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CHAPTER 1. GENERAL PROVISIONS

[HISTORY: Adopted by the Town Board of the Town of Bethlehem as indicated in article histories. Amendments noted where applicable.]

ARTICLE I. Adoption of Code

[Adopted 3-23-1988 by L.L. No. 2-1988]

§ 1-1. Legislative intent.

It is the intent of this local law to establish a codification of local laws, ordinances and certain resolutions of the Town of Bethlehem for the purpose of increasing the effectiveness of Town governmental administration, providing for greater public awareness of and access to Town legislation and protecting the health, safety and welfare of Town inhabitants. The local laws, ordinances and resolutions of the Town of Bethlehem referred to in § 1-2 of this local law shall be known collectively as the "Code of the Town of Bethlehem," and the various parts and sections of such local laws, ordinances and resolutions shall be distributed and designated as provided and set forth in § 1-2 of this local law.

§ 1-2. Distribution of local laws, ordinances and resolutions.

Derivation Table

(Section numbers with asterisks in the second column have not been repeated in the first column because they are section numbers which relate to titles, effective dates or severability clauses, which sections are not pertinent to the codification. For severability, refer to § 1-13 hereof.)

New Number (chapter, title, Article, section)	Old Number (source)	Adoption or Amendment Date
Ch. 5, Appearance Tickets	L.L. No. 2-1981	4-22-1981
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§ 5-2	Section 2	Amended at time of adoption of Code

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Ch. <u>26</u> , Public Works, Department of	L.L. No. 5-1981	6-10-1981
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Ch. <u>35</u> , Alarm Systems	L.L. No. 1-1987	1-28-1987
§ <u>35-1</u>	Section 1	
§ <u>35-2</u>	Section 2	
§ <u>35-3</u>	Section 3	
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§ <u>35-10</u>	Section 10	

New Number (chapter, title, Article, section)	Old Number (source)	Adoption or Amendment Date
§ 35-11	Section 11	
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Ch. <u>37</u> , Amusements, Licensed	Ordinance	9-30-1946
§ <u>37-1</u>	Section 1	
§ <u>37-2</u>	Section 2	Amended at time of adoption of Code
§ <u>37-3</u>	Section 3	
§ <u>37-4</u>	Section 4	
§ <u>37-5</u>	Section 5	Amended at time of adoption of Code
Ch. <u>41</u> , Automobile Junkyards	Ordinance	11-15-1966
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§ 41-4	4	
§ 41-5	5	
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Ch. <u>46</u> , Bicycles	Ordinance	4-16-1958

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Ch. <u>49</u> , Bingo and Games of Chance		
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§ <u>49-3</u>	Section 2	
§ <u>49-4</u>	Section 3	
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Ch. <u>53</u> , Building Construction and Fire Prevention Administration	Ordinance	2-28-1968
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§ <u>53-2</u>	Section 2	Amended at time of adoption of Code

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§ <u>56-1</u>	Section 1	
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	Section 10*	
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§ <u>69-2</u>	1.2	
§ <u>69-3</u>	1.3	
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	Section 3.0	
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§ <u>69-6</u>	3.2	
§ <u>69-7</u>	3.3	
	3.4*	
§ <u>69-8</u>	3.5	
§ <u>69-9</u>	3.6	
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§ <u>69-11</u>	4.2	
§ <u>69-12</u>	4.3	
§ <u>69-13</u>	5.1	
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§ <u>69-15</u>	5.3	
	Section 6.0	
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§ <u>69-17</u>	6.2	
Ch. <u>72</u> , Freshwater Wetlands	Ordinance	8-25-1976

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§ <u>72-5</u>	Article 5	
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§ <u>72-7</u>	Article 7	
§ <u>72-8</u>	Article 8	
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	Article 10*	
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§ <u>76-3</u>	Section 3	
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§ <u>76-5</u>	Section 5	Amended at time of adoption of Code
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Ch. <u>82</u> , Off-Highway Motorcycles	L.L. No. 3-1985	10-9-1985
§ <u>82-1</u>	Section 1	
§ <u>82-2</u>	Section 2	
§ <u>82-3</u>	Section 3	
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Ch. <u>86</u> , Peddling and Soliciting	Ordinance	7-1-1959; amended 10-21-1959 and 12-9-1964
§ <u>86-1</u>	Section 1	

New Number (chapter, title, Article, section)	Old Number (source)	Adoption or Amendment Date
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§ 86-11	Section 11	Amended at time of adoption of Code
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§ <u>91-3</u>	Section 202	
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§ <u>91-7</u>	Section 302	
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§ <u>91-16</u>	Section 404	
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§ <u>91-18</u>	Section 406	
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§ <u>91-26</u>	Section 414	
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§ <u>91-29</u>	Section 503	
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§ <u>91-31</u>	Section 505	
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§ <u>91-36</u>	Section 603	
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§ <u>91-38</u>	Section 605	
§ <u>91-39</u>	Section 606	
§ <u>91-40</u>	Section 607	
§ <u>91-41</u>	Section 608	
§ <u>91-42</u>	Section 609	
§ <u>91-43</u>	Section 610	
§ <u>91-44</u>	Section 611	
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§ <u>91-45</u>	Section 701	
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§ <u>91-47</u>	Section 801	
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§ <u>94-5</u>	Section 5	
§ <u>94-6</u>	Section 6	Amended 2-24-1982
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§ <u>97-3</u>	Section 3	
§ <u>97-4</u>	Section 4	
§ <u>97-5</u>	Section 5	Amended at time of adoption of Code
§ <u>97-6</u>	Section 6	
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§ <u>100-2</u>	Section 2	
§ <u>100-3</u>	Section 3	
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§ <u>100-8</u>	Section 4	
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Article II	Article II	
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§ <u>103-19</u>	C	
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§ <u>103-23</u>	G	
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New Number (chapter, title, Article, section)	Old Number (source)	Adoption or Amendment Date
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§ 106-15	Section 15	Amended at time of adoption of Code
	Section 16*	

New Number (chapter, title, Article, section)	Old Number (source)	Adoption or Amendment Date
Ch. <u>111</u> , Taxation		
Article I	Resolution	8-2-1982
§ <u>111-1</u>	Unnumbered	Amended 1-3-1984; 1-14-1987
§ <u>111-2</u>	Unnumbered	Amended 1-14-1987; at time of adoption of Code
§ <u>111-3</u>	Unnumbered	Amended 1-3-1984
Article II	L.L. No. 1-1984	1-3-1984
§ <u>111-4</u>	Section 1	
§ <u>111-5</u>	Section 2	
§ <u>111-6</u>	Section 3	
§ <u>111-7</u>	Section 4	
	Section 5*	
Ch. <u>115</u> , Trailers and Trailer Camps	Ordinance	6-21-1961
§ <u>115-1</u>	Section 1	
§ <u>115-2</u>	Section 2	
§ <u>115-3</u>	Section 3	
§ <u>115-4</u>	Section 4	
§ <u>115-5</u>	Section 5	
§ <u>115-6</u>	Section 6	Amended at time of adoption of Code
§ <u>115-7</u>	Section 7	
§ <u>115-8</u>	Section 8	
§ <u>115-9</u>	Section 9	
§ <u>115-10</u>	Section 10	
§ <u>115-11</u>	Section 11	
§ <u>115-12</u>	Section 12	Amended 12-26-1961; at time of adoption of Code
§ <u>115-13</u>	Section 13	

New Number (chapter, title, Article, section)	Old Number (source)	Adoption or Amendment Date
§ <u>115-14</u>	Section 14	
§ <u>115-15</u>	Section 15	Amended at time of adoption of Code
§ <u>115-16</u>	Section 16	
	Section 17*	
	Section 18*	
Ch. <u>119</u> , Vehicles and Traffic	Traffic Ordinance	At time of adoption of Code
Articles <u>I</u> through VI		
§§ <u>119-1</u> through <u>119-41</u>		
Ch. <u>128</u> , Zoning	Ordinance	10-28-1944; readopted as amended to date at time of adoption of Code
Article <u>I</u>	Article <u>I</u>	
§ <u>128-1</u>	Nos. 1 through 36	
Article II	Article II	
§ <u>128-2</u>	Unnumbered	
Article III	Article III	
§ <u>128-3</u>	Unnumbered	
Article IV	Article IV	
§ <u>128-4</u>	Unnumbered	
Article V	Article IV-A	
§ <u>128-5</u>	Unnumbered	
§ <u>128-6</u>	Unnumbered	
§ <u>128-7</u>	Unnumbered	
§ <u>128-8</u>	Unnumbered	
Article VI	Article V	
§ <u>128-9</u>	Unnumbered	
§ <u>128-10</u>	Residence AAA	

New Number (chapter, title, Article, section)	Old Number (source)	Adoption or Amendment Date
§ <u>128-11</u>	Residence AA	
§ <u>128-12</u>	Residence A	
§ <u>128-13</u>	Residence AB	
§ <u>128-14</u>	Residence B	
§ <u>128-15</u>	Residence AR	
§ <u>128-16</u>	CCC Commercial Services District	
§ <u>128-17</u>	CC Retail Commercial District	
§ <u>128-18</u>	C General Commercial District	
§ <u>128-19</u>	Industrial Districts	
§ <u>128-20</u>	Light Industrial District	
§ <u>128-21</u>	Heavy Industrial District	
§ <u>128-22</u>	Off-Street parking Rural District	
§ <u>128-23</u>	Not Zoned	
§ <u>128-24</u>	Special Permit Uses	
Article VII	Article V-A	
§ <u>128-25</u>	1, 2	
Article VIII	Article V-B	
§ <u>128-26</u>	Sec. 1	
§ <u>128-27</u>	Sec. 2	
§ <u>128-28</u>	Sec. 3	
§ <u>128-29</u>	Sec. 4	
§ <u>128-30</u>	Sec. 5	
§ <u>128-31</u>	Sec. 6	
§ <u>128-32</u>	Sec. 7	

New Number (chapter, title, Article, section)	Old Number (source)	Adoption or Amendment Date
§ <u>128-33</u>	Sec. 8	
Article IX	Article VI	
§ <u>128-34</u>	1	
§ <u>128-35</u>	2	
§ <u>128-36</u>	3	
§ <u>128-37</u>	4	
Article X	Article VI-A	
§ <u>128-38</u>	1	
§ <u>128-39</u>	2	
§ <u>128-40</u>	3	
§ <u>128-41</u>	4	
§ <u>128-42</u>	5	
§ <u>128-43</u>	6	
Article XI	Article VII	
§ <u>128-44</u>	1, 2, 3, 4	
§ <u>128-45</u>	5	
§ <u>128-46</u>	6	
§ <u>128-47</u>	7	
§ <u>128-48</u>	Unnumbered	
Article XII	Article VIII	
§ <u>128-49</u>	1	
§ <u>128-50</u>	2	
§ <u>128-51</u>	3	
§ <u>128-52</u>	4	
§ <u>128-53</u>	5	
§ <u>128-54</u>	6	
§ <u>128-55</u>	7	

New Number (chapter, title, Article, section)	Old Number (source)	Adoption or Amendment Date
§ 128-55.1	8	
§ <u>128-56</u>	Unnumbered	
Article XIII	Article VIII-A	
§ <u>128-57</u>	AAA or AA District	
§ <u>128-58</u>	A District	
§ <u>128-59</u>	B District	
Article XIV	Article IX	
§ <u>128-60</u>	1 through 8	
§ <u>128-61</u>	9	
§ <u>128-62</u>	Unnumbered	
Article XV	Article X	
§ <u>128-63</u>	1, 2	
§ <u>128-64</u>	3	
§ <u>128-65</u>	Unnumbered	
Article XVI	Article XI	
§ <u>128-66</u>	1	
§ <u>128-67</u>	2	
§ <u>128-68</u>	3	
§ <u>128-69</u>	4	
§ <u>128-70</u>	5	
§ <u>128-71</u>	6	
§ <u>128-72</u>	Unnumbered	
Article XVII	Article XII	
§ <u>128-73</u>	1 through 7	
§ <u>128-74</u>	8	
§ <u>128-75</u>	9	
§ <u>128-76</u>	10	

New Number (chapter, title, Article, section)	Old Number (source)	Adoption or Amendment Date
§ <u>128-77</u>	11	
§ 128-77.1	12	
§ <u>128-78</u>	Unnumbered	
Article XVIII	Article XIII	
§ <u>128-79</u>	1, 2, 3	
§ <u>128-80</u>	4	
§ <u>128-81</u>	5	
§ <u>128-82</u>	6	
§ <u>128-83</u>	7	
§ <u>128-84</u>	8	
§ 128-84.1	9	
§ <u>128-85</u>	Unnumbered	
Article XIX	Article XIV	
§ <u>128-86</u>	A, B	
Article XX	Article XV	
§ <u>128-87</u>	Unnumbered	
§ <u>128-88</u>	Unnumbered	
§ <u>128-89</u>	Unnumbered	
§ <u>128-90</u>	Unnumbered	
§ <u>128-91</u>	Unnumbered	
Article XXI	Article XVI	
§ <u>128-92</u>	Unnumbered	
§ <u>128-93</u>	Unnumbered	
Article XXII	Article XVII	
§ <u>128-94</u>	Unnumbered	
§ <u>128-95</u>	Unnumbered	
§ <u>128-96</u>	Unnumbered	

New Number (chapter, title, Article, section)	Old Number (source)	Adoption or Amendment Date
Article XXIII	Article XVIII	
§ <u>128-97</u>	Organization	
§ <u>128-98</u>	Records	
§ <u>128-99</u>	Appeal	
§ <u>128-100</u>	Jurisdiction	
§ <u>128-101</u>	Hearing and Determination	
Article XXIV	Article XIX	
§ <u>128-102</u>	Unnumbered	
Article XXV	Article XX	
§ 128-103	Unnumbered	
Article XXVI	Article XXI	
§ 128-104	Unnumbered	
	Article XXII*	
	Article XXIII*	

§ 1-3. Repeal of local laws and ordinances.

A. The local laws and ordinances of a general and permanent nature enacted or adopted by the Town Board of the Town of Bethlehem and not included in the Code of the Town of Bethlehem and in force on the date of the adoption of this local law are hereby repealed as of the effective date of this local law, except as hereinafter provided.

B. By way of clarification in a specific instance and not by way of enumeration, Local Law No. 1-1978, enacted May 24, 1978, to establish a Department of Public Safety, is hereby specifically repealed.

§ 1-4. Local laws and ordinances saved from repeal; matters not affected by repeal.

The repeal of local laws and ordinances provided for in § 1-3 of this local law shall not affect the following classes of local laws, ordinances, resolutions, rights and obligations, which are hereby expressly saved from repeal.

A. Any right or liability established, accrued or incurred under any legislative provision of the Town of Bethlehem prior to the effective date of this local law, or any action or proceeding brought for the enforcement of such right or liability.

B. Any offense or act committed or done before the effective date of this local law in violation of any legislative provision of the Town of Bethlehem, or any penalty, punishment or forfeiture which may result therefrom.

C. Any prosecution, indictment, action, suit or other proceeding pending or any judgment rendered prior to the effective date of this local law and brought pursuant to any legislative provision of the Town of Bethlehem.

D. Any franchise, license, right, easement or privilege heretofore granted or conferred by the Town of Bethlehem.

E. Any local law, ordinance or resolution of the Town of Bethlehem providing for the laying out, opening, altering, widening, relocating, straightening, establishing of grade, changing of name, improvement, acceptance or vacation of any right-of-way, easement, street, road, highway, park or other public place within the Town of Bethlehem or any portion thereof.

F. Any ordinance or resolution of the Town of Bethlehem appropriating money or transferring funds, promising or guaranteeing the payment of money or authorizing the issuance and delivery of any bond of the Town of Bethlehem or other instruments or evidence of the Town's indebtedness.

G. Local laws, ordinances or resolutions authorizing the purchase, sale, lease or transfer of property or any lawful contract or obligation.

H. The levy or imposition of special assessments or charges.

I. The dedication of property.

J. Any local laws, ordinances or resolutions relating to salaries.

K. Any currently effective ordinance or local law regulating water use or pertaining to water rates in the Town of Bethlehem.

L. Any local laws or ordinances adopted subsequent to April 8, 1987.

§ 1-5. Meaning and intent of previously adopted legislation unchanged.

In compiling and preparing the local laws, ordinances and resolutions of the Town for publication as the Code of the Town of Bethlehem, as distributed and designated in the table in § 1-2 hereof, no changes in the meaning or intent of such local laws, ordinances and resolutions have been made.

§ 1-6. Copy of Code on file.

A copy of the Code of the Town of Bethlehem, in loose-leaf form, has been filed in the office of the Town Clerk of the Town of Bethlehem and shall remain there for use and examination by the public until final action is taken on this local law; and if this local law shall be adopted, such copy shall be certified by the Town Clerk by impressing thereon the Seal of the Town of Bethlehem, and such certified copy shall remain on file in the office of said Town Clerk to be made available to persons desiring to examine the same during all times while said Code is in effect.

§ 1-7. Changes or additions.

A. In compiling and preparing the local laws, ordinances and resolutions for adoption and revision as part of the Code pursuant to the Municipal Home Rule Law § 20, Subdivision 3, certain grammatical changes and other minor changes were made in one or more of the local laws, ordinances or resolutions. It is the intention of the Town Board that all such changes be adopted as part of the Code as if the provisions so changed had been previously formally amended to read as such.

B. In addition, certain changes, amendments and additions are enacted herewith, to become effective upon the effective date of this local law (chapter and section number references are to these materials as they are numbered and appear in the Code): Editor's Note: Pursuant to § 1-7B, the following sections and chapters were added, amended or revised: §§ 5-2C, 16-2, 26-10B, 37-2A, 41-10, 46-5, 53-1, 53-2, 53-5, 53-16B, 56-4, 86-6,

97-12, 97-13, 106-7, 106-14, 111-2A, C and D, 115-6D, 115-12B(3) and 115-15 and Chs. 119 and 128. A complete description of these changes is on file in the office of the Town Clerk.

(1) The sections listed below are amended herewith to provide, in substance, that an offense against the provisions of the chapter or article involved shall constitute a violation punishable, upon conviction, by a fine of not more than \$250 or by imprisonment for a term not exceeding 15 days, or by both such fine and imprisonment, with the continuation of an offense to constitute a separate and distinct offense for each day of continuation:

§ <u>37-5A</u>	(original Section 5, first paragraph)
§ 41-14	(original 14)
§ <u>66-4</u>	(original Section 4)
§ <u>76-5</u>	(original Section 5)
§ 86-11	(original Section 11)
§ <u>94-8</u>	(original Section 8)
§ <u>97-5</u>	(original Section 5 of Art. I)
§ 106-15	(original Section 15)

§ 1-8. Amendments to Code.

Any and all additions, deletions, amendments or supplements to any of the local laws, ordinances and resolutions known collectively as the "Code of the Town of Bethlehem," or any new local laws, ordinances or resolutions, when enacted or adopted in such form as to indicate the intention of the Town Board to be a part thereof, shall be deemed to be incorporated into such Code so that reference to the Code of the Town of Bethlehem shall be understood and intended to include such additions, deletions, amendments or supplements. Whenever such additions, deletions, amendments or supplements to the Code of the Town of Bethlehem shall be enacted or adopted, they shall thereafter be printed and, as provided hereunder, inserted in the loose-leaf book containing said Code, as amendments and supplements thereto.

§ 1-9. Code book to be kept up-to-date.

It shall be the duty of the Town Clerk to keep up-to-date the certified copy of the book containing the Code of the Town of Bethlehem required to be filed in the office of the Town Clerk for use by the public. All changes in said Code and all local laws, ordinances and resolutions adopted by the Town Board subsequent to the enactment of this local law in such form as to indicate the intention of said Board to be a part of said Code shall, when finally enacted or adopted, be included therein by temporary attachment of copies of such changes or local laws, ordinances or resolutions until such changes or local laws, ordinances or resolutions are printed as supplements to said Code book, at which time such supplements shall be inserted therein.

§ 1-10. Sale of Code book; supplementation.

Copies of the Code book containing the Code of the Town of Bethlehem may be purchased from the Town Clerk upon the payment of a fee to be set by resolution of the Town Board, which may also arrange by resolution for procedures for the periodic supplementation thereof.

§ 1-11. Tampering with Code.

Any person who, without authorization from the Town Clerk, changes or amends, by additions or deletions, any part or portion of the Code of the Town of Bethlehem, or who alters or tampers with such Code in any manner

whatsoever which will cause the legislation of the Town of Bethlehem to be misrepresented thereby, or who violates any other provision of this local law, shall be guilty of an offense and shall, upon conviction thereof, be subject to a fine of not more than \$250 or imprisonment for a term of not more than 15 days, or both.

§ 1-12. Penalties for offenses.

Any person committing an offense against any chapter or article of this Code for which a different penalty is not specifically provided shall be guilty of a violation under the Penal Law and, upon conviction thereof, shall be punishable for each offense by a fine of not more than \$250 or by imprisonment for not more than 15 days, or by both such fine and imprisonment. Each day that an offense continues shall constitute a separate violation.

§ 1-13. Severability.

If any clause, sentence, paragraph, section, article or part of this local law or of any local law or ordinance cited in the table in § 1-2 hereof, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, article or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 1-14. Incorporation of provisions into Code.

The provisions of this local law are hereby made Chapter 1 of the Code of the Town of Bethlehem, to be entitled "General Provisions, Article I, Adoption of Code," and the sections of this local law shall be numbered §§ 1-1 to 1-15, inclusive.

§ 1-15. When effective.

This local law and the Code of the Town of Bethlehem adopted hereby shall take effect immediately upon the filing with the Secretary of State of the State of New York of a copy of this local law.

CHAPTER 5. APPEARANCE TICKETS

§ 5-1. Purpose.

§ 5-2. Persons authorized to issue and serve tickets.

§ 5-3. Personal service.

CHAPTER 5. APPEARANCE TICKETS

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 4-22-1981 by L.L. No. 2-1981. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction and fire prevention administration — See Ch. 53.

Dogs — See Ch. 61.

§ 5-1. Purpose.

The purpose of this chapter is to authorize public servants of the Town of Bethlehem to issue and serve appearance tickets in connection with violations of state statutes, local laws, ordinances or rules and regulations of the Town which the public servants are authorized or required to enforce.

§ 5-2. Persons authorized to issue and serve tickets.

The following public servants of the Town of Bethlehem are hereby authorized to issue and serve appearance tickets with respect to violations of a state statute, a local law, ordinance, rule or regulation of the Town of Bethlehem that such public servants are, respectively, required or authorized to enforce:

- A. Building Inspector and Assistant Building Inspectors: building and zoning.
- B. Fire Inspector and Assistant Fire Inspectors: fire prevention and safety.
- C. Animal Control Officer: dog control.

[Amended 3-23-1988 by L.L. No. 2-1988]

§ 5-3. Personal service.

An appearance ticket other than for a parking violation shall be served personally.

CHAPTER 11. DEFENSE OF TOWN EMPLOYEES

- § 11-1. Definitions.
- § 11-2. Defense of employee in civil action.
- § 11-3. Eligibility for defense.
- § 11-4. Benefits inure only to employees.
- § 11-5. Employees under civil service.
- § 11-6. Insurers' rights and obligations not affected.
- § 11-7. Rights preserved.
- § 11-8. Applicability.

CHAPTER 11. DEFENSE OF TOWN EMPLOYEES

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 3-11-1981 by L.L. No. 1-1981. Amendments noted where applicable.]

§ 11-1. Definitions.

As used in this chapter, unless the context otherwise requires, the following terms shall have the meanings indicated:

EMPLOYEE

Any person holding a position by election, appointment or employment in the service of the Town, but shall not include a volunteer, any person not compensated for his services or any independent contractor. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

TOWN

The Town of Bethlehem.

§ 11-2. Defense of employee in civil action.

A. Upon compliance by the employee with the provisions of § 11-3, the Town shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting or in good faith purporting to act within the scope of his public employment or duties. Such defense shall not be provided where such civil action or proceeding is brought by or on behalf of the Town.

B. Subject to the conditions set forth in this chapter, the employee shall be represented by the Town Attorney or an attorney employed or retained by the Town for the defense of the employee. The Town Board shall employ or retain an attorney for the defense of the employee whenever the Town does not have a Town Attorney, or whenever the Town Board determines, based upon its investigation and review of the facts and circumstances of the case, that representation by the Town Attorney would be inappropriate, or a court of competent jurisdiction determines that a conflict of interest exists and that the employee cannot be represented by the Town Attorney. Reasonable attorney's fees and litigation expenses shall be paid by the Town to such attorney employed or retained, from time to time, during the pendency of the civil action or proceeding, subject to certification by the Town Supervisor that the employee is entitled to representation under the terms and conditions of this chapter. Payment of such fees and expenses shall be made in the same manner as payment of other claims and expenses of the Town. Any dispute with respect to representation of multiple employees by the Town Attorney

or by an attorney employed or retained for such purposes or with respect to the amount of the fees or expenses shall be resolved by the court.

C. Where the employee delivers process and a request for a defense to the Town Attorney or the Town Supervisor as required by § 11-3, the Town Attorney or the Supervisor, as the case may be, shall take the necessary steps, including the retention of an attorney under the terms and conditions provided in Subsection B of this section, on behalf of the employee to avoid entry of a default judgment, pending resolution of any question relating to the obligations of the Town to provide a defense.

§ 11-3. Eligibility for defense.

A. The duties to defend provided in this chapter shall be contingent upon:

(1) Delivery to the Town Attorney or, if none, to the Town Supervisor of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after an employee is served with such document; and

(2) The full cooperation of the employee in the defense of such action or proceeding and defense of any action or proceeding against the Town based upon the same act or omission and in the prosecution of any appeal.

B. Such delivery shall be deemed a request by the employee that the Town provide for his defense pursuant to this chapter unless the employee shall state in writing that a defense is not requested.

§ 11-4. Benefits inure only to employees.

The benefits of this chapter will inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party, nor shall any provision of this chapter be construed to affect, alter or repeal any provisions of the Worker's Compensation Law.

§ 11-5. Employees under civil service.

The benefits of this chapter shall be extended to an employee of a negotiating unit for which an agreement has been negotiated pursuant to Civil Service Law, Article 14, only if such agreement expressly so provides.

§ 11-6. Insurers' rights and obligations not affected.

The provisions of this chapter shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance, nor shall the Town be obligated hereunder if an insurance carrier is providing a defense by reason of insurance coverage.

§ 11-7. Rights preserved.

As otherwise specifically provided in this chapter, the provisions of this chapter shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the Town or any right to defense provided for any governmental officer or employee by, in accordance with or by reason of any other provision of state or federal statutory or common law.

§ 11-8. Applicability.

The provisions of this chapter shall apply to all actions and proceedings specified herein which have been commenced, instituted or brought on or after the effective date of this chapter.

CHAPTER 16. ETHICS, CODE OF

ARTICLE I. Intent and Standards

§ 16-1. Legislative declaration.

§ 16-2. Definitions.

§ 16-3. Standards of conduct.

§ 16-4. Employees' rights preserved.

§ 16-5. Distribution of copies.

§ 16-6. Penalties for offenses.

ARTICLE II. Board of Ethics

§ 16-7. Board established; membership.

§ 16-8. Advisory opinions.

§ 16-9. Organization and records.

CHAPTER 16. ETHICS, CODE OF

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 9-23-1970. Amendments noted where applicable.]

ARTICLE I. Intent and Standards

§ 16-1. Legislative declaration.

Pursuant to the provisions of § 806 of the General Municipal Law, the Town Board of the Town of Bethlehem recognizes that there are rules of ethical conduct for public officers and employees which must be observed if a high degree of moral conduct is to be obtained and if public confidence is to be maintained in our unit of local government. It is the purpose of this chapter to promulgate these rules of ethical conduct for the officers and employees of the Town of Bethlehem. These rules shall serve as a guide for official conduct of the officers and employees of the Town of Bethlehem. The rules of ethical conduct of this chapter, as adopted, shall not conflict with but shall be in addition to any prohibition of Article 18 of the General Municipal Law or any other general or special law relating to ethical conduct and interest in contracts of municipal officers and employees.

§ 16-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

INTEREST

A pecuniary or material benefit accruing to a municipal officer or employee, unless the context otherwise requires.

MUNICIPAL OFFICER OR EMPLOYEE

An officer or employee of the Town of Bethlehem, whether paid or unpaid, including members of any administrative board, commission or other agency thereof. No person shall be deemed to be a "municipal officer or employee" solely by reason of being a volunteer fireman or civil defense volunteer, except a Chief or Assistant Chief.

[Amended 3-23-1988 by L.L. No. 2-1988]

§ 16-3. Standards of conduct.

Every officer or employee of the Town of Bethlehem shall be subject to and abide by the following standards of conduct:

A. Gifts. He shall not, directly or indirectly, solicit any gift, or accept or receive any gift having a value of \$25 or more, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him or could reasonably be expected to influence him in the performance of his official duties or was intended as a reward for any official action on his part.

B. Confidential information. He shall not disclose confidential information acquired by him in the course of his official duties or use such information to further his personal interest.

C. Representation before one's own agency. He shall not receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any municipal agency of which he is an officer, member or employee or before any municipal agency over which he has jurisdiction or to which he has the power to appoint any member, officer or employee.

D. Representation before any agency for a contingent fee. He shall not receive, or enter into any agreement, express or implied, for compensation for services to be rendered in relation to any matter before any agency of this municipality whereby his compensation is to be dependent or contingent upon any action by such agency with respect to such matter, provided that this subsection shall not prohibit the fixing at any time of fees based upon the reasonable value of the services rendered.

E. Disclosure of interest in legislation. To the extent that he knows thereof, a member of the Town Board and any officer or employee of the Town of Bethlehem, whether paid or unpaid, who participates in the discussion or gives official opinion to the Town Board on any legislation before the Town Board shall publicly disclose on the official record the nature and extent of any direct or indirect financial or other private interest he has in such legislation.

F. Investments in conflict with official duties. He shall not invest or hold any investment, directly or indirectly, in any financial, business, commercial or other private transaction which creates a conflict with his official duties.

G. Private employment. He shall not engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of his official duties.

H. Future employment. He shall not, after the termination of service or employment with such municipality, appear before any board or agency of the Town of Bethlehem in relation to any case, proceeding or application in which he personally participated during the period of his service or employment or which was under his active consideration.

§ 16-4. Employees' rights preserved.

Nothing herein shall be deemed to bar or prevent the timely filing by a present or former municipal officer or employee of any claim, account, demand or suit against the Town of Bethlehem or any agency thereof on behalf of himself or any member of his family arising out of any personal injury or property damage or for any lawful benefit authorized or permitted by law.

§ 16-5. Distribution of copies.

The Supervisor of the Town of Bethlehem shall cause a copy of this Code of Ethics to be distributed to every officer and employee of the Town of Bethlehem within 30 days after the effective date of this chapter. Each officer and employee elected or appointed thereafter shall be furnished a copy before entering upon the duties of his office or employment.

§ 16-6. Penalties for offenses.

In addition to any penalty contained in any other provision of law, any person who shall knowingly and intentionally violate any of the provisions of this chapter may be fined, suspended or removed from office or employment, as the case may be, in the manner provided by law.

ARTICLE II. Board of Ethics

§ 16-7. Board established; membership.

There is hereby established a Board of Ethics consisting of three members to be appointed by the Town Board, all of whom shall reside in the Town of Bethlehem, who shall serve without compensation and at the pleasure of the Town Board. A majority of such members shall be persons other than Town employees, but said Board shall include one member who is an elected or appointed Town employee of the Town of Bethlehem.

§ 16-8. Advisory opinions.

The Board of Ethics shall render advisory opinions to the officers and employees of the Town of Bethlehem upon written request. The opinions of the Board of Ethics shall be advisory and confidential, and in no event shall the identity of the Town employee be disclosed except to authorized persons and agencies.

§ 16-9. Organization and records.

The Board of Ethics, following the appointment of the members, shall organize and adopt its own rules and regulations as to procedures and shall maintain appropriate records of its proceedings and opinions.

CHAPTER 24. POLICE DEPARTMENT

ARTICLE I. Investigation Fund

§ 24-1. Legislative intent.

§ 24-2. Purpose.

§ 24-3. Authorization; maintenance of records.

CHAPTER 24. POLICE DEPARTMENT

**[HISTORY: Adopted by the Town Board of the Town of Bethlehem as indicated in article histories.
Amendments noted where applicable.]**

ARTICLE I. Investigation Fund

[Adopted 2-24-1988 by L.L. No. 1-1988]

§ 24-1. Legislative intent.

It is the intent of this article to establish and provide for the maintenance of an Investigation Fund to be used by the Town of Bethlehem Police Department as part of its law enforcement activities.

§ 24-2. Purpose.

It shall be the purpose of this article to provide immediate access to the funds to enable the Bethlehem Police Department to conduct undercover and other lawful police activities.

§ 24-3. Authorization; maintenance of records.

A. This article shall authorize the Bethlehem Police Department to maintain an account for the purpose set forth herein. The account shall bear the title "Investigation Fund of the Bethlehem Police Department" and shall be funded in the initial amount of \$3,000.

B. The Police Department shall maintain a ledger book showing the amounts expended, dates and general purposes, but need not maintain records nor report the names of informants or any other information intended to be confidential. Said records shall be available for review by the Town Comptroller.

C. Only the Chief of Police or his designee shall be authorized to utilize these funds.

CHAPTER 26. PUBLIC WORKS, DEPARTMENT OF

- § 26-1. Establishment.
- § 26-2. Commissioner of Public Works.
- § 26-3. Functions of Department.
- § 26-4. Salary of Commissioner.
- § 26-5. Divisions of Department.
- § 26-6. Appointment of employees.
- § 26-7. Transfer of employees.
- § 26-8. Continuing responsibility for payments and charges.
- § 26-9. Status of employees.
- § 26-10. Powers of Town Board.
- § 26-11. Powers of Town Supervisor.
- § 26-12. Qualifications of Commissioner.

CHAPTER 26. PUBLIC WORKS, DEPARTMENT OF

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 6-10-1981 by L.L. No. 5-1981. Amendments noted where applicable.]

GENERAL REFERENCES

Sewers — See Ch. 91.

§ 26-1. Establishment.

There is hereby created the Department of Public Works for the Town of Bethlehem. This Department shall consist of the Commissioner of Public Works and such other officers and employees as may be needed.

§ 26-2. Commissioner of Public Works.

There is hereby created the office of Commissioner of Public Works, who shall be appointed by the Town Board as provided by law. The Commissioner shall have control and supervision over all officers and employees assigned to the Department. He shall serve at the pleasure of the Town Board and his office shall be in the unclassified civil service.

§ 26-3. Functions of Department.

The Department of Public Works shall be responsible for:

- A. The construction, repair, maintenance and cleaning of sanitary sewers owned by or under the sole jurisdiction of the Town or any improvement district or other district or agency thereof.
- B. The operation, repair and maintenance of any sewage treatment plant owned by or under the sole jurisdiction of the Town or any improvement district or other district or agency thereof.
- C. The construction, maintenance and operation of such other sanitation facilities to the extent that the same shall be delegated to the Department of Public Works by the Town Board.
- D. The construction, operation, repair and maintenance of water pumping facilities, water treatment plants and water distribution systems owned by or under the sole jurisdiction of the Town or any improvement district or other district or agency thereof.
- E. The billing of consumers for use of water and/or sewer services supplied by the Town or by any improvement district or other district or agency thereof and such other work and/or services as the Town Board may lawfully direct.

F. The provision of engineering services, including but not limited to highway and drainage, buildings and facilities, solid waste disposal, water facilities and such other engineering services as may be directed by the Town Board.

§ 26-4. Salary of Commissioner.

The salary of the Commissioner of Public Works shall be fixed annually by the Town Board, shall be paid out of the general funds of the Town and shall not be a charge, in whole or in part, upon any improvement or benefit district of the Town.

§ 26-5. Divisions of Department.

There shall be within the Department of Public Works, and there is hereby created in the Department of Public Works, the following divisions:

A. Engineering Division.

B. Sewer Division.

C. Water Division.

§ 26-6. Appointment of employees.

All employees of the Department of Public Works shall be hired by the Commissioner of Public Works; provided, however, that any employee in the classified civil service may be removed only for cause. "Employee," as used in this section of this chapter, shall not include the Commissioner of Public Works.

§ 26-7. Transfer of employees.

Except as limited by §§ 26-10 through 26-12, the Commissioner of Public Works may transfer any employee of the Department of Public Works from one division or office thereof to another division or office thereof, and such transfer may be on either a temporary or a permanent basis: provided, however, that the salary of any employee so transferred shall not be reduced by reason of such transfer, and further provided that the salary of no employee so transferred shall be increased by reason of such transfer unless such salary increase shall be approved in advance by the Town Board.

§ 26-8. Continuing responsibility for payments and charges.

Except as in this chapter expressly provided, this chapter shall not in any manner change the present provisions of law in effect in the Town, by reason of any provisions of any state statute or otherwise, relating to the parcels of real property presently responsible for the payment of real property taxes for maintenance, operation and capital cost of any improvement district or other district of the Town. Except as herein expressly provided, all of the charges for the foregoing shall continue to be assessed in the same manner as if this chapter had not been adopted, and the bookkeeping procedures of the Department of Public Works and in the office of the Town Comptroller shall be adjusted to accommodate the provisions for tax payments for such items in the same manner as if all of the items were being performed by individual departments, districts or agencies of the Town. Except as otherwise specifically provided in this chapter, all costs and expenses lawfully incurred by the Department of Public Works on behalf of any special district or improvement or other district agency of the Town or on behalf of any special Town project shall be charged against such district or project and paid from the funds duly appropriated for the purpose of such district or project.

§ 26-9. Status of employees.

The employees of every water and sewer district of the Town, as well as employees of the Engineering Division, performing functions which are hereby transferred to the Department of Public Works, shall be continued as employees of the Department of Public Works with the same classification, salary, benefits, pensions and

retirement rights and privileges as they had immediately prior to such transfer; and the Commissioner of Public Works shall have the right to hire, fire and discipline such employees.

§ 26-10. Powers of Town Board.

A. Nothing herein contained shall be construed to delegate or transfer any power of the Town Board contained in §§ 51, 64, 12, 14 and 16 of the New York State Town Law or provided for by the New York State Municipal Home Rule Law or other powers which may be lawfully exercised by said Board.

B. The Town Board shall establish or set the rates for fees for services rendered by the Department of Public Works.

[Added 3-23-1988 by L.L. No. 2-1988]

§ 26-11. Powers of Town Supervisor.

Nothing herein contained shall be construed to delegate or transfer any power of the Town Supervisor contained in §§ 29, 52 or 119 of the New York State Town Law or any other powers which may be lawfully exercised by said Supervisor.

§ 26-12. Qualifications of Commissioner.

Before entering upon the duties of his office, the Commissioner of Public Works shall take and file with the Town Clerk an oath of office. He shall be a high school graduate, preferably supplemented by college level courses in civil engineering.

CHAPTER 35. ALARM SYSTEMS

§ 35-1. Title.

§ 35-2. Purpose.

§ 35-3. Definitions.

§ 35-4. License required; installation permit; fees; penalties.

§ 35-5. Maintenance.

§ 35-6. Promulgation of regulations; suspension or revocation.

§ 35-7. False alarms.

§ 35-8. Timer required.

§ 35-9. Dialer alarms.

§ 35-10. Disclaimer of liability; verification of security by alarm user.

CHAPTER 35. ALARM SYSTEMS

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 1-28-1987 by L.L. No. 1-1987; amended in its entirety 10-26-1988 by L.L. No. 7-1988. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Police Department — See Ch. 24.

§ 35-1. Title.

This chapter shall be known and may be cited as the "Emergency Alarm System Law of the Town of Bethlehem."

§ 35-2. Purpose.

This chapter is to promote the health, safety and general welfare of the people of the Town of Bethlehem, New York, including the protection of the property of the Town and its inhabitants, by imposing regulations on the sale, installation and maintenance of burglar, fire and other emergency alarms in the Town of Bethlehem.

§ 35-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ALARM SUPPLIER

A. Any person, corporation or other entity who assembles, installs, constructs or maintains emergency alarms in the Town of Bethlehem ("Town").

B. The term "alarm supplier" shall not include property owners who install and/or maintain emergency alarms in premises owned and occupied by such property owner as a residence or place of business, nor shall such term include lessees of premises who install and/or maintain emergency alarms in such leased premises occupied by such lessee as a residence or place of business.

EMERGENCY ALARM

A. Any device which transmits a signal to or otherwise communicates to or with, causes communication to or with or initiates communication to or with the Police Department of the Town of Bethlehem ("Police Department"), or any such device which causes an audible signal to be emitted on the exterior of the premises wherein such device is installed.

B. Such term shall not include, however, any such device installed in premises owned or controlled by any governmental agency, school district or municipality and shall not include any such device installed in a motor vehicle as that term is defined in the Vehicle and Traffic Law of the State of New York.

FALSE ALARM

A. A signal emitted by an emergency alarm, which signal results in an actual communication to or with the Police Department, which communication falsely indicates that there is or has been a fire, burglary, intrusion or other emergency at a premises in the Town of Bethlehem.

B. A "false alarm" does not include signals emitted by an emergency alarm caused by or as a result of circumstances such as storms or acts of God beyond the control of the licensee.

LICENSEE

The person, corporation or other entity who applies for and to whom an emergency alarm permit is issued or reissued.

§ 35-4. License required; installation permit; fees; penalties.

A. No alarm supplier shall be permitted to install or service emergency alarms within the Town of Bethlehem without first being licensed to do so by said Town.

B. Before an alarm supplier may be licensed by the Town of Bethlehem, at least one individual who is owner, officer, partner or employee of the alarm supplier shall establish to the satisfaction of the Chief of Police or his designee that he has been engaged in or employed by an alarm business, in sales, service or installation, for an aggregate period of three years prior to applying for an alarm supplier's license, and, in addition, that such person devotes a substantial portion of his time engaged in and/or supervising alarm services on behalf of the alarm supplier.

C. The Chief of Police may deny the application for an alarm supplier license or renewal or may revoke or suspend a license if he finds that the applicant or the individual having authority and the responsibility for the management and operation of the alarm supplier's business or that any of the alarm supplier's owners, partners or principal corporate officers have:

- (1) Been convicted in any jurisdiction of a felony or a misdemeanor, if the Chief of Police finds that such conviction reflects unfavorably on the fitness of the alarm supplier to engage in the alarm business.
- (2) Knowingly given false information of a material nature in connection with the application for an alarm supplier's license or its renewal or for an emergency alarm permit.
- (3) Committed fraud, as determined by a court of competent jurisdiction, in connection with any contract of or work performed by the alarm supplier.
- (4) Been found by the Chief of Police to have violated any of the provisions of this chapter or any rules or regulations of the Chief of Police, which violations reflect unfavorably upon the fitness of the alarm supplier to engage in the alarm business.

D. The annual fee for such alarm supplier's license shall be \$25.

E. Installation permit.

- (1) Prior to the installation by an alarm supplier, as defined in § 35-3 herein, of any emergency alarm in the Town of Bethlehem, a permit for such emergency alarm must be issued by the Town. Application for such permit shall be made to the Chief of Police of the Town of Bethlehem (the "Chief") or, if none, to the person designated as Acting Chief by the Town Board. Such application shall contain such information as is required by the regulations as promulgated and amended by the Chief.
- (2) Every owner of an emergency alarm, except one defined in § 35-3 herein, shall apply for a permit in accordance with the provisions of this chapter within 90 days after the effective date hereof or shall disable said emergency alarm.
- (3) A fee of \$25 shall be paid to the Town by the applicant prior to the issuance of such permit, and such permit may be issued only to the owner or lessee of the premises in which the alarm is to be installed.
- (4) In the event that after a permit is issued the owner or lessee of the premises protected by an emergency alarm changes, the licensee shall immediately notify the Chief of such change. Upon such change, such emergency alarm shall be immediately disabled in such a manner as to prevent the same from transmitting alarm signals. Such alarm device shall remain so disabled until a new permit is issued to the new owner or lessee. In the event that a permit issued by the Town is revoked pursuant to the provisions of the chapter, the emergency alarm for which such permit was issued shall be immediately disabled in such a manner as to prevent the same from transmitting alarm signals.
- (5) Any person, corporation or other entity violating any of the provisions of Subsections E(1) through (4) of this section shall be subject to a civil fine not exceeding \$50 for each day on which such violation occurs or continues.

F. Any person or persons, associations or corporations failing to submit the application required by Subsection E herein and obtaining the required approval thereof is guilty of a violation and shall, upon conviction thereof, be subject to a fine not exceeding \$250 or to imprisonment not exceeding 15 days, or both.

§ 35-5. Maintenance.

Each and every emergency alarm in the Town of Bethlehem shall be properly maintained by the personnel of an alarm supplier licensed by the Town pursuant to § 35-4 of this chapter.

§ 35-6. Promulgation of regulations; suspension or revocation.

The Chief of Police, subject to Town Board approval, shall have the authority to promulgate rules and regulations governing the operations, testing and maintenance of each alarm system. The penalty for violation of said rules and regulations shall be the suspension or revocation of the alarm supplier's license.

§ 35-7. False alarms.

A. Penalties as set forth herein may be imposed against the licensee of any emergency alarm which emits a false alarm. A grace period of 45 calendar days after a new installation of an emergency alarm, or after making operational a disabled emergency alarm, will be granted by the Chief in writing after application therefor by the licensee. Extensions of such grace period may be granted in writing by the Chief in the Chief's discretion.

B. The penalties for false alarms which may be imposed against the licensee for the occurrence of false alarms caused by such licensee's emergency alarm are as follows:

(1) A civil fine not exceeding \$50 for the first such false alarm.

(2) A civil fine not exceeding \$100 for the second such false alarm.

(3) A civil fine not exceeding \$250 for the third and subsequent false alarms.

C. The Chief may revoke a permit issued pursuant to this chapter upon the occurrence of the fourth false alarm within a one-year period.

§ 35-8. Timer required.

Each and every emergency alarm system which is audible at the exterior of the premises of the alarm installation shall be installed with a timer which will discontinue the audible signal after a maximum time period of 30 minutes.

§ 35-9. Dialer alarms.

After 90 days from the effective date of this chapter, each and every automatic dialer alarm of any type shall not call any telephone number servicing any of the Town of Bethlehem emergency services.

§ 35-10. Disclaimer of liability; verification of security by alarm user.

A. The Town of Bethlehem shall not be liable for any defects in the operation of emergency alarm systems nor for any failure to respond appropriately nor for any erroneous response nor for the failure or defect of any licensee pursuant to the provisions of this chapter with respect to the installation, operation or maintenance of equipment, the transmission of alarm signals or messages or the relaying of such signals or messages.

B. In case of apparent false alarms received, it is mandated that a representative of the emergency alarm user respond to the scene to verify the security of the premises.

CHAPTER 37. AMUSEMENTS, LICENSED

§ 37-1. License required for certain amusements; exception.

§ 37-2. License fees.

§ 37-3. Closing hours; Sunday operation.

§ 37-4. Suspension or revocation of certain licenses; denial of license.

§ 37-5. Penalties for offenses.

CHAPTER 37. AMUSEMENTS, LICENSED

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 9-30-1946. Amendments noted where applicable.]

GENERAL REFERENCES

Bingo and games of chance — See Ch. 49.

§ 37-1. License required for certain amusements; exception.

No person, firm, corporation or combination of persons having charge or control of any building or vacant lot in the Town of Bethlehem or any part thereof, either as owner, lessee, agent or otherwise, shall use or allow any other person, firm, corporation or combination of persons to use such building or any part thereof or any such vacant lot as a place of public amusement, theater, public golf course, public golf driving field, public miniature golf course or green, public tennis court, public bowling green or alley, public poolroom, public rifle range or shooting gallery, racetrack, merry-go-round, toboggan slide, public garden or for the giving of any concert, theatrical, dramatic or musical entertainment, including opera, ballet, farce or minstrel, or for giving of dancing or other entertainments of the stage or any part or parts therein, or any equestrian circus or any other kind of circus or dramatic performance or exhibition of any kind, whether an admission fee is charged or not, nor shall any person or persons keep or operate any hall or other place for rent or use for dances or balls, except a hall or place used exclusively as a school or academy for instruction in dancing, unless a license therefor is duly obtained in the manner herein specified. Nothing herein contained shall apply to the use of church meeting rooms, public school auditoriums, public or private golf courses or clubs, Masonic or other fraternal meeting rooms or any fire company or to the activities of any fire company from which the fire company derives a direct financial benefit, or to any performance, show or exhibition given for the benefit of any religious, educational, patriotic, veteran or eleemosynary society.

§ 37-2. License fees.

A. Licenses for keeping, having or performing any of the amusements or entertainments above numerated may be granted by the Town Board in its discretion and issued by the Town Clerk upon the payment to the Clerk of the license fee hereinafter specified and upon complying with the rules and regulations prescribed by this chapter. The license fee to be charged upon the granting of such license shall be as follows:

[Amended 3-23-1988 by L.L. No. 2-1988]

- (1) For each local theater or movie house, not to exceed \$100 for one-year.
- (2) For every transient performance not given in a regularly licensed theater, public hall or place of public amusement except as given for charitable objects, and for each concert, theatrical or musical performance, minstrel, panorama or exhibition of any kind as provided, not to exceed \$100 for one-year.
- (3) For every circus, caravan, menagerie or outdoor show or exhibition, \$600 for each and every day open to the public; provided, however, that the Town Board in its discretion may reduce the license fee required for such circus or outdoor exhibition.
- (4) For each golf driving field, miniature golf course, rifle range or shooting gallery, public tennis court, public bowling green or alley, public poolroom, merry-go-round, toboggan slide or public garden, not to exceed \$100 for one-year.
- (5) For each public dance hall or other place for rent or use for dances, whether such place shall be used solely for such purposes or in connection with any other business conducted on the said premises, not to exceed \$50 in one-year.
- (6) For all other places of public amusement or for the giving of concerts or theatrical, dramatic or musical entertainments, not to exceed \$100 for one-year.

B. All licenses shall expire on the succeeding first day of January.

§ 37-3. Closing hours; Sunday operation.

All places of public amusement or for which a license shall be issued in accordance with the provisions of this chapter shall close their places at 12:00 midnight and remain closed until 7:00 a.m. of the following day, and all such places shall be closed and remain closed from 12:00 midnight Saturday night until 7:00 a.m. the following Monday, and no business, performance or activity licensed under this chapter shall be held or conducted for any purpose or in any manner, with or without hire or compensation, from 12:00 midnight Saturday until 7:00 a.m. the following Monday, excepting that bowling alleys and theaters for which a license shall have been issued may open

their doors to the public for entertainment on Sunday between the hours of 2:00 p.m. and 11:00 p.m. and that baseball may be played in the parks of the said Town between the hours of 2:00 p.m. and 9:00 p.m. on Sunday.

§ 37-4. Suspension or revocation of certain licenses; denial of license.

A. The Town Board may, in its discretion, after notice to the owner, lessee or agent, suspend or revoke the license of any theater or place of public amusement as herein specified where any show, play or exhibition is given or advertised to be given which in its opinion is of a lewd or immoral nature or where it is determined by the Town Board to constitute a nuisance. The Town Board may also refuse to license any transient show, exhibition or entertainment, or may suspend or revoke the license of the same, whenever in its judgment such show, exhibition or entertainment is of a lewd or immoral nature. The Town Board may refuse to issue or reissue a license in a case where it may appear to be contrary to the best interest of the community or in a case where any of the provisions of this chapter have been violated.

B. The Town Board may revoke any license granted under this chapter in its own discretion, where it may deem that it is for the best interests of the community to do so or where any provisions of this chapter have been violated.

§ 37-5. Penalties for offenses.

A. Pursuant to § 135 of the Town Law and amendments thereto, every violation of this chapter or failure to comply with any of the provisions or regulations set forth in this chapter shall be punishable by a fine not to exceed \$250 for a single such violation or failure or, by imprisonment for not more than 15 days or both.

[Amended 3-23-1988 by L.L. No. 2-1988]

B. The Town Board may enforce obedience to this chapter and restrain any violation thereof by injunction.

CHAPTER 41. (RESERVED)

[Former Ch. 41, Automobile Junkyards, adopted 11-15-1966, as amended 3-23-1988 by L.L. No. 2-1988, was repealed 8-23-2006 by L.L. No. 4-2006. See now Ch. 128, Zoning.]

CHAPTER 46. BICYCLES

§ 46-1. Title.

§ 46-2. Definitions.

§ 46-3. Registration and inspection required.

§ 46-4. Application for registration.

§ 46-5. Equipment requirements.

§ 46-6. Inspection and issuance of registration plate.

§ 46-7. Fee for registration; lost plates.

§ 46-8. Transfer of ownership.

§ 46-9. Altering or destroying frame number or plate.

§ 46-10. Rules for operation.

§ 46-11. Penalties for offenses.

§ 46-12. Traffic infractions.

CHAPTER 46. BICYCLES

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 4-16-1958. Amendments noted where applicable.]

GENERAL REFERENCES

Vehicles and traffic — See Ch. 119.

§ 46-1. Title.

This chapter shall be known as the "Bicycle Ordinance" of the Town of Bethlehem.

§ 46-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BICYCLE

Any vehicle consisting of an arrangement or combination of two wheels, 20 inches or more in diameter, one following the other, supported or connected by a frame and propelled by the feet acting upon pedals.

§ 46-3. Registration and inspection required.

On and after July 1, 1958, no resident of the Town of Bethlehem shall ride a bicycle upon any public highway, private road open to public motor vehicle traffic or upon any path set aside for the exclusive use of bicycles within the limits of the Town of Bethlehem unless and until such bicycle shall have been registered and inspected and a registration card and plate obtained as herein provided.

§ 46-4. Application for registration.

Applications for registration shall be made to the Town Clerk of the Town of Bethlehem and shall be signed by the owner of the bicycle and, if the owner is a minor, also by the parent or guardian of such minor. Applications shall set forth the name and residence of the owner and his age if under 21; the make, color, trim, size and type of the bicycle; the manufacturer's serial number; and such other information as may be prescribed by the Town Clerk.

§ 46-5. Equipment requirements.

[Amended 3-23-1988 by L.L. No. 2-1998]

No bicycle shall be used or operated as aforesaid unless such bicycle is provided with handlebars, a seat securely affixed to the frame and two pedals; a brake which will enable the operator to make the braked wheels skid on dry, level, clean pavement; a bell or other device capable of giving a signal audible for a distance of at least 100 feet, except that a bicycle shall not be equipped with, nor shall any person use upon a bicycle, any siren or whistle. Every bicycle when in use during the period from 1/2 hour after sunset to 1/2 hour before sunrise shall be equipped with a lamp on the front which shall emit a white light visible from a distance of at least 500 feet to the front and with a red reflector on the rear of a type approved by the Commissioner of Motor Vehicles of the State of New York, which shall be visible from all distances from 50 feet to 300 feet to the rear when directly in front of lawful, upper beams of headlamps on a motor vehicle. A lamp emitting a red light visible to the rear may be used in addition to the red reflector.

§ 46-6. Inspection and issuance of registration plate.

No registration card or plate for a bicycle shall be issued until the application therefor has been approved by the Chief of Police of the Town of Bethlehem or his designee or designees, and such application shall not be approved until such bicycle shall have been inspected and found to be in safe condition and equipped as herein prescribed. Registration shall not be transferable. Upon satisfactory proof that the bicycle is equipped as herein prescribed, the Town Clerk shall issue to the applicant a registration card and plate bearing a distinctive number. The registration plate shall at all times be securely and conspicuously attached to the bicycle registered.

§ 46-7. Fee for registration; lost plates.

The fee for the issuance of such registration shall be \$0.25. Registrations shall expire on June 30 of the third calendar year following the issuance thereof and may be renewed during the three-month period prior to the expiration date. In the event a registration plate shall become lost or illegible, a new registration card and plate shall be issued upon compliance with the provisions of this chapter and the payment of a fee of \$0.25.

§ 46-8. Transfer of ownership.

In case of transfer of ownership of a registered bicycle, the person by whom it is transferred shall forthwith present the registration plate and card to the Town Clerk for cancellation and the bicycle shall be reregistered by the new owner upon compliance with the provisions of this chapter and the payment of a fee of \$0.25.

§ 46-9. Altering or destroying frame number or plate.

No person shall willfully remove, destroy or alter the number on any bicycle frame for which a registration has been procured pursuant to this chapter, and no person shall willfully destroy, mutilate or alter any registration plate or registration card.

§ 46-10. Rules for operation.

A. A person propelling a bicycle shall not ride other than upon or astride a permanent and regular seat attached thereto, shall not ride with his feet removed from the pedals and shall keep at least one hand on the handlebars.

B. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped.

C. No person riding upon any bicycle shall attach the same or himself to any vehicle upon any public highway or any private road open to public motor vehicle traffic.

D. Every person operating a bicycle upon a public highway or private road open to public motor vehicle traffic shall ride as near to the right side of the roadway as practicable, exercising due care when passing a vehicle, a bicycle or a pedestrian standing or proceeding in the same direction.

E. Persons riding bicycles upon a public highway or private road open to public motor vehicle traffic shall not ride two or more abreast.

F. Whenever a usable path for bicycles has been provided adjacent to a public highway or a private road open to public motor vehicle traffic, bicycle riders shall use such path and shall not use the roadway.

G. No person operating a bicycle shall carry any package, bundle or article which prevents the operator from keeping at least one hand upon the handlebars.

H. Bicycle riders shall obey all traffic signals and traffic control signs.

I. Bicycles shall not be used to pull or tow any person or object of any character.

J. Every person operating a bicycle and desiring to pass another bicycle, vehicle or pedestrian shall signal his desire by a blast of the horn or bell and shall pass to the left of the overtaken bicycle, vehicle or pedestrian.

K. Bicycles turning to the left at an intersection shall, unless otherwise directed by a peace officer, sign or pavement marking, pass to the right of the center of the intersection: provided, however, that this shall not apply in turning from or into a highway where one-way traffic is prescribed.

L. Bicycles coming out of a driveway or entering a highway at a point other than an intersection shall come to a stop immediately before entering the highway and shall use due care in entering thereon.

M. Bicycles shall at all times be equipped as herein provided, which equipment shall be kept in good working order.

§ 46-11. Penalties for offenses.

A. Any person 16 years of age or over or any corporation convicted of a violation of any provision of this chapter may be punished by a fine of not more than \$5 or by removal and detention of the registration plate for a period of not to exceed six months or by impounding the bicycle for a period of not to exceed six months, or by any combination thereof. Every such person or corporation shall be deemed guilty of a separate offense for each day the registration or equipment requirements of this chapter shall be violated.

B. Any person under 16 years of age violating any provision of this chapter or failing to comply with the requirements thereof shall be subject to the following penalties:

(1) For the first offense, a written warning setting forth the nature of the violation and advising of the penalties for further or other violations shall be mailed to the violator and to the parents or guardian or such violator.

(2) For the second and subsequent offenses, by removal and detention of the registration plate for a period of not to exceed six months or by impounding the bicycle for a period of not to exceed six months. Every such person shall be deemed guilty of a separate offense for each day the registration or equipment requirements of this chapter shall be violated.

C. In the event the violation pertains to the equipment on the bicycle, evidence shall be presented that the defect or lack of equipment has been remedied.

§ 46-12. Traffic infractions.

Conviction of a violation of any provision of this chapter shall be considered a traffic infraction and not a misdemeanor.

CHAPTER 49. BINGO AND GAMES OF CHANCE

ARTICLE I. Bingo

§ 49-1. Purpose; regulations.

ARTICLE II. Games of Chance

§ 49-2. Statutory authority; title.

§ 49-3. Definitions.

§ 49-4. Games of chance authorized; restrictions.

§ 49-5. Bell jar tickets.

CHAPTER 49. BINGO AND GAMES OF CHANCE

[HISTORY: Adopted by the Town Board of the Town of Bethlehem as indicated in article histories. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Licensed amusements — See Ch. 37.

ARTICLE I. Bingo

[Adopted 1-28-1959; amended in its entirety 4-24-1963]

§ 49-1. Purpose; regulations.

The purpose of this article is to amend an ordinance adopted by the Town Board of the Town of Bethlehem, Albany County, New York, dated January 28, 1959, authorizing the conduct of bingo in such Town, to change the reference in such ordinance from Article 14-G of the General Municipal Law to Article 14-H of the General Municipal Law, as so renumbered by Chapter 438 of the Laws of 1962, and to set forth therein the following additional amended and renumbered restrictions concerning the conduct of the game of bingo by an authorized organization in such Town as required by § 479 of the General Municipal Law of the State of New York, as amended by Chapter 438 of the Laws of 1962:

A. No person, firm, association, corporation or organization other than a licensee under the provisions of Article 14-H of the General Municipal Law shall conduct such game or shall lease or otherwise make available for conducting bingo a hall or other premises for any consideration whatsoever, direct or indirect.

B. No bingo games shall be held, operated or conducted on or within any leased premises if rental under such lease is to be paid, wholly or partly, on the basis of a percentage of the receipts or net profits derived from the operation of such game.

C. No authorized organization licensed under the provisions of Article 14-H of the General Municipal Law shall purchase or receive any supplies or equipment specifically designed or adapted for use in the conduct of bingo games from other than a supplier licensed under the Bingo Control Law or from another authorized organization.

D. The entire net proceeds of any game of bingo and of any rental shall be exclusively devoted to the lawful purposes of the organization permitted to conduct the same.

E. No prize shall exceed the sum or value of \$250 in any single game of bingo.

F. No series of prizes on any one bingo occasion shall aggregate more than \$1,000.

G. No person except a bona fide member of any such organization shall participate in the management or operation of such game.

H. No person shall receive any remuneration for participating in the management or operation of any game of bingo.

I. The unauthorized conduct of a bingo game and any willful violation of any provision of this chapter shall constitute and be punishable as a misdemeanor.

ARTICLE II. Games of Chance

[Adopted 5-11-1977]

§ 49-2. Statutory authority; title.

This article is adopted pursuant to the authority of Article 9-A of the General Municipal Law of the State of New York and shall be known as the "Games of Chance Ordinance of the Town of Bethlehem."

§ 49-3. Definitions.

A. The words and terms used in this article shall have the meanings such words and terms have in Article 9-A of the General Municipal Law, unless otherwise provided herein or unless the context requires a different meaning.

B. The following words and terms shall have the meanings indicated:

OFFICER

The chief law enforcement officer of the Town.

TOWN

The Town of Bethlehem.

§ 49-4. Games of chance authorized; restrictions.

Games of chance may be conducted in the Town by an authorized organization, after obtaining a license therefor, in accordance with the provisions, requirements and limitations of Article 9-A of the General Municipal Law, the rules and regulations of the New York State Racing and Wagering Board and this chapter.

§ 49-5. Bell jar tickets.

[Added 6-28-1989 by L.L. No. 4-1989]

This article shall allow the sale of bell jar tickets on Sunday, except for Easter Sunday, Christmas Day or New Year's Eve.

CHAPTER 53. BUILDING CONSTRUCTION AND FIRE PREVENTION ADMINISTRATION

§ 53-1. Legislative intent.

§ 53-2. Duties and powers of Building Inspector; Fire Inspectors.

§ 53-3. Records and reports.

§ 53-4. Application for building permit.

§ 53-5. Building permit fees.

§ 53-6. Issuance or denial of building permit.

§ 53-7. Performance of work under building permit.

§ 53-8. Revocation of permit.

§ 53-9. Stop orders.

§ 53-10. Right of entry.

§ 53-11. Certificate of occupancy required.

§ 53-12. Inspection prior to issuance of certificate.

§ 53-13. Issuance of certificate of occupancy.

§ 53-14. Temporary certificate of occupancy.

§ 53-15. Tests.

§ 53-16. Penalties for offenses.

§ 53-17. Abatement of violation.

CHAPTER 53. BUILDING CONSTRUCTION AND FIRE PREVENTION ADMINISTRATION

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 2-28-1968. Amendments noted where applicable.]

GENERAL REFERENCES

Unsafe buildings — See Ch. 56.

§ 53-1. Legislative intent.

[Amended 3-23-1988 by L.L. No. 2-1988]

The purpose and intent of this chapter is to provide for the enforcement of the New York State Uniform Fire Prevention and Building Code.

§ 53-2. Duties and powers of Building Inspector; Fire Inspectors.

[Amended 3-23-1988 by L.L. No. 2-1988]

A. Except as otherwise specifically provided by law, the Building Inspector of the Town of Bethlehem and his deputies and assistants shall administer and enforce all of the provisions of laws, ordinances and regulations applicable to the construction, alteration, repair, removal and demolition of buildings and structures and the installation and use of materials and equipment therein and the regulation, use, occupancy and maintenance thereof, as provided for in the New York State Uniform Fire Prevention and Building Code.

B. The Chief of each of the five Fire Departments currently existing within the Town of Bethlehem shall serve and are hereby appointed as Fire Inspectors, to serve as such within the boundaries of their individual fire districts. The Fire Inspectors shall be charged with the responsibility of reporting any and all violations of Chapter C, Fire Prevention, of the New York State Uniform Fire Prevention and Building Code brought to their

attention within their fire districts to the Building Inspector for such action as he may deem necessary for the enforcement of said Chapter C.

C. The Building Inspector shall receive applications and issue permits for the construction, alteration, removal and demolition of buildings or structures or parts thereof and shall examine the premises for which such applications have been received or such permits have been issued for the purpose of ensuring compliance with laws, ordinances and regulations governing building construction.

D. The Building Inspector shall issue all appropriate notices or orders to require the necessary safeguards during construction and to ensure compliance during the entire course of construction with the requirements of such laws, ordinances and regulations. He shall make all inspections which are necessary or proper for the carrying out of his duties, except that he may accept reports of inspection from his assistants and other employees of the Building Department.

E. Whenever the same may be necessary or appropriate to assure compliance with the provisions of applicable laws, ordinances and regulations governing building construction, the Building Inspector may require the performance of tests in the field by experienced persons or by accredited and authoritative testing laboratories or agencies.

§ 53-3. Records and reports.

The Building Inspector shall keep permanent official records of all transactions and activities conducted by him, including all applications received, permits and certificates issued, fees charged and collected, inspection reports and notices and orders issued. All such records shall be public records, open to public inspection during business hours.

§ 53-4. Application for building permit.

A. No person, firm or corporation shall commence the erection, construction, enlargement, alteration, removal, improvement, demolition, conversion or change in the nature of the occupancy of any building or structure, or cause the same to be done, without first obtaining a separate building permit from the Building Inspector for each such building or structure, except that no building permit shall be required for the performance of ordinary repairs which are not structural in nature.

B. Applications for building permits shall be made by the owner or lessee, or agent of either, or by the architect, engineer or builder employed in connection with the proposed work. Where such application is made by a person other than the owner, it shall be accompanied by an affidavit of the owner or applicant that the proposed work is authorized by the owner and that the applicant is authorized to make such application. The application shall be made to the Building Inspector on forms provided by him and shall contain the following information:

- (1) A description of the land on which the proposed work is to be done.
- (2) A statement of the use or occupancy of all parts of the land and the proposed building or structure.
- (3) The valuation of the proposed work.
- (4) The full name and address of the owner and of the applicant, and the names and addresses of their responsible officers if any of them are corporations.
- (5) A brief description of the nature of the proposed work.
- (6) A duplicate set of plans and specifications as set forth in Subsection C of this section.
- (7) Such other information as may reasonably be required by the Building Inspector to establish compliance of the proposed work with the requirements of the applicable building laws, ordinances and regulations.

C. Each application for a building permit shall be accompanied by duplicate copies of plans and specifications, including a plot plan, drawn to scale, showing the location and size of all proposed new construction and all existing structures on the site; the nature and character of the work to be performed and the materials to be incorporated; distance from lot lines; the relationship of structures on adjoining property; widths and grades of adjoining streets, walks and alleys; and, where required by the Building Inspector, details of structural, mechanical and electrical work, including computations, stress diagrams and other essential technical data. Plans and specifications shall bear the signature of the person responsible for the design and drawings and, where required by § 7302, as amended, of Article 147 of the Education Law of the State of New York, the seal of a licensed architect or a licensed professional engineer. The Building Inspector may waive the requirements for filing plans and specifications for minor alterations.

D. Amendments, if any, to the application or to the plans and specifications accompanying the same shall be filed with the Building Department and approval received from the Building Inspector prior to the commencement of such change of work.

§ 53-5. Building permit fees.

[Amended 3-23-1988 by L.L. No. 2-1988; 7-13-1988 by L.L. No. 3-1988; 1-13-1999 by L.L. No. 1-1999]

The Town Board shall establish or set rates and fees for services rendered by the Building Department.

§ 53-6. Issuance or denial of building permit.

The Building Inspector shall examine or cause to be examined all applications for permits and the plans, specifications and documents filed therewith. He shall approve or disapprove the application within a reasonable time.

A. Upon approval of the application and upon receipt of the legal fees therefor, he shall issue a building permit to the applicant upon the form prescribed by him and shall affix his signature or cause his signature to be affixed thereto.

B. Upon approval of the application, both sets of plans and specifications shall be endorsed with the word "approved." One set of such approved plans and specifications shall be retained in the files of the Building Department and the other set shall be returned to the applicant, together with the building permit, and shall be kept at the building site open to inspection by the Building Inspector or his authorized representative at all reasonable times.

C. If the application, together with plans, specifications and other documents filed therewith, describes proposed work which does not conform to all of the requirements of the applicable building regulations, the Building Inspector shall disapprove the same and shall return the plans and specifications to the applicant. Upon the request of the applicant, the Building Inspector shall cause such refusal, together with the reasons therefor, to be transmitted to the applicant in writing.

§ 53-7. Performance of work under building permit.

A. A building permit shall be effective to authorize the commencing of work in accordance with the application, plans and specifications on which it is based for a period of six months after the date of its issuance. For good cause, the Building Inspector may allow a maximum of two extensions for periods not exceeding three months each.

B. The issuance of a building permit shall constitute authority to the applicant to proceed with the work in accordance with the approved plans and specifications and in accordance with the applicable building laws, ordinances and regulations. All work shall conform to the approved application, plans and specifications.

C. Building permits shall be prominently displayed on the jobsite at all times during the progress of construction so as to be readily seen from adjacent thoroughfares.

§ 53-8. Revocation of permit.

The Building Inspector may revoke a building permit theretofore issued in the following instances:

- A. Where he finds that there has been any false statement or misrepresentation as to a material fact in the application, plans or specifications on which the building permit was based.
- B. Where he finds that the building permit was issued in error and should not have been issued in accordance with the applicable law.
- C. Where he finds that the work performed under the permit is not being prosecuted in accordance with the provisions of the application, plans or specifications.
- D. Where the person to whom a building permit has been issued fails or refuses to comply with a stop order issued by the Building Inspector.

§ 53-9. Stop orders.

Whenever the Building Inspector has reasonable grounds to believe that work on any building or structure is being prosecuted in violation of the provisions of the applicable building laws, ordinances or regulations or not in conformity with the provisions of an application, plans or specifications on the basis of which a building permit was issued or in an unsafe and dangerous manner, he shall notify the owner of the property or the owner's agent or the person performing the work to suspend all work, and any such persons shall forthwith stop such work and suspend all building activities until the stop order has been rescinded. Such order and notice shall be in writing, shall state the conditions under which the work may be resumed and may be served upon a person to whom it is directed either by delivering it personally to him or by posting the same upon a conspicuous portion of the building under construction and sending a copy of the same by registered mail.

§ 53-10. Right of entry.

The Building Inspector and assistants, upon the showing of proper credentials and in the discharge of their duties, may enter upon any building, structure or premises at any reasonable hour, and no person shall interfere with or prevent such entry.

§ 53-11. Certificate of occupancy required.

- A. No building hereafter erected shall be used or occupied in whole or in part until a certificate of occupancy shall have been issued by the Building Inspector.
- B. No building hereafter enlarged, extended or altered or upon which work has been performed which required the issuance of a building permit shall continue to be occupied or used for more than 30 days after the completion of the alteration or work unless a certificate of occupancy shall have been issued by the Building Inspector.
- C. No change shall be made in the use or type of occupancy of an existing building unless a certificate of occupancy authorizing such change shall have been issued by the Building Inspector.
- D. The owner or his agent shall make application for a certificate of occupancy. Accompanying this application and before the issuance of a certificate of occupancy, there shall be filed with the Building Inspector an affidavit of the registered architect or licensed professional engineer who filed the original plans, or of the registered architect or licensed professional engineer who supervised the construction of the work, or of the superintendent of construction who supervised the work and who, by reason of his experience, is qualified to superintend the work for which the certificate of occupancy is sought. This affidavit shall state that the deponent has examined the approved plans of the structure for which a certificate of occupancy is sought and that the structure has been erected in accordance with the approved plans and, as erected, complies with the law governing building construction except insofar as variations therefrom have been legally authorized. Such variations shall be specified in the affidavit.

§ 53-12. Inspection prior to issuance of certificate.

A. Before issuing a certificate of occupancy, the Building Inspector shall examine or cause to be examined all buildings, structures and sites for which an application has been filed for a building permit to construct, enlarge, alter, repair, remove, demolish or change the use or occupancy; and he may conduct such inspections as he deems appropriate from time to time during and upon completion of the work for which a building permit has been issued.

B. There shall be maintained in the Building Department a record of all such examinations and inspections, together with a record of findings of violations of the law.

§ 53-13. Issuance of certificate of occupancy.

A. When, after final inspection, it is found that the proposed work has been completed in accordance with the applicable building laws, ordinances and regulations and also in accordance with the application, plans and specifications filed in connection with the issuance of the building permit, the Building Inspector shall issue a certificate of occupancy upon the form provided by him. If it is found that the proposed work has not been properly completed, the Building Inspector shall refuse to issue a certificate of occupancy and shall order the work completed in conformity with the building permit and in conformity with the applicable building regulations.

B. A certificate of occupancy shall be issued, where appropriate, within 30 days after application therefor is made. Failure to act upon such application within 30 days shall constitute approval of such application and the building or portion thereof may thereafter be occupied as though a certificate of occupancy had been issued.

C. The certificate of occupancy shall certify that the work has been completed and that the proposed use and occupancy are in conformity with the provisions of the applicable building laws, ordinances and regulations, and shall specify the use or uses and the extent thereof to which the building or structure or its several parts may be put.

§ 53-14. Temporary certificate of occupancy.

Upon request, the Building Inspector may issue a temporary certificate of occupancy for a building or structure or part thereof before the entire work covered by the building permit shall have been completed, provided that such portion or portions as have been completed may be occupied safely without endangering life or the public welfare. A temporary certificate of occupancy shall remain effective for a period not exceeding three months from its date of issuance. For good cause the Building Inspector may allow a maximum of two extensions for periods not exceeding three months each.

§ 53-15. Tests.

Whenever there are reasonable grounds to believe that any material, construction, equipment or assembly does not conform to the requirements of the applicable building laws, ordinances or regulations, the Building Inspector may require the same to be subjected to tests in order to furnish proof of such compliance.

§ 53-16. Penalties for offenses.

In accordance with § 382 of Article 18 of the Executive Law of the State of New York:

A. It shall be unlawful for any person, firm or corporation to construct, alter, repair, move, remove, demolish, equip, use, occupy or maintain any building or structure or portion thereof in violation of any provision of law or rule promulgated by the Building Department in accordance with applicable laws, or to fail in any manner to comply with a notice, directive or order of the Building Inspector, or to construct, alter, use or occupy any building or structure or part thereof in a manner not permitted by an approved building permit or certificate of occupancy.

B. Any person who shall fail to comply with a written order of the Building Inspector within the time fixed for compliance therewith, and any owner, builder, architect, tenant, contractor, subcontractor, construction

superintendent or their agents or any other person taking part or assisting in the construction or use of any building who shall knowingly violate any of the applicable provisions of law or any lawful order, notice, directive, permit or certificate of the Building Inspector made thereunder, shall be punishable by a fine of not more than \$1,000 per day of violation or by imprisonment not exceeding one-year, or both.

[Amended 3-23-1988 by L.L. No. 2-1988]

§ 53-17. Abatement of violation.

Appropriate actions and proceedings may be taken at law or in equity to prevent unlawful construction or to restrain, correct or abate a violation or to prevent illegal occupancy of a building, structure or premises or to prevent illegal acts, conduct or business in or about any premises, and these remedies shall be in addition to penalties otherwise prescribed by law.

CHAPTER 56. BUILDINGS, UNSAFE

§ 56-1. Purpose.

§ 56-2. Title.

§ 56-3. Definitions.

§ 56-4. Investigation and report.

§ 56-5. Town Board order.

§ 56-6. Notice; contents.

§ 56-7. Service of notice.

§ 56-8. Filing copy of notice.

§ 56-9. Refusal to comply.

§ 56-10. Assessment of expenses.

§ 56-11. Emergency cases.

CHAPTER 56. BUILDINGS, UNSAFE

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 4-22-1981 by L.L. No. 3-1981. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction and fire prevention administration — See Ch. 53.

§ 56-1. Purpose.

Unsafe buildings pose a threat to life and property in the Town of Bethlehem. Buildings and structures may become unsafe by reason of damage by fire, the elements, age or general deterioration. Vacant buildings not properly secured at doorways and windows also serve as an attractive nuisance for young children who may be injured therein, as well as a point of congregation by vagrants and transients. A dilapidated building may also serve as a place of rodent infestation, thereby creating a health menace to the community. It is the purpose of this chapter to provide for the safety, health, protection and general welfare of persons and property in the Town of Bethlehem by requiring such unsafe buildings to be repaired or demolished and removed.

§ 56-2. Title.

This chapter shall be known as the "Unsafe Buildings Law" of the Town of Bethlehem.

§ 56-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BUILDING

Any building, structure or portion thereof used for residential, business or industrial purpose.

BUILDING INSPECTOR

The Building Inspector of the Town of Bethlehem or such other person appointed by the Town Board to enforce the provisions of this chapter.

§ 56-4. Investigation and report.

[Amended 3-23-1988 by L.L. No. 2-1988]

When in his own opinion or upon receipt of information that a building is or may become dangerous or unsafe to the general public: is open at the doorways and windows, making it accessible to and an object of attraction to minors under 18 years of age, as well as to vagrants and other trespassers; is or may become a place of rodent infestation; presents any other danger to the health, safety, morals and general welfare of the public; or is unfit for the purposes for which it may lawfully be used, the Building Inspector shall cause or make an inspection thereof and report in writing to the Town Board his findings and recommendations in regard to its repair or demolition and removal.

§ 56-5. Town Board order.

The Town Board shall thereafter consider such report and by resolution determine, if in its opinion the report so warrants, that such building is unsafe and dangerous and order its repair if the same can be safely repaired or its demolition and removal, and further order that a notice be served upon the persons and in the manner provided herein.

§ 56-6. Notice; contents.

The notice shall contain the following:

- A. A description of the premises.
- B. A statement of the particulars in which the building is unsafe or dangerous.
- C. An order outlining the manner in which the building is to be made safe and secure or demolished and removed.
- D. A statement that the securing or removal of such building shall commence within 30 days of the service of the notice and shall be completed within 60 days thereafter, unless for good cause shown such time shall be extended.
- E. A date, time and place for a hearing before the Town Board in relation to such dangerous or unsafe building, which hearing shall be scheduled not less than five business days from the date of service of the notice.
- F. A statement that in the event of neglect or refusal to comply with the order to secure or demolish and remove the building, the Town Board is authorized to provide for its demolition and removal, to assess all expenses thereof against the land on which it is located and to institute a special proceeding to collect the costs of demolition, including legal expenses.

§ 56-7. Service of notice.

The said notice shall be served by personal service of a copy thereof upon the owner, executor, administrator, agent, lessee or any person having a vested or contingent interest in such unsafe building as shown by the records of the Receiver of Taxes (or Tax Collector) or of the County Clerk; or if no such person can be reasonably found, by mailing to such owner by registered mail a copy of such notice, directed to his last known address as shown by the above records, and by personal service of a copy of such notice upon any adult person residing in or occupying said premises if such person can be reasonably found and by securely affixing a copy of such notice upon the unsafe building.

§ 56-8. Filing copy of notice.

A copy of the notice served as provided herein shall be filed with the Office of the County Clerk of the County of Albany.

§ 56-9. Refusal to comply.

In the event of the refusal or neglect of the person so notified to comply with said order of the Town Board and after the hearing, the Town Board shall provide for the demolition and removal of such building or structure either by Town employees or by contract. Except in an emergency as provided in § 56-11 hereof, any contract for demolition and removal of a building in excess of \$5,000 shall be awarded through competitive bidding.

§ 56-10. Assessment of expenses.

All expenses incurred by the Town in connection with the proceedings to repair and secure or demolish and remove the unsafe building, including the cost of actually removing such building, shall be assessed against the land on which such building is located and shall be levied and collected in the same manner as provided in Article 15 of the Town Law for the levy and collection of a special ad valorem levy.

§ 56-11. Emergency cases.

Where it reasonably appears that there is present a clear and imminent danger to the life, safety or health of any person or property unless an unsafe building is immediately repaired and secured or demolished, the Town Board may by resolution authorize the Building Inspector to immediately cause the repair or demolition of such unsafe building. The expense of such repair or demolition shall be a charge against the land on which it is located and shall be assessed, levied and collected as provided in § 56-10 hereof.

CHAPTER 61. DOGS

ARTICLE I. Regulation of Dogs

§ 61-1. Purpose.

§ 61-2. Statutory authority.

§ 61-3. Title.

§ 61-4. Definitions.

§ 61-5. Restrictions.

§ 61-6. Seizure of dogs at large; appearance tickets; complaints.

§ 61-7. Penalties for offenses.

ARTICLE II. License Fees

§ 61-8. Increase in license fees.

§ 61-9. Exemption from increase.

§ 61-10. When effective.

CHAPTER 61. DOGS

[HISTORY: Adopted by the Town Board of the Town of Bethlehem as indicated in article histories. Amendments noted where applicable.]

ARTICLE I. Regulation of Dogs

[Adopted 2-13-1980 by L.L. No. 1-1980]

§ 61-1. Purpose.

[Amended 7-10-1991 by L.L. No. 3-1991]

The Town Board of the Town of Bethlehem finds that the running at large and other uncontrolled behavior of licensed and unlicensed dogs have created physical harm to persons and damage to property and have created other nuisances within the Town. The purpose of this article is to protect the health, safety and well-being of persons and property by imposing restrictions on the keeping and running at large of dogs.

§ 61-2. Statutory authority.

This article is enacted pursuant to the provisions of Article 7 of the Agriculture and Markets Law and the Municipal Home Rule Law of the State of New York.

§ 61-3. Title.

The title of this article shall be the "Dog Control Law of the Town of Bethlehem."

§ 61-4. Definitions.

As used in this article, the following words shall have the following respective meanings:

DOG

Male and female, licensed and unlicensed, members of the species *Canis familiaris*.

FECAL MATTER

All feces, excrement, manure, dung or solid waste matter discharged by a dog.

[Added 7-10-1991 by L.L. No. 3-1991]

OWNER

Person entitled to claim lawful custody and possession of a dog and who is responsible for purchasing the license for such dog unless the dog is or has been lost and such loss was promptly reported to the Dog Control Officer or a police agency and a reasonable search has been made. If a dog is not licensed, the term "owner" shall designate and cover any person or persons, firm, association or corporation who or which at any time owns or has custody or control of, harbors or is otherwise responsible for any dog which is kept, brought or comes within the Town. Any person owning or harboring a dog for a period of one week prior to the filing of any complaint charging a violation of this article shall be held and deemed to be the "owner" of such dog for the purpose of this article. In the event that the "owner" of any dog found to be in violation of this article shall be under 18 years of age, any head of the household in which said minor resides shall be deemed to have custody and control of said dog and shall be responsible for any acts of the said dog in violation of this article.

RUN AT LARGE

To be in a public place or on private lands without the knowledge, consent and approval of the owner of such lands.

TOWN

The Town of Bethlehem.

§ 61-5. Restrictions.

It shall be unlawful for any owner of any dog in the Town to permit or allow such dog to:

A. Run at large unless the dog is restrained by an adequate leash not exceeding eight feet in length or unless it is accompanied by its owner or a responsible person and under the full control of such owner or person. For the purpose of this article, a dog or dogs hunting in the company of a hunter or hunters shall be considered as accompanied by its owner.

B. Engage in habitual loud howling, barking, crying or whining or conduct itself in such a manner as to unreasonably and habitually disturb the comfort or repose of any person other than the owner of such dog.

C. Uproot, dig or otherwise damage any vegetables, lawns, flowers, garden beds or other property without the consent or approval of the owner thereof.

D. Chase, jump upon or at or otherwise harass any person in such a manner as to reasonably cause intimidation or fear or to put such person in reasonable apprehension of bodily harm or injury on property other than that of the owner.

E. Habitually chase, run alongside of or bark at motor vehicles, motorcycles or bicycles while on a public street, highway or place or upon private property without the consent or approval of the owner of such property.

F. Cause damage or destruction to property or commit a nuisance upon the premises of a person other than the owner or person harboring such dog.

G. If a female dog, when in heat, be off the owner's premises unrestrained by a leash.

H. Deposit any dropping or fecal matter on any private property, Town of Bethlehem public roadway and sidewalk or that portion of a front lawn owned by the Town and maintained by the landowner as a front lawn (without the consent of the owner).

[Added 7-10-1991 by L.L. No. 3-1991]

(1) Such soiling action is declared to be a public nuisance.

(2) Such soiling action shall be deemed prevented and not a violation of this article if such person shall immediately clean up all such fecal matter and droppings by causing the same to be gathered in a suitable container and disposed of in a safe and sanitary manner.

(3) The provisions of this subsection shall not apply to guide dogs, hearing dogs or service dogs accompanying any person with a disability as defined in Subdivision 21 of § 292 of the Executive Law.

§ 61-6. Seizure of dogs at large; appearance tickets; complaints.

A. The Dog Control Officer or any peace officer shall seize any unlicensed dog whether on or off the owner's premises, any dog not wearing a tag and, after January 1, 1980, not identified and which is not on the owner's premises and any dog found in violation of § ~~61-5A~~. Such seized dog shall be kept and disposed of in accordance with the provisions of Article 7 of the Agriculture and Markets Law. The Dog Control Officer or peace officer may also investigate and report to a Town Justice of the Town any dangerous dog, as described in Article 7 of the Agriculture and Markets Law, and see that the order of the Town Justice in such case is carried out.

B. The Dog Control Officer or a peace officer observing a violation of this article in his presence shall issue and serve an appearance ticket for such violation.

C. Any person who observes a dog in violation of this article may file a complaint under oath with a Town Justice of the Town, specifying the nature of the violation, the date thereof, a description of the dog and the name and residence, if known, of the owner of such dog. Such complaint may serve as the basis for enforcing the provisions of this article.

§ 61-7. Penalties for offenses.

Any person convicted of a violation of this article shall be deemed to have committed a violation and shall be subject to a fine not exceeding \$100.

ARTICLE II. License Fees

[Adopted 4-22-1981 by L.L. No. 4-1981]

§ 61-8. Increase in license fees.

A. The dog license fee set forth in Subdivision 1 of § 110 of the Agriculture and Markets Law is hereby increased by \$2 to a total of \$4.50 for a spayed or neutered dog and a total of \$9.50 for an unspayed or unneutered dog.

B. The purebred license fee specified in paragraphs (a), (b) and (c) of Subdivision 2 of § 110 of the Agriculture and Markets Law is hereby increased by \$5 to a total of:

(1) Up to 10 dogs: \$30.

(2) Eleven to 25 dogs: \$55.

(3) Twenty-six dogs and over: \$105.

§ 61-9. Exemption from increase.

All persons 65 years of age or older shall be exempt from payment of the additional fee provided for in this article.

§ 61-10. When effective.

This article shall take effect for the licensing period 1982 and upon being filed in the office of the Secretary of State in accordance with § 27 of the Municipal Home Rule Law.

CHAPTER 66. FIREARMS

§ 66-1. Legislative intent.

§ 66-2. Discharge on Town property prohibited.

§ 66-3. Exceptions.

§ 66-4. Penalties for offenses.

CHAPTER 66. FIREARMS

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 4-25-1973. Amendments noted where applicable.]

§ 66-1. Legislative intent.

The Town Board is interested in promoting the health, safety and general welfare of the Town, including the protection and preservation of the property of the Town and of its inhabitants and of peace and good order.

§ 66-2. Discharge on Town property prohibited.

No person shall carry or discharge a firearm in Town parks, Town playgrounds or other Town-owned property.

§ 66-3. Exceptions.

The prohibition contained in § 66-2 shall not apply to a law enforcement officer in the performance of his official duties, nor to a person carrying an unloaded firearm fully encased or an unloaded firearm contained in the luggage compartment of a motor vehicle.

§ 66-4. Penalties for offenses.

[Amended 3-23-1988 by L.L. No. 2-1988]

Any person violating the provisions of this chapter shall be guilty of a violation under the Penal Law and, upon conviction thereof, shall be punishable by a fine not exceeding \$250 or by imprisonment for a term not to exceed 15 days, or by both such fine and imprisonment.

CHAPTER 69. FLOOD DAMAGE PREVENTION

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CHAPTER 69. FLOOD DAMAGE PREVENTION

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 3-25-1987 by L.L. No. 2-1987. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction and fire prevention administration — See Ch. 53.
Freshwater wetlands — See Ch. 72.
Subdivision regulations — See Ch. 103.
Zoning — See Ch. 128.

§ 69-1. Findings.

The Town Board of the Town of Bethlehem finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of Bethlehem and that such damages may include the destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this chapter is adopted.

§ 69-2. Purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- A. Regulate uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities.
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
- C. Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters.
- D. Control filling, grading, dredging and other development which may increase erosion or flood damages.
- E. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- F. Qualify for and maintain participation in the National Flood Insurance Program.

§ 69-3. Objectives.

The objectives of this chapter are:

- A. To protect human life and health.
- B. To minimize the expenditure of public money for costly flood-control projects.
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- D. To minimize prolonged business interruptions.
- E. To minimize damage to public facilities and utilities, such as water and gas mains; electric, telephone and sewer lines; and streets and bridges, located in areas of special flood hazard.
- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood-blight areas.
- G. To provide that developers are notified that property is in an area of special flood hazard.
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 69-4. Definitions and word usage.

A. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

B. As used in this chapter, the following terms shall have the meanings indicated:

APPEAL

A request for a review of the Building Inspector's interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING

A designated AO or VO Zone on a community's Flood Insurance Rate Map (FIRM), with base flood depths from one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate and where velocity flow may be evident.

AREA OF SPECIAL FLOOD HAZARD

The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1 through A-99, V, VO, VE or V1 through V-30. It is also commonly referred to as the "base floodplain" or "one-hundred-year floodplain."

BASE FLOOD

The flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT

That portion of a building having its flood subgrade (below ground level) on all sides.

BREAKWAY WALL

A wall that is not part of the structural support of the building and is intended, through its design and construction, to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

BUILDING

Any structure built for support, shelter or enclosure for occupancy or storage.

CELLAR

The same meaning as "basement."

COASTAL HIGH-HAZARD AREA

The area subject to high-velocity waters, including but not limited to hurricane wave wash. The area is designated on a FIRM as Zone V1 through V-30, VE, VO or V.

DEVELOPMENT

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations located within the area of special flood hazard.

ELEVATED BUILDING

A nonbasement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers) or sheer walls.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM)

An official map of the community, published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The FBFM delineates a regulatory floodway along watercourses studied in detail in the Flood Insurance Study.

FLOOD or FLOODING

A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD HAZARD BOUNDARY MAP (FHBM)

An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined but no water surface elevation is provided.

FLOOD INSURANCE RATE MAP (FIRM)

An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY

The official report provided by the Federal Emergency Management Agency. The report contains flood profiles as well as the Flood Boundary - Floodway Map and the water surface elevations of the base flood.

FLOODPROOFING

Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY

The same meaning as "regulatory floodway."

FLOOR

The top surface of an enclosed area in a building, including basement, i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction.

FUNCTIONALLY DEPENDENT USE

A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding and ship repair. The term does not include long-term storage, manufacture, sales or service facilities.

HIGHEST ADJACENT GRADE

The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

LOWEST FLOOR

The lowest level, including basement or cellar, of the lowest enclosed area. An unfinished or flood-resistant enclosure usable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's "lowest floor," provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter.

MANUFACTURED HOME

A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

MEAN SEA LEVEL

For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other data to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

MOBILE HOME

The same meaning as "manufactured home."

NATIONAL GEODETIC VERTICAL DATUM (NGVD)

As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

NEW CONSTRUCTION

Structures for which the start of construction commenced on or after the effective date of this chapter.

ONE-HUNDRED-YEAR FLOOD

The same meaning as "base flood."

PRINCIPALLY ABOVE GROUND

At least 51% of the actual cash value of the structure, excluding land value, is above ground.

REGULATORY FLOODWAY

The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height, as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 69-12B of this chapter.

SAND DUNES

Naturally occurring accumulations of sand in ridges or mounds landward of the beach.

START OF CONSTRUCTION

The initiation, excluding planning and design, of any phase of a project or physical alteration of the property, and shall include land preparation, such as clearing, grading and filling; the installation of streets and/or walkways; excavation for a basement, footings, piers or foundations; or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers and building materials. For manufactured homes, the "actual start" means the affixing of the manufactured home to its permanent site.

STRUCTURE

A walled and roofed building, a manufactured home or a gas- or liquid-storage tank that is principally above ground.

SUBSTANTIAL IMPROVEMENT

(1) Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either:

(a) Before the improvement or repair is started.

(b) If the structure has been damaged and is being restored, before the damage occurred.

(2) For the purposes of this definition, "substantial improvement" is considered to commence when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

(a) Any project for improvement of a structure to comply with existing state or local building, fire, health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or

(b) Any alteration of a structure or contributing structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

VARIANCE

A grant of relief from the requirements of this chapter, which permits construction or use in a manner that would otherwise be prohibited by this chapter.

§ 69-5. Applicability.

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the Town of Bethlehem.

§ 69-6. Basis for establishing areas of special flood hazard.

[Amended 3-22-1989 by L.L. No. 1-1989]

A. The areas of special flood hazard have been identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "Flood Insurance Study, Town of Bethlehem, Albany County, New

York," dated April 17, 1984, with Flood Insurance Rate Maps enumerated on Map Index No. 361540 0001-0025, dated April 17, 1984, and with accompanying Flood Boundary and Floodway Maps enumerated on Map Index No. 361540 0001-0025, dated April 17, 1984.

B. The above documents are hereby adopted and declared to be a part of this chapter and are filed at the office of the Building Inspector, 445 Delaware Avenue, Delmar, New York 12054.

§ 69-7. Effect on other laws; interpretation.

A. This chapter is adopted in response to revisions to the National Flood Insurance Program effective October 1, 1986, and shall supersede all previous laws adopted for the purpose of establishing and maintaining eligibility for flood insurance.

B. In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements, adopted for the promotion of the public health, safety and welfare. Whenever the requirements of this chapter are at variance with the requirements of any other lawful adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern.

§ 69-8. Penalties for offenses; other remedies; notification of noncompliance.

No structure shall hereafter be constructed, located, extended, converted, or altered and no land shall be excavated or filled without full compliance with the terms of this chapter and any other applicable regulations. Any infraction of the provisions of this chapter by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be fined no more than \$250 or be imprisoned for not more than 15 days, or both. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Building Inspector from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not complaint with the requirements of this chapter, for which the developer and/or owner has not applied for and received an approved variance under §§ 69-16 and 69-17 will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

§ 69-9. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazard or that uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town of Bethlehem, any officer or employee thereof or the Federal Emergency Management Agency for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

§ 69-10. Designation of local administrator.

The Building Inspector is hereby appointed local administrator to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

§ 69-11. Development permit.

A development permit shall be obtained before the start of construction or any other development within the area of special flood hazard as established in § 69-6. Application for a development permit shall be made on forms furnished by the Building Inspector and may include but not be limited to plans, in duplicate, drawn to scale and showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures; fill; storage of materials; drainage facilities; and the location of the foregoing.

A. Application stage. The following information is required where applicable:

- (1) The elevation, in relation to mean sea level, of the proposed lowest floor, including basement or cellar, of all structures.
- (2) The elevation, in relation to mean sea level, to which any nonresidential structure will be floodproofed.
- (3) When required, a certificate from a licensed professional engineer or architect that the utility floodproofing will meet the criteria in § 69-13C(1).
- (4) A certificate from a licensed professional engineer or architect that the nonresidential floodproofed structure will meet the floodproofing criteria in § 69-14.
- (5) A description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

B. Construction stage. Upon placement of the lowest floor or floodproofing by whatever means, it shall be the duty of the permit holder to submit to the Building Inspector a certificate of the elevation of the lowest floor or floodproofed elevation in relation to mean sea level. The elevation certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular building, the floodproofing certificate shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by the same. Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The Building Inspector shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.

§ 69-12. Duties of Building Inspector.

Duties of the Building Inspector shall include but not be limited to:

A. Permit application review. The Building Inspector shall:

- (1) Review all development permit applications to determine that the requirements of this chapter have been satisfied.
- (2) Review all development permit applications to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
- (3) Review all development permit applications to determine if the proposed development adversely affects the area of special flood hazard. For the purposes of this chapter, "adversely affects" means physical damage to adjacent properties. An engineering study may be required of the applicant for this purpose.
 - (a) If there is no adverse effect, then the permit shall be granted consistent with the provisions of this chapter.
 - (b) If there is an adverse effect, then flood damage mitigation measures shall be made a condition of the permit.
- (4) Review all development permits for compliance with the provisions of § 69-13E, Encroachments.

B. Use of other base flood and floodway data. When base flood elevation data has not been provided in accordance with § 69-6, Basis for establishing areas of special flood hazard, the Building Inspector shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data developed pursuant to § 69-13D(4), in order to administer § 69-14, Specific provisions for flood hazard reduction, and § 69-15, Floodways.

C. Information to be obtained and maintained. The Building Inspector shall:

(1) Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor, including basement or cellar, of all new or substantially improved structures and whether or not the structure contains a basement or cellar.

(2) For all new or substantially improved floodproofed structures:

(a) Obtain and record the actual elevation, in relation to mean sea level, to which the structure has been floodproofed.

(b) Maintain the floodproofing certifications required in §§ 69-13 and 69-14.

(3) Maintain for public inspection all records pertaining to the provisions of this chapter, including variances, when granted, and certificates of compliance.

D. Alteration of watercourses. The Building Inspector shall:

(1) Notify adjacent communities and the New York State Department of Environmental Conservation prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Regional Director, Federal Emergency Management Agency, Region II, 26 Federal Plaza, New York, New York 10278.

(2) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

E. Interpretation of FIRM boundaries.

(1) The Building Inspector shall have the authority to make interpretations when there appears to be a conflict between the limits of the federally identified area of special flood hazard and actual field conditions.

(2) Base flood elevation data established pursuant to §§ 69-6 and/or 69-12B, when available, shall be used to accurately delineate the area of special flood hazard.

(3) The Building Inspector shall use flood information from any other authoritative source, including historical data, to establish the limits of the area of special flood hazard when base flood elevations are not available.

F. Stop-work orders.

(1) All floodplain development found ongoing without an approved permit shall be subject to the issuance of a stop-work order by the Building Inspector. Disregard of a stop-work order shall be subject to the penalties described in § 69-8 of this chapter.

(2) All floodplain development found noncompliant with the provisions of this chapter and/or the conditions of the approved permit shall be subject to the issuance of a stop-work order by the Building Inspector. Disregard of a stop-work order shall be subject to the penalties described in § 69-8 of this chapter.

G. Inspections. The Building Inspector and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify that the development is in compliance with the requirements of either the development permit or the approved variance.

H. Certificate of compliance.

(1) It shall be unlawful to use or occupy or to permit the use or occupancy of any building or premises, or both, or part thereof, hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance has been issued by the Building Inspector, stating that the building or land conforms to the requirements of this chapter.

(2) All other development occurring within the designated flood hazard area will have, upon completion, a certificate of compliance issued by the Building Inspector.

(3) All certifications shall be based upon the inspections conducted subject to § 69-12G and/or any certified elevations, hydraulic information, floodproofing, anchoring requirements or encroachment analysis which may have been required as a condition of the approved permit.

§ 69-13. General provisions for flood hazard reduction.

In all areas of special flood hazard, the following standards are required:

A. Anchoring.

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

(2) All manufactured homes shall be installed using methods and practices which minimize flood damage. Manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Manufactured homes shall be elevated to or above the base flood elevation or two feet above the highest adjacent grade when no base flood elevation has been determined. Methods of anchoring may include, but are not to be limited to, the use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

B. Construction materials and methods.

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

C. Utilities.

(1) Electrical, heating, ventilation, plumbing, air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. When designed for location below the base flood elevation, a professional engineer's or architect's certification is required.

(2) All new and replacement water supply systems shall be designed to minimize or eliminate the infiltration of floodwaters into the system.

(3) New and replacement sanitary sewage systems shall be designed to minimize or eliminate the infiltration of floodwaters.

(4) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision proposals.

(1) All subdivision proposals shall be consistent with the need to minimize flood damage.

(2) All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical and water systems, located and constructed to minimize flood damage.

(3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

(4) Base flood elevation data shall be provided for subdivision proposals and other proposed developments, including proposals for manufactured home parks and subdivisions, greater than either 50 lots or five acres.

E. Encroachments.

(1) All proposed development in riverine situations where no flood elevation data is available (unnumbered A Zones) shall be analyzed to determine the effects on the flood-carrying capacity of the area of special flood hazard set forth in § 69-12A(3). This may require the submission of additional technical data to assist in the determination.

(2) In all areas of special flood hazard in which base flood elevation data is available pursuant to § 69-12B or 69-13D(4) and no floodway has been determined, the cumulative effects of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one-foot at any point.

(3) In all areas of special flood hazard where floodway data is provided or available pursuant to § 69-12B, the requirements of § 69-15, Floodways, shall apply.

§ 69-14. Specific provisions for flood hazard reduction.

In all areas of special flood hazard where base flood elevation data has been provided as set forth in § 69-6, Basis for establishing areas of special flood hazard, and § 69-12B, Use of other base flood and floodway data, the following standards are required:

A. Residential construction. New construction and substantial improvements of any resident structure shall have:

(1) The lowest floor, including basement or cellar, elevated one-foot above the base flood elevation.

(2) Fully enclosed areas below the lowest floor that are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:

(a) A minimum of two openings having a total net area of not less than one square inch shall be required for every square foot of enclosed area subject to flooding.

(b) The bottom of all such openings shall be no higher than one-foot above the lowest adjacent finished grade.

(c) Openings may be equipped with louvers, valves, screens or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.

B. Nonresidential construction.

(1) New construction and substantial improvements of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, shall either have the lowest floor, including basement or cellar elevated to one-foot above the base flood elevation or be floodproofed so that the structure is watertight below the base flood level, with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

(a) If the structure is to be elevated, fully enclosed areas below the base flood elevation shall be designed to automatically, without human intervention, allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:

[1] A minimum of two openings having a total net area of not less than one square inch shall be required for every square foot of enclosed area subject to flooding.

[2] The bottom of all such openings shall be no higher than one-foot above the lowest adjacent finished grade.

[3] Openings may be equipped with louvers, valves, screens or other coverings or other devices, provided that they permit the automatic entry and exit of floodwaters.

(b) If the structure is to be floodproofed:

[1] A licensed professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice to make the structure watertight with walls substantially impermeable to the passage of water, with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

[2] A licensed professional engineer or licensed land surveyor shall certify the specific elevation, in relation to mean sea level, to which the structure is floodproofed.

(2) The Building Inspector shall maintain on record a copy of all such certificates noted in this section.

C. Construction standards for areas of special flood hazard without base flood elevations. New construction or substantial improvements of structures, including manufactured homes, shall have the lowest floor, including basement, elevated to one-foot above the base flood elevation, as may be determined in § 69-12B, or two feet above the highest adjacent grade where no elevation data is available.

(1) New construction or substantial improvements of structures including manufactured homes shall have the lowest floor, including basement, elevated at least two feet above the highest adjacent grade next to the proposed foundation of the structure.

(2) Fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically, without human intervention, allow for the entry and exit of floodwaters for the purpose of equalizing hydrostatic flood forces on exterior walls. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:

(a) A minimum of two openings having a total net area of not less than one square inch shall be required for every square foot of enclosed area subject to flooding.

(b) The bottom of all such openings shall be no higher than one-foot above the lowest adjacent finished grade.

(c) Openings may be equipped with louvers, valves, screens or other coverings or openings, provided that they permit the automatic entry and exit of floodwaters.

§ 69-15. Floodways.

Located within areas of special flood hazard are areas designated as floodways (see definition, § 69-4B). The floodway is an extremely hazardous area due to high-velocity floodwaters carrying debris and posing additional threats from potential erosion forces. When floodway data is available for a particular site as provided by §§ 69-6 and 69-12B, all encroachments, including fill, new construction, substantial improvements and other development, are prohibited within the limits of the floodway unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

§ 69-16. Appeals.

A. The Bethlehem Board of Appeals, as established by the Town Board, shall hear and decide appeals and requests for variances from the requirements of this chapter.

B. The Bethlehem Board of Appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Building Inspector in the enforcement or administration of this chapter.

C. Those aggrieved by the decision of the Bethlehem Board of Appeals may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.

D. In passing upon such applications, the Bethlehem Board of Appeals shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:

- (1) The danger that materials may be swept onto other lands to the injury of others.
- (2) The danger to life and property due to flooding or erosion damage.
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
- (4) The importance of the services provided by the proposed facility to the community.
- (5) The necessity to the facility of a waterfront location, where applicable.
- (6) The availability of alternative locations for proposed use which are not subject to flooding or erosion damage.
- (7) The compatibility of the proposed use with existing and anticipated development.
- (8) The relationship of the proposed use to the Comprehensive Plan and floodplain management program of that area.
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (10) The costs of local governments and the dangers associated with conducting search and rescue operations during periods of flooding.
- (11) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
- (12) The costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.

E. Upon consideration of the factors of § 69-16D and the purposes of this chapter, the Bethlehem Board of Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

F. The Building Inspector shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency upon request.

§ 69-17. Variances.

A. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the

base flood level, provided that, Subsections D(1) through (12) of § 69-16 have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.

B. Variances may be issued for the reconstruction, rehabilitation or restoration of structures and contributing structures listed on the National Register of Historic Places or the State Inventory of Historic Places without regard to the contributing structures procedures set forth in the remainder of this section.

C. Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:

(1) The criteria of Subsections A, D, E and F of this section are met.

(2) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.

D. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

E. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

F. Variances shall only be issued upon receiving written justification:

(1) A showing of good and sufficient cause.

(2) A determination that failure to grant the variance would result in exceptional hardship to the applicant.

(3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

G. Any applicant to whom a variance is granted for a building with the lowest floor one-foot above the base flood elevation shall be given written notice that the cost of flood insurance will be commensurate with the increased risk resulting from lowest flood elevation.

CHAPTER 72. FRESHWATER WETLANDS

§ 72-1. Responsibility of Planning Board.

§ 72-2. Definitions.

§ 72-3. Scope of regulations.

§ 72-4. Activities not requiring permits.

§ 72-5. Application for permit.

§ 72-6. Grant or denial of permit.

§ 72-7. Penalties for offenses.

§ 72-8. Review of Planning Board determinations.

CHAPTER 72. FRESHWATER WETLANDS

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 8-25-1976. Amendments noted where applicable.]

GENERAL REFERENCES

Flood damage prevention — See Ch. 69.

Subdivision regulations — See Ch. 103.

§ 72-1. Responsibility of Planning Board.

The Planning Board of the Town of Bethlehem shall be the responsible Town agency for the implementation, administration and enforcement of this chapter and shall also exercise those powers, functions, duties and responsibilities devolved upon the Town by Article 24 of the New York State Environmental Conservation Law, excepting therefrom those functions, powers, duties and responsibilities limited to the Town Board or other Town agency or official by law.

§ 72-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BOUNDARIES OF FRESHWATER WETLANDS

Outer limit of vegetation as specified in paragraphs (a) and (b) of Subdivision 1 of § 24-0107 of the Environmental Conservation Law and of the waters specified in paragraph (c) of such subdivision.

ENVIRONMENTAL CONSERVATION LAW

The Environmental Conservation Law of the State of New York, being Chapter 614 of the Laws of the State of New York of 1975, as amended.

FRESHWATER WETLANDS MAPS

A map on which is indicated the boundaries of any freshwater wetland and which has been duly filed with the Town Clerk and the Planning Board by the State Department of Environmental Conservation.

PERSON

Any person, state, applicant, agency, firm, partnership, corporation, association, trust, estate, public authority or public benefit corporation, and any unit of government or an agency or subdivision thereof.

POLLUTION

Presence in the environment of human-induced conditions or contaminants in quantities which are or may be injurious to humans, plants, animals or property.

REGULATED ACTIVITY

Activities delineated in § 72-3 of this chapter.

WETLANDS

All areas defined as "freshwater wetlands" in § 24-0107 of the Environmental Conservation Law and so designated on the Freshwater Wetlands Maps prepared pursuant to § 24-0301 of the Environmental Conservation Law when filed with the Clerk of the Town of Bethlehem.

§ 72-3. Scope of regulations.

Within an officially designated wetland, any person proposing to conduct or cause to be conducted any of the activities specified below in Subsections A through E shall be required to file an application for a permit with the Town Clerk. These activities are subject to regulation whether or not they occur upon the wetland itself, if they impinge upon or otherwise affect the wetlands; provided, however, that no regulation shall apply to any area situated more than 100 feet from the boundary of such wetland or any such greater or lesser distance therefrom as determined by the Planning Board. Activities requiring such a permit are as follows:

- A. Erecting any structures, roads, the driving of pilings or placing of any other obstructions whether or not changing the ebb and flow of the water.
- B. Any form of pollution, including but not limited to installing a septic tank, running a sewer outfall, discharging sewage treatment effluent or other liquid wastes into or so as to drain into a freshwater wetland.
- C. Any form of draining, dredging, excavation or removal of soil, mud, sand, shells, gravel or other aggregate.
- D. Any form of dumping, filling or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly.
- E. Any other activity which impairs any of the several functions served by freshwater wetlands or the benefits derived therefrom which are set forth in § 24-0105 of the Environmental Conservation Law.

§ 72-4. Activities not requiring permits.

A. No permit under this chapter shall be required for the following activities:

(1) The deposition or removal of the natural products of freshwater wetlands and adjacent areas by recreational or commercial fishing, agriculture, hunting or trapping, where otherwise legally permitted and regulated.

(2) The activities of farmers and other landowners in grazing and watering livestock, making reasonable use of water resources, harvesting natural products of wetlands or adjacent areas or engaging in the use of wetlands for growing agricultural products. Each farmer or landowner who intends to conduct an activity described in Subsection A(1) or A(2) which would otherwise be regulated shall notify the Planning Board in writing of such an intention. Elements to be included are as follows:

(a) General location of proposed activity.

(b) Description of activity.

(c) Acreage to be affected.

(d) Methods to be employed to effectuate activity.

(3) Public health activities and those conducted pursuant to lawful orders and regulations of a state or local public health department or agency.

B. Authorization pursuant to any other law, rule or regulation to conduct activities which are subject to regulation under this chapter shall not exempt such activities from the requirements hereof.

§ 72-5. Application for permit.

A. No person shall conduct a regulated activity upon a freshwater wetland without first obtaining a valid permit pursuant to the provisions of this chapter.

B. Application for permits will be filed with the Town Clerk, who shall cause a copy of any such application to be filed with the Planning Board. Such application shall be accompanied by a nonrefundable fee of \$25 and shall be accompanied by completed plans and specifications for the proposed project.

C. No sooner than 30 days and not later than 60 days following the receipt by the Town Clerk of such application and after notice of such application has been published in two newspapers having a general circulation in the Town, the Planning Board shall hold a public hearing on such application. Notice of such hearing shall be published not less than five days nor more than 10 days prior to the date set for such hearing. Within 30 days following said hearing or any adjourned date thereof, the Planning Board shall render a decision to approve, deny or approve with conditions.

D. All owners of record of the adjacent land and known claimants to water rights shall be notified by certified mail of any hearing to be held pursuant hereto not less than 15 days prior to the date set for such hearing.

E. Involved agencies shall have the right to inspect the location of the proposed activity and collect any further information and/or data it may consider pertinent or necessary to properly review the application.

F. If no notice of objection has been filed with the Town Clerk or if the Planning Board finds the activity to be of such a minor nature as not to substantially affect or endanger the balance of systems within the wetlands, the Planning Board, in any such case, may dispense with such hearing. When the Planning Board finds that a hearing is not necessary, it shall publish its decision, setting forth its reasons therefor, which shall be a matter of public record.

§ 72-6. Grant or denial of permit.

A. In granting a permit, the Planning Board may limit it or impose conditions or limitations designed to carry out the public policy set forth in Article 24 of the Environmental Conservation Law. The Planning Board may require a bond, in an amount and with surety and conditions satisfactory to the Planning Board, securing to the Town compliance with the conditions and limitations set forth in said permit. The Planning Board may suspend or revoke a permit if it finds that the permittee has not complied with a condition or limitation set forth in the permit or has exceeded the scope of the permitted activity.

B. A duly filed notice in writing that the state or any agency or subdivision thereof is in the process of acquiring any freshwater wetlands by purchase, gift, appropriation or condemnation shall be a sufficient basis for the denial of an application for a permit affecting such freshwater wetlands.

§ 72-7. Penalties for offenses.

The provisions of Title 1, Title 3 and Title 5 of Article 71 of the Environmental Conservation Law, except as herein modified, shall be applicable to the enforcement of this chapter. In addition, any person who violates, disobeys or disregards any provision of this chapter or of any permit issued hereunder shall be liable to a civil penalty of not more than \$3,000 for each such violation and an additional penalty of not more than \$500 for each day during which such violation continues, and, in addition thereto, such person may be enjoined from continuing such violation. Penalties and injunctive relief provided herein shall be recoverable in an action brought by the Attorney General at the request of the Planning Board or the Commissioner of Environmental Conservation of the State of New York. Such action may be brought in the name of the Planning Board or in the name of such Commissioner.

§ 72-8. Review of Planning Board determinations.

Any determination of the Planning Board under this chapter may be reviewed in accordance with the provisions of Subdivision 5 of § 24-0705 and Title 11 of Article 24 of the Environmental Conservation Law, and the provisions of such sections shall be applicable to any such review.

CHAPTER 76. GARBAGE, RUBBISH AND REFUSE

§ 76-1. Legislative intent.

§ 76-2. Definitions.

§ 76-3. Storage of rubbish or garbage outside buildings.

§ 76-4. Placement of rubbish for cleanup days.

§ 76-5. Penalties for offenses.

CHAPTER 76. GARBAGE, RUBBISH AND REFUSE

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 5-13-1970. Amendments noted where applicable.]

GENERAL REFERENCES

Solid waste — See Ch. 97.

§ 76-1. Legislative intent.

A clean, wholesome, attractive and healthful environment is decreed to be of importance to the health and welfare of the residents of the Town, and such environment is deemed essential to the maintenance and continued development of the economy of the Town. It is further decreed that the unrestricted disposal of rubbish and garbage, as herein defined, is a hazard to such health, welfare and economy, necessitating the regulation, restraint and confinement thereof.

§ 76-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

GARBAGE

Offal, waste food, dead animals or fowl or parts thereof, vegetable matter of any kind and any other waste or discarded matter which shall be either flammable or capable of fermentation or decay.

PERSON

An individual, society, club, firm, partnership, corporation or association of persons.

RUBBISH

Waste material, including papers, cartons, tin cans, scrap metal, bottles, plastic and cardboard, containers, waste or discarded wood and lumber and any and all similar substances and articles.

§ 76-3. Storage of rubbish or garbage outside buildings.

No person shall place or deposit, or permit or cause to be placed or deposited, any rubbish or garbage outside any building within the Town of Bethlehem, unless the garbage is properly and carefully contained within a covered metal, wooden or molded plastic receptacle and the rubbish is properly contained within a covered metal, wooden or molded plastic receptacle or placed in an adequate solid (opaque) enclosure, which receptacle or enclosure shall be capable of holding the contents thereof within the confines of the said receptacle or enclosure so as to prevent the same from falling out, being blown about or in any way removed from the said receptacle or enclosure except for transmittal to a proper place of disposal.

§ 76-4. Placement of rubbish for cleanup days.

Nothing herein contained shall be construed to prevent any person from placing any of the aforementioned articles, except those set forth under the definition of "garbage," on his own property for the purpose of being picked up by the Town on Town cleanup days; provided, however, that said material is properly packaged, contained or bound to prevent its being blown about, and provided further that said material shall not be placed on the property for pickup more than two days before the next scheduled cleanup day.

§ 76-5. Penalties for offenses.

[Amended 3-23-1988 by L.L. No. 2-1988]

Any person committing an offense against any of the provisions of this chapter shall be guilty of a violation and, upon conviction thereof, shall be punishable by a fine not exceeding \$250 or by imprisonment for a term not exceeding 15 days, or both. Each day's continued violation shall constitute a separate, additional violation.

CHAPTER 79. HUNTING

§ 79-1. Title.

§ 79-2. Purpose.

§ 79-3. Hunting prohibited in parks.

§ 79-4. Exceptions.

§ 79-5. Penalties for offenses.

CHAPTER 79. HUNTING

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 4-25-1990. Amendments noted where applicable.]

GENERAL REFERENCES

Firearms — See Ch. 66.

§ 79-1. Title.

This chapter may be known and cited as the "Town of Bethlehem Hunting Ordinance."

§ 79-2. Purpose.

The purpose of this chapter is to protect the public health, welfare, safety, peace and tranquility by regulating hunting and trapping on park property owned by the Town of Bethlehem.

§ 79-3. Hunting prohibited in parks.

No person shall hunt, trap or use any hunting device on property which is designated as parkland. Hunting devices include firearms, bows and arrows, traps or any other device used for hunting.

§ 79-4. Exceptions.

The prohibition contained in § 79-3 shall not apply to a law enforcement or peace officer in the performance of his or her official duties.

§ 79-5. Penalties for offenses.

Any person violating the provisions of this chapter shall be guilty of a violation and, upon conviction thereof, shall be punishable by a fine not exceeding \$250.

CHAPTER 82. OFF-HIGHWAY MOTORCYCLES

§ 82-1. Definitions.

§ 82-2. Registration required; application; fee.

§ 82-3. Rules and regulations authorized.

§ 82-4. Penalties for offenses.

CHAPTER 82. OFF-HIGHWAY MOTORCYCLES

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 10-9-1985 by L.L. No. 3-1985. Amendments noted where applicable.]

GENERAL REFERENCES

Snowmobiles — See Ch. 94.

Vehicles and traffic — See Ch. 119.

§ 82-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

OFF-HIGHWAY MOTORCYCLE

A motorcycle, as defined by § 123 of the Vehicle and Traffic Law of the State of New York, which is not equipped in conformity with the provisions of § 381 of the Vehicle and Traffic Law of the State of New York, is not registered in accordance with the provisions of § 410 of the Vehicle and Traffic Law of the State of New York and which is manufactured and sold for operation primarily on off-highway trails or in off-highway competitions and only incidentally operated on public highways.

§ 82-2. Registration required; application; fee.

A. No person shall operate any off-highway motorcycle within the Town of Bethlehem unless such off-highway motorcycle has been registered in accordance with the provisions of this section and such registration is in full force and effect and indicia of registration is displayed in accordance with regulations promulgated by the Town Board.

B. Every owner of an off-highway motorcycle which is or is intended to be operated within the Town of Bethlehem shall cause to be filed in the office of the Town Clerk an application for registration, on a form to be prepared under the direction of and furnished by the Town Clerk for that purpose, containing:

- (1) A brief description of the off-highway motorcycle to be registered, including the name of the manufacturer and the factory number of such vehicle.
- (2) The name and address of the owner of such vehicle and the name and address of any operator or operators of such vehicle other than the owner.
- (3) Such other information as the Town Board may from time to time require by order or resolution.

C. Upon receipt of a sufficient application for registration, the Town Clerk shall register such off-highway motorcycle and maintain a record of the registration of such motorcycle under the distinctive number assigned to such motorcycle and shall issue a certificate of registration, together with such indicia of registration as shall be determined by the Town Board. A fee of \$5, payable to the Town of Bethlehem, shall be paid to the Town Clerk upon the registration of such off-highway motorcycle.

§ 82-3. Rules and regulations authorized.

The Town Board is hereby empowered to make and promulgate, from time to time, by order or resolution, such rules and regulations relating to the use and operation of off-highway motorcycles on off-highway trails and in off-highway competitions, including the requirement of instruction and training, as the Town Board may determine in the interest of promoting the public welfare, convenience and safety. For the purpose of implementing and enforcing such rules and regulations, the Town Board may impose such restrictions, limitations and conditions upon the issuance of certificates of registration under this chapter as the Town Board may deem appropriate.

§ 82-4. Penalties for offenses.

The operation of an off-highway motorcycle in violation of this chapter shall be deemed a violation. Such violator or violators shall each be liable to a fine of not less than \$50 nor more than \$250 for each violation.

CHAPTER 86. PEDDLING AND SOLICITING

- § 86-1. Definitions.
- § 86-2. License required.
- § 86-3. Exempt persons and organizations.
- § 86-4. Application procedure.
- § 86-5. Revocation of license.
- § 86-6. Fees; exceptions; expiration of license.
- § 86-7. Use of vehicles.
- § 86-8. Prohibited acts.
- § 86-9. Records.
- § 86-10. Penalties for offenses.

CHAPTER 86. PEDDLING AND SOLICITING

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 3-13-1996 by L.L. No. 3-1996. Amendments noted where applicable.]

§ 86-1. Definitions.

For the purpose of this chapter, the words used herein are defined as follows:

ESTABLISHED PLACE OF BUSINESS

A building, commercial or residential, in which or where a person transacts business and deals in goods, wares, merchandise or services, which shall have been in operation for at least 90 days.

PERSON

One or more persons of either sex, a firm, a partnership, a corporation or any individual representative or agent thereof with proper identification (ID), such as a driver's license or photo ID with proper addresses.

SOLICITOR

A. Any person who, by means of telephone, by going door-to-door or by standing in any street or public place:

- (1) Offers to sell merchandise, wares or other goods.
- (2) Takes orders for the future delivery of merchandise, wares or other goods.
- (3) Offers to purchase goods, wares or other articles of value.
- (4) Offers to perform services immediately or at any future date or offers to make, manufacture or repair any article or thing whatsoever for future delivery.
- (5) Offers to make a future appointment for any of the above purposes.

B. For the purpose of this chapter, the following terms shall be considered synonymous with "solicitor": hawker, peddler, itinerant, merchant, transient, vender, purveyor and door-to-door salesman.

VEHICLE

Car, truck, van, pushcart and trailer.

§ 86-2. License required.

It shall be unlawful for any person to solicit, as defined in § 86-1, within the Town of Bethlehem without first having registered with the Town Clerk and having received and having in force and effect a license for the same if such be required by said Town Clerk.

§ 86-3. Exempt persons and organizations.

The following persons or organizations shall be exempt from the provisions of this chapter:

- A. Merchants or solicitors having an established place of business within the Town or their employees while acting within the scope of their employment and not having another use.
- B. Farmers and truck gardeners or their employees who sell or deliver products of their own farms and gardens.
- C. Religious, charitable and nonprofit organizations.

§ 86-4. Application procedure.

A. Any person desiring to procure a license or to register to solicit in the Town of Bethlehem shall file with the Town Clerk and Building Inspector a written application, together with an employer's authorization if required, sworn to before a notary public, upon a form approved by the Town Board.

B. If the Town Clerk shall approve the application, he or she shall, within five days, issue a license or registration card signed by him, authorizing the holder thereof to conduct business under the terms of this chapter. In the event that the application shall be denied, the Town Clerk shall state the reasons therefore. Any license issued hereunder shall not be assignable, and any holder of a license who permits it to be used by any other persons, and any other person who uses it, shall be guilty of a violation of this chapter.

C. No license shall be granted to a person under 18 years of age. No license shall be issued to a person who has been refused a license within the past 12 months or who has had a license revoked within the past 12

months unless he can show that the reasons for such rejection or revocation no longer exist. Every licensee, while conducting business, shall carry the license and exhibit the same upon demand.

D. No license shall be issued to any individual whose merchandise to be sold on the streets of the Town consists of souvenirs such as artificial flowers to be worn as boutonnieres, small replicas of the American Flag or a facsimile thereof or any other souvenirs of a patriotic nature unless sponsored by one of the bona fide local veterans' organizations.

E. No license shall be issued to any person standing or selling in parking lots, on sidewalks or rights-of-way.

§ 86-5. Revocation of license.

A. The Town may at any time, for cause shown or for a violation of this chapter of any other law, immediately revoke any license by delivering to the licensee, either in person or by mailing address given in the application, notice of such revocation in writing and stating therein the reason or reasons for such revocation. A license so revoked shall be returned to the Town Clerk within four days of revocation.

B. The refusal of a solicitor to leave private premises after a request by the owner or lawful occupant or the solicitation of persons other than between the hours of 9:00 a.m. and 6:00 p.m. or sundown, whichever is later, shall be cause for revocation. The licensee shall be entitled to a hearing before the Town Board upon any claim that a license was wrongly revoked or refused.

§ 86-6. Fees; exceptions; expiration of license.

A. The license fee for solicitors shall be \$75 per person as an annual license fee. In addition, those solicitors who use vehicles shall pay an annual fee of \$100 for each vehicle.

B. Any veteran of the Armed Forces of the United States holding a peddlers license provided for in Article 4 of the General Business Law shall not be required to pay any license fee whatever, but shall be required to register with the Town Clerk.

C. All licenses shall expire December 31 of each year and must be renewed by payment of another annual fee.

D. All applicants for food licenses shall exhibit to the Town a permit from the Albany County Department of Health at the time of application hereunder.

E. All vehicles which will be used or involved in soliciting shall at the time of application have a valid license and registration.

F. All places of sale or soliciting shall be handicapped accessible.

G. All premises licensed hereunder shall be in conformity with New York State Uniform Fire Prevention and Building Code.

§ 86-7. Use of vehicles.

Every vehicle used by a licensee hereunder shall bear, prominently displayed on both sides of the vehicle in letters and figures at least two inches in height, the name of the licensee and his address. Such lettering and figures shall be maintained so that they can be plainly and distinctly read at all times while such vehicle is in use during the continuance of the license. Any licensee using a vehicle shall employ only a registered or licensed person in selling and delivering wares and other merchandise.

§ 86-8. Prohibited acts.

A licensee or his employee shall not:

A. Create or maintain any booth or stand or place any barrels, boxes, crates or other obstruction upon any street, sidewalk or public place for the purpose of conducting business.

B. Sell or conduct business of any kind within 250 feet of any school between the hours of 8:00 a.m. and 4:00 p.m. on days school is in session.

§ 86-9. Records.

It shall be the duty of the Town Clerk to keep a record of all applications received and all licenses granted under the provisions of this chapter, in which shall be recorded the names and addresses of persons licensed, the amount of fees paid and all other pertinent data concerning the issuance of licenses under this chapter. All licenses issued and all records pertaining thereto shall contain, in addition to the name and address of the licensee, the kind of goods, wares and merchandise to be sold or the nature of the services to be rendered and the date of expiration of said license.

§ 86-10. Penalties for offenses.

A. Any person who, himself or through an agent or employee, shall act as a solicitor as herein defined without registering with the Town Clerk or obtaining a license, if said Clerk shall require one, or who, having had his license revoked, shall continue to act as a solicitor shall, upon conviction, be punished by a fine of not more than \$250, and each day on which such violation continues shall constitute a separate offense.

B. Any person who, himself or through an agent or employee, shall violate the provisions of this chapter shall, upon conviction, be punished by a fine of not to exceed \$250 for the first offense and not to exceed \$500 for each subsequent offense.

C. Any violation of the provisions of this chapter shall be deemed an offense.

CHAPTER 87. PESTICIDES

§ 87-1. Definitions.

§ 87-2. Exceptions.

§ 87-3. Pest Management Committee established.

§ 87-4. Application on Town property prohibited.

§ 87-5. Use warranted by human health or safety emergency.

§ 87-6. Use warranted by infestation of stinging insects.

§ 87-7. Use warranted by adversely affected turf quality and safety.

§ 87-8. Public notice of use.

§ 87-9. Prevention of pest problems on Town property.

§ 87-10. Copies to be forwarded.

CHAPTER 87. PESTICIDES

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 10-14-1998 by L.L. No. 11-1998. Amendments noted where applicable.]

§ 87-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ANTIMICROBIAL PESTICIDE

A pesticide as defined by 7 U.S.C. § 136(mm).

PEST

Any insect, rodent, fungus, weed, virus, bacteria or other microorganism (except viruses, bacteria or other microorganisms on or in living persons or other living animals) that the Commissioner of the New York State Department of Environmental Conservation declares to be a pest.

PESTICIDE

Any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliator or desiccant registered as such by the United States Environmental Protection Agency and/or the New York State Department of Environmental Conservation, and all such products for which experimental use permits and provisional registrations have been granted by the United States Environmental Protection Agency and/or the New York State Department of Environmental Conservation.

POISONOUS PLANTS

Poison ivy, oak, or sumac or plants of a similar nature.

[Added 5-23-2007 by L.L. No. 5-2007]

SYNTHETIC CONTROL

A chemically based substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, or weeds, or any other form of life declared to be pests, and those substances intended for use as a plant growth regulator, defoliant, or desiccant. Pesticides are regulated and labeled for use by the US Environmental Protection Agency, under the mandate of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), enacted in 1947, and amended several times since then.

[Added 5-23-2007 by L.L. No. 5-2007]

TARGET INSECTS

[Added 5-23-2007 by L.L. No. 5-2007]

A. Those found in soil which generally feed on turfgrass roots, and include white grubs, mole crickets, wire worms, bill bugs, black turfgrass ataenius, and ground pearls.

B. Thatch-inhabiting insects which include chinch bugs, sod webworms, cut worms, and armyworms.

C. Leaf-inhabiting insects, which include aphids, mites, and scales. Furthermore, ornamental leaf and stem pests include Japanese beetles, leaf beetles, root weevils, borers, bark beetles, tent caterpillars, webworms, bag

THRESHOLD LEVEL

A condition measured in time that will allow the Town Supervisor to authorize the use of synthetic control.

[Added 5-23-2007 by L.L. No. 5-2007]

WEEDS ADAPTED TO LAWNS

[Added 5-23-2007 by L.L. No. 5-2007]

A. Perennial broadleaf weeds (ex., white clover and dandelions): plants that set seeds for two or more seasons.

B. Annual grassy weeds (ex., crabgrass and goosegrass): plants that germinate, grow, flower, set seeds, and die in one year.

§ 87-2. Exceptions.

Notwithstanding any other provisions, this chapter shall not apply to the following:

A. Pesticides used for the purpose of maintaining a safe drinking water supply at drinking water treatment plants, wastewater treatment plants, reservoirs and related collection, distribution and treatment facilities.

- B. Pesticides used for the treatment of swimming pool water.
- C. Antimicrobial pesticides.
- D. Pesticides in contained baits for the purpose of rodent control.
- E. Pesticides classified by the United States Environmental Protection Agency as exempt materials under 40 CFR 152.25.
- F. Pesticides used for the purposes of maintaining any golf course owned, leased, or operated by the Town.

[Added 5-23-2007 by L.L. No. 5-2007]

§ 87-3. Pest Management Committee established.

The Town of Bethlehem hereby establishes a Pest Management Committee with the power to recommend least-toxic pest control substances or procedures for the period prior to January 1, 2000, for pest control on property owned, operated or maintained by the Town of Bethlehem and to recommend nonchemical pest control substances or procedures for the period after January 1, 2000, on property owned, operated or maintained by the Town of Bethlehem. Said Committee shall be made up of the Town Supervisor; a Town Board member; one person from each of the following Town Departments: Parks and Recreation, Highway and Public Works; one resident designated by the Town Supervisor to represent the environmental interests of the general public, and one person designated by the Town Supervisor who is capable of providing technical assistance on nonchemical alternatives for pest control.

§ 87-4. Application on Town property prohibited.

[Amended 5-23-2007 by L.L. No. 5-2007]

- A. Effective immediately, no Town department or any contractor or subcontractor for pest control purposes shall apply on property owned, operated or maintained by the Town of Bethlehem any pesticide classified as Toxicity Category I by the United States Environmental Protection Agency or any pesticide classified as a known, likely or probable human carcinogen by the United States Environmental Protection Agency, except as provided for in § 87-5, 87-6 or 87-7 of this chapter.
- B. Effective January 1, 1999, no Town department, or any contractor or subcontractor employed by the Town, shall apply on any property owned, operated or maintained by the Town any pesticide classified as Toxicity Category II by the United States Environmental Protection Agency, any pesticide classified as a possible human carcinogen by the United States Environmental Protection Agency or any pesticide classified as restricted use by the United States Environmental Protection Agency or the New York State Department of Environmental Conservation, except as provided for in § 87-5, 87-6 or 87-7 of this chapter.
- C. Effective January 1, 2000, no Town department, or any contractor or subcontractor employed by the Town, shall apply any pesticide on any property owned, operated or maintained by the Town, except as provided for in § 87-5, 87-6 or 87-7 of this chapter.

§ 87-5. Use warranted by human health or safety emergency.

Should the Town Supervisor, upon consultation with the Pest Management Committee to the extent practicable, determine that a human health or safety emergency warrants the use of a pesticide that would otherwise not be allowed under this chapter, the Town Supervisor shall have the authority to issue an exception based on the following criteria:

- A. The pest infestation poses an immediate threat to human health or safety.
- B. Viable effective alternatives consistent with this chapter do not exist.

C. Any pesticide used of all available choices must have the least acute and chronic toxic effect on human health or safety.

D. Underlying causes of the pest infestation are addressed in order to prevent future outbreaks.

§ 87-6. Use warranted by infestation of stinging insects.

[Amended 5-23-2007 by L.L. No. 5-2007]

Should the Administrator of Parks and Recreation determine that an infestation of stinging insects warrants the use of a pesticide that would otherwise not be allowed under this chapter, the Administrator shall have the authority, in consultation with the Town Supervisor, to use such pesticide if the following criteria are met:

A. The pest infestation poses an immediate threat to human health or safety.

B. Viable effective alternatives consistent with this chapter do not exist.

C. Any pesticide used of all available choices must have the least acute and chronic toxic effect on human health or safety.

D. Underlying causes of the pest infestation are addressed in order to prevent future outbreaks.

§ 87-7. Use warranted by adversely affected turf quality and safety.

[Added 5-23-2007 by L.L. No. 5-2007 Editor's Note: This local law also redesignated former §§ 87-7, 87-8 and 87-9 as §§ 87-8, 87-9 and 87-10, respectively.]

A. Should the Town Supervisor, upon consultation with the Administrator of Parks and Recreation and the Pesticide Committee, and based upon a report from the Administrator of Parks and Recreation, determine that an infestation has occurred at a threshold level set forth below, the Town Supervisor shall have the authority to permit Category III or Category IV synthetic controls:

(1) For weeds adapted to lawns and poisonous plants: Measuring an area of turf 10 feet by 10 feet (100 square feet) and yielding more than six noxious weed types may require synthetic control.

(2) For target insects: Areas shall be monitored prior to any control methods applied.

(a) Measuring a square of turf one foot by one foot and observing more than eight grubs will require treatment.

(b) Similarly more than 15 chinch bugs per square foot may require synthetic control.

(c) Other insects shall be evaluated on a case-by-case basis and monitored prior to any synthetic controls.

B. Notwithstanding anything to the contrary set forth hereinabove, prior to the application of synthetic control, applied in accordance with a time schedule that minimizes human exposure to the maximum degree practicable, the Town shall attempt to use nonsynthetic controls, including but not limited to:

(1) Overseeding, fertilizing and irrigation as available; or

(2) Removing stressed and/or diseased plants from the landscape to discourage infestation; or

(3) When planting new areas, utilize plant species not preferred by prevalent insects; or

(4) Encouraging natural predators when possible; or

- (5) Alleviating compaction, dry and wet soil conditions; or
- (6) Using landscape fabric or organic mulch layer; if practicable.

§ 87-8. Public notice of use.

A. Should pesticides or synthetic control be used pursuant to § 87-5 or § 87-7 of this chapter, the entity engaged in such application shall conspicuously post at the site of application and, to the extent practicable in advance of the actual application, publish or communicate through local mass media such as newspapers, Internet, television or radio the following information:

[Amended 5-23-2007 by L.L. No. 5-2007]

- (1) Date of posting.
- (2) Organism targeted.
- (3) Specific location, date, and approximate time of application.
- (4) Method of application.
- (5) Trade name and the active ingredient of the pesticide used.
- (6) Copy of the label.
- (7) Name and telephone number of the person responsible for the application.
- (8) Poison control telephone number.

B. Should pesticides be used pursuant to § 87-6 of this chapter, the Administrator shall conspicuously post for 48 hours at the immediate area of application the following information:

- (1) Organism targeted.
- (2) Date and time of application.
- (3) Trade name and active ingredient of pesticide used.

§ 87-9. Prevention of pest problems on Town property.

Any plans for new construction or remodeling of buildings owned, operated or maintained by the Town of Bethlehem, any plans for designing or redesigning public parks and recreational areas owned, operated or maintained by the Town of Bethlehem and any plans for landscaping on property owned, operated or maintained by the Town of Bethlehem shall contain provisions for the prevention of pest problems by means such as appropriate structural design, pest-resistant vegetation and pest control maintenance and planting practices.

§ 87-10. Copies to be forwarded.

The Town Clerk of the Town of Bethlehem is directed to forward certified copies of this chapter to the appropriate Town officials.

CHAPTER 88. RECORDS

ARTICLE I. Records Management

§ 88-1. Findings; purpose.
§ 88-2. Program established; designation of Records Management Officer.
§ 88-3. Definitions.
§ 88-4. Powers and duties of Records Management Officer.
§ 88-5. Records Advisory Board.
§ 88-6. Custody and control of records.
§ 88-7. Disposition of records.
§ 88-8. Replevin.
§ 88-9. Public access to records; appeals procedure.
§ 88-10. Fees.

CHAPTER 88. RECORDS

[HISTORY: Adopted by the Town Board of the Town of Bethlehem as indicated in article histories. Amendments noted where applicable.]

ARTICLE I. Records Management

[Adopted 10-13-1993 by L.L. No. 8-1993]

§ 88-1. Findings; purpose.

Records are essential to the administration of local government. They contain the information that keeps government programs functioning. It is the intent of this article that a Records Management Program be established which will assist officials in making decisions, administering programs and providing administrative continuity with past operations. The program is intended to document the delivery of services, show the legal responsibilities of government and protect the legal rights of citizens. It will contain information on taxation and on the management and expenditure of funds. These records will also document the historical development of government itself, the community and the people of the Town.

§ 88-2. Program established; designation of Records Management Officer.

A. There shall be a Records Management Program established under the aegis of the Town Clerk and headed by the Records Management Officer. The Town Clerk is designated as the Records Management Officer (RMO) and will be responsible for administering the current and archival public records in storage areas for the Town in accordance with local, state and federal laws and guidelines.

B. The RMO may appoint a designee to carry out the specific duties listed in § 88-4.

§ 88-3. Definitions.

As used in this article, the following terms shall have the meanings indicated:

ARCHIVES

Those official records which have been determined by the Records Management Officer and Advisory Committee to have sufficient historical or other value to warrant the continued preservation by the Town.

RECORDS

Official files, minutes and documents, books, papers, photographs, sound recordings, microforms or any other materials, regardless of physical form or characteristics, made or received pursuant to law or in conjunction with the transaction of official Town business.

RECORDS CENTER

A central storage area maintained by the Records Management Officer for the storage, servicing, security and processing of records which must be preserved for varying periods of time.

RECORDS DISPOSITION

The removal by the Town of Bethlehem, in accordance with approved records control schedules, of the records no longer necessary for the conduct of business by such agency through removal methods which may include the disposition of temporary records by destruction or donation or the transfer of records to a central storage facility for records determined to have historical or other sufficient value warranting continued preservation or the transfer of records from one Town agency to another Town agency.

RECORDS MANAGEMENT

The planning, controlling, directing, organizing, training, promotion and other managerial activities involved in records disposition, including records preservation, records disposal and the records center or other storage facilities.

SERVICING

Making information in records available to any agency for official use or to the public.

§ 88-4. Powers and duties of Records Management Officer.

The Records Management Officer shall have all the necessary powers to carry out the efficient administration and determination of value, use, preservation, storage and disposition of the public records kept, filed or received by the officers and departments of the Town.

A. The Records Management Officer shall continually survey and examine public records to recommend their classification so as to determine the most suitable method to be used for maintaining, storing and servicing them under the following guidelines:

(1) Disposition. Records deemed obsolete and unnecessary according to the New York State Records Retention and Disposition Schedule are subject to disposition.

(2) Archival retention. Records containing information with administrative, legal, fiscal, research, historical or educational value which warrants their permanent retention are subject to archival retention.

(3) Active retention. Records not yet subject to disposition according to state law are subject to active retention.

B. The Records Management Officer shall establish guidelines for proper records management in any department of the Town government in accordance with local, state and federal laws and guidelines.

C. The Records Management Officer shall report annually to the governing body on the powers and duties herein mentioned, including but not limited to the development and progress of programs to date and planned activities for subsequent years.

D. The Records Management Officer shall operate a central records management storage facility for storage, processing and servicing of all Town records for all Town departments and agencies.

E. Additional requirements of the Records Management Officer include but are not limited to:

(1) Development of a comprehensive records management program.

(2) Conduct of an initial survey and analysis of all records, to be followed up annually with a report of records stored.

(3) Encouragement and coordination of the continuous legal destruction of obsolete records through the adoption and use of the State Archive Records Retention and Disposition Schedules.

(4) Development of suitable retention periods for records not covered by the New York State Records Retention and Disposition Schedules. (Subsequently, the RMO must secure approval of such retention periods from the New York State Commissioner of Education and gain adoption from the Town Board of any proposed change before the retention period takes effect.)

(5) Assistance to each department for the establishment of a records management system to support the overall Town records management program and encouragement of the continued efficient management of records within respective departments.

(6) Setting up and overseeing a center for the storage of inactive records.

(7) Maintenance of archival materials which are not official Town records but which have historical value to the community or close relationship to the existing archival collection. This shall be subject to archive space, staff and cost limitations and to the potential endangerment of such materials if they are not collected by the archives.

(8) Coordination of and carrying out or participating in the planning for development of advanced records management systems and equipment.

(9) Preparation of special and annual reports for the Town Board on the records management program progress, cost savings and cost avoidance problems and additional issues.

§ 88-5. Records Advisory Board.

There shall be a Records Advisory Board designated to work closely with and provide advice to the Records Management Officer. The Board shall consist of five members, with the Records Management Officer as Chairman, suggested but not limited to the following areas: Town Historian, a department head, a Councilperson and the Town Attorney. Appointments are to be made by the Supervisor. The Board shall meet periodically and have the following duties:

- A. To provide advice to the Records Management Officer on the development of the records management program.
- B. To review the performance of the program on an ongoing basis and propose changes and improvements.
- C. To review any changes in retention periods proposed by the Records Management Officer for records not covered by the State Archive Schedules.
- D. To provide advice on the appraisal of records for archival value and to be the final sign-off entity as to what is or is not archival.

§ 88-6. Custody and control of records.

A. Active records. The originating department has full custody (legal and physical) over records still in active use.

B. Inactive records. The originating department is the legal custodian of its records and shall retain the power to retrieve and use records deposited in inactive storage in the records center. The RMO will have physical custody of inactive records and will determine the method and design of storage.

C. Archival records. Records transferred to or acquired by the archives shall be under the full custody (legal and physical) of the archives, as directed by the RMO, rather than the department which created or held them immediately prior to being transferred to the archives.

(1) Records shall be transferred to the archives upon the recommendation of the RMO, with the approval of the head of the department which had custody of the records and the approval of the Records Advisory Board.

(2) Records may be removed (temporarily or permanently) from the archives at the request of the RMO or the head of the department which had custody of the records immediately prior to the transfer of those records to the archives, subject to the approval of the Records Advisory Board.

§ 88-7. Disposition of records.

No record shall be destroyed or otherwise disposed of by a department of the Town until it has met the time limit on the New York State Records Retention and Disposition Schedule or unless approved of by the Records Management Officer. No records shall be destroyed or otherwise disposed of by the Records Management Officer

without the express written consent of the department head having authority. Following required consents and prior to actual destruction, the RMO will allow the Town Historian to review and/or remove any single document or sampling of documents that are of historic value to the community.

§ 88-8. Replevin.

The Legal Department may take steps to recover local government records which have been alienated from proper custody and may, when necessary, institute actions of replevin. ("Replevin" means the recovery by a person of goods claimed to be his, on his promise to test the matter in court and give the goods up again if defeated.)

§ 88-9. Public access to records; appeals procedure.

To comply with Article 6 of the Public Officers Law, the following format will be followed:

A. All requests for information shall be in writing, reasonably describing the record requested, and made during regular business hours of the Town of Bethlehem offices.

B. Within five business days of the receipt of the written request, one of the following will occur:

(1) The record will be made available to the person requesting it.

(2) The request will be denied in writing.

(3) A written acknowledgment of the receipt of the request and a statement of the approximate date when such request shall be granted or denied will be forwarded.

C. Any person denied access to a record may appeal, within 30 days, in writing, such denial to the Town Board.

D. The Town Board is hereby designated as the appeal agency for determination of denials and will proceed as follows:

(1) The Town Board shall, within 10 business days of the receipt of an appeal, fully explain, in writing, to the person requesting the record the reason for further denial or the Town Board shall provide access to the record sought.

(2) The Town Board shall forward to the Committee on Open Government a copy of such appeal when received by the agency and shall also forward to said Committee the ensuing determination thereon.

§ 88-10. Fees.

A set fee will be charged per photocopy of a record. Such charges will be established by resolution of the Town Board.

CHAPTER 91. SEWERS

ARTICLE I. Definitions

§ 91-1. Definitions and word usage.

ARTICLE II. Use of Public Sewers Required

§ 91-2. Deposit of waste on public or private property prohibited.

§ 91-3. Untreated discharges to natural outlets prohibited.

§ 91-4. Septic tanks and cesspools restricted.

§ 91-5. Plumbing facilities and sewer connection required.

ARTICLE III. Private Sewage Disposal

§ 91-6. Private system required where public sewers are unavailable.

§ 91-7. Permit required.

§ 91-8. Inspections.

§ 91-9. Compliance with state standards.

§ 91-10. Facilities to be maintained in sanitary condition.

§ 91-11. Abandonment.

§ 91-12. Construal of provisions.
ARTICLE IV. Building Sewers, Connections and Fees
§ 91-13. Permit required.
§ 91-14. Classes of permits; application.
§ 91-15. Building sewers to be separate; exception.
§ 91-16. Use of old building sewers.
§ 91-17. Building sewers to conform to specifications.
§ 91-18. Size and slope.
§ 91-19. Elevation and placement.
§ 91-20. Mechanical means of discharge.
§ 91-21. Excavations.
§ 91-22. Joints and connections.
§ 91-23. Connection at property line; costs.
§ 91-24. Inspection of connections; penalty.
§ 91-25. Safety and indemnification for excavation.
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ARTICLE V. Sewer Extensions
§ 91-27. Design specifications; approval required.
§ 91-28. Conditions for construction by district.
§ 91-29. Construction by property owner.
§ 91-30. Design standards.
§ 91-31. Exfiltration tests.
§ 91-32. Acceptance of extensions; guaranty.
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ARTICLE VI. Use of Public Sewers
§ 91-34. Discharge of drainage to sanitary sewers prohibited.
§ 91-35. Discharges to storm sewers.
§ 91-36. Prohibited discharges.
§ 91-37. Grease, oil and sand interceptors.
§ 91-38. Maintenance of interceptors.
§ 91-39. Pretreatment of wastes.
§ 91-40. Maintenance of pretreatment facilities.
§ 91-41. Control manholes.
§ 91-42. Measurements and tests.
§ 91-43. Special arrangements for treatment.
§ 91-44. Sampling and analysis.
ARTICLE VII. Protection from Damage
§ 91-45. Tampering prohibited.
§ 91-46. Liability insurance required for construction.
ARTICLE VIII. Inspectors
§ 91-47. Powers and authority.
ARTICLE IX. Enforcement
§ 91-48. Notice of violation.
§ 91-49. Penalties for offenses.
§ 91-50. Other remedies.
§ 91-51. Liability for damages.

CHAPTER 91. SEWERS

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 12-23-1986 by L.L. No. 1-1986. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction and fire prevention administration — See Ch. 53.
Subdivision regulations — See Ch. 103.

ARTICLE I. Definitions

§ 91-1. Definitions and word usage.

A. Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

ASTM

The American Society for Testing and Materials, latest edition.

BOD (denoting "biochemical oxygen demand")

The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20° C., expressed in parts per million by weight.

BUILDER

Any person, persons or corporation which undertakes to construct, either under contract or for resale within two years, any habitable building.

BUILDING DRAIN

The part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

BUILDING SEWER

The extension from the building drain to the public sewer or other place of disposal.

CHLORINE REQUIREMENT or CHLORINE DEMAND

The number of parts per million (ppm) of chlorine required to be added to the sewage to produce a residual chlorine content of 1.0 ppm after 30 minutes' contact of the chlorine with the sewage.

COMMERCIAL SERVICE

Any service from business buildings or institutions from which the wastes are not predominantly industrial.

COMMISSIONER

The Commissioner of the Department of Public Works of the Town of Bethlehem or his authorized deputy, agent or representative.

CONTRACTOR

Any person, firm or corporation approved by the Commissioner to do work in the Town of Bethlehem.

DEVELOPER

Any person, persons or corporation which undertakes to construct simultaneously more than one housing unit on a given tract or land subdivision.

DISTRICT

The Bethlehem Sewer District, including Delmar-Elsmere Sewer District and Extensions in the Town of Bethlehem, Albany County, New York.

DISTRICT BOUNDARIES

The physical boundaries as presently established or as may be extended from time to time as duly provided by the Town Law.

DOMESTIC SEWAGE

Only that sewage discharged into the sanitary sewer through the building drain from lavatories, bathrooms, sinks, laundry tubs, etc., and shall not include drainage from underground drain tile or water from beneath the cellar floor and foundation of a building or structure, or other areas.

ENGINEER

Any professional engineer retained as engineer for the district.

GARBAGE

Solid wastes from the preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

INDUSTRIAL SERVICE

Any service from which the wastes are predominantly industrial.

INDUSTRIAL WASTES

The liquid wastes from industrial processes, as distinct from sanitary sewage.

NATURAL OUTLET

Any outlet into a watercourse, pond, ditch, lake or other body of surface or ground water.

OWNER

Any individual, firm, company, association, society, person or group having title to real property.

PERSON

Any individual, firm, company, association, society, corporation or group.

pH

The logarithm of the reciprocal of the concentration of hydrogen ions in gramionic weights per liter of solution.

PROPERLY SHREDDED GARBAGE

The wastes from the preparation, cooking and dispensing of food that have been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than 1/2 inch in any dimension.

PROPERTY LINE

The edge of a sewer right-of-way in those instances where the building sewer connects to the public sewer located in a right-of-way. "Property line" shall also mean the edge of the street right-of-way in those instances where the building sewer connects to a public sewer located off or in the paved portion of the street.

PUBLIC SEWER

A sewer in which all owners of abutting properties have equal rights and which is controlled by public authority.

RESIDENTIAL SERVICE

Any service from which the wastes are of a domestic nature only.

SANITARY SEWER

A sewer which carries sewage and to which storm- , surface and ground waters are not intentionally admitted.

SEWAGE

A combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments.

SEWAGE WORKS

All facilities for collecting, pumping, treating and disposing of sewage.

SEWER

A pipe or conduit for carrying sewage, subject to the control and direction of the district.

STORM SEWER or STORM DRAIN

A conduit or pipe for carrying storm- , surface and ground waters.

SUSPENDED SOLIDS

Solids that either float on the surface of or are in suspension in water, sewage or other liquids and which are removable by laboratory filtering.

TOWN

The Town of Bethlehem, Albany County, New York.

TOWN BOARD

The duly elected Town Board of the Town of Bethlehem, or its authorized deputy or representative.

WATERCOURSE

A channel in which a flow of water occurs, either continuously or intermittently.

WATER POLLUTION CONTROL PLANT

Any arrangement of devices and structures used for treating sewage.

B. Word usage. "Shall" is mandatory; "may" is permissive.

ARTICLE II. Use of Public Sewers Required**§ 91-2. Deposit of waste on public or private property prohibited.**

It shall be unlawful for any person to place, deposit or permit to be deposited upon public or private property within the district, or in any area under the jurisdiction of said district, any human or animal excrement, garbage or other objectionable waste.

§ 91-3. Untreated discharges to natural outlets prohibited.

It shall be unlawful to discharge to any natural outlet, either directly or through any storm drain, within the district, or in any area under the jurisdiction of the district, any sanitary sewage, industrial wastes or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter. The use of separate storm drains and sanitary sewers is mandatory. The construction of new facilities on streets not presently served by sewers shall be separate storm and sanitary systems. No combined sewers shall be allowed.

§ 91-4. Septic tanks and cesspools restricted.

Within the limits of the established sewer district, the use of septic tanks or cesspools is prohibited, except by permit issued by the Commissioner upon finding that it would be physically impossible or would work an undue hardship upon the owner or owners of the property in question to establish a connection to a sewer main. If and when such a permit is issued by the Commissioner for a septic tank, the installation of such a septic tank shall be

accomplished as prescribed by the Albany County Department of Health and shall continue in use only so long as an established sewer main is not accessible.

§ 91-5. Plumbing facilities and sewer connection required.

The owner of all houses, buildings or properties used for human occupancy, employment, recreation or other purpose, situated within the district and abutting on any street, alley or right-of-way in which there is now located or may be in the future be located a public sanitary sewer of the district, is hereby required, at his expense, to install suitable plumbing facilities therein and to connect such facilities directly to the proper public sewer in accordance with the provisions of this chapter within 90 days after the date of official notice to do so, provided that said public sewer is within 100 feet of the property line.

ARTICLE III. Private Sewage Disposal

§ 91-6. Private system required where public sewers are unavailable.

Where a public sanitary sewer is not available under the provisions of § 91-5, the building sewer shall be connected to a private sewage disposal system complying with the provisions established by the Albany County Department of Health.

§ 91-7. Permit required.

Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit from the Albany County Health Department, which may be supplemented by any plans, specifications and other information as are deemed necessary by the Albany County Health Department.

§ 91-8. Inspections.

A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Albany County Health Department. The applicant shall notify the Albany County Health Department when the work is ready for final inspection and before any underground portions are covered. The inspection shall be made within 48 hours of the receipt of notice by the Albany County Health Department.

§ 91-9. Compliance with state standards.

The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations of the Department of Health of the State of New York. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

§ 91-10. Facilities to be maintained in sanitary condition.

The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at his own expense and at no expense to the district.

§ 91-11. Abandonment.

At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in § 91-5, a direct connection shall be made to the public sewer in compliance with this chapter, and any septic tanks, cesspools and similar private sewage disposal facilities shall be cleaned of sludge and liquid, abandoned and filled with suitable material.

§ 91-12. Construal of provisions.

No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by the authorized representative of the Albany County Department of Health or the New York State Department of Health.

ARTICLE IV. Building Sewers, Connections and Fees

§ 91-13. Permit required.

No person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the district.

§ 91-14. Classes of permits; application.

There shall be three classes of building sewer permits: for residential, for commercial service and for service to establishments producing industrial wastes. In any case, the owner or his agent shall make application on a special form furnished by the district. The permit application shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the Commissioner. The permit and inspection fees shall be as established by the Town Board and shall be filed with the Town Clerk.

§ 91-15. Building sewers to be separate; exception.

A separate and independent building sewer shall be provided for every building, except that, where one building stands at the rear of another on an interior lot and no sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer. In such cases, approval shall be obtained from the Commissioner prior to the installation of the building sewer.

§ 91-16. Use of old building sewers.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Commissioner, to meet all requirements of this chapter.

§ 91-17. Building sewers to conform to specifications.

The building sewer shall be constructed and installed in conformance with the specifications and requirements as established by the Commissioner.

§ 91-18. Size and slope.

The size and slope of the building sewer shall be subject to the approval of the Commissioner.

§ 91-19. Elevation and placement.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement flood. Any openings, such as cleanout hand holes in traps in house drains, cellar drains, etc., shall be not lower than the level of the finished basement floor. No building sewer shall be laid parallel to and within three feet of any bearing wall which might thereby be weakened. The depth shall be sufficient to afford protection from frost. The building sewer shall be laid at uniform grade and in straight alignment insofar as possible. Changes in direction shall be made only with properly curved pipe and fittings.

§ 91-20. Mechanical means of discharge.

In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such drain shall be lifted by approved and mechanical means and discharged to the building sewer.

§ 91-21. Excavations.

All excavations required for the installation of a building sewer shall be open trench work unless otherwise approved by the Commissioner. Pipe laying and backfill shall be performed in accordance with specifications of the

district as established by the Commissioner and in full accordance with the local building code. No backfill shall be placed until the work has been inspected and approved by the Commissioner.

§ 91-22. Joints and connections.

All joints and connections shall be made gastight and watertight.

§ 91-23. Connection at property line; costs.

The connection of the building sewer into an existing public sewer shall be made at the property line. If a building sewer connection has not previously been provided, the building sewer will be constructed from the existing public sewer to the property line by the owner after obtaining the necessary permit. The cost of constructing the building sewer from the public sewer to the property line will be at the owner's expense. All subsequent costs and expenses incidental to the installation, connection and maintenance of the building sewer shall be borne by the owner. The owner shall indemnify the district from any loss or damage that may directly or indirectly be occasioned by the installation and maintenance of the building sewer. The method of connection of the building sewer will be dependent upon the type of sewer material used and in all cases shall be approved by the Commissioner.

§ 91-24. Inspection of connections; penalty.

A. The applicant for the building sewer permit shall notify the Commissioner when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Commissioner.

B. When trenches are opened for the laying of building sewer pipes, such trenches shall be inspected by the Commissioner before the trenches are backfilled, and the contractor performing such work shall notify the Commissioner when the laying of building sewer is completed. The backfilling of a trench before inspection is made or approval given will subject the contractor to a penalty of not to exceed \$250 for each offense, and the trench shall be reopened for inspection at the expense of the contractor.

C. In case of a violation of any of the rules and regulations of the district by a contractor or other persons in his employ, he (the contractor) may be suspended, or his recognition may be removed by the Commissioner.

§ 91-25. Safety and indemnification for excavation.

All excavations for building sewer installation shall be adequately protected with barricades and lights so as to protect the public from hazard. An indemnity bond will be required to be posted before a permit will be granted to excavate. All excavations must be properly refilled and tamped at intervals, and the original type of surface must be replaced. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the Commissioner or other authority having jurisdiction.

§ 91-26. Capping of building sewers.

In the case of the demolition of a building, within the district, which has a building sewer, the owner is responsible for properly capping the building sewer at the property line to prevent the entry of dirt, debris or any foreign substances into the public sewer. This shall be accomplished under the supervision of the Commissioner.

ARTICLE V. Sewer Extensions

§ 91-27. Design specifications; approval required.

A. All extensions to the sanitary sewer system owned and maintained by the district shall be properly designed in accordance with the Recommended Standards for Sewage Works, as adopted by the Great Lakes — Upper Mississippi River Board of the State Sanitary Engineers and in strict conformance with all requirements of the New York State Department of Health.

B. Plans and specifications for sewer extensions shall be submitted to and approval obtained from the Commissioner and the Albany County Department of Health before construction may proceed. The design of sewers must anticipate and allow for flows from all possible future extensions and developments within the immediate drainage area.

§ 91-28. Conditions for construction by district.

Sewer extensions, including individual building sewer laterals to the property line, may be constructed by the District under public contract if, in the opinion of the Town Board, the number of properties to be served by such extension warrants its cost. Under this arrangement, the property owner shall pay for and install the building sewer from the property line to his residence or place of business in accordance with the requirements of Article IV. Property owners may propose sewer extensions within the district by drafting a written petition, signed by a majority of the benefitting property owners, and filing it with the Town Board.

§ 91-29. Construction by property owner.

If the Town Board does not elect to construct a sewer extension under public contract, the property owner, builder or developer may construct the necessary sewer extension if this extension is approved by the Town Board in accordance with the requirements of § 91-27. The property owner, builder or developer must pay for the entire installation, including all expenses incidental thereto. Each building sewer installed must be installed and inspected as previously required, and the inspection fees shall be paid. Design of sewers shall be as specified in § 91-30. The installation of the sewer extension must be subject to inspection by the Commissioner, and the expenses for this inspection shall be paid for by the owner, builder or developer. The Commissioner's decisions shall be final in matters of quality and methods of construction. The sewer, as constructed, must pass the exfiltration test required in § 91-31 before any building sewer is connected thereto. The entire cost of the sewer extension thus made shall be absorbed by the developers or benefitting property owners.

§ 91-30. Design standards.

Sewer design shall be in accordance with the standards and specifications as established by the Commissioner.

§ 91-31. Exfiltration tests.

A. All sewers shall satisfy requirements of a final exfiltration test before they will be approved and sewage flow accepted from them by the district. This test consists of filling the pipe with water to provide a head of at least five feet above the top of the pipe or five feet above groundwater, whichever is higher, at the highest point of the pipeline under test, and then measuring the loss of water from the line by the amount which must be added to maintain the original level. In this test, the line must remain filled with water for at least 24 hours prior to the taking of measurements. Exfiltration shall be measured by the drop of water level in a standpipe with closed bottom end or in one of the sewer manholes available for convenient measuring.

B. When a standpipe and plug arrangement is used in the upper manhole of a line under test, there must be some positive method of releasing entrapped air in the sewer prior to taking measurements. The test length intervals for either type of test shall be as ordered or approved, but in no event shall they exceed 1,000 feet. In the case of sewers laid on steep grades, the length of line to be tested by exfiltration at any one time may be limited by the maximum allowable internal pressure on the pipe and joints at the lower end of the line. The test period wherein the measurements are taken shall not be less than two hours in either type of test.

C. The total leakage of any section tested shall not exceed the rate of 130 gallons per mile of pipe per 24 hours per inch of nominal pipe diameter. For purposes of determining the maximum allowable leakage, manholes shall be considered as sections of forty-eight-inch diameter pipe, five feet long. The equivalent leakage allowance shall be 4.5 gallons per manhole per 24 hours for forty-eight-inch diameter manholes. If leakage exceeds the specified amount, the necessary repairs or replacements required shall be made to permanently reduce the leakage to within the specified limit, and the tests shall be repeated until the leakage requirement is met.

§ 91-32. Acceptance of extensions; guaranty.

All sewer extensions constructed at the property owner's, builder's or developer's expense, after final approval and acceptance by the Commissioner, shall become the property of the district and shall thereafter be maintained by the district. Said sewer extensions, after their acceptance by the district, shall be guaranteed for one-year by the builder or developer. The guaranty shall be in such form and contain such provisions as provided for by the district. At the sole discretion of the district, a completion bond or bank check may be demanded as part of the guaranty.

§ 91-33. Disposal system required for building permit.

No builder or developer shall be issued a building permit for a new dwelling or structure requiring sanitary facilities within the district unless a suitable and approved method of waste disposal is proposed. All new housing or building developments shall be provided with an approved system of sanitary sewers.

ARTICLE VI. Use of Public Sewers

§ 91-34. Discharge of drainage to sanitary sewers prohibited.

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, cooling water or unpolluted industrial process waters to any sanitary sewer.

§ 91-35. Discharges to storm sewers.

Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers or to a natural outlet approved by the Commissioner. Industrial cooling water or unpolluted process waters may be discharged, upon approval of the Commissioner, to a storm sewer or natural outlet.

§ 91-36. Prohibited discharges.

Except as hereinafter provided, no person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewer:

- A. Any liquid or vapor having a temperature higher than 150° F. (65° C.).
- B. Any waters or wastes which contain grease or oil or other substances that will solidify or become discernibly viscous at temperatures between 32° and 150° F.
- C. Any waters or wastes containing fats, wax, grease or oils, whether emulsified or not, exceeding an average of 50 parts per million (417 pounds per million gallons) other soluble matter.
- D. Any gasoline, benzene, naphtha, fuel oil or mineral oil or other flammable or explosive liquid, solid or gas.
- E. Any noxious or malodorous gas such as hydrogen sulfide, sulfur dioxide or nitrous oxide or other substance which, either singly or by interaction with other wastes, is capable of creating a public nuisance or hazard to life or of preventing entry into sewers for their maintenance and repair.
- F. Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of 3/4 horsepower or greater shall be subject to the review and approval of the Commissioner.
- G. Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastic, cardboard, wood, paunch manure, hair and fleshings, entrails, lime slurry, lime residues, cannery waste, bulk solids or any other viscous substance capable of causing obstruction to the flow of the sewers or other interference with the proper operation of the sewage system.
- H. Any waters or wastes, acid and alkaline in reaction, having corrosive properties capable of causing damage or hazard to structures, equipment and personnel of the sewerage system. Free acids and alkalies must be neutralized at all times, within a permissible pH range of 6.5 to 9.5.

I. Any cyanides in excess of two parts per million by weight as CN.

J. Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Commissioner in compliance with applicable state or federal regulations.

K. Any waters or wastes that, for a duration of 15 minutes, has a concentration greater than five times that of normal sewage as measured by suspended solids and BOD and/or which is discharged continuously at a rate exceeding 1,000 gallons per minute, except by special permit. Normal sanitary sewage shall be construed to fall within the following ranges at the effluent of the industrial plant in question:

Constituents	Permissible Range (ppm)
Suspended solids	180 to 350
BOD	140 to 300
Chlorine requirements	5 to 15

L. Any stormwater, roof drains, spring water, cistern or tank overflow, footing drain, or the contents of any privy vault, septic tank or cesspool, or the discharge of effluent from any air-conditioning machine or refrigeration unit.

M. Any waters or wastes containing a toxic or poisonous substance, high BOD or chlorine demand or suspended solids in sufficient quantity to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals or create any hazard in the receiving waters or the effluent of the district water-pollution control plant. Such toxic substances shall be limited to the average concentrations listed hereinafter in the sewage as it arrives at the plant, and at no time shall the hourly concentration at the plant exceed three times the average concentration. If concentrations listed are exceeded, individual establishments will be subject to control in volume and concentration of sewage by the Commissioner.

Limits of Toxic Substances in Sewage

Substance	Limit (ppm)
Iron, as Fe	0.5
Chromium, as Cr (hexavalent)	1.5
Copper, as Cu	0.3
Chlorine requirements	15.0
Phenol	1.0
Cyanide, as CN	0.17
Cadmium, as Cd	0.5
Zinc, as Zn	0.5
Nickel	1.0

§ 91-37. Grease, oil and sand interceptors.

A. Grease, oil and sand interceptors shall be provided when the above-set limits for those substances are exceeded or when, in the opinion of the Commissioner, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand and other harmful ingredients, except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Commissioner and shall be located as to be readily and easily accessible for cleaning and inspection.

B. Grease and oil interceptors shall be constructed of impervious materials capable of withstanding abrupt and extreme changes in temperature. They shall be of substantial construction, watertight and equipped with easily removable covers which, when bolted in place, shall be gastight and watertight.

§ 91-38. Maintenance of interceptors.

Where installed, all grease, oil and sand interceptors shall be maintained by the owner, at his expense, in continuously efficient operation at all times and shall be readily accessible and open to inspection by the Commissioner at any time.

§ 91-39. Pretreatment of wastes.

The admission into the public sewers of any waters or wastes having a five-day biochemical oxygen demand greater than 300 parts per million or containing more than 350 parts per million of suspended solids or containing more than 15 parts per million of chlorine requirement or containing any quantity of substances having the characteristics described in § 91-36 or having an average daily flow greater than 2% of the average daily sewage flow of the district shall be subject to the review and approval of the Commissioner. Where necessary in the opinion of the Commissioner, the owner shall provide, at his expense, such preliminary treatments as may be necessary to reduce the biochemical oxygen demand to 300 parts per million and the suspended solids to 350 parts per million by weight or to reduce the chlorine requirements to 15 parts per million or to reduce objectionable characteristics or constituents to within the maximum limits provided for in § 91-36 or to control the quantities and rates of discharge of such waters or wastes. Plans, specifications and any other facilities shall be submitted for the approval of the Commissioner, and no construction of such facilities shall be commenced until said approval is obtained in writing. Failure to comply with one or more of the remedial procedures as required by the Commissioner will constitute a violation of this chapter.

§ 91-40. Maintenance of pretreatment facilities.

Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at his expense.

§ 91-41. Control manholes.

When required by the Commissioner, the owner of any property served by a building sewer carrying industrial wastes shall install a suitable control manhole in the building sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessible and safely located and shall be constructed in accordance with plans approved by the Commissioner. The manhole shall be installed by the owner at his expense and shall be maintained by him so as to be safe and accessible at all times.

§ 91-42. Measurements and tests.

All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in §§ 91-36 and 91-39 shall be determined in accordance with Standard Methods for the Examination of Water and Waste Water, upon suitable samples taken at the control manhole provided for in § 91-41. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected.

§ 91-43. Special arrangements for treatment.

No statement contained in this article shall be construed as preventing any special agreement or arrangement between the district and any industrial concern, whereby an industrial waste of unusual strength or character may be accepted by the district for treatment subject to payment therefor by the industrial concern.

§ 91-44. Sampling and analysis.

All of the preceding standards are to apply at the point where the industrial wastes are discharged into the public sanitary sewerage system, and any chemical or mechanical corrective treatment required must be accomplished to practical completion before the wastes reach that point. The laboratory methods used in the examination of all industrial wastes shall be those set forth in the latest edition of Standard Methods for the Examination of Water and Waste Water, published by the American Public Health Association. However, alternate methods for the analysis of industrial wastes may be used subject to mutual agreement between the district and the producer of such wastes. The frequency and duration of the sampling of any industrial waste shall not be less than once a quarter for 24 hours. However, more frequent and longer periods may be required at the discretion of the district.

ARTICLE VII. Protection from Damage

§ 91-45. Tampering prohibited.

No person shall maliciously or willfully break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the district sewerage works.

§ 91-46. Liability insurance required for construction.

A contractor must present a certificate of insurance naming the Town as an insured and showing suitable liability insurance before a permit will be issued for the construction of building sewers, sewer extensions or private sewage disposal.

ARTICLE VIII. Inspectors

§ 91-47. Powers and authority.

The commissioner and other duly authorized agents of the district bearing proper credentials and identification shall be permitted to enter upon all properties subject to this chapter for the purpose of inspection, observation, measurement, sampling and testing, in accordance with the provisions of this chapter.

ARTICLE IX. Enforcement

§ 91-48. Notice of violation.

Any person found to be violating any provision of this chapter shall be served by the district with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations. The notice requirement contained herein shall not be applicable to a violation of § 91-45.

§ 91-49. Penalties for offenses.

Any person, individual, firm, corporation or partnership which fails to comply with the provisions of this chapter, other than those provisions pertaining to the payment of charges for services established herein, shall be subject to a fine not exceeding \$250 for each offense. The continued violation of any provisions of any section of this chapter, other than those pertaining to the payment of charges for services established herein, shall constitute a separate offense for each and every day that such violation of any provision hereof shall continue.

§ 91-50. Other remedies.

As an alternative, upon violation of this chapter, the Town Board, in addition to other remedies, may institute any appropriate action or proceedings, including an injunction, to prevent such unlawful use, construction or maintenance of cesspools, septic tanks, sewage disposal systems, pipes or drains, to restrain, correct or abate such violation or to prevent the occupancy of any building structure or land where said violations of this chapter are found.

§ 91-51. Liability for damages.

Any person violating any of the provisions of this chapter shall become liable to the district for any expense, loss or damage occasioned the district by reason of such violation.

CHAPTER 94. SNOWMOBILES

§ 94-1. Title.

§ 94-2. Purpose.

§ 94-3. Definitions.

§ 94-4. Operation on private lands.

§ 94-5. Operation on Town lands.

§ 94-6. Operation near dwellings during certain hours.

§ 94-7. Permissible operation.

§ 94-8. Penalties for offenses.

CHAPTER 94. SNOWMOBILES

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 1-24-1973. Amendments noted where applicable.]

GENERAL REFERENCES

Off-highway motorcycles — See Ch. 82.

§ 94-1. Title.

This chapter may be known and cited as the "Snowmobile Ordinance of the Town of Bethlehem."

§ 94-2. Purpose.

The purpose of this chapter is to protect the public health, welfare, safety, peace and tranquility by regulating the driving and operation of snowmobiles within the Town of Bethlehem.

§ 94-3. Definitions.

For the purpose of this chapter, the following terms shall have the meanings indicated:

SNOWMOBILE

A self-propelled vehicle designed for travel on snow or ice, steered by skis or runners and supported in part by skis, belts or cleats.

§ 94-4. Operation on private lands.

It shall be unlawful for any person to drive or operate any snowmobile on private lands within the Town of Bethlehem without having first obtained the consent of the owner of said land for such driving or operation of said snowmobile thereon.

§ 94-5. Operation on Town lands.

It shall be unlawful for any person to drive or operate any snowmobile on lands owned by the Town of Bethlehem and used for any purpose without the express consent of the Town Board.

§ 94-6. Operation near dwellings during certain hours.

[Amended 2-24-1982]

The driving or operation of any snowmobile on either private or public lands within the Town of Bethlehem within 500 feet of any dwelling or dwelling house between the hours of 12:00 midnight and 7:00 a.m. is hereby forbidden.

§ 94-7. Permissible operation.

Other than as provided in §§ 94-4, 94-5 and 94-6 hereof, snowmobiles may be driven and operated within the Town of Bethlehem in such places and in such manner as is not inconsistent with provisions of the laws of the State of New York.

§ 94-8. Penalties for offenses.

[Amended 3-23-1988 by L.L. No. 2-1988]

Failure to comply with the provisions of this chapter shall be deemed a violation, and the violator, upon conviction thereof, shall be punishable by a fine of not more than \$250 or by imprisonment for not more than 15 days, or both, and each day that a violation is continued shall constitute a separate and distinct offense.

CHAPTER 97. SOLID WASTE

ARTICLE I. Dumps and Dumping

§ 97-1. Definitions.

§ 97-2. Use of public dump required.

§ 97-2.1. Waste excavation material.

§ 97-3. Prohibited disposal.

§ 97-4. Authority for establishment of public dumps or dumping grounds.

§ 97-5. Penalties for offenses.

§ 97-6. Exclusions.

§ 97-7. Permits.

ARTICLE II. Solid Waste Management

§ 97-8. Legislative declaration.

§ 97-9. Applicability of state standards.

§ 97-10. Definitions.

§ 97-11. Rules and regulations.

§ 97-12. Prohibited materials.

§ 97-13. Requirements for permits.

§ 97-14. Fees for permits.

§ 97-15. Administration.

§ 97-16. Penalties for offenses.

ARTICLE III. Mandatory Recycling

§ 97-17. Legislative declaration.

§ 97-18. Definitions.

§ 97-19. Mandatory recycling requirements.

§ 97-20. Further designation of recyclable materials.

§ 97-21. Administration.

§ 97-22. Penalties for offenses.

§ 97-23. Severability.

§ 97-24. Effective date.

ARTICLE IV. Solid Waste Facilities

§ 97-25. Legislative declaration.

§ 97-26. Applicability; more restrictive provisions to prevail.

§ 97-27. Definitions.

§ 97-28. Prohibited acts; individual facilities to comply.
§ 97-29. Administration.
§ 97-30. Application and permit requirements.
§ 97-31. Siting standards.
§ 97-32. Design standards.
§ 97-33. Construction standards; insurance requirements.
§ 97-34. Operation standards; guaranties and insurance requirements.
§ 97-35. Monitoring and testing standards.
§ 97-36. Regulatory fees.
§ 97-37. Enforcement; right of entry for inspections.
§ 97-38. Variances.
§ 97-39. Penalties for offenses; civil penalties; suspension or revocation of permit.
§ 97-40. Severability.
§ 97-41. When effective.

CHAPTER 97. SOLID WASTE

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 6-19-1990 by L.L. No. 4-1990. Amendments noted where applicable.]

GENERAL REFERENCES

Garbage, rubbish and refuse — See Ch. 76.

ARTICLE I. Dumps and Dumping

§ 97-1. Definitions.

As used in this article, the following terms shall have the meanings indicated:

GARBAGE

Any refuse from animal and vegetable matter and foodstuff after it has been used as food; refuse from kitchens, markets, houses or stores; floor sweepings; table wastes or animal or vegetable matter; vegetables; meats; fish; bones; and all offal and organic waste substance.

PERSON

One or more persons of either sex, natural persons, corporations, partnerships, associations, joint-stock companies, societies, clubs, fraternal orders and all other entities of any kind capable of being sued.

RUBBISH

Combustible trash, including but not limited to paper, cartons, boxes, barrels, wood, tree branches, stumps, yard trimmings, wood furniture and bedding; noncombustible trash, including but not limited to metal, tin cans, metal furniture, small quantities of rock and pieces of concrete, glass, crockery and other metal fixtures; and street rubbish, including but not limited to street sweepings, leaves and catch basin dirt.

SOLID WASTE

All putrescible and nonputrescible materials or substances that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles and offal. The term shall not include domestic sewage and other highly diluted water-carried materials or substance and those in gaseous form or such other items or materials excluded from the definition of "solid waste" pursuant to the regulations of the State of New York, Department of Environmental Conservation.

WASTE EXCAVATION MATERIAL

Includes earth, sand, dirt and soil but shall not include construction and demolition debris as that term is defined in § 97-10 of this chapter.

§ 97-2. Use of public dump required.

No land within the Town of Bethlehem shall be used for the discharge, disposal, deposit or burial of rubbish, garbage or solid wastes, as defined in this chapter, unless operated as a public dump by or on behalf of the Town of Bethlehem or operated pursuant to a permit issued for said purpose by the Town of Bethlehem and operated in

accordance with all applicable laws, rules and regulations of the State of New York, County of Albany and Town of Bethlehem.

§ 97-2.1. Waste excavation material.

[Amended 11-14-2007 by L.L. No. 7-2007]

Waste excavation material of any kind shall not be discharged, disposed of, deposited or buried within the Town of Bethlehem unless said material is clean and uncontaminated by any hazardous or toxic substance and does not include solid waste or construction and demolition materials or debris. The discharge, disposal, depositing or burial of such waste excavation material within the Town shall require a permit and be performed in accordance with Chapter 98 of the Code of the Town of Bethlehem.

§ 97-3. Prohibited disposal.

No person shall throw, bury, deposit, discharge or cause to be thrown or deposited any garbage, rubbish, waste excavation material or solid waste in, upon or under any land, including any public highway, in the Town of Bethlehem other than at a public dump or dumping ground established, permitted and operated pursuant to this chapter.

§ 97-4. Authority for establishment of public dumps or dumping grounds.

This article shall not prohibit the establishment or operation by the Town Board of public dumps or dumping grounds as the necessity therefor may arise, nor shall it prohibit the Town of Bethlehem from authorizing, for good cause shown, the discharge, disposal, deposit or burial of waste excavation material at a particular site located within the Town.

§ 97-5. Penalties for offenses.

A. The Town Building Inspector shall be responsible for the enforcement of this article and all rules and regulations issued thereunder. A violation of this article is hereby declared to be an offense punishable by a fine not exceeding \$350 or by imprisonment for a period not to exceed six months, 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 imprisonment for a period not to exceed six months, or both; and, upon conviction of 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 six months, or both. Each day's continued violation shall constitute a separate, additional violation.

B. Additional penalties.

(1) In addition to the penalties above provided, after a hearing the Town Supervisor may revoke any permit issued pursuant to this article if the Town Supervisor at such hearing determined that the holder of such permit is a persistent violator or incapable of or unwilling to comply with the provisions of this article or has intentionally or negligently acted or has acted and, as a result, has harmed or created a risk of harm to the aesthetics and environment of the Town or the health or safety of its inhabitants or has utilized said permit in a manner inconsistent with this article or has allowed said permit to be utilized by other than its issuee. The permittee shall have an opportunity to be heard at such hearing, which shall be held after such permittee shall be served by written notice of such hearing in person or by registered mail, return receipt requested, not less than 15 days prior to the date of such hearing.

(2) The Town shall also have such other remedies as are provided by law.

§ 97-6. Exclusions.

The provisions of this article shall not apply to any department of the Town of Bethlehem providing leaf and trash pickup within the Town.

§ 97-7. Permits.

[Amended 11-14-2007 by L.L. No. 7-2007]

Notwithstanding the provisions of this article, the Town Board may, upon good cause shown, grant permits for dumping and/or the operation of a public dump or dumping within the Town on such terms and conditions as to the Town Board seem necessary or desirable, including but not limited to compliance with Articles II and/or III of this chapter and, also, the posting of such security or liability insurance as the Town shall deem necessary.

ARTICLE II. Solid Waste Management

§ 97-8. Legislative declaration.

Cognizant of the ever increasing demands upon the solid waste management system within the Town of Bethlehem and the costs associated with the disposal of solid waste and recognizing the expanding role imposed upon municipal waste disposal programs by the New York State Solid Waste Management Plan and being desirous of maintaining a clean, wholesome and attractive environment within the Town and protecting the health and safety of its inhabitants and, further, recognizing the inherent dangers arising from the unrestricted or unsafe generation, collection or disposal of solid wastes or other dangerous, noxious, unhealthy and hazardous substances, the Town hereby adopts the following rules and regulations concerning the collection, transportation, disposal and management of solid waste within the Town.

§ 97-9. Applicability of state standards.

Nothing in this article shall be construed to supersede the minimum standards for solid waste management set forth by the New York State Department of Environmental Conservation or the New York State Sanitary Code, which minimum standards supersede any conflicting provision of this article to the extent that such state provisions require a standard more restrictive than that provided by this article.

§ 97-10. Definitions.

As used in this article, the following terms shall have the meanings indicated:

BULKY WASTE

Large items of refuse, including but not limited to furniture; auto parts; appliances, such as washers, dryers and refrigerators; television sets; water heaters; mattresses; springs; logs; and tree stumps.

COMMERCIAL WASTE COLLECTOR

Any person who collects residential or commercial waste from more than one household or any business or commercial establishment or industrial facility within the Town of Bethlehem or who otherwise transports or disposes of solid wastes collected from said sources or who performs any of these services for a fee.

CONSTRUCTION AND DEMOLITION DEBRIS

Uncontaminated wastes resulting from the construction, remodeling, repair and demolition of structures.

These wastes shall include concrete, asphalt, stone, brick, block, wood, plaster, shingles, roofing materials and metals but shall not include any hazardous wastes or any of said listed materials which contain, include or are tainted or affected by toxic, hazardous or otherwise harmful elements, chemicals or materials.

GARBAGE

Any refuse from animal and vegetable matter and foodstuff after it has been used as food; refuse from kitchens, markets, houses or stores; floor sweepings; table wastes or animal or vegetable matter; vegetables; meats; fish; bones; and all offal and organic waste substances.

HAZARDOUS WASTE

Any waste or combination of wastes which, because of its quantity, concentration or physical, chemical or biological characteristics, possesses a substantial present or potential hazard to human or animal health or to the environment as determined by the Department of Environmental Conservation. Such waste shall include but not be limited to wastes which are bioconcentrative, highly flammable, explosive, highly reactive, toxic or poisonous, irritating, sensitizing, corrosive or infectious and shall include wastes that are solid, semisolid or liquid or contain gases. The final determination of whether or not a waste is "hazardous" or not shall be made by the Town of Bethlehem Highway Superintendent in accordance with his discretion and shall not be limited to those items or materials defined as hazardous by state and federal law, rule or regulation.

HOUSEHOLD HAZARDOUS WASTE

Household waste which, but for its point of generation, would be hazardous waste as defined by this article, including pesticides as defined in the New York State Environmental Conservation Law.

INDUSTRIAL WASTE

Solid waste generated by manufacturing or industrial processes. Such waste may include but is not limited to the following manufacturing processes; electric power generation; fertilizer/agricultural chemicals; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include oil or gas drilling production and treatment wastes, such as brines, oil and frac fluids; or overburden, spoil or tailings resulting from mining; or solution mining brine and insoluble component wastes.

PERSON

One or more persons of either sex, natural persons, corporations, partnerships, associations, joint-stock companies, societies, clubs, fraternal orders and all other entities of any kind capable of being sued.

RUBBISH

Combustible trash, including but not limited to paper, cartons, boxes, barrels, wood, excelsior, tree branches, stumps, yard trimmings, wood furniture and bedding; noncombustible trash, including but not limited to metal, tin cans, metal furniture, small quantities of rock and pieces of concrete, glass, crockery and other metal fixtures; and street rubbish, including but not limited to street sweepings, leaves and catch basin dirt.

SOLID WASTE

All putrescible and nonputrescible materials or substances that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles and offal. The term shall not include domestic sewage and other highly diluted water-carried materials or substance and those in gaseous form or such other items or materials excluded from the definition of "solid waste" pursuant to the regulations of the State of New York, Department of Environmental Conservation.

SOLID WASTE FACILITY

Any facility within the Town of Bethlehem distinguished as a depository or holding or transfer point for solid wastes, including but not limited to sanitary landfills, landfills, transfer stations, recycling facilities, construction and demolition debris landfills, materials recovery facilities, incinerators, waste-to-energy plants or such other facilities that are or shall be designated as such by any law, rule or regulation of the United States, the State of New York or any ordinance, rule or regulation of the Town of Bethlehem. This term shall also include those dumps or dumping grounds or approved waste excavation material disposal sites referred to in Article I of this chapter.

WASTE EXCAVATION MATERIAL

As defined in § 97-1 of this chapter.

§ 97-11. Rules and regulations.

A. Only solid wastes generated and collected within the Town of Bethlehem and which are not otherwise prohibited will be accepted at any solid waste facility within the Town or at any public dump or dumping ground authorized pursuant to Article I of this chapter.

B. The Town may contract from time to time with another municipality or private person to accept solid waste, and such waste may be accepted at a solid waste facility within the Town in accordance with such a contract.

C. All vehicles used to collect or transport solid waste shall be equipped with a means of covering the waste and/or of keeping such waste within the hauling body so as to comply at all times with the pertinent provisions of the New York State Vehicle and Traffic Law relating to littering and/or throwing refuse on highways, as set out in §§ 1219 and 1220 thereof, and any amendments thereof or additions to said act.

D. No vehicle shall be allowed to enter or discharge solid waste at any solid waste facility within the Town unless it displays an appropriate permit sticker.

E. Any person entering or utilizing a solid waste facility shall adhere to the rules and regulations of said facility, as well as all other laws, ordinances, rules or regulations of the State of New York, County of Albany, Town of

Bethlehem or other governmental entity in regards to the collection, transportation or disposal of solid waste, and also must follow the instructions of the attendant on duty.

F. Access to any solid waste facility shall be limited to those times as posted and when authorized personnel are on duty.

G. All persons who collect, transport or dispose of solid wastes in the Town of Bethlehem must obtain a permit for such purposes from the Town of Bethlehem in addition to such other permits or approvals that may be required by law, rule or regulation of the State of New York, County of Albany, Town of Bethlehem or other governmental entity.

H. No waste excavation material shall be deposited or accepted for deposit at any solid waste facility or other location within the Town unless a permit therefor has been issued pursuant to Article I of this chapter.

I. No municipal solid waste facility within the Town shall be used for the collection or disposal in any manner of any hazardous waste, nor shall any person collect or dispose of any hazardous waste at any municipal solid waste facility with the Town. However, notwithstanding this provision, the Town of Bethlehem may operate or sponsor, and enter into contracts related thereto, one or more collection days so that household hazardous waste generated by Town residents may be accepted for disposal by or on behalf of the Town.

J. The Superintendent of Highways may, by way of regulation approved by the Town Board, establish such additional, other or further rules, requirements and procedures concerning the collection, transportation or disposal of solid or industrial wastes within the Town.

§ 97-12. Prohibited materials.

The disposal of any of the following materials at any municipal solid waste facility within the Town is prohibited:

A. Toxic, industrial or hazardous wastes, except that household hazardous waste may be accepted at a municipal solid waste facility as part of a collection day operated by or on behalf of the Town.

B. Large dead animals and carcasses, including rendering products, hides, fleshings and residues from meat-processing facilities.

C. Junk car bodies.

D. Refillable propane or butane bottles and cylinders.

E. Tires in large quantities (over 10).

F. Any and all other materials or waste, hazardous or not, which the Town of Bethlehem Highway Superintendent finds would require special handling and disposal to protect and conserve the environment, employees and equipment.

§ 97-13. Requirements for permits.

Permits for the use of solid waste facilities and/or for the collection, transportation or disposal of solid waste within the Town shall be obtained as follows:

A. Residents. Resident permits for the use of solid waste facilities shall be obtained by providing proof of residence within the Town. Resident permit stickers shall be issued and may be affixed to the private automobiles and other vehicles belonging to said residents. Said permits shall allow residents to use solid waste facilities only for the purpose of disposing of solid waste arising from the resident's household use.

B. Commercial waste collectors. Permits shall be obtained by any such persons collecting, transporting or disposing of solid waste from more than one single-family household or from any commercial establishment,

industrial or institutional facility within the Town of Bethlehem or who perform any such services for a fee. Permits may be required for each vehicle used for such purposes.

§ 97-14. Fees for permits.

[Amended 11-14-2007 by L.L. No. 7-2007]

The Superintendent of Highways, subject to the approval of the Town Board, shall adopt a schedule of fees for solid waste permits issued pursuant to this article. Said schedule may further provide for deposits or other security to be posted by the commercial waste collector or person using a solid waste facility, including but not limited to liability insurance of a nature and in an amount which shall be acceptable to the Superintendent of Highways. Permits shall be available at the office of the Town Clerk or at such other places as the Town Supervisor shall designate.

§ 97-15. Administration.

A. The Superintendent of Highways shall be responsible for administering solid waste collection, transportation, disposal and management within the Town of Bethlehem and for the issuance of rules or regulations implementing this chapter. The Town Building Inspector shall be responsible for the enforcement of any violations of this chapter or the rules and regulations issued thereunder.

B. The Superintendent of Highways shall be empowered to:

(1) Establish the days and hours of operation of all facilities.

(2) Establish rules and regulations governing the operation, maintenance and use of all solid waste facilities in the Town and the collection, transportation or disposal of solid wastes within the Town.

(3) Suspend any permit pending a hearing for revocation pursuant to § 97-16B(1). Said suspension shall not exceed a period of 30 days. A permit may be temporarily suspended as provided for by this subsection in the event that the Superintendent of Highways determines, in his discretion, that a person holding said permit is in violation of this chapter and said violation constitutes or may create a danger to the aesthetics and environment of the Town or the health and safety of its inhabitants or that a person is utilizing said permit for a purpose or in a matter that is inconsistent with this chapter or is allowing said permit to be utilized by a person other than the issuee of said permit.

§ 97-16. Penalties for offenses.

A. A violation of this article is hereby declared to be an offense punishable by a fine not exceeding \$350 or by imprisonment for a period not to exceed six months, 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 imprisonment for a period not to exceed six months, or both; and, upon conviction of 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 six months, or both. Each day's continued violation shall constitute a separate, additional violation.

B. Additional penalties.

(1) In addition to the penalties above provided, after a hearing the Town Supervisor may revoke any permit issued pursuant to this article if the Town Supervisor at such hearing determines that the holder of such permit is a persistent violator or incapable of or unwilling to comply with the provisions of this article or has intentionally or negligently acted or has acted and, as a result, has harmed or created a risk of harm to the aesthetics and environment of the Town or the health or safety of its inhabitants or has utilized said permit in a manner inconsistent with this article or has allowed said permit to be utilized by other than its issuee. The permittee shall have an opportunity to be heard at such hearing, which shall be held after such permittee shall be served by written notice of such hearing in person or by registered mail, return receipt requested, not less than 15 days prior to the date of such hearing.

(2) The Town shall also have such other remedies as are provided by law.

ARTICLE III. Mandatory Recycling

§ 97-17. Legislative declaration.

Believing that a significant amount of recyclable or reusable material can be removed from the solid waste stream being generated within the Town of Bethlehem and in order to facilitate the conservation of vital and natural resources through recycling and in recognition of the established public policy of the State of New York to encourage local governments to implement comprehensive materials recycling programs as part of their solid waste management strategies, the Town Board hereby finds that it is in the general public interest to implement environmentally sound, yet economically feasible, recycling programs to complement the Town's solid waste management system. In so doing the Town Board acknowledges those findings and recommendations of the Town of Bethlehem New York Solid Waste Task Force, contained in its Recycling Plan, dated June 1989, revised July 25, 1989.

§ 97-18. Definitions.

For purposes of this article, those terms defined in §§ 97-1 and 97-10 of this chapter shall have the meanings indicated therein unless a different meaning or context is set forth or required in this article. The following additional terms shall have the meanings indicated:

COMMERCIAL WASTE

Solid waste other than residential or industrial waste.

COMMERCIAL WASTE COLLECTOR

Any person who collects residential, industrial or commercial waste from more than one household or from any business, institution or commercial establishment or industrial facility within the Town of Bethlehem or who otherwise transports or disposes of such wastes collected from said sources or who performs such service for a fee.

CORRUGATED CARDBOARD

Cardboard containers, boxes and packaging which is cleaned of contamination by food wastes, adhesives, metals, plastics and excess tape and which has been flattened or baled for transport. It excludes cereal or food-type packaging.

GLASS CONTAINER

Clear, green and amber (brown) glass jars, bottles and containers, empty, rinsed and with rings and caps removed.

METAL CANS

Tin, aluminum or other ferrous or nonferrous or composite cans and containers used for food or beverages. All-metal cans shall be cleaned of contaminants, with labels removed.

NEWSPAPER

Common machine-finished paper, made chiefly from wood pulp, used for printing newspapers.

OFFICE PAPER

All bond paper, including computer printout, stationery, photocopy and ledger-free commercial wastepaper. Paper must be free of tape, adhesives, labels, rubber bands, paper clips, binders and other contaminants. This term excludes carbon paper, chemical transfer paper, windowed envelopes, glossy paper and other wastepapers of nonbond quality.

PLASTIC CONTAINERS

All high-density polyethylene (HDPE) and PET plastic containers, clean of contaminants and with tops removed. If crushed, these containers do not break. The following "plastic containers" are acceptable: detergent bottles, plastic liquor bottles, peanut butter jars, soda bottles, milk and juice containers, shampoo containers, etc. This term excludes all film, vinyl, foam plastic materials, yogurt, cottage cheese and pudding type containers, pens, tops, bags, etc.

RECYCLABLE MATERIALS

Those materials specified by the Town of Bethlehem or the State of New York by law, ordinance, rule or regulation which are not hazardous and which are to be separated from the waste stream and held for reuse or which have, or may have in the future, market or other value. These materials shall include but not be limited to glass containers, plastic containers, corrugated cardboard, newspapers and metal cans as defined herein. The Superintendent of Highways may, with the approval of the Town Board, designate other kinds of solid wastes that shall constitute recyclable material.

RESIDENTIAL WASTE

All solid waste generated or produced by persons occupying buildings containing three or fewer dwelling units.

WASTE SEPARATION

The segregation or separation of recyclable or reusable materials from the solid waste stream at the source of its generation or production.

§ 97-19. Mandatory recycling requirements.

A. The use by a resident, pursuant to a resident permit issued pursuant to Article II of this chapter, of any solid waste facility within the Town shall be conditioned upon said resident having separated recyclable materials as required herein from the solid waste to be disposed of.

B. As a condition for obtaining any permit required by this chapter or for the use of any solid waste facility within the Town, all commercial waste collectors shall have filed with and obtained the approval by the Superintendent of Highways of a recycling plan setting forth the procedures, means and methods by which said commercial waste collector shall perform or require the separation from the solid waste so collected of recyclable materials. Each plan must require that recyclables from residential waste will be collected as often and on the very same day as the other residential waste collected by said commercial waste collector. Such plan shall also provide a schedule for the collection of recyclables from commercial waste.

C. In all instances, except where the commercial waste collector shall itself perform waste separation as defined herein, said commercial waste collector shall require its customers to separate recyclable waste at its source or generation point. Each commercial waste collector shall provide its residential customers with at least one Town-approved plastic bin or container, from 14 to 40 gallons in capacity, for the placement of recyclables prior to their collection by the commercial waste collector.

D. Each commercial waste collector shall, as a condition of maintaining a permit required by this chapter, file with the Superintendent of Highways written reports, not less than every 30 days, containing any requested amendments to the collector's recycling plan, which shall be subject to the approval of the Superintendent of Highways, and also report concerning the amount of solid waste collected or transported by the commercial waste collector and further quantifying the amount of each recyclable segregated and the location and manner of the disposal of such recyclable materials.

E. The Superintendent of Highways may, subject to the approval of the Town Board, adopt rules and regulations concerning the specific methods by which said recyclable materials shall be segregated prior to their acceptance for disposal at any solid waste facility operated pursuant to Article II of this chapter.

F. No solid waste will be accepted by any solid waste management facility within the Town of Bethlehem if it contains recyclables which are mixed or commingled with other solid waste.

§ 97-20. Further designation of recyclable materials.

The above listing of recyclable materials shall not prohibit the establishment, by way of regulation promulgated by the Superintendent of Highways with the approval of the Town Board, of such further or additional recyclable items or materials that must be separated pursuant to this article.

§ 97-21. Administration.

A. The Superintendent of Highways shall be responsible for administering the mandatory recycling requirements of the Town of Bethlehem and for the issuance of rules or regulations implementing this chapter. The Town Building Inspector shall be responsible for the enforcement of any violations of this chapter or the rules and regulations issued thereunder.

B. The Town Board may establish one or more sites for the operation by or on behalf of the Town of Bethlehem of a recycling facility and shall establish the days and hours of operation of all such facilities.

C. The Superintendent of Highways shall be empowered to:

(1) Establish rules and regulations concerning the operation and use of such recycling facilities.

(2) Suspend any permit pending a hearing for revocation pursuant to § 97-22B(1). Said suspension shall not exceed a period of 30 days. A permit may be temporarily suspended as provided for by this subsection in the event that the Superintendent of Highways determines, in his discretion, that a person holding said permit is in violation of this chapter and said violation constitutes or may create a danger to the aesthetics and environment of the Town or the health and safety of its inhabitants or that a person is utilizing said permit for a purpose or in a matter that is inconsistent with this chapter or is allowing said permit to be utilized by a person other than the issuee of said permit.

§ 97-22. Penalties for offenses.

A. Any person who shall commit an offense against any of the provisions of this article or fail to comply therewith or with any of the provisions thereof shall be guilty of a violation and, upon conviction thereof be punishable by a fine not exceeding \$250 for each offense or by imprisonment for a term not to exceed 15 days, and/or by both fine and imprisonment. Each act or day of continuance shall constitute a separate violation.

B. Additional penalties.

(1) In addition to the penalties above provided, after a hearing the Town Supervisor may revoke any permit issued pursuant to this article if the Town Supervisor at such hearing determines that the holder of such permit is a persistent violator or incapable of or unwilling to comply with the provisions of this article or has intentionally or negligently acted or failed to act in a manner that has harmed or created a risk of harm to the aesthetics and environment of the Town and the health or safety of its inhabitants or has utilized said permit in a manner inconsistent with this article or has allowed said permit to be utilized by other than its issuee. The permittee shall have an opportunity to be heard at such hearing, which shall be held after such permittee shall be served by written notice of such hearing in person or by registered mail, return receipt requested, not less than 15 days prior to the date of such hearing.

(2) The Town shall also have such other remedies as are provided by law.

§ 97-23. Severability.

If any clause, sentence, paragraph, section, article or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, article or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 97-24. Effective date.

This chapter shall take effect September 1, 1990, and when the appropriate certified copies hereof are filed with the Secretary of State pursuant to the applicable provisions of the Municipal Home Rule Law.

ARTICLE IV. Solid Waste Facilities

[Added 6-23-1993 by L.L. No. 4-1993]

§ 97-25. Legislative declaration.

Recognizing that compliance with the State Solid Waste Management Plan and the increased commitment to reuse and recycle solid waste, both in the Town of Bethlehem (hereafter the "Town") and throughout the state, has encouraged, and will encourage in the future, the construction and operation of solid waste management facilities designed to collect, sort, process, treat, reuse in manufacturing new products and/or dispose of solid waste; and being desirous of maintaining a clean, wholesome and attractive environment within the Town while protecting the health, safety and welfare of its inhabitants; and further recognizing the inherent dangers arising from the unrestricted or unsafe siting, design, construction or operation of solid waste management facilities and the need for proper planning, siting, design, construction and operation of such facilities to protect the inhabitants of the

Town and its vital environmental resources, the Town declares that the general public interest shall be served by implementing the following requirements for the permitting of solid waste management facilities to be sited, constructed or operated on land within the Town.

§ 97-26. Applicability; more restrictive provisions to prevail.

A. The requirements and standards of this article shall be in addition to the provisions of any applicable federal, state or local laws. Where the provisions set forth below are more restrictive than provisions set forth in any applicable federal, state or local laws, the provisions of this article shall apply. Where the provisions set forth in any applicable federal, state or local law are more restrictive than the provisions of this article, then the provisions of such applicable federal, state or local law shall apply.

B. This article shall apply to all new and existing solid waste management facilities sited, constructed, operated or located within the Town, unless otherwise specifically provided in this article.

§ 97-27. Definitions.

A. For the purposes of this article, those terms defined in §§ 97-1, 97-10 and 97-18 of this chapter shall have the meanings indicated therein unless a different meaning or content is set forth or required by this article.

B. The following terms shall have the meanings indicated:

BLOWDOWN

An event where steam is intentionally released into the atmosphere at fuel pressure in order to evacuate piping systems of particular matter.

CLASS I FACILITY

All solid waste management facilities used to store, for short periods of time and without sorting or processing, solid waste and/or to transfer solid waste from small vehicles to larger vehicles in order to facilitate long-distance transport. If no markets can be found within reasonable time, or such time as may be set by the Town, materials stored in "Class I facilities" shall be removed to either a Class II, III or IV facility within the Town or removed from the Town. "Class I facilities" include, but are not limited to, household hazardous waste storage facilities, recyclable materials dropoff facilities, waste exchanges, convenience centers and transfer stations. Except for household hazardous waste facilities, all facilities having a designed daily capacity of five tons per day (tpd) or less and/or cumulative intake floor storage capacity of not more than 2,000 square feet shall be exempt from the requirements of this article.

CLASS II FACILITY

All solid waste management facilities wherein physical manipulation of any kind of solid waste occurs to sort the waste stream components into identifiable fractions for the purpose of introduction into the secondary materials marketplace (recycling), for transfer to either a Class III or Class IV facility or for removal from the Town. "Class II facilities" include, but are not limited to, materials recovery facilities (MRF), intermediate processing facilities (IPF), construction and demolition (C&D) debris processing facilities and feedstocks for composting. An MRF having a designed daily capacity and operated at an average daily processing rate of less than 10 tons per day shall be exempt from the requirements of this article, except for § 97-32A(5) herein.

CLASS III FACILITY

All solid waste management facilities wherein solid waste is processed, modified, converted, treated or otherwise prepared either chemically, biologically, mechanically or otherwise to produce, create and/or manufacture component materials, raw materials or other substances to be recovered, reused or recycled. Processing can occur completely within structures, completely outdoors or in combinations thereof. "Class III facilities" include, but are not limited to, resource recovery facilities (RRF), waste-to-energy facilities, incinerators, composting facilities, sludge stabilization facilities, facilities for preparation of refuse-derived fuel (RDF) and freestanding landfill gas (LFG) conversion facilities. Regulated medical waste combustion facilities located at institutions where such waste is generated and having a designed daily capacity of less than five tons per day shall be exempt from the requirements of this article.

CLASS IV FACILITY

All solid waste management facilities where intermediate or long-term natural decomposition or permanent deposition of solid waste occurs, including related leachate (liquid) and gas management subsystems. "Class IV facilities" may also accommodate the long-term storage of solid wastes which are not subject to appreciable natural degradation. "Class IV facilities" are commonly outdoors and are characterized by

gradual placement of solid waste in prepared space. "Class IV facilities" include, but are not limited to, land applications (sewer sludge, septage and food waste), landfills and disposal facilities.

CONVENIENCE CENTER

An improved area where small amounts of solid waste materials can be unloaded from noncommercial vehicles and placed in steel containers or parked trucks for later transfer to nearby unloading areas where large vehicles routinely operate.

DESIGNED DAILY CAPACITY

The maximum amount of solid waste which can be managed in or at a facility during a twenty-four-hour period.

FOOTPRINT

That area of land actually improved through the construction of a secure, lined landfill base and upon which waste materials are deposited for disposal.

HOT LOAD AREA

An improved noncombustible surface upon which burning solid wastes may be deposited from trucks carrying them.

SOLID WASTE

All putrescible and nonputrescible materials or substances that are discarded or rejected as being spent, useless, worthless or in excess to the owner(s) at the time of such discard or rejection, including but not limited to garbage, refuse, industrial and commercial waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator residue, construction and demolition debris, discarded automobiles and offal. The term shall not include domestic sewage and other highly dilute water-carried materials or substances. For purposes of this article, however, "solid waste" shall also include septage or sludge removed from cesspools, septic tanks or other treatment or holding facilities.

§ 97-28. Prohibited acts; individual facilities to comply.

A. Except as authorized by the Town Board pursuant to a valid permit, or renewal or modification thereof, issued pursuant to this article, no person shall:

- (1) Initiate construction of a solid waste management facility or commence any physical alteration related to construction of a solid waste management facility, including but not limited to any site work related to such construction.
- (2) Operate a solid waste management facility or any phase or part of such facility.
- (3) Modify any aspect of construction or operation of a permitted solid waste management facility.
- (4) Operate a solid waste management facility, or any phase or part of such facility, except in accordance with such valid permit, or renewal or modification thereof, or in accordance with the provisions of this article.

B. Every solid waste management facility located on one site must be individually permitted under this article.

§ 97-29. Administration.

A. There shall be two permits required for any new solid waste management facility under this article: a permit to construct and a permit to operate. An application for an initial permit to construct a new solid waste management facility, or any part of such a facility, or to expand an existing facility must be accompanied by an application for an initial permit to operate the facility.

B. Applications to operate existing solid waste management facilities shall be submitted within 90 days of the effective date of this article.

C. All applications for permits shall be made in writing, subscribed to and verified by the owner of the property and the facility operator, if different, for which the permit is sought or by the agent of the owner who is duly authorized by a written instrument, duly executed and acknowledged by the owner of property.

D. The applications shall be made upon such forms and accompanied by complete information as required in §§ 97-31 through 97-34 of this article, which are applicable to the facility proposed, and such site and plot plans,

topographic (contour) maps, building plans and specifications and other pertinent data or information as may be required by the Town Board.

E. An application to modify a permit to construct or to operate a solid waste management facility shall be treated as a new application if any of the following actions are proposed:

- (1) An expansion of facility operations.
- (2) An increase in the quantity of solid waste received at the facility.
- (3) The installation of any additional equipment at the facility.
- (4) Change in the type of solid waste being received, handled or processed.

F. Any person who intends to continue the construction or operation of a solid waste management facility beyond the period set forth in any permit issued by the Town shall file a complete application for renewal of such permit at least 180 days before the existing or initial permit expires. A complete application for the renewal of such permit shall be made on forms required by the Town Board. No person may continue to construct or operate a solid waste management facility unless a timely and complete renewal application, as provided herein, is submitted to the Town Board.

G. The Town Board shall establish the applicable fees to be submitted at the time of any initial or subsequent application.

§ 97-30. Application and permit requirements.

A. An original plus 10 copies of the application for a permit to construct or operate shall be submitted to the Clerk of the Town Board.

B. Verification.

(1) An application shall be executed and verified by the owner of the site and the person who will operate the facility as follows:

- (a) By a duly authorized president or vice president in the case of a corporation;
- (b) By a general partner in the case of any partnership;
- (c) By the proprietor of any proprietorship; or
- (d) By the chief executive officer in the case of a state, state agency, authority, public benefit corporation or other governmental entity.

(2) The verified application must include a statement by the applicant in accordance with § 210.45 of the Penal Law to the effect that false statements made in the application are made under penalty of perjury.

C. Every application for a permit to operate shall include a contingency plan as set forth in 6 NYCRR 360-1.9. In addition, the contingency plan shall include a description and list of all hazardous or toxic substances or materials to be stored or used at the facility.

D. Permits issued pursuant to this article shall not be transferable without the specific written approval of the Town upon application pursuant to this article.

E. Permits to construct shall be issued for a period of one-year and shall automatically expire if duly filed renewal applications are not submitted to the Town.

F. Permits to operate shall be issued for a period of five years and shall automatically expire if duly filed renewal applications are not submitted to the Town.

§ 97-31. Siting standards.

A. Any solid waste management facility with a designed daily capacity greater than 100 tons per day shall be directly served by either state highways or by county, city or Town roads whose abutting properties are zoned to allow nonresidential use for the entire distance between the facility site and the nearest state highway utilized (which is to be used) as part of the permitted delivery route. This requirement shall apply to all permitted delivery routes for the facility.

B. Any facility with a designed daily capacity less than 100 tons per day may be served by state highways or county or Town roads having over 90% of the abutting properties either not developed with structures or zoned for or as otherwise allowed in the master plan for nonresidential use for the entire distance between the facility site and the nearest state highway or county road utilized (which is to be used) as part of a permitted delivery route. This requirement shall apply to all permitted delivery routes for the facility.

C. Solid waste management facilities shall meet the minimum site requirements as follows:

(1) Class I facilities shall have a minimum site size of one acre for each 50 tons, or part thereof, of designed daily capacity. Class I facilities may be sited as part of large commercial, industrial, governmental or institutional developments which are under single ownership but which contain multiple structures.

(2) Class II facilities shall have a minimum site size of five acres for each 200 tons, or part thereof, of designed daily capacity. A Class II facility with a daily designed capacity of not more than 10 tons may be situated on a site with a minimum size of one acre.

(3) Class III facilities shall have a minimum site size of 20 acres, dedicated solely for the use of the facility, and an additional one acre for each 100 tons, or part thereof, of designed daily capacity. In addition, the minimum site size set forth above shall be increased for composting facilities by one acre for each 5,000 cubic yards, or part thereof, of long-term curing or storage capacity. For facilities producing ash or other residue as part of a combustion process, the minimum site size set forth above shall be increased by 10 acres for each 150,000 tons of thirty-day storage capacity, or part thereof.

(4) Class IV facilities shall have a minimum site size of four times the actual land surface designated for use for land spreading or four times the area designed to be developed as a footprint of the disposal facility having a twenty-year capacity at permitted loading rates or the ultimate capacity of the site if the expected life of the facility is less than 20 years.

D. All applications to construct new facilities shall include a map setting forth the proposed solid waste delivery routes for the facilities, zoning classifications and land uses of property abutting the proposed routes and such other information as the Town may require.

E. Notwithstanding § 97-26 of this article, the siting standards contained in this section shall apply only to net solid waste management facilities. The Town, however, shall not be precluded from requiring compliance with some or all other siting standards as a condition for a permit to construct or operate a facility pursuant to this article.

F. Notwithstanding any section of this article to the contrary, no waste tire storage or disposal facilities shall be sited or opened within the Town. Notwithstanding any section of this article to the contrary, facilities which temporarily store waste tires shall be exempt from this article if:

(1) Such storage is incidental to the primary use of the site;

(2) Such storage occurs wholly on site where the waste tire was generated;

(3) The primary use of the site is not as a regulated solid waste management facility pursuant to this article;

(4) No waste tire is stored on site for more than 30 days and no more than 100 tires shall be present at any time in any exterior, fenced storage area or no more than 500 tires if fully stored within the interior of a building; and

(5) The storage area is fully enclosed by fencing with a minimum height of at least eight feet or the waste tires are stored in fully enclosed and lockable containers.

§ 97-32. Design standards.

A. All solid waste management facilities shall meet the following design standards:

(1) Site designs shall indicate utility and public rights-of-way, including those shown on adopted official maps. Amendments to official maps may be made at the same time as a permit to construct is issued and may be adjusted by the Town Board to accommodate improvements necessitated by the facility's construction.

(2) Where vehicle scales are provided, a single scale weighing vehicles from both directions (bidirectional) may be used for facilities with designed daily capacity of up to 300 tons per day. Facilities with greater than 300 tons per day of designed daily capacity shall have separate inbound and outbound scales.

(3) No lane reversals shall occur within a road distance of 200 feet from the facility's entrance gate.

(4) All internal roadways, loading areas and off-loading areas shall be designed so that vehicles delivering waste materials must travel in a direction such that the driver of a left-hand drive vehicle shall have maximum visibility during initial backing maneuvers.

(5) Except for facilities designed to manage only solid waste generated on site, facilities shall be designed to accept and shall only accept solid waste of the same type normally accepted by the facility, including recyclables, generated within the Town and delivered by the generators of the solid waste. Such facilities shall be designed to accept such solid waste during all permitted operating hours.

(6) Freestanding radio communication antennas shall be no higher than 40 feet above the existing topography and shall be located on site at a minimum of 80 feet from all property lines. Antennas attached to buildings shall be no more than 10 feet above such buildings.

B. Newly constructed Class I solid waste management facilities or existing solid waste management facilities expanded by more than 20% shall also meet the following design standards:

(1) Building setbacks from all site boundaries shall be four times the building height or 60 feet, whichever is greater.

(2) Internal roadways shall have minimum lane widths of 12 feet and with four-foot paved shoulders.

(3) Elevated roadways (ramps) shall not exceed an eight-percent grade nor an eighteen-foot rise. Such roadways shall be concrete surfaced. Six-foot shoulders shall be constructed on elevated roadways, and guardrails shall be installed.

(4) The maximum building height shall be 60 feet above the elevation of the intake room floor.

(5) All solid waste unloaded from self-unloading vehicles shall occur within a building.

(6) All materials handling shall be within a building, except for the reloading of recyclable materials from bunkers to takeaway vehicles via the building's doors. Compaction-type containers or trailers may be mechanically loaded through the building's exterior walls, although all loading devices shall be within the building.

(7) All utilities within the site shall be installed underground.

C. Class II solid waste management facilities shall also meet the following design standards:

- (1) Building setbacks from all site boundaries shall be two times the building height, or 60 feet, whichever is greater, if the facility is located in a light or heavy industrial zone. If the facility is located in other than a light or heavy industrial zone, building setbacks from all site boundaries shall be four times the building height or 120 feet, whichever is greater.
- (2) Internal roadways shall be paved with minimum lane widths of 12 feet and have four-foot paved shoulders.
- (3) Elevated roadways (ramps) shall not exceed an eight-percent grade nor an eight-foot rise. Such roadways shall be paved with six-foot paved shoulders and installed with guardrails.
- (4) A paved roadway shall be provided around the entire facility at a distance of less than 30 feet from all buildings.
- (5) The maximum building height shall be 60 feet above the intake room floor.
- (6) All buildings for the unloading or processing of solid waste shall be of fireproof construction and equipped with ventilation equipment capable of maintaining negative air pressure in the building and dust removal. All control rooms and employee work areas shall be climate controlled with isolated fresh air intakes.
- (7) All waste unloading, handling, processing and reloading shall occur within a building. All materials storage shall be within an enclosed building, except recyclables. Combustible materials storage shall not exceed 2,000 cubic yards in a single building, which shall be separated from all other buildings by a minimum distance of 50 feet.
- (8) Fuel storage shall be underground or in fully screened aboveground tanks and shall meet all applicable requirements for spill prevention, containment and control.
- (9) The facility shall be capable of shielding all stored waste materials from view from the site boundaries as observed from five feet above the ground surface. Electric substations within the site shall be 80% screened by evergreen vegetation with a minimum height of 10 feet.
- (10) At a minimum, the solid waste handling portion of the site shall be fully enclosed with a fence having a minimum height of eight feet and containing lockable gates.
- (11) Two site entries shall be provided for facilities having a designed daily capacity of more than 100 tons.
- (12) Three queuing positions, each 50 feet long, shall be provided before vehicle scales for each 100 tons of designed daily capacity or part thereof.
- (13) All utilities within the site shall be installed underground.
- (14) A minimum of two fire hydrants, independent from the building sprinkler system, shall be provided where public water supply service is available. If no public water supply exists, an acceptable fire pond or other acceptable water supply must be provided.

D. Class III solid waste management facilities shall also meet the following design criteria:

- (1) Building setbacks from all site boundaries shall be 1 1/2 times the maximum building height (except chimneys, smoke stacks, etc.) if the facility is located in a light or heavy industrial zone or three times the maximum building height (except chimneys, smoke stacks, etc.) if the facility is not located in a light or heavy industrial zone. Electrical substations within a site shall be a minimum of 50 feet from the site boundary.

(2) Internal roadways shall be paved with minimum lane widths of 12 feet and have paved six-foot shoulders. All major facility buildings or processing/curing areas shall be encircled with roadways.

(3) Elevated roadways (ramps) shall not exceed an eight-percent grade nor a thirty-foot rise. Such roadway shall be paved with eight-foot paved shoulders, and guardrails shall be installed.

(4) The maximum building height shall be 120 feet above the average original natural grade thereunder, except for chimneys, smoke stacks, etc., which shall be no higher than 220 feet above the original grade.

(5) All buildings and structural components, except cooling towers, shall be of fireproof construction. All mechanical components, including turbine generators, shall be enclosed, except bailers, economizers, condensers, air quality control equipment and cooling tower fans.

(6) No mechanical systems shall emit air pressure pulsations between one and 1,000 cycles per second, as measured at the site boundary. No mechanical systems shall emit noise between four and 200 or over 2,000 cycles per second at levels above 65 decibels, as measured at the site boundary, unless that emission comes from a required safety device or system. Steam condensers shall have a combined capacity equal to 50% or more of designed steam production.

(7) All unloading areas and unprocessed waste storage shall be within a building. The combined storage capacity for unprocessed solid waste shall not exceed 3 1/2 times the facility's designed daily capacity and shall be clearly distinguishable from waste unloading areas.

(8) All storage areas shall be designed to enable the loading of solid waste into transfer vehicles for removal from the facility.

(9) All enclosed spaces shall be capable of positive ventilation with air treatment capacity. All control rooms and employee work areas shall be climate controlled with independent fresh air supplies. All residue storage and loading areas shall be within an enclosable space having positive ventilation.

(10) Storage pits and/or floors of compost processing, curing and storage areas shall be designed with leachate control and storage systems. Fluid levels in sumps or storage tanks shall be monitored by external monitoring devices.

(11) All floor drains shall be interconnected in a system designed to manage contaminated discharges.

(12) All areas dedicated to product curing shall be paved and covered with a roofed structure having a maximum height of 40 feet and whose side walls must enclose the upper third of the curing space.

(13) No exterior lighting shall be directed toward the site boundaries.

(14) All utilities within the site, except substations and related transmission lines, shall be installed underground. Electrical substations shall be 80% screened with evergreen vegetation with a minimum height of 12 feet.

(15) At a minimum, the solid waste handling portion of the site shall be fully enclosed with a fence having a minimum height of eight feet and containing lockable gates.

(16) Two site entries shall be provided for facilities having a designed daily capacity of more than 200 tons.

(17) Electrical substations within the site shall be enclosed with fencing having a minimum height of eight feet.

(18) If located outside a light or heavy industrial zone, the site shall be landscaped along its entire public highway frontage. Landscape mounds shall be a maximum height of 10 feet.

(19) When a facility is served by a public water supply, a minimum of two fire hydrants shall be located within 50 feet of the entrance to any intake room. If no public water supply exists, an acceptable fire pond or other acceptable water supply system must be provided.

E. Class IV solid waste management facilities shall also meet the following design standards:

(1) Portions of the site which are designed to receive or store solid waste, including tires, shall be a minimum of 400 feet from a site boundary. Portions of the site which are designed to store contaminated liquids shall be a minimum of 200 feet from a site boundary. Portions of the site which are the subject of mining permits shall be a minimum of 150 feet from a site boundary.

(2) Scale houses and/or administration buildings shall be a minimum of 100 feet from a site boundary. All other buildings or structures shall be a minimum of 300 feet from a site boundary.

(3) The maximum height of any constructed fill area shall be 80 feet above the average elevation of natural grades existing before construction of the landfill section's base.

(4) Internal roadways intended to be used by highway vehicles shall be paved with minimum lane widths of 12 feet and have four-foot paved shoulders. All roadways surrounding a landfill's base shall be designed to handle two-way traffic.

(5) The maximum building height shall be 40 feet.

(6) All buildings shall be of fireproof construction.

(7) A concrete hot-load area shall be provided along a landfill entrance roadway and no less than 150 feet from the scale house or other building for the inspection of delivery vehicles and the contents thereof, unless that emission comes from a required safety device or system.

(8) All utilities within the site, except those in the immediate vicinity of leachate storage facilities, shall be underground.

(9) Permanent landfill gas piping shall be installed below the barrier layer in the final cover system and underground when outside of permitted solid waste fill areas.

(10) Landfill gas pumping stations shall be fully enclosed. Flares shall be fully screened to avoid nighttime visibility from any point on the site boundary.

(11) Landfill gas pumping stations, flares, supplemental fuel storage and generating facilities shall be fully enclosed within a freestanding fence 10 feet high, with lockable gates.

(12) The entire site boundary shall be planted with evergreen trees within a distance of 50 feet of the perimeter fence (except for site entrances). Such plantings shall be on offset ten-foot centers.

(13) Electric substations shall be 80% screened by evergreen vegetation having a minimum height of eight feet.

(14) Fuel storage shall be underground or in fully screened aboveground tanks and shall meet all applicable requirements for spill prevention, containment and control.

(15) Convenience centers within the site shall have canopies over unloading and interior storage space and shall be paved. Maximum grade separations at convenience centers shall be seven feet. Grade separation walls shall project 1 1/2 feet above the upper grades. Ramps serving convenience centers shall not exceed 6% slopes.

(16) A concrete hot-load area having a minimum dimension of 30 feet by 40 feet shall be provided along a landfill entrance roadway no closer than 150 feet from a scalehouse or other building. This area shall be serviced by a drainage collection and recovery system, acceptable to the Town, to ensure the prevention of runoff from this area.

F. Design requirements set forth above may vary when applied to portions of sites between two or more facilities located on the same site and with regard to overall site size requirements when more than one facility is located on a site which is to include a Class IV facility.

G. All variances requested in applications for federal, state or local permits shall be identified and become a part of an application for a permit to construct under this article. The granting of a variance by another agency will not bind the Town to issue the same variance if it applies to equal or similar provisions of this article.

H. These design standards shall apply only to new solid waste management facilities, unless otherwise specifically provided for in a permit to operate pursuant to this article.

§ 97-33. Construction standards; insurance requirements.

A. All construction of buildings and related structures shall be in accordance with the Uniform Fire Prevention and Building Code of New York State.

B. For all Class I and Class II solid waste management facilities, all roadways, parking areas, signs, landscaping and utility connections shall be installed before solid waste is received at the facility.

C. Class III solid waste management facilities shall also meet the following construction standards:

(1) All temporary lay-down areas shall be within the site and shall not be within 40 feet of overhead utility locations. This area shall be serviced by a drainage collection and recovery system, acceptable to the Town, to ensure the prevention of runoff from this area.

(2) On-site storage areas for residue materials generated during start-up, and prior to the issuance of a permit to operate, shall be in an enclosed building.

(3) Heavy construction equipment shall not be operated between the hours of 10:00 p.m. and 7:00 a.m., Monday through Saturday, or on Sundays, except in light and heavy industrial zones.

(4) Aircraft shall only be operated during the period between sunrise and sunset.

(5) The facility shall contain adequate off-street parking for all individuals working on the site at any one time.

(6) All off-loading of construction materials or components delivered to the site shall occur within the site.

(7) Any utility interconnections which will cause service interruptions to other utility users shall only be made after twenty-four-hour notification to parties so affected.

(8) Seven-day notice shall be given to the Town for scheduled blowdown sequences. In addition, all property owners and occupants of such properties within 1/4 mile of the facility shall receive written notice at least 24 hours prior to each blowdown event.

(9) Unless otherwise directed by a public agency having responsibility for adjacent highways, no temporary signs or lighting shall be placed beyond the site boundary.

(10) All temporary signs and lighting equipment shall be removed prior to the commencement of operations.

(11) No outdoor electric communication devices shall be used beyond hours stipulated for heavy equipment operations.

D. Class IV solid waste management facilities shall also meet the following construction standards:

- (1) Heavy equipment operations during construction shall only occur between the hours of 6:30 a.m. and 9:00 p.m., Monday through Saturday, including any soil processing equipment.
- (2) Aircraft operation shall only be operated between sunrise and sunset.
- (3) All deliveries of earth materials to the site shall occur between 7:00 a.m. and 7:00 p.m., Monday through Saturday.
- (4) Mechanical placement of geosynthetics shall occur only during hours when heavy equipment may operate; however, joining (seaming operations) may be conducted without limitation.
- (5) Off-street parking for all individuals working at the site at any one time shall be provided.
- (6) All stockpiled topsoil shall be graded and planted with grass during the growing season immediately following placement.
- (7) All haul roads shall be treated with water applications as required in order to prevent off-site distribution of dust.
- (8) A landfill entrance road shall be paved to the point of scale location or 300 feet, whichever is greater, prior to deliveries of earth resources from off site.
- (9) Stormwater treatment facilities and erosion control practices in accordance with Chapter 98 of the Code of the Town of Bethlehem shall be developed and made available for use prior to excavations on any other portions of the site which require pumping for discharge of accumulated surface waters.

[Amended 11-14-2007 by L.L. No. 7-2007]

- (10) All temporary signs and lighting shall be contained within the site and removed prior to facility startup.

E. Performance guaranties and insurance.

- (1) Where the facility is to be constructed for the Town or where an applicant is seeking to operate, in whole or in part, in order to perform a service for the Town, as a condition to the issuance of a permit to construct, the applicant shall be required to obtain performance bonds for construction of a facility from a New York State authorized surety company acceptable to the Town. The amount of such performance bonds shall be determined by the Town Board on a case-by-case basis, taking into consideration the size, class and location of the proposed facility.
- (2) An applicant shall also be required to obtain comprehensive general liability insurance for claims arising out of injury or damage to persons or property during construction. In addition, an applicant shall be required to obtain environmental impairment liability and pollution discharge insurance for claims arising out of environmental damage caused by construction activities. The amount of such insurance shall be determined by the Town Board on a case-by-case basis, taking into consideration the size, class and location of the facility. On all insurance required by this section, the Town shall be named as an additional insured. All insurance shall be issued by a company licensed to do business in the State of New York and acceptable to the Town with a rating of AA or better as reported by Moody's Rating of Insurance Companies. The applicant shall be required to maintain all insurance until a permit to operate is issued.

§ 97-34. Operation standards; guaranties and insurance requirements.

A. All solid waste management facilities shall be operated in accordance with the following operation standards:

- (1) All applicable fees for facility use shall be clearly posted at locations ahead of transaction points.

(2) Rules and regulations regarding site use shall be clearly posted where they can be read without traffic obstruction and shall also be available in written form to all facility users upon request.

(3) Reports of facility use in terms of solid waste received, recycled, processed (including special wastes), rejected (and reasons therefor), energy or fuel generated/recovered, unprocessed bypass waste, fluids or leachate removed and/or solid waste disposed shall be prepared on a daily basis and transmitted to the Town within five business days after the close of each month.

(4) Access shall be provided to Town officials or its agents at any time for the purpose of inspecting facilities and observing operations in order to determine compliance with this article. The operation of a facility within the Town shall be deemed to constitute consent to any inspection pursuant to this subsection. The refusal by an owner, operator or their officers, agents or employees to allow such inspection shall constitute grounds for the revocation of any permit issued by the Town for the facility.

(5) Facilities which accept solid waste from noncontracted sources or off-site public sources shall accept similar nonhazardous solid waste from individual sources within the Town of Bethlehem, provided that appropriate fees are paid. All fees shall be as posted or as otherwise shown in the permit to operate issued by the Town and as may be amended.

(6) All fences and gates shall be maintained as originally installed. All paved roadways shall be maintained free of obstructions or holes greater than four inches in any direction. Signs shall be maintained in good mechanical condition with uniform tones on all markings. All exterior surfaces of buildings or other structures shall be maintained with uniform coverings and tones.

(7) The Town shall be notified immediately of facility breakdowns which cause waste bypass to facilities located at other sites, the deposition of hazardous waste or the deposition of waste which is not permitted at the facility.

(8) Total daily solid waste intake shall be limited as set forth in the permit to operate.

(9) All man-made surfaces (nonorganic) of buildings and all signs shall be maintained so that not more than 2% of the surface is deteriorated or damaged.

(10) Structural deflection from gate and guardrails shall not exceed 5% of the original approved design. Surface conditions shall meet the standards set forth in Subsection A(9) of this section.

(11) All planting shall be maintained in accordance with the landscape architecture and screening requirement of any permit.

(12) Access to the facility shall be provided during all business hours as set forth in any permit to operate.

(13) No dirt, dust or other material or substance of any kind shall be tracked from the facility onto any public road.

(14) Access to and at least a fifteen-foot unobstructed clearance from all fire hydrants shall be maintained. A roadway shall be maintained at least 15 feet from all fire hydrants.

B. Class I solid waste management facilities shall also meet the following operation standards:

(1) Facilities having designed daily capacity of over 500 tons per day shall maintain a minimum interval of five minutes between transport vehicle movements.

(2) Loading of rail cars may occur at any time within structures which are completely enclosed except for rail penetrations.

(3) Loaded vehicles, including rail cars and barges, may not remain on site for more than 24 hours, if said vehicles contain putrescible materials.

(4) The entire site, including fences, shall be cleared of accumulated solid waste each operating day.

(5) All grass on the facility site and adjacent rights-of-way shall be maintained at a height not exceeding four inches.

(6) Operators of facilities having a designed daily capacity of over 500 tons and which are located outside of light or heavy industrial zones shall, at a minimum, clear all public highway rights-of-way of solid waste for a center-line distance of one mile in all directions from the entrance gate every second calendar day.

(7) No delivery vehicle shall empty any leachate, liquid or fluid waste at a Class I facility, except that the Town may permit a direct discharge monitored at all times by the facility operator and the driver of the vehicle, into a leachate or waste oil holding and removal system.

C. Class II solid waste management facilities shall also meet the following operation standards:

(1) The entire facility site, outside structures and structural partial enclosures, including fences, shall be cleared of all accumulated solid waste each operating day.

(2) Operators of facilities having a design daily capacity of over 500 tons and located outside of a light or heavy industrial zone shall clear all public highway rights-of-way of solid waste for a center line distance of one mile in all directions from the site entrance every second calendar day as a minimum.

(3) All grass on the facility site and adjacent rights-of-way shall be maintained at a maximum height of four inches.

(4) All solid waste residuals shall be removed from the facility within 24 hours.

(5) No delivery vehicle shall empty any leachate, liquid or fluid at a Class II facility, except that the Town may permit a direct discharge, monitored at all times by the facility operator and the driver of the vehicle, into a leachate and waste oil holding and removal system.

(6) Loading of rail cars may occur at any time within structures which are completely enclosed except for rail penetrations.

D. Class III solid waste management facilities shall also meet the following operation standards:

(1) No delivery vehicle shall empty any leachate, liquid or fluid at a Class III facility, except that the Town may permit a direct discharge, monitored at all times by the facility operator and the driver of the vehicle, into a leachate or waste oil holding and removal system.

(2) Pipeline deliveries may be made at any time. Solid waste size reduction operations shall only occur within stipulated intake hours unless all doors are closed.

(3) Solid waste storage prior to processing shall not exceed eight calendar days, except under conditions attributable to unscheduled shutdown or capacity reduction due to mechanical failure. In the event of an unscheduled shutdown or capacity reduction due to mechanical failure, a maximum storage time of 12 calendar days may be permitted.

(4) All waste materials remaining in storage pits longer than eight calendar days of complete facility shutdown shall be removed from the site.

(5) All unprocessed solid waste to be removed shall be removed in fully enclosed vehicles which shall leave the site in intervals of no less than five minutes and during permitted waste intake hours only.

(6) Following plant shutdown, solid waste shall not be accepted at a facility until unprocessed waste inventories are reduced to four days of daily designed capacity.

(7) Unprocessed waste storage pits shall be managed to allow no more than one day's designed daily capacity to remain at the beginning of each week's intake operations.

(8) The entire facility site, outside structures and structural partial enclosures, including fences, shall be cleared of all solid waste debris each operating day.

(9) Operators of facilities having a designed daily capacity of 500 or more tons shall also remove solid waste from the public highway rights-of-way serving the site within a center-line distance of one mile in all directions from the site entrances each operating day.

(10) All informational and regulatory signs shall be maintained in good mechanical condition, with uniform coloring to all backgrounds, letters and/or digits.

(11) All planting shall be maintained in accordance with the landscape architecture and screening requirement of any permit.

(12) Loading of rail cars may occur at any time within structures which are completely enclosed except for rail penetrations.

E. Class IV solid waste management facilities shall also meet the following operation standards:

(1) Machinery operation shall be limited to 1/2 hour before scheduled solid waste intake and one hour after scheduled solid waste intake.

(2) Facilities having designed daily capacity of greater than 400 tons shall limit total solid waste intake to two times the designed daily capacity on any given day.

(3) No delivery vehicle shall empty any leachate, liquid or fluid at a Class IV facility, except that the Town may permit a direct discharge, monitored at all times by the facility operator and the driver of the vehicle, into a leachate or waste oil holding and removal system.

(4) Operators of facilities shall remove all solid waste debris within 50 feet of all internal site roads, landscaped areas, all primary fencing within 300 feet of frontage roads and all public rights-of-way along the site boundary each operating day. All remaining areas of the site and fences shall be cleared of solid waste debris on a weekly basis.

(5) Operators of facilities with designed daily capacity of greater than 300 tons shall, in addition, clear solid waste debris from all public highways serving the site within a center-line distance of one mile in all directions from the site entrances each operating day.

(6) All landfilling operations shall be such that outer slopes facing public rights-of-way are filled before interior spaces and that all resulting surfaces are covered with compact soil or plastic membrane at the close of each operating day.

(7) Tires shall not be used for securing geosynthetic cover membrane materials.

(8) Outer slopes which are covered with soil shall be planted with grass as soon as practicable during germination and growing seasons.

(9) Roadway surfaces shall be maintained free of tracked earth materials for a distance of 600 center-line feet inside the entrance gate.

(10) A single entrance gate shall be identified as the facility's normal means of access by all vehicles.

(11) All other gates shall remain locked at all times, except emergencies involving public agency response.

(12) All planting shall be maintained in accordance with the landscape architecture and screening requirement of any permit.

(13) Loading of rail cars may occur at any time within structures which are completely enclosed except for rail penetrations.

F. Performance and closure guaranty and insurance.

(1) Where the facility is to be constructed for the Town or where an applicant is seeking to operate, in whole or in part, in order to perform a service for the Town, as a condition to the issuance of a permit to operate, the applicant shall be required to obtain performance bonds for the operation of the facility. The amount of such performance bond shall be determined by the Town Board on a case-by-case basis, taking into consideration the size, class and location of the proposed facility.

(2) An applicant shall also be required to obtain comprehensive general liability insurance for claims arising out of injury or damage to persons or property. In addition, an applicant shall be required to obtain environmental impairment and pollution discharge liability insurance for claims arising out of environmental damage. The amount of such insurance shall be determined by the Town Board on a case-by-case basis, taking into consideration the size, class and location of the facility. On all insurance required by this section, the Town shall be named as an additional insured. All insurance shall be issued by a company licensed to do business in the State of New York and acceptable to the Town with a rating of AA or better as reported by Moody's Rating of Insurance Companies. The applicant shall be required to maintain all insurance during the effective period of the permit, and such insurance shall not be canceled by the insurer except upon 60 days' notice to the Town.

(3) In addition to the above, and to any other requirement by a governmental unit or entity other than the Town of Bethlehem, as a condition to the issuance of a permit to operate, an applicant shall be required to provide, by bond, insurance, escrow account or other means, sufficient assurance of the ability of the applicant to timely and properly complete the closure of the solid waste facility in accordance with requirements of the Town and all other applicable state, federal or local laws. The method by which such assurance is to be provided and the amount of such bond, insurance or escrow account shall be determined by the Town Board on a case-by-case basis, taking into consideration the size, class and location of the proposed facility and the nature of its operation and possible impacts on the environment. Such bond, insurance or escrow account shall be dedicated by the applicant solely for the purposes of facility closure and related expenses and may not be diminished, encumbered or used for any other purpose by the applicant, including but not limited to as any form of collateral, without the specific written permission of the Town. The applicant shall be required to maintain such bond, insurance or escrow account during the effective period of the permit and for a period of 30 years after a solid waste facility ceases operations or a permit to operate lapses, is surrendered or is withdrawn, whichever period is longer.

§ 97-35. Monitoring and testing standards.

A. The following operational and environmental monitoring and testing standards shall be followed by all facilities, unless otherwise provided in this article or in a permit to operate by the Town:

(1) Operational monitoring and testing.

(a) All components of a facility shall be monitored and tested as required in the operation and maintenance manual approved by the Town. At a minimum such monitoring requirements shall provide that:

[1] The facility is monitored and inspected on at least a weekly basis for malfunctions, deterioration of equipment, operator error and any actual or threatened discharges constituting a violation of the conditions of any operating permit, whether issued by the Town or any other governmental agency. A record of all inspections must be kept at the facility and summarized in the monthly operating report submitted to the Town.

[2] All aboveground tanks and associated gauges, valves and equipment shall be inspected weekly and a log maintained on file for each tank during the life of the facility and for a period of 30 years after its closure or the cessation of operations, whichever comes later.

[3] All underground tanks and associated gauges, valves and equipment shall be monitored daily and a monitoring log maintained on file for each tank during the life of the facility and for a period of 30 years after its closure or the cessation of operations, whichever comes later.

[4] All other pollution control systems and associated gauges, valves and equipment shall be monitored weekly and a monitoring log maintained for each pollution control system during the life of the facility and for a period of 30 years after its closure or the cessation of operations, whichever comes later.

[5] All solid waste delivered to a facility shall be tracked and documented. The following information shall be compiled weekly: the amount of solid waste received during the week; the amount of solid waste processed during the week; the amount of solid waste removed from the facility site during the week, either processed or unprocessed; the amount of processed solid waste stored on site at the end of the week; and the amount of unprocessed solid waste stored on site at the end of the week.

[6] Any unauthorized solid waste delivered to a facility shall be tracked and documented. The following information shall be compiled weekly: the amount of unauthorized waste delivered to the facility during the week; the person who delivered said waste; the amount of time the unauthorized waste was stored at the facility; and the solid waste management facility at which the unauthorized waste was disposed of and the means and date of delivery thereto.

(b) In the event that the operator fails to comply with these monitoring requirements, in addition to all other remedies provided by this article, the Town may undertake such program of monitoring. All expenses related thereto shall be paid by the facility owner or operator. This shall include a full-time, Town-designated on-site monitor if required by the Town.

(c) All monitoring records and logs shall be maintained on file and made available to the Town during the life of the facility and for a period of 30 years after its closure or the cessation of operations, whichever comes later.

(d) Copies of all records and logs required by this section shall be submitted to the Town in monthly monitoring reports to be filed within five days of the end of the month in which such record and logs are made. Each facility shall maintain records and logs reflecting all testing of such equipment, gauges or devices, the personnel involved in such testing and the standard methods and calibration records used in relation to such testing.

(e) All monitoring or testing reports or results for facility components required by any federal, state or local agency, or undertaken for any other reason by the owner or operator by the facility, shall also be submitted to the Town within five days of the receipt or preparation of such reports or results.

(f) An annual facility operation, monitoring and testing report shall be submitted by the operator to the Town. The report shall be prepared by an engineer licensed to practice in New York State and shall certify that the facility has been monitored and tested in compliance with the permit to operate and the operator's operation and maintenance manual and that all components, equipment, devices and instrumentation at the facility have been properly calibrated and meet manufacturer specifications.

(2) Environmental monitoring and testing; operations.

(a) All facilities where the operation thereof involves or causes a discharge or emission of any kind shall be equipped with devices capable of continuously monitoring such discharges or emissions, unless such devices are not commercially available, cannot be monitored or such discharges or emissions cannot be monitored reliably, in which case the Town shall set an alternate discharge or emission monitoring requirement. If such continuous monitoring or testing device becomes available and feasible to use in the future, the Town may order the installation of such device.

(b) Unless otherwise provided by the Town in an operating permit, all discharge or emission points shall be monitored continuously, and a record of such monitoring shall be made daily. A report of such monitoring shall be submitted to the Town within five days of the end of the month.

(c) The monthly monitoring reports shall also include:

[1] A copy of any reports filed with federal, state or local agencies during the month.

[2] A report of any excess discharges or emissions or any spills or leaks into the environment, including the indoor environment, the corrective action taken and the modification to the facility's operation and maintenance manual and/or quality assurance and quality control plan to be undertaken to prevent such excess discharge, emission, spill or leak into the environment in the future.

[3] A report of the monitoring and testing of various regulatory monitoring points established in a permit to operate. All facilities with the designed daily capacity of 20 tons per day, or storage capacity of greater than 150,000 cubic yards, and all household hazardous waste facilities shall be monitored, unless otherwise provided by the Town, as follows:

[a] Groundwater monitoring report.

[i] Groundwater monitoring report shall be submitted with an application for a permit to operate which shall analyze the hydrogeologic conditions at the site, with a plan acceptable to the Town setting forth procedures for obtaining, securing the integrity of and analyzing groundwater monitoring samples.

[ii] The report shall be based on analytical data from a sufficient number of monitoring wells installed on the site to determine groundwater flow and background conditions of the uppermost water-bearing unit, unless comparable and reliable data is available and approved by the Town, in which case only one downgradient groundwater monitoring well may be required.

[iii] All monitoring wells which are installed shall be constructed in a manner which maintains the integrity of the monitoring well and be sealed to prevent contamination of samples or groundwater.

[iv] The report shall provide an analysis of the expanded parameters set forth in 6 NYCRR 360-2. The Town will set applicable monitoring frequencies for groundwater at the site based on the analysis of background conditions. Groundwater monitoring points shall be sampled and analyzed quarterly.

[v] The analytical results and any other reports regarding sampling shall be certified and submitted directly to the Town by the certified lab which completed the analysis or report and summarized in the monthly monitoring report.

[b] Surface water monitoring report.

[i] A surface water monitoring report shall be submitted with a permit to operate and shall contain an analysis of the surface waters on site acceptable to the Town.

[ii] The report shall contain an analysis for the expanded parameters set forth in 6 NYCRR 360-2, shall identify the proposed monitoring points and shall contain an acceptable plan setting forth procedures for obtaining, securing the integrity of and analyzing groundwater monitoring samples. The Town will set applicable monitoring frequencies for surface water at the site based on the analysis of the background conditions. Surface water monitoring points shall be sampled and analyzed quarterly.

[iii] The analytical results and any other reports regarding sampling shall be certified and submitted directly to the Town by the certified lab which completed the analysis or report and summarized in the monthly monitoring report.

(3) Post-closure monitoring and testing. All nonexempt facilities shall conduct environmental monitoring and testing after closure of the facility. A post-closure monitoring and testing plan shall be submitted to the Town with an application for a permit to operate a facility. At a minimum the plan shall:

- (a) Set forth procedures for obtaining, securing the integrity of and analyzing groundwater monitoring samples.
- (b) Provide for quarterly sampling and analysis of all environmental monitoring points.
- (c) Provide that analytical results, and any other reports regarding sampling, be certified and submitted directly to the Town by the certified lab which completed the analysis or report and summarized in the annual post-closure monitoring report.
- (d) Provide for at least monthly inspections and monitoring of the facility and submission of such inspection reports with the annual post-closure monitoring report. The frequency of inspections may be increased by the Town if any type of collection, treatment or storage of leachate, gas or other substance, generated at the facility after closure, will occur.
- (e) Provide a contingency plan for handling and addressing releases, contamination or threatened releases or contamination at the facility.
- (f) Provide for an annual post-closure monitoring report which shall include a narrative description of the facility, any operations and inspections during the year, copies of inspection reports, maintenance reports and analytical reports on quarterly sampling.

B. The following monitoring and testing standards shall apply to all facilities, unless otherwise provided in the application or in a permit to operate:

(1) Light.

(a) The intensity of light (reflective or artificial) generated by a facility shall be controlled to prevent light levels beyond the property line from exceeding the following levels:

[1] Daytime (reflective): not to exceed 1.6.

[2] Nighttime (artificial): not to exceed 2.5.

(b) The intensity of direct light must be made at an approved location on the property line. An approved light-metering or exposure device shall be used for taking all measurements.

(2) Noise. The intensity of sound (direct or reflected) generated by a facility shall be controlled to prevent noise levels beyond the property line from exceeding the following ambient levels unless the noise emission arises from the operation of a required safety device or system:

(a) General.

[1] Day (7:00 a.m. to 7:00 p.m.): 80 decibels.

[2] Night (7:00 p.m. to 7:00 a.m.): 65 decibels.

(b) Peak.

[1] Day (7:00 a.m. to 7:00 p.m.): 90 decibels.

[2] Night (7:00 p.m. to 7:00 a.m.): 65 decibels.

(c) Maximum (blowdowns only): 110 decibels.

(d) Sustained.

[1] Night (7:00 p.m. to 7:00 a.m.) equipment: 60 decibels.

[2] Power lines: not greater than four decibels above ambient levels.

(3) Airborne dirt, dust and vapors. The concentration of airborne dust, dirt or vapors generated by a facility shall be controlled to prevent the opacity from exceeding the following:

(a) At source: Ringelmann Chart Index No. 6.

(b) At property line: none detectable.

(4) Vibrations. The intensity of vibrations generated by a facility shall be controlled to prevent vibrations beyond the property line from exceeding:

(a) Air pulsations below 30 cycles: 0.001.

(b) Ground transmissions: 10.

(5) Landfill gas.

(a) Flares shall be observed stationary and with ignition module activated.

(b) The amount of airborne gas generated by a facility shall be controlled to prevent gas levels beyond the property line from exceeding greater than 2% of the lower explosive limit (LEL).

(6) Maintenance of plantings, screening and landscaping.

(a) There shall be germination and/or survival of all trees, shrubs or other plants required by the Town for screening and other purposes.

(b) The height of grasses or other ground covers in open lawn areas shall not exceed four inches, except in times when the Town has declared a drought condition and has restricted the use of water in landscape maintenance.

(7) Odors. The intensity of odors generated by a facility shall be controlled to prevent any noxious or offensive odors beyond the property line.

(8) Vectors.

(a) The number of birds counted in a one-hundred-foot-by-one-hundred-foot randomly selected grid on the facility site on three consecutive days shall not exceed 50.

(b) The number of rodents counted in a ten-foot-by-ten-foot prepared grid within 24 hours shall not exceed two.

(9) Facility air pressure. Where negative air pressure is required in a structure or facility, the barometric pressure inside the structure or facility shall be lower than the pressure outside the facility.

(10) Storage of flammable or combustible materials.

(a) In the event that any solid waste facility will involve the accumulation or storage of items or materials that are flammable or combustible, all such material must be stored in an area equipped with an operating sprinkler or fire-abatement system allocated to the type of materials stored, if stored within a structure or facility, and within operating range of a working hydrant if stored in an exterior area. If no public water supply exists, an acceptable fire pond or acceptable water supply must be provided.

(b) This requirement shall be in addition to any state or local fire code or other statute or regulation governing the handling, storage or transportation of items or materials that are or may become flammable or combustible.

C. The Town Engineer may promulgate additional rules, regulations or and/or standards to implement these monitoring and testing requirements and standards.

D. The above requirements shall be in addition to any operational and environmental monitoring and testing standards required by any state, federal or local regulatory body. Further, the above shall not limit the authority of the Town, by this article or otherwise, to perform inspections or to receive access to data, reports or audits performed by the operator or performed or required by any other person or governmental body.

§ 97-36. Regulatory fees.

A. Notwithstanding any general or special law to the contrary, all solid waste management facilities which require permits pursuant to this article shall submit a regulatory program fee as set forth in this section. Such program fees shall be paid annually to the Town, on such forms and at such times as are specified by the Town.

B. All existing solid waste management facilities which require permits pursuant to this article shall be liable to the Town for the fees set forth in this section on and after [date].

C. All new solid waste management facilities which require permits pursuant to this article shall be liable for the program fees set forth in this section on and after the effective date of this article.

D. Liability for all program fees authorized by this section shall equal the annual fee established. The initial fee to be paid shall be prorated from the date of issuance. All payments shall be due within 30 days of billing by the Town.

E. If the program fee is not paid within 30 days of the date it is due, a penalty shall be imposed. The amount of the penalty to be imposed shall be 5% of the amount of the program fee as originally billed. A penalty may be imposed for each thirty-day period, or part thereof, that the program fee is not paid. The total penalty imposed shall not exceed 50% of the program fee as originally billed by the Town. Notice of a determination that a penalty is due, together with a notice of the right to appeal such determination, shall be given in writing to the permit holder at the address set forth in the permit. The determination shall be final and irrevocable within 10 days, unless such permit holder requests a hearing, in writing, by certified mail addressed to the Town Supervisor. A hearing shall be held within 15 days of receipt of the request for a hearing or such later date as may be consented to by the permit holder and the Town. Notice of the final determination shall be given to the permit holder in writing after such hearing. No penalty authorized by this subsection shall be assessed until after the expiration of the period in which a hearing may be requested or the issuance of a final determination following a hearing, whichever is later.

F. Interest shall be collected upon any unpaid amount of the program fee as billed by the Town. Interest shall be collected at the rate of 9% and shall begin to accrue 30 days after the date the fee was due and shall continue until the date payment is actually received by the Town. Interest shall accrue and be collected in addition to any penalties which may be due.

G. The Town may suspend or revoke a permit for a facility if the program fee authorized by this section is not paid as required herein.

H. All solid waste management facilities which require a permit pursuant to this article shall pay to the Town a program fee as shall be established by the Town Board.

§ 97-37. Enforcement; right of entry for inspections.

A. The Town Building Inspector shall be responsible for the enforcement of any violations of this article.

B. The Town Building Inspector, or his duly designated employee or agent, shall be permitted to enter and inspect at any time any solid waste management facility located in the Town and to access and copy all books, papers, documents and other records relating to the construction, operation and monitoring of the facility.

§ 97-38. Variances.

Editor's Note: Former § 97-38, Penalties for offenses; civil penalties; suspension or revocation of permit, § 97-39, Severability, and § 97-40, When effective, were redesignated as §§ 97-39, 97-40 and 97-41, respectively.

[Added 12-22-1993 by L.L. No. 11-1993]

A. Upon a written verified application by an owner, and by an operator if different from the owner, the Town Board may, in its sole discretion, grant a variance from one or more provisions of this article.

B. An original and 10 copies of an application for a variance pursuant to this section shall be filed with the Town Clerk. An application for a variance must include evidence that:

- (1) Identifies the specific provision(s) of this article from which a variance is sought;
- (2) Demonstrates that strict compliance with the provisions identified creates practical or operational difficulties for the applicant which are substantial in nature and would impose an unreasonable economic or technological burden on the applicant or demonstrates that unusual circumstances exist, unique to the applicant, that should excuse the applicant from strict compliance with this article's provisions;
- (3) Demonstrates that the variance sought is the minimum variance necessary; and
- (4) Demonstrates that the facility, with the variance, shall not have an adverse impact on the public health, safety or welfare or the environment or natural resources of the Town and shall be consistent with the intent, provisions and policies of this article and the Town Code.

C. In making its determination, the Town Board shall take into consideration the following:

- (1) The benefit to the applicant(s) if the variance is granted.
- (2) The detriment to the health, safety and welfare of the neighborhood, community and/or the Town if a variance is granted.
- (3) Whether the benefit sought by the applicant(s) can be achieved by any feasible method other than a variance.
- (4) Whether the variance is substantial.
- (5) Whether adverse impacts or effects may be reasonably expected if the variance is granted and whether such impacts can be mitigated by applicant(s).

(6) Whether the applicant(s) was or should have been aware of the actual or potential difficulty or condition at the time of the acquisition of land, operation or business for which the variance is sought and whether the applicant(s) caused or created or contributed to any condition or difficulty on which the variance application is based.

(7) Whether the variance is the minimum variance necessary.

(8) Whether the denial of the variance will deprive the applicant of all economic use or benefit from the property in question.

D. In making a determination to grant a variance, the Town Board may grant only the minimum variance which is necessary and adequate and, at the same time, which preserves and protects the character of the neighborhood and the health, safety and welfare of the neighborhood, community and the Town. The Town Board may impose any and all conditions and restrictions related to and/or incidental to the siting, construction and/or operation of the facility with the variance. Such conditions shall be consistent with the provisions and policies of this article and shall minimize any adverse impact or effect said variance may have on the neighborhood, community or the Town. The burden of demonstrating the need and appropriateness of the requested variance is solely that of the applicant(s).

E. Application; hearing; determination.

(1) Within 45 days of the date that an application is filed with the Town Clerk, the Town Board shall review the application and make a determination as to whether it is complete and contains all of the information required under this section.

(2) If the application is determined to be incomplete, written notice shall be given to the applicant(s) containing a brief statement identifying material and information required to complete the application. The Town Board may require the submission of additional information before reaching a determination under this section.

(3) When an application is determined to be complete, the Town Board shall schedule a public hearing on said application. Such hearing shall be held within 60 days of the date on which the Board shall determine the application to be complete. The applicant shall be responsible for all costs of any hearing(s), including but not limited to the cost of advertising and the cost of transcribing the minutes of said hearing.

(4) The Town Board shall make a determination to approve or approve with conditions or deny the application for a variance within 30 days of the date on which the hearing transcript is accepted by the Board at a meeting of the Board or from that date when additional documentation requested at the hearing is accepted and determined to be complete by the Board.

F. There shall be no right to a variance under this section. Upon consideration of the criteria set forth herein, the issuance of any variance shall be in the sole discretion of the Town Board. A claim that compliance with this article will cause additional cost or expense for the construction or operation of a solid waste facility or, further, that compliance with this article shall require changes or modifications in an existing facility or its method of operations shall not constitute a basis for the granting of a variance pursuant to the provisions of this article.

G. The applicant(s) shall be liable to the Town for any costs incurred by the Town for the investigation, processing or analysis of an application for a variance, including the Town's legal fees, if any. Payment by the applicant(s) of all such costs shall be a condition precedent to the effective date of any variance granted pursuant to the terms of this section.

H. This section shall take effect immediately upon filing with the Secretary of State.

§ 97-39. Penalties for offenses; civil penalties; suspension or revocation of permit.

A. Any person who shall commit an offense against any of the provisions of this article or fail to comply therewith shall be guilty of a violation and, upon conviction thereof, be punishable by a fine not exceeding \$250 for each

violation or by imprisonment for a term not to exceed 15 days, and/or both such fine and imprisonment. Each act or day of continuance of such act shall constitute a separate violation.

B. Any person who shall violate any of the provisions of this article or fail to comply therewith shall also be liable to the Town for a civil penalty of not less than \$1,000 nor greater than \$2,500 and an additional penalty of \$2,500 for each day during which such violation continues. Each act or day of continuance of such act shall constitute a separate violation.

C. In addition to the penalties above provided, after a hearing the Town Supervisor may revoke any permit issued pursuant to this article if the Town Supervisor at such hearing determines the holder of such permit to be a persistent violator; or incapable of or unwilling to comply with the provisions of this article; or to have intentionally or negligently acted, or failed to act, in a manner that has harmed or created a risk of harm to the aesthetics and environment of the Town and the health or safety of its inhabitants; or to have utilized said permit in a manner inconsistent with this chapter; or to have allowed said permit to be utilized by other than its issue. The permittee shall have an opportunity to be heard at such hearing, which shall be held after such permittee shall be served by written notice of such hearing in person or by registered mail, return receipt requested, not less than 15 days prior to the date of such hearing.

D. Violation of the provisions of this article by an operator shall serve as cause for the suspension or revocation of any permit issued to the owner of such facility.

E. The Town shall also have such other remedies as are provided by law, including the right to injunctive relief.

§ 97-40. Severability.

If any clause, sentence, paragraph, section, article or part of this article shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section, article or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 97-41. When effective.

This article shall take effect when the appropriate certified copies hereof are filed with the Secretary of State pursuant to the applicable provisions of the Municipal Home Rule Law.

CHAPTER 98. STORMWATER MANAGEMENT

CHAPTER 98. STORMWATER MANAGEMENT

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 11-14-2007 by L.L. No. 7-2007. Amendments noted where applicable.]

GENERAL REFERENCES

Flood damage prevention — See Ch. 69.

Freshwater wetlands — See Ch. 72.

Sewers — See Ch. 91.

Solid waste — See Ch. 97.

Subdivision regulations — See Ch. 103.

Zoning — See Ch. 128.

PART 1. Illicit Discharges, Activities and Connections to Separate Storm Sewer System

ARTICLE I. General Provisions

§ 98-1. Purpose/intent.

The purpose of this Part 1 is to provide for the health, safety, and general welfare of the citizens of the Town of Bethlehem through the regulation of nonstormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This Part 1 establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the SPDES General Permit for Municipal Separate Storm Sewer Systems. The objectives of this Part 1 are:

- A. To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02, as amended or revised;
- B. To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process or discharge nonstormwater wastes;
- C. To prohibit illicit connections, activities and discharges to the MS4;
- D. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this Part 1; and
- E. To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the MS4.

§ 98-2. Definitions.

Whenever used in this Part 1, unless a different meaning is stated in a definition applicable to only a portion of this Part 1, the following terms will have meanings set forth below:

BEST MANAGEMENT PRACTICES (BMPs)

Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

CLEAN WATER ACT

The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CONSTRUCTION ACTIVITY

Activities requiring authorization under the SPDES Permit for Stormwater Discharges from Construction Activity, GP-02-01, as amended or revised. These activities include construction projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

DEPARTMENT

The New York State Department of Environmental Conservation.

DESIGN PROFESSIONAL

New York State licensed professional engineer or registered landscape architect.

HAZARDOUS MATERIALS

Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

ILLICIT CONNECTIONS

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4, including but not limited to:

- A. Any conveyances which allow any nonstormwater discharge, including treated or untreated sewage, process wastewater, and wash water, to enter the MS4 and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or

B. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

ILLCIT DISCHARGE

Any direct or indirect nonstormwater discharge to the MS4, except as exempted in § 98-7 of this Part 1.

INDUSTRIAL ACTIVITY

Activities requiring the SPDES Permit for Discharges from Industrial Activities Except Construction, GP-98-03, as amended or revised.

MS4

Municipal separate storm sewer system.

MUNICIPALITY

The Town of Bethlehem.

MUNICIPAL SEPARATE STORM SEWER SYSTEM

A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- A. Owned or operated by the Town of Bethlehem;
- B. Designed or used for collecting or conveying stormwater;
- C. Which is not a combined sewer; and
- D. Which is not part of a publicly owned treatment works (POTW) as defined at 40 CFR 122.2.

NONSTORMWATER DISCHARGE

Any discharge to the MS4 that is not composed entirely of stormwater.

PERSON

Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

POLLUTANT

Dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal, agricultural waste and ballast discharged into water which may cause or might reasonably be expected to cause pollution of the waters of the state in contravention of the standards.

PREMISES

Any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips.

SPECIAL CONDITIONS

- A. Discharge compliance with water quality standards. The condition that applies where a municipality has been notified that the discharge of stormwater authorized under its MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition, the municipality must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.
- B. 303(d) listed waters. The condition in the municipality's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition, the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.
- C. Total maximum daily load (TMDL) strategy. The condition in the municipality's MS4 permit where a TMDL, including requirements for control of stormwater discharges, has been approved by EPA for a water body or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the municipality was required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

D. The condition in the municipality's MS4 permit that applies if a TMDL is approved in the future by EPA for any water body or watershed into which an MS4 discharges. Under this condition, the municipality must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the TMDL stormwater allocations, the municipality must, within six months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

STATE POLLUTANT DISCHARGE ELIMINATION SYSTEM (SPDES) STORMWATER DISCHARGE PERMIT

A permit issued by the Department that authorizes the discharge of pollutants to waters of the state.

STORMWATER

Rainwater, surface runoff, snowmelt and drainage.

STORMWATER MANAGEMENT OFFICER (SMO)

The Town Engineer or his/her designee shall enforce this Part 1. The SMO may also be designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices.

303(d) LIST

A list of all surface waters in the state for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by pollutants, prepared periodically by the Department as required by Section 303(d) of the Clean Water Act. 303(d) listed waters are estuaries, lakes and streams that fall short of state surface water quality standards and are not expected to improve within the next two years.

TMDL

Total maximum daily load.

TOTAL MAXIMUM DAILY LOAD

The maximum amount of a pollutant to be allowed to be released into a water body so as not to impair uses of the water, allocated among the sources of that pollutant.

WASTEWATER

Water that is not stormwater, is contaminated with pollutants and is or will be discarded.

§ 98-3. Applicability.

This Part 1 shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

§ 98-4. Responsibility for administration.

The Stormwater Management Officer(s) [SMO(s)] shall administer, implement, and enforce the provisions of this Part 1. Such powers granted or duties imposed upon the authorized enforcement official may be delegated in writing by the SMO as may be authorized by the municipality.

§ 98-5. Severability.

The provisions of this Part 1 are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Part 1 or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Part 1.

§ 98-6. Adoption of law.

This Part 1 shall be in full force and effect on January 1, 2008. All prior laws and parts of law in conflict with this Part 1 are hereby repealed.

ARTICLE II. Prohibited Activities

§ 98-7. Discharge and connection prohibitions.

A. Prohibition of illegal discharges. No person shall discharge or cause to be discharged into the MS4 any materials other than stormwater except as provided in Subsection A(1). The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:

(1) The following discharges are exempt from discharge prohibitions established by this Part 1, unless the Department or the municipality has determined them to be substantial contributors of pollutants: water line flushing or other potable water sources, (water line flushing of superchlorinated water used to disinfect water mains shall be dechlorinated), landscape irrigation or lawn watering, existing diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains, crawl space or basement sump pumps, air-conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire-fighting activities, and any other water source not containing pollutants. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants.

(2) Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this Part 1.

(3) Dye testing in compliance with applicable state and local laws is an allowable discharge, but requires a verbal notification to the SMO prior to the time of the test.

(4) The prohibition shall not apply to any discharge permitted under a SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Department, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.

B. Prohibition of illicit connections.

(1) The construction, use, maintenance or continued existence of illicit connections to the MS4 is prohibited.

(2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

(3) A person is considered to be in violation of this Part 1 if the person connects a line conveying sewage to the municipality's MS4, or allows such a connection to continue.

§ 98-8. Prohibition against activities contaminating stormwater.

A. Activities that are subject to the requirements of this section are those types of activities that:

(1) Cause or contribute to a violation of the municipality's MS4 SPDES permit.

(2) Cause or contribute to the municipality being subject to the special conditions as defined in Article I, § 98-2 (Definitions), of this Part 1.

B. Upon notification to a person that he or she is engaged in activities that cause or contribute to violations of the municipality's MS4 SPDES permit authorization, that person shall take all reasonable actions to correct such activities such that he or she no longer causes or contributes to violations of the municipality's MS4 SPDES permit authorization.

ARTICLE III. Discharges and Access to MS4

§ 98-9. Prevention, control and reduction of stormwater pollutants by use of best management practices.

Best management practices. Where the SMO has identified illicit discharges as defined in Article I, § 98-2, or activities contaminating stormwater as defined in Article II, § 98-8, the municipality may require implementation of best management practices (BMPs) to control those illicit discharges and activities.

A. The owner or operator of a commercial or industrial establishment shall provide, at his or her own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the MS4 through the use of structural and nonstructural BMPs.

B. Any person responsible for a property or premises, which is or may be the source of an illicit discharge as defined in Article I, § 98-2, or an activity contaminating stormwater as defined in Article II, § 98-8, may be required to implement, at said person's expense, additional structural and nonstructural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.

C. Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

§ 98-10. Suspension of access to MS4.

A. Illicit discharges in emergency situations. The SMO may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the MS4. The SMO shall notify the person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the SMO may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.

B. Suspension due to the detection of illicit discharge. Any person discharging to the municipality's MS4 in violation of this Part 1 may have his or her MS4 access terminated if such termination would abate or reduce an illicit discharge. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the SMO for a reconsideration and hearing. Access may be granted by the SMO if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the SMO determines in writing that the illicit discharge has not ceased or is likely to recur. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section without the prior approval of the SMO.

§ 98-11. Industrial or construction activity discharges.

Any person subject to an industrial or construction activity SPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the municipality prior to the allowing of discharges to the MS4.

§ 98-12. Access to facilities and monitoring of discharges.

A. Applicability. This section applies to all facilities that the SMO must inspect to enforce any provision of this Part 1, or whenever the authorized enforcement agency has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Part 1.

B. Access to facilities.

(1) The SMO shall be permitted to enter and inspect facilities subject to regulation under this Part 1 as often as may be necessary to determine compliance with this Part 1. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the SMO.

(2) Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this Part 1.

(3) The municipality shall have the right to set up on any facility subject to this Part 1 such devices as are necessary, in the opinion of the SMO, to conduct monitoring and/or sampling of the facility's stormwater discharge.

(4) The municipality has the right to require the facilities subject to this Part 1 to install monitoring equipment as is reasonably necessary to determine compliance with this Part 1. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

(5) Unreasonable delays in allowing the municipality access to a facility subject to this Part 1 is a violation of this Part 1. A person who is the operator of a facility subject to this Part 1 commits an offense if the person denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by this Part 1.

(6) If the SMO has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Part 1, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Part 1 or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction.

§ 98-13. Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the MS4, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the municipality in person or by telephone or facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the municipality within three business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

ARTICLE IV. Administration and Enforcement

§ 98-14. Enforcement; penalties for offenses.

A. Notice of violation. When the municipality's SMO finds that a person has violated a prohibition or failed to meet a requirement of this Part 1, he/she may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The elimination of illicit connections or discharges;
- (2) That violating discharges, practices, or operations shall cease and desist;
- (3) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (4) The performance of monitoring, analyses, and reporting;
- (5) Payment of a fine; and
- (6) The implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration

must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

B. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this Part 1 shall be guilty of a violation punishable by a fine not exceeding \$350 or 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 not less than \$350 nor more than \$700 or 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 not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed 15 days, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this Part 1 shall be deemed misdemeanors and, for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each day's continued violation shall constitute a separate additional violation.

[Amended 2-25-2009 by L.L. No. 3-2009]

§ 98-15. Appeal of notice of violation.

Any person receiving a notice of violation may appeal the determination of the SMO to the Town Board within 15 days of its issuance, which shall hear the appeal within 30 days after the filing of the appeal, and, within five days of making its decision, file its decision in the office of the municipal clerk and mail a copy of its decision by certified mail to the discharger.

§ 98-16. Corrective measures after appeal.

A. If the violation has not been corrected pursuant to the requirements set forth in the notice of violation or, in the event of an appeal, within five business days of the decision of the municipal authority upholding the decision of the SMO, then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.

B. If refused access to the subject private property, the SMO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger.

§ 98-17. Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Part 1. If a person has violated or continues to violate the provisions of this Part 1, the SMO may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

§ 98-18. Alternative remedies.

A. Where a person has violated a provision of this Part 1, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Municipal Attorney and concurrence of the Municipal Code Enforcement Officer, where:

- (1) The violation was unintentional.
- (2) The violator has no history of previous violations of this Part 1.
- (3) Environmental damage was minimal.
- (4) The violator acted quickly to remedy the violation.

(5) The violator cooperated in investigation and resolution.

B. Alternative remedies may consist of one or more of the following:

(1) Attendance at compliance workshops.

(2) Storm drain stenciling or storm drain marking.

(3) River, stream or creek cleanup activities.

§ 98-19. Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this Part 1 is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

§ 98-20. Remedies not exclusive.

The remedies listed in this Part 1 are not exclusive of any other remedies available under any applicable federal, state or local law, and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

PART 2. Stormwater Management and Erosion and Sediment Control

ARTICLE V. General Provisions

§ 98-21. Findings of fact.

It is hereby determined that:

A. Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;

B. This stormwater runoff contributes to increased quantities of waterborne pollutants, including siltation of aquatic habitats for fish and other desirable species;

C. Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitats;

D. Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff, thereby increasing stream bank erosion and sedimentation;

E. Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;

F. Substantial economic losses can result from these adverse impacts on the waters of the municipality;

G. Stormwater runoff, soil erosion and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;

H. The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety;

I. Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatible with the natural functions of a particular site or an entire watershed and thereby mitigate the adverse effects of erosion and sedimentation from development.

§ 98-22. Purpose.

The purpose of this Part 2 is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in § 98-21 hereof. This Part 2 seeks to meet those purposes by achieving the following objectives:

- A. Meet the requirements of minimum measures 4 and 5 of the SPDES General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit No. GP-02-02, as amended or revised;
- B. Require land development activities to conform to the substantive requirements of the NYS Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Construction Activities, GP-02-01, as amended or revised;
- C. Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and streambank erosion and maintain the integrity of stream channels;
- D. Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- E. Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
- F. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management practices and to ensure that these management practices are properly maintained and eliminate threats to public safety.

§ 98-23. Statutory authority.

In accordance with § 10 of the Municipal Home Rule Law of the State of New York, the Town Board of Bethlehem has the authority to enact local laws and amend local laws for the purpose of promoting the health, safety or general welfare of the Town of Bethlehem and for the protection and enhancement of its physical environment. The Town Board of Bethlehem may include in any such local law provisions for the appointment of any municipal officer, employees, or independent contractor to effectuate, administer and enforce such local law.

§ 98-24. Applicability.

- A. This Part 2 shall be applicable to all land development activities as defined in this Part 2, Article VI, § 98-26.
- B. The municipality shall designate a Stormwater Management Officer who shall accept and review all stormwater pollution prevention plans and forward such plans to the applicable municipal board. The Stormwater Management Officer may review the plans; engage the services of a licensed professional engineer or registered landscape architect to review the plans, specifications and related documents at a cost not to exceed a fee schedule established by said governing board; or accept the certification of a licensed professional engineer or registered landscape architect that the plans conform to the requirements of this Part 2.
- C. All land development activities subject to review and approval by the applicable board of the Town of Bethlehem under subdivision, site plan, and/or special permit regulations shall be reviewed subject to the standards contained in this Part 2.

D. All land development activities not subject to review as stated in Subsection C shall be required to submit a stormwater pollution prevention plan (SWPPP) to the Stormwater Management Officer who shall approve the SWPPP if it complies with the requirements of this Part 2.

§ 98-25. Exemptions.

The following activities may be exempt from review under this Part 2:

- A. Agricultural activity, as defined in this Part 2.
- B. Silvicultural activity, except that landing areas and log haul roads are subject to this Part 2.
- C. Routine maintenance activities that disturb less than five acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.
- D. Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer.
- E. Any part of a subdivision if a plat for the subdivision has been approved by the Town of Bethlehem on or before the effective date of this Part 2.
- F. Land development activities for which a building permit has been approved on or before the effective date of this Part 2.
- G. Cemetery graves.
- H. Installation of fence, sign, telephone, and electric poles and other kinds of posts or poles.
- I. Emergency activity immediately necessary to protect life, property or natural resources.
- J. Activities of an individual engaging in home gardening by growing flowers, vegetables and other plants primarily for use by that person and his or her family.

ARTICLE VI. Stormwater Control

§ 98-26. Definitions.

The terms used in this Part 2 or in documents prepared or reviewed under this Part 2 shall have the meaning as set forth in this section.

AGRICULTURAL ACTIVITY

The activity of an active farm, including grazing and watering livestock, irrigating crops, harvesting crops, using land for growing agricultural products, and cutting timber for sale, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities.

APPLICANT

A property owner or agent of a property owner who has filed an application for a land development activity.

BUILDING

Any structure, either temporary or permanent, having walls or supported by columns and a roof, designed for the shelter of any person, animal, or property.

CHANNEL

A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

CLEARING

Any activity that removes the vegetative surface cover.

DEDICATION

The deliberate appropriation of property by its owner for general public use.

DEPARTMENT

The New York State Department of Environmental Conservation.

DESIGN MANUAL

The "New York State Stormwater Management Design Manual," most recent version, including applicable updates, that serves as the official guide for stormwater management principles, methods and practices.

DEVELOPER

A person who undertakes land development activities.

EROSION CONTROL MANUAL

The most recent version of the "New York Standards and Specifications for Erosion and Sediment Control Manual," commonly known as the "Blue Book."

GRADING

Excavation or fill of material, including the resulting conditions thereof.

IMPERVIOUS COVER

Those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snowmelt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc).

INDUSTRIAL STORMWATER PERMIT

A state pollutant discharge elimination system permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

INFILTRATION

The process of percolating stormwater into the subsoil.

JURISDICTIONAL WETLAND

An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

LAND DEVELOPMENT ACTIVITY

Construction activity, including clearing, grading, excavating, soil disturbance or placement of fill, that results in:

A. Land disturbance of equal to or greater than one acre.

B. Activities disturbing less than one acre of total land area that are part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

LANDOWNER

The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

MAINTENANCE AGREEMENT

A legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

NONPOINT SOURCE POLLUTION

Pollution from any source, other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

PHASING

Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

POLLUTANT OF CONCERN

Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

PROJECT

Land development activity.

RECHARGE

The replenishment of underground water reserves.

SEDIMENT CONTROL

Measures that prevent eroded sediment from leaving the site.

SENSITIVE AREAS

Cold-water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, and habitats for threatened, endangered or special-concern species.

SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01

A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one or more acres of land.

SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02

A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA-established water quality standards and/or to specify stormwater control standards.

STABILIZATION

The use of practices that prevent exposed soil from eroding.

STOP-WORK ORDER

An order issued which requires that all construction activity on a site be stopped.

STORMWATER

Rainwater, surface runoff, snowmelt and drainage.

STORMWATER HOTSPOT

A land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

STORMWATER MANAGEMENT

The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

STORMWATER MANAGEMENT FACILITY

One or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.

STORMWATER MANAGEMENT OFFICER (SMO)

An employee or officer designated by the Town Board to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board and inspect stormwater management practices. The Town Engineer or his/her designee is hereby designated to be the SMO.

STORMWATER MANAGEMENT PRACTICES (SMPS)

Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

STORMWATER RUNOFF

Flow on the surface of the ground resulting from precipitation.

SURFACE WATERS OF THE STATE OF NEW YORK

Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction. Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition, are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the state.

WATERCOURSE

A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

WATERWAY

A channel that directs surface runoff to a watercourse or to the public storm drain.

§ 98-27. Stormwater pollution prevention plans.

A. Stormwater pollution prevention plan requirement. No application for approval of a land development activity shall be approved until the appropriate board has accepted a stormwater pollution prevention plan (SWPPP) prepared in accordance with the specifications in this Part 2.

B. Contents of stormwater pollution prevention plans.

(1) All SWPPPs shall provide the following background information and erosion and sediment controls:

(a) Background information about the scope of the project, including location, type and size of project;

(b) Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s); the site map shall be at a scale as determined by the SMO;

(c) Description of the soil(s) present at the site;

(d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five acres shall be disturbed at any one time unless pursuant to an approved SWPPP;

(e) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;

(f) Description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices, to minimize exposure of the materials to stormwater, and spill prevention and response;

(g) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out;

(h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;

(i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;

(j) Temporary practices that will be converted to permanent control measures;

(k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;

(l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;

(m) Name(s) of the receiving water(s);

(n) Delineation of SWPPP implementation responsibilities for each part of the site;

(o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and

(p) Any existing data that describes the stormwater runoff at the site.

(2) Land development activities as defined in § 98-26 of this article and meeting Condition A, B or C below shall also include water quantity and water quality controls (postconstruction stormwater runoff controls) as set forth in Subsection B(3) below as applicable:

(a) Condition A: stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.

(b) Condition B: stormwater runoff from land development activities disturbing five or more acres.

(c) Condition C: stormwater runoff from land development activity disturbing between one and five acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties.

(3) SWPPP requirements for Conditions A, B and C:

(a) All information in Subsection B(1) of this Part 2.

(b) Description of each postconstruction stormwater management practice.

(c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each postconstruction stormwater management practice.

(d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms.

(e) Comparison of postdevelopment stormwater runoff conditions with predevelopment conditions.

(f) Dimensions, material specifications and installation details for each postconstruction stormwater management practice.

(g) Maintenance schedule to ensure continuous and effective operation of each postconstruction stormwater management practice.

(h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property.

(i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with Article VI, § 98-29, of this Part 2.

C. Plan certification. The SWPPP shall be prepared by a registered landscape architect or licensed professional engineer and must be signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meets the requirements in this Part 2.

D. Other environmental permits. The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

E. Contractor certification.

(1) Each contractor and subcontractor who will be involved in soil disturbance and/or stormwater management practice installation identified in the SWPPP shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the stormwater pollution prevention plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."

(2) The certification must include the name and title of the person providing the signature; the address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

(3) The certification statement(s) shall become part of the SWPPP for the land development activity.

F. A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

§ 98-28. Performance and design criteria.

All land development activities shall be subject to the following performance and design criteria:

A. Technical standards. For the purpose of this Part 2, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed to meet the most restrictive of the following technical documents, as determined by the SMO, shall be presumed to meet the standards imposed by this Part 2:

(1) The New York State Stormwater Management Design Manual (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the "Design Manual").

(2) New York Standards and Specifications for Erosion and Sediment Control, (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the "Erosion Control Manual").

(3) Town of Bethlehem Standard Specifications and Details.

B. Water quality standards. Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

C. Equivalence to technical standards. Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in Article VI, § 98-28A, and the SWPPP shall be prepared by a licensed professional.

[Added 2-25-2009 by L.L. No. 3-2009]

§ 98-29. Maintenance, inspection and repair of stormwater facilities.

[Amended 2-25-2009 by L.L. No. 3-2009]

A. Maintenance and inspection during construction.

(1) The applicant or developer of the land development activity shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this Part 2. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%.

(2) The applicant or developer or his or her representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices. Timing of inspections shall be in accordance with current NYSDEC requirements. The reports shall be delivered to the Stormwater Management Officer and also copied to the site logbook.

B. Maintenance easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement

shall provide for access to the facility at reasonable times for periodic inspection by the Town of Bethlehem to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this Part 2. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the counsel for the Town of Bethlehem.

C. Maintenance after construction. The owner or operator of permanent stormwater management practices installed in accordance with this Part 2 shall ensure they are operated and maintained to achieve the goals of this Part 2. Proper operation and maintenance also includes, as a minimum, the following:

(1) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this Part 2.

(2) Written procedures for operation and maintenance and training new maintenance personnel.

(3) Discharges from the SMPs shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with Article VI, § 98-28B.

D. Maintenance agreements. The Town of Bethlehem shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of Schedule B of this Part 2 entitled "Sample Stormwater Control Facility Maintenance Agreement." Editor's Note: A copy of the sample maintenance agreement is on file in the Town offices. The Town of Bethlehem, in lieu of a maintenance agreement, at its sole discretion, may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this Part 2 and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

§ 98-30. Severability and effective date.

A. Severability. If the provisions of any article, section, subsection, paragraph, subdivision or clause of this Part 2 shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this Part 2.

B. Effective date. This Part 2 shall take effect January 1, 2008 after filing with the office of the Secretary of State. Approved by the Town Board November 14, 2007.

ARTICLE VII. Administration and Enforcement

§ 98-31. Inspections.

A. Erosion and sediment control inspections during construction.

(1) The Town of Bethlehem Stormwater Management Officer may require such inspections as necessary to determine compliance with this Part 2 and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this Part 2 and the stormwater pollution prevention plan (SWPPP) as approved. To obtain inspections, the applicant shall notify the Town of Bethlehem enforcement official at least 48 hours before any of the following as required by the Stormwater Management Officer:

(a) Start of construction.

(b) Installation of sediment and erosion control measures.

(c) Completion of site clearing.

- (d) Completion of rough grading.
- (e) Completion of final grading.
- (f) Close of the construction season or prior to a prolonged shutdown (exceeding 30 days).
- (g) Completion of final landscaping.
- (h) Successful establishment of landscaping in public areas.

(2) If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected, unless approved in writing by the Stormwater Management Officer and all work previously completed has received approval by the Stormwater Management Officer.

B. Final construction stormwater management practice inspections The Town of Bethlehem Stormwater Management Officer is responsible for conducting final construction inspections of stormwater management practices (SMPs). All applicants are required to submit "record drawing" plans for any stormwater management practices located on site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a licensed professional engineer or registered landscape architect.

C. Postconstruction inspection of stormwater facilities. Inspection programs shall be established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher-than-typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher-than-usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include but are not limited to reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.

D. Submission of reports. The Town of Bethlehem Stormwater Management Officer may require monitoring and reporting from entities subject to this Part 2 as are necessary to determine compliance with this Part 2.

E. Right-of-entry for inspection. When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public stormwater system, the landowner shall grant to the Town of Bethlehem the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in Subsection C.

§ 98-32. Performance guarantee; recordkeeping.

A. Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Town of Bethlehem in its approval of the stormwater pollution prevention plan, the Town of Bethlehem may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town of Bethlehem as the beneficiary. The security shall be in an amount to be determined by the Town of Bethlehem based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Town of Bethlehem, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one-year inspection has been conducted and the facilities have been found to be acceptable to the Town of Bethlehem. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

B. Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town of Bethlehem with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Town of Bethlehem may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

C. Recordkeeping. The Town of Bethlehem requires entities subject to this Part 2 to maintain records demonstrating compliance with this Part 2. The Town of Bethlehem, at its discretion, has the right to review owners' records.

§ 98-33. Enforcement; penalties for offenses.

A. Notice of violation. When the Town of Bethlehem determines that a land development activity is not being carried out in accordance with the requirements of this Part 2, it may issue a written notice of violation to the landowner. The notice of violation shall contain:

- (1) The name and address of the landowner, developer or applicant;
- (2) The address, when available, or a description of the building, structure or land upon which the violation is occurring;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to bring the land development activity into compliance with this Part 2 and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (6) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation.

B. Stop-work orders. The Town of Bethlehem may issue a stop-work order for violations of this Part 2. Persons receiving a stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop-work order. The stop-work order shall be in effect until the Town of Bethlehem confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop-work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this Part 2.

C. Violations. Any land development activity that is commenced or is conducted contrary to this Part 2 may be restrained by injunction or otherwise abated in a manner provided by law.

D. Penalties. In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this Part 2 shall be guilty of a violation punishable by a fine not exceeding \$350 or 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 not less than \$350 nor more than \$700 or 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 not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed 15 days, or both. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this Part 2 shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each day's continued violation shall constitute a separate additional violation.

[Amended 2-25-2009 by L.L. No. 3-2009]

E. Withholding of certificate of occupancy. If any building or land development activity is installed or conducted in violation of this Part 2, the Stormwater Management Officer may prevent the occupancy of said building or land.

F. Restoration of lands. Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Bethlehem may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

§ 98-34. Fees for services.

The Town of Bethlehem may require any person undertaking land development activities regulated by this Part 2 to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SMP maintenance performed by the Town of Bethlehem or performed by a third party for the Town of Bethlehem.

CHAPTER 100. STREETS AND SIDEWALKS

CHAPTER 100. STREETS AND SIDEWALKS

[HISTORY: Adopted by the Town Board of the Town of Bethlehem as indicated in part histories. Amendments noted where applicable.]

GENERAL REFERENCES

Subdivision regulations — See Ch. 103.

PART 1. Acceptance of Proposed Streets and Highways

[Adopted 6-13-1979]

ARTICLE I. General Provisions

§ 100-1. Purpose.

The purpose of this Part 1 is to establish standards to which a proposed street or highway shall conform prior to acceptance by the Town Board. Except as hereinafter provided, no proposed street or highway shall be accepted by the Town unless and until it conforms to the standards herein set forth.

§ 100-2. Discretion of Town Board.

The Town Board may refuse to accept a proposed street or highway notwithstanding that it conforms to all of the provisions of this Part 1 if in the judgment of the Board the public interest will not be served by such acceptance. The Town Board may, in its discretion, accept a proposed street or highway notwithstanding that it does not conform to all of the provisions of this Part 1 if in its judgment the public interest will be served by such acceptance and subject to such conditions as the Town Board may impose.

§ 100-3. Streets or highways in subdivisions.

The approval by the Planning Board of a land subdivision Editor's Note: See Ch. 103, Subdivision Regulations. shall be required prior to the acceptance by the Town of any proposed street or highway or portion thereof which is located within the boundaries of such subdivision.

§ 100-4. Request for acceptance of street or highway.

Requests for acceptance of a proposed street or highway shall be addressed to the Town Board and shall be signed by all the owners of the proposed street or highway.

ARTICLE II. Location and Design

§ 100-5. Factors for consideration.

In determining whether the location, width, grade, length and alignment of a particular proposed street or highway are satisfactory, due consideration will be given to the location of existing streets and highways and other proposed streets and highways, the topography and proposed use of the land to be served and public safety.

§ 100-6. Proposed street to join or intersect existing improved highway.

A proposed street or highway shall intersect or join an existing state or county highway or an existing Town highway which has been improved to the satisfaction of the Town Superintendent of Highways.

§ 100-7. Intersection to be approved by state or county authorities.

The intersection or junction of a proposed street or highway with an existing state or county highway shall be approved by the New York State Department of Transportation or the County Superintendent of Highways, respectively, and evidence of such approval, satisfactory to the Town Board, shall be submitted to the Town Board at the time a proposed street or highway is offered for acceptance.

§ 100-8. Manner of making intersection.

A particular proposed street or highway shall intersect or join an existing street or highway or other proposed street or highway in such manner that the intersection or junction shall consist of not more than four vehicular outlets.

§ 100-9. Intersection to be by simple curve or long chord of curve.

At intersections and junctions, each right-of-way boundary of a proposed street or highway shall connect with the right-of-way boundary of an existing street or highway or the right-of-way boundary of another proposed street or highway by means of a simple curve, the radius of which shall not be less than 25 feet, or by means of the long chord of such curve.

§ 100-10. Minimum width of street right-of-way.

The right-of-way of a proposed street or highway shall not be less than 50 feet in width, and a greater width may be required by the Town Board.

§ 100-11. Center-line gradient of proposed street.

Except at intersections, the center-line gradient of a proposed street or highway shall not be less than 0.8 of 1% nor more than 10%.

ARTICLE III. Layout and Construction

§ 100-12. Setting of stakes required for location, alignment and elevation.

All stakes required for location, alignment and elevation in connection with the construction, improvement or treatment of a proposed street or highway under the provisions of this Part 1 shall be set and properly marked by or under the responsible direction of a licensed professional engineer or a licensed land surveyor, at the expense of the owner.

§ 100-13. Phases of construction to be completed prior to acceptance.

Prior to the acceptance of a proposed street or highway by the Town Board, the following phases of construction shall have been completed by the grantor at his (her) expense and in full conformance with the current specifications of the Town Superintendent of Highways:

- A. The right-of-way of the proposed street or highway shall have been cleared and rough graded for the full width and length of said right-of-way.
- B. That portion of the storm drainage system which has been determined by the Town Board to be necessary for the drainage of surface water from the proposed street or highway and the land adjacent thereto shall have been installed.
- C. Acceptable subbase material shall have been placed to the proper depth, properly crowned and thoroughly compacted in that portion of the right-of-way intended or reserved for vehicular travel.
- D. The area of the right-of-way of the proposed street or highway which is not reserved or intended for vehicular travel shall have been improved and treated.
- E. The base course for the final pavement or wearing surface shall have been placed or installed in that portion of the right-of-way intended or reserved for vehicular traffic.

§ 100-14. Approval of phases of construction; additional requirements.

The approval of the Town Superintendent of Highways of the phases of construction listed in § 100-13 shall have been given to the Town Board prior to the acceptance of a proposed street or highway by the said Town Board.

- A. In addition to the construction requirements stated in § 100-13, it shall be the responsibility of the grantor, and at his (her) expense, to place or install the final pavement or wearing surface on the proposed street or highway and to place monuments to locate the right-of-way for such street or highway in accordance with the specifications of the Town Superintendent of Highways.
- B. In order to assure the installation of an acceptable final pavement on a proposed street or highway and the installation of proper monuments to locate the right-of-way, there shall be submitted to the Town Board, prior to the acceptance of the proposed street or highway by the Town Board, a bond in an amount determined by the Town to guarantee the placement or installation of such final pavement or wearing surface and the placement of the required right-of-way monuments in respect to the proposed street or highway offered for acceptance.
- C. The final pavement shall be installed and the monuments set for the proposed street or highway when so directed by the Town Superintendent of Highways.

§ 100-15. General supervision of layout and construction.

All layout and construction work performed on streets and highways which are covered by this Part 1 shall be performed under the general supervision of the Town Superintendent of Highways and in accordance with the specifications of the Town Superintendent of Highways.

§ 100-16. Supervision of work performed by owner.

All work performed by the owner in the right-of-way of an existing Town street or highway in connection with the construction, improvement and treatment of the proposed street or highway or in connection with the installation of facilities and utilities within the right-of-way of said proposed street or highway shall be or shall have been performed with the prior permission and under the general supervision of the Town Superintendent of Highways.

ARTICLE IV. Maps and Documents

§ 100-17. Supplying of maps, plans and documents by owner.

Maps, plans, profiles and documents required by the Town Board in connection with the acceptance of a proposed street or highway shall be furnished by the owner in the form and in the number of copies prescribed by the Town Board, and all such material shall be delivered by the owner of the Town Clerk.

§ 100-18. Basis of elevations shown on maps, plans and profiles.

All elevations shown on maps, plans and profiles submitted to the Town Board under the provisions of this Part 1 shall be based on United States Government datum, as established by the United States Geological Survey and the United States Coast and Geodetic Survey.

§ 100-19. Materials to accompany request for acceptance of street.

At the time of the submission to the Town Board of a formal written request for acceptance of a proposed street or highway, the owner shall file with said request:

- A. A proposed deed description of the street or highway right-of-way for which acceptance is being requested, said description to have been prepared in a manner such that it represents a closed and balanced traverse.
- B. A suggested name for the street or highway.
- C. A proposed profile of the street or highway.
- D. A fully dimensioned and annotated map prepared by a licensed land surveyor, showing the street or highway right-of-way described in the proposed deed description, said map to be at a scale of 1:1,200 or 1:600 (the choice of scale being such as to provide a legible map approximately 8 1/2 inches by 13 inches in size), and said map also showing in detail the survey ties to existing monuments or base lines used to locate the proposed street or highway, and said map also showing both right-of-way lines of the existing street or highway which the proposed street or highway intersects or joins.

§ 100-20. Additional maps and documents.

The owner shall furnish the following additional maps and documents:

- A. A separate warranty deed to the Town of Bethlehem conveying the right-of-way of each proposed street or highway.
- B. Easements, in warranty deed form, together with appropriate fully dimensioned and annotated maps prepared by a licensed land surveyor, as required by the Town Board.
- C. Releases from holders of mortgages or other liens on the land conveyed by the said deed or deeds and on the land subject to the said easement or easements.
- D. An adequate title search covering the forty-year period prior to the time the deed of the proposed street or highway is delivered to the Town and a tax search, to cover both the land conveyed by the said deeds and said easements.
- E. Such other maps or documents as may be required by the Town Board.

ARTICLE V. Acceptance Prior to Completion of Construction

§ 100-21. Prerequisites for acceptance of a proposed street prior to completion.

The owner of the right-of-way of a proposed street or highway may request the acceptance of the proposed street or highway by the Town Board prior to the completion of construction of said street or highway, and the Town Board may accept said street or highway, provided that at the time of such acceptance by the Town Board there is deposited with the Town Board by the owner:

A. A check, performance bond or other security as set forth in § 106 of the General Municipal Law, in an amount determined by the Town Board to be sufficient to defray the expense of completing the proposed street or highway in accordance with the provisions of this Part 1.

B. A written guaranty by the owner that the construction will be completed within the time allowed by the Town Board and that the owner will comply with any and all conditions imposed by the Town Board.

C. An insurance policy or policies, in a company and in an amount satisfactory to the Town Board, insuring the Town and any special districts involved against liability for personal injuries and property damage arising out of the construction of the said street or highway.

§ 100-22. Cashier's check required; other documents.

A check deposited with the Town Board under the provisions of § 100-21 shall be a cashier's check payable to the Town of Bethlehem. Such check or other security shall be accompanied by such documents as may be required by the Town Attorney to empower the Town Board to utilize the full amount of the check or other security or such portion as may be necessary to complete the construction of the proposed street or highway in the event that the grantor fails to complete construction of the proposed street or highway within the time allotted for such construction by the Town Board.

§ 100-23. Form of bond required.

A bond deposited with the Town Board under the provisions of § 100-21 shall be in a form satisfactory to the Town Attorney and shall be written by a bonding company acceptable to the Town Board.

§ 100-24. Completion of portion of construction; reduction of check or bond.

Upon completion of a portion of the construction of a proposed street or highway accepted by the Town Board under the provisions of § 100-21 and upon application of the grantor, the Town Board may reduce the amount of the check or bond deposited with the Town Board, provided that the amount of the check or bond remaining on deposit with the Town Board shall be sufficient, in the determination of the Town Board, to complete the construction of the proposed street or highway.

§ 100-25. Certification of completion of street.

Upon completion of a street or highway which has been accepted by the Town Board prior to completion pursuant to the provisions of this article, the Town Superintendent of Highways shall certify such completion to the Town Board.

§ 100-26. Extension of time for completion.

The Town Board shall have the right, in its discretion and upon good cause shown, to extend the time originally granted for completion of a street or highway pursuant to the provisions of this article.

ARTICLE VI. Monuments

§ 100-27. Setting of monuments to locate right-of-way before release of security.

Prior to the release of the security posted with the Town Board to enable the acceptance of a proposed street or highway by such Board as provided by Article III and Article V of this Part 1, there shall have been set by a licensed land surveyor, at the expense of the owner, an adequate number of monuments to properly and accurately locate the right-of-way of the proposed street or highway.

§ 100-28. Design and installation of monuments.

The monuments shall be of a design satisfactory to the Town Superintendent of Highways, and when set the elevation of the top of each installed monument shall be established in respect to United States Government datum as determined by the United States Geological Survey and the United States Coast and Geodetic Survey.

§ 100-29. Verification of accuracy of location and elevation.

Prior to the release of the aforementioned security by the Town Board, the owner shall furnish the Board the affidavit of the licensed land surveyor verifying the accuracy of the location and elevation of each monument set to locate the right-of-way of the street or highway, together with a map showing necessary ties between the monuments and the right-of-way lines of the proposed street or highway.

ARTICLE VII. Waivers and Modifications

§ 100-30. Application for waiver or modification.

Applications for waivers or modifications made by the owner shall be submitted to the Town Board and shall state the provisions of this Part 1 from which a waiver or modification is requested, and the application shall also state the reason for the request.

§ 100-31. Conditions for waivers.

In granting waivers or modifications to this Part 1, the Town Board may impose any conditions which it may deem necessary to secure the general objectives of this Part 1.

§ 100-32. Waiver of provisions by Town Board on its own motion.

In respect to a particular proposed street or highway, the Town Board may, upon its own motion, waive any provisions of this Part 1 if in its judgment such waiver is in the interest of public health, safety and general welfare, and may impose such conditions on such waiver as it deems appropriate.

§ 100-33. Copies of resolutions granting waivers or modifications.

Copies of resolutions of the Town Board waiving or modifying any of the provisions of this Part 1 shall be delivered by the Town Clerk to the applicant, the Planning Board, the Town Superintendent of Highways and to such others as the Town Board may direct.

ARTICLE VIII. Applicability

§ 100-34. Applicability to all proposed streets.

This Part 1 shall apply to all proposed streets or highways offered to the Town for acceptance after the effective date of this Part 1.

§ 100-35. Streets accepted prior to effective date of Part 1.

Certain proposed streets or highways which were accepted by the Town Board prior to the effective date of this Part 1 and prior to completion of construction, and the acceptance of which was made possible by the posting of security with the Town Board guaranteeing satisfactory completion of construction and which are still not completed to the satisfaction of the Town Superintendent of Highways on the effective date of this Part 1, shall be completed in accordance with the pertinent ordinance in effect at the time of such acceptance.

§ 100-36. Applicability to accepted streets not yet opened to public use.

A particular street or highway for which the right-of-way has been dedicated to and accepted by the Town prior to the effective date of this Part 1 but which has not been improved for the passage of traffic to the satisfaction of the Town Superintendent of Highways may be determined by the Town Board to be subject to certain provisions of this

Part 1 in the event that the Board receives a request that such street or highway be opened for public use, notwithstanding the prior acceptance of the right-of-way by the Town.

§ 100-37. Applicability to certain unimproved streets owned by the Town.

A particular street or highway right-of-way, the ownership of which is considered as running to the Town on the basis of existing records in the office of the Albany County Clerk but which has never been improved for the passage of traffic to the satisfaction of the Town Superintendent of Highways, may be determined by the Town Board to be subject to certain provisions of this Part 1 in the event that the Board receives a request that such street or highway be opened for public use.

PART 2. Obstructions on Town Rights-of-Way

[Adopted 1-13-1982]

ARTICLE IX. Unlawful Obstructions

§ 100-38. Planting trees, shrubs or fences in highway right-of-way.

It shall be unlawful to plant any tree, shrub or plant or to erect any fence, wall or berm within the right-of-way of any Town highway, or in any other way encroach upon any public street, parkway or right-of-way or other public place.

§ 100-39. Maintaining trees, shrubs or fences in highway right-of-way.

[Amended 5-22-1991 by L.L. No. 2-1991]

It shall be unlawful to maintain any tree, shrub, plant, fence, wall, berm or other obstruction within the Town highway right-of-way which creates a hazardous condition for vehicular or pedestrian traffic or that interferes with the proper maintenance of any Town highway.

§ 100-40. Notice of violation.

[Amended 5-22-1991 by L.L. No. 2-1991]

In the event that an obstruction is found which violates this article, the Building Inspector shall notify the owner of the property or the owner of the abutting property by certified mail and request the removal thereof.

§ 100-41. Removal of obstructions by Town; costs.

[Amended 5-22-1991 by L.L. No. 2-1991]

If, within 30 days after having received notice, said landowner or abutting landowner has not complied with the terms of this article, Town employees may remove said obstruction, and the landowner or abutting landowner shall be charged by the Town of Bethlehem for the reasonable cost of said removal.

§ 100-42. Penalties for offenses.

[Added 5-22-1991 by L.L. No. 2-1991]

A violation of this article is hereby declared to be an offense punishable by a fine not exceeding \$350 for conviction of a first offense. For conviction of a second offense, both of which are committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700. 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. Each week's continued violation shall constitute a separate additional violation.

CHAPTER 103. SUBDIVISION REGULATIONS

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§ 103-40. Variances, waivers and conditions.

§ 103-41. (Reserved)

§ 103-42. (Reserved)

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CHAPTER 103. SUBDIVISION REGULATIONS

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 8-23-2006 by L.L. No. 4-2006. Editor's Note: This local law superseded former Ch. 103, Subdivision Regulations, adopted 8-26-1980, as amended. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 53.
Flood damage prevention — See Ch. 69.
Freshwater wetlands — See Ch. 72.
Sewers — See Ch. 91.
Streets and sidewalks — See Ch. 100.
Zoning — See Ch. 128.

ARTICLE I. General Provisions

§ 103-1. Short title.

These regulations shall be known as and may be cited by the title "Subdivision Regulations, Town of Bethlehem."

§ 103-2. Authority.

A. By the authority of the Town Board of the Town of Bethlehem, pursuant to the provisions of Article 16 of the Town Law of the State of New York, the Planning Board of the Town of Bethlehem is authorized and empowered to approve plats showing lots, with or without streets or highways, to approve the development of entirely or partially undeveloped plats already filed in the office of the Albany County Clerk and to conditionally approve preliminary plats, within that part of the Town of Bethlehem outside the limits of any incorporated village. In order that land subdivision may be made in accordance with this policy, these regulations, known as the "Town of Bethlehem Subdivision Regulations," have been adopted by the Planning Board on August 2, 2005, and approved by the Town Board on August 24, 2005.

B. The Planning Board of the Town of Bethlehem is also hereby authorized and empowered, pursuant to Town Law § 276, Subdivision 2, to approve the development of plats, entirely or partially undeveloped, which were filed in the office of the Albany County Clerk prior to the appointment of the Planning Board. The term "undeveloped" shall mean those plats where 20% or more of the lots within the plat are unimproved, unless existing conditions, such as poor drainage, have prevented their development.

C. This chapter is also intended to supersede and amend inconsistent provisions of Town Law § 276, Subdivision 8, by eliminating the provisions for default approval resulting from the Planning Board's failure to take any action or hold any hearing on a preliminary or final plat within the statutory time periods.

§ 103-3. Authorization to approve plats.

The Town of Bethlehem has authorized its Planning Board and, under specified circumstances, its Department of Economic Development and Planning to approve plats showing lots, blocks or sites, with or without streets or highways, as a complete or as a partial development of land, and to approve such plats for filing with the office of the Albany County Clerk as provided in these regulations. The Clerk of the Town of Bethlehem shall immediately file a certificate of that fact with the office of the Albany County Clerk.

§ 103-4. Amendments.

This chapter may be amended by the Town Board after due notice and public hearing.

§ 103-5. Purpose.

It is declared to be the policy of the Town Board to consider land subdivisions as part of the orderly and desirable development of land. These regulations provide procedures and standards for the Planning Board in its review of subdivision plats. The intent of these regulations is to encourage the most appropriate and best development of land in order to protect and promote the general health, safety and welfare, which is intended to include the following:

A. To assure that land to be subdivided will produce building sites of such character and area that will permit their development for homes or buildings without danger to health or peril from fire, flood or other menace.

B. To facilitate the adequate and efficient provision of community facilities, services and utilities and require the most desirable and appropriate systems for drainage, water supply, sewage disposal and other needed improvements, including any appropriate parks and playgrounds.

C. To promote the safe and convenient circulation of vehicles and pedestrians and to promote the efficient design, location and construction of roads, streets, sidewalks, pathways, and driveways so as to accommodate current and future needs.

D. To minimize the destruction of the natural character of the land and promote the conservation of all elements of topography and vegetation which contribute to the natural beauty of the land.

E. To provide, through all subdivision planning and development, for the privacy of family residents while enhancing the general appearance of the community.

§ 103-6. Severability.

If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered or as determined by such judgment.

§ 103-7. When effective.

This chapter shall take effect upon the effective date of the local law, filed with the Secretary of State, that governs this chapter. Editor's Note: This chapter became effective September 1, 2006.

ARTICLE II. Definitions

§ 103-8. Terms defined.

As used in this chapter, the following terms shall have the meanings indicated:

AGRICULTURAL DISTRICT

An area designated pursuant to Article 25-AA of the New York State Agriculture and Markets Law.

ALLEY

A narrow street or passage between properties or buildings serving as a secondary means of access to abutting property.

APPLICANT

Any person, firm, corporation, partnership, association or other entity who or which shall lay out any land division, lot line revision, subdivision, or resubdivision, or part thereof, either on behalf of himself or itself or for another or others.

AVERAGE DENSITY SUBDIVISION

A subdivision carried out in accordance with this chapter which includes a number of lots having less than the required minimum lot size. Said lots shall be deemed to be conforming lots, provided that the total number of dwelling units within the subdivision does not exceed the maximum density unit requirements of this chapter.

BUFFER AREA or BUFFER ZONE

Open space, landscape areas, fences, walls, berms or any combination thereof used to physically separate or screen one use or property from another use or property so as to visually shield or block noise, light, or other nuisances.

BUILDABLE AREA

The space remaining on a lot after the minimum yard, area and bulk requirements of Chapter 128, Zoning, have been met or that area of the lot for which a variance from said minimum yard, area and bulk requirements has been granted by the Zoning Board of Appeals.

BUILDABLE LOT

A lot having a buildable area capable of accommodating proposed principal and accessory improvements and including, where required, an on-site water supply facility and sewage treatment system that meet the standards of the Albany County Department of Health.

BUILDABLE YIELD

The maximum unit density for a proposed subdivision after deduction of constrained land areas.

[Amended 10-8-2008 by L.L. No. 3-2008]

BUILDING

Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals or chattel.

BUILDING AREA

The total of the areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of uncovered porches, terraces and steps. All dimensions shall be measured between the exterior faces of walls.

BUILDING, FRONT LINE OF

The line of that face of the building nearest the front line of the lot. This face includes sun parlors and covered porches, whether enclosed or unenclosed, but does not include steps.

CALIPER, TREE

The diameter of a tree as measured at a point six inches above the ground level (up to and including four-inch caliper size) and 12 inches above the ground level (for larger sizes).

COMPREHENSIVE PLAN

The materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material, that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the Town located outside the limits of any incorporated village.

CONDITIONAL APPROVAL

Approval by the Planning Board of a preliminary or a final plat, subject to such conditions as may be set forth by the Planning Board in a resolution conditionally approving such plat. Such conditional approval does not qualify a final plat for recording nor authorize issuance of any building permits prior to the signing of the plat by a duly authorized officer of the Planning Board and recording of the plat in the office of the County Clerk or Registrar as herein provided.

CONSERVATION SUBDIVISION

A residential subdivision pursuant to Town Law § 278 where the dwelling units that would result on a given parcel under a conventional subdivision plan are allowed to be concentrated on a smaller and more compact portion of land and where a majority of the remaining land is left in its natural open space condition in perpetuity. Conservation development results in a flexibility of design and development to promote the most appropriate use of land, to facilitate the adequate and economical provisions of streets and utilities, and to preserve the natural and scenic qualities of open lands.

CONSTRAINED LAND

Land containing one or more of the following: state and/or federal protected freshwater wetlands; one-hundred-year floodplains or flood hazard areas; steep slopes of 20% and greater; and open bodies of water, including streams, ponds and lakes.

CUL-DE-SAC

A dead-end street or a portion of a street having only one vehicular outlet.

DEPARTMENT OF ECONOMIC DEVELOPMENT AND PLANNING

The Department of Economic Development and Planning of the Town of Bethlehem, New York, also sometimes referred to as "Department."

DEVELOPMENT PLANNING COMMITTEE

A committee appointed by the Director composed of staff members of the Department of Economic Development and Planning of the Town of Bethlehem.

DIRECTOR

The Director of the Department of Economic Development and Planning of the Town of Bethlehem.

DWELLING

A building designed or used as the living quarters for one or more families. The term "dwelling," "one-family dwelling," "two-family dwelling" or "dwelling group" shall not be deemed to include a motel, boardinghouse, tourist home or guest house.

DWELLING, FOUR-FAMILY

A building designed for or occupied exclusively by four families living independently of each other.

DWELLING, MULTIFAMILY

A building or portion thereof containing five or more dwelling units on one plot but which may have joint services or joint facilities, or both, also known as a "multiple dwelling," and includes garden apartment, townhouse, cooperative, and condominium developments, assisted living projects, and continuous care retirement community (CCRC) developments.

DWELLING, ONE-FAMILY

A detached building designed for or occupied exclusively by one family.

DWELLING, THREE-FAMILY

A building designed for or occupied exclusively by three families living independently of each other.

DWELLING, TWO-FAMILY

A building designed for or occupied exclusively by two families living independently of each other.

DWELLING UNIT

A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrance or other hallways or porches) or cooking or sanitary facilities in common with any other dwelling unit. A trailer, motor home, travel or camping trailer, boarding- or rooming house, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging, nursing or other similar home, or other similar structure, shall not be deemed to constitute a "dwelling unit."

EASEMENT

Authorization by a property owner for the use by another, for a specified purpose, of any designated part of real property.

ELEVATION

The elevation, in feet, above mean sea level, as determined from the nearest United States Coastal and Geodetic benchmark of the principal building to be sited on a lot.

FINAL PLAT

A drawing prepared by a New York State licensed professional engineer or land surveyor (with appropriate certification), in a manner prescribed by these regulations, showing a proposed subdivision and containing, in such additional detail as shall be provided by these regulations, all information required to appear on a preliminary plat and the modifications, if any, required by the Planning Board at the time of approval of a preliminary plat of such proposed subdivision if such preliminary plat has been so approved and which, if approved, may be filed or recorded by the owner in the office of the Albany County Clerk.

FINAL SUBDIVISION PLAT APPROVAL

The signing of a plat in final form by a duly authorized officer of the Planning Board pursuant to a Planning Board resolution granting final approval to the plat or after conditions specified in a resolution granting conditional approval of the plat are completed. Such final approval qualifies the plat for recording in the office of the County Clerk.

GRADE, ESTABLISHED

The elevation of the center line of the streets as officially established by the Town authorities.

GRADE, FINISHED

The completed surfaces of lawns, walks and roads brought to grades as shown on official plans or designs relating thereto.

GRADING

The alteration of the surface or subsurface conditions of land, lakes, ponds or watercourses by excavation or filling to a depth greater than six inches.

HIGHWAY FRONTAGE

That portion of any lot which bounds a street, as measured along the property line, which is coincidental with such street right-of-way or center line, or on a corner lot in which case frontage is along both streets.

INCENTIVE ZONING

Adjustments to the maximum unit density requirements of the Town Zoning Law Editor's Note: See Ch. 128, Zoning, in exchange for the preservation of significant open space and/or the provision of improvements, facilities or amenities deemed to be of benefit to the Town.

LAND DISTURBANCE

Any activity involving the clearing, cutting, excavation, filling, grading or any other activity that alters land topography or vegetative cover.

LAND DIVISION

Any division of a parent parcel so as to create one new lot fronting on an existing street and not involving the construction of any new streets or roads, not involving a resubdivision, and not adversely affecting the development of the remainder of the parcel or any adjoining property and meeting the criteria of § 103-20 of this chapter and not in conflict with any provision or portion of Chapter 128, Zoning, or this chapter.

LOT

Land occupied or to be occupied by a building and its accessory buildings or by a dwelling group and its accessory buildings, together with such open spaces as are required under the provisions of this chapter, having not less than the minimum area and width required by this chapter for a lot in the district in which such land is situated and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of state law to be adequate as a condition of the issuance of a building permit for a building on such land.

LOT, CORNER

A lot which has an interior angle of less than 135° at the intersection of two street lines. A lot abutting upon a curved street shall be considered a corner lot if the tangents to the curve at the points of intersection of the side lot lines intersect at an interior angle of less than 135°.

LOT COVERAGE

That percentage of the lot covered by the footprint of the principal and accessory building area.

LOT, DEPTH OF

The mean horizontal distance between the front and the rear lot lines, measured in the general directions of its side lot lines.

LOT, FLAG

A lot which has sufficient frontage on a public street to comply with the minimum lot frontage requirements of this chapter but which is shaped in such a manner that the portion of the lot closest to the street can only be used for access purposes and not as a yard or buildable area, and whose width some distance back from the right-of-way is sufficient to provide proper space to meet the yard and setback requirements.

LOT, HOUSE

In cluster subdivisions, that portion of the subdivision reserved as a development area for the location of dwelling units and constituting lands outside of the protected open space areas.

LOT, INTERIOR

A lot other than a corner lot.

LOT LINE

Any line dividing one lot from another.

LOT LINE, REAR

The lot line generally opposite to the street line; if the rear lot line is less than 10 feet in length or if the lot comes to a point in the rear, the rear lot line shall be deemed to be a line parallel to the front lot line not less than 10 feet long lying farthest from the front lot line.

LOT LINE REVISION or LOT LINE AMENDMENT

A change in the location of a boundary between two or more lots within a subdivision plat previously approved by the Planning Board and filed in the Albany County Clerk's office.

LOT, THROUGH

An interior lot having frontage on two parallel or approximately parallel streets but which is not a corner lot.

LOT WIDTH

The mean distance measured at the required minimum front yard depth along a line at right angles to the depth of lot line and parallel to the street right-of-way (ROW) line.

OFFICIAL MAP

The map and any amendments thereto adopted by the Town Board under § 270 of the Town Law or by the County under § 239-h of the General Municipal Law.

OPEN SPACE

Land left in a natural state for conservation and agricultural purposes or land landscaped for scenic purposes, devoted to active or passive recreation, or devoted to the preservation of distinctive architectural, historic, geologic or botanic sites. The term shall not include land that is paved, used for the storage, parking or circulation of automobiles, or occupied by any structure. Open space may be included as a portion of one or more large lots or may be contained in a separate open space lot but shall not include private yards within 50 feet of a principal structure.

OPEN SPACE, USABLE

An unenclosed portion of the ground of a lot which is not devoted to driveways or parking spaces, which is free of structures of any kind, of which not more than 25% is roofed for shelter purposes only, the minimum dimension of which is 40 feet and which is available and accessible to all occupants of the building or buildings on said lot for purposes of active or passive outdoor recreation. Accessory building roof space may be substituted for ground space, provided that such space is available and accessible to all said occupants by means of access other than stairs.

OWNER

The owner of record of a tract or parcel, the subdivision of which requires approval of the Planning Board, or a person or persons holding an option to purchase a tract or parcel, contingent only upon receipt of Planning Board approval of a proposed subdivision of such tract or parcel. The owner may be represented by a duly authorized agent or representative in the conduct of business before the Board, except in those instances specified hereafter that require the appearance of the owner in person.

PARENT PARCEL

A parcel of land legally in existence on the effective date of this chapter. For purposes of this chapter, the parent parcel shall be deemed to be that lot, parcel or tract of land owned by the person or persons as shown on the records of the Town of Bethlehem Assessor's office as of the effective date of this chapter.

PLANNING BOARD

The Town of Bethlehem Planning Board.

PRELIMINARY PLAT

A drawing, prepared in the manner prescribed in this chapter, showing the layout of a proposed subdivision, including but not restricted to road and lot layout and approximate dimensions, key plan, topography and drainage, and all proposed facilities, including preliminary plans and profiles, at suitable scale and in such detail as this chapter requires.

PRELIMINARY PLAT APPROVAL

The approval of a proposed subdivision as set forth in a preliminary plat, but subject to the approval of the final plat in accordance with the provisions of this chapter.

PROPERTY

Any lot or parcel of land.

RESUBDIVISION

A change in a subdivision plat previously approved by the Planning Board and filed in the County Clerk's office, which change affects any street layout shown on such plat, affects any area reserved thereon for public use, or changes the number of lots.

SECRETARY OF THE PLANNING BOARD

The individual appointed by the Planning Board to perform, among other things, the duties set forth in Town Law § 274-a, § 274-b, § 276, § 277, and this chapter.

SKETCH PLAN

A conceptual sketch made on a topographic survey map showing the proposed subdivision in relation to existing conditions and with reference to the minimum lot and area requirements of the zoning district in which the property is located.

SKETCH PLAN REVIEW

The review of a conceptual layout of a proposed subdivision by the Department of Economic Development and Planning. The review is limited to ensuring that the proposed subdivision meets the minimum lot and area requirements as set forth in the Town Zoning Law, Chapter 128, subject to approval of the plat in preliminary and/or final form in accordance with the provisions of this chapter.

SLOPE OF SITE, MEANS OF MEASURING

The vertical distance, in feet, between the highest elevation of a lot or development and the lowest elevation of a lot or development, divided by the horizontal difference between these two elevations, in feet, said horizontal distance ordinarily to be the natural course of stormwater runoff. Should the site be sufficiently large, in the judgment of the Planning Board, and heterogeneous in character (difference of one or more slope factors), the site should be divided into different measurement units, with a gradient defined for each.

STEEP SLOPES

All ground areas having a topographical gradient equal to or greater than 20%, measured by utilizing two-foot contours.

STREET

A right-of-way for vehicular traffic, including a road, avenue, lane, highway or other way designed and constructed in accordance with Chapter 100, Streets and Sidewalks, of the Town of Bethlehem Code, as amended, the Town of Bethlehem Department of Public Works Guidelines for Final Subdivision Plans dated August 25, 1997, as amended, and the State Highway Law, as amended.

STREET, ARTERIAL

A street which serves or is designed to be used primarily for crosstown movement by fast or heavy traffic.

STREET, COLLECTOR

A street which carries traffic from local streets to the major system of arterial streets; the principal entrance and circulation streets within a development.

STREET GRADE

The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the street grade.

STREET LINE

The dividing line between the street and the lot.

STREET, LOCAL

A street intended to serve primarily as an access to abutting residential properties.

STREET PAVEMENT

The wearing or exposed surface of the roadway used by vehicular traffic.

STREET WIDTH

The distance between property lines.

SUBDIVISION

The division of any parcel of land resulting in the creation of three or more lots, plots, or sites, with or without streets or highways, for the purpose, with respect to any portion of the original parcel, of immediate or future development, or for the immediate or future sale, lease or any other transfer of any interest in any portion of such original parcel. The term shall also include the division of any parcel that does not meet the criteria for a land division as set forth in this section. The term "subdivision" shall include a resubdivision.

SUBDIVISION, CONSERVATION

A residential subdivision pursuant to Town Law § 278 where the dwelling units that would result on a given parcel under a conventional subdivision plan are allowed to be concentrated on a smaller and more compact portion of land and where a majority of the remaining land is left in its natural open space

condition in perpetuity. Conservation development results in a flexibility of design and development to promote the most appropriate use of land, to facilitate the adequate and economical provisions of streets and utilities, and to preserve the natural and scenic qualities of open lands.

SUBDIVISION, CONVENTIONAL

The subdivision of land into lots that meet or exceed the minimum area, yard and bulk regulations of the district in which it is located.

SUBDIVISION, MAJOR

Any subdivision not classified as a minor subdivision, including but not limited to subdivisions of five or more lots or any size subdivision requiring any new street or road or the extension of municipal facilities.

SUBDIVISION, MINOR

Any subdivision or resubdivision containing not more than four lots fronting on an existing improved public street and not involving construction of any new street(s) or road(s) and that meets the criteria of § 103-13C of this chapter.

SUPERINTENDENT

The duly elected Town Superintendent of Highways or other such authorized official.

TOWN COMPREHENSIVE PLAN

A comprehensive plan for the development of the Town as adopted by the Town Board pursuant to § 272-a of the Town Law, which may include general recommendations for various public works and reservations, and for the general physical development of the Town, including any part of such plan separately adopted and any amendment to such plan or parts thereof.

TRACT

Any body of land, including contiguous parcels of land, under the control of one or more owners acting in concert as part of a common scheme or plan.

WAY

A street or alley or other thoroughfare or easement permanently established for passage of persons or vehicles.

§ 103-9. (Reserved)

§ 103-10. (Reserved)

ARTICLE III. Procedures for Filing and Review of Plat Maps

§ 103-11. Application required.

A. Applications for land division, subdivision, resubdivision and lot line revision approval under this chapter shall comply fully with the applicable provisions of Article 16 of the Town Law, the Public Health Law, and this chapter. Due care in the preparation of the maps and other information called for will expedite the process of obtaining approval of a land division, a subdivision, a resubdivision or a lot line revision.

B. When any land division, subdivision, resubdivision or lot line revision of land is proposed, and before any contract for the sale of land or any offer to sell such land division, subdivision, resubdivision or land with a lot line revision, or any part thereof, is made, or any grading, clearing, construction or other improvement is undertaken therein, the applicant or his duly authorized agent shall apply in writing for approval of such proposed land division, subdivision, resubdivision or lot line revision in accordance with the procedures set forth in this chapter.

§ 103-12. Sketch plan (optional).

A. A sketch plan review is recommended prior to submission of a formal application for subdivision approval. The sketch plan review is intended to reduce the review time for Planning Board consideration of proposed subdivisions by allowing early review of the plan by the Department of Planning and Economic Development. Upon the request for sketch plan review, the Development Planning Committee shall notify the applicant of the place, date, and time of the meeting at which the sketch plan is to be considered. The applicant or the applicant's representatives shall be present at the meeting to discuss the application. The sketch plan review shall be limited to a review of the basic concept of the proposal with respect to the minimum area, yard and bulk requirements of the district in which the property is located, and to identify problems with meeting the requirements of this chapter which might occur during formal Planning Board consideration. The sketch plan review and consultation shall be nonbinding. 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. After the sketch plan review, nothing herein shall be construed to prevent an applicant from submitting a formal application for subdivision approval to the Planning Board. 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.

B. 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. The sketch plan shall contain the information as set forth in § 103-33 of this chapter.

§ 103-13. Minor subdivision.

A. Application and fee. All applications for minor subdivision approval shall be in writing and on forms and in such quantity as may be prescribed by the Planning Board together with a fee as set by the Town Board. Unless otherwise waived, the plat shall conform to the requirements listed in § 103-34.

B. Information waiver. The Department of Planning and Economic Development may grant a waiver from the information requirements of this section where it determines that such information is not relevant to, or is not otherwise required to conduct, the review of the application.

C. Minor subdivision criteria. The following subsection sets forth the criteria of a minor subdivision wherein the proposed subdivision plat is presented in a proposed final form at the time of the initial application.

(1) A minor subdivision is one:

(a) That contains not more than four lots fronting on an existing street.

(b) That does not require the construction of any new streets or roads.

(c) That does not adversely affect the development of the remaining lands of the subdivision.

(d) That does not adversely affect the development or quiet enjoyment of adjoining property.

(e) That is not in conflict with any provisions of the Town Comprehensive Plan, the Official Map of the Town, the Town Zoning Law Editor's Note: See Ch. 128, Zoning. or this chapter.

(f) Where each proposed lot is of a size and configuration so as to provide, if applicable, the minimum separation distances and meet the design standards for on-site water supply and sewage disposal systems as established by the Albany County Department of Health.

(2) A proposed minor subdivision that does not meet each of these criteria shall be subject to the major subdivision review procedures. Nothing herein shall be interpreted to prohibit the use of the procedures for review of a major subdivision for any subdivision application, where the Planning Board determines that processing of the application as a major subdivision is necessary to protect the public health, safety and welfare.

(3) In the case of a minor subdivision, no more than four lots shall be created either simultaneously or sequentially from a parent parcel within a ten-year period. Should more than that total number of lots be applied for within 10 years of the date the minor subdivision is approved, the Planning Board shall require the applicant to provide all of the information required of a major subdivision for the previously subdivided lots as well as for the lots under consideration in the new application.

D. Compliance with the State Environmental Quality Review Act. Editor's Note: See Art. 8 of the Environmental Conservation Law. An application for a minor subdivision shall not be considered complete until a negative declaration has been filed or until a notice of completion of a draft environmental impact statement has been filed in accordance with the provisions of the State Environmental Quality Review Act. The time periods for review of a minor subdivision plat shall begin upon filing of such negative declaration or such notice of

completion. An application for minor subdivision approval that has been determined by the Planning Board to require the preparation of a draft environmental impact statement shall result in the processing of the application as a major subdivision.

E. Applicant to attend Planning Board meetings. The applicant or his duly authorized representative shall attend meetings of the Planning Board at which the application is considered to discuss the plat. 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.

F. When officially submitted. An application submitted under this section shall be deemed received at the next regular meeting of the Planning Board at which the application is to be considered. An application shall be placed on the Planning Board agenda only upon payment of the application fee as set by the Town Board along with the number of copies of the plat as specified by the Planning Board, an environmental assessment form, and a completed application form and an agricultural data statement (if applicable).

G. Agricultural data statement. If any portion of the project is located on property within an agricultural district containing a farm operation, or on property with boundaries within 500 feet of a farm operation located in an agricultural district, the application must include an agricultural data statement containing 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 land contains farm operations and is located within 500 feet of the boundary of the property upon which the project is proposed; 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.

H. County referral. An application for subdivision approval under this section shall be forwarded to the Albany County Planning Board for review pursuant to General Municipal Law § 239-n if the boundary of the proposed subdivision is located within 500 feet of:

- (1) The boundary of any city, village, or town.
- (2) The boundary of any existing or proposed county or state park or other recreation area.
- (3) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway.
- (4) The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines.
- (5) The existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated.
- (6) The boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the Agriculture and Markets Law, if required.

I. Referral to neighboring municipalities. Pursuant to General Municipal Law § 239-nn, for a subdivision review under this section involving property located within 500 feet of an adjacent municipality, notice of any public hearing shall be given by mail or electronic transmission to the clerk of the adjacent municipality not less than 10 days prior to the date of said hearing.

J. Public hearing on minor subdivision. The hearing on the minor subdivision plat shall be advertised at least once in the official newspaper so designated by the Town Board at least five days before such hearing. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that an application for a subdivision approval is under consideration by the Board. All notices shall include the name of the subdivision, the location of the land to be subdivided, and the date, place, time and subject of the public hearing. Such notice shall not be required for adjourned dates. The hearing on the minor subdivision plat shall be closed upon motion of the Planning Board within 120 days after it has been opened.

K. Action on minor subdivision plat. The Planning Board shall, within 62 days from the date of the public hearing, approve, conditionally approve with or without modification, or disapprove a complete application for minor subdivision plat approval. When conditionally approving a minor subdivision plat with or without modifications, the Planning Board must state in writing the modifications, if any, it deems necessary before the plat will be endorsed by the Chairman. The Board shall specify in writing its reasons for any disapproval.

L. Filing of notice of action. Written notice of the action of the Planning Board, plus any conditions attached thereto, shall be provided to the applicant, and a copy of such notice shall be filed with the Town Clerk within five days of the date of approval.

M. Duration of conditional approval of minor subdivision plat. Conditional approval of the minor subdivision plat shall expire within 180 days after the date of adoption of the resolution granting such approval unless all applicable requirements stated in such resolution have been completed. The Planning Board may extend by not more than two additional periods of 90 days each the time in which a conditionally approved plat must be submitted for signature if, in the Board's opinion, such extension is warranted by the particular circumstances.

N. Filing of minor subdivision plat; expiration of approval. The applicant shall file the approved minor subdivision plat in the office of the County Clerk within 62 days from the date of final approval or such approval shall expire. The signature of the Chairman or Vice Chairman or other duly authorized officer of the Planning Board signifying final approval and completion of conditions of final approval by the Planning Board shall constitute approval.

O. Endorsement of the Chairman. Upon approval of the minor subdivision plat, the applicant shall carry out the following steps prior to obtaining the Chairman's signature of approval:

(1) Provide proof of compliance with Department of Health standards and approval of the plan for water supply and sewage disposal.

(2) Provide proof of compliance with all other required local, state and federal agency permits and approvals, including but not limited to stream disturbance; wetland and wetland buffer disturbance; highway work; curb cuts; stormwater connections; SPDES permit discharges; dams and impoundments, etc.

(3) Make all required corrections or changes to the minor subdivision plat map as outlined in the resolution of the Planning Board and provide two copies of the corrected final plat to the Secretary of the Planning Board for final review and approval by the Department of Planning and Economic Development, the Town Engineer and other designated Town officials for compliance with the resolution of the Planning Board. The applicant shall also complete all applicable conditions of the Planning Board resolution approving the final plat.

(4) Provide Mylar and paper copies of the minor subdivision plat in such quantity as specified by the Planning Board to the Secretary of the Planning Board for the endorsement of the Chairman. After the Chairman has signed the Mylar and the paper copies of the plat, the Secretary shall immediately notify the applicant of the availability of the minor subdivision plat map. The applicant is solely responsible for filing of the minor subdivision plat with the County Clerk.

(5) Pay all outstanding escrow fees and application fees. Parkland fees, if applicable, are due and payable at the time an application for a building permit is made.

P. Filed plat map. Within 30 days of the date the minor subdivision plat is filed with the County Clerk, the applicant shall submit one copy of the plat showing the endorsement of the County Clerk to the Secretary of the Planning Board.

Q. Plat void if revised after approval. No changes, erasures, modifications or revisions shall be made to any subdivision plat after endorsement of said plat by the Chairman of the Planning Board, unless said plat is first resubmitted to the Planning Board and the Board approves any modifications. Such modified plat shall be resubmitted to the Planning Board for restamping and signature. In the event that any such subdivision plat is recorded without complying with this requirement, the same shall be considered null and void, and the Planning Board shall institute proceedings to have the plat stricken from the records of the County Clerk.

R. Fees. 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). 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, reasonable fees shall be paid for by the applicant and an escrow deposit will be required in accordance with Chapter 128, Zoning, § 128-85.

§ 103-14. Preliminary plat for major subdivision.

A. Application and fee. Prior to the filing of an application for the approval of a final plat for a major subdivision, the applicant shall submit an application for approval of a preliminary subdivision plat. All applications for preliminary subdivision approval shall be in writing and on forms and in such quantity as may be prescribed by the Planning Board, together with a fee as set by the Town Board. The preliminary plat shall, in all respects, comply with the requirements set forth in this chapter and the provisions of §§ 276 and 277 of the Town Law, except where a waiver of such requirements may be specifically authorized by the Department or Planning Board. Said application shall also conform to the requirements listed in § 103-35.

B. Purpose. The preliminary layout, the application, and all supporting documents for a proposed subdivision constitute the material to be officially submitted to the Planning Board. On the basis of the general design of the subdivision and any proposed or required public improvements, the Planning Board will indicate its approval or disapproval of the preliminary plat prior to the time that the final plat, including the design and detailing of the improvements and utilities, is completed. Approval of the preliminary layout does not constitute an approval of the final plat, nor shall it be considered a valid basis for filing of the preliminary plat with the County Clerk, or the construction of site improvements, or for other commitments which depend upon detailed design characteristics.

C. When officially submitted. An application submitted under this section shall be deemed received at the next regular meeting of the Planning Board at which the application is to be considered. An application shall be placed on the Planning Board agenda only upon payment of the application fee as set by the Town Board along with an environmental assessment form and the number of copies of the plat map as specified by the Planning Board.

D. Applicant to attend Planning Board meetings. The applicant or his duly authorized representative shall attend meetings of the Planning Board at which the application is considered to discuss the preliminary plat. 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.

E. Information waiver. The Department of Planning and Economic Development may grant a waiver from the information requirements of this section where it determines that such information is not relevant to, or is not otherwise required to conduct, the review of the application.

F. Study of preliminary plat. The Planning Board shall study the proposed preliminary plat, taking into consideration the goals and policies of the Town Comprehensive Plan for the district in which the parcel is located, the needs of the community, the requirements of the Town Zoning Law Editor's Note: See Ch. 128, Zoning, and this chapter, and the best use of the land being subdivided. Particular attention shall be given to the arrangement, location and width of streets, their relation to the topography of the land, water supply, sewage disposal, vehicular and pedestrian access, preservation of natural resources, relationship to improvements on adjacent and neighboring land, drainage, lot sizes and arrangement, and the future development of adjoining lands as yet unsubdivided, including those lands depicted on the Official Map.

G. Look-back provision. Within any ten-year period, no more than 49 lots may be created either simultaneously or sequentially from a parent parcel for which both central sewer and water services do not exist or have not been provided. Should more than that total number of lots be applied for within 10 years of the date of subdivision approval involving the parent parcel, the Planning Board may require the applicant to include a plan for providing central sewer and water services to the previously subdivided lots at no additional cost to their present owners as part of the new application for subdivision approval.

H. Compliance with the State Environmental Quality Review Act. Editor's Note: See Art. 8 of the Environmental Conservation Law. A preliminary plat application shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the State Environmental Quality Review Act. The time periods for review of a preliminary plat application shall begin upon filing of such negative declaration or such notice of completion.

I. Planning Board as lead agency under the State Environmental Quality Review Act: public hearing; notice; decision.

(1) Public hearing on preliminary flats. The time within which the Planning Board shall hold a public hearing on the preliminary plat shall be coordinated with any hearings the Planning Board may schedule pursuant to the State Environmental Quality Review Act as follows:

(a) If such Board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the public hearing on such plat shall be held within 62 days after receipt of a complete preliminary plat by the Secretary of the Planning Board; or

(b) If the Planning Board determines that an environmental impact statement is required and a public hearing on the draft environmental impact statement is held, the public hearing on the preliminary plat and the draft environmental impact statement shall be held jointly within 62 days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the State Environmental Quality Review Act. If no public hearing is held on the draft environmental impact statement, a public hearing on the preliminary plat shall be held within 62 days of filing the notice of completion.

(2) Public hearing notice. The hearing on the preliminary plat shall be advertised at least once in the official newspaper so designated by the Town Board at least five days before such hearing if no hearing is held on the draft environmental impact statement or 14 days before a hearing held jointly therewith. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that an application for a subdivision approval is under consideration by the Board. All notices shall include the name of the subdivision, the location of the land to be subdivided, and the date, place, time and subject of the public hearing. Such notice shall not be required for adjourned dates. The hearing on the preliminary plat shall be closed upon motion of the Planning Board within 120 days after it has been opened.

(3) Decision. The Planning Board shall approve, with or without modification, or disapprove such preliminary plat as follows:

(a) If the Planning Board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the Planning Board shall make its decision within 62 days after the close of the public hearing.

(b) If the Planning Board determines that an environmental impact statement is required and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of such public hearing in accordance with the provisions of the State Environmental Quality Review Act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of the public hearing on the preliminary plat. Within 30 days of the filing of such final environmental impact statement, the Planning Board shall issue findings on the final environmental impact statement and make its decision on the preliminary plat.

(4) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board. When so approving a preliminary plat, the Planning Board shall state in writing any modifications it deems necessary for submission of the plat in final form.

J. Planning Board not as lead agency under the State Environmental Quality Review Act: public hearing; notice; decision.

(1) Public hearing on preliminary plats. The Planning Board shall, with the agreement of the lead agency, hold the public hearing on the preliminary plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement, the Planning Board shall hold the public hearing on the preliminary plat within 62 days after receipt of a complete preliminary plat by the Secretary of the Planning Board.

(2) Public hearing notice. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the Town at least five days before such hearing if held independently of the hearing on the draft environmental impact statement or 14 days before a hearing held jointly therewith. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that an application for a subdivision approval is under consideration by the Board. All notices shall include the name of the subdivision, the location of the land to be subdivided, and the date, place, time and subject of the public hearing. Such notice shall not be required for adjourned dates. The hearing on the preliminary plat shall be closed upon motion of the Planning Board within 120 days after it has been opened.

(3) Decision. The Planning Board shall, by resolution, approve with or without modification or disapprove the preliminary plat within 62 days after the close of the public hearing on such preliminary plat.

(a) If the preparation of an environmental impact statement on the preliminary plat is not required, the Planning Board shall make its decision within 62 days after the close of the public hearing on the preliminary plat.

(b) If an environmental impact statement is required, the Planning Board shall make its own findings and its decision on the preliminary plat within 62 days after the close of the public hearing on such preliminary plat or within 30 days of the adoption of findings by the lead agency, whichever period is longer.

(4) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board. When so approving a preliminary plat, the Planning Board shall state in writing any modifications it deems necessary for submission of the plat in final form.

K. Agricultural data statement. If any portion of the project is located on property within an agricultural district containing a farm operation, or on property with boundaries within 500 feet of a farm operation located in an agricultural district, the application must include an agricultural data statement containing 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 land contains farm operations and is located within 500 feet of the boundary of the property upon which the project is proposed; 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.

L. County referral. Prior to action on an application for subdivision approval under this section, a copy of said application shall be forwarded to the Albany County Planning Board for review pursuant to General Municipal Law § 239-n if the boundary of the proposed subdivision is located within 500 feet of:

(1) The boundary of any city, village, or town.

(2) The boundary of any existing or proposed county or state park or other recreation area.

(3) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway.

(4) The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines.

(5) The existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated.

(6) The boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the Agriculture and Markets Law, if required.

M. Referral to neighboring municipalities. Pursuant to General Municipal Law § 239-nn, for a subdivision review under this section involving property located within 500 feet of an adjacent municipality, notice of any public hearing shall be given by mail or electronic transmission to the clerk of the adjacent municipality not less than 10 days prior to the date of said hearing.

N. Filing of notice of action. Written notice of the action of the Planning Board, plus any conditions attached thereto, shall be provided to the applicant, and a copy of such notice shall be filed with the Town Clerk within five days of the approval of the preliminary plat. Approval of the preliminary plat shall not constitute approval of the final plat but shall be deemed an expression of approval of the design submitted on the preliminary plat as a guide to the preparation of the final plat which will be submitted for approval of the Planning Board and for recording upon fulfillment of the requirements of the Town Zoning Law Editor's Note: See Ch. 128, Zoning, and this chapter and the conditions of the approval of the preliminary plat, if any. Prior to approval of the final subdivision plat the Planning Board may require additional changes as a result of further study of the final subdivision plat or as a result of new information obtained at the public hearing.

O. Expiration of approval. Planning Board approval of a preliminary layout submission shall expire six months after the date the decision of the Board is filed with the Town Clerk. Prior to the expiration of preliminary approval, the applicant shall request in writing an extension of the preliminary approval and shall state the reasons for such extension. The Planning Board may extend by not more than two additional periods of 90 days each the time for expiration of the preliminary plat if, in the Board's opinion, such extension is warranted by the particular circumstances. In addition, such extension shall be granted only if the proposed subdivision fully conforms to the zoning regulations in effect at the time such extension is applied for.

P. Fees. 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). 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, reasonable fees shall be paid for by the applicant and an escrow deposit will be required in accordance with Chapter 128, Zoning, § 128-85.

§ 103-15. Final plat for major subdivision.

A. Application for approval and fee. The applicant shall, within six months after the date of filing of the preliminary plat approval with the Town Clerk, file with the Planning Board an application for approval of all or part of the subdivision plat in final form. All applications for plan approval shall be in writing and on forms and in such quantity as may be prescribed by the Planning Board together with a fee as set by the Town Board. Said application shall also conform to the requirements listed in § 103-36.

B. Purpose. The proposed final plat, together with drawings and documents, shall constitute the complete development of the subdivision proposal, shall include the conditions of the Planning Board's preliminary subdivision approval, and shall include the detailed layout drawings for the public improvements and utilities. The final plat shall be in conformity with the approved preliminary plat. After approval by the Planning Board of this submission, the approved performance surety and the general liability insurance policy as approved by the Town Board shall become the basis for the construction of the subdivision and the inspection services by the Town Engineer or other delegated Town officer. The plat itself must be recorded with the County Clerk to have legal status, and an unrecorded plat shall not be a valid basis for site improvements or other commitments. The plat shall be an accurate survey record of the properties resulting from the subdivision and shall bear the seal and signature of the licensed land surveyor responsible for its preparation.

C. When officially submitted. An application submitted under this section shall be deemed received at the next regular meeting of the Planning Board at which the application is to be considered. An application shall be placed on the Planning Board agenda only after payment of the application fee as set by the Town Board and submission of the specified number of copies of the final plat map and any supporting documentation.

D. Applicant to attend Planning Board meeting. The applicant or his duly authorized representative shall attend the meeting(s) of the Planning Board at which the application is considered to discuss the final plat.

E. Final plats not in substantial agreement with approved preliminary plats or when no preliminary plat is required to be submitted. When a final plat is submitted that the Planning Board deems not to be in substantial agreement with a preliminary plat approved pursuant to this chapter, or when no preliminary plat is required to be submitted and a final plat clearly marked "final plat" is submitted conforming to the definition provided by this chapter, the following shall apply:

(1) Planning Board as lead agency: public hearing; notice; decision.

(a) Public hearing on final plat. The time within which the Planning Board shall hold a public hearing on such final plat shall be coordinated with any hearings the Planning Board may schedule pursuant to the State Environmental Quality Review Act, Editor's Note: See Art. 8 of the Environmental Conservation Law. as follows:

[1] If the Planning Board determines that the preparation of an environmental impact statement is not required, the public hearing on a final plat not in substantial agreement with a preliminary plat, or on a final plat when no preliminary plat is required to be submitted, shall be held within 62 days after the receipt of a complete final plat by the Secretary of the Planning Board.

[2] If the Planning Board determines that an environmental impact statement is required and a public hearing on the draft environmental impact statement is held, the public hearing on the final plat and the draft environmental impact statement shall be held jointly within 62 days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the State Environmental Quality Review Act. If no public hearing is held on the draft environmental impact statement, the public hearing on the final plat shall be held within 62 days following filing of the notice of completion.

(b) Public hearing notice. The hearing on the final plat shall be advertised at least once in the official newspaper so designated by the Town Board at least five days before such hearing if no hearing is held on the draft environmental impact statement or 14 days before a hearing held jointly therewith. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that an application for a subdivision approval is under consideration by the Board. All notices shall include the name of the subdivision, the location of the land to be subdivided, and the date, place, time and subject of the public hearing. Such notice shall not be required for adjourned dates. The hearing on the final plat shall be closed upon motion of the Planning Board within 120 days after it has been opened.

(c) Decision. The Planning Board shall make its decision on the final plat as follows:

[1] If such Board determines that the preparation of an environmental impact statement on the final plat is not required, the Planning Board shall, by resolution, conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat within 62 days after the date of the public hearing.

[2] If the Planning Board determines that an environmental impact statement is required and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of such public hearing in accordance with the provisions of the State Environmental Quality Review Act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of the public hearing on the final plat. Within 30 days of the filing of the final environmental impact statement, the Planning Board shall issue findings on such final environmental impact statement and shall, by resolution, conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of the such plat.

(d) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board.

(2) Planning Board not as lead agency: public hearing; notice; decision.

(a) Public hearing on final plat. The Planning Board shall, with the agreement of the lead agency, hold the public hearing on the final plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement, the Planning Board shall hold the public hearing on the final plat within 62 days after the receipt of a complete final plat by the Secretary of the Planning Board.

(b) Public hearing notice. The hearing on the final plat shall be advertised at least once in the official newspaper so designated by the Town Board at least five days before such hearing if held independently of the hearing on the draft environmental impact statement or 14 days before a hearing held jointly therewith. Notice shall be provided pursuant to Chapter 58. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that an application for a subdivision approval is under consideration by the Board. All notices shall include the name of the subdivision, the location of the land to be subdivided, and the date, place, time and subject of the public hearing. Such notice shall not be required for adjourned dates. The hearing on the final plat shall be closed upon motion of the Planning Board within 120 days after it has been opened.

(c) Decision. The Planning Board shall, by resolution, conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat within 62 days after the close of the public hearing on such final plat. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board.

[1] If the preparation of an environmental impact statement on the final plat is not required, the Planning Board shall make its decision within 62 days after the close of the public hearing on the final plat.

[2] If an environmental impact statement is required, the Planning Board shall make its own findings and its decision on the final plat within 62 days after the close of the public hearing on such final plat or within 30 days of the adoption of findings by the lead agency, whichever period is longer. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board.

F. Filing of notice of action. Written notice of the action of the Planning Board, plus any conditions attached thereto, shall be provided to the applicant, and a copy of such notice shall be filed with the Town Clerk within five days of the date of approval.

G. Approval of plat in sections. In granting conditional or final approval of a plat in final form, the Planning Board may permit the plat to be subdivided and developed in two or more sections and may, in its resolution granting conditional or final approval, state such requirements as it deems necessary to ensure that the orderly development of the plat shall be completed before said sections may be signed by the Chairman.

H. Duration of conditional approval of final plat. Conditional approval of the final plat shall expire within 180 days after the resolution granting such approval unless all requirements stated in such resolution have been certified as completed. The Planning Board may extend by not more than two additional periods of 90 days each the time in which a conditionally approved plat must be submitted for signature if, in the Board's opinion, such extension is warranted by the particular circumstances.

I. Filing of final plat; expiration of approval. The applicant shall file the approved final plat, or a section of such plat, in the office of the County Clerk within 62 days from the date of final approval or such approval shall expire. In the event that the applicant shall file only a section of such approved plat with the County Clerk, the entire approved plat shall be filed within 30 days of the filing of such section with the Town Clerk. Such section shall encompass at least 10% of the total number of lots contained in the approved plat, and the approval of the remaining sections of the approved plat shall expire unless said sections are filed with the County Clerk within three years of the date of filing of the first section. The signature of the Chairman or Vice Chairman or other duly authorized officer of the Planning Board signifying final approval and completion of conditions of final approval by the Planning Board shall constitute final approval.

J. Performance surety and estimate of cost of improvements. The Planning Board may require as a condition of final plat approval that the owner/applicant establish or provide a cash escrow account, performance bond or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the required public improvements associated with development of the plat. The surety shall name the Town as beneficiary, shall be in a form satisfactory to the Town Attorney or his/her designee and shall be in an amount as determined by the Town Engineer based on an estimate of the cost of the required public improvements. The surety to guarantee completion of the improvements shall be in accordance with the requirements of § 103-16B of this chapter.

[Amended 10-8-2008 by L.L. No. 3-2008]

K. Endorsement of the Chairman. Upon approval of the final plat, the applicant shall carry out the following steps prior to obtaining the Chairman's signature of approval:

- (1) Provide proof of compliance with Department of Health standards and approval by that Department of the plan for water supply and sewage disposal.
- (2) Provide proof of compliance with all other required local, state and federal agency permits and approvals, including but not limited to stream disturbance; wetland and wetland buffer disturbance; highway work; curb cuts; stormwater connections; SPDES permit discharges; dams and impoundments, etc.
- (3) Make all required corrections or changes to the final plat map as outlined in the resolution of the Planning Board and provide two copies of the corrected final plat to the Secretary of the Planning Board for final review and approval by the Department, the Town Engineer and other designated Town officials for compliance with the resolution of the Planning Board.
- (4) Complete all applicable conditions of final approval as set forth in the resolution of the Planning Board.
- (5) Provide Mylar and paper copies of the final plat in such quantity as specified by the Planning Board to the Secretary of the Planning Board for the endorsement of the Chairman. After the Chairman has signed the Mylar and the paper copies of the plat, the Secretary shall immediately notify the applicant of the availability of the final plat map. The applicant is solely responsible for filing of the final plat with the County Clerk.
- (6) Obtain a performance surety in the amount of the estimate for the improvements and a general liability insurance policy and submit them to the Planning Board Attorney for approval as to form.
- (7) Pay all outstanding escrow fees and application fees to the Planning Board Secretary or to the Town Clerk. Parkland fees, if applicable, are due and payable at the time an application for a building permit is made.

L. Filed plat map. Within 30 days of the date the final plat is filed with the County Clerk, the applicant shall submit one copy of the final plat showing the endorsement of the County Clerk to the Secretary of the Planning Board.

M. Plat void if revised after approval. No changes, erasures, modifications or revisions shall be made to any subdivision plat after endorsement of said plat by the Chairman of the Planning Board, unless said plat is first resubmitted to the Planning Board and the Board approves any modifications. Such modified plat shall be resubmitted to the Planning Board for restamping and signature. In the event that any such subdivision plat is recorded without complying with this requirement, the same shall be considered null and void, and the Planning Board shall institute proceedings to have the plat stricken from the records of the County Clerk.

N. Fees. 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). 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, reasonable fees shall be paid for by the applicant and an escrow deposit will be required in accordance with Chapter 128, Zoning, § 128-85.

§ 103-16. Required public improvements.

A. Improvements.

(1) The applicant shall provide the following improvements when required by the Planning Board:

- (a) Paved streets.
- (b) Corner curves and paved aprons.
- (c) Sidewalks.
- (d) Water mains and fire hydrants.
- (e) Sanitary sewage disposal facilities.
- (f) Storm drainage system facilities.
- (g) Street signs.
- (h) Streetlighting.
- (i) Street trees.
- (j) Seeding or sodding of planting strips with lawn grass.
- (k) Parklands in accordance with § 103-29 of this chapter and § 128-57 of the Town Zoning Law.

(2) In making a determination to require such improvements, the Planning Board shall take into consideration the prospective character of the development, whether dense residence, open residence, business or industrial.

B. Surety. As outlined below, the Town may require that a performance surety in the form of a bond, cash, or an irrevocable letter of credit, as determined by the Town, shall be delivered to the Town to guarantee that the applicant will faithfully cause to be constructed and completed, within a reasonable period of time, the required public improvements and will convey the required lands and improvements to the Town free and clear of encumbrances.

[Amended 10-8-2008 by L.L. No. 3-2008]

(1) The Planning Board may require as a condition of final plat approval, based upon an estimate prepared by the Town Engineer, that the applicant shall file with the Department of Economic Development and Planning either a performance bond, cash escrow account, or an irrevocable letter of credit from a bank having a credit acceptable to the Town to cover the cost of the required public improvements. Any such surety shall comply with the requirements of § 277 of the Town Law and, further, shall be satisfactory to the Town Attorney or his/her designee as to form, sufficiency, duration, renewability, and manner of execution. The term of the surety shall be sufficient, as determined by the Town, to permit the completion of improvements by the applicant.

(2) The required public improvements shall not be considered to be completed until the Town Engineer has approved the improvements as installed and an as-built map has been submitted to the Town. The map shall indicate the location of monuments marking all underground utilities as actually installed. The performance surety shall not be released until the improvements have been accepted by the Town Board upon the recommendation of the Town Engineer.

(3) The applicant shall complete all public improvements required for the lots, or part thereof, to the satisfaction of the Town before any certificate of occupancy may be issued.

(4) If the Town Board decides at any time during the term of the performance surety that the extent of the building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such performance surety, or that required improvements have been installed in sufficient amount to warrant reduction in the face amount of said surety, or that the character and extent of such development require additional improvements previously waived for a period stated at the time of fixing the original terms of such surety, the Town Board may modify its requirements for any or all such improvements, and the face value of such performance surety shall thereupon be reduced or increased by an appropriate amount so that the new face value will cover the cost in full of the amended list of improvements required by the Town Board and any security deposited with the surety may be reduced or increased proportionately.

C. General liability insurance procedures. The general contractor shall file with the Town Attorney a general liability insurance policy at the same time that the applicant files the performance surety. The Town Board, upon the recommendation of the Town Attorney, shall approve the policy as to form and amount. The policy shall insure the Town and the general contractor and shall cover all operations of the development, including maintenance of property and buildings and contracting operations of every nature, and all public improvements. The policy shall remain in force during the term of the construction of improvements and shall be extended in conformance with any extension of the performance surety.

D. Maintenance surety. The applicant shall file with the Town Board a maintenance surety in an amount based on a maximum of 10% of the improvement estimate or in such amount which shall be adequate to assure the satisfactory condition of the initial public improvements for a period of one year following their completion and acceptance by the Town Board. Such surety shall be a bond, cash, or an irrevocable letter of credit, as determined by the Town, and shall be satisfactory to the Town Attorney as to form and manner of execution.

E. Modification of design improvements. If at any time before or during the construction of the required improvements it is demonstrated to the satisfaction of the Town Engineer that unforeseen conditions make it necessary or preferable to modify the location or design of required improvements, the Town Engineer may authorize modifications, provided that these modifications maintain the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board. The Town Engineer shall issue any authorization under this section in writing and shall transmit a copy of such authorization to the Planning Board at its next regular meeting.

F. Supervision of improvements. The construction of all required improvements shall be supervised by the Town Engineer who, after completion of construction, shall certify to the Town Board that all required improvements have been constructed as required and approved by the Planning Board or as modified by the Planning Board.

G. Inspections. The Town may employ an inspector for the purpose of assuring the satisfactory completion of improvements required by the Planning Board and shall determine an amount sufficient to defray costs of inspection. The Town shall invoice the actual cost of the inspection to the applicant, who shall pay all amounts due within 30 days of the date of the invoice. If the Planning Board or its agent finds, upon inspection, that any of the required improvements have not been constructed in accordance with the approved drawings, the applicant and the surety company will be severally and jointly liable for the costs of completing said improvements according to specifications. All improvements will be inspected to ensure satisfactory completion. In no case shall any paving work, including prime and seal coats, be done without permission from the Town Engineer. At least 24 hours' notice shall be given to the Town Engineer prior to any such construction so that a representative of the Town may be present at the time work is to be done. If the Town Engineer or other duly designated official does not carry out inspection of required improvements during construction, the applicant or the surety company shall not in any way be relieved of their responsibilities. The Town Engineer shall be notified after each of the following phases of the work has been completed so that he or his representative may inspect the work:

(1) Road subgrade.

(2) Curb and gutter forms.

(3) Road paving, after each coat in the case of priming and sealing.

(4) Sidewalk forms.

(5) Waterlines, sanitary sewer lines, stormwater drainage pipes and other drainage structures before backfilling.

(6) All underground utilities prior to backfilling.

H. Final inspection. A final inspection of all improvements will be made to determine whether the work is satisfactory and in substantial agreement with the approved final plat drawings and in compliance with the Town specifications as of the time the offer of dedication of the roads and other facilities is made to the Town Board. The general condition of the site as to cleanup and installation of sod or landscaping shall also be considered. Upon a satisfactory final inspection report, the Town Engineer shall recommend to the Town Board the release of the performance surety covering the improvements.

I. Proper installation of improvements. If the Town Engineer finds, upon inspection of the improvements performed before the expiration date of the performance surety, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the applicant, he shall so report to the Town Board, Building Inspector and Planning Board. The Town Board then shall notify the applicant and, if necessary, the issuer of the bond or the irrevocable letter of credit and take all necessary steps to preserve the Town's rights under the surety. The Town Board may thereupon declare the applicant in default and collect the sum remaining payable under the surety agreement, and upon receipt of the proceeds thereof the Town shall install such improvements as are covered by the performance surety commensurate with the building development that has taken place in the subdivision, but not exceeding in cost the amount of such proceeds. With regard to a subdivision approved in parts or phases, no subsequent parts of such a plat shall be approved by the Planning Board as long as the applicant is in default on a previously approved part of the plat.

J. Monuments. Permanent monuments shall be set at block corners and at intervals of 500 feet, or such other distance or location as the Town Engineer may designate. Each location must be indicated by a suitable symbol on the subdivision plat. The type of monument must be approved by the Town Engineer.

K. Time for completion of improvements. All improvements, or any part thereof required to service the lots as shown on a partial plat filing, shall be completed to the satisfaction of the Town Engineer before a building permit is issued with respect to any lot or dwelling fronting on a street shown on the subdivision plat.

L. Acceptance of improvements. The acceptance of improvements will not be considered or processed until three sets of as-built data per Town Highway Department standards are presented showing the improvements and, in addition, the submission of legal documents necessary for the dedication to the public of these improvements.

§ 103-17. Public streets, parks and parkland areas.

A. Public acceptance of streets, parks and parkland areas.

(1) The approval of the Planning Board of a subdivision plat shall not be deemed to constitute or be evidence of any acceptance by the Town. As a condition of final plat approval, the applicant shall submit an irrevocable offer of cession for review by the Town Board and the Town Attorney. The irrevocable offer of cession shall be in a form suitable for recording and shall not be filed until approved by the Town Board upon the recommendation of the Town Attorney.

(2) Every street shown on a plat that is filed or recorded in the office of the County Clerk as provided in these regulations shall be deemed to be a private street until such time as it has been formally offered for cession to be public and formally accepted as a public street by resolution of the Town or, alternatively, until it has been condemned by the Town for use as a public street.

(3) After such plat is approved and filed, subject, however, to review by the court as hereinafter provided, the streets, highways and parks shown on such plat shall be and become a part of the Official Map or plan of the Town. The filing of the plat with the County Clerk shall constitute a continuing offer of dedication of the streets, highways or parkland areas, water supply and sewage disposal facilities, and said offer of dedication

may be accepted by the Town Board at any time. In the event that the applicant or his agent shall elect not to file his plat prior to the expiration of plat approval as provided in § 103-15, then such formal offers of cession shall be deemed to be invalid, void and of no effect on and after such expiration date.

(4) No public street utility or improvement shall be constructed by the Town in any street or highway unless it has been offered as a public street or highway, except that the Town Board may authorize the construction of a public street utility or improvement in or under a street which has not been dedicated but which has been used by the public as a street for five years or more prior.

B. Street access and improvement prior to issuance of building permits.

(1) No permit for the erection of any building shall be issued unless the lot on which the building is proposed has frontage on a street or highway that has been duly placed on the Official Map or plan or, if there shall be no Official Map or plan, unless such street or highway is:

(a) An existing state, county or town highway.

(b) A street shown upon a plat approved by the Planning Board.

(c) A street on a plat duly filed and recorded in the office of the County Clerk prior to the appointment of the Planning Board and the grant to such Board of the power to approve plats.

(2) Before such permit shall be issued, such street or highway shall have been suitably improved to the satisfaction of the Town Board in accordance with standards and specifications approved by the appropriate municipal officers as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway, or, alternatively and in the discretion of the Town Board, a performance surety sufficient to cover the full cost of such improvement as estimated by such Board or other appropriate municipal departments designated by such Board shall be furnished to the Town by the applicant. Such performance surety shall be issued by a surety company approved by the Town Board or by the applicant with security acceptable to the Town Board and shall also be approved by the Town Attorney as to form, sufficiency and manner of execution. The term, manner of notification and method of enforcement of such surety shall be determined by the Town Board. The surety to guarantee completion of the improvements shall be a bond, cash or an irrevocable letter of credit as determined by the Town.

C. Ownership and maintenance of parkland areas. When a park, playground, natural or historic feature or other parkland or open space area shall have been shown on a plat, the approval of said plat shall not constitute an acceptance by the Town of such area. The Planning Board shall require the plat to be endorsed with appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the Town Board covering future deed and title, dedication and provision for the cost of grading, development, equipment and maintenance of any such parkland area.

§ 103-18. Conservation subdivisions.

A. Statement of policy. The Town of Bethlehem hereby establishes a policy of encouraging the use of conservation subdivision design to preserve open space, agricultural land, water supplies, and other environmental resources identified in the Town of Bethlehem Comprehensive Plan and to harmonize new development with the traditional open, wooded, agricultural and hamlet landscapes of the Town. These principles allow the Planning Board to modify the applicable area and bulk provisions of this chapter in order to preserve open space and encourage more sensitive and efficient development patterns than would be possible by strict adherence to the conventional specifications.

B. Grant of authority. The Town Board of the Town of Bethlehem hereby grants to the Planning Board of the Town of Bethlehem the authority to modify applicable area, yard and bulk provisions of the Zoning Law Editor's Note: See Ch. 128, Zoning, as they apply to a specific plat when so requested by an applicant so long as the modified plat is consistent with the goals and objectives of the Comprehensive Plan pertaining to conservation subdivisions and this chapter. To the extent that any provisions of this chapter are inconsistent with § 278 of the Town Law, the Town Board of the Town of Bethlehem hereby declares its intent to supersede that section of the

Town Law, pursuant to its home rule powers under Municipal Home Rule Law § 10, Subdivision 1(ii)(d)(3) et seq.

C. Purposes. This section encourages flexibility in the design and development of land in order to promote its most appropriate use and to preserve as permanent open space important natural features and resources, wildlife habitat, water resources, ecological systems, and scenic areas for the benefit of present and future residents. A conservation subdivision plan may involve grouping development on one or more portions of a parcel and modifying the minimum lot, area, setback or frontage requirements in order to achieve one or more of the following specific purposes:

- (1) Long-term protection of natural and man-made resources identified in the Comprehensive Plan and this chapter.
- (2) Compatibility with surrounding land uses and the overall character of the neighborhood in which the property proposed for subdivision is located.
- (3) Provision of adequate setbacks and visual buffers from adjoining properties.
- (4) Contribution to Town-wide open space planning by creating a system of permanently preserved open spaces providing linkages between existing and potential future open space areas.
- (5) Preservation of open space where the preserved lands border active agricultural land or land which is suitable for agricultural use.
- (6) Protection of ground- and surface water, regulated wetlands, steep slopes, floodplains or unique areas of natural, scenic or historic significance.
- (7) Mitigation of significant environmental impacts identified through application of the State Environmental Quality Review Act requirements. Editor's Note: See Art. 8 of the Environmental Conservation Law and 6 NYCRR 617.
- (8) Reduction of the number of new roads or driveways obtaining access from existing public roads and reduction of the amount of new road that may be required to be dedicated to the Town.
- (9) Protection of designated critical environmental areas.

D. Preservation of land. A conservation subdivision accomplishes the purposes set forth above by reducing the generally applicable minimum lot size and bulk requirements of this chapter for the district in which the property is located and by grouping residences in those areas where development would have the least impact on identified natural and community resources. The approved conservation subdivision plat shall identify, with specificity, the location and type of resource(s) to be preserved. The resource(s) shall then be permanently preserved through the use of a conservation easement(s) and/or restrictive covenants as determined by the Planning Board.

E. Applicability. This section shall be applicable only to land parcels zoned for residential uses for which an application for approval of a major subdivision pursuant to this chapter is submitted to the Planning Board.

F. Standards and procedures. An applicant for a major subdivision as set forth in this chapter has the option of requesting that the Planning Board consider approval of a conservation subdivision plan in lieu of a conventional major subdivision plan. The decision to permit a conservation subdivision is at the sole discretion of the Planning Board. The use of a conservation subdivision plan is specifically encouraged when the parcel contains, in whole or in part, one or more of the following:

- (1) State and/or federal freshwater wetlands occupy 25% or more of the site.
- (2) Slopes of greater than 20% occupy 25% or more of the site.

(3) The site contains a floodplain or flood hazard area as mapped by the Federal Emergency Management Agency's Flood Insurance Maps.

(4) The site contains a critical environmental area.

(5) The site contains identified scenic views or scenic vistas.

(6) The total amount of land included in the subdivision is 50 acres or more.

(7) The total number of lots is 10 or more.

(8) The lot or parcel is included within an agricultural district.

(9) The lot or parcel is under a forestry management plan.

G. Required plans. An application for conservation development shall include all plans and materials required for approval of a conventional subdivision as set forth in this chapter. The maximum number of residential lots that may be permitted and approved within a conservation development shall not exceed the maximum number of lots capable of being developed within a conventional subdivision layout of the same property prior to the application of incentive densities pursuant to § 128-51 of the Town Zoning Law. Lots shown on the conventional layout shall be fully consistent with the lot, area and bulk requirements for the zoning district in which the land is located and all applicable requirements of this chapter and Chapter 128.

H. Planning Board findings. In order to approve a conservation subdivision, the Planning Board must find that the conservation subdivision will benefit the Town and will fulfill the applicable purposes stated in § 128-8 of the Town Zoning Law and Subsection C of this section.

I. Determination of development density and minimum acreage. Upon receipt of an application for a conservation subdivision, the Planning Board shall review the proposed plan and shall, in accordance with Subsection J below, determine the number of building lots or dwelling units that could be practically created pursuant to said plan.

J. Maximum density unit calculation. The maximum number of density units (i.e., units per acre or "DU") in a conservation subdivision shall not exceed the maximum allowable DU for a conventional subdivision in the district in which the property is located prior to the application of incentive densities pursuant to § 128-51 of the Town Zoning Law. Any regulations contained in this chapter and in Chapter 128 restricting the number of dwelling units permitted in a conventional subdivision shall also restrict the number of dwelling units permitted in a conservation development. The calculation of buildable yield for a conservation subdivision shall be based on the following formula, which shall also be applicable to the maximum density unit calculation for all major conventional subdivisions as defined in this chapter. The buildable yield (BY) shall be used to determine the allowable density units per the area, yard and bulk chart, § 128-100 of the Zoning Law. Editor's Note: See the Schedule of Area, Yard and Bulk Requirements included at the end of Ch. 128, Zoning.

[Amended 10-8-2008 by L.L. No. 3-2008]

(1) The BY calculation shall be determined by subtracting the constrained land areas of the property (i.e., NYSDEC and USACOE regulated wetlands, and lands within the one-hundred-year floodplain area, and steep slope areas of greater than 20%) for which the applicant has not secured and has not submitted to the Planning Board permits or approvals that would allow development in such constrained land areas, as follows:

$$T - (W+F+S) = BY$$

Where:

T = Total acreage inside the boundary lines of the project parcel.

- W = Total acreage inside the boundary lines of the project parcel and within a NYSDEC or USACOE regulated wetland (exclusive of any buffer area).
- F = Total acreage inside the boundary lines of the project parcel and within the one-hundred-year floodplain area where the base elevations and flood hazard are determined exclusive of any flood area within a regulated state or federal wetland.
- S = Total acreage inside the boundary lines of the project parcel and containing slopes of 20% or greater.
- BY = Maximum number of acres that can be developed and that form the basis for determining the maximum number of residential dwellings that may be created per the area, yard and bulk chart.

(2) The BY calculation set forth in Subsection J(1) above shall be adjusted to include, in whole or in part, the constrained land area(s) for which the applicant has secured the necessary permits or approvals from applicable local, state or federal agencies authorizing development in such area(s) and has submitted copies of said permits or approvals to the Planning Board. If the parcel is not proposed for connections to central sewage disposal facilities, the plan shall also include an assessment and certification by a professional engineer as to the suitability of the soils to accommodate individual sewage disposal systems. The Department, in its sole discretion, shall determine whether the plan is realistic and reflects a development pattern that could reasonably be implemented.

(3) In addition, the following formula shall be used to determine the minimum open space set aside for a conservation subdivision:

With public water and public sewer: $T - (W+F+S+I) \times 0.40 = OS$

With private wells and/or septic: $T - (W+F+S+I) \times 0.50 = OS$

Where:

- T = Total land area (acres) inside the boundary lines of the project parcel.
- W = Total land area (acres) inside the boundary lines of the project parcel and within a NYSDEC or USACOE regulated wetland (exclusive of any buffer area).
- F = Total land area (acres) inside the boundary lines of the project parcel and within the one-hundred-year floodplain area where the base elevations and flood hazard are determined exclusive of any flood area within a regulated state or federal wetland.
- S = Total land area (acres) inside the boundary lines of the project parcel and containing slopes of 20% or greater.
- I = The total acreage of required public improvements (i.e., roads, sidewalks, stormwater management facilities).
- OS = Minimum land area (acres) required for open space.

K. Incentive density. Notwithstanding any contrary provision of the Town Law, this chapter, or Chapter 128, Zoning, that may limit or restrict the maximum residential density of a proposed conservation subdivision, an applicant proposing a conservation subdivision may also apply for an incentive adjustment to the maximum density requirements of this chapter in exchange for the preservation of significant open space and the provision of public facilities or amenities in accordance with § 128-51, Incentive zoning, of the Town Zoning Law. In authorizing the incentive adjustment to the maximum unit density pursuant to said section, the Planning Board

shall ensure that the benefit to the Town is permanent and may require such easements, surety or other performance guaranties that the Board, in its sole discretion, deems necessary. Before authorizing an incentive adjustment, the Planning Board shall make a determination, in writing, that the preserved open space and other amenities meet the requirements of § 128-8 and/or 128-42 and/or 128-51 of the Town Zoning Law and/or Subsection C of this section, as applicable, and that the additional unit density would not have a significant adverse environmental impact.

L. Existing structures. A proposed conservation plat may be denied where the Planning Board finds that the location of proposed boundary lines, relative to existing principal or accessory structure(s) located on the parcel, or the location of proposed means of ingress and egress for such existing structure(s) relative to proposed new lots and adjoining property would create a conflict with the orderly development and use of the lots of the conservation subdivision, or of adjoining lots, or would not fulfill the purpose and intent of this chapter.

M. Minimum acreage per lot. The Planning Board shall determine the minimum lot area and yard setbacks for each lot created as part of a conservation subdivision.

N. Unit mix. Notwithstanding any limitations on residential housing type as set forth in the Schedule of Uses, Editor's Note: The Schedule of Uses is included at the end of Ch. 128, Zoning. the conservation subdivision design may include a range of residential housing types as a means of achieving housing diversity and preserving open space. Within the conservation subdivision, the number of multifamily units shall be limited to not more than 1/3 of the total number of dwelling units.

O. Location of open space. The Planning Board is authorized to require the reconfiguration of a conservation subdivision to ensure that the open space to be protected under the plan generally consists of large contiguous land tracts unbroken by intervening lots, structures, roads or driveways. In order to achieve a continuity of open space lands and avoid fragmentation, not less than 50% of the lands so preserved shall be continuous and unbroken by intervening lot lines or boundary lines and shall, at its narrowest point, not be less than 30 feet in width.

P. Pedestrian access. The Planning Board may require that the conservation subdivision layout include sidewalks and trails for pedestrian circulation. Such pedestrian accessways shall be designed and installed to meet the needs of the residents of the conservation subdivision.

Q. Water supply and sewage disposal. Water supply and sewage disposal facilities serving the conservation subdivision shall be designed in accordance with all applicable County Health Department standards and shall be prepared by a licensed professional engineer.

R. Utilities. All telephone, natural gas, electric and similar utilities serving the conservation subdivision shall be located underground.

S. Open space preservation requirements. All lands identified as having one or more of the features or characteristics identified in Subsection E that are not included in a conservation development plat as building lots, roads or parkland areas shall be set aside as permanent open space. The creation, preservation and management of open space to be protected as part of a conservation subdivision development shall be as follows:

(1) Ownership. The preserved open space area may be:

(a) Created as a separate parcel owned in common by the residents of the conservation subdivision through a homeowners' association (HOA) formed in accordance with state law and approved by the office of the State Attorney General;

(b) Created as a separate parcel owned in fee by the Town of Bethlehem or by a qualified not-for-profit conservation organization acceptable to the Town Board; or

(c) Owned by one or more of the owners of the lots of the conservation subdivision wherein the open space may comprise part of one or more of the lots of the subdivision with appropriate restrictions and covenants placed in the deed(s) to said lot(s) to ensure the permanent preservation of the open space.

(2) Prohibited use. No portion of the open space shall be used for roads, building lots, utility structures, driveways, or any principal or accessory structure, except for utility lines and connections installed underground. In addition, no part of the open space shall be used for residential, industrial, or commercial purposes except in connection with active agricultural and forestry use.

(3) Preservation and enforcement. Open space set aside in a conservation subdivision shall be permanently preserved as required by this section. Each lot created as part of the conservation subdivision shall be granted individual rights to enforce the covenants and restrictions of the conservation easement(s) protecting and preserving the open space, and the Planning Board may require that the right of enforcement also be granted to the Town or to a qualified conservation organization.

(4) Plat notations. Open space created by a conservation subdivision must be clearly labeled on the final plat as to its use, ownership, management, method of preservation, and the rights, if any, of the owners in the subdivision to such land. The plat shall clearly show that the open space land is permanently reserved for open space purposes and shall contain a notation indicating the liber and page of any conservation easements or deed restrictions required to be filed to implement such reservations or restrictions.

(5) Permanent protection of open space. Open space shall be protected by a perpetual conservation easement restricting development of the open space land and allowing use only for active agriculture, forestry, active or passive recreation or protection of natural resources, pursuant to § 247 of the General Municipal Law and/or §§ 49-0301 through 49-0311 of the Environmental Conservation Law. Said conservation easement may be granted to the Town with the approval of the Town Board or to a qualified not-for-profit conservation organization acceptable to the Town Board. Such conservation easement shall be reviewed and approved by the Planning Board and be required as a condition of plat approval hereunder.

(6) Recording. The conservation easement shall be recorded in the Albany County Clerk's office prior to or simultaneously with the filing of the conservation subdivision final plat in the County Clerk's office.

§ 103-19. Fees.

Applicants are responsible for payment of all application, administrative and escrow fees as set by the Town Board as set forth in § 128-85 of the Town Zoning Law.

§ 103-20. Land divisions.

A. Standards. A land division, as defined in § 103-8 of this chapter, may, upon the determination of the Town of Bethlehem Department of Economic Development and Planning, be exempt from the requirements of a subdivision application. In order to qualify for an exemption from the requirements of a minor or a major subdivision application the following conditions shall be met:

(1) Land divisions are permitted in the R, RLL, RA, RB, RC, CR, RR, RH and RLI Districts only. Land divisions involving property located in any other district shall be subject to the procedures for processing of a minor subdivision or a major subdivision.

(2) In areas not served by central water and/or central sewer facilities up to four lots may be created from a parent parcel within any ten-year period, provided that not more than one new lot may be created from a parent parcel in any twelve-month period. In areas served by central water and/or central sewer facilities, no more than one lot may be created from a parent parcel within any ten-year period, unless the parent parcel is in agricultural use in an agricultural district, in which case up to four lots may be created from the parent parcel within any ten-year period. In all cases, a separate application shall be required for each lot to be divided, and the Department shall consider only a single land division from a parent parcel at any one time. For purposes of this subsection, "served by central water and/or central sewage treatment facilities" shall mean:

(a) A property that has a central water distribution line or a central sewage disposal collection line within 100 feet of the property line; and

(b) The water system and/or the sewage treatment system has capacity to provide service to the lot to be created.

(3) In all cases the size and configuration of the new lot and the remaining parent parcel shall be a buildable lot as defined in this chapter and Chapter 128, Zoning.

(4) Each lot of a land division shall meet the area, yard and bulk requirements of Chapter 128, Zoning, for the district in which the lots are located.

(5) No new streets or extensions to any existing street shall be required.

(6) Each new lot shall also meet the requirements of § 128-53, lots bordering streams, of the Zoning Law, and all local, state and federal standards regarding protection of freshwater wetlands, and § 128-49 of the Zoning Law and Chapter 98 of the Code of the Town of Bethlehem.

[Amended 11-14-2007 by L.L. No. 7-2007]

B. An applicant for a land division shall provide a written disclosure of any future plans to further divide the parent parcel, including plans for creation of central water supply and/or sewage treatment facilities, and the Department shall give due consideration to 6 NYCRR 617.3(g)(1) of the State Environmental Quality Review Act as it relates to segmentation.

C. Any application that does not meet each of the requirements of Subsection A(1) through (6) above shall be referred to the Planning Board and processed as an application for subdivision approval pursuant to this chapter.

D. Compliance with the State Environmental Quality Review Act. Editor's Note: See Art. 8 of the Environmental Conservation Law. An application for a land division shall not be considered complete until a negative declaration has been issued by the Department. If the Department determines that the land division may have one or more potentially significant environmental impacts, the application shall be referred to the Planning Board and processed as an application for subdivision approval.

E. Decision. In rendering its decision concerning an application for land division approval, the Department shall consider the purposes of this chapter as set forth in §§ 103-5 and 103-24 and shall give due consideration to the potential for the further division of the parent parcel. The Department may attach reasonable conditions to its approval of a land division in order to avoid or minimize any adverse effects on adjoining lands.

F. Action on land division plat. The Department of Economic Development and Planning shall, within 62 days of receipt of a complete application, approve, conditionally approve with or without modification, or disapprove the land division plat. When conditionally approving a plat the Department shall state in writing the modifications, if any, it deems necessary before the plat will be endorsed by the Director. The Department shall also set forth in writing its reasons for any disapproval.

G. Filing of notice of action. Written notice of the action of the Department, plus any conditions attached thereto, shall be provided to the applicant, and a copy of such notice shall be filed with the Town Clerk within five days of the date of approval.

H. Duration of conditional approval. Conditional approval of a land division plat shall expire within 180 days after the date of approval by the Department unless all requirements and conditions have been completed.

I. Filing of final plat; expiration of approval. The applicant shall file the approved final plat in the office of the County Clerk within 62 days from the date of final approval or such approval shall expire. The signature of the Director or other duly authorized officer of the Department of Economic Development on the plat shall constitute final approval.

J. Filed plat map. Within 30 days of the date the final plat is filed with the County Clerk, the applicant shall submit one copy of the filed map showing the endorsement of the County Clerk to the Department.

K. Plat void if revised after approval. No changes, erasures, modifications or revisions shall be made to any land division plat after endorsement of said plat by the Director unless said plat is first resubmitted to the Department and the Department approves any modifications. Such modified plat shall be resubmitted to the Department for restamping and signature. In the event that any such land division plat is recorded without complying with this requirement, the same shall be considered null and void, and the Department shall institute proceedings to have the plat stricken from the records of the County Clerk.

§ 103-21. Lot line revisions.

A. Planning Board approval required. Planning Board approval shall be required for any changes in the location of a lot line shown on a filed final plat that was previously approved by the Planning Board.

[Amended 10-8-2008 by L.L. No. 3-2008]

B. Application and fee. All applications for approval shall be in writing and on forms and in such quantity as may be prescribed by the Planning Board, together with a fee as set by the Town Board.

C. Information waiver. The Department of Economic Development and Planning may grant a waiver from the information requirements of this chapter where it determines that such information is not relevant to, or is not otherwise required to conduct, the review of the application.

D. Compliance with the State Environmental Quality Review Act. Editor's Note: See Art. 8 of the Environmental Conservation Law. An application for a lot line revision shall not be considered complete until a negative declaration has been issued.

E. Applicant to attend Planning Board meetings. The applicant or his duly authorized representative shall attend meetings of the Planning Board at which the application is considered.

F. Lot line revision criteria. A lot line revision shall not be approved unless the Planning Board has determined that:

(1) The lot line revision does not adversely affect the development of the remaining lands within the subdivision.

(2) The lot line revision does not adversely affect the development and/or quiet enjoyment of adjoining property.

(3) The lot line revision is consistent with the subdivision approval(s) originally issued by the Planning Board by which the subject parcel(s) was (were) established or amended.

(4) The conditions of the subdivision approval(s) originally issued by the Planning Board have been completed or have been waived by the Planning Board.

(5) The lot line revision is consistent with the Town Comprehensive Plan, Official Map of the Town, the Town Zoning Law Editor's Note: See Ch. 128, Zoning. and this chapter.

G. Filing of notice of action. Written notice of the action of the Planning Board, plus any conditions attached thereto, shall be provided to the applicant, and copy of such notice shall be filed with the Town Clerk within five days of the date of approval.

H. Duration of conditional approval of a lot line revision. Conditional approval of the lot line revision plat shall expire within 180 days after the date of adoption of the resolution granting such approval unless all applicable requirements stated in such resolution have been completed. The Planning Board may extend by not more than two additional periods of 90 days each the time in which a conditionally approved plat must be submitted for signature if, in the Board's opinion, such extension is warranted by the particular circumstances.

I. Filing of lot line revision plat; expiration of approval. The applicant shall file the approved lot line revision plat in the office of the County Clerk within 62 days from the date of final approval or such approval shall expire. The signature of the Chairman or Vice Chairman or other duly authorized officer of the Planning Board signifying final approval and completion of conditions of final approval by the Planning Board shall constitute approval.

J. Endorsement of the Chairman. Upon approval of the lot line revision, the applicant shall carry out the following steps prior to obtaining the Chairman's signature of approval:

(1) Make all required corrections or changes to the lot line revision plat as outlined in the resolution of the Planning Board and provide one copy of the corrected final plat to the Secretary of the Planning Board for final review by staff for compliance with the resolution of the Planning Board. The applicant shall also complete all applicable conditions of the Planning Board resolution approving the final plat.

(2) Provide Mylar and paper copies of the lot line revision in such quantity as specified by the Planning Board to the Secretary of the Planning Board for the endorsement of the Chairman. After the Chairman has signed the Mylar and the paper copies of the plat, the Secretary shall immediately notify the applicant of the availability of the lot line revision plat. The applicant is solely responsible for filing of the lot line revision plat with the County Clerk.

K. Filed plat. Within 30 days of the date the lot line revision plat is filed with the County Clerk, the applicant shall submit one copy of the plat showing the endorsement of the County Clerk to the Secretary of the Planning Board.

L. Plat void if revised after approval. No changes, erasures, modifications or revisions shall be made to any lot line revision plat after the endorsement of the Chairman of the Planning Board unless said plat is first resubmitted to the Planning Board and the Board approves any modifications.

§ 103-22. (Reserved)

§ 103-23. (Reserved)

ARTICLE IV. General Requirements and Design Standards

§ 103-24. Purpose; requirements and standards.

A. The purpose of this article is to ensure that the highest standards of site, building and landscape design are conscientiously met through the use of qualified technical and aesthetic judgment compatible with the Comprehensive Plan. In acting upon plats, the Planning Board shall require, among other conditions in the public interest, that the tract shall be adequately drained and the streets shall be of sufficient width and suitable grade and suitably located to accommodate the prospective traffic and to provide access for fire-fighting equipment to buildings. The Planning Board shall further require that all lots shown on the plats shall be adaptable for the intended purpose without danger to health or peril from flood, fire, erosion or other menace. Required improvements shall be designed and constructed to conform to specifications established by the Town. In considering applications for subdivision approval, the Planning Board shall be guided by the standards set forth herein. These standards shall be considered to be minimum requirements and may be waived by the Board only under the circumstances set forth in § 103-40 of this chapter.

B. Specifications for required improvements. All required improvements shall be constructed or installed to conform to municipal specifications, which may be obtained from the Town Engineer.

C. Existing features which would add value to the development, such as large trees, watercourses, historic sites and similar irreplaceable assets, should be preserved, insofar as possible, through harmonious design of the subdivision.

D. The Planning Board, in considering an application for the subdivision of land, shall be guided by the policy considerations specified in § 103-5 of this chapter. In addition, the Planning Board, in its deliberations on any discretionary actions under this chapter, shall ensure that the goals and policies of the Town Comprehensive Plan are implemented as far as practicable through this chapter.

§ 103-25. Maximum density unit calculation for major subdivisions.

[Amended 10-8-2008 by L.L. No. 3-2008]

The maximum number of density units (i.e., units per acre or DU) shall not exceed the maximum allowable DU for a subdivision in the district in which the property is located. Any regulations contained in this chapter and in Chapter 128 restricting the number of dwelling units permitted in a subdivision shall apply. The calculation of buildable yield for a major subdivision shall be based on the following formula. The buildable yield (BY) shall be used to determine the allowable density units per the area, yard and bulk chart, § 128-100 of the Zoning Law. Editor's Note: See the Schedule of Area, Yard and Bulk Requirements included at the end of Ch. 128, Zoning.

A. The BY calculation shall be determined by subtracting the constrained land areas of the property (i.e., NYSDEC and USACOE regulated wetlands, and lands within the one-hundred-year floodplain area, and steep slope areas of greater than 20%) for which the applicant has not secured and has not submitted to the Planning Board permits or approvals that would allow development in such constrained land areas, as follows:

$$T - (W+F+S) = BY$$

Where:

T = Total acreage inside the boundary lines of the project parcel.

W = Total acreage inside the boundary lines of the project parcel and within a NYSDEC or USACOE regulated wetland (exclusive of any buffer area).

F = Total acreage inside the boundary lines of the project parcel and within the one-hundred-year floodplain area where the base elevations and flood hazard are determined exclusive of any flood area within a regulated state or federal wetland.

S = Total acreage inside the boundary lines of the project parcel and containing slopes of 20% or greater.

BY = Maximum number of acres that can be developed and that form the basis for determining the maximum number of residential dwellings that may be created per the area, yard and bulk chart.

B. The BY calculation set forth in Subsection A above shall be adjusted to include, in whole or in part, the constrained land area(s) for which the applicant has secured the necessary permits or approvals from applicable local, state or federal agencies authorizing development in such area(s) and has submitted copies of said permits or approvals to the Planning Board. If the parcel is not proposed for connections to central sewage disposal facilities, the plan shall also include an assessment and certification by a professional engineer as to the suitability of the soils to accommodate individual sewage disposal systems. The Department, in its sole discretion, shall determine whether the plan is realistic and reflects a development pattern that could reasonably be implemented.

§ 103-26. Layout of streets and roads.

A. Relation to topography. Streets shall be logically related and conform, insofar as possible, to the original topography. They shall be arranged so as to obtain as many as possible of the building sites at or above the grades of the streets. A combination of steep grades and sharp curves shall be avoided.

B. Streets. Streets shall be graded and improved with pavement, street signs, sidewalks, streetlighting, curbs, gutters, trees, water mains, sanitary sewers, storm drains and fire hydrants in accordance with the Town of Bethlehem Department of Public Works Guidelines for Final Subdivision Plans, dated August 25, 1997, as amended, and the State Highway Law, as amended. The Planning Board may waive, subject to appropriate conditions and upon the recommendation of the Town Highway Department and the Town Engineer, such improvements as it considers are not requisite in the interest of public health, safety and general welfare.

C. Utilities. Underground utilities shall be placed between the paved roadway and street line to facilitate location and repair of the lines. The applicant shall install underground connections, where required, to the property line of each lot before the street is paved.

D. Grading and stormwater improvements. Site grading and improvements related to management of stormwater quality and quantity shall conform to Town specifications and shall be approved as to design and specifications by the Town Engineer or duly authorized representative. In addition, development of the parcel shall conform with the State Pollutant Discharge Elimination System (SPDES) Phase II stormwater requirements and §128-49 of the Zoning Law and Chapter 98 of the Code of the Town of Bethlehem.

[Amended 11-14-2007 by L.L. No. 7-2007]

E. Intersections. Intersections of major streets by other streets shall generally be at least 600 feet apart where practicable. Cross (four-cornered) street intersections shall be avoided, except at important intersections. A distance of at least 150 feet shall be maintained between offset intersections. Within 50 feet of an intersection, streets shall be approximately at right angles and grades shall be limited to 1.5%. All street intersection corners shall be rounded by curves of at least 25 feet in radius at the property line.

F. Trees. A conscious effort shall be made to preserve all worthwhile trees and shrubs which exist on the site. Such features may well be suggested for park or playground areas. On individual lots or parcels, care should be taken to preserve selected trees to enhance the landscape treatment of the development.

G. Sight lines and visibility at intersections. Within the triangular area formed at corners by the intersection of street center lines, for a distance of 75 feet from their intersection and the diagonal connecting the end points of these lines, visibility for traffic safety shall be provided. Fences, walls, hedges or other landscaping shall not be permitted or placed so as to obstruct such visibility.

H. Continuation of streets into adjacent property. Streets shall be arranged to provide for their continuation between adjacent properties where such continuation is necessary for convenient movement of traffic, effective fire protection, and efficient provision for utilities and particularly where such continuation is in accordance with the Town Plan. If the adjacent property is undeveloped and the streets must dead end temporarily, the right-of-way and the improvements must run to the property line. A temporary "T" turnaround, meeting Town specifications, shall be provided at the terminus of all dead-end streets together with a notation on the plat that the land outside the street right-of-way shall revert to abutters whenever the street is continued.

I. Permanent dead-end streets (culs-de-sac). A circular turnaround in accordance with the standards set forth in the Town specifications shall be provided at the end of the dead-end street for greater convenience to traffic and effective police and fire protection. Permanent dead-end streets shall, in general, be limited in length to 900 feet.

J. Street names. All streets shall be named, and such names shall be subject to the approval of the Town Board. Names shall be sufficiently different in sound and spelling from other street names in the Town so as not to cause confusion. A street which is a continuation of an existing street shall bear the same name.

K. Future street system. Where the plat covers only a part of the applicant's tract, a sketch of the prospective future street system of the unsubmitted part shall be furnished and the street system of the part submitted shall be considered along with the potential future street system.

§ 103-27. Lots, flag lots and shared driveways.

A. Arrangement. The arrangement of lots shall be such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in locating a building on each lot and in providing access to buildings on such lots from an approved street.

B. Flag lots. Lots which meet the definition of "flag lot," as defined in this chapter, shall meet the following additional standards:

- (1) The access to the flag lot shall be by way of a driveway placed within the "flagpole" or "panhandle" portion of the lot or parcel, as recorded.

(2) Only that portion of the lot having adequate width to meet the minimum lot width requirements and allow for provision of meeting the minimum yard and setback requirements of the district shall be counted as part of the minimum lot area. The accessway (i.e., the "flagpole" or "panhandle") shall not be included in the calculation of minimum lot area.

(3) The accessway shall maintain a constant minimum width of not less than the minimum highway frontage as set forth in Chapter 128, Zoning, § 128-100 for the district in which the property is located.

(4) The flagpole shall not cross a flowing or intermittent stream, ravine or similar topographic feature without provision of an adequate structure or fill and culvert to carry traffic.

(5) In no event shall a flag lot be used to access a private road.

(6) The flagpole shall be conveyed with the ownership of the rear lot or parcel and shall be considered a permanent part of that lot or parcel, never to be resubdivided or conveyed separately from the parcel to which it provides access.

(7) A flag lot parcel shall not be approved which would create a flagpole that would be generally parallel to a public street, unless the flagpole is separated from the public street by a distance of not less than 200 feet.

(8) Adjoining flag lots are prohibited. The minimum distance between driveways serving individual flag lots shall be not less than 100 feet as measured along the public road or highway frontage.

(9) Flag lots shall be permitted in both major and minor subdivisions at the discretion of the Planning Board. Flag lots must meet all area, yard and bulk requirements for the zoning district applicable and shall be so arranged as to provide suitable all-weather access for passenger and emergency vehicles.

(10) The length of the "pole" of the flag lot from the roadway to the front yard line shall not be less than 200 feet.

(11) Where one flag lot parcel is preexisting, the adjoining lot or parcel shall not be divided into a flag lot shape.

(12) Notwithstanding any inconsistent provisions of this chapter or the Zoning Law Editor's Note: See Ch. 128, Zoning. , flag lots shall be permitted for the erection and maintenance of single-family dwellings only.

(13) Flag lots may not be further subdivided.

C. The Planning Board is authorized to modify the requirements for flag lots as set forth in Subsection A above, provided that the Board determines that such modification will result in an improved project design, will be protective of the environment, and will ensure the protection of the public health, safety and welfare.

D. Lots located in the R, RR, and RLI Districts shall be exempt from regulation as flag lots under Subsection B(8).

E. A shared driveway may be used to access no more than three buildable lots. Shared driveways may be used to access a flag lot and not more than two lots adjoining the flag lot, provided that each such lot has frontage on a public road or public highway. The establishment of a shared driveway requires an access easement and an agreement or covenant setting forth the rights and obligations of the owners of the lots to share in the cost of maintaining and repairing the shared driveway. Such agreement or covenant is subject to the approval of the Town Attorney.

§ 103-28. Reservations and easements.

A. Realignment or widening of existing streets. Where the subdivision borders an existing street and the Official Map or Town Plan indicates plans for realignment or widening of the street that would require reservation of

some land of the subdivision, the Planning Board may require that such areas be shown in the plat as "Reserved for Street Purposes."

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

[Amended 10-8-2008 by L.L. No. 3-2008]

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

[Amended 10-8-2008 by L.L. No. 3-2008]

D. Ownership of reservations. Ownership shall be clearly indicated on all reservations and easements.

§ 103-29. Parkland reservation and fee requirements.

A. General provisions.

(1) In reviewing residential site plans and residential subdivisions, or proposals for planned residential and mixed economic developments, the Planning Board, in the case of site plans and subdivisions, or the Town Board in the case of planned residential and mixed economic developments, shall ensure that the park and recreation demands generated by new residential development are addressed in accordance with the provisions of this article.

(2) To the extent that this section is inconsistent with Town Law § 274-a, Subdivision 6, or § 277, Subdivision 4, or any other provision of Article 16 of the Town Law, the provisions of this chapter are expressly intended to and do hereby supersede any such inconsistent provisions.

B. Reservation of land for public park, playground or parkland purpose.

(1) Land reservation requirement.

(a) Residential developments requiring site plan or subdivision approval. Where the Planning Board determines that suitable land for a public park, playground or other recreational purpose exists within the parcel boundaries of a proposed residential development, the Planning Board may require as a condition of site plan or subdivision approval that a portion of the development parcel be reserved for such purpose.

(b) Residential developments requiring planned residential development approval. Where the Town Board determines that suitable land for a public park, playground or other recreational purpose exists within the parcel boundaries of a proposed planned residential development, the Town Board may require as a condition of building project approval that a portion of the development parcel be reserved for such purpose.

(2) In determining whether or not to require the reservation of land for public park, playground or other recreational purpose, the Planning Board, in the case of residential site plans and subdivisions, and the Town Board, in the case of planned residential and mixed economic developments, shall be guided by the criteria and procedures outlined in Subsections C, D and E below.

C. Amount of land reservation. The minimum amount of land area to be reserved for public park, playground or other recreational purpose shall be determined by the number and type of new residential units located within the proposed residential development, according to the following schedule:

Unit Type	Amount of Land to be Reserved (square feet per dwelling unit)
Single-family detached	1,550
Single-family attached ¹	1,100
Two- to four-family unit ²	1,150
Multifamily unit ³	925

Notes:

- ¹ Refers to single-family attached units such as townhouses where each dwelling unit sits on its own individual lot.
- ² Refers to units located in structures with two to four dwelling units, including condominium units, but excluding single-family attached units such as townhouses.
- ³ Refers to units located in structures with five or more dwelling units, including condominium units, but excluding single-family attached units such as townhouses.

D. Criteria for land reservation. In determining whether or not to require the reservation of land for public park, playground or recreational purposes, the Planning Board, in its review of residential site plans or subdivisions, or the Town Board, in its review of planned residential and mixed economic developments, shall consider the following factors:

- (1) Whether suitable land exists within the parcel boundaries of the proposed development, in terms of its size, shape, and dimensions, to reasonably accommodate a public park, playground or other recreation use.
- (2) Whether the characteristics of the land in terms of topography, soils, vegetative cover, hydrology and/or other natural features readily lend themselves to development of the site for active recreation use.
- (3) Whether there are state or federal regulatory restrictions that would limit the usefulness of the site for active recreation development.
- (4) Whether the site, in terms of its physical characteristics, would provide an attractive and safe area for recreational use.
- (5) Whether the site is located such that reasonable and safe pedestrian, bicycle and vehicular access can be provided between the site and surrounding residential areas.
- (6) Whether the character of the proposed residential development and that of the surrounding area are compatible with a public park and/or recreational use.
- (7) Whether the anticipated population of the proposed residential development, together with the population density of surrounding neighborhoods, is sufficient to justify development and long-term maintenance of a public park, playground or other recreation facility at the location.
- (8) Whether the site is located near or duplicates recreation facilities already provided in the area, particularly those providing the same type of recreation opportunities, including facilities located on public school grounds.
- (9) Whether development and long-term maintenance of the site would place an undue burden on the Town Parks and Recreation Department, given other commitments and priorities of that Department.

(10) Whether the site contains any unique and significant physical, aesthetic or ecological features that would make it particularly suited for environmental education, trail development, a nature preserve, or other passive recreation use.

(11) Whether reservation of the land is consistent with recommendations contained in the Comprehensive Plan for the Town of Bethlehem and/or the Master Plan for Parks and Recreation in the Town of Bethlehem, if any, in effect at the time the development application is made.

(12) Whether reservation of the land is consistent with the general goals and objectives of the Town Parks and Recreation Department and the Town Board with respect to parks and recreation facility development.

E. Referral required.

(1) Site plan and subdivision applications. Prior to making any final determination that land within a proposed residential development will be reserved for public park, playground or other recreational purpose, the Planning Board, in the case of site plans or subdivisions, shall first refer the proposal to both the Town Board and the Administrator of Parks and Recreation for their input on the matter. If no response is rendered within 30 days of the date of referral, the Planning Board may make a final determination. A referral is not necessary where the Planning Board makes a determination that it will not require the reservation of land within the residential development.

(2) Planned residential development applications. Prior to making any final determination that land within a proposed residential development will be reserved for public park, playground or other recreational purpose, the Town Board, in the case of planned residential and mixed economic developments, shall first refer the proposal to the Administrator of Parks and Recreation for his/her input on the matter. If no response is rendered within 30 days of the date of referral, the Town Board may make a final determination. A referral is not necessary where the Town Board makes a determination that it will not require the reservation of land within the residential development.

F. Findings required. Prior to making any final determination that land will be reserved for public park, playground or other recreational purpose, the Planning Board, in the case of residential site plans and subdivisions, or the Town Board, in the case of planned residential and mixed economic developments, shall make a finding, in accordance with § 274-a, Subdivision 6, or § 277, Subdivision 4, of the New York State Town Law that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. The finding shall include an analysis of the criteria of Subsections D(1) through (12) above.

G. Timing of land reservation. The reservation of public park, playground or recreation land shall occur prior to the issuance of the first building permit for any dwelling unit located within the approved residential development.

H. Satisfaction of land reservation requirement. The land reservation requirement of this section shall be satisfied by:

(1) The presentation to the Town of a metes and bounds description of the site that is proposed to be reserved for public park, playground or recreation purposes;

(2) The placing of a notation upon the approved plan indicating that the land is so reserved and cannot be further subdivided or built upon except for such purposes; and

(3) The placing of deed restrictions upon the site. Said deed restrictions shall be in a manner and form acceptable to the Town Attorney and shall indicate that the land is reserved for public park, playground or recreational purposes and cannot be further subdivided or built upon except for such purposes. Said deed restrictions shall be filed in the office of the County Clerk, and upon their filing the land so reserved shall become part of the Official Map of the Town of Bethlehem.

I. Fee in lieu of public park, playground or recreational land.

(1) Fee in lieu of land reservation. Where the Planning Board, in the case of residential site plans and subdivisions, or the Town Board, in the case of planned residential and mixed economic developments, does not require the reservation of land for a public park, playground or other recreational purpose, the approving Board or agency shall instead require that a fee in lieu of said land be paid to the Town as a condition of project approval.

(2) Amount of fee. The fee to be paid the Town above shall be determined by the number and type of new residential units located within the proposed residential development, according to the following schedule:

Unit Type	Fee Amount (per dwelling unit)
Single-family detached	\$1,550.00
Single-family attached ¹	\$1,100.00
Two- to four-family unit ²	\$1,150.00
Multifamily unit ³	\$925.00

Notes:

¹ Refers to single-family attached units such as townhouses where each dwelling unit sits on its own individual lot.

² Refers to units located in structures with two to four dwelling units, including condominium units, but excluding single-family attached units such as townhouses.

³ Refers to units located in structures with five or more dwelling units, including condominium units, but excluding single-family attached units such as townhouses.

(3) Findings required. Prior to requiring the payment of a fee in lieu of the reservation of land, the Planning Board, in the case of site plans or subdivisions, or the Town Board, in the case of planned residential and mixed economic developments, shall make a finding, in accordance with § 274-a, Subdivision 6, or § 277, Subdivision 4, of the New York State Town Law and § 128-57 of the Town Zoning Law that the proposed residential development presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan or within such building project.

(4) Timing of fee payment. Payment of the fee shall be made to the Town at the time of application for a building permit for each approved dwelling unit. Fees may be paid on a unit-by-unit basis consistent with the number of units covered in each building permit application.

(5) Fees to constitute separate trust fund. All fees collected pursuant to this section shall be placed in a separate trust fund(s) to be established and used by the Town exclusively for the acquisition of public park, playground or recreation land and/or the improvement of public park and recreation facilities.

J. Credits.

(1) Credit for previous land reservations and fee payments. Notwithstanding the provisions found elsewhere in this article, credit shall be given for previous land reservations and/or fee payments that were made pursuant to this chapter or Chapter 128, Zoning, of the Town Code at the time of a prior residential development approval.

(2) Credit for land previously reserved. Any land reservation required pursuant to this article shall be reduced by an amount equal to the area of land reservation required for the approved dwelling unit(s) or lot(s) at the time of previous subdivision, site plan or planned residential development approval.

(3) Credit for fees previously paid. Any parkland fee required pursuant to this article shall be reduced by an amount equal to the parkland fee required for the approved dwelling unit(s) or lot(s) at the time of previous subdivision, site plan or planned residential development approval.

(4) Credit for on-site facilities. In instances where private parkland facilities are provided on site for the benefit of residents of the development, the parkland fee required pursuant to this article may be reduced by an amount equal to 50% of the required fee or 50% of the cost of such on-site facilities, whichever is less. Acceptable facilities shall include clubhouses, swimming pools, tennis courts, playgrounds, athletic fields, and other similar facilities for active recreation use. The acceptability of on-site facilities and any subsequent reduction in fee shall be determined by the Town Board in the case of planned residential and mixed economic developments or by the Planning Board in the case of residential site plans or subdivisions. The cost of any on-site facilities for which credit is sought shall be fully documented and may include the cost of materials and labor only.

§ 103-30. Average density subdivision.

The Planning Board may encourage and allow the use of an average density calculation for new lots as part of a major subdivision development. In approving average density subdivisions, the Planning Board shall find that the subdivision furthers the Town Comprehensive Plan's objectives of protecting natural and open lands and organizing the open space parcels into a continuous open space system. The Planning Board may allow the application of average density subdivisions subject to the following:

- A. The application shall meet the criteria as a major subdivision. Minor subdivision applications shall be ineligible for approval as an average density subdivision.
- B. The lots so created shall be for residential use only.
- C. The parent parcel must be located in one of the following districts: R, RLL, RA, RB, CR or RR.
- D. An average density subdivision shall be platted so that the mean, or average, lot area throughout the subdivision meets or exceeds the minimum lot area requirement for the zoning district.
- E. Any reduced area lot created as part of an average density subdivision shall meet all of the other minimum area, yard and bulk requirements for the zoning district.
- F. The Planning Board shall require sufficient legal assurances (i.e., conservation easements, restrictive covenants or similarly binding legal mechanisms) to prevent future subdivision of either the remaining lands of the parent parcel or any of the lots created in a way that would cause the maximum average density unit standard to be exceeded.
- G. In approving an average density subdivision, the Planning Board shall find that the adverse environmental impacts of the proposed subdivision are less than what would otherwise occur within a conventional subdivision.
- H. The use of average density subdivision shall not increase the total amount of density units that are permitted pursuant to § 103-25 of this chapter and § 128-100 of the Town Zoning Law.

§ 103-31. (Reserved)

ARTICLE V. Application Requirements

§ 103-32. Land division application and plat data.

- A. Application. An application for a land division shall be submitted to the Department of Economic Development and Planning. Application forms are available from the Department, and the Department shall specify the number of copies required for review. In addition, the application shall include the following:

- (1) Payment of an application fee as prescribed by the Town Board.
- (2) A short form environmental assessment form pursuant to Article 8 of the Environmental Conservation Law.
- (3) An actual field survey of the boundary lines of the lots to be divided from the entire tract, giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The survey shall include:
 - (a) A title block containing:
 - [1] Parcel owner's name.
 - [2] Street address of parcel to be divided, including town and county.
 - [3] Tax parcel number of lot to be divided.
 - [4] Name and address of map preparer.
 - (b) A North arrow point.
 - (c) A map scale.
 - (d) The zoning district in which the parcel is located.
 - (e) The date of the survey and the latest revision date (if any).
 - (f) The location of existing and proposed structures, including offset distances to property lines and highway right-of-way boundaries, and indicating conformance to zoning district requirements.
 - (g) The location of intersection of driveway(s) with public road.

B. Accompanying information. The following information shall accompany a land division application:

- (1) A copy of the current recorded deed of the parent parcel, together with copies of any recorded covenants, restrictions or easements affecting the parent parcel.
- (2) Letter of approval (if applicable) from the Town Department of Public Works, or the Albany County Department of Public Works, or the New York State Department of Transportation approving the driveway access for the new lot.

§ 103-33. Sketch plan data.

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. The sketch shall indicate 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. A map of the entire holding or parcel to be subdivided and indicating the location of that portion which is to be subdivided in relation to the entire tract and the adjacent street system.

D. 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.

E. The tax map section, block and lot numbers.

F. The general location of all utilities and all streets which are either proposed, mapped or built.

G. The proposed subdivision layout, including the 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.

H. All existing restrictions on the use of land, including easements and covenants.

I. A location map, at a minimum scale of one inch equals 1,000 feet, to indicate the relationship of the proposed subdivision 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.

J. Existing drainage features (e.g., culverts, marshes, ponds and streams) within the portion to be subdivided and within 100 feet thereof.

K. Zoning district or districts.

L. Acreage of each land use and proposed density with supporting calculations, if required.

§ 103-34. Minor subdivision application and plat data.

A. Application. An application for a minor subdivision shall be submitted to the Planning Board. Application forms are available from the Department, and the Department shall specify the number of copies required for review.

B. Information on plat. In the case of a minor subdivision only, the subdivision plat shall include the following data:

(1) An actual field survey of the boundary lines of the lots to be subdivided from the entire tract, giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The plat shall include:

(a) A title block containing.

[1] The name of the subdivision.

[2] The owner's name.

[3] The tax parcel number of the parcel to be subdivided.

[4] The street address of the parcel to be subdivided, including town and county.

[5] The name and address of the map preparer.

(b) A North arrow point.

(c) A map scale.

(d) The zoning district(s) in which the parcel is located and the zoning district boundaries, if applicable.

- (e) The date of the survey and the latest revision date (if any).
- (f) The location of existing and proposed structures, including offset distances to property lines and highway right-of-way boundaries, and indicating conformance to zoning district requirements.
- (g) The location of intersection of driveway(s) with public road.
- (h) Identification of the size and configuration of the buildable portion on each lot, including limits of clearing and grading.
- (i) A location map.
- (j) The total acreage of the parcel and acreage of each proposed lot
- (k) Topography, at intervals of five feet or less.
- (l) Existing and proposed utilities, including location of the nearest hydrant if served by municipal water.
- (m) Easements, existing and proposed.
- (n) Existing and proposed drainage facilities.
- (o) Names of adjacent property owners.
- (p) Planning Board approval box.
- (q) Preliminary stormwater drainage system plan. Drainage structures shall be shown on the preliminary layout, indicating the direction of flow, the approximate location and size of proposed lines and culverts and their profiles, as well as connections to existing lines or alternative means of disposal. This shall include, as required, the proposed size and location of detention basins and other stormwater management facilities as required to comply with the State Pollutant Discharge Elimination System (SPDES) MS4 requirements and Chapter 98 of the Code of the Town of Bethlehem.

[Added 11-14-2007 by L.L. No. 7-2007]

(2) All on-site sanitation and water supply facilities shall be designed to meet the minimum specifications of the State Department of Health. The location and results of the percolation test(s) on which the septic system design(s) is (are) based shall be indicated on the plat.

C. Accompanying information. The following information shall accompany a minor subdivision application:

- (1) A copy of current recorded deed and such covenants or deed restrictions as are intended to cover all or part of the tract.
- (2) Letter of approval (if applicable) from the Town Department of Public Works, the Albany County Department of Public Works, or the New York State Department of Transportation relative to access to a public road under its jurisdiction.
- (3) Applicable fee as set by Town Board.
- (4) Environmental assessment form (EAF).

§ 103-35. Major subdivision application and preliminary plat data.

A. Application. An application for a major subdivision shall be submitted to the Planning Board. Application forms are available from the Department, and the Department shall specify the number of copies required for review.

B. Plat preparation. The preliminary plat shall be prepared by a licensed land surveyor and shall bear the seal and signature of the surveyor responsible for its preparation.

C. Information on plat. In the case of a major subdivision, the subdivision plat shall include the following data:

(1) A title block containing:

(a) The name of the subdivision.

(b) The parcel owner's name.

(c) The tax parcel number of the parcel to be subdivided.

(d) The street address of the parcel to be subdivided, including town and county.

(e) The name and address of the map preparer.

(2) Date, North arrow and scale.

(3) Names of the owners of adjoining parcels.

(4) Total acreage for the parcel and the tax map number.

(5) Bold outlines depicting boundaries of the parcel to be subdivided, plotted to scale.

(6) Total number of proposed lots and the size of each lot.

(7) The date of original preparation and of each subsequent revision.

(8) Graphic scale of no less than 100 feet equals one inch, but preferably not less than 50 feet to the inch.

(9) Offers of dedication or statements establishing easements should be indicated on the drawing.

(10) Zoning district, including exact boundary lines of the district, if more than one district, and any standards from the Zoning Law schedules applicable to the area to be subdivided. Editor's Note: See the schedules included at the end of Ch. 128, Zoning.

(11) Wetlands, marshes, rivers, lakes and watercourses. In the case of a regulated freshwater wetland, the field-delineated boundary of said wetland shall be shown together with any applicable wetland buffer area.

(12) Cut or match lines for two or more drawing sheets shall be indicated within the site boundaries, with each section numbered according to the corresponding sheet.

(13) Adjacent properties. Adjacent properties within 100 feet of the site which are part of a recorded subdivision plat shall be identified by the names of the owners of record, together with section, block and lot numbers.

(14) Boundaries of special districts. Boundaries of special districts (such as water, sewer, fire, school, lighting, etc.).

(15) Topographic contours. Topographic contours at two-foot intervals referred to the United States Coast and Geodetic Survey data of mean sea level. Topographic and information shall extend at least 100 feet beyond the boundaries of the parcel.

(16) Proposed finished grades shall be indicated.

(17) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The corners of the tract shall also be located on the ground and marked by substantial markers or stakes of such size and type as are approved by the Town Engineer and shall be referenced and shown on the plat.

(18) Street rights-of-way and widening of rights-of-way on the subdivision and within 200 feet of its boundaries, including the street name, location and width, center-line elevations at intersections and other critical points, and other rights-of-way, easements, including restrictions on use, and highways, streets, sidewalks and municipal boundaries within 100 feet of the boundaries of the parcel.

(19) Drainage structures on the subdivision and within 100 feet of its boundaries, including:

(a) Type of structure.

(b) Location, invert elevations, gradients, types and sizes of all pipe and of all other structures, where applicable, and direction of flow.

(20) Location and size or capacity of all other utility structures, such as water and gas mains and power lines, on the subdivision and within 100 feet of its boundaries.

(21) Date, location and graphic representation of findings for all test results of percolation and other tests to ascertain subsurface soil, rock and groundwater conditions and depth of groundwater unless pits are dry at a depth of five feet.

(22) Locations shall be indicated where critical conditions exist, especially wet conditions.

(23) Municipal or other public lands and lands designated as parks, open spaces or for some other public use.

(24) Buildings and other structures located on and within 100 feet of the site.

(25) Location of rock outcrops, isolated trees over 12 inches in diameter at breast height and clusters of large trees, tree lines, wooded areas, existing structures, stone walls, roads or lanes, power lines, easements and other existing improvements within the portion to be subdivided and within 100 feet thereof.

D. Accompanying information. The following information shall accompany a major subdivision application:

(1) A copy of current recorded deed of the parcel and such covenants or deed restrictions as are intended to cover all or part of the tract.

(2) Letter of approval (if applicable) from the Town Department of Public Works, the Albany County Department of Public Works, or the New York State Department of Transportation relative to access to a public road under its jurisdiction.

(3) Applicable fee as set by the Town Board.

(4) Environmental assessment form (EAF).

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

[Added 10-8-2008 by L.L. No. 3-2008]

E. Proposed site development.

(1) Proposed streets and street names and right-of-way width.

(2) The width and location of any streets or public ways or places shown on the Official Map or the Comprehensive Plan within the area to be subdivided, together with preliminary street profiles of public ways proposed by the developer.

(3) Preliminary center-line elevations at intersections and at principal changes in gradient.

(4) Preliminary center-line gradient shown in percent of slope.

(5) Plans and cross sections showing the proposed location and type of sidewalks, lighting, street trees, curbs, water mains, sanitary sewers and storm drains, and the size and type thereof; the character, width and depth of pavements and subbase; and the location of manholes, basins and underground conduits.

(6) Lot layout, including lot lines and dimensions scaled to the nearest foot; suggested location of buildings.

(7) Building setback line (dashed) and dimensions.

(8) Identification of the size and configuration of the buildable portion on each lot, including limits of clearing and grading.

(9) Proposed easements, parks, and restricted areas, including purpose and restrictions.

(10) Designation of areas or rights-of-way which are to be offered for public dedication or deeded to a homeowners' association or other private corporation. The Board may require specific recreation improvements and planting of trees, shrubs, grass and other landscaping in all areas to be so dedicated.

(11) Preliminary stormwater drainage system plan. Drainage structures shall be shown on the preliminary layout, indicating the direction of flow, the approximate location and size of proposed lines and culverts and their profiles, as well as connections to existing lines or alternative means of disposal. This shall include, as required, the proposed size and location of detention basins and other stormwater management facilities as required to comply with the State Pollutant Discharge Elimination System (SPDES) MS4 requirements and Chapter 98 of the Code of the Town of Bethlehem.

[Added 11-14-2007 by L.L. No. 7-2007]

(12) Preliminary water supply and sewage treatment systems. The approximate location, size and profiles of all proposed waterlines, valves, hydrants and sewer lines, connection to existing lines or alternative means of water supply or sewage disposal and treatment as provided in the Public Health Law.

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

[Amended 10-8-2008 by L.L. No. 3-2008]

(14) Entire holdings. If the application covers only a part of the applicant's entire holding, a map of the entire tract, drawn at a scale of not less than 400 feet to the inch, shall be provided. The map shall show an outline of the platted area with its proposed streets and indication of the probable future street system, including its grades and drainage in the remaining portion of the tract and the probable future drainage layout of the entire tract in relation to the part of the applicant's holdings not included in the application.

F. Temporary field markers. The Planning Board may require the location of temporary markers adequate to enable members of the Board to locate readily and appraise the basic layout in the field. These may include markers at corners of the site or along road center lines.

§ 103-36. Major subdivision final application and plat data.

A. The following documents shall be submitted for plat approval:

(1) If any information from the preliminary plat application has changed, an application supplying the updated information shall be submitted to the Planning Board, including an updated deed, if applicable.

(2) Applicable fee as set by Town Board.

(3) Major subdivision plat. The plat to be filed with the County Clerk shall be printed on a Mylar at a dimension as specified by the County Clerk.

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

[Added 10-8-2008 by L.L. No. 3-2008]

B. The final plat shall be prepared by licensed design professionals in accordance with local and state laws and shall provide the information as outlined in the Town of Bethlehem Department of Public Works Guidelines for Final Subdivision Plans dated August 25, 1997, as amended, and any information required by the Planning Board.

§ 103-37. Lot line revision application and plat data.

A. Application. An application for a lot line revision shall be submitted to the Planning Board. Application forms are available from the Department, and the Department shall specify the number of copies required for review. In addition, the application shall include the following:

(1) Payment of an application fee as prescribed by the Town Board.

(2) A short environmental assessment form, pursuant to Article 8 of the Environmental Conservation Law.

(3) An actual field survey of the boundary lines of the lots involved in the lot line revision, drawn to scale and giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The survey shall include:

(a) A title block containing:

[1] Subdivision name in which the lots are located.

[2] Street addresses of lots being revised, including town and county.

(b) Names of the owners of lots being revised.

(c) Name and address of map preparer.

- (d) Tax parcel numbers of lots being revised.
- (e) A North arrow point.
- (f) A map scale.
- (g) The zoning district of the lots.
- (h) The date of the survey and the latest revision date (if any).
- (i) The location of existing and proposed structures, including offset distances to property lines and highway right-of-way boundaries, and indicating conformance to zoning district requirements.
- (j) The area of the lots prior to and subsequent to the lot line revision.
- (k) Location of existing or proposed easements, deed-restricted areas, streets, paved areas, public or private utilities, manholes, catch basins, or other public or private improvements located within the area of the lot line revision or immediately adjacent thereto.
- (l) The location of intersection of driveway(s) with public road.
- (m) Name, approval date, map reference and preparer of original subdivision.

B. Accompanying information. The following information shall accompany a lot line revision application: a copy of the current recorded deed for each lot being affected by the lot line revision together with copies of any recorded covenants, restrictions or easements affecting the lots.

§ 103-38. (Reserved)

§ 103-39. (Reserved)

ARTICLE VI. Waivers

§ 103-40. Variances, waivers and conditions.

A. In addition to waivers granted by the Department, where the Planning Board finds that certain data and information are not required for a complete application, it may waive the regulations upon written request of the applicant, provided that such waiver will not have the effect of nullifying the intent and purpose of this chapter, or Chapter 128, Zoning, of the Town of Bethlehem Code, or the State Environmental Quality Review Act. Editor's Note: See Art. 8 of the Environmental Conservation Law.

B. Where the Board finds that, due to the special circumstances of a particular plat, the provision of certain required improvements is not requisite in the interest of the public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements, subject to appropriate conditions.

§ 103-41. (Reserved)

§ 103-42. (Reserved)

§ 103-43. (Reserved)

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§ 103-38. (Reserved)

§ 103-39. (Reserved)

ARTICLE VI. Waivers

§ 103-40. Variances, waivers and conditions.

§ 103-41. (Reserved)

§ 103-42. (Reserved)

§ 103-43. (Reserved)

CHAPTER 103. SUBDIVISION REGULATIONS

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 8-23-2006 by L.L. No. 4-2006. Editor's

Note: This local law superseded former Ch. 103, Subdivision Regulations, adopted 8-26-1980, as amended.

Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 53.

Flood damage prevention — See Ch. 69.

Freshwater wetlands — See Ch. 72.
Sewers — See Ch. 91.
Streets and sidewalks — See Ch. 100.
Zoning — See Ch. 128.

ARTICLE I. General Provisions

§ 103-1. Short title.

These regulations shall be known as and may be cited by the title "Subdivision Regulations, Town of Bethlehem."

§ 103-2. Authority.

A. By the authority of the Town Board of the Town of Bethlehem, pursuant to the provisions of Article 16 of the Town Law of the State of New York, the Planning Board of the Town of Bethlehem is authorized and empowered to approve plats showing lots, with or without streets or highways, to approve the development of entirely or partially undeveloped plats already filed in the office of the Albany County Clerk and to conditionally approve preliminary plats, within that part of the Town of Bethlehem outside the limits of any incorporated village. In order that land subdivision may be made in accordance with this policy, these regulations, known as the "Town of Bethlehem Subdivision Regulations," have been adopted by the Planning Board on August 2, 2005, and approved by the Town Board on August 24, 2005.

B. The Planning Board of the Town of Bethlehem is also hereby authorized and empowered, pursuant to Town Law § 276, Subdivision 2, to approve the development of plats, entirely or partially undeveloped, which were filed in the office of the Albany County Clerk prior to the appointment of the Planning Board. The term "undeveloped" shall mean those plats where 20% or more of the lots within the plat are unimproved, unless existing conditions, such as poor drainage, have prevented their development.

C. This chapter is also intended to supersede and amend inconsistent provisions of Town Law § 276, Subdivision 8, by eliminating the provisions for default approval resulting from the Planning Board's failure to take any action or hold any hearing on a preliminary or final plat within the statutory time periods.

§ 103-3. Authorization to approve plats.

The Town of Bethlehem has authorized its Planning Board and, under specified circumstances, its Department of Economic Development and Planning to approve plats showing lots, blocks or sites, with or without streets or highways, as a complete or as a partial development of land, and to approve such plats for filing with the office of the Albany County Clerk as provided in these regulations. The Clerk of the Town of Bethlehem shall immediately file a certificate of that fact with the office of the Albany County Clerk.

§ 103-4. Amendments.

This chapter may be amended by the Town Board after due notice and public hearing.

§ 103-5. Purpose.

It is declared to be the policy of the Town Board to consider land subdivisions as part of the orderly and desirable development of land. These regulations provide procedures and standards for the Planning Board in its review of subdivision plats. The intent of these regulations is to encourage the most appropriate and best development of land in order to protect and promote the general health, safety and welfare, which is intended to include the following:

A. To assure that land to be subdivided will produce building sites of such character and area that will permit their development for homes or buildings without danger to health or peril from fire, flood or other menace.

B. To facilitate the adequate and efficient provision of community facilities, services and utilities and require the most desirable and appropriate systems for drainage, water supply, sewage disposal and other needed improvements, including any appropriate parks and playgrounds.

C. To promote the safe and convenient circulation of vehicles and pedestrians and to promote the efficient design, location and construction of roads, streets, sidewalks, pathways, and driveways so as to accommodate current and future needs.

D. To minimize the destruction of the natural character of the land and promote the conservation of all elements of topography and vegetation which contribute to the natural beauty of the land.

E. To provide, through all subdivision planning and development, for the privacy of family residents while enhancing the general appearance of the community.

§ 103-6. Severability.

If any clause, sentence, paragraph, section or part of this chapter shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered or as determined by such judgment.

§ 103-7. When effective.

This chapter shall take effect upon the effective date of the local law, filed with the Secretary of State, that governs this chapter. Editor's Note: This chapter became effective September 1, 2006.

ARTICLE II. Definitions

§ 103-8. Terms defined.

As used in this chapter, the following terms shall have the meanings indicated:

AGRICULTURAL DISTRICT

An area designated pursuant to Article 25-AA of the New York State Agriculture and Markets Law.

ALLEY

A narrow street or passage between properties or buildings serving as a secondary means of access to abutting property.

APPLICANT

Any person, firm, corporation, partnership, association or other entity who or which shall lay out any land division, lot line revision, subdivision, or resubdivision, or part thereof, either on behalf of himself or itself or for another or others.

AVERAGE DENSITY SUBDIVISION

A subdivision carried out in accordance with this chapter which includes a number of lots having less than the required minimum lot size. Said lots shall be deemed to be conforming lots, provided that the total number of dwelling units within the subdivision does not exceed the maximum density unit requirements of this chapter.

BUFFER AREA or BUFFER ZONE

Open space, landscape areas, fences, walls, berms or any combination thereof used to physically separate or screen one use or property from another use or property so as to visually shield or block noise, light, or other nuisances.

BUILDABLE AREA

The space remaining on a lot after the minimum yard, area and bulk requirements of Chapter 128, Zoning, have been met or that area of the lot for which a variance from said minimum yard, area and bulk requirements has been granted by the Zoning Board of Appeals.

BUILDABLE LOT

A lot having a buildable area capable of accommodating proposed principal and accessory improvements and including, where required, an on-site water supply facility and sewage treatment system that meet the standards of the Albany County Department of Health.

BUILDABLE YIELD

The maximum unit density for a proposed subdivision after deduction of constrained land areas.

[Amended 10-8-2008 by L.L. No. 3-2008]

BUILDING

Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals or chattel.

BUILDING AREA

The total of the areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of uncovered porches, terraces and steps. All dimensions shall be measured between the exterior faces of walls.

BUILDING, FRONT LINE OF

The line of that face of the building nearest the front line of the lot. This face includes sun parlors and covered porches, whether enclosed or unenclosed, but does not include steps.

CALIPER, TREE

The diameter of a tree as measured at a point six inches above the ground level (up to and including four-inch caliper size) and 12 inches above the ground level (for larger sizes).

COMPREHENSIVE PLAN

The materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material, that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the Town located outside the limits of any incorporated village.

CONDITIONAL APPROVAL

Approval by the Planning Board of a preliminary or a final plat, subject to such conditions as may be set forth by the Planning Board in a resolution conditionally approving such plat. Such conditional approval does not qualify a final plat for recording nor authorize issuance of any building permits prior to the signing of the plat by a duly authorized officer of the Planning Board and recording of the plat in the office of the County Clerk or Registrar as herein provided.

CONSERVATION SUBDIVISION

A residential subdivision pursuant to Town Law § 278 where the dwelling units that would result on a given parcel under a conventional subdivision plan are allowed to be concentrated on a smaller and more compact portion of land and where a majority of the remaining land is left in its natural open space condition in perpetuity. Conservation development results in a flexibility of design and development to promote the most appropriate use of land, to facilitate the adequate and economical provisions of streets and utilities, and to preserve the natural and scenic qualities of open lands.

CONSTRAINED LAND

Land containing one or more of the following: state and/or federal protected freshwater wetlands; one-hundred-year floodplains or flood hazard areas; steep slopes of 20% and greater; and open bodies of water, including streams, ponds and lakes.

CUL-DE-SAC

A dead-end street or a portion of a street having only one vehicular outlet.

DEPARTMENT OF ECONOMIC DEVELOPMENT AND PLANNING

The Department of Economic Development and Planning of the Town of Bethlehem, New York, also sometimes referred to as "Department."

DEVELOPMENT PLANNING COMMITTEE

A committee appointed by the Director composed of staff members of the Department of Economic Development and Planning of the Town of Bethlehem.

DIRECTOR

The Director of the Department of Economic Development and Planning of the Town of Bethlehem.

DWELLING

A building designed or used as the living quarters for one or more families. The term "dwelling," "one-family dwelling," "two-family dwelling" or "dwelling group" shall not be deemed to include a motel, boardinghouse, tourist home or guest house.

DWELLING, FOUR-FAMILY

A building designed for or occupied exclusively by four families living independently of each other.

DWELLING, MULTIFAMILY

A building or portion thereof containing five or more dwelling units on one plot but which may have joint services or joint facilities, or both, also known as a "multiple dwelling," and includes garden apartment, townhouse, cooperative, and condominium developments, assisted living projects, and continuous care retirement community (CCRC) developments.

DWELLING, ONE-FAMILY

A detached building designed for or occupied exclusively by one family.

DWELLING, THREE-FAMILY

A building designed for or occupied exclusively by three families living independently of each other.

DWELLING, TWO-FAMILY

A building designed for or occupied exclusively by two families living independently of each other.

DWELLING UNIT

A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrance or other hallways or porches) or cooking or sanitary facilities in common with any other dwelling unit. A trailer, motor home, travel or camping trailer, boarding- or rooming house, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging, nursing or other similar home, or other similar structure, shall not be deemed to constitute a "dwelling unit."

EASEMENT

Authorization by a property owner for the use by another, for a specified purpose, of any designated part of real property.

ELEVATION

The elevation, in feet, above mean sea level, as determined from the nearest United States Coastal and Geodetic benchmark of the principal building to be sited on a lot.

FINAL PLAT

A drawing prepared by a New York State licensed professional engineer or land surveyor (with appropriate certification), in a manner prescribed by these regulations, showing a proposed subdivision and containing, in such additional detail as shall be provided by these regulations, all information required to appear on a preliminary plat and the modifications, if any, required by the Planning Board at the time of approval of a preliminary plat of such proposed subdivision if such preliminary plat has been so approved and which, if approved, may be filed or recorded by the owner in the office of the Albany County Clerk.

FINAL SUBDIVISION PLAT APPROVAL

The signing of a plat in final form by a duly authorized officer of the Planning Board pursuant to a Planning Board resolution granting final approval to the plat or after conditions specified in a resolution granting conditional approval of the plat are completed. Such final approval qualifies the plat for recording in the office of the County Clerk.

GRADE, ESTABLISHED

The elevation of the center line of the streets as officially established by the Town authorities.

GRADE, FINISHED

The completed surfaces of lawns, walks and roads brought to grades as shown on official plans or designs relating thereto.

GRADING

The alteration of the surface or subsurface conditions of land, lakes, ponds or watercourses by excavation or filling to a depth greater than six inches.

HIGHWAY FRONTAGE

That portion of any lot which bounds a street, as measured along the property line, which is coincidental with such street right-of-way or center line, or on a corner lot in which case frontage is along both streets.

INCENTIVE ZONING

Adjustments to the maximum unit density requirements of the Town Zoning Law Editor's Note: See Ch. 128, Zoning, in exchange for the preservation of significant open space and/or the provision of improvements, facilities or amenities deemed to be of benefit to the Town.

LAND DISTURBANCE

Any activity involving the clearing, cutting, excavation, filling, grading or any other activity that alters land topography or vegetative cover.

LAND DIVISION

Any division of a parent parcel so as to create one new lot fronting on an existing street and not involving the construction of any new streets or roads, not involving a resubdivision, and not adversely affecting the development of the remainder of the parcel or any adjoining property and meeting the criteria of § 103-20 of this chapter and not in conflict with any provision or portion of Chapter 128, Zoning, or this chapter.

LOT

Land occupied or to be occupied by a building and its accessory buildings or by a dwelling group and its accessory buildings, together with such open spaces as are required under the provisions of this chapter, having not less than the minimum area and width required by this chapter for a lot in the district in which such land is situated and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of state law to be adequate as a condition of the issuance of a building permit for a building on such land.

LOT, CORNER

A lot which has an interior angle of less than 135° at the intersection of two street lines. A lot abutting upon a curved street shall be considered a corner lot if the tangents to the curve at the points of intersection of the side lot lines intersect at an interior angle of less than 135°.

LOT COVERAGE

That percentage of the lot covered by the footprint of the principal and accessory building area.

LOT, DEPTH OF

The mean horizontal distance between the front and the rear lot lines, measured in the general directions of its side lot lines.

LOT, FLAG

A lot which has sufficient frontage on a public street to comply with the minimum lot frontage requirements of this chapter but which is shaped in such a manner that the portion of the lot closest to the street can only be used for access purposes and not as a yard or buildable area, and whose width some distance back from the right-of-way is sufficient to provide proper space to meet the yard and setback requirements.

LOT, HOUSE

In cluster subdivisions, that portion of the subdivision reserved as a development area for the location of dwelling units and constituting lands outside of the protected open space areas.

LOT, INTERIOR

A lot other than a corner lot.

LOT LINE

Any line dividing one lot from another.

LOT LINE, REAR

The lot line generally opposite to the street line; if the rear lot line is less than 10 feet in length or if the lot comes to a point in the rear, the rear lot line shall be deemed to be a line parallel to the front lot line not less than 10 feet long lying farthest from the front lot line.

LOT LINE REVISION or LOT LINE AMENDMENT

A change in the location of a boundary between two or more lots within a subdivision plat previously approved by the Planning Board and filed in the Albany County Clerk's office.

LOT, THROUGH

An interior lot having frontage on two parallel or approximately parallel streets but which is not a corner lot.

LOT WIDTH

The mean distance measured at the required minimum front yard depth along a line at right angles to the depth of lot line and parallel to the street right-of-way (ROW) line.

OFFICIAL MAP

The map and any amendments thereto adopted by the Town Board under § 270 of the Town Law or by the County under § 239-h of the General Municipal Law.

OPEN SPACE

Land left in a natural state for conservation and agricultural purposes or land landscaped for scenic purposes, devoted to active or passive recreation, or devoted to the preservation of distinctive architectural, historic, geologic or botanic sites. The term shall not include land that is paved, used for the storage, parking or circulation of automobiles, or occupied by any structure. Open space may be included as a portion of one or more large lots or may be contained in a separate open space lot but shall not include private yards within 50 feet of a principal structure.

OPEN SPACE, USABLE

An unenclosed portion of the ground of a lot which is not devoted to driveways or parking spaces, which is free of structures of any kind, of which not more than 25% is roofed for shelter purposes only, the minimum dimension of which is 40 feet and which is available and accessible to all occupants of the building or buildings on said lot for purposes of active or passive outdoor recreation. Accessory building roof space may be substituted for ground space, provided that such space is available and accessible to all said occupants by means of access other than stairs.

OWNER

The owner of record of a tract or parcel, the subdivision of which requires approval of the Planning Board, or a person or persons holding an option to purchase a tract or parcel, contingent only upon receipt of Planning Board approval of a proposed subdivision of such tract or parcel. The owner may be represented by a duly authorized agent or representative in the conduct of business before the Board, except in those instances specified hereafter that require the appearance of the owner in person.

PARENT PARCEL

A parcel of land legally in existence on the effective date of this chapter. For purposes of this chapter, the parent parcel shall be deemed to be that lot, parcel or tract of land owned by the person or persons as shown on the records of the Town of Bethlehem Assessor's office as of the effective date of this chapter.

PLANNING BOARD

The Town of Bethlehem Planning Board.

PRELIMINARY PLAT

A drawing, prepared in the manner prescribed in this chapter, showing the layout of a proposed subdivision, including but not restricted to road and lot layout and approximate dimensions, key plan, topography and drainage, and all proposed facilities, including preliminary plans and profiles, at suitable scale and in such detail as this chapter requires.

PRELIMINARY PLAT APPROVAL

The approval of a proposed subdivision as set forth in a preliminary plat, but subject to the approval of the final plat in accordance with the provisions of this chapter.

PROPERTY

Any lot or parcel of land.

RESUBDIVISION

A change in a subdivision plat previously approved by the Planning Board and filed in the County Clerk's office, which change affects any street layout shown on such plat, affects any area reserved thereon for public use, or changes the number of lots.

SECRETARY OF THE PLANNING BOARD

The individual appointed by the Planning Board to perform, among other things, the duties set forth in Town Law § 274-a, § 274-b, § 276, § 277, and this chapter.

SKETCH PLAN

A conceptual sketch made on a topographic survey map showing the proposed subdivision in relation to existing conditions and with reference to the minimum lot and area requirements of the zoning district in which the property is located.

SKETCH PLAN REVIEW

The review of a conceptual layout of a proposed subdivision by the Department of Economic Development and Planning. The review is limited to ensuring that the proposed subdivision meets the minimum lot and area requirements as set forth in the Town Zoning Law, Chapter 128, subject to approval of the plat in preliminary and/or final form in accordance with the provisions of this chapter.

SLOPE OF SITE, MEANS OF MEASURING

The vertical distance, in feet, between the highest elevation of a lot or development and the lowest elevation of a lot or development, divided by the horizontal difference between these two elevations, in feet, said horizontal distance ordinarily to be the natural course of stormwater runoff. Should the site be sufficiently large, in the judgment of the Planning Board, and heterogeneous in character (difference of one or more slope factors), the site should be divided into different measurement units, with a gradient defined for each.

STEEP SLOPES

All ground areas having a topographical gradient equal to or greater than 20%, measured by utilizing two-foot contours.

STREET

A right-of-way for vehicular traffic, including a road, avenue, lane, highway or other way designed and constructed in accordance with Chapter 100, Streets and Sidewalks, of the Town of Bethlehem Code, as amended, the Town of Bethlehem Department of Public Works Guidelines for Final Subdivision Plans dated August 25, 1997, as amended, and the State Highway Law, as amended.

STREET, ARTERIAL

A street which serves or is designed to be used primarily for crosstown movement by fast or heavy traffic.

STREET, COLLECTOR

A street which carries traffic from local streets to the major system of arterial streets; the principal entrance and circulation streets within a development.

STREET GRADE

The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the street grade.

STREET LINE

The dividing line between the street and the lot.

STREET, LOCAL

A street intended to serve primarily as an access to abutting residential properties.

STREET PAVEMENT

The wearing or exposed surface of the roadway used by vehicular traffic.

STREET WIDTH

The distance between property lines.

SUBDIVISION

The division of any parcel of land resulting in the creation of three or more lots, plots, or sites, with or without streets or highways, for the purpose, with respect to any portion of the original parcel, of immediate or future development, or for the immediate or future sale, lease or any other transfer of any interest in any portion of such original parcel. The term shall also include the division of any parcel that does not meet the criteria for a land division as set forth in this section. The term "subdivision" shall include a resubdivision.

SUBDIVISION, CONSERVATION

A residential subdivision pursuant to Town Law § 278 where the dwelling units that would result on a given parcel under a conventional subdivision plan are allowed to be concentrated on a smaller and more compact portion of land and where a majority of the remaining land is left in its natural open space

condition in perpetuity. Conservation development results in a flexibility of design and development to promote the most appropriate use of land, to facilitate the adequate and economical provisions of streets and utilities, and to preserve the natural and scenic qualities of open lands.

SUBDIVISION, CONVENTIONAL

The subdivision of land into lots that meet or exceed the minimum area, yard and bulk regulations of the district in which it is located.

SUBDIVISION, MAJOR

Any subdivision not classified as a minor subdivision, including but not limited to subdivisions of five or more lots or any size subdivision requiring any new street or road or the extension of municipal facilities.

SUBDIVISION, MINOR

Any subdivision or resubdivision containing not more than four lots fronting on an existing improved public street and not involving construction of any new street(s) or road(s) and that meets the criteria of § 103-13C of this chapter.

SUPERINTENDENT

The duly elected Town Superintendent of Highways or other such authorized official.

TOWN COMPREHENSIVE PLAN

A comprehensive plan for the development of the Town as adopted by the Town Board pursuant to § 272-a of the Town Law, which may include general recommendations for various public works and reservations, and for the general physical development of the Town, including any part of such plan separately adopted and any amendment to such plan or parts thereof.

TRACT

Any body of land, including contiguous parcels of land, under the control of one or more owners acting in concert as part of a common scheme or plan.

WAY

A street or alley or other thoroughfare or easement permanently established for passage of persons or vehicles.

§ 103-9. (Reserved)

§ 103-10. (Reserved)

ARTICLE III. Procedures for Filing and Review of Plat Maps

§ 103-11. Application required.

A. Applications for land division, subdivision, resubdivision and lot line revision approval under this chapter shall comply fully with the applicable provisions of Article 16 of the Town Law, the Public Health Law, and this chapter. Due care in the preparation of the maps and other information called for will expedite the process of obtaining approval of a land division, a subdivision, a resubdivision or a lot line revision.

B. When any land division, subdivision, resubdivision or lot line revision of land is proposed, and before any contract for the sale of land or any offer to sell such land division, subdivision, resubdivision or land with a lot line revision, or any part thereof, is made, or any grading, clearing, construction or other improvement is undertaken therein, the applicant or his duly authorized agent shall apply in writing for approval of such proposed land division, subdivision, resubdivision or lot line revision in accordance with the procedures set forth in this chapter.

§ 103-12. Sketch plan (optional).

A. A sketch plan review is recommended prior to submission of a formal application for subdivision approval. The sketch plan review is intended to reduce the review time for Planning Board consideration of proposed subdivisions by allowing early review of the plan by the Department of Planning and Economic Development. Upon the request for sketch plan review, the Development Planning Committee shall notify the applicant of the place, date, and time of the meeting at which the sketch plan is to be considered. The applicant or the applicant's representatives shall be present at the meeting to discuss the application. The sketch plan review shall be limited to a review of the basic concept of the proposal with respect to the minimum area, yard and bulk requirements of the district in which the property is located, and to identify problems with meeting the requirements of this chapter which might occur during formal Planning Board consideration. The sketch plan review and consultation shall be nonbinding. 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. After the sketch plan review, nothing herein shall be construed to prevent an applicant from submitting a formal application for subdivision approval to the Planning Board. 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.

B. 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. The sketch plan shall contain the information as set forth in § 103-33 of this chapter.

§ 103-13. Minor subdivision.

A. Application and fee. All applications for minor subdivision approval shall be in writing and on forms and in such quantity as may be prescribed by the Planning Board together with a fee as set by the Town Board. Unless otherwise waived, the plat shall conform to the requirements listed in § 103-34.

B. Information waiver. The Department of Planning and Economic Development may grant a waiver from the information requirements of this section where it determines that such information is not relevant to, or is not otherwise required to conduct, the review of the application.

C. Minor subdivision criteria. The following subsection sets forth the criteria of a minor subdivision wherein the proposed subdivision plat is presented in a proposed final form at the time of the initial application.

(1) A minor subdivision is one:

(a) That contains not more than four lots fronting on an existing street.

(b) That does not require the construction of any new streets or roads.

(c) That does not adversely affect the development of the remaining lands of the subdivision.

(d) That does not adversely affect the development or quiet enjoyment of adjoining property.

(e) That is not in conflict with any provisions of the Town Comprehensive Plan, the Official Map of the Town, the Town Zoning Law Editor's Note: See Ch. 128, Zoning. or this chapter.

(f) Where each proposed lot is of a size and configuration so as to provide, if applicable, the minimum separation distances and meet the design standards for on-site water supply and sewage disposal systems as established by the Albany County Department of Health.

(2) A proposed minor subdivision that does not meet each of these criteria shall be subject to the major subdivision review procedures. Nothing herein shall be interpreted to prohibit the use of the procedures for review of a major subdivision for any subdivision application, where the Planning Board determines that processing of the application as a major subdivision is necessary to protect the public health, safety and welfare.

(3) In the case of a minor subdivision, no more than four lots shall be created either simultaneously or sequentially from a parent parcel within a ten-year period. Should more than that total number of lots be applied for within 10 years of the date the minor subdivision is approved, the Planning Board shall require the applicant to provide all of the information required of a major subdivision for the previously subdivided lots as well as for the lots under consideration in the new application.

D. Compliance with the State Environmental Quality Review Act. Editor's Note: See Art. 8 of the Environmental Conservation Law. An application for a minor subdivision shall not be considered complete until a negative declaration has been filed or until a notice of completion of a draft environmental impact statement has been filed in accordance with the provisions of the State Environmental Quality Review Act. The time periods for review of a minor subdivision plat shall begin upon filing of such negative declaration or such notice of

completion. An application for minor subdivision approval that has been determined by the Planning Board to require the preparation of a draft environmental impact statement shall result in the processing of the application as a major subdivision.

E. Applicant to attend Planning Board meetings. The applicant or his duly authorized representative shall attend meetings of the Planning Board at which the application is considered to discuss the plat. 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.

F. When officially submitted. An application submitted under this section shall be deemed received at the next regular meeting of the Planning Board at which the application is to be considered. An application shall be placed on the Planning Board agenda only upon payment of the application fee as set by the Town Board along with the number of copies of the plat as specified by the Planning Board, an environmental assessment form, and a completed application form and an agricultural data statement (if applicable).

G. Agricultural data statement. If any portion of the project is located on property within an agricultural district containing a farm operation, or on property with boundaries within 500 feet of a farm operation located in an agricultural district, the application must include an agricultural data statement containing 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 land contains farm operations and is located within 500 feet of the boundary of the property upon which the project is proposed; 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.

H. County referral. An application for subdivision approval under this section shall be forwarded to the Albany County Planning Board for review pursuant to General Municipal Law § 239-n if the boundary of the proposed subdivision is located within 500 feet of:

- (1) The boundary of any city, village, or town.
- (2) The boundary of any existing or proposed county or state park or other recreation area.
- (3) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway.
- (4) The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines.
- (5) The existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated.
- (6) The boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the Agriculture and Markets Law, if required.

I. Referral to neighboring municipalities. Pursuant to General Municipal Law § 239-nn, for a subdivision review under this section involving property located within 500 feet of an adjacent municipality, notice of any public hearing shall be given by mail or electronic transmission to the clerk of the adjacent municipality not less than 10 days prior to the date of said hearing.

J. Public hearing on minor subdivision. The hearing on the minor subdivision plat shall be advertised at least once in the official newspaper so designated by the Town Board at least five days before such hearing. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that an application for a subdivision approval is under consideration by the Board. All notices shall include the name of the subdivision, the location of the land to be subdivided, and the date, place, time and subject of the public hearing. Such notice shall not be required for adjourned dates. The hearing on the minor subdivision plat shall be closed upon motion of the Planning Board within 120 days after it has been opened.

K. Action on minor subdivision plat. The Planning Board shall, within 62 days from the date of the public hearing, approve, conditionally approve with or without modification, or disapprove a complete application for minor subdivision plat approval. When conditionally approving a minor subdivision plat with or without modifications, the Planning Board must state in writing the modifications, if any, it deems necessary before the plat will be endorsed by the Chairman. The Board shall specify in writing its reasons for any disapproval.

L. Filing of notice of action. Written notice of the action of the Planning Board, plus any conditions attached thereto, shall be provided to the applicant, and a copy of such notice shall be filed with the Town Clerk within five days of the date of approval.

M. Duration of conditional approval of minor subdivision plat. Conditional approval of the minor subdivision plat shall expire within 180 days after the date of adoption of the resolution granting such approval unless all applicable requirements stated in such resolution have been completed. The Planning Board may extend by not more than two additional periods of 90 days each the time in which a conditionally approved plat must be submitted for signature if, in the Board's opinion, such extension is warranted by the particular circumstances.

N. Filing of minor subdivision plat; expiration of approval. The applicant shall file the approved minor subdivision plat in the office of the County Clerk within 62 days from the date of final approval or such approval shall expire. The signature of the Chairman or Vice Chairman or other duly authorized officer of the Planning Board signifying final approval and completion of conditions of final approval by the Planning Board shall constitute approval.

O. Endorsement of the Chairman. Upon approval of the minor subdivision plat, the applicant shall carry out the following steps prior to obtaining the Chairman's signature of approval:

(1) Provide proof of compliance with Department of Health standards and approval of the plan for water supply and sewage disposal.

(2) Provide proof of compliance with all other required local, state and federal agency permits and approvals, including but not limited to stream disturbance; wetland and wetland buffer disturbance; highway work; curb cuts; stormwater connections; SPDES permit discharges; dams and impoundments, etc.

(3) Make all required corrections or changes to the minor subdivision plat map as outlined in the resolution of the Planning Board and provide two copies of the corrected final plat to the Secretary of the Planning Board for final review and approval by the Department of Planning and Economic Development, the Town Engineer and other designated Town officials for compliance with the resolution of the Planning Board. The applicant shall also complete all applicable conditions of the Planning Board resolution approving the final plat.

(4) Provide Mylar and paper copies of the minor subdivision plat in such quantity as specified by the Planning Board to the Secretary of the Planning Board for the endorsement of the Chairman. After the Chairman has signed the Mylar and the paper copies of the plat, the Secretary shall immediately notify the applicant of the availability of the minor subdivision plat map. The applicant is solely responsible for filing of the minor subdivision plat with the County Clerk.

(5) Pay all outstanding escrow fees and application fees. Parkland fees, if applicable, are due and payable at the time an application for a building permit is made.

P. Filed plat map. Within 30 days of the date the minor subdivision plat is filed with the County Clerk, the applicant shall submit one copy of the plat showing the endorsement of the County Clerk to the Secretary of the Planning Board.

Q. Plat void if revised after approval. No changes, erasures, modifications or revisions shall be made to any subdivision plat after endorsement of said plat by the Chairman of the Planning Board, unless said plat is first resubmitted to the Planning Board and the Board approves any modifications. Such modified plat shall be resubmitted to the Planning Board for restamping and signature. In the event that any such subdivision plat is recorded without complying with this requirement, the same shall be considered null and void, and the Planning Board shall institute proceedings to have the plat stricken from the records of the County Clerk.

R. Fees. 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). 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, reasonable fees shall be paid for by the applicant and an escrow deposit will be required in accordance with Chapter 128, Zoning, § 128-85.

§ 103-14. Preliminary plat for major subdivision.

A. Application and fee. Prior to the filing of an application for the approval of a final plat for a major subdivision, the applicant shall submit an application for approval of a preliminary subdivision plat. All applications for preliminary subdivision approval shall be in writing and on forms and in such quantity as may be prescribed by the Planning Board, together with a fee as set by the Town Board. The preliminary plat shall, in all respects, comply with the requirements set forth in this chapter and the provisions of §§ 276 and 277 of the Town Law, except where a waiver of such requirements may be specifically authorized by the Department or Planning Board. Said application shall also conform to the requirements listed in § 103-35.

B. Purpose. The preliminary layout, the application, and all supporting documents for a proposed subdivision constitute the material to be officially submitted to the Planning Board. On the basis of the general design of the subdivision and any proposed or required public improvements, the Planning Board will indicate its approval or disapproval of the preliminary plat prior to the time that the final plat, including the design and detailing of the improvements and utilities, is completed. Approval of the preliminary layout does not constitute an approval of the final plat, nor shall it be considered a valid basis for filing of the preliminary plat with the County Clerk, or the construction of site improvements, or for other commitments which depend upon detailed design characteristics.

C. When officially submitted. An application submitted under this section shall be deemed received at the next regular meeting of the Planning Board at which the application is to be considered. An application shall be placed on the Planning Board agenda only upon payment of the application fee as set by the Town Board along with an environmental assessment form and the number of copies of the plat map as specified by the Planning Board.

D. Applicant to attend Planning Board meetings. The applicant or his duly authorized representative shall attend meetings of the Planning Board at which the application is considered to discuss the preliminary plat. 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.

E. Information waiver. The Department of Planning and Economic Development may grant a waiver from the information requirements of this section where it determines that such information is not relevant to, or is not otherwise required to conduct, the review of the application.

F. Study of preliminary plat. The Planning Board shall study the proposed preliminary plat, taking into consideration the goals and policies of the Town Comprehensive Plan for the district in which the parcel is located, the needs of the community, the requirements of the Town Zoning Law Editor's Note: See Ch. 128, Zoning, and this chapter, and the best use of the land being subdivided. Particular attention shall be given to the arrangement, location and width of streets, their relation to the topography of the land, water supply, sewage disposal, vehicular and pedestrian access, preservation of natural resources, relationship to improvements on adjacent and neighboring land, drainage, lot sizes and arrangement, and the future development of adjoining lands as yet unsubdivided, including those lands depicted on the Official Map.

G. Look-back provision. Within any ten-year period, no more than 49 lots may be created either simultaneously or sequentially from a parent parcel for which both central sewer and water services do not exist or have not been provided. Should more than that total number of lots be applied for within 10 years of the date of subdivision approval involving the parent parcel, the Planning Board may require the applicant to include a plan for providing central sewer and water services to the previously subdivided lots at no additional cost to their present owners as part of the new application for subdivision approval.

H. Compliance with the State Environmental Quality Review Act. Editor's Note: See Art. 8 of the Environmental Conservation Law. A preliminary plat application shall not be considered complete until a negative declaration has been filed or until a notice of completion of the draft environmental impact statement has been filed in accordance with the provisions of the State Environmental Quality Review Act. The time periods for review of a preliminary plat application shall begin upon filing of such negative declaration or such notice of completion.

I. Planning Board as lead agency under the State Environmental Quality Review Act: public hearing; notice; decision.

(1) Public hearing on preliminary flats. The time within which the Planning Board shall hold a public hearing on the preliminary plat shall be coordinated with any hearings the Planning Board may schedule pursuant to the State Environmental Quality Review Act as follows:

(a) If such Board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the public hearing on such plat shall be held within 62 days after receipt of a complete preliminary plat by the Secretary of the Planning Board; or

(b) If the Planning Board determines that an environmental impact statement is required and a public hearing on the draft environmental impact statement is held, the public hearing on the preliminary plat and the draft environmental impact statement shall be held jointly within 62 days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the State Environmental Quality Review Act. If no public hearing is held on the draft environmental impact statement, a public hearing on the preliminary plat shall be held within 62 days of filing the notice of completion.

(2) Public hearing notice. The hearing on the preliminary plat shall be advertised at least once in the official newspaper so designated by the Town Board at least five days before such hearing if no hearing is held on the draft environmental impact statement or 14 days before a hearing held jointly therewith. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that an application for a subdivision approval is under consideration by the Board. All notices shall include the name of the subdivision, the location of the land to be subdivided, and the date, place, time and subject of the public hearing. Such notice shall not be required for adjourned dates. The hearing on the preliminary plat shall be closed upon motion of the Planning Board within 120 days after it has been opened.

(3) Decision. The Planning Board shall approve, with or without modification, or disapprove such preliminary plat as follows:

(a) If the Planning Board determines that the preparation of an environmental impact statement on the preliminary plat is not required, the Planning Board shall make its decision within 62 days after the close of the public hearing.

(b) If the Planning Board determines that an environmental impact statement is required and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of such public hearing in accordance with the provisions of the State Environmental Quality Review Act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of the public hearing on the preliminary plat. Within 30 days of the filing of such final environmental impact statement, the Planning Board shall issue findings on the final environmental impact statement and make its decision on the preliminary plat.

(4) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board. When so approving a preliminary plat, the Planning Board shall state in writing any modifications it deems necessary for submission of the plat in final form.

J. Planning Board not as lead agency under the State Environmental Quality Review Act: public hearing; notice; decision.

(1) Public hearing on preliminary plats. The Planning Board shall, with the agreement of the lead agency, hold the public hearing on the preliminary plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement, the Planning Board shall hold the public hearing on the preliminary plat within 62 days after receipt of a complete preliminary plat by the Secretary of the Planning Board.

(2) Public hearing notice. The hearing on the preliminary plat shall be advertised at least once in a newspaper of general circulation in the Town at least five days before such hearing if held independently of the hearing on the draft environmental impact statement or 14 days before a hearing held jointly therewith. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such preliminary plat, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that an application for a subdivision approval is under consideration by the Board. All notices shall include the name of the subdivision, the location of the land to be subdivided, and the date, place, time and subject of the public hearing. Such notice shall not be required for adjourned dates. The hearing on the preliminary plat shall be closed upon motion of the Planning Board within 120 days after it has been opened.

(3) Decision. The Planning Board shall, by resolution, approve with or without modification or disapprove the preliminary plat within 62 days after the close of the public hearing on such preliminary plat.

(a) If the preparation of an environmental impact statement on the preliminary plat is not required, the Planning Board shall make its decision within 62 days after the close of the public hearing on the preliminary plat.

(b) If an environmental impact statement is required, the Planning Board shall make its own findings and its decision on the preliminary plat within 62 days after the close of the public hearing on such preliminary plat or within 30 days of the adoption of findings by the lead agency, whichever period is longer.

(4) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board. When so approving a preliminary plat, the Planning Board shall state in writing any modifications it deems necessary for submission of the plat in final form.

K. Agricultural data statement. If any portion of the project is located on property within an agricultural district containing a farm operation, or on property with boundaries within 500 feet of a farm operation located in an agricultural district, the application must include an agricultural data statement containing 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 land contains farm operations and is located within 500 feet of the boundary of the property upon which the project is proposed; 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.

L. County referral. Prior to action on an application for subdivision approval under this section, a copy of said application shall be forwarded to the Albany County Planning Board for review pursuant to General Municipal Law § 239-n if the boundary of the proposed subdivision is located within 500 feet of:

(1) The boundary of any city, village, or town.

(2) The boundary of any existing or proposed county or state park or other recreation area.

(3) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway.

(4) The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines.

(5) The existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated.

(6) The boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the Agriculture and Markets Law, if required.

M. Referral to neighboring municipalities. Pursuant to General Municipal Law § 239-nn, for a subdivision review under this section involving property located within 500 feet of an adjacent municipality, notice of any public hearing shall be given by mail or electronic transmission to the clerk of the adjacent municipality not less than 10 days prior to the date of said hearing.

N. Filing of notice of action. Written notice of the action of the Planning Board, plus any conditions attached thereto, shall be provided to the applicant, and a copy of such notice shall be filed with the Town Clerk within five days of the approval of the preliminary plat. Approval of the preliminary plat shall not constitute approval of the final plat but shall be deemed an expression of approval of the design submitted on the preliminary plat as a guide to the preparation of the final plat which will be submitted for approval of the Planning Board and for recording upon fulfillment of the requirements of the Town Zoning Law Editor's Note: See Ch. 128, Zoning, and this chapter and the conditions of the approval of the preliminary plat, if any. Prior to approval of the final subdivision plat the Planning Board may require additional changes as a result of further study of the final subdivision plat or as a result of new information obtained at the public hearing.

O. Expiration of approval. Planning Board approval of a preliminary layout submission shall expire six months after the date the decision of the Board is filed with the Town Clerk. Prior to the expiration of preliminary approval, the applicant shall request in writing an extension of the preliminary approval and shall state the reasons for such extension. The Planning Board may extend by not more than two additional periods of 90 days each the time for expiration of the preliminary plat if, in the Board's opinion, such extension is warranted by the particular circumstances. In addition, such extension shall be granted only if the proposed subdivision fully conforms to the zoning regulations in effect at the time such extension is applied for.

P. Fees. 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). 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, reasonable fees shall be paid for by the applicant and an escrow deposit will be required in accordance with Chapter 128, Zoning, § 128-85.

§ 103-15. Final plat for major subdivision.

A. Application for approval and fee. The applicant shall, within six months after the date of filing of the preliminary plat approval with the Town Clerk, file with the Planning Board an application for approval of all or part of the subdivision plat in final form. All applications for plan approval shall be in writing and on forms and in such quantity as may be prescribed by the Planning Board together with a fee as set by the Town Board. Said application shall also conform to the requirements listed in § 103-36.

B. Purpose. The proposed final plat, together with drawings and documents, shall constitute the complete development of the subdivision proposal, shall include the conditions of the Planning Board's preliminary subdivision approval, and shall include the detailed layout drawings for the public improvements and utilities. The final plat shall be in conformity with the approved preliminary plat. After approval by the Planning Board of this submission, the approved performance surety and the general liability insurance policy as approved by the Town Board shall become the basis for the construction of the subdivision and the inspection services by the Town Engineer or other delegated Town officer. The plat itself must be recorded with the County Clerk to have legal status, and an unrecorded plat shall not be a valid basis for site improvements or other commitments. The plat shall be an accurate survey record of the properties resulting from the subdivision and shall bear the seal and signature of the licensed land surveyor responsible for its preparation.

C. When officially submitted. An application submitted under this section shall be deemed received at the next regular meeting of the Planning Board at which the application is to be considered. An application shall be placed on the Planning Board agenda only after payment of the application fee as set by the Town Board and submission of the specified number of copies of the final plat map and any supporting documentation.

D. Applicant to attend Planning Board meeting. The applicant or his duly authorized representative shall attend the meeting(s) of the Planning Board at which the application is considered to discuss the final plat.

E. Final plats not in substantial agreement with approved preliminary plats or when no preliminary plat is required to be submitted. When a final plat is submitted that the Planning Board deems not to be in substantial agreement with a preliminary plat approved pursuant to this chapter, or when no preliminary plat is required to be submitted and a final plat clearly marked "final plat" is submitted conforming to the definition provided by this chapter, the following shall apply:

(1) Planning Board as lead agency: public hearing; notice; decision.

(a) Public hearing on final plat. The time within which the Planning Board shall hold a public hearing on such final plat shall be coordinated with any hearings the Planning Board may schedule pursuant to the State Environmental Quality Review Act, Editor's Note: See Art. 8 of the Environmental Conservation Law. as follows:

[1] If the Planning Board determines that the preparation of an environmental impact statement is not required, the public hearing on a final plat not in substantial agreement with a preliminary plat, or on a final plat when no preliminary plat is required to be submitted, shall be held within 62 days after the receipt of a complete final plat by the Secretary of the Planning Board.

[2] If the Planning Board determines that an environmental impact statement is required and a public hearing on the draft environmental impact statement is held, the public hearing on the final plat and the draft environmental impact statement shall be held jointly within 62 days after the filing of the notice of completion of such draft environmental impact statement in accordance with the provisions of the State Environmental Quality Review Act. If no public hearing is held on the draft environmental impact statement, the public hearing on the final plat shall be held within 62 days following filing of the notice of completion.

(b) Public hearing notice. The hearing on the final plat shall be advertised at least once in the official newspaper so designated by the Town Board at least five days before such hearing if no hearing is held on the draft environmental impact statement or 14 days before a hearing held jointly therewith. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that an application for a subdivision approval is under consideration by the Board. All notices shall include the name of the subdivision, the location of the land to be subdivided, and the date, place, time and subject of the public hearing. Such notice shall not be required for adjourned dates. The hearing on the final plat shall be closed upon motion of the Planning Board within 120 days after it has been opened.

(c) Decision. The Planning Board shall make its decision on the final plat as follows:

[1] If such Board determines that the preparation of an environmental impact statement on the final plat is not required, the Planning Board shall, by resolution, conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat within 62 days after the date of the public hearing.

[2] If the Planning Board determines that an environmental impact statement is required and a public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of such public hearing in accordance with the provisions of the State Environmental Quality Review Act. If no public hearing is held on the draft environmental impact statement, the final environmental impact statement shall be filed within 45 days following the close of the public hearing on the final plat. Within 30 days of the filing of the final environmental impact statement, the Planning Board shall issue findings on such final environmental impact statement and shall, by resolution, conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of the such plat.

(d) Grounds for decision. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board.

(2) Planning Board not as lead agency: public hearing; notice; decision.

(a) Public hearing on final plat. The Planning Board shall, with the agreement of the lead agency, hold the public hearing on the final plat jointly with the lead agency's hearing on the draft environmental impact statement. Failing such agreement, the Planning Board shall hold the public hearing on the final plat within 62 days after the receipt of a complete final plat by the Secretary of the Planning Board.

(b) Public hearing notice. The hearing on the final plat shall be advertised at least once in the official newspaper so designated by the Town Board at least five days before such hearing if held independently of the hearing on the draft environmental impact statement or 14 days before a hearing held jointly therewith. Notice shall be provided pursuant to Chapter 58. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of such final plat, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that an application for a subdivision approval is under consideration by the Board. All notices shall include the name of the subdivision, the location of the land to be subdivided, and the date, place, time and subject of the public hearing. Such notice shall not be required for adjourned dates. The hearing on the final plat shall be closed upon motion of the Planning Board within 120 days after it has been opened.

(c) Decision. The Planning Board shall, by resolution, conditionally approve, with or without modification, disapprove, or grant final approval and authorize the signing of such plat within 62 days after the close of the public hearing on such final plat. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board.

[1] If the preparation of an environmental impact statement on the final plat is not required, the Planning Board shall make its decision within 62 days after the close of the public hearing on the final plat.

[2] If an environmental impact statement is required, the Planning Board shall make its own findings and its decision on the final plat within 62 days after the close of the public hearing on such final plat or within 30 days of the adoption of findings by the lead agency, whichever period is longer. The grounds for a modification, if any, or the grounds for disapproval shall be stated upon the records of the Planning Board.

F. Filing of notice of action. Written notice of the action of the Planning Board, plus any conditions attached thereto, shall be provided to the applicant, and a copy of such notice shall be filed with the Town Clerk within five days of the date of approval.

G. Approval of plat in sections. In granting conditional or final approval of a plat in final form, the Planning Board may permit the plat to be subdivided and developed in two or more sections and may, in its resolution granting conditional or final approval, state such requirements as it deems necessary to ensure that the orderly development of the plat shall be completed before said sections may be signed by the Chairman.

H. Duration of conditional approval of final plat. Conditional approval of the final plat shall expire within 180 days after the resolution granting such approval unless all requirements stated in such resolution have been certified as completed. The Planning Board may extend by not more than two additional periods of 90 days each the time in which a conditionally approved plat must be submitted for signature if, in the Board's opinion, such extension is warranted by the particular circumstances.

I. Filing of final plat; expiration of approval. The applicant shall file the approved final plat, or a section of such plat, in the office of the County Clerk within 62 days from the date of final approval or such approval shall expire. In the event that the applicant shall file only a section of such approved plat with the County Clerk, the entire approved plat shall be filed within 30 days of the filing of such section with the Town Clerk. Such section shall encompass at least 10% of the total number of lots contained in the approved plat, and the approval of the remaining sections of the approved plat shall expire unless said sections are filed with the County Clerk within three years of the date of filing of the first section. The signature of the Chairman or Vice Chairman or other duly authorized officer of the Planning Board signifying final approval and completion of conditions of final approval by the Planning Board shall constitute final approval.

J. Performance surety and estimate of cost of improvements. The Planning Board may require as a condition of final plat approval that the owner/applicant establish or provide a cash escrow account, performance bond or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the required public improvements associated with development of the plat. The surety shall name the Town as beneficiary, shall be in a form satisfactory to the Town Attorney or his/her designee and shall be in an amount as determined by the Town Engineer based on an estimate of the cost of the required public improvements. The surety to guarantee completion of the improvements shall be in accordance with the requirements of § 103-16B of this chapter.

[Amended 10-8-2008 by L.L. No. 3-2008]

K. Endorsement of the Chairman. Upon approval of the final plat, the applicant shall carry out the following steps prior to obtaining the Chairman's signature of approval:

- (1) Provide proof of compliance with Department of Health standards and approval by that Department of the plan for water supply and sewage disposal.
- (2) Provide proof of compliance with all other required local, state and federal agency permits and approvals, including but not limited to stream disturbance; wetland and wetland buffer disturbance; highway work; curb cuts; stormwater connections; SPDES permit discharges; dams and impoundments, etc.
- (3) Make all required corrections or changes to the final plat map as outlined in the resolution of the Planning Board and provide two copies of the corrected final plat to the Secretary of the Planning Board for final review and approval by the Department, the Town Engineer and other designated Town officials for compliance with the resolution of the Planning Board.
- (4) Complete all applicable conditions of final approval as set forth in the resolution of the Planning Board.
- (5) Provide Mylar and paper copies of the final plat in such quantity as specified by the Planning Board to the Secretary of the Planning Board for the endorsement of the Chairman. After the Chairman has signed the Mylar and the paper copies of the plat, the Secretary shall immediately notify the applicant of the availability of the final plat map. The applicant is solely responsible for filing of the final plat with the County Clerk.
- (6) Obtain a performance surety in the amount of the estimate for the improvements and a general liability insurance policy and submit them to the Planning Board Attorney for approval as to form.
- (7) Pay all outstanding escrow fees and application fees to the Planning Board Secretary or to the Town Clerk. Parkland fees, if applicable, are due and payable at the time an application for a building permit is made.

L. Filed plat map. Within 30 days of the date the final plat is filed with the County Clerk, the applicant shall submit one copy of the final plat showing the endorsement of the County Clerk to the Secretary of the Planning Board.

M. Plat void if revised after approval. No changes, erasures, modifications or revisions shall be made to any subdivision plat after endorsement of said plat by the Chairman of the Planning Board, unless said plat is first resubmitted to the Planning Board and the Board approves any modifications. Such modified plat shall be resubmitted to the Planning Board for restamping and signature. In the event that any such subdivision plat is recorded without complying with this requirement, the same shall be considered null and void, and the Planning Board shall institute proceedings to have the plat stricken from the records of the County Clerk.

N. Fees. 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). 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, reasonable fees shall be paid for by the applicant and an escrow deposit will be required in accordance with Chapter 128, Zoning, § 128-85.

§ 103-16. Required public improvements.

A. Improvements.

(1) The applicant shall provide the following improvements when required by the Planning Board:

- (a) Paved streets.
- (b) Corner curves and paved aprons.
- (c) Sidewalks.
- (d) Water mains and fire hydrants.
- (e) Sanitary sewage disposal facilities.
- (f) Storm drainage system facilities.
- (g) Street signs.
- (h) Streetlighting.
- (i) Street trees.
- (j) Seeding or sodding of planting strips with lawn grass.
- (k) Parklands in accordance with § 103-29 of this chapter and § 128-57 of the Town Zoning Law.

(2) In making a determination to require such improvements, the Planning Board shall take into consideration the prospective character of the development, whether dense residence, open residence, business or industrial.

B. Surety. As outlined below, the Town may require that a performance surety in the form of a bond, cash, or an irrevocable letter of credit, as determined by the Town, shall be delivered to the Town to guarantee that the applicant will faithfully cause to be constructed and completed, within a reasonable period of time, the required public improvements and will convey the required lands and improvements to the Town free and clear of encumbrances.

[Amended 10-8-2008 by L.L. No. 3-2008]

(1) The Planning Board may require as a condition of final plat approval, based upon an estimate prepared by the Town Engineer, that the applicant shall file with the Department of Economic Development and Planning either a performance bond, cash escrow account, or an irrevocable letter of credit from a bank having a credit acceptable to the Town to cover the cost of the required public improvements. Any such surety shall comply with the requirements of § 277 of the Town Law and, further, shall be satisfactory to the Town Attorney or his/her designee as to form, sufficiency, duration, renewability, and manner of execution. The term of the surety shall be sufficient, as determined by the Town, to permit the completion of improvements by the applicant.

(2) The required public improvements shall not be considered to be completed until the Town Engineer has approved the improvements as installed and an as-built map has been submitted to the Town. The map shall indicate the location of monuments marking all underground utilities as actually installed. The performance surety shall not be released until the improvements have been accepted by the Town Board upon the recommendation of the Town Engineer.

(3) The applicant shall complete all public improvements required for the lots, or part thereof, to the satisfaction of the Town before any certificate of occupancy may be issued.

(4) If the Town Board decides at any time during the term of the performance surety that the extent of the building development that has taken place in the subdivision is not sufficient to warrant all the improvements covered by such performance surety, or that required improvements have been installed in sufficient amount to warrant reduction in the face amount of said surety, or that the character and extent of such development require additional improvements previously waived for a period stated at the time of fixing the original terms of such surety, the Town Board may modify its requirements for any or all such improvements, and the face value of such performance surety shall thereupon be reduced or increased by an appropriate amount so that the new face value will cover the cost in full of the amended list of improvements required by the Town Board and any security deposited with the surety may be reduced or increased proportionately.

C. General liability insurance procedures. The general contractor shall file with the Town Attorney a general liability insurance policy at the same time that the applicant files the performance surety. The Town Board, upon the recommendation of the Town Attorney, shall approve the policy as to form and amount. The policy shall insure the Town and the general contractor and shall cover all operations of the development, including maintenance of property and buildings and contracting operations of every nature, and all public improvements. The policy shall remain in force during the term of the construction of improvements and shall be extended in conformance with any extension of the performance surety.

D. Maintenance surety. The applicant shall file with the Town Board a maintenance surety in an amount based on a maximum of 10% of the improvement estimate or in such amount which shall be adequate to assure the satisfactory condition of the initial public improvements for a period of one year following their completion and acceptance by the Town Board. Such surety shall be a bond, cash, or an irrevocable letter of credit, as determined by the Town, and shall be satisfactory to the Town Attorney as to form and manner of execution.

E. Modification of design improvements. If at any time before or during the construction of the required improvements it is demonstrated to the satisfaction of the Town Engineer that unforeseen conditions make it necessary or preferable to modify the location or design of required improvements, the Town Engineer may authorize modifications, provided that these modifications maintain the spirit and intent of the Planning Board's approval and do not extend to the waiver or substantial alteration of the function of any improvements required by the Board. The Town Engineer shall issue any authorization under this section in writing and shall transmit a copy of such authorization to the Planning Board at its next regular meeting.

F. Supervision of improvements. The construction of all required improvements shall be supervised by the Town Engineer who, after completion of construction, shall certify to the Town Board that all required improvements have been constructed as required and approved by the Planning Board or as modified by the Planning Board.

G. Inspections. The Town may employ an inspector for the purpose of assuring the satisfactory completion of improvements required by the Planning Board and shall determine an amount sufficient to defray costs of inspection. The Town shall invoice the actual cost of the inspection to the applicant, who shall pay all amounts due within 30 days of the date of the invoice. If the Planning Board or its agent finds, upon inspection, that any of the required improvements have not been constructed in accordance with the approved drawings, the applicant and the surety company will be severally and jointly liable for the costs of completing said improvements according to specifications. All improvements will be inspected to ensure satisfactory completion. In no case shall any paving work, including prime and seal coats, be done without permission from the Town Engineer. At least 24 hours' notice shall be given to the Town Engineer prior to any such construction so that a representative of the Town may be present at the time work is to be done. If the Town Engineer or other duly designated official does not carry out inspection of required improvements during construction, the applicant or the surety company shall not in any way be relieved of their responsibilities. The Town Engineer shall be notified after each of the following phases of the work has been completed so that he or his representative may inspect the work:

(1) Road subgrade.

(2) Curb and gutter forms.

(3) Road paving, after each coat in the case of priming and sealing.

(4) Sidewalk forms.

(5) Waterlines, sanitary sewer lines, stormwater drainage pipes and other drainage structures before backfilling.

(6) All underground utilities prior to backfilling.

H. Final inspection. A final inspection of all improvements will be made to determine whether the work is satisfactory and in substantial agreement with the approved final plat drawings and in compliance with the Town specifications as of the time the offer of dedication of the roads and other facilities is made to the Town Board. The general condition of the site as to cleanup and installation of sod or landscaping shall also be considered. Upon a satisfactory final inspection report, the Town Engineer shall recommend to the Town Board the release of the performance surety covering the improvements.

I. Proper installation of improvements. If the Town Engineer finds, upon inspection of the improvements performed before the expiration date of the performance surety, that any of the required improvements have not been constructed in accordance with plans and specifications filed by the applicant, he shall so report to the Town Board, Building Inspector and Planning Board. The Town Board then shall notify the applicant and, if necessary, the issuer of the bond or the irrevocable letter of credit and take all necessary steps to preserve the Town's rights under the surety. The Town Board may thereupon declare the applicant in default and collect the sum remaining payable under the surety agreement, and upon receipt of the proceeds thereof the Town shall install such improvements as are covered by the performance surety commensurate with the building development that has taken place in the subdivision, but not exceeding in cost the amount of such proceeds. With regard to a subdivision approved in parts or phases, no subsequent parts of such a plat shall be approved by the Planning Board as long as the applicant is in default on a previously approved part of the plat.

J. Monuments. Permanent monuments shall be set at block corners and at intervals of 500 feet, or such other distance or location as the Town Engineer may designate. Each location must be indicated by a suitable symbol on the subdivision plat. The type of monument must be approved by the Town Engineer.

K. Time for completion of improvements. All improvements, or any part thereof required to service the lots as shown on a partial plat filing, shall be completed to the satisfaction of the Town Engineer before a building permit is issued with respect to any lot or dwelling fronting on a street shown on the subdivision plat.

L. Acceptance of improvements. The acceptance of improvements will not be considered or processed until three sets of as-built data per Town Highway Department standards are presented showing the improvements and, in addition, the submission of legal documents necessary for the dedication to the public of these improvements.

§ 103-17. Public streets, parks and parkland areas.

A. Public acceptance of streets, parks and parkland areas.

(1) The approval of the Planning Board of a subdivision plat shall not be deemed to constitute or be evidence of any acceptance by the Town. As a condition of final plat approval, the applicant shall submit an irrevocable offer of cession for review by the Town Board and the Town Attorney. The irrevocable offer of cession shall be in a form suitable for recording and shall not be filed until approved by the Town Board upon the recommendation of the Town Attorney.

(2) Every street shown on a plat that is filed or recorded in the office of the County Clerk as provided in these regulations shall be deemed to be a private street until such time as it has been formally offered for cession to be public and formally accepted as a public street by resolution of the Town or, alternatively, until it has been condemned by the Town for use as a public street.

(3) After such plat is approved and filed, subject, however, to review by the court as hereinafter provided, the streets, highways and parks shown on such plat shall be and become a part of the Official Map or plan of the Town. The filing of the plat with the County Clerk shall constitute a continuing offer of dedication of the streets, highways or parkland areas, water supply and sewage disposal facilities, and said offer of dedication

may be accepted by the Town Board at any time. In the event that the applicant or his agent shall elect not to file his plat prior to the expiration of plat approval as provided in § 103-15, then such formal offers of cession shall be deemed to be invalid, void and of no effect on and after such expiration date.

(4) No public street utility or improvement shall be constructed by the Town in any street or highway unless it has been offered as a public street or highway, except that the Town Board may authorize the construction of a public street utility or improvement in or under a street which has not been dedicated but which has been used by the public as a street for five years or more prior.

B. Street access and improvement prior to issuance of building permits.

(1) No permit for the erection of any building shall be issued unless the lot on which the building is proposed has frontage on a street or highway that has been duly placed on the Official Map or plan or, if there shall be no Official Map or plan, unless such street or highway is:

(a) An existing state, county or town highway.

(b) A street shown upon a plat approved by the Planning Board.

(c) A street on a plat duly filed and recorded in the office of the County Clerk prior to the appointment of the Planning Board and the grant to such Board of the power to approve plats.

(2) Before such permit shall be issued, such street or highway shall have been suitably improved to the satisfaction of the Town Board in accordance with standards and specifications approved by the appropriate municipal officers as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway, or, alternatively and in the discretion of the Town Board, a performance surety sufficient to cover the full cost of such improvement as estimated by such Board or other appropriate municipal departments designated by such Board shall be furnished to the Town by the applicant. Such performance surety shall be issued by a surety company approved by the Town Board or by the applicant with security acceptable to the Town Board and shall also be approved by the Town Attorney as to form, sufficiency and manner of execution. The term, manner of notification and method of enforcement of such surety shall be determined by the Town Board. The surety to guarantee completion of the improvements shall be a bond, cash or an irrevocable letter of credit as determined by the Town.

C. Ownership and maintenance of parkland areas. When a park, playground, natural or historic feature or other parkland or open space area shall have been shown on a plat, the approval of said plat shall not constitute an acceptance by the Town of such area. The Planning Board shall require the plat to be endorsed with appropriate notes to this effect. The Planning Board may also require the filing of a written agreement between the applicant and the Town Board covering future deed and title, dedication and provision for the cost of grading, development, equipment and maintenance of any such parkland area.

§ 103-18. Conservation subdivisions.

A. Statement of policy. The Town of Bethlehem hereby establishes a policy of encouraging the use of conservation subdivision design to preserve open space, agricultural land, water supplies, and other environmental resources identified in the Town of Bethlehem Comprehensive Plan and to harmonize new development with the traditional open, wooded, agricultural and hamlet landscapes of the Town. These principles allow the Planning Board to modify the applicable area and bulk provisions of this chapter in order to preserve open space and encourage more sensitive and efficient development patterns than would be possible by strict adherence to the conventional specifications.

B. Grant of authority. The Town Board of the Town of Bethlehem hereby grants to the Planning Board of the Town of Bethlehem the authority to modify applicable area, yard and bulk provisions of the Zoning Law Editor's Note: See Ch. 128, Zoning, as they apply to a specific plat when so requested by an applicant so long as the modified plat is consistent with the goals and objectives of the Comprehensive Plan pertaining to conservation subdivisions and this chapter. To the extent that any provisions of this chapter are inconsistent with § 278 of the Town Law, the Town Board of the Town of Bethlehem hereby declares its intent to supersede that section of the

Town Law, pursuant to its home rule powers under Municipal Home Rule Law § 10, Subdivision 1(ii)(d)(3) et seq.

C. Purposes. This section encourages flexibility in the design and development of land in order to promote its most appropriate use and to preserve as permanent open space important natural features and resources, wildlife habitat, water resources, ecological systems, and scenic areas for the benefit of present and future residents. A conservation subdivision plan may involve grouping development on one or more portions of a parcel and modifying the minimum lot, area, setback or frontage requirements in order to achieve one or more of the following specific purposes:

- (1) Long-term protection of natural and man-made resources identified in the Comprehensive Plan and this chapter.
- (2) Compatibility with surrounding land uses and the overall character of the neighborhood in which the property proposed for subdivision is located.
- (3) Provision of adequate setbacks and visual buffers from adjoining properties.
- (4) Contribution to Town-wide open space planning by creating a system of permanently preserved open spaces providing linkages between existing and potential future open space areas.
- (5) Preservation of open space where the preserved lands border active agricultural land or land which is suitable for agricultural use.
- (6) Protection of ground- and surface water, regulated wetlands, steep slopes, floodplains or unique areas of natural, scenic or historic significance.
- (7) Mitigation of significant environmental impacts identified through application of the State Environmental Quality Review Act requirements. Editor's Note: See Art. 8 of the Environmental Conservation Law and 6 NYCRR 617.
- (8) Reduction of the number of new roads or driveways obtaining access from existing public roads and reduction of the amount of new road that may be required to be dedicated to the Town.
- (9) Protection of designated critical environmental areas.

D. Preservation of land. A conservation subdivision accomplishes the purposes set forth above by reducing the generally applicable minimum lot size and bulk requirements of this chapter for the district in which the property is located and by grouping residences in those areas where development would have the least impact on identified natural and community resources. The approved conservation subdivision plat shall identify, with specificity, the location and type of resource(s) to be preserved. The resource(s) shall then be permanently preserved through the use of a conservation easement(s) and/or restrictive covenants as determined by the Planning Board.

E. Applicability. This section shall be applicable only to land parcels zoned for residential uses for which an application for approval of a major subdivision pursuant to this chapter is submitted to the Planning Board.

F. Standards and procedures. An applicant for a major subdivision as set forth in this chapter has the option of requesting that the Planning Board consider approval of a conservation subdivision plan in lieu of a conventional major subdivision plan. The decision to permit a conservation subdivision is at the sole discretion of the Planning Board. The use of a conservation subdivision plan is specifically encouraged when the parcel contains, in whole or in part, one or more of the following:

- (1) State and/or federal freshwater wetlands occupy 25% or more of the site.
- (2) Slopes of greater than 20% occupy 25% or more of the site.

(3) The site contains a floodplain or flood hazard area as mapped by the Federal Emergency Management Agency's Flood Insurance Maps.

(4) The site contains a critical environmental area.

(5) The site contains identified scenic views or scenic vistas.

(6) The total amount of land included in the subdivision is 50 acres or more.

(7) The total number of lots is 10 or more.

(8) The lot or parcel is included within an agricultural district.

(9) The lot or parcel is under a forestry management plan.

G. Required plans. An application for conservation development shall include all plans and materials required for approval of a conventional subdivision as set forth in this chapter. The maximum number of residential lots that may be permitted and approved within a conservation development shall not exceed the maximum number of lots capable of being developed within a conventional subdivision layout of the same property prior to the application of incentive densities pursuant to § 128-51 of the Town Zoning Law. Lots shown on the conventional layout shall be fully consistent with the lot, area and bulk requirements for the zoning district in which the land is located and all applicable requirements of this chapter and Chapter 128.

H. Planning Board findings. In order to approve a conservation subdivision, the Planning Board must find that the conservation subdivision will benefit the Town and will fulfill the applicable purposes stated in § 128-8 of the Town Zoning Law and Subsection C of this section.

I. Determination of development density and minimum acreage. Upon receipt of an application for a conservation subdivision, the Planning Board shall review the proposed plan and shall, in accordance with Subsection J below, determine the number of building lots or dwelling units that could be practically created pursuant to said plan.

J. Maximum density unit calculation. The maximum number of density units (i.e., units per acre or "DU") in a conservation subdivision shall not exceed the maximum allowable DU for a conventional subdivision in the district in which the property is located prior to the application of incentive densities pursuant to § 128-51 of the Town Zoning Law. Any regulations contained in this chapter and in Chapter 128 restricting the number of dwelling units permitted in a conventional subdivision shall also restrict the number of dwelling units permitted in a conservation development. The calculation of buildable yield for a conservation subdivision shall be based on the following formula, which shall also be applicable to the maximum density unit calculation for all major conventional subdivisions as defined in this chapter. The buildable yield (BY) shall be used to determine the allowable density units per the area, yard and bulk chart, § 128-100 of the Zoning Law. Editor's Note: See the Schedule of Area, Yard and Bulk Requirements included at the end of Ch. 128, Zoning.

[Amended 10-8-2008 by L.L. No. 3-2008]

(1) The BY calculation shall be determined by subtracting the constrained land areas of the property (i.e., NYSDEC and USACOE regulated wetlands, and lands within the one-hundred-year floodplain area, and steep slope areas of greater than 20%) for which the applicant has not secured and has not submitted to the Planning Board permits or approvals that would allow development in such constrained land areas, as follows:

$$T - (W+F+S) = BY$$

Where:

T = Total acreage inside the boundary lines of the project parcel.

- W = Total acreage inside the boundary lines of the project parcel and within a NYSDEC or USACOE regulated wetland (exclusive of any buffer area).
- F = Total acreage inside the boundary lines of the project parcel and within the one-hundred-year floodplain area where the base elevations and flood hazard are determined exclusive of any flood area within a regulated state or federal wetland.
- S = Total acreage inside the boundary lines of the project parcel and containing slopes of 20% or greater.
- BY = Maximum number of acres that can be developed and that form the basis for determining the maximum number of residential dwellings that may be created per the area, yard and bulk chart.

(2) The BY calculation set forth in Subsection J(1) above shall be adjusted to include, in whole or in part, the constrained land area(s) for which the applicant has secured the necessary permits or approvals from applicable local, state or federal agencies authorizing development in such area(s) and has submitted copies of said permits or approvals to the Planning Board. If the parcel is not proposed for connections to central sewage disposal facilities, the plan shall also include an assessment and certification by a professional engineer as to the suitability of the soils to accommodate individual sewage disposal systems. The Department, in its sole discretion, shall determine whether the plan is realistic and reflects a development pattern that could reasonably be implemented.

(3) In addition, the following formula shall be used to determine the minimum open space set aside for a conservation subdivision:

With public water and public sewer: $T - (W+F+S+I) \times 0.40 = OS$

With private wells and/or septic: $T - (W+F+S+I) \times 0.50 = OS$

Where:

- T = Total land area (acres) inside the boundary lines of the project parcel.
- W = Total land area (acres) inside the boundary lines of the project parcel and within a NYSDEC or USACOE regulated wetland (exclusive of any buffer area).
- F = Total land area (acres) inside the boundary lines of the project parcel and within the one-hundred-year floodplain area where the base elevations and flood hazard are determined exclusive of any flood area within a regulated state or federal wetland.
- S = Total land area (acres) inside the boundary lines of the project parcel and containing slopes of 20% or greater.
- I = The total acreage of required public improvements (i.e., roads, sidewalks, stormwater management facilities).
- OS = Minimum land area (acres) required for open space.

K. Incentive density. Notwithstanding any contrary provision of the Town Law, this chapter, or Chapter 128, Zoning, that may limit or restrict the maximum residential density of a proposed conservation subdivision, an applicant proposing a conservation subdivision may also apply for an incentive adjustment to the maximum density requirements of this chapter in exchange for the preservation of significant open space and the provision of public facilities or amenities in accordance with § 128-51, Incentive zoning, of the Town Zoning Law. In authorizing the incentive adjustment to the maximum unit density pursuant to said section, the Planning Board

shall ensure that the benefit to the Town is permanent and may require such easements, surety or other performance guaranties that the Board, in its sole discretion, deems necessary. Before authorizing an incentive adjustment, the Planning Board shall make a determination, in writing, that the preserved open space and other amenities meet the requirements of § 128-8 and/or 128-42 and/or 128-51 of the Town Zoning Law and/or Subsection C of this section, as applicable, and that the additional unit density would not have a significant adverse environmental impact.

L. Existing structures. A proposed conservation plat may be denied where the Planning Board finds that the location of proposed boundary lines, relative to existing principal or accessory structure(s) located on the parcel, or the location of proposed means of ingress and egress for such existing structure(s) relative to proposed new lots and adjoining property would create a conflict with the orderly development and use of the lots of the conservation subdivision, or of adjoining lots, or would not fulfill the purpose and intent of this chapter.

M. Minimum acreage per lot. The Planning Board shall determine the minimum lot area and yard setbacks for each lot created as part of a conservation subdivision.

N. Unit mix. Notwithstanding any limitations on residential housing type as set forth in the Schedule of Uses, Editor's Note: The Schedule of Uses is included at the end of Ch. 128, Zoning. the conservation subdivision design may include a range of residential housing types as a means of achieving housing diversity and preserving open space. Within the conservation subdivision, the number of multifamily units shall be limited to not more than 1/3 of the total number of dwelling units.

O. Location of open space. The Planning Board is authorized to require the reconfiguration of a conservation subdivision to ensure that the open space to be protected under the plan generally consists of large contiguous land tracts unbroken by intervening lots, structures, roads or driveways. In order to achieve a continuity of open space lands and avoid fragmentation, not less than 50% of the lands so preserved shall be continuous and unbroken by intervening lot lines or boundary lines and shall, at its narrowest point, not be less than 30 feet in width.

P. Pedestrian access. The Planning Board may require that the conservation subdivision layout include sidewalks and trails for pedestrian circulation. Such pedestrian accessways shall be designed and installed to meet the needs of the residents of the conservation subdivision.

Q. Water supply and sewage disposal. Water supply and sewage disposal facilities serving the conservation subdivision shall be designed in accordance with all applicable County Health Department standards and shall be prepared by a licensed professional engineer.

R. Utilities. All telephone, natural gas, electric and similar utilities serving the conservation subdivision shall be located underground.

S. Open space preservation requirements. All lands identified as having one or more of the features or characteristics identified in Subsection E that are not included in a conservation development plat as building lots, roads or parkland areas shall be set aside as permanent open space. The creation, preservation and management of open space to be protected as part of a conservation subdivision development shall be as follows:

(1) Ownership. The preserved open space area may be:

(a) Created as a separate parcel owned in common by the residents of the conservation subdivision through a homeowners' association (HOA) formed in accordance with state law and approved by the office of the State Attorney General;

(b) Created as a separate parcel owned in fee by the Town of Bethlehem or by a qualified not-for-profit conservation organization acceptable to the Town Board; or

(c) Owned by one or more of the owners of the lots of the conservation subdivision wherein the open space may comprise part of one or more of the lots of the subdivision with appropriate restrictions and covenants placed in the deed(s) to said lot(s) to ensure the permanent preservation of the open space.

(2) Prohibited use. No portion of the open space shall be used for roads, building lots, utility structures, driveways, or any principal or accessory structure, except for utility lines and connections installed underground. In addition, no part of the open space shall be used for residential, industrial, or commercial purposes except in connection with active agricultural and forestry use.

(3) Preservation and enforcement. Open space set aside in a conservation subdivision shall be permanently preserved as required by this section. Each lot created as part of the conservation subdivision shall be granted individual rights to enforce the covenants and restrictions of the conservation easement(s) protecting and preserving the open space, and the Planning Board may require that the right of enforcement also be granted to the Town or to a qualified conservation organization.

(4) Plat notations. Open space created by a conservation subdivision must be clearly labeled on the final plat as to its use, ownership, management, method of preservation, and the rights, if any, of the owners in the subdivision to such land. The plat shall clearly show that the open space land is permanently reserved for open space purposes and shall contain a notation indicating the liber and page of any conservation easements or deed restrictions required to be filed to implement such reservations or restrictions.

(5) Permanent protection of open space. Open space shall be protected by a perpetual conservation easement restricting development of the open space land and allowing use only for active agriculture, forestry, active or passive recreation or protection of natural resources, pursuant to § 247 of the General Municipal Law and/or §§ 49-0301 through 49-0311 of the Environmental Conservation Law. Said conservation easement may be granted to the Town with the approval of the Town Board or to a qualified not-for-profit conservation organization acceptable to the Town Board. Such conservation easement shall be reviewed and approved by the Planning Board and be required as a condition of plat approval hereunder.

(6) Recording. The conservation easement shall be recorded in the Albany County Clerk's office prior to or simultaneously with the filing of the conservation subdivision final plat in the County Clerk's office.

§ 103-19. Fees.

Applicants are responsible for payment of all application, administrative and escrow fees as set by the Town Board as set forth in § 128-85 of the Town Zoning Law.

§ 103-20. Land divisions.

A. Standards. A land division, as defined in § 103-8 of this chapter, may, upon the determination of the Town of Bethlehem Department of Economic Development and Planning, be exempt from the requirements of a subdivision application. In order to qualify for an exemption from the requirements of a minor or a major subdivision application the following conditions shall be met:

(1) Land divisions are permitted in the R, RLL, RA, RB, RC, CR, RR, RH and RLI Districts only. Land divisions involving property located in any other district shall be subject to the procedures for processing of a minor subdivision or a major subdivision.

(2) In areas not served by central water and/or central sewer facilities up to four lots may be created from a parent parcel within any ten-year period, provided that not more than one new lot may be created from a parent parcel in any twelve-month period. In areas served by central water and/or central sewer facilities, no more than one lot may be created from a parent parcel within any ten-year period, unless the parent parcel is in agricultural use in an agricultural district, in which case up to four lots may be created from the parent parcel within any ten-year period. In all cases, a separate application shall be required for each lot to be divided, and the Department shall consider only a single land division from a parent parcel at any one time. For purposes of this subsection, "served by central water and/or central sewage treatment facilities" shall mean:

(a) A property that has a central water distribution line or a central sewage disposal collection line within 100 feet of the property line; and

(b) The water system and/or the sewage treatment system has capacity to provide service to the lot to be created.

(3) In all cases the size and configuration of the new lot and the remaining parent parcel shall be a buildable lot as defined in this chapter and Chapter 128, Zoning.

(4) Each lot of a land division shall meet the area, yard and bulk requirements of Chapter 128, Zoning, for the district in which the lots are located.

(5) No new streets or extensions to any existing street shall be required.

(6) Each new lot shall also meet the requirements of § 128-53, lots bordering streams, of the Zoning Law, and all local, state and federal standards regarding protection of freshwater wetlands, and § 128-49 of the Zoning Law and Chapter 98 of the Code of the Town of Bethlehem.

[Amended 11-14-2007 by L.L. No. 7-2007]

B. An applicant for a land division shall provide a written disclosure of any future plans to further divide the parent parcel, including plans for creation of central water supply and/or sewage treatment facilities, and the Department shall give due consideration to 6 NYCRR 617.3(g)(1) of the State Environmental Quality Review Act as it relates to segmentation.

C. Any application that does not meet each of the requirements of Subsection A(1) through (6) above shall be referred to the Planning Board and processed as an application for subdivision approval pursuant to this chapter.

D. Compliance with the State Environmental Quality Review Act. Editor's Note: See Art. 8 of the Environmental Conservation Law. An application for a land division shall not be considered complete until a negative declaration has been issued by the Department. If the Department determines that the land division may have one or more potentially significant environmental impacts, the application shall be referred to the Planning Board and processed as an application for subdivision approval.

E. Decision. In rendering its decision concerning an application for land division approval, the Department shall consider the purposes of this chapter as set forth in §§ 103-5 and 103-24 and shall give due consideration to the potential for the further division of the parent parcel. The Department may attach reasonable conditions to its approval of a land division in order to avoid or minimize any adverse effects on adjoining lands.

F. Action on land division plat. The Department of Economic Development and Planning shall, within 62 days of receipt of a complete application, approve, conditionally approve with or without modification, or disapprove the land division plat. When conditionally approving a plat the Department shall state in writing the modifications, if any, it deems necessary before the plat will be endorsed by the Director. The Department shall also set forth in writing its reasons for any disapproval.

G. Filing of notice of action. Written notice of the action of the Department, plus any conditions attached thereto, shall be provided to the applicant, and a copy of such notice shall be filed with the Town Clerk within five days of the date of approval.

H. Duration of conditional approval. Conditional approval of a land division plat shall expire within 180 days after the date of approval by the Department unless all requirements and conditions have been completed.

I. Filing of final plat; expiration of approval. The applicant shall file the approved final plat in the office of the County Clerk within 62 days from the date of final approval or such approval shall expire. The signature of the Director or other duly authorized officer of the Department of Economic Development on the plat shall constitute final approval.

J. Filed plat map. Within 30 days of the date the final plat is filed with the County Clerk, the applicant shall submit one copy of the filed map showing the endorsement of the County Clerk to the Department.

K. Plat void if revised after approval. No changes, erasures, modifications or revisions shall be made to any land division plat after endorsement of said plat by the Director unless said plat is first resubmitted to the Department and the Department approves any modifications. Such modified plat shall be resubmitted to the Department for restamping and signature. In the event that any such land division plat is recorded without complying with this requirement, the same shall be considered null and void, and the Department shall institute proceedings to have the plat stricken from the records of the County Clerk.

§ 103-21. Lot line revisions.

A. Planning Board approval required. Planning Board approval shall be required for any changes in the location of a lot line shown on a filed final plat that was previously approved by the Planning Board.

[Amended 10-8-2008 by L.L. No. 3-2008]

B. Application and fee. All applications for approval shall be in writing and on forms and in such quantity as may be prescribed by the Planning Board, together with a fee as set by the Town Board.

C. Information waiver. The Department of Economic Development and Planning may grant a waiver from the information requirements of this chapter where it determines that such information is not relevant to, or is not otherwise required to conduct, the review of the application.

D. Compliance with the State Environmental Quality Review Act. Editor's Note: See Art. 8 of the Environmental Conservation Law. An application for a lot line revision shall not be considered complete until a negative declaration has been issued.

E. Applicant to attend Planning Board meetings. The applicant or his duly authorized representative shall attend meetings of the Planning Board at which the application is considered.

F. Lot line revision criteria. A lot line revision shall not be approved unless the Planning Board has determined that:

(1) The lot line revision does not adversely affect the development of the remaining lands within the subdivision.

(2) The lot line revision does not adversely affect the development and/or quiet enjoyment of adjoining property.

(3) The lot line revision is consistent with the subdivision approval(s) originally issued by the Planning Board by which the subject parcel(s) was (were) established or amended.

(4) The conditions of the subdivision approval(s) originally issued by the Planning Board have been completed or have been waived by the Planning Board.

(5) The lot line revision is consistent with the Town Comprehensive Plan, Official Map of the Town, the Town Zoning Law Editor's Note: See Ch. 128, Zoning. and this chapter.

G. Filing of notice of action. Written notice of the action of the Planning Board, plus any conditions attached thereto, shall be provided to the applicant, and copy of such notice shall be filed with the Town Clerk within five days of the date of approval.

H. Duration of conditional approval of a lot line revision. Conditional approval of the lot line revision plat shall expire within 180 days after the date of adoption of the resolution granting such approval unless all applicable requirements stated in such resolution have been completed. The Planning Board may extend by not more than two additional periods of 90 days each the time in which a conditionally approved plat must be submitted for signature if, in the Board's opinion, such extension is warranted by the particular circumstances.

I. Filing of lot line revision plat; expiration of approval. The applicant shall file the approved lot line revision plat in the office of the County Clerk within 62 days from the date of final approval or such approval shall expire. The signature of the Chairman or Vice Chairman or other duly authorized officer of the Planning Board signifying final approval and completion of conditions of final approval by the Planning Board shall constitute approval.

J. Endorsement of the Chairman. Upon approval of the lot line revision, the applicant shall carry out the following steps prior to obtaining the Chairman's signature of approval:

(1) Make all required corrections or changes to the lot line revision plat as outlined in the resolution of the Planning Board and provide one copy of the corrected final plat to the Secretary of the Planning Board for final review by staff for compliance with the resolution of the Planning Board. The applicant shall also complete all applicable conditions of the Planning Board resolution approving the final plat.

(2) Provide Mylar and paper copies of the lot line revision in such quantity as specified by the Planning Board to the Secretary of the Planning Board for the endorsement of the Chairman. After the Chairman has signed the Mylar and the paper copies of the plat, the Secretary shall immediately notify the applicant of the availability of the lot line revision plat. The applicant is solely responsible for filing of the lot line revision plat with the County Clerk.

K. Filed plat. Within 30 days of the date the lot line revision plat is filed with the County Clerk, the applicant shall submit one copy of the plat showing the endorsement of the County Clerk to the Secretary of the Planning Board.

L. Plat void if revised after approval. No changes, erasures, modifications or revisions shall be made to any lot line revision plat after the endorsement of the Chairman of the Planning Board unless said plat is first resubmitted to the Planning Board and the Board approves any modifications.

§ 103-22. (Reserved)

§ 103-23. (Reserved)

ARTICLE IV. General Requirements and Design Standards

§ 103-24. Purpose; requirements and standards.

A. The purpose of this article is to ensure that the highest standards of site, building and landscape design are conscientiously met through the use of qualified technical and aesthetic judgment compatible with the Comprehensive Plan. In acting upon plats, the Planning Board shall require, among other conditions in the public interest, that the tract shall be adequately drained and the streets shall be of sufficient width and suitable grade and suitably located to accommodate the prospective traffic and to provide access for fire-fighting equipment to buildings. The Planning Board shall further require that all lots shown on the plats shall be adaptable for the intended purpose without danger to health or peril from flood, fire, erosion or other menace. Required improvements shall be designed and constructed to conform to specifications established by the Town. In considering applications for subdivision approval, the Planning Board shall be guided by the standards set forth herein. These standards shall be considered to be minimum requirements and may be waived by the Board only under the circumstances set forth in § 103-40 of this chapter.

B. Specifications for required improvements. All required improvements shall be constructed or installed to conform to municipal specifications, which may be obtained from the Town Engineer.

C. Existing features which would add value to the development, such as large trees, watercourses, historic sites and similar irreplaceable assets, should be preserved, insofar as possible, through harmonious design of the subdivision.

D. The Planning Board, in considering an application for the subdivision of land, shall be guided by the policy considerations specified in § 103-5 of this chapter. In addition, the Planning Board, in its deliberations on any discretionary actions under this chapter, shall ensure that the goals and policies of the Town Comprehensive Plan are implemented as far as practicable through this chapter.

§ 103-25. Maximum density unit calculation for major subdivisions.

[Amended 10-8-2008 by L.L. No. 3-2008]

The maximum number of density units (i.e., units per acre or DU) shall not exceed the maximum allowable DU for a subdivision in the district in which the property is located. Any regulations contained in this chapter and in Chapter 128 restricting the number of dwelling units permitted in a subdivision shall apply. The calculation of buildable yield for a major subdivision shall be based on the following formula. The buildable yield (BY) shall be used to determine the allowable density units per the area, yard and bulk chart, § 128-100 of the Zoning Law. Editor's Note: See the Schedule of Area, Yard and Bulk Requirements included at the end of Ch. 128, Zoning.

A. The BY calculation shall be determined by subtracting the constrained land areas of the property (i.e., NYSDEC and USACOE regulated wetlands, and lands within the one-hundred-year floodplain area, and steep slope areas of greater than 20%) for which the applicant has not secured and has not submitted to the Planning Board permits or approvals that would allow development in such constrained land areas, as follows:

$$T - (W+F+S) = BY$$

Where:

T = Total acreage inside the boundary lines of the project parcel.

W = Total acreage inside the boundary lines of the project parcel and within a NYSDEC or USACOE regulated wetland (exclusive of any buffer area).

F = Total acreage inside the boundary lines of the project parcel and within the one-hundred-year floodplain area where the base elevations and flood hazard are determined exclusive of any flood area within a regulated state or federal wetland.

S = Total acreage inside the boundary lines of the project parcel and containing slopes of 20% or greater.

BY = Maximum number of acres that can be developed and that form the basis for determining the maximum number of residential dwellings that may be created per the area, yard and bulk chart.

B. The BY calculation set forth in Subsection A above shall be adjusted to include, in whole or in part, the constrained land area(s) for which the applicant has secured the necessary permits or approvals from applicable local, state or federal agencies authorizing development in such area(s) and has submitted copies of said permits or approvals to the Planning Board. If the parcel is not proposed for connections to central sewage disposal facilities, the plan shall also include an assessment and certification by a professional engineer as to the suitability of the soils to accommodate individual sewage disposal systems. The Department, in its sole discretion, shall determine whether the plan is realistic and reflects a development pattern that could reasonably be implemented.

§ 103-26. Layout of streets and roads.

A. Relation to topography. Streets shall be logically related and conform, insofar as possible, to the original topography. They shall be arranged so as to obtain as many as possible of the building sites at or above the grades of the streets. A combination of steep grades and sharp curves shall be avoided.

B. Streets. Streets shall be graded and improved with pavement, street signs, sidewalks, streetlighting, curbs, gutters, trees, water mains, sanitary sewers, storm drains and fire hydrants in accordance with the Town of Bethlehem Department of Public Works Guidelines for Final Subdivision Plans, dated August 25, 1997, as amended, and the State Highway Law, as amended. The Planning Board may waive, subject to appropriate conditions and upon the recommendation of the Town Highway Department and the Town Engineer, such improvements as it considers are not requisite in the interest of public health, safety and general welfare.

C. Utilities. Underground utilities shall be placed between the paved roadway and street line to facilitate location and repair of the lines. The applicant shall install underground connections, where required, to the property line of each lot before the street is paved.

D. Grading and stormwater improvements. Site grading and improvements related to management of stormwater quality and quantity shall conform to Town specifications and shall be approved as to design and specifications by the Town Engineer or duly authorized representative. In addition, development of the parcel shall conform with the State Pollutant Discharge Elimination System (SPDES) Phase II stormwater requirements and §128-49 of the Zoning Law and Chapter 98 of the Code of the Town of Bethlehem.

[Amended 11-14-2007 by L.L. No. 7-2007]

E. Intersections. Intersections of major streets by other streets shall generally be at least 600 feet apart where practicable. Cross (four-cornered) street intersections shall be avoided, except at important intersections. A distance of at least 150 feet shall be maintained between offset intersections. Within 50 feet of an intersection, streets shall be approximately at right angles and grades shall be limited to 1.5%. All street intersection corners shall be rounded by curves of at least 25 feet in radius at the property line.

F. Trees. A conscious effort shall be made to preserve all worthwhile trees and shrubs which exist on the site. Such features may well be suggested for park or playground areas. On individual lots or parcels, care should be taken to preserve selected trees to enhance the landscape treatment of the development.

G. Sight lines and visibility at intersections. Within the triangular area formed at corners by the intersection of street center lines, for a distance of 75 feet from their intersection and the diagonal connecting the end points of these lines, visibility for traffic safety shall be provided. Fences, walls, hedges or other landscaping shall not be permitted or placed so as to obstruct such visibility.

H. Continuation of streets into adjacent property. Streets shall be arranged to provide for their continuation between adjacent properties where such continuation is necessary for convenient movement of traffic, effective fire protection, and efficient provision for utilities and particularly where such continuation is in accordance with the Town Plan. If the adjacent property is undeveloped and the streets must dead end temporarily, the right-of-way and the improvements must run to the property line. A temporary "T" turnaround, meeting Town specifications, shall be provided at the terminus of all dead-end streets together with a notation on the plat that the land outside the street right-of-way shall revert to abutters whenever the street is continued.

I. Permanent dead-end streets (culs-de-sac). A circular turnaround in accordance with the standards set forth in the Town specifications shall be provided at the end of the dead-end street for greater convenience to traffic and effective police and fire protection. Permanent dead-end streets shall, in general, be limited in length to 900 feet.

J. Street names. All streets shall be named, and such names shall be subject to the approval of the Town Board. Names shall be sufficiently different in sound and spelling from other street names in the Town so as not to cause confusion. A street which is a continuation of an existing street shall bear the same name.

K. Future street system. Where the plat covers only a part of the applicant's tract, a sketch of the prospective future street system of the unsubmitted part shall be furnished and the street system of the part submitted shall be considered along with the potential future street system.

§ 103-27. Lots, flag lots and shared driveways.

A. Arrangement. The arrangement of lots shall be such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in locating a building on each lot and in providing access to buildings on such lots from an approved street.

B. Flag lots. Lots which meet the definition of "flag lot," as defined in this chapter, shall meet the following additional standards:

- (1) The access to the flag lot shall be by way of a driveway placed within the "flagpole" or "panhandle" portion of the lot or parcel, as recorded.

(2) Only that portion of the lot having adequate width to meet the minimum lot width requirements and allow for provision of meeting the minimum yard and setback requirements of the district shall be counted as part of the minimum lot area. The accessway (i.e., the "flagpole" or "panhandle") shall not be included in the calculation of minimum lot area.

(3) The accessway shall maintain a constant minimum width of not less than the minimum highway frontage as set forth in Chapter 128, Zoning, § 128-100 for the district in which the property is located.

(4) The flagpole shall not cross a flowing or intermittent stream, ravine or similar topographic feature without provision of an adequate structure or fill and culvert to carry traffic.

(5) In no event shall a flag lot be used to access a private road.

(6) The flagpole shall be conveyed with the ownership of the rear lot or parcel and shall be considered a permanent part of that lot or parcel, never to be resubdivided or conveyed separately from the parcel to which it provides access.

(7) A flag lot parcel shall not be approved which would create a flagpole that would be generally parallel to a public street, unless the flagpole is separated from the public street by a distance of not less than 200 feet.

(8) Adjoining flag lots are prohibited. The minimum distance between driveways serving individual flag lots shall be not less than 100 feet as measured along the public road or highway frontage.

(9) Flag lots shall be permitted in both major and minor subdivisions at the discretion of the Planning Board. Flag lots must meet all area, yard and bulk requirements for the zoning district applicable and shall be so arranged as to provide suitable all-weather access for passenger and emergency vehicles.

(10) The length of the "pole" of the flag lot from the roadway to the front yard line shall not be less than 200 feet.

(11) Where one flag lot parcel is preexisting, the adjoining lot or parcel shall not be divided into a flag lot shape.

(12) Notwithstanding any inconsistent provisions of this chapter or the Zoning Law Editor's Note: See Ch. 128, Zoning. , flag lots shall be permitted for the erection and maintenance of single-family dwellings only.

(13) Flag lots may not be further subdivided.

C. The Planning Board is authorized to modify the requirements for flag lots as set forth in Subsection A above, provided that the Board determines that such modification will result in an improved project design, will be protective of the environment, and will ensure the protection of the public health, safety and welfare.

D. Lots located in the R, RR, and RLI Districts shall be exempt from regulation as flag lots under Subsection B(8).

E. A shared driveway may be used to access no more than three buildable lots. Shared driveways may be used to access a flag lot and not more than two lots adjoining the flag lot, provided that each such lot has frontage on a public road or public highway. The establishment of a shared driveway requires an access easement and an agreement or covenant setting forth the rights and obligations of the owners of the lots to share in the cost of maintaining and repairing the shared driveway. Such agreement or covenant is subject to the approval of the Town Attorney.

§ 103-28. Reservations and easements.

A. Realignment or widening of existing streets. Where the subdivision borders an existing street and the Official Map or Town Plan indicates plans for realignment or widening of the street that would require reservation of

some land of the subdivision, the Planning Board may require that such areas be shown in the plat as "Reserved for Street Purposes."

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

[Amended 10-8-2008 by L.L. No. 3-2008]

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

[Amended 10-8-2008 by L.L. No. 3-2008]

D. Ownership of reservations. Ownership shall be clearly indicated on all reservations and easements.

§ 103-29. Parkland reservation and fee requirements.

A. General provisions.

(1) In reviewing residential site plans and residential subdivisions, or proposals for planned residential and mixed economic developments, the Planning Board, in the case of site plans and subdivisions, or the Town Board in the case of planned residential and mixed economic developments, shall ensure that the park and recreation demands generated by new residential development are addressed in accordance with the provisions of this article.

(2) To the extent that this section is inconsistent with Town Law § 274-a, Subdivision 6, or § 277, Subdivision 4, or any other provision of Article 16 of the Town Law, the provisions of this chapter are expressly intended to and do hereby supersede any such inconsistent provisions.

B. Reservation of land for public park, playground or parkland purpose.

(1) Land reservation requirement.

(a) Residential developments requiring site plan or subdivision approval. Where the Planning Board determines that suitable land for a public park, playground or other recreational purpose exists within the parcel boundaries of a proposed residential development, the Planning Board may require as a condition of site plan or subdivision approval that a portion of the development parcel be reserved for such purpose.

(b) Residential developments requiring planned residential development approval. Where the Town Board determines that suitable land for a public park, playground or other recreational purpose exists within the parcel boundaries of a proposed planned residential development, the Town Board may require as a condition of building project approval that a portion of the development parcel be reserved for such purpose.

(2) In determining whether or not to require the reservation of land for public park, playground or other recreational purpose, the Planning Board, in the case of residential site plans and subdivisions, and the Town Board, in the case of planned residential and mixed economic developments, shall be guided by the criteria and procedures outlined in Subsections C, D and E below.

C. Amount of land reservation. The minimum amount of land area to be reserved for public park, playground or other recreational purpose shall be determined by the number and type of new residential units located within the proposed residential development, according to the following schedule:

Unit Type	Amount of Land to be Reserved (square feet per dwelling unit)
Single-family detached	1,550
Single-family attached ¹	1,100
Two- to four-family unit ²	1,150
Multifamily unit ³	925

Notes:

¹ Refers to single-family attached units such as townhouses where each dwelling unit sits on its own individual lot.

² Refers to units located in structures with two to four dwelling units, including condominium units, but excluding single-family attached units such as townhouses.

³ Refers to units located in structures with five or more dwelling units, including condominium units, but excluding single-family attached units such as townhouses.

D. Criteria for land reservation. In determining whether or not to require the reservation of land for public park, playground or recreational purposes, the Planning Board, in its review of residential site plans or subdivisions, or the Town Board, in its review of planned residential and mixed economic developments, shall consider the following factors:

(1) Whether suitable land exists within the parcel boundaries of the proposed development, in terms of its size, shape, and dimensions, to reasonably accommodate a public park, playground or other recreation use.

(2) Whether the characteristics of the land in terms of topography, soils, vegetative cover, hydrology and/or other natural features readily lend themselves to development of the site for active recreation use.

(3) Whether there are state or federal regulatory restrictions that would limit the usefulness of the site for active recreation development.

(4) Whether the site, in terms of its physical characteristics, would provide an attractive and safe area for recreational use.

(5) Whether the site is located such that reasonable and safe pedestrian, bicycle and vehicular access can be provided between the site and surrounding residential areas.

(6) Whether the character of the proposed residential development and that of the surrounding area are compatible with a public park and/or recreational use.

(7) Whether the anticipated population of the proposed residential development, together with the population density of surrounding neighborhoods, is sufficient to justify development and long-term maintenance of a public park, playground or other recreation facility at the location.

(8) Whether the site is located near or duplicates recreation facilities already provided in the area, particularly those providing the same type of recreation opportunities, including facilities located on public school grounds.

(9) Whether development and long-term maintenance of the site would place an undue burden on the Town Parks and Recreation Department, given other commitments and priorities of that Department.

(10) Whether the site contains any unique and significant physical, aesthetic or ecological features that would make it particularly suited for environmental education, trail development, a nature preserve, or other passive recreation use.

(11) Whether reservation of the land is consistent with recommendations contained in the Comprehensive Plan for the Town of Bethlehem and/or the Master Plan for Parks and Recreation in the Town of Bethlehem, if any, in effect at the time the development application is made.

(12) Whether reservation of the land is consistent with the general goals and objectives of the Town Parks and Recreation Department and the Town Board with respect to parks and recreation facility development.

E. Referral required.

(1) Site plan and subdivision applications. Prior to making any final determination that land within a proposed residential development will be reserved for public park, playground or other recreational purpose, the Planning Board, in the case of site plans or subdivisions, shall first refer the proposal to both the Town Board and the Administrator of Parks and Recreation for their input on the matter. If no response is rendered within 30 days of the date of referral, the Planning Board may make a final determination. A referral is not necessary where the Planning Board makes a determination that it will not require the reservation of land within the residential development.

(2) Planned residential development applications. Prior to making any final determination that land within a proposed residential development will be reserved for public park, playground or other recreational purpose, the Town Board, in the case of planned residential and mixed economic developments, shall first refer the proposal to the Administrator of Parks and Recreation for his/her input on the matter. If no response is rendered within 30 days of the date of referral, the Town Board may make a final determination. A referral is not necessary where the Town Board makes a determination that it will not require the reservation of land within the residential development.

F. Findings required. Prior to making any final determination that land will be reserved for public park, playground or other recreational purpose, the Planning Board, in the case of residential site plans and subdivisions, or the Town Board, in the case of planned residential and mixed economic developments, shall make a finding, in accordance with § 274-a, Subdivision 6, or § 277, Subdivision 4, of the New York State Town Law that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. The finding shall include an analysis of the criteria of Subsections D(1) through (12) above.

G. Timing of land reservation. The reservation of public park, playground or recreation land shall occur prior to the issuance of the first building permit for any dwelling unit located within the approved residential development.

H. Satisfaction of land reservation requirement. The land reservation requirement of this section shall be satisfied by:

(1) The presentation to the Town of a metes and bounds description of the site that is proposed to be reserved for public park, playground or recreation purposes;

(2) The placing of a notation upon the approved plan indicating that the land is so reserved and cannot be further subdivided or built upon except for such purposes; and

(3) The placing of deed restrictions upon the site. Said deed restrictions shall be in a manner and form acceptable to the Town Attorney and shall indicate that the land is reserved for public park, playground or recreational purposes and cannot be further subdivided or built upon except for such purposes. Said deed restrictions shall be filed in the office of the County Clerk, and upon their filing the land so reserved shall become part of the Official Map of the Town of Bethlehem.

I. Fee in lieu of public park, playground or recreational land.

(1) Fee in lieu of land reservation. Where the Planning Board, in the case of residential site plans and subdivisions, or the Town Board, in the case of planned residential and mixed economic developments, does not require the reservation of land for a public park, playground or other recreational purpose, the approving Board or agency shall instead require that a fee in lieu of said land be paid to the Town as a condition of project approval.

(2) Amount of fee. The fee to be paid the Town above shall be determined by the number and type of new residential units located within the proposed residential development, according to the following schedule:

Unit Type	Fee Amount (per dwelling unit)
Single-family detached	\$1,550.00
Single-family attached ¹	\$1,100.00
Two- to four-family unit ²	\$1,150.00
Multifamily unit ³	\$925.00

Notes:

¹ Refers to single-family attached units such as townhouses where each dwelling unit sits on its own individual lot.

² Refers to units located in structures with two to four dwelling units, including condominium units, but excluding single-family attached units such as townhouses.

³ Refers to units located in structures with five or more dwelling units, including condominium units, but excluding single-family attached units such as townhouses.

(3) Findings required. Prior to requiring the payment of a fee in lieu of the reservation of land, the Planning Board, in the case of site plans or subdivisions, or the Town Board, in the case of planned residential and mixed economic developments, shall make a finding, in accordance with § 274-a, Subdivision 6, or § 277, Subdivision 4, of the New York State Town Law and § 128-57 of the Town Zoning Law that the proposed residential development presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan or within such building project.

(4) Timing of fee payment. Payment of the fee shall be made to the Town at the time of application for a building permit for each approved dwelling unit. Fees may be paid on a unit-by-unit basis consistent with the number of units covered in each building permit application.

(5) Fees to constitute separate trust fund. All fees collected pursuant to this section shall be placed in a separate trust fund(s) to be established and used by the Town exclusively for the acquisition of public park, playground or recreation land and/or the improvement of public park and recreation facilities.

J. Credits.

(1) Credit for previous land reservations and fee payments. Notwithstanding the provisions found elsewhere in this article, credit shall be given for previous land reservations and/or fee payments that were made pursuant to this chapter or Chapter 128, Zoning, of the Town Code at the time of a prior residential development approval.

(2) Credit for land previously reserved. Any land reservation required pursuant to this article shall be reduced by an amount equal to the area of land reservation required for the approved dwelling unit(s) or lot(s) at the time of previous subdivision, site plan or planned residential development approval.

(3) Credit for fees previously paid. Any parkland fee required pursuant to this article shall be reduced by an amount equal to the parkland fee required for the approved dwelling unit(s) or lot(s) at the time of previous subdivision, site plan or planned residential development approval.

(4) Credit for on-site facilities. In instances where private parkland facilities are provided on site for the benefit of residents of the development, the parkland fee required pursuant to this article may be reduced by an amount equal to 50% of the required fee or 50% of the cost of such on-site facilities, whichever is less. Acceptable facilities shall include clubhouses, swimming pools, tennis courts, playgrounds, athletic fields, and other similar facilities for active recreation use. The acceptability of on-site facilities and any subsequent reduction in fee shall be determined by the Town Board in the case of planned residential and mixed economic developments or by the Planning Board in the case of residential site plans or subdivisions. The cost of any on-site facilities for which credit is sought shall be fully documented and may include the cost of materials and labor only.

§ 103-30. Average density subdivision.

The Planning Board may encourage and allow the use of an average density calculation for new lots as part of a major subdivision development. In approving average density subdivisions, the Planning Board shall find that the subdivision furthers the Town Comprehensive Plan's objectives of protecting natural and open lands and organizing the open space parcels into a continuous open space system. The Planning Board may allow the application of average density subdivisions subject to the following:

- A. The application shall meet the criteria as a major subdivision. Minor subdivision applications shall be ineligible for approval as an average density subdivision.
- B. The lots so created shall be for residential use only.
- C. The parent parcel must be located in one of the following districts: R, RLL, RA, RB, CR or RR.
- D. An average density subdivision shall be platted so that the mean, or average, lot area throughout the subdivision meets or exceeds the minimum lot area requirement for the zoning district.
- E. Any reduced area lot created as part of an average density subdivision shall meet all of the other minimum area, yard and bulk requirements for the zoning district.
- F. The Planning Board shall require sufficient legal assurances (i.e., conservation easements, restrictive covenants or similarly binding legal mechanisms) to prevent future subdivision of either the remaining lands of the parent parcel or any of the lots created in a way that would cause the maximum average density unit standard to be exceeded.
- G. In approving an average density subdivision, the Planning Board shall find that the adverse environmental impacts of the proposed subdivision are less than what would otherwise occur within a conventional subdivision.
- H. The use of average density subdivision shall not increase the total amount of density units that are permitted pursuant to § 103-25 of this chapter and § 128-100 of the Town Zoning Law.

§ 103-31. (Reserved)

ARTICLE V. Application Requirements

§ 103-32. Land division application and plat data.

- A. Application. An application for a land division shall be submitted to the Department of Economic Development and Planning. Application forms are available from the Department, and the Department shall specify the number of copies required for review. In addition, the application shall include the following:

- (1) Payment of an application fee as prescribed by the Town Board.
- (2) A short form environmental assessment form pursuant to Article 8 of the Environmental Conservation Law.
- (3) An actual field survey of the boundary lines of the lots to be divided from the entire tract, giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The survey shall include:
 - (a) A title block containing:
 - [1] Parcel owner's name.
 - [2] Street address of parcel to be divided, including town and county.
 - [3] Tax parcel number of lot to be divided.
 - [4] Name and address of map preparer.
 - (b) A North arrow point.
 - (c) A map scale.
 - (d) The zoning district in which the parcel is located.
 - (e) The date of the survey and the latest revision date (if any).
 - (f) The location of existing and proposed structures, including offset distances to property lines and highway right-of-way boundaries, and indicating conformance to zoning district requirements.
 - (g) The location of intersection of driveway(s) with public road.

B. Accompanying information. The following information shall accompany a land division application:

- (1) A copy of the current recorded deed of the parent parcel, together with copies of any recorded covenants, restrictions or easements affecting the parent parcel.
- (2) Letter of approval (if applicable) from the Town Department of Public Works, or the Albany County Department of Public Works, or the New York State Department of Transportation approving the driveway access for the new lot.

§ 103-33. Sketch plan data.

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. The sketch shall indicate 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. A map of the entire holding or parcel to be subdivided and indicating the location of that portion which is to be subdivided in relation to the entire tract and the adjacent street system.

D. 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.

E. The tax map section, block and lot numbers.

F. The general location of all utilities and all streets which are either proposed, mapped or built.

G. The proposed subdivision layout, including the 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.

H. All existing restrictions on the use of land, including easements and covenants.

I. A location map, at a minimum scale of one inch equals 1,000 feet, to indicate the relationship of the proposed subdivision 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.

J. Existing drainage features (e.g., culverts, marshes, ponds and streams) within the portion to be subdivided and within 100 feet thereof.

K. Zoning district or districts.

L. Acreage of each land use and proposed density with supporting calculations, if required.

§ 103-34. Minor subdivision application and plat data.

A. Application. An application for a minor subdivision shall be submitted to the Planning Board. Application forms are available from the Department, and the Department shall specify the number of copies required for review.

B. Information on plat. In the case of a minor subdivision only, the subdivision plat shall include the following data:

(1) An actual field survey of the boundary lines of the lots to be subdivided from the entire tract, giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The plat shall include:

(a) A title block containing.

[1] The name of the subdivision.

[2] The owner's name.

[3] The tax parcel number of the parcel to be subdivided.

[4] The street address of the parcel to be subdivided, including town and county.

[5] The name and address of the map preparer.

(b) A North arrow point.

(c) A map scale.

(d) The zoning district(s) in which the parcel is located and the zoning district boundaries, if applicable.

- (e) The date of the survey and the latest revision date (if any).
- (f) The location of existing and proposed structures, including offset distances to property lines and highway right-of-way boundaries, and indicating conformance to zoning district requirements.
- (g) The location of intersection of driveway(s) with public road.
- (h) Identification of the size and configuration of the buildable portion on each lot, including limits of clearing and grading.
- (i) A location map.
- (j) The total acreage of the parcel and acreage of each proposed lot
- (k) Topography, at intervals of five feet or less.
- (l) Existing and proposed utilities, including location of the nearest hydrant if served by municipal water.
- (m) Easements, existing and proposed.
- (n) Existing and proposed drainage facilities.
- (o) Names of adjacent property owners.
- (p) Planning Board approval box.
- (q) Preliminary stormwater drainage system plan. Drainage structures shall be shown on the preliminary layout, indicating the direction of flow, the approximate location and size of proposed lines and culverts and their profiles, as well as connections to existing lines or alternative means of disposal. This shall include, as required, the proposed size and location of detention basins and other stormwater management facilities as required to comply with the State Pollutant Discharge Elimination System (SPDES) MS4 requirements and Chapter 98 of the Code of the Town of Bethlehem.

[Added 11-14-2007 by L.L. No. 7-2007]

(2) All on-site sanitation and water supply facilities shall be designed to meet the minimum specifications of the State Department of Health. The location and results of the percolation test(s) on which the septic system design(s) is (are) based shall be indicated on the plat.

C. Accompanying information. The following information shall accompany a minor subdivision application:

- (1) A copy of current recorded deed and such covenants or deed restrictions as are intended to cover all or part of the tract.
- (2) Letter of approval (if applicable) from the Town Department of Public Works, the Albany County Department of Public Works, or the New York State Department of Transportation relative to access to a public road under its jurisdiction.
- (3) Applicable fee as set by Town Board.
- (4) Environmental assessment form (EAF).

§ 103-35. Major subdivision application and preliminary plat data.

A. Application. An application for a major subdivision shall be submitted to the Planning Board. Application forms are available from the Department, and the Department shall specify the number of copies required for review.

B. Plat preparation. The preliminary plat shall be prepared by a licensed land surveyor and shall bear the seal and signature of the surveyor responsible for its preparation.

C. Information on plat. In the case of a major subdivision, the subdivision plat shall include the following data:

(1) A title block containing:

(a) The name of the subdivision.

(b) The parcel owner's name.

(c) The tax parcel number of the parcel to be subdivided.

(d) The street address of the parcel to be subdivided, including town and county.

(e) The name and address of the map preparer.

(2) Date, North arrow and scale.

(3) Names of the owners of adjoining parcels.

(4) Total acreage for the parcel and the tax map number.

(5) Bold outlines depicting boundaries of the parcel to be subdivided, plotted to scale.

(6) Total number of proposed lots and the size of each lot.

(7) The date of original preparation and of each subsequent revision.

(8) Graphic scale of no less than 100 feet equals one inch, but preferably not less than 50 feet to the inch.

(9) Offers of dedication or statements establishing easements should be indicated on the drawing.

(10) Zoning district, including exact boundary lines of the district, if more than one district, and any standards from the Zoning Law schedules applicable to the area to be subdivided. Editor's Note: See the schedules included at the end of Ch. 128, Zoning.

(11) Wetlands, marshes, rivers, lakes and watercourses. In the case of a regulated freshwater wetland, the field-delineated boundary of said wetland shall be shown together with any applicable wetland buffer area.

(12) Cut or match lines for two or more drawing sheets shall be indicated within the site boundaries, with each section numbered according to the corresponding sheet.

(13) Adjacent properties. Adjacent properties within 100 feet of the site which are part of a recorded subdivision plat shall be identified by the names of the owners of record, together with section, block and lot numbers.

(14) Boundaries of special districts. Boundaries of special districts (such as water, sewer, fire, school, lighting, etc.).

(15) Topographic contours. Topographic contours at two-foot intervals referred to the United States Coast and Geodetic Survey data of mean sea level. Topographic and information shall extend at least 100 feet beyond the boundaries of the parcel.

(16) Proposed finished grades shall be indicated.

(17) An actual field survey of the boundary lines of the tract, giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The corners of the tract shall also be located on the ground and marked by substantial markers or stakes of such size and type as are approved by the Town Engineer and shall be referenced and shown on the plat.

(18) Street rights-of-way and widening of rights-of-way on the subdivision and within 200 feet of its boundaries, including the street name, location and width, center-line elevations at intersections and other critical points, and other rights-of-way, easements, including restrictions on use, and highways, streets, sidewalks and municipal boundaries within 100 feet of the boundaries of the parcel.

(19) Drainage structures on the subdivision and within 100 feet of its boundaries, including:

(a) Type of structure.

(b) Location, invert elevations, gradients, types and sizes of all pipe and of all other structures, where applicable, and direction of flow.

(20) Location and size or capacity of all other utility structures, such as water and gas mains and power lines, on the subdivision and within 100 feet of its boundaries.

(21) Date, location and graphic representation of findings for all test results of percolation and other tests to ascertain subsurface soil, rock and groundwater conditions and depth of groundwater unless pits are dry at a depth of five feet.

(22) Locations shall be indicated where critical conditions exist, especially wet conditions.

(23) Municipal or other public lands and lands designated as parks, open spaces or for some other public use.

(24) Buildings and other structures located on and within 100 feet of the site.

(25) Location of rock outcrops, isolated trees over 12 inches in diameter at breast height and clusters of large trees, tree lines, wooded areas, existing structures, stone walls, roads or lanes, power lines, easements and other existing improvements within the portion to be subdivided and within 100 feet thereof.

D. Accompanying information. The following information shall accompany a major subdivision application:

(1) A copy of current recorded deed of the parcel and such covenants or deed restrictions as are intended to cover all or part of the tract.

(2) Letter of approval (if applicable) from the Town Department of Public Works, the Albany County Department of Public Works, or the New York State Department of Transportation relative to access to a public road under its jurisdiction.

(3) Applicable fee as set by the Town Board.

(4) Environmental assessment form (EAF).

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

[Added 10-8-2008 by L.L. No. 3-2008]

E. Proposed site development.

(1) Proposed streets and street names and right-of-way width.

(2) The width and location of any streets or public ways or places shown on the Official Map or the Comprehensive Plan within the area to be subdivided, together with preliminary street profiles of public ways proposed by the developer.

(3) Preliminary center-line elevations at intersections and at principal changes in gradient.

(4) Preliminary center-line gradient shown in percent of slope.

(5) Plans and cross sections showing the proposed location and type of sidewalks, lighting, street trees, curbs, water mains, sanitary sewers and storm drains, and the size and type thereof; the character, width and depth of pavements and subbase; and the location of manholes, basins and underground conduits.

(6) Lot layout, including lot lines and dimensions scaled to the nearest foot; suggested location of buildings.

(7) Building setback line (dashed) and dimensions.

(8) Identification of the size and configuration of the buildable portion on each lot, including limits of clearing and grading.

(9) Proposed easements, parks, and restricted areas, including purpose and restrictions.

(10) Designation of areas or rights-of-way which are to be offered for public dedication or deeded to a homeowners' association or other private corporation. The Board may require specific recreation improvements and planting of trees, shrubs, grass and other landscaping in all areas to be so dedicated.

(11) Preliminary stormwater drainage system plan. Drainage structures shall be shown on the preliminary layout, indicating the direction of flow, the approximate location and size of proposed lines and culverts and their profiles, as well as connections to existing lines or alternative means of disposal. This shall include, as required, the proposed size and location of detention basins and other stormwater management facilities as required to comply with the State Pollutant Discharge Elimination System (SPDES) MS4 requirements and Chapter 98 of the Code of the Town of Bethlehem.

[Added 11-14-2007 by L.L. No. 7-2007]

(12) Preliminary water supply and sewage treatment systems. The approximate location, size and profiles of all proposed waterlines, valves, hydrants and sewer lines, connection to existing lines or alternative means of water supply or sewage disposal and treatment as provided in the Public Health Law.

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

[Amended 10-8-2008 by L.L. No. 3-2008]

(14) Entire holdings. If the application covers only a part of the applicant's entire holding, a map of the entire tract, drawn at a scale of not less than 400 feet to the inch, shall be provided. The map shall show an outline of the platted area with its proposed streets and indication of the probable future street system, including its grades and drainage in the remaining portion of the tract and the probable future drainage layout of the entire tract in relation to the part of the applicant's holdings not included in the application.

F. Temporary field markers. The Planning Board may require the location of temporary markers adequate to enable members of the Board to locate readily and appraise the basic layout in the field. These may include markers at corners of the site or along road center lines.

§ 103-36. Major subdivision final application and plat data.

A. The following documents shall be submitted for plat approval:

(1) If any information from the preliminary plat application has changed, an application supplying the updated information shall be submitted to the Planning Board, including an updated deed, if applicable.

(2) Applicable fee as set by Town Board.

(3) Major subdivision plat. The plat to be filed with the County Clerk shall be printed on a Mylar at a dimension as specified by the County Clerk.

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

[Added 10-8-2008 by L.L. No. 3-2008]

B. The final plat shall be prepared by licensed design professionals in accordance with local and state laws and shall provide the information as outlined in the Town of Bethlehem Department of Public Works Guidelines for Final Subdivision Plans dated August 25, 1997, as amended, and any information required by the Planning Board.

§ 103-37. Lot line revision application and plat data.

A. Application. An application for a lot line revision shall be submitted to the Planning Board. Application forms are available from the Department, and the Department shall specify the number of copies required for review. In addition, the application shall include the following:

(1) Payment of an application fee as prescribed by the Town Board.

(2) A short environmental assessment form, pursuant to Article 8 of the Environmental Conservation Law.

(3) An actual field survey of the boundary lines of the lots involved in the lot line revision, drawn to scale and giving complete descriptive data by bearings and distances, made and certified to by a licensed land surveyor. The survey shall include:

(a) A title block containing:

[1] Subdivision name in which the lots are located.

[2] Street addresses of lots being revised, including town and county.

(b) Names of the owners of lots being revised.

(c) Name and address of map preparer.

- (d) Tax parcel numbers of lots being revised.
- (e) A North arrow point.
- (f) A map scale.
- (g) The zoning district of the lots.
- (h) The date of the survey and the latest revision date (if any).
- (i) The location of existing and proposed structures, including offset distances to property lines and highway right-of-way boundaries, and indicating conformance to zoning district requirements.
- (j) The area of the lots prior to and subsequent to the lot line revision.
- (k) Location of existing or proposed easements, deed-restricted areas, streets, paved areas, public or private utilities, manholes, catch basins, or other public or private improvements located within the area of the lot line revision or immediately adjacent thereto.
- (l) The location of intersection of driveway(s) with public road.
- (m) Name, approval date, map reference and preparer of original subdivision.

B. Accompanying information. The following information shall accompany a lot line revision application: a copy of the current recorded deed for each lot being affected by the lot line revision together with copies of any recorded covenants, restrictions or easements affecting the lots.

§ 103-38. (Reserved)

§ 103-39. (Reserved)

ARTICLE VI. Waivers

§ 103-40. Variances, waivers and conditions.

A. In addition to waivers granted by the Department, where the Planning Board finds that certain data and information are not required for a complete application, it may waive the regulations upon written request of the applicant, provided that such waiver will not have the effect of nullifying the intent and purpose of this chapter, or Chapter 128, Zoning, of the Town of Bethlehem Code, or the State Environmental Quality Review Act. Editor's Note: See Art. 8 of the Environmental Conservation Law.

B. Where the Board finds that, due to the special circumstances of a particular plat, the provision of certain required improvements is not requisite in the interest of the public health, safety and general welfare or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may waive such requirements, subject to appropriate conditions.

§ 103-41. (Reserved)

§ 103-42. (Reserved)

§ 103-43. (Reserved)

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 8-23-2006 by L.L. No. 4-2006. Editor's Note: This local law superseded former Ch. 103, Subdivision Regulations, adopted 8-26-1980, as amended. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 53.
Flood damage prevention — See Ch. 69.
Freshwater wetlands — See Ch. 72.
Sewers — See Ch. 91.
Streets and sidewalks — See Ch. 100.
Zoning — See Ch. 128.

CHAPTER 106. (RESERVED)

[Former Ch. 106, Swimming Pools, adopted 9-13-1967, as amended 3-23-1988 by L.L. No. 2-1988, was repealed 8-23-2006 by L.L. No. 4-2006. See now Ch. 128, Zoning.]

CHAPTER 111. TAXATION

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ARTICLE IV. Delinquent Tax Notices

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ARTICLE V. Exemption for Persons With Disabilities and Limited Incomes

§ 111-16. Exemption granted.

ARTICLE VI. Assessment of Converted Condominiums

§ 111-17. Purpose; legislative authority.

§ 111-18. Application of state statutes.

§ 111-19. Definitions.

CHAPTER 111. TAXATION

[HISTORY: Adopted by the Town Board of the Town of Bethlehem as indicated in article histories. Amendments noted where applicable.]

ARTICLE I. Partial Exemption for Aged Persons

[Adopted 8-2-1982]

§ 111-1. Exemption stated.

[Amended 1-3-1984; 1-14-1987; 2-22-1990 by L.L. No. 3-1990; 12-12-1990; 10-23-1991 by L.L. No. 6-1991; 1-13-1993 by L.L. No. 1-1993; 10-26-1994 by L.L. No. 9-1994; 12-13-1995 by L.L. No. 10-1995; 12-11-1996 by L.L. No. 16-1996]

A. The Town Board hereby adopts, pursuant to § 467 of the Real Property Tax Law and Chapter 588 of the Laws of 1989, a partial exemption from real property taxes for persons 65 years of age or older. Under an amendment to § 467 under Chapter 313 of the New York State Laws of 1996, signed into law July 17, 1996, persons are permitted to subtract all medical and prescription drug expenses not reimbursed or paid by insurance to be excluded from the computation of an applicant's income, the latter being used as one of the criteria for determining the applicant's eligibility for the senior exemption.

B. The Town Board hereby adopts, pursuant to § 467 of the Real Property Tax Law, a partial exemption from real property taxes for persons 65 years of age or older. Under an amendment signed into law in 2002, the maximum income ceiling for the basic exemption is increased from \$24,000 to \$29,000. This increase also affects the "sliding scale" option [§ 467 (1) (b)]. The following income eligibility levels will apply:

[Amended 3-10-1999 by L.L. No. 4-1999; 1-10-2001 by L.L. No. 1-2001; 11-13-2002 by L.L. No. 7-2002; 1-14-2004 by L.L. No. 2-2004; 2-28-2007 by L.L. No. 2-2007]

Income	Percentage of Exemption
2007	
\$0 to \$26,000	50%
\$26,000 to \$27,000	45%
\$27,000 to \$28,000	40%
\$28,000 to \$29,000	35%
\$29,000 to \$29,900	30%
\$29,900 to \$30,800	25%
\$30,800 to \$31,700	20%
\$31,700 to \$32,600	15%
\$32,600 to \$33,500	10%
\$33,500 to \$34,400	5%

Income	Percentage of Exemption
2008	
\$0 to \$27,000	50%
\$27,000 to \$28,000	45%
\$28,000 to \$29,000	40%
\$29,000 to \$30,000	35%
\$30,000 to \$30,900	30%

Income	Percentage of Exemption
	2008
\$30,900 to \$31,800	25%
\$31,800 to \$32,700	20%
\$32,700 to \$33,600	15%
\$33,600 to \$34,500	10%
\$34,500 to \$35,400	5%

Income	Percentage of Exemption
	2009
\$0 to \$28,000	50%
\$28,000 to \$29,000	45%
\$29,000 to \$30,000	40%
\$30,000 to \$31,000	34%
\$31,000 to \$31,900	30%
\$31,900 to \$32,800	25%
\$32,800 to \$33,700	20%
\$33,700 to \$34,600	15%
\$34,600 to \$35,500	10%
\$35,500 to \$36,400	5%

Income	Percentage of Exemption
	2010
\$0 to \$29,000	50%
\$29,000 to \$30,000	45%
\$30,000 to \$31,000	40%
\$31,000 to \$32,000	35%
\$32,000 to \$32,900	30%
\$32,900 to \$33,800	25%
\$33,800 to \$34,700	20%

Income	Percentage of Exemption
	2010
\$34,700 to \$35,600	15%
\$35,600 to \$36,500	10%
\$36,500 to \$37,400	5%

§ 111-1.1. Grants to persons qualifying after taxable status date.

[Added 2-22-1990 by L.L. No. 3-1990 Editor's Note: Section 2 of this local law provided that it shall apply to assessment rolls prepared on the basis of taxable status dates occurring after 1-1-1990. **]**

All persons who qualify for a partial exemption from real estate taxes pursuant to § 467 of the Real Property Tax Law shall not be denied such exemption because they turn age 65 after the taxable status date of March 1 but before December 31 of one same calendar year.

§ 111-2. Disqualifications.

No exemption shall be granted:

A. If the income of the owner or the combined income of the owners of the property for the income tax year immediately preceding the date of making application for exemption exceeds income limits under the New York State Real Property Tax Law. Where title is vested in either the husband or the wife, their combined income may not exceed such sum. Such income shall include social security and retirement benefits, interest, dividends, net rental income, salary or earnings and net income from self-employment, but shall not include gifts or inheritances.

[Amended 1-14-1987; 3-23-1988 by L.L. No. 2-1988; 7-13-1988 by L.L. No. 4-1988]

B. Unless the title of the property shall have been vested in the owner or one of the owners of the property for at least 24 consecutive months prior to the date of making application for exemption; provided, however, that in the event of the death of either a husband or wife, the time of ownership of the property by the deceased husband or wife shall be deemed also a time of ownership by the survivor, and such ownership shall be deemed continuous for the purposes of computing such period of 24 consecutive months, and provided further that where property of the owner or owners has been acquired to replace property formerly owned by such owner or owners and taken by eminent domain or other involuntary proceedings, except a tax sale, the period of ownership of the former property shall be combined with the period of ownership of the property for which application is made for exemption, and such period of ownership shall be deemed to be consecutive for purposes of this article.

C. Unless the property is used exclusively for residential purposes; provided, however, that in the event that any portion of such property is not so used exclusively for residential purposes but is used for other purposes, such portion shall be subject to taxation, and the remaining portion only shall be entitled to the exemption provided by this article.

[Amended 3-23-1988 by L.L. No. 2-1988]

D. Unless the real property is the legal residence of and is occupied in whole or in part by the owner or by all of the owners of the property, provided that an owner who is absent while receiving health-related care as an inpatient of a residential health care facility, as defined in § 2801 of the Public Health Law, shall be deemed to remain a legal resident and an occupant of the property while so confined, and income accruing to that person shall be income only to the extent that it exceeds the amount paid by such owner, spouse or co-owner for care in the facility; and provided further that during such confinement such property is not occupied by other than the spouse or co-owner of such owner.

[Amended 3-23-1988 by L.L. No. 2-1988]

§ 111-3. Application for exemption.

[Amended 1-3-1984]

Application for such exemption must be made by the owner or by all of the owners of the property on forms prescribed by the State Board of Equalization and Assessment, to be furnished by the Board of Assessors of the Town, and such application shall furnish the information and be executed in the manner required or prescribed in such forms and shall be filed in such Assessors' office on or before the appropriate taxable status date. Editor's Note: Local Law No. 2-1985, adopted February 13, 1985, authorized an application for a renewal of an exemption granted pursuant to Real Property Tax Law § 467(d) to be filed on or before the date of hearing complaints in the Town of Bethlehem. As of 1986 this date became the third Tuesday in May.

ARTICLE II. Improvements to Real Property of Disabled Persons

[Adopted 1-3-1984 by L.L. No. 1-1984]

§ 111-4. Purpose.

The purpose of this article is to exempt from real property taxes property owned by certain physically disabled persons, as authorized by § 459 of the Real Property Tax Law.

§ 111-5. Exemption for improvement to facilitate use and accessibility.

An improvement to any real property used solely for residential purposes as a one-, two- or three-family residence shall be exempt from taxation to the extent of any increase in value attributable to such improvement if such improvement is used for the purpose of facilitating and accommodating the use and accessibility of such real property by a resident owner of the real property who is physically disabled or by a member of the resident owner's household who is physically disabled if such member resides in the real property.

§ 111-6. Improvements entitled to exemption.

Any such real property tax exemption will apply to improvements constructed prior to the effective date of this article.

§ 111-7. Applicable taxable status date.

This article shall apply to assessment rolls prepared on the basis of taxable status date occurring on or after January 2, 1984.

ARTICLE III. Eligible Funds Veterans Exemption

Editor's Note: Former Art. III, Homestead Base Proportions, adopted 3-27-1992 by L.L. No. 2-1992, was repealed 9-22-1993 by L.L. No. 7-1993.

[Adopted 9-28-1994 by L.L. No. 8-1994]

§ 111-8. Purpose.

The purpose of this article is to require a change in the amount of the eligible funds exemption granted to veterans in the event of a material change in the level of assessment as authorized by Subdivision 5 of § 458 of the Real Property Tax Law as amended by Chapter 410 of the Laws of 1994.

§ 111-9. Recomputation of exemption upon change of assessment.

In the event that the total assessed value of any real property for which an exemption prescribed in Subdivision 1 or 2 of § 458 of the Real Property Tax Law has been granted increases or decreases as the result of a revaluation or update of assessments and a material change in level of assessment, as provided in Title 2 of Article 12 of the Real Property Tax Law, is certified for the assessment roll pursuant to the rules of the State Board of Equalization and Assessment, the Bethlehem Town Assessor shall increase or decrease the amount of such exemption by multiplying the amount of such exemption by such change in level of assessment. If the Assessor receives the certification after the completion, verification and filing of the final assessment roll, the Assessor shall certify the amount of exemption as recomputed pursuant to this section to the local officers having custody and control of the roll, and such local officers are hereby directed and authorized to enter the recomputed exemption certified by the Assessor on the roll.

§ 111-10. Recomputation of exemption upon change of status.

Owners of property who previously received an exemption pursuant to § 458 of the Real Property Tax Law but who opted instead to received exemption pursuant to § 458-a of the Real Property Tax Law may again receive an exemption pursuant to § 458 of the Real Property Tax Law upon application by the owner within one-year of the adoption of this article. The Assessor shall recompute all exemptions granted pursuant to § 458 of the Real Property Tax Law by multiplying the amount of each such exemption by the cumulative change in level of assessment certified by the State Board of Equalization and Assessment measured from the assessment roll immediately preceding the assessment roll on which exemptions were first granted pursuant to § 458-a of the Real Property Tax Law; provided, however, that if an exemption pursuant to § 458 of the Real Property Tax Law was initially granted to a parcel on a later assessment roll, the cumulative change in level factor to be used in recomputing that exemption shall be measured from the assessment roll immediately preceding the assessment roll on which that exemption was initially granted. No refunds or retroactive entitlements shall be granted.

§ 111-11. Applicable taxable status date.

The provisions of this article shall be applied retroactively to an assessment roll prepared on the basis of a taxable status date occurring on or March 1, 1994.

§ 111-11.1. Eligible funds alternative veterans exemption.

[Added 12-11-1996 by L.L. No. 17-1996; amended 3-10-1999 by L.L. No. 3-1999; 2-22-2006 by L.L. No. 1-2006]

Chapter 256 of the New York State Laws of 2005 provides an amendment to § 458-a of the Real Property Tax Law (alternative veterans exemption). This new law provides that each county, city, town or village has the authority to adopt a local law to increase the home value cap of \$180,000 currently in effect to one of three new levels: \$200,000, \$220,000 or \$240,000. Adoption of one of these three new levels would result in the following changes in the maximum exemption amounts permitted to recipients of the alternative veterans exemption:

	Current Amount	Amount Permitted Based on Change
Home value cap	\$180,000	\$240,000
Maximum exemption		
Wartime (15%)	\$27,000	\$36,000
Combat (10%)	\$18,000	\$24,000
Disabled	\$90,000	\$130,000
Current total maximum exemption	\$135,000	\$190,000

§ 111-11.2. Gold Star parents as eligible recipients.

[Added 1-10-2001 by L.L. No. 3-2001]

An amendment to § 458-a of the Real Property Tax Law (alternative veterans exemption) includes Gold Star parents as eligible recipients. This new law provides that each county, city, town or village has the authority to adopt a local law to include Gold Star parents as eligible recipients.

§ 111-11.3. Cold War veterans exemption.

[Added 2-11-2009 by L.L. No. 2-2009]

A. Purpose. The purpose of this section is to provide a tax exemption for Cold War veterans, as authorized by Chapter 655 of the Laws of New York for 2007, as amended by Chapter 6 of the Laws of New York for 2008, Editor's Note: See New York State Real Property Tax Law § 458-b. and by Local Law No. 6 of Albany County, New York, for 2008.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

ACTIVE DUTY

Full-time duty in the United States Armed Forces, other than active duty for training.

ARMED FORCES

The United States Army, Navy, Marine Corps, Air Force and Coast Guard.

COLD WAR VETERAN

A person, male or female, who served on active duty in the United States Armed Forces during the time period from September 2, 1945, to December 26, 1991, and was discharged or released therefrom under honorable conditions.

LATEST CLASS RATIO

The latest, final class ratio established by the New York State Board of Real Property Tax Services pursuant to Title 1 of Article 12 of the New York State Real Property Tax Law for use in a special assessing unit as defined in § 1801 of the New York State Real Property Tax Law.

LATEST STATE EQUALIZATION RATE

The latest, final equalization rate established by the New York State Board of Real Property Tax Services pursuant to Article 12 of the New York State Real Property Tax Law.

QUALIFIED OWNER

A Cold War veteran, the spouse of a Cold War veteran or the unremarried, surviving spouse of a deceased Cold War veteran. Where property is owned by more than one qualified owner, the exemption to which each is entitled may be combined. Where a veteran is also the unremarried, surviving spouse of a veteran, such person may also receive any exemption to which the deceased spouse was entitled.

QUALIFIED RESIDENTIAL REAL PROPERTY

Property owned by a qualified owner which is used exclusively for residential purposes; provided, however, that in the event that any portion of such property is not used exclusively for residential purposes but is used for other purposes, such portion shall be subject to taxation and only the remaining portion used exclusively for residential purposes shall be subject to the exemption provided by this section. Such property shall be the primary residence of the Cold War veteran or the unremarried, surviving spouse of a Cold War veteran, unless the Cold War veteran or unremarried, surviving spouse is absent from the property due to medical reasons or institutionalization.

SERVICE CONNECTED

With respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in the line of duty on active military, naval or air service.

C. Amount of exemption; limitations.

(1) Qualifying residential real property shall be exempt from taxation to the extent of 15% of the assessed value of such property; provided, however, that such exemption shall not exceed \$12,000 or the product of \$12,000 multiplied by the latest state equalization rate of the assessing unit or, in the case of a special assessing unit the latest class ratio, whichever is less.

(2) In addition to the exemption provided by Subsection C(1) of this section, where the Cold War veteran received a compensation rating from the United States Department of Veterans Affairs or from the United States Department of Defense because of a service-connected disability, qualifying residential real property

shall be exempt from taxation to the extent of the product of the assessed value of such property multiplied by 50% of the Cold War veteran disability rating; provided, however, that such exemption shall not exceed \$40,000 or the product of \$40,000 multiplied by the latest state equalization rate of the assessing unit, or, in the case of a special assessing unit the latest class ratio, whichever is less.

(3) If a Cold War veteran receives either a veterans exemption authorized by § 458 of the Real Property Tax Law or an alternative veterans exemption authorized by § 458-a of the Real Property Tax Law, the Cold War veteran shall not be eligible to receive an exemption under this section.

D. Duration of exemption. The exemption provided by this section shall be granted for a period of 10 years. The commencement of such ten-year period shall be governed pursuant to this subsection. Where a qualified owner owns qualifying residential real property on the effective date of this section, or such other date as may be set forth in § 458-b2(c) of the New York State Real Property Tax Law, such ten-year period shall be measured from the assessment roll prepared pursuant to the first taxable status date occurring on or after the effective date of this section, or such other date as may be set forth in § 458-b2(c) of the New York State Real Property Tax Law. Where a qualified owner does not own qualifying residential real property on the effective date of this section, or such other date as may be set forth in § 458-b2(c) of the New York State Real Property Tax Law, such ten-year period shall be measured from the assessment roll prepared pursuant to the first taxable status date occurring at least 60 days after the date of purchase of qualifying residential real property; provided, however, that should the veteran apply for and be granted an exemption on the assessment roll prepared pursuant to a taxable status date occurring within 60 days after the date of purchase of residential real property, such ten-year period shall be measured from the first assessment roll in which the exemption occurs. If, before the expiration of such ten-year period, such exempt property is sold and replaced with other residential real property, such exemption may be granted pursuant to this subsection for the unexpired portion of the ten-year exemption period.

E. Application for exemption. Application for the exemption set forth in this section shall be made by the qualified owner, or all of the qualified owners, of the property on a form prescribed by the New York State Board of Real Property Tax Services. The owner or owners shall file the completed form in their local assessor's office on or before the first appropriate taxable status date. The exemption shall continue in full force and effect for all appropriate subsequent tax years, and the owner or owners of the property shall not be required to refile each year. Applicants shall be required to refile on or before the taxable status date if the percentage of disability percentage increases or decreases or may refile if other changes have occurred which affect qualification for an increased or decreased amount of exemption. Any applicant convicted of willfully making any false statement in the application for such exemption shall be subject to the penalties prescribed in the New York State Penal Law.

ARTICLE IV. Delinquent Tax Notices

[Adopted 2-14-1996 by L.L. No. 1-1996]

§ 111-12. Intent.

This article shall be known as "A Local Law to Establish a Fee to be Charged by the Town of Bethlehem to Send a Delinquent Tax Notice as Required by § 987, Subdivision 1, of the New York State Real Property Tax Law."

§ 111-13. Notice required; prior mandatory fee.

Chapter 680 of the Real Property Tax Law requires that a delinquent tax notice be sent by the Receiver of Taxes to all property owners whose taxes are delinquent. Until recently, a charge of \$1 was mandatory. The Real Property Tax Law has been amended so that said charge may be as much as \$2 but is no longer mandatory.

§ 111-14. Determination of fee adequacy.

The Receiver of Taxes has determined that a fee should be charged and that a fee of \$1 is adequate to compensate the Town for the cost of sending the notice.

§ 111-15. Delinquent tax notice fee.

On or after the effective date of this article, there shall be a fee charged for the sending of the delinquent tax notice required by the New York State Real Property Tax Law in the amount of \$1.

ARTICLE V. Exemption for Persons With Disabilities and Limited Incomes

[Adopted 1-28-1998 by L.L. No. 2-1998]

§ 111-16. Exemption granted.

[Amended 2-9-2000 by L.L. No. 3-2000; 1-10-2001 by L.L. No. 2-2001]

A. Chapter 315 of the New York State Laws of 1997 was signed into law on July 29, 1997. This law amends the Real Property Tax Law by adding a new § 459-c to provide a real property tax exemption to persons with disabilities who have limited incomes. The law's provisions are available for real property owned by one or more disabled persons or by married couples or siblings, one of whom has a qualifying, certified disability. The new law is somewhat similar to that currently provided to senior citizens with limited incomes (§ 467, Real Property Tax Law) in terms of residency and income eligibility level requirements. The latter are outlined below. However, it is noted that a property cannot receive an exemption for the same tax purpose under both §§ 459-c and 467. If adopted by a local municipality, school district, etc., the provisions created by the new law shall apply to the assessment rolls prepared on the basis of taxable status dates.

B. The Town Board hereby adopts, pursuant to § 459-c of the Real Property Tax Law, a partial exemption from real property taxes for persons with disabilities who have limited incomes. Under an amendment signed into law in 2002, the maximum income ceiling for the basic exemption is increased from \$20,500 to \$21,500. This increase also affects the "sliding scale" option [§ 459-c, Subdivision 1(b)]. The following income eligibility levels will apply:

[Amended 11-13-2002 by L.L. No. 8-2002; 1-14-2004 by L.L. No. 1-2004; 2-28-2007 by L.L. No. 1-2007]

Income	Percentage of Exemption
2007	
\$0 to \$26,000	50%
\$26,000.01 to \$27,000	45%
\$27,000.01 to \$28,000	40%
\$28,000.01 to \$29,000	35%
\$29,000.01 to \$29,900	30%
\$29,900.01 to \$30,800	25%
\$30,800.01 to \$31,700	20%
\$31,700.01 to \$32,600	15%
\$32,600.01 to \$33,500	10%
\$33,500.01 to \$34,400	5%

Income	Percentage of Exemption
---------------	--------------------------------

2008

Income	Percentage of Exemption
	2008
\$0 to \$27,000	50%
\$27,000 to \$28,000	45%
\$28,000 to \$29,000	40%
\$29,000 to \$30,000	35%
\$30,000 to \$30,900	30%
\$30,900 to \$31,800	25%
\$31,800 to \$32,700	20%
\$32,700 to \$33,600	15%
\$33,600 to \$34,500	10%
\$34,500 to \$35,400	5%

Income	Percentage of Exemption
	2009
\$0 to \$28,000	50%
\$28,000 to \$29,000	45%
\$29,000 to \$30,000	40%
\$30,000 to \$31,000	34%
\$31,000 to \$31,900	30%
\$31,900 to \$32,800	25%
\$32,800 to \$33,700	20%
\$33,700 to \$34,600	15%
\$34,600 to \$35,500	10%
\$35,500 to \$36,400	5%

Income	Percentage of Exemption
	2010
\$0 to \$29,000	50%
\$29,000 to \$30,000	45%

Income	Percentage of Exemption
	2010
\$30,000 to \$31,000	40%
\$31,000 to \$32,000	35%
\$32,000 to \$32,900	30%
\$32,900 to \$33,800	25%
\$33,800 to \$34,700	20%
\$34,700 to \$35,600	15%
\$35,600 to \$36,500	10%
\$36,500 to \$37,400	5%

ARTICLE VI. Assessment of Converted Condominiums

[Adopted 6-25-2008 by L.L. No. 2-2008]

§ 111-17. Purpose; legislative authority.

This article is adopted pursuant to Chapter 293 of the Laws of New York, 1997, for the purpose of preventing lower assessments of converted condominiums.

§ 111-18. Application of state statutes.

Neither Paragraph (a) of Subdivision (1) of § 581 of the Real Property Tax Law nor Paragraph (b) of Subdivision (1) of § 339-y of the Real Property Law shall apply to any converted condominium unit in the Town of Bethlehem.

§ 111-19. Definitions.

As used in this article, the following terms shall have the meanings indicated:

CONVERTED CONDOMINIUM UNIT

A dwelling unit held in condominium form of ownership that has previously been on an assessment roll as a dwelling unit in other-than-condominium form of ownership and has not been previously subject to the provisions of § 581(1)(a) of the Real Property Tax Law or § 339-y(1)(b) of the Real Property Law.

CHAPTER 113. (RESERVED)

[Former Ch. 113, Telecommunication Towers, adopted 7-23-1997 by L.L. No. 10-1997, was repealed 8-23-2006 by L.L. No. 4-2006. See now Ch. 128, Zoning.]

CHAPTER 115. TRAILERS AND TRAILER CAMPS

§ 115-1. Title.

§ 115-2. Purpose.

§ 115-3. Definitions.

§ 115-4. Permitted locations.

§ 115-5. Permit required for trailer camp.

§ 115-6. Issuance of permit; fees.
§ 115-7. Regulations for trailer camps.
§ 115-8. Right of entry for inspection.
§ 115-9. Revocation of permit.
§ 115-10. Renewal of permit.
§ 115-11. Applicability to existing trailer camps.
§ 115-12. House trailers not located in trailer camps.
§ 115-13. Revocation of permit for trailer outside trailer camp.
§ 115-14. Applicability to existing trailers not located in trailer camps.
§ 115-15. Penalties for offenses.
§ 115-16. No waiver of compliance.
Open all 16 sections

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 6-21-1961. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 128.

CHAPTER 119. VEHICLES AND TRAFFIC

ARTICLE I. General Provisions

§ 119-1. Definitions.
§ 119-2. Authority to install traffic control devices.
§ 119-3. Schedules; adoption of regulations.

ARTICLE II. Traffic Regulations

§ 119-4. Traffic control signals.
§ 119-5. Speed limits.
§ 119-6. One-way streets.
§ 119-7. Prohibited turns at intersections.
§ 119-8. Prohibited right turns on red signal.
§ 119-8.1. Prohibited U-turns.
§ 119-9. Through streets.
§ 119-10. Stop intersections.
§ 119-11. Yield intersections.
§ 119-12. Vehicles over certain weights excluded.

ARTICLE III. Parking, Standing and Stopping

§ 119-13. Application of article.
§ 119-14. Parking prohibited at all times.
§ 119-14.1. Handicapped parking.
§ 119-15. No stopping.
§ 119-16. No standing.
§ 119-17. Parking prohibited certain hours.
§ 119-18. Time limit parking.
§ 119-19. Loading zones.
§ 119-19.1. Angle parking.

ARTICLE IV. Removal and Storage of Vehicles

§ 119-20. Authority to impound vehicles.
§ 119-21. Storage and charges.
§ 119-22. Notice of removal.

ARTICLE V. Miscellaneous Provisions

§ 119-23. Penalties for offenses.
§ 119-24. When effective.
§ 119-25. Severability.
§ 119-26. Repealer.

ARTICLE VI. Schedules

§ 119-27. Schedule I: Traffic Control Signals.
§ 119-28. Schedule II: Speed Limits.
§ 119-29. Schedule III: One-Way Streets.
§ 119-30. Schedule IV: Prohibited Turns at Intersections.

§ 119-31. Schedule V: Prohibited Right Turns on Red Signal.
§ 119-32. Schedule VI: Through Streets.
§ 119-33. Schedule VII: Stop Intersections.
§ 119-34. Schedule VIII: Yield Intersections.
§ 119-35. Schedule IX: Vehicles Over Certain Weights Excluded.
§ 119-36. Schedule X: Parking Prohibited at All Times.
§ 119-37. Schedule XI: No Stopping.
§ 119-38. Schedule XII: No Standing.
§ 119-39. Schedule XIII: Parking Prohibited Certain Hours.
§ 119-40. Schedule XIV: Time Limit Parking.
§ 119-41. Schedule XV: Loading Zones.
§ 119-42. Schedule XVI: Angle Parking.
§ 119-43. Schedule XVII: Tractor-Trailers Excluded.
§ 119-44. Schedule XVIII: Prohibited U-Turns.
§ 119-45. Schedule XIX: Auto Carriers Excluded.

CHAPTER 119. VEHICLES AND TRAFFIC

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 3-23-1988 by L.L. No. 2-1988. Amendments noted where applicable.]

GENERAL REFERENCES

Off-highway motorcycles — See Ch. 82.
Snowmobiles — See Ch. 94.

ARTICLE I. General Provisions

§ 119-1. Definitions.

A. The words and phrases used in this chapter shall, for the purposes of this chapter, have the meanings respectively ascribed to them by Article I of the Vehicle and Traffic Law of the State of New York.

B. The following words and phrases, which are not defined by Article I of the Vehicle and Traffic Law of the State of New York, shall have the meanings respectively ascribed to them in this section for the purposes of this chapter:

CURBLINE

The prolongation of the lateral line of a curb or, in the absence of a curb, the lateral boundary line of the roadway.

HOLIDAYS

New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas Day.

OFFICIAL TIME STANDARD

Whenever certain hours are named herein or on traffic control devices, they shall mean the time standard which is in current use in this state.

§ 119-2. Authority to install traffic control devices.

The Superintendent of Highways shall install and maintain traffic control devices when and as required under the provisions of this chapter, to make effective the provisions of this chapter, and may install and maintain such additional traffic control devices as he may deem necessary to regulate, warn or guide traffic under the Vehicle and Traffic Law of the State of New York, subject to the provisions of §§ 1682 and 1684 of that law.

§ 119-3. Schedules; adoption of regulations.

A. For the purpose of maintaining an accurate record of all regulations adopted under the provisions of this chapter, there is hereby established a system of schedules, appearing as Article VI of this chapter, in which shall

be entered all regulations after adoption. Such schedules shall be deemed a part of the section to which they refer. All regulations shall be adopted with reference to the appropriate schedule as indicated in the various sections of this chapter.

B. Regulations shall be adopted by the Town Board in accordance with provisions of the Town Law and the Vehicle and Traffic Law, or by an officer or agency authorized by the Town Board to adopt regulations pursuant to § 1603 of the Vehicle and Traffic Law.

ARTICLE II. Traffic Regulations

§ 119-4. Traffic control signals.

Traffic control signals shall be installed and operated at the intersection of those streets described in Schedule I (§ 119-27), attached to and made a part of this chapter.

§ 119-5. Speed limits.

The maximum speed at which vehicles may proceed on or along any streets or highways within the Town is hereby established at 30 miles per hour, except that the speed limit for vehicles proceeding on or along those streets or parts of streets described in Schedule II (§ 119-28) shall be as indicated in said schedule.

§ 119-6. One-way streets.

The streets or parts of streets described in Schedule III (§ 119-29), attached to and made a part of this chapter, are hereby designated as one-way streets in the direction indicated.

§ 119-7. Prohibited turns at intersections.

No person shall make a turn of the kind designated (left, right, all) at any of the locations described in Schedule IV (§ 119-30), attached to and made a part of this chapter.

§ 119-8. Prohibited right turns on red signal.

No person shall make a right turn when facing a steady red signal (stop indication) at any of the locations described in Schedule V (§ 119-31), attached to and made a part of this chapter.

§ 119-8.1. Prohibited U-turns.

[Added 5-10-2000 by L.L. No. 5-2000]

No person shall make a U-turn at any time upon any of the streets or parts of streets described in Schedule XVIII (§ 119-44), attached to and made a part of this chapter.

§ 119-9. Through streets.

The streets or parts of streets described in Schedule VI (§ 119-32), attached to and made a part of this chapter, are hereby designated as through streets. Traffic control devices shall be installed on each street intersecting the through street.

§ 119-10. Stop intersections.

The intersections described in Schedule VII (§ 119-33), attached to and made a part of this chapter, are hereby designated as stop intersections. Stop signs shall be installed as provided therein.

§ 119-11. Yield intersections.

The intersections described in Schedule VIII (§ 119-34), attached to and made a part of this chapter, are hereby designated as yield intersections. Yield signs shall be installed as provided therein.

§ 119-12. Vehicles over certain weights excluded.

Trucks, commercial vehicles, tractors and tractor-trailer combinations in excess of the weights indicated are hereby excluded from the streets or parts of streets described in Schedule IX (§ 119-35), except for the pickup and delivery of materials on such streets.

ARTICLE III. Parking, Standing and Stopping

§ 119-13. Application of article.

The provisions of this article shall apply except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic control device.

§ 119-14. Parking prohibited at all times.

No person shall park a vehicle at any time upon any of the streets or parts thereof described in Schedule X (§ 119-36), attached to and made a part of this chapter.

§ 119-14.1. Handicapped parking.

[Added 12-26-1990 by L.L. No. 8-1990]

After establishment by any governmental agency or specially marked parking spaces for handicapped persons in multifamily dwellings, shopping centers and any other locations in the Town of Bethlehem, no person shall park a motor vehicle in such space unless a handicapped person is either a passenger, driver or occupant of the vehicle and the vehicle contains a designation issued by the Commissioner of Motor Vehicles, pursuant to § 1203-a of the Vehicle and Traffic Law or a permit issued by the Town Clerk of the Town of Bethlehem which shall be displayed as required by the applicable statute. A "multifamily dwelling," for purposes of this chapter, shall be defined as a building designated to be occupied as a residence for three or more families.

§ 119-15. No stopping.

No person shall stop a vehicle upon any of the streets or parts of streets described in Schedule XI (§ 119-37), attached to and made a part of this chapter.

§ 119-16. No standing.

No person shall stand a vehicle upon any of the streets or parts of streets described in Schedule XII (§ 119-38), attached to and made a part of this chapter.

§ 119-17. Parking prohibited certain hours.

No person shall park a vehicle between the hours specified in Schedule XIII (§ 119-39) of any day, unless otherwise indicated, upon any of the streets or parts of streets described in said Schedule XIII, attached to and made a part of this chapter.

§ 119-18. Time limit parking.

No person shall park a vehicle for longer than the time limit shown in Schedule XIV (§ 119-40) at any time between the hours listed in said Schedule XIV of any day, unless otherwise indicated, upon any of the streets or parts of streets described in said Schedule XIV, attached to and made a part of this chapter.

§ 119-19. Loading zones.

The locations described in Schedule XV (§ 119-41), attached to and made a part of this chapter, are hereby designated as loading zones.

§ 119-19.1. Angle parking.

[Added 5-8-1996 by L.L. No. 9-1996]

The locations described in Schedule XVI, Editor's Note: See § 119-42, attached hereto and made a part of this chapter are hereby designated as areas where angle parking is permitted. Signage and/or pavement markings shall be placed in such a manner as to indicate the authorization of angle parking.

ARTICLE IV. Removal and Storage of Vehicles

§ 119-20. Authority to impound vehicles.

A. When any vehicle is parked or abandoned on any highway or public parking lot within this Town during a snowstorm, flood, fire or other public emergency which affects that portion of the public highway or parking lot upon which said vehicle is parked or abandoned, said vehicle may be removed by or under the direction of the Chief of Police.

B. When any vehicle is found unattended on any highway or public parking lot within the Town where said vehicle constitutes an obstruction to traffic, said vehicle may be removed by or under the direction of the Chief of Police.

§ 119-21. Storage and charges.

After removal of any vehicle as provided in this article, the Chief of Police may store or cause such vehicle to be stored in a suitable place at the expense of the owner. Such owner or person in charge of the vehicle may redeem the same upon payment to the person with whom stored of the amount of all expenses actually and necessarily incurred in effecting such removal and storage.

§ 119-22. Notice of removal.

It shall be the duty of the Chief of Police to ascertain to the extent possible the owner of the vehicle or the person having the same in charge and to notify him of the removal and disposition of such vehicle and of the amount which will be required to redeem same. Said Chief of Police shall also without delay report the removal and disposition of any vehicle removed as provided in this article to the Town Clerk.

ARTICLE V. Miscellaneous Provisions

§ 119-23. Penalties for offenses.

Every person convicted of a traffic infraction for a violation of any provision of this chapter which is not a violation of any provision of the Vehicle and Traffic Law of the State of New York shall, for a first conviction thereof, be punished by a fine of not more than \$50 or by imprisonment for not more than 15 days, or by both such fine and imprisonment: for a second such conviction within 18 months thereafter, such person shall be punished by a fine of not more than \$100 or by imprisonment for not more than 45 days, or by both such fine and imprisonment: upon a third or subsequent conviction within 18 months after the first conviction, such person shall be punished by a fine of not more than \$250 or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

§ 119-24. When effective.

A. Except those parts, if any, which are subject to approval under § 1684 of the Vehicle and Traffic Law of the State of New York, this chapter and any regulations adopted hereunder shall take effect as provided by law.

B. Any part or parts of this chapter and any regulations adopted hereunder which are subject to approval under § 1684 of the Vehicle and Traffic Law of the State of New York shall take effect from and after the day on which approval in writing is received from the New York State Department of Transportation.

§ 119-25. Severability.

If any article, section, subsection, paragraph, sentence, clause or provision of this chapter shall, be adjudged by any court of competent jurisdiction to be invalid, such adjudication shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the article, section, subsection, paragraph, sentence, clause or provision thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 119-26. Repealer.

All prior ordinances, regulations and rules, or parts thereof, of this Town regulating traffic and parking are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance, regulation or rule hereby repealed prior to the taking effect of this chapter.

ARTICLE VI. Schedules

§ 119-27. Schedule I: Traffic Control Signals.

In accordance with the provisions of § 119-4, traffic control signals shall be installed at the following described intersections:

Intersection

County Route 52 Elm Avenue at Elm Avenue (Town highway) in front of Elm Avenue Town Park.

[Added 3-12-1997 by L.L. No. 5-1997]

§ 119-28. Schedule II: Speed Limits.

A. Limits generally. In accordance with the provisions of § 119-5, speed limits other than 30 miles per hour are established upon the following streets or parts of streets:

Name of Street	Speed Limit (mph)	Location
Beaver Dam Road	40	Between Route 396 and Route 144
Blessing Road		
[Repealed 9-10-1997 by L.L. No. 12-1997]		
Cherry Avenue	30	Between Delaware Avenue and Kenwood Avenue
[Amended 10-10-2001 by L.L. No. 10-2001]		
County Route 204 (Krumkill Road)	30	From the intersection of Schoolhouse Road to the intersection of Russell Road
[Added 7-13-1994 by L.L. No.		

Name of Street	Speed Limit (mph)	Location
4-1994]		
Delmar Bypass Extension	35	Between Elm Avenue and Van Dyke Road
[Added 3-24-1993 by L.L. No. 3-1993; amended 10-10-2001 by L.L. No. 11-2001]		
Elm Avenue	30	Between Delaware Avenue and Delmar Bypass
[Added 10-10-2001 by L.L. No. 10-2001]		
Elm Avenue	35	Between Delaware Avenue and Feura Bush Road
Elm Avenue	35	From the entrance of Elm Avenue Park to the intersection of Feura Bush Road (State Route No. 910A)
[Added 6-8-1994 by L.L. No. 3-1994]		
Elm Avenue	35	Between Feura Bush Road and Peel Street
Elm Avenue	40	Between Peel Street and Jericho Road
Hudson Avenue	35	Between Delaware Avenue and intersection with Adams Street and North Street
Jericho Road	35	From Route 9W to County Route 55 and from County Route 55 to the Conrail Railroad bridge
Kenwood Avenue	35	Between Cherry Avenue and New Scotland Road
Kenwood Avenue	40	Between Rockefeller Road and the Peter Kleinke property (New York Telephone Pole No. 184)
Lasher Road	30	From Route 9W to Bridge Street, Route 396
[Amended 7-26-1995 by L.L. No. 7-1995]		
Old Ravena Road	35	From intersection with Route 9W to the Bethlehem-Coeymans Town line
Russell Road		
[Repealed 9-10-1997 by L.L. No. 12-1997]		

Name of Street	Speed Limit (mph)	Location
South Albany Road [Added 9-22-2004 by L.L. No. 6-2004]	35	Between Old School Road and Currey Avenue, Selkirk
Van Dyke Road [Repealed 9-10-1997 by L.L. No. 12-1997]		
Wemple Road	40	Between Feura Bush Road and Route 9W

B. School zones. Twenty miles per hour is hereby established as a maximum speed at which vehicles may proceed on or along the Town streets or highways listed below at locations designated as school zones:

Name of Street	Location
Adams Place	300 feet in either direction from the building line of St. Thomas School, 36 Adams Place, Delmar, New York
Albin Road [Added 1-10-2001 by L.L. No. 4-2001]	300 feet northerly from the building line of the Hamagrael Grade School
Herrick Avenue [Added 1-10-2001 by L.L. No. 4-2001]	300 feet in either direction from the building line of the Elsmere Grade School
Kenwood Avenue	300 feet in either direction from the building line of the Bethlehem Central Middle School located at 332 Kenwood Avenue, Delmar, New York
Kenwood Avenue	300 feet in either direction from the building line of St. Thomas School, 36 Adams Place, Delmar, New York
McGuffey Lane [Added 1-10-2001 by L.L. No. 4-2001]	300 feet easterly from the building line of the Hamagrael Grade School
Parkwyn Drive [Added 1-10-2001 by L.L. No. 4-2001]	300 feet westerly from the building line of the Hamagrael Grade School
Union Avenue	300 feet in either direction from the building line of the Slingerlands Grade School

§ 119-29. Schedule III: One-Way Streets.

In accordance with the provisions of § 119-6, the following described streets or parts of streets are hereby designated as one-way streets in the direction indicated:

Name of Street	Direction of Travel	Limits
Kenwood Avenue		East ramp off Route 32
Kenwood Avenue	North	One-way exit on easternmost driveway of Bethlehem Central Middle School
[Added 8-11-1993 by L.L. No. 6-1993]		
Kenwood Avenue	South	One-way entrance on westernmost driveway of Bethlehem Central Middle School
[Added 8-11-1993 by L.L. No. 6-1993]		
Thatcher Street		
[Repealed 8-11-1993 by L.L. No. 6-1993]		
Tierney Drive	South	From Heather Lane to Murray Avenue
Winne Road		From Delaware Avenue to Adams Place

§ 119-30. Schedule IV: Prohibited Turns at Intersections.

In accordance with the provisions of § 119-7, no person shall make a turn of the kind designated below at any of the following locations:

Name of Street	Direction of Travel	Prohibited Turn	Hours	At Intersection of
Oak Road	West	Left	All	Cherry Avenue
Van Dyke Road	South	Left	All	Driveway to front parking lot of Bethlehem Central High School
[Added 10-10-2001 by L.L. No. 12-2001]				

§ 119-31. Schedule V: Prohibited Right Turns on Red Signal.

In accordance with the provisions of § 119-8, no person shall make a right turn when facing a steady red signal (stop indication) at any of the following locations:

Name of Street	Direction of Travel	Prohibited Right Turn on Red Signal Onto
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(Reserved)

§ 119-32. Schedule VI: Through Streets.

In accordance with the provisions of § 119-9, the following described streets or parts of streets are hereby designated as through streets. Traffic control devices shall be installed on each street intersecting the through street.

Name of Through Street	Name of Entrance Street	Direction From Which Entering	Type of Traffic Control Device
Adams Place, between Oakwood Place and Kenwood Avenue and between Kenwood Avenue and Roweland Avenue	Adams Street	Both	Stop signs
Adams Place, between Oakwood Place and Kenwood Avenue and between Kenwood Avenue and Roweland Avenue	Hawthorne Avenue	Southwest	Stop sign
Adams Place, between Oakwood Place and Kenwood Avenue and between Kenwood Avenue and Roweland Avenue	Oakwood Place	Both	Stop signs
Adams Street	Adams Place	Both	Stop signs
Adams Street	Hawthorne Avenue	South	Stop sign
Albin Road	McGuffey Lane	East	Stop sign
Albin Road	Parkwyn Drive	West	Stop sign
Albin Road	Roweland Avenue	North	Stop sign
Albin Road	Wisconsin Avenue	Both	Stop signs
Beacon Road, between Wemple Road and Route 9W	Jefferson Road	North	Stop signs
Beacon Road, between Wemple Road and Route 9W	Placid Lane	South	Stop signs
Bender Lane, between Elsmere Avenue and Delmar Bypass	Devon Road	South	Stop sign
Bender Lane, between Elsmere Avenue and Delmar Bypass	Oakwood Road	East	Stop sign
Bender Lane, between Route 32 and Route 9W	Foxfire Court	—	Stop sign
[Added 7-26-1995 by L.L. No. 8-1995]			
Blessing Road	Bradhaven Road	Northwest	Stop sign
[Added 9-23-1992 by L.L. No. 3-1992]			

Name of Through Street	Name of Entrance Street	Direction From Which Entering	Type of Traffic Control Device
Blessing Road	Mosall Drive	West	Stop sign
[Added 1-14-1998 by L.L. No. 1-1998]			
Blessing Road	Staffords Crossing	Southeast	Stop sign
[Added 9-23-1992 by L.L. No. 3-1992]			
Brockley Drive	Frederick Place	Both	Stop signs
[Added 4-10-1996 by L.L. No. 6-1996]			
Brockley Drive	Grantwood Road	Both	Stop signs
[Added 4-10-1996 by L.L. No. 6-1996]			
Brockley Drive	Summit Road	Both	Stop signs
[Added 4-10-1996 by L.L. No. 6-1996]			
Brookview Avenue, between Kenwood Avenue and Devon Road	Devon Road	Both	Stop signs
Brookview Avenue, between Kenwood Avenue and Devon Road	Montrose Drive	Both	Stop signs
Candlewood Lane	Murray Avenue	East	Stop sign
[Added 4-30-1997 by L.L. No. 7-1997]			
Carolanne Drive	Murray Avenue	East	Stop sign
[Added 4-30-1997 by L.L. No. 7-1997]			
Catherine Street	Murray Avenue	East	Stop sign
[Added 4-30-1997 by L.L. No. 7-1997]			
Cherry Avenue	Custer Road	Northeast	Stop sign
Cherry Avenue	Dawson Road	Northeast	Stop sign
Cherry Avenue	Huron Road	Northeast	Stop sign

Name of Through Street	Name of Entrance Street	Direction From Which Entering	Type of Traffic Control Device
Cherry Avenue	Kimberly Place	Northeast	Stop sign
Cherry Avenue	Oak Road	East	Stop sign
Cherry Avenue	Orchard Street	Both	Stop signs
Corrit Drive	Egmont Court	Both	Stop sign
[Added 4-8-1998 by L.L. No. 6-1998]			
Corrit Drive	Hasgate Drive	South	Stop sign
[Added 4-8-1998 by L.L. No. 6-1998]			
Corrit Drive	Westphal Drive	North	Stop sign
[Added 4-8-1998 by L.L. No. 6-1998]			
Crestwood Lane	Crystal Lane	East	Stop sign
[Added 11-23-1999 by L.L. No. 9-1999]			
Darnley Green	Murray Avenue	East (both ends)	Stop sign
[Added 4-30-1997 by L.L. No. 7-1997]			
Darroch Road	Marlboro Road	Both	Stop signs
Darroch Road	Partridge Road	South	Stop sign
Darroch Road	Roweland Avenue	Both	Stop signs
Delmar Place	Adams Street	Both	Stop signs
Delmar Place	Douglas Road	Both	Stop signs
Delmar Place	Wellington Road	Both	Stop signs
Dumbarton Drive, between Kenwood Avenue and Devon Road and between Devon Road and Oakwood Road	Brookview Avenue	North	Stop sign
Dumbarton Drive, between Kenwood Avenue and Devon Road and	The Crossway	Northeast	Stop sign

Name of Through Street	Name of Entrance Street	Direction From Which Entering	Type of Traffic Control Device
between Devon Road and Oakwood Road			
Elm Avenue, between Delaware Avenue and the Delmar Bypass	Longwood Drive	East	Stop sign
Elm Avenue, between Delaware Avenue and the Delmar Bypass	Murray Avenue	Southeast	Stop sign
Elm Avenue, between Delaware Avenue and the Delmar Bypass	Tierney Drive	North	Stop sign
Elm Avenue, between Delaware Avenue and the Delmar Bypass	Wexford Road	East	Stop sign
Elm Avenue, between Feura Bush Road and Elm Avenue south	Fairlawn Drive	West	Stop sign
Elm Avenue, between Feura Bush Road and Elm Avenue south	Peel Street	West	Stop sign
Fernbank Avenue	Brookside Drive	Northerly	Stop sign
Fernbank Avenue	Delmar Place	Northeast	Stop sign
Fernbank Avenue	Jordan Boulevard	Southwest	Stop sign
Fernbank Avenue	Keith Road	Southwest	Stop sign
Fernbank Avenue	Louise Street	Southwest	Stop sign
Fernbank Avenue	Palmer Avenue	Both	Stop signs
Fernbank Avenue	Sylvan Avenue	Northeast	Stop sign
Fernbank Avenue	Wedge Road	Northeast	Stop sign
Fernbank Avenue	Wisconsin Avenue	Both	Stop signs
Fieldstone Drive	Murray Avenue	Southwest	Stop sign
[Added 4-30-1997 by L.L. No. 7-1997]			
Fisher Boulevard	Birkdale Court	East	Stop sign
[Added 12-22-1993 by L.L. No. 12-1993]			

Name of Through Street	Name of Entrance Street	Direction From Which Entering	Type of Traffic Control Device
Fisher Boulevard	Fife Drive	East	Stop sign
[Added 1-14-1998 by L.L. No. 1-1998]			
Fisher Boulevard	Fox Hollow Greene	East	Stop sign
[Added 1-9-2002 by L.L. No. 1-2002]			
Fisher Boulevard	Gullane Drive	East	Stop sign
[Added 1-14-1998 by L.L. No. 1-1998]			
Fisher Boulevard	Hedgerose Lane	West	Stop sign
[Added 1-9-2002 by L.L. No. 1-2002]			
Fisher Boulevard	Mansion Boulevard (private)	Both	Stop sign
[Added 1-9-2002 by L.L. No. 1-2002]			
Fisher Boulevard	Mutterfield Court	West	Stop sign
[Added 1-14-1998 by L.L. No. 1-1998]			
Fisher Boulevard	Ridgefield Drive	West	Stop sign
[Added 1-9-2002 by L.L. No. 1-2002]			
Fisher Boulevard	Swan Place	East	Stop sign
[Added 1-14-1998 by L.L. No. 1-1998]			
Fisher Boulevard	Trumpeter Place	East	Stop sign
[Added 1-14-1998 by L.L. No. 1-1998]			
Fisher Boulevard	Turnberry Drive	West (both ends)	Stop sign
[Added 12-22-1993 by L.L. No. 12-1993]			
Fisher Boulevard	Victoria Lane	West	Stop sign

Name of Through Street	Name of Entrance Street	Direction From Which Entering	Type of Traffic Control Device
[Added 1-9-2002 by L.L. No. 1-2002]			
Greenleaf Drive	Hawley Court	South	Stop sign
[Added 11-10-1999 by L.L. No. 7-1999]			
Greenock Road, between The Crossway and Dumbarton Drive	Devon Road	Both	Stop signs
Hasgate Drive	Barrington Court	East	Stop sign
[Added 4-8-1998 by L.L. No. 6-1998]			
Hasgate Drive	Corrit Drive	West	Stop sign
[Added 4-8-1998 by L.L. No. 6-1998]			
Hasgate Drive	Dowers Way	East	Stop sign
[Added 4-8-1998 by L.L. No. 6-1998]			
Hasgate Drive	Egmont Court	Both	Stop sign
[Added 4-8-1998 by L.L. No. 6-1998]			
Hasgate Drive	Forsten Drive	South	Stop sign
[Added 4-8-1998 by L.L. No. 6-1998]			
Hasgate Drive	Reynolds Court	East	Stop sign
[Added 4-8-1998 by L.L. No. 6-1998]			
Hawthorne Avenue, between Winne Road and Adams Place	Douglas Road	Southeast	Stop sign
Hawthorne Avenue, between Winne Road and Adams Place	Wellington Road	Both	Stop signs
Huntersfield Road	Murray Avenue	Southwest	Stop sign
[Added 4-30-1997 by L.L. No. 7-			

Name of Through Street	Name of Entrance Street	Direction From Which Entering	Type of Traffic Control Device
1997]			
Huron Road	Carson Road	South	Stop sign
Huron Road	Lansing Drive	South	Stop sign
Huron Road	McKinley Drive	North	Stop sign
Huron Road	Meadowland Street	Both	Stop signs
Huron Road	St. Clair Drive	South	Stop sign
Jordan Boulevard, between Roweland Avenue and terminus	Louise Street	West	Stop sign
Jordan Boulevard	Winne Road	Both	Stop signs
[Added 12-8-1999 by L.L. No. 12-1999]			
Jordan Boulevard, between Roweland Avenue and terminus	Woodstream Drive	South	Stop sign
Kenaware Avenue	Dawson Road	Southwest	Stop sign
Kenaware Avenue	Huron Road	Southwest	Stop sign
Kenaware Avenue	Stratton Place	Southwest	Stop sign
Kenwood Avenue	Adams Place	Both	Stop signs
Kenwood Avenue	Alden Court	South	Stop signs
[Added 7-10-1996 by L.L. No. 12-1996]			
Kenwood Avenue	Brookview Avenue	South	Stop sign
Kenwood Avenue	Clermont Street	North	Stop signs
[Added 7-10-1996 by L.L. No. 12-1996]			
Kenwood Avenue	Delmar Place	Both	Stop signs
Kenwood Avenue	Delsmere Avenue	North	Stop sign
Kenwood Avenue	Dumbarton Drive	South	Stop sign

Name of Through Street	Name of Entrance Street	Direction From Which Entering	Type of Traffic Control Device
Kenwood Avenue	Elsmere Avenue cutoff	At its immediate proximity to Bethlehem Cemetery	Stop sign
Kenwood Avenue	Glendale Avenue	South	Stop sign
Kenwood Avenue	Greenleaf Drive	North	Stop signs
[Added 7-10-1996 by L.L. No. 12-1996]			
Kenwood Avenue	Harrison Avenue	South	Stop signs
[Added 7-10-1996 by L.L. No. 12-1996]			
Kenwood Avenue	Hoyt Avenue	North	Stop signs
[Added 7-10-1996 by L.L. No. 12-1996]			
Kenwood Avenue	Lavery Drive	North	Stop signs
[Added 7-10-1996 by L.L. No. 12-1996]			
Kenwood Avenue	Mason Road	North	Stop signs
[Added 7-10-1996 by L.L. No. 12-1996]			
Kenwood Avenue	Maywood Road	North	Stop signs
[Added 7-10-1996 by L.L. No. 12-1996]			
Kenwood Avenue	Montrose Drive	South	Stop sign
Kenwood Avenue	Oakwood Place	North	Stop sign
Kenwood Avenue	Oakwood Road	South	Stop sign
Kenwood Avenue	Pine Street	South	Stop signs
[Added 7-10-1996 by L.L. No. 12-1996]			
Kenwood Avenue	Pinetree Drive	North	Stop signs

Name of Through Street	Name of Entrance Street	Direction From Which Entering	Type of Traffic Control Device
[Added 7-10-1996 by L.L. No. 12-1996]			
Kenwood Avenue	Ridge Road	North	Stop signs
[Added 7-10-1996 by L.L. No. 12-1996]			
Kenwood Avenue	Rockefeller Road	Northeast	Stop sign
Kenwood Avenue	Winne Place	North	Stop signs
[Added 7-10-1996 by L.L. No. 12-1996]			
Kenwood Avenue	Woodridge Road	North	Stop signs
[Added 7-10-1996 by L.L. No. 12-1996]			
Krumkill Road	Andover Road	South	Stop sign
[Added 9-23-1992 by L.L. No. 3-1992]			
Krumkill Road	Beldale Road	South	Stop sign
[Added 9-23-1992 by L.L. No. 3-1992]			
Krumkill Road	Beverwyck Lane	South	Stop sign
[Added 9-23-1992 by L.L. No. 3-1992]			
Krumkill Road	Clifton Way	South	Stop sign
[Added 9-23-1992 by L.L. No. 3-1992]			
Krumkill Road	Googas Road	North	Stop sign
[Added 9-23-1992 by L.L. No. 3-1992]			
Krumkill Road	Iroquois Trail	North	Stop sign
[Added 9-23-1992 by L.L. No. 3-1992]			

Name of Through Street	Name of Entrance Street	Direction From Which Entering	Type of Traffic Control Device
Krumkill Road	Iroquois Trail	Northeast	Stop sign
[Added 9-23-1992 by L.L. No. 3-1992]			
Krumkill Road	Mohawk Trail	North	Stop sign
[Added 9-23-1992 by L.L. No. 3-1992]			
Krumkill Road	Olympian Drive	South	Stop sign
[Added 9-23-1992 by L.L. No. 3-1992]			
Krumkill Road	Yale Avenue	South	Stop sign
[Added 9-23-1992 by L.L. No. 3-1992]			
LaGrange Road	Murray Avenue	North	Stop sign
[Added 4-30-1997 by L.L. No. 7-1997]			
Maryea Lane	Murray Avenue	East	Stop sign
[Added 4-30-1997 by L.L. No. 7-1997]			
Montrose Drive, between Kenwood Avenue and Brookview Avenue	The Crossway	Both	Stop signs
Mosher Road	Dykeman Road	Both	Stop sign
[Added 12-11-1996 by L.L. No. 19-1996]			
Mosher Road	Heather Lane	Southwest	Stop sign
[Added 12-11-1996 by L.L. No. 19-1996]			
Mosher Road	LaGrange Road	Southwest	Stop sign
[Added 12-11-1996 by L.L. No. 19-1996]			
Mosher Road	Old Ox Road	Northeast	Stop sign
[Added 12-11-1996 by L.L. No. 19-			

Name of Through Street	Name of Entrance Street	Direction From Which Entering	Type of Traffic Control Device
1996]			
Murray Avenue	Darroch Road	East	Stop sign
Murray Avenue	Dykeman Road	East	Stop sign
Murray Avenue	Partridge Road	East	Stop sign
Oakwood Road	Devon Road	West	Stop sign
Oakwood Road	Dumbarton Drive	Southwest	Stop sign
Oakwood Road	Montrose Drive	West	Stop sign
Orchard Street, between Delaware Avenue and Cherry Avenue	Brockley Drive	South	Stop sign
Orchard Street, between Delaware Avenue and Cherry Avenue	Charles Boulevard	South	Stop sign
Orchard Street, between Delaware Avenue and Cherry Avenue	Crestwood Lane	North	Stop sign
Orchard Street, between Delaware Avenue and Cherry Avenue	Elwood Road	South	Stop sign
Orchard Street, between Delaware Avenue and Cherry Avenue	Magdalen Road	South	Stop sign
Orchard Street, between Delaware Avenue and Cherry Avenue	Union Avenue	Both	Stop signs
Parkwyn Drive, between Pheasant Lane and Albin Road	Jordan Boulevard	North	Stop sign
Parkwyn Drive, between Pheasant Lane and Albin Road	Pheasant Lane	North	Stop sign
Roweland Avenue, between Albin Road and Darroch Road and between Darroch Road and Delaware Avenue	Adams Place	Both	Stop signs
Roweland Avenue, between Albin Road and Darroch Road and between Darroch Road and Delaware Avenue	Center Lane	Both	Stop signs
Roweland Avenue, between Albin Road and Darroch Road and between Darroch Road and Delaware Avenue	Hawthorne Avenue	Northeast	Stop sign

Name of Through Street	Name of Entrance Street	Direction From Which Entering	Type of Traffic Control Device
Roweland Avenue, between Albin Road and Darroch Road and between Darroch Road and Delaware Avenue	Jordan Boulevard	Both	Stop signs
Roweland Avenue, between Albin Road and Darroch Road and between Darroch Road and Delaware Avenue	Lake Place	West	Stop sign
Roweland Avenue, between Albin Road and Darroch Road and between Darroch Road and Delaware Avenue	Louise Street	Both	Stop signs
Roweland Avenue, between Albin Road and Darroch Road and between Darroch Road and Delaware Avenue	Pinedale Avenue	Northeast	Stop sign
Roweland Avenue, between Albin Road and Darroch Road and between Darroch Road and Delaware Avenue	Wellington Road	Both	Stop signs
Ruxton Road	Murray Avenue	East	Stop sign
[Added 4-30-1997 by L.L. No. 7-1997]			
Sylvan Avenue	Wellington Road	Both	Stop sign
[Added 11-23-1999 by L.L. No. 10-1999]			
Union Avenue	Frederick Place	West	Stop sign
Union Avenue	Orchard Street	Both	Stop signs
Union Avenue	Western Avenue	West	Stop sign
[Added 12-22-1993 by L.L. No. 12-1993]			
Wellington Road	Sylvan Avenue	North	Stop sign
[Added 11-23-1999 by L.L. No. 10-1999]			
Wemple Road	Beacon Road	East	Stop sign
Wemple Road	Bryn Mawr	West	Stop sign

Name of Through Street	Name of Entrance Street	Direction From Which Entering	Type of Traffic Control Device
	Drive		
Wemple Road, between Feura Bush Road and Route 9W	Eileen Lane	—	Stop sign
[Added 2-10-1999 by L.L. No. 2-1999]			
Wemple Road, between Feura Bush Road and Route 9W	Harwick Drive	—	Stop sign
[Added 2-10-1999 by L.L. No. 2-1999]			
Wemple Road, between Feura Bush Road and Route 9W	Quincy Road	East	Stop sign
Wemple Road, between Feura Bush Road and Route 9W	Somerset Drive	—	Stop sign
[Added 2-10-1999 by L.L. No. 2-1999]			
Wemple Road, between Feura Bush Road and Route 9W	Windham Hill Road	—	Stop sign
[Added 2-10-1999 by L.L. No. 2-1999]			
Winne Road, between Adams Place and Hawthorne Avenue, Hawthorne Avenue and Fernbank Avenue, Fernbank Avenue and McGuffey Lane	Albin Road	South	Stop sign
Winne Road, between Adams Place and Hawthorne Avenue, Hawthorne Avenue and Fernbank Avenue, Fernbank Avenue and McGuffey Lane	Betsy Lane	Northeast	Stop sign
Winne Road, between Adams Place and Hawthorne Avenue, Hawthorne Avenue and Fernbank Avenue, Fernbank Avenue and McGuffey Lane	Center Lane	Southwest	Stop sign
Winne Road, between Adams Place and Hawthorne Avenue, Hawthorne Avenue and Fernbank Avenue, Fernbank Avenue and McGuffey Lane	Darroch Road	Southwest	Stop sign

Name of Through Street	Name of Entrance Street	Direction From Which Entering	Type of Traffic Control Device
Winne Road	Jordan Boulevard	Both	Stop signs
[Added 12-8-1999 by L.L. No. 12-1999]			
Winne Road, between Adams Place and Hawthorne Avenue, Hawthorne Avenue and Fernbank Avenue, Fernbank Avenue and McGuffey Lane	Jordan Boulevard	Both	Stop signs
Winne Road, between Adams Place and Hawthorne Avenue, Hawthorne Avenue and Fernbank Avenue, Fernbank Avenue and McGuffey Lane	Keith Road	Northeast	Stop sign
Winne Road, between Adams Place and Hawthorne Avenue, Hawthorne Avenue and Fernbank Avenue, Fernbank Avenue and McGuffey Lane	Louise Street	Both	Stop signs
Winne Road, between Adams Place and Hawthorne Avenue, Hawthorne Avenue and Fernbank Avenue, Fernbank Avenue and McGuffey Lane	Palmer Avenue	Northeast	Stop sign
Winne Road, between Adams Place and Hawthorne Avenue, Hawthorne Avenue and Fernbank Avenue, Fernbank Avenue and McGuffey Lane	Pinedale Avenue	Southwest	Stop sign
Winne Road, between Adams Place and Hawthorne Avenue, Hawthorne Avenue and Fernbank Avenue, Fernbank Avenue and McGuffey Lane	Wellington Road	Both	Stop signs
Winne Road, between Adams Place and Hawthorne Avenue, Hawthorne Avenue and Fernbank Avenue, Fernbank Avenue and McGuffey Lane	Wisconsin Avenue	Both	Stop signs
Winslow Street, between Delaware Avenue and Brookman Avenue	Crannell Avenue	Both	Stop signs
Wisconsin Avenue, between Westchester Drive north and Fernbank Avenue	Fernbank Avenue	Both	Stop signs

Name of Through Street	Name of Entrance Street	Direction From Which Entering	Type of Traffic Control Device
Woodmont Drive	Murray Avenue	Southwest	Stop sign

[Added 4-30-1997 by L.L. No. 7-1997]

§ 119-33. Schedule VII: Stop Intersections.

In accordance with the provisions of § 119-10, the following described intersections are hereby designated as stop intersections, and stop signs shall be installed as follows:

Stop Sign on	Direction of Travel	At Intersection of
Adams Place	Northeast	Oakwood Place
Albin Road	South	McGuffey Lane/Parkwyn Drive, Delmar
[Added 11-12-1997 by L.L. No. 13-1997]		
Alden Court	Southwest	Bender Lane, Delmar
[Added 6-14-2004 by L.L. No. 5-2004]		
Amsterdam Avenue (3-way)	North	Brookhaven Lane
[Added 4-12-2006 by L.L. No. 3-2006]		
Amsterdam Avenue (4-way)	North and south	Rotterdam Drive
[Added 4-12-2006 by L.L. No. 3-2006]		
Andover Road	South	Krumkill Road
[Added 9-23-1992 by L.L. No. 3-1992]		
Anna Court (3-way)	West (2)	Trinity Place
[Added 10-25-2006 by L.L. No. 5-2006]		
Ashgrove Lane	East	Silver Creek Drive
[Added 10-22-2004 by L.L. No. 8-2004]		
Ashgrove Lane	North	Chesterwood Drive
[Added 10-22-2004 by L.L. No. 8-2004]		
Beldale Road	South	Krumkill Road
[Added 9-23-1992 by L.L. No. 3-1992]		

Stop Sign on	Direction of Travel	At Intersection of
Bernard Place	East	Amsterdam Avenue
[Added 8-24-1994 by L.L. No. 6-1994]		
Berwick Road	South	Devon Road
Berwick Road	Both	Greenock Road, Delmar
[Added 7-9-2003 by L.L. No. 1-2003]		
Bethlehem Central Middle School, easternmost driveway	North	Kenwood Avenue
[Added 8-11-1993 by L.L. No. 6-1993]		
Bethlehem Court		Normanskill Boulevard, Elsmere
[Added 5-8-1996 by L.L. No. 8-1996]		
Beverwyck Lane	Both	Marquis Drive
[Added 12-11-1996 by L.L. No. 21-1996]		
Beverwyck Lane	West	Clifton Way
[Added 12-11-1996 by L.L. No. 21-1996]		
Beverwyck Lane	South	Krumkill Road
[Added 9-23-1992 by L.L. No. 3-1992]		
Birchwood Place	Both	Wellington Road
Blessing Road	North	Krumkill Road
Bradhaven Road	Northwest	Blessing Road
[Added 9-23-1992 by L.L. No. 3-1992]		
Brian Ridge Place	West	Holly Mill Road
[Added 10-22-2004 by L.L. No. 8-2004]		
Bridge Street	North	McCormack Road
[Added 7-27-1994 by L.L. No. 5-1994]		
Bridge Street	Both	Monroe Avenue
[Added 9-23-1992 by L.L. No. 4-1992]		
Bridge Street, eastern wye	South	McCormack Road

Stop Sign on	Direction of Travel	At Intersection of
[Added 7-27-1994 by L.L. No. 5-1994]		
Brightonwood Road	West	Wemple Road
Brightonwood Road	Both	Sussex Road
[Added 3-8-1995 by L.L. No. 3-1995]		
Burhans Place	North	Normanside Avenue
[Added 2-28-2007 by L.L. No. 3-2007]		
Burhans Place	North and south	Capitol Avenue
[Added 2-28-2007 by L.L. No. 3-2007]		
Caldwell Boulevard	South	Trumpeter Place
[Added 1-14-1998 by L.L. No. 1-1998]		
Capitol Avenue	Both	Burhans Place
[Added 10-10-2001 by L.L. No. 13-2001]		
Capitol Avenue	East	Euclid Avenue
[Added 10-10-2001 by L.L. No. 13-2001]		
Capitol Avenue	West	Salisbury Road
[Added 10-10-2001 by L.L. No. 13-2001]		
Charles Boulevard	South	Frederick Place
[Added 10-10-2001 by L.L. No. 14-2001]		
Chase Court	East	Westphal Drive
[Added 4-8-1998 by L.L. No. 6-1998]		
Cherryvale Boulevard	North	McCormack Road North
[Added 7-26-2000 by L.L. No. 8-2000]		
Chriskén Drive	South	Beacon Road
Clarkson Road	Both	Wellington Road
[Added 11-22-1994 by L.L. No. 10-1994; amended 3-8-1995 by L.L. No. 4-1995]		

Stop Sign on	Direction of Travel	At Intersection of
Clermont Street [Added 7-12-1995 by L.L. No. 6-1995]	North	East Poplar Drive
Clifton Way [Added 12-11-1996 by L.L. No. 21-1996]	South	Marquis Drive
Clifton Way [Added 9-23-1992 by L.L. No. 3-1992]	South	Krumkill Road
Cloverleaf Lane [Added 6-14-2004 by L.L. No. 5-2004]	Both	Wemple Road, Glenmont
Cottonwood Lane [Added 6-14-2004 by L.L. No. 5-2004]	North	Elm Avenue, Selkirk
Crescent Creek Way [Added 10-22-2004 by L.L. No. 8-2004]	West	Harvest Ridge Road
Crimson Leaf Drive [Added 10-10-2001 by L.L. No. 14-2001]	West	Brockley Drive
Cygnet Circle (3-way) [Added 10-25-2006 by L.L. No. 5-2006]	South	Swan Place
Daniel Street [Added 1-14-1998 by L.L. No. 1-1998]	West	Caldwell Boulevard
Darroch Road [Added 8-24-1994 by L.L. No. 6-1994]	West	Huntersfield Road
Dawson Road	Both	St. Clair Drive
Delmar Place [Added 8-22-2007 by L.L. No. 6-2007]	North	Adams Place
Devon Road	Both	Gladwish Road
Devonshire Drive [Added 12-22-1993 by L.L. No. 12-1993]	Northwest	Forest Hill Road

Stop Sign on	Direction of Travel	At Intersection of
Domenico Drive	East	Henderson Road
[Added 4-25-2007 by L.L. No. 4-2007]		
Dover Drive	West	Elm Avenue
Dover Drive	East	Salem Road
[Added 7-10-1996 by L.L. No. 11-1996]		
Dumbarton Drive	Southeast and northwest	Devon Road
East Poplar Drive	South	Greenleaf Drive
[Added 2-9-2000 by L.L. No. 1-2000]		
Eastmount Drive	West	Blessing Road
Eliot Drive	South	Thoreau Drive
[Added 9-22-2004 by L.L. No. 7-2004]		
Elwood Road	Both	Frederick Place
[Added 10-10-2001 by L.L. No. 14-2001]		
Erie Drive	West	Googas Road
[Added 1-8-1997 by L.L. No. 1-1997]		
Eton Drive	West	Blessing Road
Euclid Avenue	North and south	Capitol Avenue
[Added 2-28-2007 by L.L. No. 3-2007]		
Fairway Avenue	West	Clarkson Road
[Added 11-22-1994 by L.L. No. 10-1994]		
Fernbank Avenue	Both	Palmer Avenue
Fernbank Avenue	—	Brookside Drive
[Added 12-8-1993 by L.L. No. 9-1993 Editor's Note: This local law provides for a three-way stop intersection at Fernbank Avenue and Brookside Drive.]		
Fisher Boulevard, Slingerlands	Both	Orchard Street

Stop Sign on	Direction of Travel	At Intersection of
[Added 8-26-2003 by L.L. No. 4-2003]		
Forest Hill Road	North	Thorndale Road
[Added 12-22-1993 by L.L. No. 12-1993]		
Front Avenue	Southeast	Russell Road
Gailes Drive (3-way)	East	Gullane Drive
[Added 10-25-2006 by L.L. No. 5-2006]		
Gailes Drive	—	Daniel Street
[Added 9-8-1999 by L.L. No. 6-1999]		
Gladwish Road	North	Montrose Drive
[Added 1-8-1997 by L.L. No. 2-1997]		
Googas Road	North	Krumkill Road
[Added 9-23-1992 by L.L. No. 3-1992]		
Greenleaf Drive	Both	Maywood Road
[Added 7-12-1995 by L.L. No. 6-1995]		
Guilder Lane	Both	Hague Boulevard
[Added 7-24-2002 by L.L. No. 6-2002]		
Guilder Lane	West	Amsterdam Avenue
[Added 8-24-1994 by L.L. No. 6-1994]		
Gullane Drive (3-way)	West	Fife Drive
[Added 10-25-2006 by L.L. No. 5-2006]		
Hackett Street	South	Thatcher Street
[Added 12-11-1996 by L.L. No. 20-1996]		
Hague Boulevard	South	Elm Avenue East
Hague Boulevard	Both	Guilder Lane
[Added 7-24-2002 by L.L. No. 6-2002]		

Stop Sign on	Direction of Travel	At Intersection of
Hamilton Lane [Added 10-10-2001 by L.L. No. 14-2001]	Northeast	Hannay Lane, Glenmont
Hampshire Place [Added 6-14-2004 by L.L. No. 5-2004]	Northeast	Bender Lane, Delmar
Hancock Drive [Added 3-13-1996 by L.L. No. 4-1996]	All	Manor Drive
Hannay Lane [Added 11-22-1994 by L.L. No. 10-1994]	South	Frontage Road
Harrison Avenue [Added 6-14-2004 by L.L. No. 5-2004]	Southwest	Bender Lane, Delmar
Harvest Ridge Road [Added 10-22-2004 by L.L. No. 8-2004]	North	Ashgrove Lane
Harvest Ridge Road [Added 6-14-2004 by L.L. No. 5-2004]	South	Elm Avenue East, Selkirk
Hasgate Drive [Added 7-9-2003 by L.L. No. 2-2003]	Both	Egmont Court, Delmar
Hawthorne Avenue	East	Winne Road
Helderberg Parkway North	Both	Carstead Drive
Helderberg Parkway North	Both	Linden Lane
Henderson Road [Added 4-25-2007 by L.L. No. 4-2007]	East	Patterson Drive
Henderson Road [Added 4-25-2007 by L.L. No. 4-2007]	North and south	Timber Lane
Herber Avenue	Both	Oakwood Place
Herrick Avenue	Both	Laurel Drive
Holland Court	Southeast	Bernard Place

Stop Sign on	Direction of Travel	At Intersection of
[Added 7-24-2002 by L.L. No. 6-2002]		
Holly Mill Road	West	Crescent Creek Way
[Added 10-22-2004 by L.L. No. 8-2004]		
Holly Mill Road	Southwest	Elm Avenue East, Selkirk
[Added 6-14-2004 by L.L. No. 5-2004]		
Hudson Avenue	Both	North Street
Hunterswood Lane (3-way)	West	Brookhaven Lane
[Added 4-12-2006 by L.L. No. 3-2006]		
Huntswood Lane (3-way)	South	Brookhaven Lane
[Added 4-12-2006 by L.L. No. 3-2006]		
Huntswood Lane (4-way)	East and west	Milltowne Road
[Added 4-12-2006 by L.L. No. 3-2006]		
Iroquois Trail	Both	Mohawk Trail
[Added 10-14-1992 by L.L. No. 5-1992]		
Iroquois Trail	North	Krumkill Road
[Added 9-23-1992 by L.L. No. 3-1992]		
Iroquois Trail	Northeast	Krumkill Road
[Added 9-23-1992 by L.L. No. 3-1992]		
Ivywood Drive	Both	Harvest Ridge Road
[Added 10-22-2004 by L.L. No. 8-2004]		
Ivywood Drive	East	Harvest Ridge Road
[Added 10-22-2004 by L.L. No. 8-2004]		
Ivywood Drive	East	Silver Creek Drive
[Added 10-22-2004 by L.L. No. 8-2004]		
Jefferson Road	All	Hancock Drive

Stop Sign on	Direction of Travel	At Intersection of
[Added 3-13-1996 by L.L. No. 4-1996]		
Journey Lane	North	Beacon Road
Kimmey Drive (4-way)	East and west	Milltowne Road
[Added 4-12-2006 by L.L. No. 3-2006]		
Languish Place	North	Plank Road
[Added 3-8-1995 by L.L. No. 2-1995]		
Laurel Drive	Both	Herrick Avenue
Laurel Drive	Southwest	Groesbeck Place
[Added 2-9-2000 by L.L. No. 2-2000]		
Lavery Drive	North	East Poplar Drive
[Added 7-12-1995 by L.L. No. 6-1995]		
Manor Drive	All	Jefferson Road
[Added 3-13-1996 by L.L. No. 4-1996]		
Maple Avenue	South	McCormack Road, Slingerlands
[Added 2-12-1997 by L.L. No. 4-1997]		
Maple Avenue	Both	Glendale Avenue
[Added 9-11-1996 by L.L. No. 13-1996]		
Marquis Drive	North	Clifton Way
[Added 12-11-1996 by L.L. No. 21-1996]		
Maywood Road	North	East Poplar Drive
[Added 7-12-1995 by L.L. No. 6-1995]		
McCormack Road	West	Bridge Street
[Added 1-9-2002 by L.L. No. 2-2002]		
Meadowbrook Drive	West	Blessing Road
Milltowne Road (3-way)	East	Hunterswood Lane

Stop Sign on	Direction of Travel	At Intersection of
[Added 4-12-2006 by L.L. No. 3-2006]		
Milltowne Road	North	Wemple Road, Glenmont
[Added 6-14-2004 by L.L. No. 5-2004]		
Mohawk Trail	North	Krumkill Road
[Added 9-23-1992 by L.L. No. 3-1992]		
Murray Drive	North	Timber Lane
[Added 4-25-2007 by L.L. No. 4-2007]		
Murrin Drive	Both	Harrison Avenue
North Street	South	Hudson Avenue
Oakwood Place	Both	Herber Avenue
Old Ravena Road	Both	Pictuay Road, Selkirk
[Added 4-27-2004 by L.L. No. 4-2004]		
Oldox Road	Southwest	Paxwood Road
[Added 7-24-2002 by L.L. No. 4-2002]		
Olympian Drive	South	Krumkill Road
[Added 9-23-1992 by L.L. No. 3-1992]		
Orchard Street	Both	Fisher Boulevard, Slingerlands
[Added 8-26-2003 by L.L. No. 4-2003]		
Palmer Avenue	Both	Wellington Road
[Added 11-22-1994 by L.L. No. 10-1994]		
Palmer Avenue	North	Clarkson Road
[Added 11-22-1994 by L.L. No. 10-1994]		
Palmer Avenue	South	Douglas Road
[Added 11-22-1994 by L.L. No. 10-1994]		
Patterson Drive	North and south	Timber Lane

Stop Sign on	Direction of Travel	At Intersection of
[Added 4-25-2007 by L.L. No. 4-2007]		
Paxwood Road	North	Royal Boulevard
Paxwood Road	Both	Oldox Road
[Added 7-24-2002 by L.L. No. 4-2002]		
Peel Street	Both	Fairlawn Avenue
Penn Lane	All	Manor Drive
[Added 3-13-1996 by L.L. No. 4-1996]		
Pheasant Lane	South	Woodstream Drive
Pictuay Road	East	Old Ravena Road
[Added 4-27-2004 by L.L. No. 4-2004]		
Ridge Road	North	West Poplar Drive, Delmar
[Added 5-10-1995 by L.L. No. 5-1995]		
Rotterdam Drive (4-way)	East and west	Amsterdam Avenue
[Added 4-12-2006 by L.L. No. 3-2006]		
Salisbury Road	North and south	Capitol Avenue
[Added 2-28-2007 by L.L. No. 3-2007]		
Salisbury Road	North and south	Normanside Avenue
[Added 2-28-2007 by L.L. No. 3-2007]		
Sandy Lane (3-way)	South	Beaver Dam Road
[Added 10-25-2006 by L.L. No. 5-2006]		
Sandy Lane (3-way)	West	Trinity Place
[Added 10-25-2006 by L.L. No. 5-2006]		
Sheffield Drive	East	Hampton Street
[Added 7-10-1996 by L.L. No. 11-1996]		
Silver Creek Drive	East	Crescent Creek Way

Stop Sign on	Direction of Travel	At Intersection of
[Added 10-22-2004 by L.L. No. 8-2004]		
Silver Creek Drive	North	Chesterwood Drive
[Added 10-22-2004 by L.L. No. 8-2004]		
Staffords Crossing	Southeast	Blessing Road
[Added 9-23-1992 by L.L. No. 3-1992]		
Stonewall Lane	Northeast	Bender Lane, Delmar
[Added 6-14-2004 by L.L. No. 5-2004]		
Stony Brook Drive	Both	Holly Mill Road
[Added 10-22-2004 by L.L. No. 8-2004]		
Stony Brook Drive	East	Holly Mill Road
[Added 10-22-2004 by L.L. No. 8-2004]		
Swan Place	North	Trumpeter Place
[Added 1-14-1998 by L.L. No. 1-1998]		
Sylvan Avenue	Both	Fairway Avenue
[Added 11-22-1994 by L.L. No. 10-1994; amended 3-8-1995 by L.L. No. 4-1995]		
Teasdale Drive	North	Thackeray Drive, Slingerlands
[Added 9-22-2004 by L.L. No. 7-2004]		
Thoreau Drive	East	McCormack Road North
[Added 9-22-2004 by L.L. No. 7-2004]		
Thoreau Drive	West	Teasdale Drive
[Added 9-22-2004 by L.L. No. 7-2004]		
Tice Lane	West	Patterson Drive
[Added 4-25-2007 by L.L. No. 4-2007]		
Tierney Drive	North	Village Drive
[Added 7-24-2002 by L.L. No. 5-2002]		

Stop Sign on	Direction of Travel	At Intersection of
Timber Lane [Added 4-25-2007 by L.L. No. 4-2007]	East	Patterson Drive
Timber Lane [Added 4-25-2007 by L.L. No. 4-2007]	West	Henderson Road
Trinity Place [Added 1-14-1998 by L.L. No. 1-1998]	South	Beaver Dam Road
Trumpeter Place [Added 9-8-1999 by L.L. No. 6-1999]	—	Daniel Street
University Street	East	Elm Avenue
Village Drive [Added 7-24-2002 by L.L. No. 5-2002]	South	Longwood Drive
Wakefield Court [Added 11-12-1998 by L.L. No. 12-1998]	Both	Grantwood Road
Walimary Drive [Added 6-14-2004 by L.L. No. 5-2004]	East	Elm Avenue, Selkirk
Wallace Drive [Added 10-10-2001 by L.L. No. 14-2001]	North	Frederick Place
Wallace Drive [Added 10-10-2001 by L.L. No. 14-2001]	South	Crimson Leaf Drive
West Poplar Drive [Added 7-12-1995 by L.L. No. 6-1995]	East	East Poplar Drive
Wildwood Lane [Added 6-14-2004 by L.L. No. 5-2004]	East	Elm Avenue, Selkirk
Willowbrook Avenue	Southwest	South Albany Road
Windmill Drive [Added 7-24-2002 by L.L. No. 6-2002]	East	Hague Boulevard

Stop Sign on	Direction of Travel	At Intersection of
Windsor Court	Northeast	Bender Lane, Delmar
[Added 6-14-2004 by L.L. No. 5-2004]		
Winne Road	South	Hawthorne Avenue
Winne Road (3-way)	South	McGuffey Lane
[Added 10-25-2006 by L.L. No. 5-2006]		
Winne Road	North	Fernbank Avenue
[Added 12-22-1993 by L.L. No. 12-1993]		
Woodridge Road	North	East Poplar Drive
[Added 7-12-1995 by L.L. No. 6-1995]		
Yale Avenue	South	Krumkill Road
[Added 9-23-1992 by L.L. No. 3-1992]		
Yorkshire Lane	East	Wembly Court
[Added 9-13-1995 by L.L. No. 9-1995]		
Yorkshire Lane	West	Wedgewood Drive
[Added 9-13-1995 by L.L. No. 9-1995]		

§ 119-34. Schedule VIII: Yield Intersections.

In accordance with the provisions of § 119-11, the following described intersections are hereby designated as yield intersections, and yield signs shall be installed as follows:

Yield Sign on	Direction of Travel	At Intersection of
Dorchester Avenue (opposite Linton Street)	West	University Street
Dykeman Road		
[Repealed 12-11-1996 by L.L. No. 19-1996]		
Forest Hill Road		
[Repealed 12-22-1993 by L.L. No. 12-1993]		
Huntersfield Road	Both	Axbridge Road
Kenwood Avenue	West	Westbound ramp from Route

Yield Sign on	Direction of Travel	At Intersection of
		32
[Added 3-13-1996 by L.L. No. 5-1996]		
Linton Street	East	University Street
McGuffey Lane	North	Wisconsin Avenue
Mosher Road	North	Murray Avenue
Oldox Road		
[Repealed 7-24-2002 by L.L. No. 4-2002]		
Vadney Road	South	Van Dyke Road
Westchester Drive North	South	Wisconsin Avenue
Winne Road		
[Repealed 12-22-1993 by L.L. No. 12-1993]		
Woodstream Drive	Southwest	Jordan Boulevard

§ 119-35. Schedule IX: Vehicles Over Certain Weights Excluded.

In accordance with the provisions of § 119-12, trucks, commercial vehicles, tractors and tractor-trailer combinations in excess of the weights indicated are hereby excluded from the following streets or parts of streets, except for the pickup and delivery of materials on such streets:

Name of Street	Weight Limit (tons)	Location
Beaver Dam Road	3	Entire length
[Added 5-8-1996 by L.L. No. 10-1996]		
Bedell Avenue	3	Entire length
Booth Road	3	Entire length
Ellsworth Avenue	3	Entire length
Elm Avenue	3	Between County Route 55 and County Road 52
Elm Avenue east	3	Between Jericho Road and Elm Avenue
Kenwood Avenue	3	Between Delmar Bypass and Delaware Avenue

Name of Street	Weight Limit (tons)	Location
Lincoln Avenue	3	Entire length
Murray Avenue	3	Entire length
Plymouth Avenue	3	Entire length
Snowden Avenue	3	Entire length
Tierney Drive	3	Between Elm Avenue and Village Drive
Village Drive	3	Between Tierney Drive and Delaware Avenue
Winne Road	3	Between Delaware Avenue and Adams Place

§ 119-36. Schedule X: Parking Prohibited at All Times.

In accordance with the provisions of § 119-14, no person shall park a vehicle at any time upon any of the following described streets or parts of streets:

Name of Street	Side	Location
Adams Place	North	From the easterly side of the eighteen-foot driveway leading to the parking lot of St. Thomas Church for a distance of approximately 200 feet to the ten-foot driveway on the property immediately east of St. Thomas Rectory
Adams Street	East	From Adams Place to a point 280 feet east of Adams Place
[Added 9-11-1996 by L.L. No. 13-1996]		
Adams Street	East	Between Delaware Avenue and Kenwood Avenue
Adams Street	East	Between the intersection with Kenwood Avenue and a point 249 feet north of the north line of Kenwood Avenue
Adams Street	Southwest	Between Delaware Avenue and Adams Place, Delmar
[Added 3-8-2006 by L.L. No. 2-2006]		
Adams Street	West	Between Delaware Avenue and Nathaniel Boulevard, except for police cars
Adams Street	West	Between Kenwood Avenue and Hudson Avenue
Bedell Avenue	Both	For 225 feet south from the center line of Delaware Avenue

Name of Street	Side	Location
Bethlehem Town Center I		In the designated fire lane
[Added 10-22-2008 by L.L. No. 4-2008]		
Bethlehem Town Center II in Glenmont		In the designated fire lane
[Added 10-22-2008 by L.L. No. 4-2008]		
Borthwick Avenue	East	Between Delaware Avenue and New York Telephone Pole No. 11
Borthwick Avenue	West	Between Delaware Avenue and Stratton Place
Connector road from the CDTA parking lot to the Town of Bethlehem water tank area	Both	For a distance of 190 feet from the intersection of the connector road and the CDTA parking lot
[Added 9-13-2000 by L.L. No. 9-2000]		
Delaware Plaza		In the designated fire lane
Delmar Bypass Extension	Both	For a distance of 300 feet in a westerly direction from the intersection of Park Edge Lane and a distance of 300 feet in an easterly direction from the intersection of Park Edge Lane
[Added 9-13-2000 by L.L. No. 9-2000]		
Elm Avenue (County Route 52)	East	From the intersection of Delaware Avenue south to the driveway of Number 16 Elm Avenue
[Added 5-24-2000 by L.L. No. 7-2000]		
Elm Avenue (County Route 52)	West	From the intersection of Delaware Avenue south to the driveway of Number 13 Elm Avenue
[Added 5-24-2000 by L.L. No. 7-2000]		
Evelyn Drive	West	From intersection of Delaware Avenue to dead end
[Added 1-14-1998 by L.L. No. 1-1998]		
Glenmont Plaza in Glenmont		In the designated fire lane
[Added 10-22-2008 by L.L. No. 4-2008]		

Name of Street	Side	Location
Hawthorne Avenue	West	From Adams Place to a point 260 feet south of Adams Place
[Added 9-11-1996 by L.L. No. 13-1996]		
Hoyt Avenue	Both	For a distance of 150 feet from the intersection of Kenwood Avenue
[Added 6-8-1994 by L.L. No. 3-1994]		
Kenwood Avenue	Southwest	From a point 27 feet southeast of the intersection with Delaware Avenue for a distance of 32 feet
Nathaniel Boulevard	North	For a distance of 500 feet from Adams Street
Nathaniel Boulevard	South	For a distance of 250 feet from Adams Street
Oakwood Place	East	From its intersection with Kenwood Avenue north for a distance of 100 feet
[Added 9-9-1998 by L.L. No. 9-1998]		
Paddock Place	Both	For a distance of 100 feet from the intersection of Delaware Avenue
Paddock Place		
[Repealed 4-30-1997 by L.L. No. 6-1997]		
Poplar Drive	North	Between Elsmere Avenue and the point of intersection of the north side of Poplar Drive with the prolongation northerly of the west side of Ridge Road
Poplar Drive	South	Between Elsmere Avenue and Ridge Road
Price Chopper Plaza in Slingerlands		In the designated fire lane
[Added 10-22-2008 by L.L. No. 4-2008]		
Ridge Road	East	At the intersection of East Poplar Drive for a distance of 75 feet
[Added 12-8-1999 by L.L. No. 11-1999]		
Ridge Road	West	At the intersection of Kenwood Avenue for a distance of 75 feet
[Added 12-8-1999 by L.L. No. 11-1999]		
Service road connecting the Delmar Bypass	Both	For a distance of 115 feet from the intersection of the Delmar Bypass Extension

Name of Street	Side	Location
Extension to the Town of Bethlehem water tank area		
[Added 9-13-2000 by L.L. No. 9-2000]		
Taylor Terrace	Both	Entire length from intersection with Kenwood Avenue
Town Squire Plaza in Glenmont		In the designated fire lane
[Added 10-22-2008 by L.L. No. 4-2008]		
Van Dyke Road	East	From its intersection with Delmar Bypass Extension north to the driveway of the Bethlehem Central Bus Garage at 82 Van Dyke Road, Delmar
[Added 3-25-1998 by L.L. No. 5-1998]		
Van Dyke Road	East	125 feet north and south of the school bus garage entrance
[Added 10-14-1992 by L.L. No. 6-1992]		
Van Dyke Road	East	30 feet south of the northern parking lot
[Added 10-14-1992 by L.L. No. 6-1992]		
Van Dyke Road	East	50 feet north and south of the southernmost parking lot
[Added 10-14-1992 by L.L. No. 6-1992]		
Winne Place	Both	For a distance of 125 feet from the intersection of Kenwood Avenue
[Added 6-8-1994 by L.L. No. 3-1994]		

§ 119-37. Schedule XI: No Stopping.

In accordance with the provisions of § 119-15, no person shall stop a vehicle upon any of the following described streets or parts of streets:

Name of Street	Side	Location
Adams Place	South	Between Kenwood Avenue and Delmar Place
Grove Street	West	North a distance of 550 feet from the center line of Delaware Avenue to a point opposite the fire hydrant located near the Curtis Lumber Company building
Kenwood Avenue	Northeast	From Adams Place north for a distance of 170 feet

Name of Street	Side	Location
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[Added 4-30-1997
by L.L. No. 6-
1997]

Kenwood Avenue	Northeast	105 feet from Delaware Avenue
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[Added 4-30-1997
by L.L. No. 6-
1997]

Kenwood Avenue		
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[Repealed 4-30-1997 by L.L. No. 6-1997]

Paddock Place	West	Entire length
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[Added 4-30-1997
by L.L. No. 6-
1997]

Union Avenue	East	From Kenwood Avenue to the driveway at 44 Union Avenue
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§ 119-38. Schedule XII: No Standing.

In accordance with the provisions of § 119-16, no person shall stand a vehicle upon any of the following described streets or parts of streets:

Name of Street	Side	Location
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(Reserved)		
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§ 119-39. Schedule XIII: Parking Prohibited Certain Hours.

In accordance with the provisions of § 119-17, no person shall park a vehicle between the hours listed upon any of the following described streets or parts of streets:

Name of Street	Side	Hours/Days	Location
All streets	Both	1:00 a.m. to 7:00 a.m./November 1 to April 15	Entire length

§ 119-40. Schedule XIV: Time Limit Parking.

In accordance with the provisions of § 119-18, no person shall park a vehicle for longer than the time limit shown upon any of the following described streets or parts of streets:

Name of Street	Side	Time Limit; Hours/Days	Location
Borthwick Avenue, Delmar		1 hr.	From a point 132 feet north of Delaware Avenue to a point 207 feet north of Delaware

[Added 12-11-1996 by L.L.

Name of Street	Side	Time Limit; Hours/Days	Location
No. 18-1996]			Avenue
Bradstreet Court	Both	1 hr.; 7:30 a.m. to 2:30 p.m./school days	Entire length
[Added 5-24-2000 by L.L. No. 6-2000]			
Brockley Drive	Both	1 hr.; 7:30 a.m. to 2:30 p.m./school days	Entire length
[Added 9-11-1996 by L.L. No. 13-1996]			
Crimsonleaf Drive	Both	1 hr.; 7:30 a.m. to 2:30 p.m./school days	Entire length
[Added 5-24-2000 by L.L. No. 6-2000]			
Dana Court	Both	1 hr.; 7:30 a.m. to 2:30 p.m./school days	Entire length
[Added 5-24-2000 by L.L. No. 6-2000]			
Dorset Street	Both	1 hr.; 7:30 a.m. to 2:30 p.m./school days	Entire length
[Added 9-11-1996 by L.L. No. 13-1996]			
Evelyn Drive	Both	1 hr.; 7:30 a.m. to 2:30 p.m./school days	Entire length
[Added 9-11-1996 by L.L. No. 13-1996]			
Frederick Place	Both	1 hr.; 7:30 a.m. to 2:30 p.m./school days	From Brockley Drive to Charles Boulevard
[Added 5-24-2000 by L.L. No. 6-2000]			
Grantwood Road	Both	1 hr.; 7:30 a.m. to 2:30 p.m./school days	Entire length
[Added 9-23-1998 by L.L. No. 10-1998; amended 4-12- 2000 by L.L. No. 4-2000; 5- 24-2000 by L.L. No. 6-2000]			
Kenwood Avenue	Southwest	30 mins.	From a point 72 feet southeast from intersection with Delaware Avenue for a distance of 202 feet
Longmeadow Drive	Both	1 hr.; 7:30 a.m. to 2:30 p.m./school days	Entire length
[Added 9-11-1996 by L.L.			

Name of Street	Side	Time Limit; Hours/Days	Location
No. 13-1996]			
Summit Road	Both	1 hr.; 7:30 a.m. to 2:30 p.m./school days	Entire length
[Added 5-24-2000 by L.L. No. 6-2000]			
Wakefield Court	Both	1 hr.; 7:30 a.m. to 2:30 p.m./school days	Entire length
[Added 9-23-1998 by L.L. No. 10-1998; amended 5-24-2000 by L.L. No. 6-2000]			
Wallace Drive	Both	1 hr.; 7:30 a.m. to 2:30 p.m./school days	Entire length
[Added 5-24-2000 by L.L. No. 6-2000]			

§ 119-41. Schedule XV: Loading Zones.

In accordance with the provisions of § 119-19, the following described locations are hereby designated as loading zones:

Name of Street	Side	Location
(Reserved)		

§ 119-42. Schedule XVI: Angle Parking.

[Added 5-8-1996 by L.L. No. 9-1996]

In accordance with the provisions of § 119-19.1, angle parking shall be permitted in the following described areas:

Name of Street	Side	Location
Normanskill Boulevard	Both	Entire length

§ 119-43. Schedule XVII: Tractor-Trailers Excluded.

[Added 11-10-1999 by L.L. No. 8-1999]

Tractor-trailers are excluded from the following streets or parts of streets, except for local deliveries:

Name of Street	Location
Wemple Road	From New York State Route 9W to New York State Route 144 (River Road)

§ 119-44. Schedule XVIII: Prohibited U-Turns.

[Added 5-10-2000 by L.L. No. 5-2000]

In accordance with the provisions of § 119-8.1, no person shall make a U-turn at any time upon any of the following streets or parts of streets:

Name of Street	Location
LaGrange Road	Slingerlands

§ 119-45. Schedule XIX: Auto Carriers Excluded.

[Added 12-16-2002 by L.L. No. 9-2002]

A. This section is adopted pursuant to the authority of § 1660 of the Vehicle and Traffic Law of the State of New York, § 10 of the Municipal Home Rule Law of the State of New York, and § 119-12 of the Bethlehem Town Code.

B. This section is adopted in order to minimize the adverse impact of certain traffic upon the residents of Elm and Cherry Avenues (Albany County Route 52), residing between Kenwood Avenue and the Delmar Bypass, and in order to promote the health, safety and welfare of the community.

C. There shall be no through traffic of the following vehicles on, and all such vehicles are hereby excluded from, Elm Avenue (County Route 52) between the Delmar Bypass (State Route 32) and Delaware Avenue (State Route 443) and on Cherry Avenue (County Route 52) between Delaware Avenue (State Route 443) and Kenwood Avenue (State Route 140):

(1) Auto carriers (conventional) of a length of 60 feet and over; and.

(2) Auto carriers (stinger-steered) of a length of 60 feet and over.

D. Exceptions. The exclusions in Subsection C shall not be construed to prevent the delivery or pickup of motor vehicles along any highway from which such vehicles are excluded.

E. Violations. The operation of a vehicle as defined herein in violation of this section shall constitute a traffic infraction for which a person, upon a first conviction hereof, shall be punished by a fine of not more than \$100 upon a first conviction thereof; for a conviction of a second violation, both of which were committed within a period of 18 months, such person will be punished by a fine of not more than \$200. A third or subsequent infraction, all of which were committed within a period of 18 months, shall constitute a violation, and such person shall be punished by fine of not more than \$250 or by imprisonment of not more than 15 days, or by both such fine and imprisonment.

F. This section shall be effective upon the erection or posting of signs or markings giving notice of the restriction contained herein.

CHAPTER 124. WATER

[A revision of this chapter is in process. Upon completion of the revision, the revised chapter will be inserted here.]

CHAPTER 128. ZONING

ARTICLE I. Introductory Provisions (§ 128-1 — § 128-6)

ARTICLE II. General Provisions (§ 128-7 — § 128-11)

ARTICLE III. Zoning Map and Districts (§ 128-12 — § 128-19)

ARTICLE IV. Word Usage and Definitions (§ 128-20 — § 128-23)

ARTICLE V. District Regulations (§ 128-24 — § 128-41)

ARTICLE VI. Supplementary Regulations (§ 128-42 — § 128-67)
ARTICLE VII. Special Use Permit and Site Plan Review (§ 128-68 — § 128-72)
ARTICLE VIII. Standards for Certain Uses Requiring Special Use Permit Review (§ 128-73 — § 128-80)
ARTICLE IX. Administration and Enforcement (§ 128-81 — § 128-86)
ARTICLE X. Zoning Board of Appeals (§ 128-87 — § 128-91)
ARTICLE XI. Amendments (§ 128-92 — § 128-95)
ARTICLE XII. Miscellaneous Provisions (§ 128-96 — § 128-98)
ARTICLE XIII. Use and Area Schedules (§ 128-99 — § 128-102)
Open all 102 sections

Attachments:

128a Sched of Uses
128b Sched of Area Yard Bulk Req
128c Zoning Map

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 8-23-2006 by L.L. No. 4-2006. Editor's

Note: This local law superseded former Ch. 128, Zoning, adopted 10-28-1944, readopted 3-23-1988 by L.L. No. 2-1988, as amended. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 53.
Flood damage prevention — See Ch. 69.
Freshwater wetlands — See Ch. 72.
Subdivision regulations — See Ch. 103.
Trailers and trailer camps — See Ch. 115.

CHAPTER 128. ZONING

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CHAPTER 128. ZONING

[HISTORY: Adopted by the Town Board of the Town of Bethlehem 8-23-2006 by L.L. No. 4-2006. Editor's Note: This local law superseded former Ch. 128, Zoning, adopted 10-28-1944, readopted 3-23-1988 by L.L. No. 2-1988, as amended. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 53.
Flood damage prevention — See Ch. 69.
Freshwater wetlands — See Ch. 72.
Subdivision regulations — See Ch. 103.
Trailers and trailer camps — See Ch. 115.

ARTICLE I. Introductory Provisions

§ 128-1. Short title.

This chapter shall be known and may be cited as the "Zoning Law of the Town of Bethlehem."

§ 128-2. Authority.

This chapter is enacted pursuant to the authority and power granted by the Municipal Home Rule Law of the State of New York and the Town Law of the State of New York, in conformance with the Town of Bethlehem Comprehensive Plan duly adopted by the Town Board. As stated herein, specific sections of Article 16 of the Town Law have been superseded by this chapter pursuant to the authority of § 10 of the Municipal Home Rule Law.

§ 128-3. Severability.

If any part of this chapter is declared to be invalid by any court of competent jurisdiction, such decision shall not affect or impair the validity of said chapter as a whole or any other part of said chapter. The Town Board hereby declares that it would have adopted this chapter and each part thereof irrespective of the fact that any one or more of the parts may be declared invalid.

§ 128-4. Supersession of inconsistent laws.

To the extent that this chapter is inconsistent with Town Law § 261-b, 261-c, 265-a, 267-a, 274-a, 274-b, 276, 277 or 278 or any other provision of Article 16 of the Town Law, the provisions of this chapter are expressly intended to and do hereby supersede any such inconsistent provisions.

§ 128-5. When effective.

This chapter shall take effect upon the effective date of the local law, filed with the Secretary of State, that governs this chapter. Editor's Note: This chapter became effective September 1, 2006.

§ 128-6. (Reserved)

ARTICLE II. General Provisions

§ 128-7. Interpretation and applicability.

In interpreting and applying this chapter, the requirements contained herein are declared to be the minimum standards applicable to land development as regulated herein. Further, this chapter shall not be deemed to affect, in any manner whatsoever, any easements, covenants, or other agreements between parties; provided, however, that where this chapter imposes a greater restriction upon the use of buildings or land, or upon the erection, construction, establishment, moving, alteration, or enlargement of buildings, than is imposed by other ordinances, local laws, rules, regulations, licenses, certificates, or other authorizations, or by easements, covenants, or agreements, the provisions of this chapter shall prevail.

§ 128-8. Purpose and objectives.

A. The purpose and objectives of this chapter are:

- (1) To guide the future growth and development of the Town in accordance with the Town of Bethlehem Comprehensive Plan by encouraging the establishment of population densities that will reflect a beneficial influence considering the most appropriate use of land relative to population trends, existing land use, environmental considerations, topographical features, soil types, economic activity, and building development and recognizing such conditions and trends both within the Town and in surrounding areas.
- (2) To secure safety from fire, flood, panic, and other dangers; provide adequate light and air; prevent overcrowding of the land; and avoid undue concentration of population.
- (3) To conserve the value of land and buildings in accordance with the character of the district and its suitability for particular uses; protect the economic stability of the entire Town; and provide for orderly and beneficial growth commensurate with the availability and capacity of public facilities and services and the ability of land and natural resources to accommodate such growth.
- (4) To establish the most beneficial relationship between land use, buildings, and the circulation of traffic throughout the Town, with particular regard to the lessening of congestion, the safe and efficient movement of vehicles and pedestrians, the provision of adequate parking facilities, and convenient access appropriate to the prospective use.
- (5) To guide public policy so as to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public improvements and guide private enterprise in building development, investment, and other economic activity relating to land use and buildings.
- (6) To safeguard natural, agricultural, historic and scenic resources; prevent the contamination of public and private drinking wells and aquifers, lakes and ponds, and freshwater wetlands and watercourses; and preserve the integrity, stability, and beauty of the community.

(7) To assure privacy for residences and freedom from nuisances and harmful, unsightly uses and protect the community against unsightly, obtrusive, and noisome land uses and operations.

(8) To facilitate, as far as environmental conditions may permit, the accommodation of solar energy systems and equipment and access to sunlight necessary therefor.

B. The regulations contained herein have been made in accordance with the Comprehensive Plan of the Town of Bethlehem, with reasonable consideration as to the character of land and the extent of development in each district, as well as the suitability of each district for particular uses.

§ 128-9. Conformity required.

A. Uses. Following the effective date of this chapter, any use not identified in the Schedule of Uses, § 128-99 of this chapter, shall be deemed prohibited. No building or lot shall be used for any purpose or in any manner except in conformity with all regulations, requirements and/or restrictions specified in this chapter for the district in which such building or lot is located. Where permitted uses are identified by generic words or descriptions, the Zoning Board of Appeals shall determine whether a specific use shall be construed to be part of such generic class. In making such determination, the Zoning Board of Appeals shall consider to what extent the proposed use is similar to the class of use indicated in the Schedule of Uses.

B. Buildings. After the effective date of this chapter, no building shall be erected, moved, altered, rebuilt, enlarged, designed or arranged to be used for any purpose or in any manner except in conformity with the regulations, requirements and/or restrictions specified in this chapter for the district in which such building is located.

C. Lots. After the effective date of this chapter, no lot shall be built upon unless it is a buildable lot as defined herein.

§ 128-10. Exceptions.

A. Height exceptions. The height limitations of this chapter shall not apply to church spires, belfries, cupolas, sirens and loudspeakers for emergency purposes, penthouses and domes not used for human occupancy, chimneys, ventilators, skylights, water tanks, silos, bulkheads and similar features, and necessary mechanical appurtenances usually carried above the roof level. Nothing contained in this chapter shall prevent the erection of an ornamental parapet wall or cornice that extends not more than five feet above the maximum permitted height of the building. Such features, however, shall be erected only to such height as is necessary to accomplish the purpose they are to serve.

B. Projecting architectural features. The space in any required setback shall be open and unobstructed except for the ordinary projection of windowsills, belt courses, cornices, eaves and other architectural features; provided, however, that such features shall not project more than three feet into any required setback.

C. Building entry and porticos. Roofed-over but unenclosed stairs and/or landings in the nature of an entryway or portico not more than eight feet wide and extending not more than six feet out from the front wall of the building shall be permitted to encroach on a required front yard setback.

§ 128-11. (Reserved)

ARTICLE III. Zoning Map and Districts

§ 128-12. Districts established.

The Town of Bethlehem is hereby divided into the following use districts:

A. Residential districts.

District	Symbol
Rural District	R
Residential Large Lot District	RLL
Residential "A" District	RA
Residential "B" District	RB
Residential "C" District	RC
Core Residential District	CR
Multifamily District	MR

B. Mixed-use districts.

District	Symbol
Rural Riverfront District	RR
Hamlet District	H
Commercial Hamlet District	CH
Rural Hamlet District	RH

C. Commercial districts.

District	Symbol
General Commercial District	C
Mixed Economic Development District	MED
Heavy Industrial District	I
Rural Light Industrial District	RLI

D. Special districts.

District	Symbol
Planned Development Districts	PDD

§ 128-13. Zoning Map.

The districts listed in § 128-12 are bounded as shown on the map series titled "Zoning Map, Town of Bethlehem" dated August 24, 2005, as amended, which, with all explanatory matter thereon, is made a part of this chapter.

§ 128-14. Schedules.

To facilitate public understanding and for convenience in administration, there is hereby declared to be a part of this chapter a Schedule of Uses (§ 128-99), a Schedule of Area, Yard and Bulk Requirements (§ 128-100), and a Schedule of Off-Street Parking (§ 128-56), which list the uses permitted in each district and the minimum lot areas, minimum yard widths, building height limitations, off-street parking needs, and other basic requirements which, in some cases, are supplemented by other regulations in this chapter.

A. Schedule of Uses. In any district established by this chapter, no premises shall be used, and no building shall be erected, constructed, enlarged, arranged, or designed to be used, in whole or in part, except for a use as set forth in the accompanying Schedule of Uses. Only those uses specifically listed shall be permitted.

B. Schedule of Area, Yard and Bulk Requirements. In any district established by this chapter, no premises shall be used and no principal or accessory building or structure shall be erected, constructed, enlarged, or arranged on a lot except in accordance with the requirements set forth in the accompanying Schedule of Area, Yard and Bulk Requirements. No yard or other open space provided around any building for the purpose of complying with the provisions of this schedule shall be considered as providing a yard or open space for any other building, and no yard or other open space on one lot shall be considered as providing a yard or open space for a building on any other lot.

C. Schedule of Off-Street Parking. In any district established by this chapter, off-street parking facilities shall be provided in accordance with the requirements set forth in the Schedule of Off-Street Parking, except where additional parking may be required as a condition for the issuance of a special permit or site plan approval or as otherwise determined by the Planning Board.

§ 128-15. Interpretation of district boundaries.

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts, the rules specified below shall apply. In cases where these rules do not identify the true location of a district boundary line, the Zoning Board of Appeals shall render a determination with respect thereto.

A. Along center lines. Where district boundaries are indicated as following roads, highways, driveways, watercourses, or power lines, the center lines of such rights-of-way shall be construed to be the boundaries of the zoning district.

B. Parallel to center lines. Where district boundaries are indicated as being parallel to roads, highways, driveways, watercourses, or power lines, a line parallel to the center line of such rights-of-way and at a distance therefrom as specified on the Zoning Map shall be construed to be the boundaries of the zoning district. If no distance is given, such dimension shall be determined by use of the scale shown on the Zoning Map.

C. Along lot lines. Where district boundaries are indicated as following lot lines, such lot lines shall be construed to be the boundaries of the zoning district.

§ 128-16. Parcels in multiple districts.

If a lot is divided by a zoning district boundary, one of the following conditions shall apply:

A. The respective district regulations shall apply to each portion of the lot so divided; or

B. The Zoning Board of Appeals may establish requirements within the intent of this chapter which represent a compromise between the requirements of the districts involved and which are approximately proportional to the area of the lot that lies within each district.

§ 128-17. (Reserved)

§ 128-18. (Reserved)

§ 128-19. (Reserved)

ARTICLE IV. Word Usage and Definitions

§ 128-20. Intent.

Except as defined herein, all words used in this chapter shall carry their everyday dictionary definition.

§ 128-21. Word usage.

- A. Words used in the present tense include the future tense.
- B. Words used in the singular include the plural, and words used in the plural include the singular.
- C. The word "person" includes a firm, association, organization, partnership, corporation, trust and company as well as an individual.
- D. The word "lot" shall include the word "plot" or "parcel" or "tract."
- E. The word "shall" is always mandatory and not merely directory.
- F. The word "structure" shall include the word "building" and any man-made object or improvement.
- G. The word "used" or "occupied" as applied to any land or building shall be construed to include the words "intended, arranged, or designed to be used or occupied."
- H. The words "Zoning Map" or "Bethlehem Zoning Map" shall mean the Zoning Map of the Town of Bethlehem, New York.
- I. Unless the context requires a different interpretation, any word denoting gender includes the female and the male.
- J. The term "Town Board" shall mean the Town Board of the Town of Bethlehem, New York.
- K. The term "Planning Board" shall mean the Planning Board of the Town of Bethlehem, New York.
- L. The terms "Zoning Board of Appeals" and "Zoning Board" shall mean the Zoning Board of Appeals of the Town of Bethlehem, New York.
- M. The term "Building Inspector" or "Zoning Enforcement Officer" shall mean the Building Inspector or Zoning Enforcement Officer of the Town of Bethlehem, New York.
- N. The terms "Department of Economic Development and Planning" and "Department" shall mean the Department of Economic Development and Planning of the Town of Bethlehem, New York.

§ 128-22. Definitions.

When used in this chapter, unless otherwise expressly stated or unless the context or subject matter otherwise requires, the following definitions shall apply:

ACCESSORY USE

See "use, accessory" definition below.

ACCESS ROAD; ACCESSWAY

A way or means of approach to provide vehicular or pedestrian physical entrance to a property.

ACREAGE

[Amended 10-8-2008 by L.L. No. 3-2008]

A. **GROSS** — The total acreage of a parcel or parcels of land proposed for subdivision and/or development, as determined by a certified survey.

B. **NET** — The gross acreage of a parcel of land minus the acreage of constrained land. It is this figure into which the minimum lot size per dwelling unit is to be divided to determine the buildable area and the buildable yield of a lot or property proposed for development.

ADAPTIVE REUSE

Contemporary use of an existing building or structure for a use other than that for which it was originally designed, intended or occupied, e.g., use of a former barn as a residential dwelling.

AGRICULTURAL DISTRICT

A district established pursuant to Article 25-AA of the Agriculture and Markets Law.

AGRICULTURE; AGRICULTURAL USE

The employment of land, including for the primary purpose of obtaining a profit in money, for raising, harvesting, and selling crops, or feeding, including but not limited to grazing, breeding, managing, selling or producing livestock, poultry, fur-bearing animals or honeybees, or dairying and the sale of dairy products, or any other horticulture, floriculture or viticulture, aquaculture, hydroponics, silviculture, animal husbandry, or a combination thereof. It also includes the employment of land, including for the primary purpose of obtaining a profit, for stabling or training equines, including but not limited to providing riding lessons, training clinics and schooling shows, including other on-farm niche marketing promotions.

AIRPORT

Land devoted to the storage, servicing, takeoff and landing of aircraft and the storage of fuel for the same.

ALLEY

A narrow street or passage between properties or buildings serving as a secondary means of access to abutting property.

ALTERATION

A change to, modification of, or addition to the parts of a structure or man-made improvement other than normal maintenance or repairs, or the moving of a building from one location to another.

AMATEUR RADIO COMMUNICATIONS TOWER

An accessory structure or series of structures, attached to or nonattached to a building, which are used in the transmission of amateur radio communications.

ANGLE OF REPOSE

The maximum angle at which a material will rest on a given surface without sliding or rolling as measured from the horizontal.

APARTMENT, ACCESSORY

A second dwelling unit either in or added to an existing single-family detached dwelling, or in a separate accessory structure on the same lot as the principal dwelling, for use as a complete, independent living facility with provision within the accessory dwelling unit for cooking, eating, sanitation, and sleeping. Such a dwelling shall be clearly accessory and incidental to the principal dwelling.

APPLICATION, COMPLETE

An application that includes the following:

A. A completed application form together with all information concerning a proposed project in the format as specified by the applicable provisions of this chapter.

B. All application fees required by this chapter and the professional review fee escrow deposit, if any, required by the reviewing agency.

C. An environmental assessment form (EAF) or draft environmental impact statement (DEIS) assessing the potential environmental impacts of the proposed project.

D. A determination by the reviewing agency, or by the lead agency in the event of coordinated review, that the proposed project is not likely to have a significant impact on the environment (negative declaration) or the filing of a notice of completion of a draft environmental impact statement in accordance with the provisions of the State Environmental Quality Review Act (SEQRA). Editor's Note: See Art. 8 of the Environmental Conservation Law.

BANK

The location of the mean high-water level.

BASEMENT

That portion of a building that is partly or completely below grade.

BED-AND-BREAKFAST

A structure where rooms are rented to guests for a maximum stay of two weeks and where meals produced on premises shall only be provided to those individuals staying at the bed-and-breakfast. The maximum number of rented rooms permitted in a bed-and-breakfast shall be limited to five. A bed-and-breakfast does not qualify as a home occupation use.

BEDROOM

All rooms in multifamily, row and group dwellings beyond one kitchen, living room and dining room or area per dwelling unit. For the purpose of determining the number of bedrooms in a proposed multifamily or townhouse dwelling, all dwelling units shall be rated as having at least one bedroom (example: studio apartment).

BILLBOARD

An outdoor advertising sign available on lease for the display of a commercial or public service message and which directs attention to a business, commodity, service, entertainment or attraction sold, offered or existing elsewhere than upon the same lot where such sign is displayed, or only incidentally upon such lot.

BUFFER AREA; BUFFER ZONE

Open space, landscape areas, fences, walls, berms or any combination thereof used to physically separate or screen one use or property from another use or property so as to visually shield or block noise, light, or other nuisances.

BUILDABLE AREA

The space remaining on a lot after the minimum yard, area and bulk requirements of this chapter have been met, or that area of the lot for which a variance from said minimum yard, area and bulk requirements has been granted by the Zoning Board of Appeals.

BUILDABLE LOT

A lot having a buildable area capable of accommodating proposed principal and accessory improvements and including, where required, an on-site water supply facility and sewage treatment system that meet the standards of the Albany County Department of Health. A buildable lot shall also adjoin and have access to an improved street or shall adjoin and have access to a paper street that will be improved as part of the development plan for the lot.

BUILDABLE YIELD

The maximum unit density for a proposed subdivision after deduction of constrained land areas.

[Amended 10-8-2008 by L.L. No. 3-2008]

BUILDING

Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals or chattel.

BUILDING, ACCESSORY

A detached subordinate building on a lot, the use of which is customarily incidental to that of the main or principal building.

BUILDING AREA

The total of the areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, exclusive of uncovered porches, terraces and steps. All dimensions shall be measured between the exterior faces of walls.

BUILDING, DETACHED

A building surrounded by open space on the same lot.

BUILDING FOOTPRINT

The area encompassed by a building's outer wall at ground level.

BUILDING, FRONT LINE OF

The line of that face of the building nearest the front line of the lot. This face includes sun parlors and covered porches, whether enclosed or unenclosed, but does not include steps.

BUILDING HEIGHT

The vertical distance measured from the average elevation of the proposed finished grade at the front entrance of the building to the highest point of the roof for flat roofs, to the decline for mansard roofs and to the median height between eaves and ridge for gable, hip and gambrel roofs.

BUILDING, MAIN OR PRINCIPAL

A building in which is conducted the main or principal use of the lot on which said building is situated.

BUSINESS USE, ADULT

Any use or business that:

A. Is any use of land, structure or location which, by the provisions of the Penal Law, is required to restrict the access thereto by minors.

B. Is an establishment, location, building or structure which features topless dancers, nude dancers or strippers, male or female.

C. Is a location, building or structure used for presenting, lending or selling motion-picture films, videocassettes, cable television or any other such visual media, or used for presenting, lending or selling books, magazines, publications, photographs or any other written materials, distinguished or characterized by an emphasis of matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined below:

(1) SPECIFIED SEXUAL ACTIVITIES:

- (a) Human genitals in a state of sexual stimulation or arousal;
- (b) Simulated and actual acts of human masturbation, sexual intercourse or sodomy; or
- (c) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breast.

(2) SPECIFIED ANATOMICAL AREAS:

- (a) Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point immediately above the top of the areola; or
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

D. Is the use of land, structures or location for an adult entertainment business or as an adult physical contact establishment as defined below:

(1) **ADULT ENTERTAINMENT BUSINESS** — Includes adult bookstores, adult video stores, adult theaters, adult cabarets, adult physical contact establishments, and nude modeling studios, defined as follows:

(a) **ADULT BOOKSTORE** — An establishment having as a substantial or significant portion of its stock-in-trade books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined herein.

(b) **ADULT VIDEO STORE** — An establishment having as a substantial or significant portion of its stock-in-trade video films, videocassettes or other films for sale or rental which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined herein.

(c) **ADULT THEATER** — An establishment which regularly features live performances, films, motion pictures, videocassettes, DVDs, slides or similar photographic reproductions characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas as defined herein. An adult theater shall also include drive-in theaters and establishments where such materials or performances are viewed from one or more individual enclosures or booths.

(d) **ADULT CABARET** — An establishment which features live topless dancers, exotic dancers, strippers, male or female, male or female impersonators or similar entertainers whose performances are characterized by partial or full nudity.

(e) **ADULT PHYSICAL CONTACT ESTABLISHMENT** — Any establishment which offers or purports to offer massage or other physical contact to patrons of either gender by employees or staff of either gender. Medical offices, offices of persons licensed or authorized under the Education Law to practice massage therapy, offices of persons licensed or otherwise authorized by the Education Law as physical therapists or physical therapist assistants, and electrolysis, karate, judo and dance studios are not to be considered adult physical contact establishments.

(f) **NUDE MODEL STUDIO** — Any place where a person appears seminude or in a state of nudity or displays specified anatomical areas and is provided to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons who pay money or any form of consideration. "Nude model studio" shall not include a proprietary school licensed by the State of New York or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

[1] That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or seminude person is available for viewing;

[2] Where in order to participate in a class a student must enroll at least three days in advance of the class; and

[3] Where no more than one nude or seminude model is on the premises at any one time.

BY-RIGHT USE

The use of land that is not subject to site plan, special use permit, or use variance approval, except as provided herein.

CALIPER, TREE

The diameter of a tree as measured at a point six inches above the ground level (up to and including four-inch caliper size) and 12 inches above the ground level (for larger sizes).

CAMP, DAY

Any land, including any building thereon, used for any assembly of persons for what is commonly known as "day camp" purposes, and any of the foregoing establishments whether or not conducted for profit and whether or not occupied by adults or by children, either as individuals, families or groups.

CAMPGROUND, VACATION

Two or more cabins, tents, travel or camping trailers, shelters, houseboats or other accommodations of a design or character suitable for seasonal or other more or less temporary living purposes, regardless of whether such structures or other accommodations actually are occupied seasonally or otherwise.

CAR WASH

A building, the use of which is devoted to the washing of and cleaning of the interior and exterior of trucks and automobiles, including but not limited to one of the following types:

A. **CONVEYOR TYPE** — A car wash facility where automobiles progress through the washing process pulled by a conveyor or by some other means than their own power.

B. **DRIVE-THROUGH TYPE** — A car wash facility where automobiles are driven through the washing process under their own power.

C. **SELF-SERVICE TYPE** — A car wash facility where automobiles are washed by the driver of the automobile using machinery provided by the management of the facility.

CEMETERY, FAMILY

The use of a portion of private property for the disposal or burial of deceased human beings in a grave, restricted to members of the immediate family of the property owner.

CEMETERY, PUBLIC

A place that is established, maintained, managed, operated, or improved and which is dedicated to and used or intended to be used for the final disposition of human remains and their memorialization and in

which burial plots and vaults are available for purchase by the general public. A cemetery shall be operated by a religious organization or by a not-for-profit corporation licensed by the New York State Cemetery Board. Editor's Note: The former definition of "clinic," which immediately followed this definition, was repealed 10-8-2008 by L.L. No. 3-2008.

CLUB; FRATERNITY; LODGE

An organization catering exclusively to members and their guests, including premises and buildings for recreational or athletic purposes, which are not conducted primarily for gain, provided that there are not conducted any vending stands, merchandising or commercial activities except as required generally for the membership and purposes of such club.

COLLOCATION

The placement of a wireless communication antenna on an existing tower or other permissible structure, usually owned by another entity. The types of structures eligible for collocation are set forth in this chapter. Editor's Note: See § 128-61, Telecommunication facilities.

COMMERCIAL RECREATION

Private outdoor and/or indoor recreational facilities such as golf courses, playgrounds, swimming pools, ice rinks, tennis courts, fishing and hunting preserves, water parks, tennis courts, driving ranges, basketball courts, handball and racquet courts, baseball and softball fields, football fields, polo fields, tracks, and riding rinks.

COMMERCIAL VEHICLE

Any vehicle that is used for any commercial purpose or which has any business advertisement affixed to or mounted on the vehicle.

CONFERENCE CENTER

A facility used for conferences and seminars with sleeping accommodations, food preparation and eating, recreation, entertainment, resource facilities, meeting rooms, fitness and health centers, and retail stores and services.

CONSERVANCY

An establishment organized for the purpose of protecting, conserving and managing existing natural resources and valuable historic and cultural areas in order to ensure a continuous flow of recreational and social benefits to the public and to achieve sustained resource utilization. Examples of a conservancy include diffuse outdoor recreation activities, timber harvesting on a sustained-yield basis, passive agricultural uses such as pasture and range lands, and other related uses and activities. Compatible commercial uses are low-intensity and low-impact activities such as small camping or picnic facilities, aquacultural, and cottage industries when the operation is entirely contained within the primary residence, excluding outbuildings, provided that such commercial activities must not alter the character of the conservancy environment. A conservancy may also incorporate educational training and meeting rooms, with or without sleeping and eating accommodations, solely for the use of attendees.

CONSERVATION SUBDIVISION

A residential subdivision pursuant to Town Law § 278 where the dwelling units that would result on a given parcel under a conventional subdivision plan are allowed to be concentrated on a smaller and more compact portion of land and where a majority of the remaining land is left in its natural open space condition in perpetuity. Conservation development results in a flexibility of design and development to promote the most appropriate use of land, to facilitate the adequate and economical provisions of streets and utilities, and to preserve the natural and scenic qualities of open lands.

CONSTRAINED LAND

Land containing one or more of the following: state and/or federal protected freshwater wetlands; one-hundred-year floodplains or flood hazard areas; steep slopes of 20% and greater; and open bodies of water, including streams, ponds and lakes.

CONTRACTOR YARD

A lot or portion of a lot or parcel used to store and maintain construction equipment and other materials and facilities customarily required in the contractor's trade, but excluding storage of materials or equipment for on-site or off-site sale. May include an office use accessory to the contractor trade use.

CONVENIENCE STORE; MINI MART

A retail store that is designed and stocked primarily to sell food, beverages and household supplies, having no more than 12 customer seats, to customers who purchase only a relatively few items. Such establishments may include the retail sale of gasoline, oil and other automotive fluids without the repair or servicing of motor vehicles. A canopy over the fuel dispensing stations shall be considered to be part of the principal structure.

CONVERSION

A change in use or occupancy of a dwelling by alteration or by other reorganization as to increase the number of families or dwelling units in a structure.

COURT

An unoccupied open space, other than a yard, on the same lot with a building, which is bounded on two or more sides by the walls of such building.

CURB LEVEL

The elevation of the curb opposite the center of the front of the building. If a building faces on more than one street, the curb level shall be the mean of the elevations of the curbs at the center of each side or front of the building. Where no curb level or equivalent has been established by the municipal authority, the mean elevation of the finished grade immediately adjacent to the front of the building shall be considered as the curb level. If a building faces on more than one street where no curb level has been established, the mean of the elevations of the finished grade on each street side of the building shall be considered as the curb level.

DAY-CARE CENTER

A facility where unrelated persons, both children and adults, are cared for during limited periods each day under supervision.

DECK

An exterior floor surface, unroofed, extending outward from a structure as an integral part thereof, intended to accommodate multipurpose outdoor activities.

DENSITY UNIT

A dwelling unit.

[Amended 10-8-2008 by L.L. No. 3-2008]

DEVELOPABLE ACREAGE

The amount of land area left for development after subtracting the constrained land area from the total area of the project parcel.

DEVELOPMENT REVIEW COMMITTEE

A committee appointed by the Director composed of staff members of the Department of Economic Development and Planning of the Town of Bethlehem.

DIRECTOR

The Director of the Department of Economic Development and Planning of the Town of Bethlehem.

DISTURBANCE

All land preparation activities involving the movement, placement, removal, transfer or shifting of soil and/or vegetation, including but not limited to clearing, draining, filling, grading, regrading or the building of structures or the placement of improvements on land, including the construction of individual sidewalks, paths, roads or driveways. The condition of land disturbance shall be deemed to continue until the area of disturbance is returned to its original state or to a state complying with a permit for such disturbance granted in accordance with this chapter.

DOCK

An accessory structure, extending from land into a body of water, for purposes of providing access to watercraft, which craft may be affixed thereto when not in use.

DRIVE-IN; DRIVE-THROUGH

An establishment which, by design, physical facilities, service or by packaging procedures, encourages and permits customers to receive services and obtain goods while remaining in their motor vehicles.

DRIVEWAY

Any area reserved on any lot, site or parcel of land for the purpose of providing vehicular access from an access road or state, county or Town highway to principal and accessory structures located on said lot, site or parcel.

DRIVEWAY, SHARED

A single driveway serving two or more adjoining lots.

DRY-CLEANING SERVICE

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

[Added 10-8-2008 by L.L. No. 3-2008]

DWELLING

A building designed or used as the living quarters for one or more families. The term "dwelling," "single-family dwelling," "two-family dwelling" or "dwelling group" shall not be deemed to include a motel, boardinghouse, tourist home or guest house.

DWELLING, MULTIFAMILY

A building or portion thereof containing five or more dwelling units on one plot but which may have joint services or joint facilities, or both. Also known as a "multiple dwelling" and includes garden apartment, townhouse, cooperative, and condominium developments, senior citizen housing, assisted living projects, and congregate care developments.

DWELLING, SINGLE-FAMILY

A detached building designed for or occupied exclusively by one family.

DWELLING, THREE-FAMILY

A building designed for or occupied exclusively by three families living independently of each other.

DWELLING, TWO-FAMILY

A building designed for or occupied exclusively by two families living independently of each other.

DWELLING UNIT

A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrance or other hallways or porches) or cooking or sanitary facilities in common with any other dwelling unit. A trailer, motor home, travel or camping trailer, boarding- or rooming house, convalescent home, dormitory, fraternity or sorority house, hotel, inn, lodging, nursing or other similar home, or other similar structure shall not be deemed to constitute a dwelling unit.

EDUCATIONAL INSTITUTION

A nonpublic or private school, college, university, vocational school, or academy.

ELEVATION

The elevation, in feet, above mean sea level, as determined from the nearest United States Coastal and Geodetic benchmark of the principal building to be sited on a lot.

EXCAVATION

Any activity that removes or disturbs surface or subsurface conditions of land, lakes, ponds or watercourses.

FABRICATION SHOP

A use involving the construction of machines, tools and structures from various raw materials. Fabrication shops generally concentrate on the metal preparation, welding and assembly aspects, while the machine shop is more concerned with the final assembly, fitting and finishing of the project. As used herein the term includes a machine shop and welding shop but excludes auto body repair shops.

FACADE

The exterior wall or walls of a building which identify the front of a building and which typically face a street or public way.

FAMILY

A. Any number of persons occupying a single nonprofit dwelling unit, related by blood, marriage or legal adoption, living and cooking together as a single housekeeping unit.

B. Any number of persons occupying a single nonprofit dwelling unit, not exceeding six adults living and cooking together as a single housekeeping unit where all were not related by blood, marriage or legal adoption.

C. Notwithstanding the provisions of this definition, a group of unrelated persons numbering more than six shall be considered a family upon a determination by the Zoning Board of Appeals that the group is the functional equivalent of a family pursuant to the standards enumerated in Subsection D below. This presumption may be rebutted, and the unrelated individuals may be considered the functional equivalent of a family for the purposes of this chapter by the Zoning Board of Appeals if such group of individuals exhibits one or more characteristics consistent with the purposes of zoning restrictions in residential districts.

D. In determining whether a group of more than six unrelated persons constitutes a family for the purpose of occupying a dwelling unit, as provided herein, the Zoning Board of Appeals shall utilize the standards enumerated herein in making said determination. Before making a determination under this subsection, the Zoning Board of Appeals shall hold a public hearing, after public notice in accordance with § 128-89 of this chapter.

(1) In making a determination the Zoning Board of Appeals shall find that:

(a) The group is one which, in theory, size, appearance and structure, resembles a traditional family unit.

(b) The group is one that will live and cook together as a single housekeeping unit.

(c) The group is of a permanent nature and is neither a framework for transient or seasonal living nor merely an association or relationship that is transient or seasonal in nature. Nothing herein shall preclude the seasonal use of a dwelling unit by a group which otherwise meets the standards of this subsection at its permanent residence.

(2) Any determination under this subsection shall be limited to the status of a particular group as a family and shall not be interpreted as authorizing any other use, occupancy or activity. In making any such determination, the Board of Appeals may impose such conditions and safeguards as the Board of Appeals shall deem necessary or advisable in order to maintain the stability and character of the neighborhood and protect the public health, safety and welfare.

E. In no case shall a dwelling be occupied by more than two adults to a conventional bedroom.

F. Persons occupying group quarters such as a dormitory, fraternity or sorority house or a seminary shall not be considered a family.

FARM STAND

A structure used for the display and sale of farm products grown on the property on which the farm stand is located.

FARMSTEAD

A group of buildings and adjacent service areas designed and located in such a manner as to support the function of a farm. Structures may include but are not limited to farmstead homes, barns, machinery sheds, granaries, pump houses, poultry coops and garages. Service areas may include a barnyard, vehicle or machinery holding spaces, corrals, livestock pens, livestock loading and unloading areas, etc.

FARMSTEAD DESIGN

A site plan layout that incorporates design elements typical of a farmstead, including buildings used for residential and agricultural purposes, outbuildings, run-in sheds, split-rail fences, ponds, field gates, stone walls, pasture, open fields and wood lots, that, taken as a whole in their agricultural setting, embody the gradual development of upstate New York farms over the centuries.

FILL

Any act by which earth, sand, gravel, rock or any other similar material is deposited, placed, pushed, pulled or transported to a place other than the place from which it was excavated and shall include the conditions resulting therefrom.

FLOOR AREA, BUILDING

The sum of the gross horizontal area of the several floors of a building and its accessory buildings on the same lot, excluding cellar and basement floor areas not devoted to residential use, but including the areas of roofed porches and roofed terraces. All dimensions shall be measured between the exterior faces of walls.

FLOOR AREA, LIVABLE

In accordance with the New York State Building Code, all spaces within the exterior walls of a dwelling unit, exclusive of garages, cellars, heater rooms, basement rooms having a window area of less than 20% of the square foot area of the room, unheated porches and breezeways, but shall include all spaces not otherwise excluded, such as principal rooms, utility rooms, bathrooms and all closets and hallways opening directly into and appurtenant to any rooms within the dwelling unit, and all attic spaces having a clear height of six feet from the finished floor level to the pitch of the roof rafter with a clear height of seven feet six inches from the finished floor level to the ceiling over 50% of the area of such attic space.

FOOD PROCESSING

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

[Added 10-8-2008 by L.L. No. 3-2008]

FOOD PROCESSING ESTABLISHMENT

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

[Added 10-8-2008 by L.L. No. 3-2008]

GARAGE, COMMERCIAL STORAGE

A principal building or structure used for the storage of commercial motorized vehicles and equipment, including commercially registered passenger vehicles and equipment.

[Amended 10-8-2008 by L.L. No. 3-2008]

GARAGE, PARKING

A principal or accessory building or portion thereof used for the parking and storage of vehicles for a fee and which is available to the general public.

GARAGE, PRIVATE

An accessory building of not more than three bays and where each bay is a maximum width of 12 feet, located on the same lot as the principal use, and that is designed and used for the storage of privately owned vehicles and personal equipment associated with the owner or occupants of the principal use, and which is erected and maintained for the personal, noncommercial use by the owner or occupants of the premises upon which it is erected. No business, occupation or service connected with passenger vehicles or any commercial use shall be permitted in a private garage.

GRADE, ESTABLISHED

The elevation of the center line of the streets as officially established by the Town authorities.

GRADE, FINISHED

The completed surfaces of lawns, walks and roads brought to grades as shown on official plans or designs relating thereto.

GRADING

The alteration of the surface or subsurface conditions of land, lakes, ponds or watercourses by excavation or filling.

GUEST HOUSE

A detached residential accessory structure subordinate to the principal dwelling and sharing a common lot.

HIGHWAY FRONTAGE

That portion of any lot which bounds a street, as measured along the property line which is coincidental with such street right-of-way or center line, or on a corner lot in which case frontage is along both streets.

HISTORIC SITE; HISTORIC BUILDING; HISTORIC DISTRICT

A site, a building, or a district that is listed on the National Register of Historic Places, or that is listed on the New York State Register of Historic Places, or for which an application for such listing has been submitted by the owner of said site, building or district.

HOME OCCUPATION

A nonresidential use, occupation or business activity operated for financial gain in, or directed from, a residential dwelling unit or accessory building by one or more family members residing within that dwelling unit and where such use is clearly secondary and subordinate to the existing principal residential use.

HOSPITAL

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

[Amended 10-8-2008 by L.L. No. 3-2008]

HOSPITAL, ANIMAL

An establishment for the medical and surgical care of sick or injured animals.

HOTEL

A building containing 41 or more rooms intended or designed to be used or which are used, rented or hired out to be occupied or which are occupied for sleeping purposes by guests for no more than 30 days and where a kitchen and dining room are generally provided within the building or in an accessory building. Small service kitchens may be provided in individual rooms.

HOUSE OF WORSHIP

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

[Added 10-8-2008 by L.L. No. 3-2008]

INCENTIVE ZONING

Adjustments to the maximum unit density requirements of this chapter in exchange for the preservation of significant open space and/or the provision of improvements, facilities or amenities deemed to be of benefit to the Town.

INDUSTRIAL, HEAVY

Includes a wide range of assembling, fabricating, and manufacturing activities, such as food processing, manufacturing and packaging; grain storage, processing and distribution; concrete and asphalt batch plants; manufacture of products and merchandise involving the use of chemicals, processes or materials that might constitute a potential explosive or environmental hazard; slaughter plants, packing houses, animal by-products rendering, and other such animal processing activities; automobile salvage and reclamation yards and facilities; processing or production of oil, natural gas, geothermal resources or other hydrocarbons; foundries; and truck terminals, delivery services, moving and storage facilities, and truck maintenance.

INDUSTRIAL, LIGHT

Includes limited manufacturing, wholesaling, warehousing, research and development, and related commercial/service activities, such as beverage bottling, distribution and warehousing; contractors' offices and storage buildings, including general contractors, plumbers, electricians, heating, ventilating and air-conditioning contractors, masons, painters, refrigeration contractors, roofing contractors, and other such construction occupations; distribution centers; ice production, storage, sales and distribution; laboratories for research, testing and experimental purposes; machine shops; manufacture of computers, computer peripherals, electrical appliances, electronic equipment, medical instruments, and other similar products from previously manufactured components; manufacture of precision instruments and equipment such as watches, electronics equipment, photographic equipment, optical goods and similar products; manufacturing of articles or merchandise from previously prepared or natural materials such as cardboard, cement, cloth, cork, fiber, glass, leather, paper, plastics, wood, metals, stones and other such prepared materials; and printing and publishing.

INDUSTRIAL PARK

A type of planned industrial environment for a variety of light industrial and related activities in which special emphasis and attention are given to aesthetics and community compatibility. Subdivided and developed according to an enforceable master plan that includes detailed provisions for streets and all necessary utilities, the park provides serviced sites for a community of industrial and industry-oriented uses. Adequate control of the land, buildings and industrial operations is provided through zoning, private restrictions incorporated as legal requirements in deeds of sale or leases and the provision of continuing management, all for the purpose of assuring attractive and efficient uses within the park and the harmonious integration of the industrial area into the community in which it is located.

INN

A building or portion thereof kept, used, maintained, advertised or held out to the public, containing 40 or fewer units used for sleeping accommodations for guests, and providing meals and other incidental services to guests and the public.

[Amended 10-8-2008 by L.L. No. 3-2008]

JUNKYARD

Any place of storage or deposit, whether in connection with another business or not, where two or more old or secondhand motor vehicles, whether registered or unregistered, no longer intended or in condition for legal use on the public highways are held, whether for the purpose of resale of used parts therefrom, for the purpose of reclaiming some or all of the materials therein, whether metal, glass, fabric or otherwise, for the purpose of disposing of the same or for any other purpose. Such term shall include any place of storage or deposit for any such purposes of used parts or waste materials from motor vehicles which, taken together, equal in bulk two or more such vehicles.

KENNEL

A parcel of land used for the harboring of more than three dogs that are more than six months old or more than 12 dogs that are under six months of age. Any dog owner whose dog(s) bear(s) more than one litter of

puppies that are of registered pedigree and offered for sale shall, for the purposes of this chapter, be considered as maintaining a dog kennel and must adhere to all regulations governing the same.

LABORATORY, MEDICAL

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

[Added 10-8-2008 by L.L. No. 3-2008]

LAND DISTURBANCE

Any activity involving the clearing, cutting, excavation, filling, grading or any other activity that alters land topography or vegetative cover.

LAND DIVISION

A division of any parcel of land into two lots in which all building lots front on an existing improved street, not requiring the construction of any new streets or roads and not adversely affecting the development of the remainder of the parcel or adjoining property. A land division may, under the standards of Chapter 103, Subdivision Regulations, § 103-20, qualify for administrative review by the Department of Economic Development and Planning.

LAUNDRY

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

[Amended 10-8-2008 by L.L. No. 3-2008]

LOT

Land occupied or to be occupied by a building and its accessory buildings or by a dwelling group and its accessory buildings, together with such open spaces as are required under the provisions of this chapter, having not less than the minimum area and width required by this chapter for a lot in the district in which such land is situated and having its principal frontage on a street or on such other means of access as may be determined in accordance with the provisions of state law to be adequate as a condition of the issuance of a building permit for a building on such land.

LOT, CORNER

A lot which has an interior angle of less than 135° at the intersection of two street lines. A lot abutting upon a curved street shall be considered a corner lot if the tangents to the curve at the points of intersection of the side lot lines intersect at an interior angle of less than 135°.

LOT COVERAGE

That percentage of the lot covered by the footprint of the principal and accessory building area.

LOT, DEPTH OF

The mean horizontal distance between the front and the rear lot lines, measured in the general directions of its side lot lines.

LOT, FLAG

A lot which has sufficient frontage on a public street to comply with the minimum lot frontage requirements of this chapter but which is shaped in such a manner that the portion of the lot closest to the street can only be used for access purposes and not as a yard or buildable area, and whose width some distance back from the right-of-way is sufficient to provide proper space to meet the yard and setback requirements.

LOT, HOUSE

In cluster subdivisions, that portion of the subdivision reserved as a development area for the location of dwelling units and constituting lands outside of the protected open space areas.

LOT, INTERIOR

A lot other than a corner lot.

LOT LINE

Any line dividing one lot from another.

LOT LINE, REAR

The lot line generally opposite to the street line; if the rear lot line is less than 10 feet in length or if the lot comes to a point in the rear, the rear lot line shall be deemed to be a line parallel to the front lot line not less than 10 feet wide lying farthest from the front lot line.

LOT, MOBILE HOME

The space that shall be assigned or used and occupied by any one mobile home.

LOT, NONCONFORMING

A plot of land which does not conform to the area, yard or bulk regulations of this chapter.

LOT, THROUGH

An interior lot having frontage on two parallel or approximately parallel streets but which is not a corner lot.

LOT WIDTH

The mean distance measured at the required minimum front yard depth along a line at right angles to the depth of lot line and parallel to the street right-of-way (ROW) line.

LUMINAIRE

A complete lighting unit, consisting of a lamp or lamps together with the parts designed to distribute the light, to position and protect the lamps and to connect the lamps to the power. When used, includes ballasts and photocells. Commonly referred to as "fixture."

LUMINAIRE, FULL CUTOFF

A luminaire that does not emit light at or above a horizontal plane running through the lowest point on the luminaire.

LUMINAIRE, NONCUTOFF

A luminaire that emits light above the horizontal plane running through the lowest point on the luminaire.

LUMINAIRE, SEMICUTOFF

A luminaire that does not allow light to escape above a sixty-five-degree angle measured from a vertical line from the center of the lamp extended to the ground.

MAIN FLOOR

The largest area formed by the projection of a horizontal plane through the livable floor area that is enclosed by the exterior walls of the building.

MANUFACTURING

Any process whereby the nature, size or shape of articles or raw materials is changed, or where articles are assembled or packaged in quantity.

MARINA

A. Any waterfront facility which provides accommodation services for vessels by engaging in any of the following:

(1) The sale of marina products or services.

(2) The sale, lease, rental or charter of two or more vessels of any type.

(3) The sale, lease, rental or any other provision of storage, wharf space or mooring, or launching for two or more vessels not registered to the owner of said facility, members of the owner's immediate family, or overnight guests on said property.

B. Any campground or travel trailer park that provides boats coincidentally with the rental of camping spaces or rental of parking spaces for automobiles shall be deemed to be a marina.

MEAN

A measure of central tendency. The mean of a set of numbers is the arithmetic average.

MEDIAN

When data is arranged in order of magnitude, the middle item (i.e., half above and half below) is the median. If the number of items is even, the median is the average of the two middle items.

MINING; MINERAL EXTRACTION

Use of land for the purpose of extracting and selling stone, sand, gravel, or other minerals, as defined in § 23-2705 of the Environmental Conservation Law, not including the process of preparing land for construction of a structure for which zoning approvals and a building permit have been issued.

MIXED-USE BUILDING

A principal structure in which are located a variety of uses, including residences, offices, retail, entertainment and recreation.

MIXED-USE DEVELOPMENT

Use of land and/or a building or structure for a variety of complementary and integrated uses, such as residential, office, retail, entertainment, and recreation.

MOBILE HOME

A dwelling unit manufactured in one or more sections, designed for long-term occupancy, containing sleeping accommodations, a flush toilet, a tub or shower, bath and kitchen facilities, with plumbing and electrical connections provided for attachment to outside systems, and designed to be transported after fabrication on its own permanent chassis and/or wheels to the site where it is to be occupied as a complete dwelling. A recreational vehicle is not included in this definition.

MOBILE HOME PARK

Any lot on which two or more mobile homes are located, subject to the provisions of Chapter 115, Trailers and Trailer Camps, of the Code of the Town of Bethlehem.

MOTEL

A building or group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units designed primarily for transient automobile travelers and providing for accessory off-street parking facilities. The term "motel" includes buildings designated as tourist courts, motor lodges, auto courts and similar appellations, but does not include boardinghouses.

MOTOR VEHICLE REPAIR SHOP

A building or portion of a building arranged, intended, or designed for making repairs to motor vehicles, their mechanical systems and their body structure, including painting, but excluding the sale of petroleum products.

MOTOR VEHICLE SALES

A building and/or area arranged, intended or designed to be used for the rental, lease, sale and/or resale of motor vehicles, new or used.

MOTOR VEHICLE SERVICE STATION

Any area of land, including structures thereon, that is used for the sale of gasoline or any other motor vehicle fuel and oil and other lubricating substances, including any sale of motor vehicle minor accessories, and which may or may not include facilities for lubricating or otherwise servicing motor vehicles, but not including the painting thereof by any means. A canopy over the fuel dispensing stations shall be considered to be part of the principal structure.

NATURAL MATERIALS

Any physical matter that is part of the earth.

NONCONFORMING BUILDING OR STRUCTURE

A building, structure or other improvement that does not conform to the area, yard or bulk regulations of this chapter.

NURSERY

A place where trees, shrubs, vines and/or flower and vegetable plants are grown and/or are offered for sale, to be transplanted onto the lands of the purchaser by the purchaser or by the nursery establishment itself.

NURSING, REST OR CONVALESCENT HOME

Any dwelling where persons are housed or lodged and furnished with meals and nursing care for hire.

OFFICE, BUSINESS

A place or establishment used for the organizational or administrative aspects of a trade or used in the conduct of a business and not involving the manufacture, storage, display or direct retail sale of goods. This may include, but is not limited to, offices of salesmen, sales representatives, insurance brokers, real estate brokers and persons with similar occupations.

OFFICE PARK

A lot or related lots designed as a master planned area for the transaction of business, for the rendering of professional services, or for other services that involve stocks of goods, wares or merchandise in limited quantities for use incidental to office uses or samples purposes. This may include such uses as an office building for business and professional services, including a lawyer, physician, dentist, architect, engineer, musician, teacher or other professional person, including real estate and insurance offices, banking and other financial businesses and similar purposes in connection with such use; clinics for outpatient care, as well as outpatient medical services, including but not limited to imaging and physical therapy; restaurant or cafeteria for supplying meals only to employees and guests for the principal use; and newsstand, post office, and branch banking facilities and similar conveniences serving primarily employees and guests of the principal use, provided that there shall be no external evidence of such use; and radio and television stations, but not including transmitting facilities or antennas.

OFFICE, PROFESSIONAL

An office devoted to a professional service occupation, in which knowledge in some department of science or learning is applied to the affairs of others, either advising or guiding them, or otherwise serving their interest or welfare through the practice of a profession founded on such knowledge.

OPEN SPACE

Land left in a natural state for conservation and agricultural purposes or land landscaped for scenic purposes, devoted to active or passive recreation, or devoted to the preservation of distinctive architectural, historic, geologic or botanic sites. The term shall not include land that is paved, used for the storage, parking or circulation of automobiles, or occupied by any structure. Open space may be included as a portion of one or more large lots or may be contained in a separate open space lot but shall not include private yards within 50 feet of a principal structure.

OPEN SPACE, USABLE

An unenclosed portion of the ground of a lot which is not devoted to driveways or parking spaces, which is free of structures of any kind, and which is available and accessible to all occupants of the building or buildings on said lot for purposes of active or passive outdoor recreation. Accessory building roof space may

be substituted for ground space, provided that such space is available and accessible to all said occupants by means of access other than stairs.

OVERLAY DISTRICT

A district, with supplementary regulations, which is superimposed upon existing use districts.

OWNER

The owner of record of a tract or parcel, the subdivision of which requires approval of the Planning Board, or a person or persons holding an option to purchase a tract or parcel, contingent only upon receipt of Planning Board approval of a proposed subdivision of such tract or parcel. The owner may be represented by a duly authorized agent or representative in the conduct of business before the Board, except in those instances specified hereafter that require the appearance of the owner in person.

PARENT PARCEL

A parcel of land legally in existence on the effective date of this chapter. For purposes of this chapter the parent parcel shall be deemed to be that lot, parcel or tract of land owned by the person or persons as shown on the records of the Town of Bethlehem Assessor's office as of the effective date of this chapter.

PARKING LOT, JOINT

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

[Added 10-8-2008 by L.L. No. 3-2008]

PARKING SPACE

An off-street space available for the parking of one motor vehicle, exclusive of passageways and driveways appurtenant thereto and giving access thereto, and having direct access to a street, driveway or alley.

PERFORMANCE STANDARDS

Measurable standards imposed under this chapter to ensure that a proposed use can operate or locate in a particular district without exceeding clearly defined standards of tolerance in areas such as noise, odor, smoke, lighting, glare, dust, vibration, and other potentially objectionable characteristics.

PLANNED DEVELOPMENT DISTRICT

A mixed-use development of land that is under unified control and is planned and developed as a whole in a single development operation or programmed series of development stages. The development may include streets, circulation ways, utilities, buildings, open spaces, and other site features and improvements, uses and structures that exceed the permitted scale, density, or intensity of use in the district, as well as uses not otherwise allowed by the underlying zoning.

PORCH

A roofed, screened or unscreened, veranda, stoop, deck, access ramp, steps or the like providing or having access to a principal structure.

PROCESSING

Any mechanical manipulation of excavated earth material, including blasted rock, including crushing, screening, blending, washing, and any procedure that changes the size of the particles or the particle size distribution or gradation from in situ characteristics, including that of blasted but unexcavated rock.

"Processing" also includes any mechanical combining or blending of earth materials from one or more sources in order to manufacture a product with certain specification requirements. "Processing" does not mean simply excavating and loading earth material directly into a transport vehicle.

PROPERTY

Any lot or parcel of land.

PUBLIC SEWER or PUBLIC WATER

Sewage disposal and water supply systems accepted by the Town Board as meeting the standards required for municipal operations.

REBUILT

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

[Added 10-8-2008 by L.L. No. 3-2008]

RESIDENTIAL CARE FACILITY

A residence for infirm children, adolescents or adults who require personal care, supervision and services, where compensation and/or reimbursement of costs is paid to an operator pursuant to state and/or federal standards, licensing requirements, or programs funding such services.

RESIDENTIAL LOT; RESIDENTIAL BUILDING PLOT

Any parcel of land of five acres or less, any point on the boundary line of which is less than 1/2 mile from any point on the boundary line of another such lot in the same tract, unless any such lot may not legally be used for residential purposes. Without limiting the generality of the foregoing, the term "residential" shall include temporary, seasonal and permanent residential use.

RESTAURANT

A building or portion thereof where food and/or beverages are sold in a form ready for consumption. As defined herein this shall also include, but is not limited to, a cafe, tavern, saloon, coffee bar, snack bar, pub, inn, bar, banquet hall or public house.

RETAIL USE; RETAIL BUSINESS, STORE OR SHOP

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

[Amended 10-8-2008 by L.L. No. 3-2008]

RIDING ACADEMY

Any establishment where horses are kept for riding, driving or stabling for compensation or incidental to the operation of any club, association, ranch or similar establishment.

RIGHT-OF-WAY

A strip of land acquired by reservation, dedication, prescription, or condemnation and intended to be occupied by a street, crosswalk, railroad, electrical transmission line, oil or gas pipeline, waterline, sanitary line, storm sewer line, or other similar uses and which exists for the purpose of allowing passage over the property of another.

SENIOR CITIZEN HOUSING

A form of housing as described at § 128-65 of this chapter where the dwelling units contained thereon are limited in their occupancy to elderly families.

SERVICE BUSINESS

An establishment primarily engaged in rendering services to businesses on a fee or contract basis, such as advertising and mailing, building maintenance, beauty shop, personal care services, unemployment service, office equipment rental and leasing, commercial research, development and testing, photo finishing and personal supply services.

SETBACK

The minimum horizontal distance from a property line to any structure, roadway, parking area, accessory building or other such improvement on a lot, except driveways.

SHOPPING CENTER; SHOPPING MALL

A group of commercial establishments planned, constructed or managed as a single entity, with customer and employee parking provided on site, provision for goods delivery separated from customer access, aesthetic considerations and protection from the elements, and landscaping and signage in accordance with an approved plan.

SIGN

A use of land, structure or material for the purpose of conveying information, as a name, direction, warning, or advertisement, that is prominently displayed for public view and that consists of letters or symbols formed, inscribed or mounted on wood, metal, masonry or any other material. The term "sign" shall be limited to those signs that are visible to the public from a street, walkway or neighboring property, that are displayed indoors or outdoors, and shall include the following types of signs:

A. **AWNING SIGN** — Any visual message incorporated into an awning attached to a building.

B. **FREESTANDING SIGN** — Any sign not attached to or part of any building but separate and permanently affixed by any other means in or upon the ground. Included are pole signs, pylon signs and masonry wall-type signs.

C. **ILLUMINATED SIGN** — Any sign illuminated by electricity, gas or other artificial light, either from the interior or exterior of a sign, and includes reflective and phosphorescent light.

D. **PORTABLE SIGN** — A sign, whether on its own trailer, wheels or otherwise, designed to be movable and not structurally attached to the ground, a building, a structure or another sign, including sidewalk signs.

E. **PROJECTING SIGN** — A sign which is attached to the building wall or structure and which extends horizontally more than nine inches from the plane of such wall, or a sign which is perpendicular to the face of such wall or structure.

F. **WALL SIGN** — A sign which is painted on or attached to the outside wall of a building with the face of the sign in the plane parallel to such wall and not extending more than nine inches from the face of such wall.

G. **WINDOW SIGN** — A sign visible from a sidewalk, street or other public place, painted or affixed on glass or other window material or located inside within four feet of window, but not including graphics in connection with customary window display of products.

SIGN SURFACE AREA

The entire area within a single, continuous perimeter enclosing all elements of the sign that form an integral part of the display. The structure supporting a sign shall be excluded unless the structure is designed in a way to form an integral background for the display. Both faces of a double-faced sign shall be included as surface or area of such a sign.

SITE PLAN

A rendering, drawing, or sketch prepared in accordance with the specifications of this chapter and which shows the arrangement, layout and design of a proposed use of a single parcel of land as shown on said plan.

SLOPE OF SITE, MEANS OF MEASURING

The vertical distance, in feet, between the highest elevation of a lot or development and the lowest elevation of a lot or development, divided by the horizontal difference between these two elevations, in feet, said horizontal distance ordinarily to be the natural course of stormwater runoff. Should the site be sufficiently large in the judgment of the Planning Board and heterogeneous in character (difference of one or more slope factors), the site may be divided into different measurement units, with a gradient defined for each.

SPECIAL USE

A land use which is deemed permissible within a given zoning district or districts but which may have the potential to exhibit characteristics or create impacts incompatible with the purposes of such district. The special use shall, therefore, be subject to approval by the Planning Board in accordance with conditions set forth for such use, as well as other applicable provisions of this chapter. Both general and specific conditions have been established for special uses to ensure that such use is in harmony with this chapter and the Town of Bethlehem Comprehensive Plan and will not adversely affect the neighborhood if the requirements are met.

STEEP SLOPES

All ground areas having a topographical gradient equal to or greater than 20% measured by utilizing two-foot contours.

STORAGE

The holding or safekeeping of goods in a warehouse or other depository to await the happening of some future event or contingency that will call for the removal of the goods.

STORAGE, BULK

The accumulation of wholesale quantities of raw or finished materials (solids, liquids and gases) preparatory to use in a manufacturing process or to retail sales, a permanent reserve being maintained. Junk and scrap materials do not qualify for inclusion in this category.

STORAGE, COLD

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

[Added 10-8-2008 by L.L. No. 3-2008]

STORY

That portion of a building included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, the space between any floor and the ceiling next above it.

STORY ABOVE GRADE

Any story having its finished floor surface entirely above grade, except that a basement shall be considered a story above grade where the finished surface of the floor above the basement is:

A. More than six feet above grade plane;

B. More than six feet above the finished ground level for more than 50% of the total building perimeter; or

C. More than 12 feet above the finished ground level at any point.

STORY, HEIGHT OF

The vertical distance from the top surface of the floor to the top surface of the floor next above. The height of the topmost story is the distance from the top surface of the floor to the top surface of the ceiling joists.

STREET

A strip of land, including the entire right-of-way, publicly or privately owned, serving primarily as a means of vehicular, pedestrian and bicycle travel, and furnishing access to abutting properties, which may also be used to provide space for sewers, public utilities, shade trees, sidewalks, and streetscape amenities.

STREET GRADE

The officially established grade of the street upon which a lot fronts. If there is no officially established grade, the existing grade of the street shall be taken as the street grade.

STREET LINE

The dividing line between the street and the lot.

STREET, PAPER

A street that has never been built but is shown on an approved plan, subdivision plat, tax map, or the Official Map of the Town of Bethlehem.

STRUCTURE

Anything constructed or erected, the use of which requires location on, in or under the ground or attachment to something having location on the ground.

SUBDIVISION, MAJOR

Any subdivision not classified as a minor subdivision, including but not limited to subdivisions of five or more lots, or any size subdivision requiring any new street or road or the extension of municipal facilities.

SUBDIVISION, MINOR

A. Any subdivision of a parent parcel into four or fewer lots within a ten-year period, where all such developable lots or parcels:

- (1) Front on an existing public street;
- (2) Do not adversely affect the development of the remainder of the parcel or adjoining property; and
- (3) Comply with all the area requirements set forth in this chapter.

B. The ten-year period shall commence running upon the final approval of the first application to divide the parent parcel.

C. Public acquisition by purchase of strips of land for the widening or opening of streets shall not be included within this definition nor subject to these regulations.

D. A minor subdivision shall also include the division of land to allow the transfer of property between adjacent parcels, provided that nonconforming lots or parcels are not created and no existing degree of nonconformity is increased.

SUBMISSION, COMPLETE

A submission that includes the following:

- A. A completed application form together with all information concerning a proposed project in the format as specified by the applicable provisions of this chapter.
- B. All application fees required by this chapter and the professional review fee escrow deposit, if any, required by the reviewing agency.
- C. An environmental assessment form (EAF) or draft environmental impact statement (DEIS) assessing the potential environmental impacts of the proposed project.

SWIMMING POOL

Any artificial pool or structure intended for bathing or swimming purposes made of concrete, masonry, metal, vinyl, plastic, or other impervious material over 24 inches in depth.

TELECOMMUNICATIONS FACILITIES

Personal wireless radio telecommunication facilities using an automated high-capacity system with two or more multichannel fixed base stations arranged as part of an integrated cellular system providing radio telecommunication from the fixed (immobile) base stations to mobile stations. Such personal wireless radio telecommunication facilities employ low-power transmitting and receiving and automatic handoff between base stations of communications in progress to enable channels to be reused at short distances for the purposes of voice, data or paging transmissions. Cellular systems may also employ digital techniques such as voice encoding and decoding, data compression, error correction and time or code division multiple access in order to increase system capacities. Personal wireless radio telecommunication facilities ("PWRT facilities") shall include cellular services, personal communication services (PCS), specialized mobile radio services, and paging services.

THEATER, INDOOR

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

[Amended 10-8-2008 by L.L. No. 3-2008]

THEATER, OUTDOOR

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

[Added 10-8-2008 by L.L. No. 3-2008]

THEATER, OUTDOOR DRIVE-IN

An open lot or part thereof, with its appurtenant facilities, devoted primarily to the showing of moving pictures or theatrical products, on a paid-admission basis, to patrons seated in automobiles or on outdoor seats.

TRACT

Any body of land, including contiguous parcels of land, under single ownership or under common control of any group of persons acting in concert as part of a common scheme or plan.

TRAILER, CAMPING

A folding structure mounted on wheels and designed for travel, recreation and vacation use.

TRAILER, OFFICE

A vehicular, portable structure, built on a chassis, designed as a temporary facility for such uses as banking, on-site construction supervision, and other office or clerical uses.

TRAILER, TRAVEL

A vehicular, portable structure, built on a chassis, designed as a temporary single-family dwelling for travel, recreation and vacation, having a body length not exceeding 40 feet.

TRANSPORTATION TERMINAL

Any premises used for the garaging or parking of public transportation vehicles and the loading and unloading of passengers.

TRUCK TERMINAL

The use of land for trucking operations where there are dock facilities, either partially or wholly enclosed, for the purpose of transferring goods for assembly or disassembly or loading onto tractor-trailers for transport to other locations. Warehouses and similar facilities for the deposit, storage and safekeeping of goods shall not be deemed to be truck terminals.

UNCONSTRAINED LAND

Land area that does not contain constrained land as defined in this chapter.

[Added 10-8-2008 by L.L. No. 3-2008]

USE

The specific purpose for which land or a building is designed, arranged, or intended or for which it is or may be occupied or maintained. The term "permitted use" or its equivalent shall not be deemed to include any nonconforming use.

USE, ACCESSORY

A use customarily incidental and subordinate to the principal use of a building and located on the same lot with such principal use of a building. Except for uses accessory to a dwelling unit, any use that is accessory

to a special permit use shall also be a special permit use. Any use that is accessory to a permitted use shall also be a permitted use.

USE, DE MINIMIS

A use of land or structure that is not outwardly apparent to an off-site viewer so as to call attention to its existence.

USE, NONCONFORMING

The lawful occupancy of a structure or land by a use or activity which was lawful at the time of enactment of this chapter or its predecessor ordinances and laws or any amendment to this chapter but which does not conform to the regulations of the district or zone in which it is situated.

USE, PRINCIPAL

The main or primary use of the lot. Except for designated mixed uses and multiple retail uses within a shopping center, only one principal use is permitted per lot, all other uses, except special uses and permitted accessory uses, being excluded.

WAREHOUSE

A building or part of a building for storing of goods, wares and merchandise, whether for the owner or for others, and whether it is a public or private warehouse, including self-storage units.

WAY

A street or alley or other thoroughfare or easement permanently established for passage of persons or vehicles.

WELLNESS CENTER

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

[Added 10-8-2008 by L.L. No. 3-2008]

YARD

An unoccupied space, open to the sky, on the same lot with a building or structure.

YARD, FRONT

A space on the same lot with a main building, extending the full width of the lot and situated between the street line and the front line of the building projected to the side lines of the lot. The depth of the front yard shall be measured between the front line of the building and the street line. Covered porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required front yard.

YARD, REAR

A space on the same lot with a main building, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot. The depth of the rear yard shall be measured between the rear line of the lot or the center line of the alley, if there is an alley, and the rear line of the building.

YARD, SIDE

A space on the same lot with a main building, situated between the side line of the building and the adjacent side line of the lot and extending from the rear line of the front yard to the front line of the rear yard. If no front yard is required, the front boundary of the side yard shall be the front line of the lot, and if no rear yard is required, the rear boundary of the side yard shall be the rear line of the lot.

§ 128-23. (Reserved)

ARTICLE V. District Regulations

§ 128-24. District purposes.

A. Rural District. Areas of the Town designated under this district are characterized by working landscapes. Traditionally, these areas have been places where resource-based economic activities have flourished. Rural areas typically have less demand for public services, and, outside of the hamlets, agriculture and forestry have been the primary uses. With its remaining agricultural businesses, undeveloped lands, and natural resources, this portion of the community stands in contrast to the more developed areas of the Town. Its rural character is highly

valued by those that live in these areas and it also contributes to the overall quality of life of the Town. The purpose of this district is to encourage a variety of uses, including agriculture, forestry, mining, small-scale commercial and light industrial activity, and development using traditional farmstead designs where appropriate.

B. Residential Large Lot District. Areas of the Town designated under this district are characterized by semirural, large lots having a minimum size of two acres, often located between lightly developed rural and natural areas and more intensively developed residential areas. The areas will often have environmental constraints or attributes that support less intensive development.

C. Residential "A" and "B" Districts. Areas of the Town designated under these districts are characterized by traditional suburban residential development, including developed single-family dwellings, as well as undeveloped residential building lots. These areas also include active agricultural lands facing immediate growth pressures to convert to nonagricultural uses. The purpose of these districts is to protect the residential viability of established residential settlements.

D. Residential "C" District. Areas of the Town designated under this district are characterized as being located near land appropriate for or zoned for moderately dense residential development, including single-family, two-family, and three- and four-family dwellings, as well as undeveloped residential building lots and commercial development. The purpose of this district is to encourage diversity in residential development and to encourage the use of conservation subdivision design to preserve open space and viable agricultural lands.

E. Core Residential District. Areas of the Town designated under this district are generally mature residential neighborhoods. The purpose of this district is to ensure that the general character of these neighborhoods, which include tree-lined streets, sidewalks, smaller lot sizes, moderately sized homes, interconnected street patterns, and a location near some small-scale services, is protected from pressures to convert residential structures to inappropriately sized nonresidential uses.

F. Multifamily District. Areas of the Town designated under this district are those in which multifamily development currently exists or where such uses are encouraged. These areas are served by municipal sewage treatment and water supply facilities that permit a high density of residential development. The purpose of this district is to protect the existing high-density residential character from encroachment by inappropriate nonresidential development.

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

H. Hamlet District. Areas of the Town designated under this district are typically the original settlement areas along major corridors and at crossroads and contain small-scale businesses and essential services in close proximity to residences. Very often the first floors of buildings in the hamlet districts are in commercial use with the upper floors in residential use. The hamlets are defined by pedestrian-friendly access along street fronts and alleyways, with on-street parking and loading. The purpose of these districts is to encourage compact, mixed-use commercial and residential development or redevelopment in identified neighborhood commercial centers and hamlet centers throughout the Town. Appropriately scaled mixed-use developments with pedestrian connections to adjacent neighborhoods are critical to the success of such centers.

I. Commercial Hamlet District. Areas of the Town designated under this district are typically original settlement areas along major corridors that contain medium-scale businesses and essential services in close proximity to residential neighborhoods. The commercial hamlets tend to be more oriented to vehicular rather than pedestrian access and are less likely to have mixed-use commercial and residential buildings. The adaptive reuse of residential buildings as commercial uses is a common feature of this district. The near proximity to traditional residential neighborhoods distinguishes this district from the General Commercial District. The purpose of this district is to encourage compact commercial development in neighborhood commercial centers throughout the Town.

J. Rural Hamlet District. Areas of the Town designated under this district are typically original settlement areas along major corridors that contain small-scale businesses and essential services in close proximity to rural and moderately developed lands. The rural hamlets tend to be more oriented to vehicular rather than pedestrian access and are less likely to have mixed-use commercial and residential buildings. Rural hamlet districts tend to

be adjacent to rural lands and active agricultural uses. The purpose of this district is to encourage compact commercial and residential development in rural neighborhoods throughout the Town.

K. General Commercial District. Areas of the Town designated under this district are those that contain commercial and nonresidential services and businesses. The purpose of these districts is to encourage the development of a variety of small-scale and large-scale commercial retail and service businesses for the community, including shopping malls.

L. Mixed Economic Development District. Areas of the Town designated under this district are those with good highway access and which do not presently contain significant agricultural uses. The purpose of this district is to encourage the treatment of individual lots as part of an integrated plan for development of planned office, industry, service, small-scale retail, and technology-based businesses. Residential uses may be permitted as accessory to the nonresidential business development.

M. Heavy Industrial and Rural Light Industrial Districts. Areas of the Town designated under these districts are those with good highway access and which are deemed appropriate for light and heavy industrial uses. Portions of these areas presently include some limited residential uses, although the dominant uses are manufacturing, assembly, processing and transportation related. The purpose of these districts is to encourage the development of light and heavy industrial uses that require trucking or rail transportation to move goods and materials.

N. Planned Development Districts (PDD). Areas of the Town designated under this district are those approved for residential use pursuant to special legislation adopted by the Town Board. A PDD is a planned development implemented according to a comprehensive plan. It is typically under unified control and is planned and developed as a whole in a single development operation or a programmed series of development operations or phases. The nonresidential uses within a PDD are typically neighborhood-scale businesses, parks, community buildings, day-care centers, schools and churches. If the development is phased, mixed uses may be included in each phase of the development to ensure that each phase represents the desired balance of residential and nonresidential uses.

§ 128-25. Rural District.

A. Minimum lot area, yard, setback and height requirements. See Schedule of Area, Yard and Bulk Requirements, § 128-100.

B. Principal uses. See Schedule of Uses, § 128-99.

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

(1) Location. No accessory building shall be located within the minimum required front yard setback. Notwithstanding, a farm stand for the sale of agricultural products may be located within a front yard setback. An accessory building may be located within the required side yard or rear yard setback, provided that such accessory building shall be set back not less than five feet from any lot line. For corner lots, a structure accessory to a single-family or a two-family residential use may be located in a front yard, opposite the side yard as determined by the Building Inspector, and shall have a minimum setback of not less than 20 feet from the front property line.

(2) Height. An accessory building shall not exceed 25 feet in height. Agricultural use buildings may exceed the height regulations applicable to nonagricultural use buildings. See § 128-10, Exceptions, of this chapter.

(3) Maximum coverage. The total lot coverage of all accessory structures shall not exceed 5% of the total lot area.

D. Specific regulations for the district.

(1) Land divisions pursuant to § 103-20 of the Town Subdivision Regulations are permitted.

(2) Nonagricultural and nonresidential uses may be established in one or more structures, not to exceed a total of 4,000 square feet on a single lot, by right. Agricultural uses are exempt from this size limitation.

(3) Notwithstanding the provisions of the preceding Subsection D(2), site plan review shall be required for all nonagricultural and nonresidential by-right uses proposed for property located within 100 feet of a residential district.

(4) Nonagricultural and nonresidential uses proposed for property abutting a residential district shall include a fifty-foot landscaped buffer between the proposed improvements and the residential district. The landscaped buffer shall be in addition to any other setback requirement for the lot and shall be planted with a mixture of evergreen and deciduous plantings.

(5) The minimum lot size and maximum density unit for a minor subdivision or a land division pursuant to Chapter 103, Subdivision Regulations, are not prescribed in § 128-100 of this chapter; however, the minimum size of any lot shall be the minimum required to provide the separation distances and meet the design standards where on-site water supply and sewage disposal systems are required by the County of Albany Department of Health.

(6) All streets shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.

(7) For uses involving an adaptive reuse conversion of a residential structure to nonresidential use, the following shall apply:

(a) The alteration or expansion of an existing building shall not cause the total building size (post construction) to exceed 30% of the total lot area.

(b) The lot shall derive access from a state or county highway and shall be located within 1,000 feet of one of the following intersections:

[1] Bridge Street and South Albany Road.

[2] Maple Avenue and Route 9W.

[3] Route 9W and Corning Hill Road.

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

E. Design guidelines. The following guidelines shall be considered by the Planning Board in the site plan and subdivision review of any new development project involving undeveloped land in the Rural District. The Planning Board shall use its discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(1) Where practicable, encourage the use of farmstead design for new large-scale residential projects.

(2) Encourage the integration of new subdivisions within the existing neighborhoods.

(3) Where practicable, provide for and encourage open space, recreational and agricultural uses.

(4) Encourage the use of conservation subdivision design and the provision of adequate water supply, sewage disposal and transportation infrastructure.

(5) Existing tree rows and hedgerows, stone walls, and similar features should be retained in the development of any new use or the expansion of any existing use.

(6) The number of off-street parking spaces provided should be the minimum necessary to adequately serve the intended use.

(7) Off-street parking lots and loading areas, accessory use structures or storage other than sheds should be screened from adjacent properties by landscaping or fencing.

(8) New buildings adjacent to historic structures and historic districts should be designed in a manner consistent with the general architectural features of such historic features in terms of form, materials, fenestration, and roof shape.

(9) New streets should be designed with rural characteristics, including minimal tree clearing, minimal grading and filling of existing topography, and usage of natural drainage where practicable.

(10) Major modifications to the existing landscape, such as extensive grading, clear-cutting of trees, or other similar activities, should be avoided.

§ 128-26. Residential Large Lot District.

A. Minimum lot area, yard, setback and height requirements. See Schedule of Area, Yard and Bulk Requirements, § 128-100.

B. Principal uses. See Schedule of Uses, § 128-99.

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

(1) Location. No accessory building shall be located within the minimum required front yard setback. Notwithstanding, a farm stand for the sale of agricultural products may be located within a front yard setback. An accessory building may be located within the required side yard or rear yard setback, provided that such accessory building shall be set back not less than five feet from any lot line. For corner lots, a structure accessory to a single-family use may be located in a front yard, opposite the side yard as determined by the Building Inspector, and shall have a minimum setback of not less than 20 feet from the front property line.

(2) Height. An accessory building shall not exceed 25 feet in height. Agricultural use buildings may exceed the height regulations applicable to nonagricultural use buildings. See § 128-10, Exceptions, of this chapter.

(3) Maximum coverage. The total lot coverage of all accessory structures shall not exceed 5% of the total lot area.

D. Specific regulations for the district.

(1) Land divisions pursuant to § 103-20 of the Town Subdivision Regulations are permitted.

(2) Nonagricultural and nonresidential uses proposed for property abutting a residential district shall include a fifty-foot landscaped buffer between the proposed improvements and the residential district. The landscaped buffer shall be in addition to any other setback requirement for the lot and shall be planted with a mixture of evergreen and deciduous plantings.

(3) All streets shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.

E. Design guidelines. The following guidelines shall be considered by the Planning Board in the site plan and subdivision review of any new development project involving undeveloped land in the Residential Large Lot

District. The Planning Board shall use its discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

- (1) Encourage the integration of new subdivisions within the existing neighborhoods.
- (2) Where practicable, provide for and encourage open space, recreational and agricultural uses.
- (3) Encourage the use of conservation subdivision design and the provision of adequate water supply, sewage disposal and transportation infrastructure.
- (4) Existing tree rows and hedgerows, stone walls, and similar features should be retained in the development of any new use or the expansion of any existing use.
- (5) The number of off-street parking spaces provided should be the minimum necessary to adequately serve the intended use.
- (6) Off-street parking lots and loading areas, accessory use structures or storage other than sheds should be screened from adjacent properties by landscaping or fencing.
- (7) New buildings adjacent to historic structures and historic districts should be designed in a manner consistent with the general architectural features of such historic features in terms of form, materials, fenestration, and roof shape.
- (8) New streets should be designed with rural characteristics, including minimal tree clearing, minimal grading and filling of existing topography, and usage of natural drainage where practicable.
- (9) Major modifications to the existing landscape, such as extensive grading, clear-cutting of trees, or other similar activities, should be avoided.

§ 128-27. Residential "A" District.

A. Minimum lot area, yard, setback and height requirements. See Schedule of Area, Yard and Bulk Requirements, § 128-100.

B. Principal uses. See Schedule of Uses, § 128-99.

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

(1) Location. An accessory building shall not be located in a front yard. For corner lots, a structure accessory to a single-family residential use may be located in a front yard, opposite the side yard as determined by the Building Inspector, and shall have a minimum setback of not less than 20 feet from the front property line. An accessory building may be located within the required side yard or rear yard setback, provided that such accessory building shall be set back not less than five feet from any side or rear lot line and shall be located not less than three feet from the principal building unless fire rated as per applicable New York State Building Codes.

[Amended 10-8-2008 by L.L. No. 3-2008]

(2) Height. An accessory building shall not exceed 18 feet in height. See § 128-10, Exceptions, of this chapter.

(3) Maximum coverage. The total lot coverage of all accessory structures shall not exceed 5% of the total lot area.

D. Specific regulations for the district.

(1) Land divisions pursuant to § 103-20 of the Town Subdivision Regulations are permitted.

(2) For uses involving the adaptive reuse conversion of a residential structure to nonresidential use, the following shall apply:

(a) The alteration or expansion of an existing building shall not cause the total building size (post construction) to exceed 15% of the total lot area.

(b) The lot shall derive access from a state or county highway and shall be located within 1,000 feet of one of the following intersections:

[1] Maple Avenue and Route 9W.

[2] Creble Road and Old School Road.

[3] Delaware Avenue and Elm Avenue.

[4] Route 9W and Corning Hill Road.

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

(3) Residential uses proposed for previously undeveloped property abutting a Rural, General Commercial, Rural Light Industrial, or Heavy Industrial District shall include a fifty-foot landscaped buffer set back from the adjoining district. The landscaped buffer shall be in addition to any other setback requirement for the lot and shall be planted with a mixture of evergreen and deciduous plantings. The Planning Board shall use its discretion to establish appropriate landscape buffer setbacks for redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(4) All streets shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.

E. Design guidelines. The following guidelines shall be considered by the Planning Board in the site plan and subdivision review of any new development project involving undeveloped land in the Residential "A" District. The Planning Board shall use its discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(1) Encourage the installation of sidewalks.

(2) Encourage the integration of new subdivisions within the existing neighborhoods.

(3) The adaptive reuse of structures should be encouraged in such a way so as to complement the character of the existing neighborhood.

(4) The development of public parks, athletic facilities, educational amenities and other low-density uses that require large acreage should be encouraged.

(5) Existing tree rows and hedgerows, stone walls, and similar features should be retained as much as possible in the development of any new use or the expansion of any existing use.

(6) The number of off-street parking spaces provided should be the minimum necessary to adequately serve the intended use.

(7) On-street parking should be discouraged with nonresidential uses.

(8) Off-street parking lots and loading areas, accessory use structures or storage other than sheds should be screened from walkways and streets utilizing appropriate vegetation and/or fencing.

(9) Where practicable, new buildings adjacent to existing structures should be designed in a manner consistent with the general architectural features of such existing structures in terms of form, materials, and fenestration and roof shape.

(10) New or in-fill buildings should be located in line with existing buildings to maintain the integrity of the existing building setback line of the street.

(11) Major modifications to the existing landscape, such as extensive grading, clear-cutting of trees, or other similar activities, should be avoided to the extent possible.

§ 128-28. Residential "B" District.

A. Minimum lot area, yard, setback and height requirements. See Schedule of Area, Yard and Bulk Requirements, § 128-100.

B. Principal uses. See Schedule of Uses, § 128-99.

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

(1) Location. An accessory building shall not be located in a front yard. For corner lots, a structure accessory to a single-family residential use may be located in a front yard, opposite the side yard as determined by the Building Inspector, and shall have a minimum setback of not less than 20 feet from the front property line. An accessory building may be located within the required side yard or rear yard setback, provided that such accessory building shall be set back not less than five feet from any side or rear lot line and shall be located not less than three feet from the principal building unless fire rated as per applicable New York State Building Codes.

[Amended 10-8-2008 by L.L. No. 3-2008]

(2) Height. An accessory building shall not exceed 18 feet in height. See § 128-10, Exceptions, of this chapter.

(3) Maximum coverage. The total lot coverage of all accessory structures shall not exceed 5% of the total lot area.

D. Specific regulations for the district:

(1) Land divisions pursuant to § 103-20 of the Town Subdivision Regulations are permitted.

(2) Residential uses proposed for previously undeveloped property abutting a Rural, General Commercial, Rural Light Industrial, or Heavy Industrial District shall include a fifty-foot landscaped buffer set back from the adjoining district. The landscaped buffer shall be in addition to any other setback requirement for the lot and shall be planted with a mixture of evergreen and deciduous plantings. The Planning Board shall use its discretion to establish appropriate landscaped buffer setbacks for redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(3) All streets shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.

E. Design guidelines. The following guidelines shall be considered by the Planning Board in the site plan and subdivision review of any new development project involving undeveloped land in the Residential "B" District. The Planning Board shall use its discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

- (1) Encourage the installation of sidewalks.
- (2) Encourage the integration of new subdivisions within the existing neighborhoods.
- (3) The adaptive reuse of structures should be encouraged in such a way so as to complement the character of the existing neighborhood.
- (4) The development of public parks, athletic facilities, educational amenities and other low-density uses that require large acreage should be encouraged.
- (5) Existing tree rows and hedgerows, stone walls, and similar features should be retained as much as possible in the development of any new use or the expansion of any existing use.
- (6) The number of off-street parking spaces provided should be the minimum necessary to adequately serve the intended use.
- (7) On-street parking should be discouraged with nonresidential uses.
- (8) Off-street parking lots and loading areas, accessory use structures or storage other than sheds should be screened from walkways and streets utilizing appropriate vegetation and/or fencing.
- (9) Where practicable, new buildings adjacent to existing structures should be designed in a manner consistent with the general architectural features of such existing structures in terms of form, materials, and fenestration and roof shape.
- (10) New or in-fill buildings should be located in line with existing buildings to maintain the integrity of the existing building setback line of the street.
- (11) Major modifications to the existing landscape, such as extensive grading, clear-cutting of trees, or other similar activities, should be avoided to the extent possible.

§ 128-29. Residential "C" District.

A. Minimum lot area, yard, setback and height requirements. See Schedule of Area, Yard and Bulk Requirements, § 128-100.

B. Principal uses. See Schedule of Uses, § 128-99.

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

(1) Location. An accessory building shall not be located in a front yard. For corner lots, a structure accessory to a single-family or a two-family residential use may be located in a front yard, opposite the side yard as determined by the Building Inspector, and shall have a minimum setback of not less than 20 feet from the front property line. An accessory building may be located within the required side yard or rear yard setback, provided that such accessory building shall be set back not less than five feet from any side or rear lot line and shall be located not less than three feet from the principal building unless fire rated as per applicable New York State Building Codes.

[Amended 10-8-2008 by L.L. No. 3-2008]

(2) Height. An accessory building shall not exceed 18 feet in height. See § 128-10, Exceptions, of this chapter.

(3) Maximum coverage. The total lot coverage of all accessory structures shall not exceed 5% of the total lot area.

D. Specific regulations for the district.

(1) Land divisions pursuant to § 103-20 of the Town Subdivision Regulations are permitted.

(2) Residential uses proposed for previously undeveloped property abutting a Rural, General Commercial, Rural Light Industrial, or Heavy Industrial District shall include a fifty-foot landscaped buffer set back from the adjoining district. The landscaped buffer shall be in addition to any other setback requirement for the lot and shall be planted with a mixture of evergreen and deciduous plantings. The Planning Board shall use its discretion to establish appropriate landscaped buffer setbacks for redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(3) All streets shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.

E. Design guidelines. The following guidelines shall be considered by the Planning Board in the site plan and subdivision review of any new development project involving undeveloped land in the Residential "C" District. The Planning Board shall use its discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(1) Encourage the installation of sidewalks.

(2) Encourage the integration of new subdivisions within the existing neighborhoods.

(3) The adaptive reuse of structures should be encouraged in such a way so as to complement the character of the existing neighborhood.

(4) The development of public parks, athletic facilities, educational amenities and other low-density uses that require large acreage should be encouraged.

(5) Existing tree rows and hedgerows, stone walls, and similar features should be retained as much as possible in the development of any new use or the expansion of any existing use.

(6) The number of off-street parking spaces provided should be the minimum necessary to adequately serve the intended use.

(7) On-street parking should be discouraged with nonresidential uses.

(8) Off-street parking lots and loading areas, accessory use structures or storage other than sheds should be screened from walkways and streets utilizing appropriate vegetation and/or fencing.

(9) Where practicable, new buildings adjacent to existing structures should be designed in a manner consistent with the general architectural features of such existing structures in terms of form, materials, and fenestration and roof shape.

(10) New or in-fill buildings should be located in line with existing buildings to maintain the integrity of the existing building setback line of the street.

(11) Major modifications to the existing landscape, such as extensive grading, clear-cutting of trees, or other similar activities, should be avoided to the extent possible.

§ 128-30. Core Residential District.

A. Minimum lot area, yard, setback and height requirements. See Schedule of Area, Yard and Bulk Requirements, § 128-100.

B. Principal uses. See Schedule of Uses, § 128-99.

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

(1) Location. An accessory building shall not be located in a front yard. For corner lots, a structure accessory to a single-family residential use may be located in a front yard, opposite the side yard as determined by the Building Inspector, and shall have a minimum setback of not less than 20 feet from the front property line. An accessory building may be located within the required side yard or rear yard setback, provided that such accessory building shall be set back not less than five feet from any side or rear lot line and shall be located not less than three feet from the principal building unless fire rated as per applicable New York State Building Codes.

[Amended 10-8-2008 by L.L. No. 3-2008]

(2) Height. An accessory building shall not exceed 18 feet in height. See § 128-10, Exceptions, of this chapter.

(3) Maximum coverage. The total lot coverage of all accessory structures shall not exceed 5% of the total lot area.

D. Specific regulations for the district.

(1) Land divisions pursuant to § 103-20 of the Town Subdivision Regulations are permitted.

(2) For uses involving the adaptive reuse conversion of a residential structure to nonresidential use, the following shall apply:

(a) The alteration or expansion of an existing building shall not cause the total building size (post construction) to exceed 15% of the total lot area.

(b) The lot shall derive access from a state or county highway and shall be located within 1,000 feet of one of the following intersections:

[1] Delaware Avenue and Elm Avenue.

[2] Delaware Avenue and Kenwood Avenue.

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

(3) Residential uses proposed for previously undeveloped property abutting a Rural, General Commercial, Rural Light Industrial, or Heavy Industrial District shall include a fifty-foot landscaped buffer set back from the adjoining district. The landscaped buffer shall be in addition to any other setback requirement for the lot and shall be planted with a mixture of evergreen and deciduous plantings. The Planning Board shall use its discretion to establish appropriate landscaped buffer setbacks for redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(4) All streets shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.

E. Design guidelines. The following guidelines shall be considered by the Planning Board in the site plan and subdivision review of any new development project involving undeveloped land in the Core Residential District. The Planning Board shall use its discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(1) Encourage the installation of sidewalks.

(2) Encourage the integration of new subdivisions within the existing neighborhoods.

(3) The adaptive reuse of structures should be encouraged in such a way so as to complement the character of the existing neighborhood while avoiding the demolition of viable structures.

(4) Existing tree rows and hedgerows, stone walls, and similar features should be retained as much as possible in the development of any new use or the expansion of any existing use.

(5) The number of off-street parking spaces provided should be the minimum necessary to adequately serve the intended use.

(6) Off-street parking lots and loading areas, accessory use structures or storage other than sheds should be screened from walkways, adjoining residences, and streets utilizing appropriate vegetation and/or fencing.

(7) Where practicable, new buildings adjacent to existing structures should be designed in a manner consistent with the general architectural features of such existing structures in terms of form, materials, and fenestration and roof shape.

(8) New or in-fill buildings should be located in line with existing buildings to maintain the integrity of the existing building setback line of the street.

(9) Major modifications to the existing landscape, such as extensive grading, clear-cutting of trees, or other similar activities, should be avoided to the extent possible.

§ 128-31. Multifamily District.

A. Minimum lot area, yard, setback and height requirements. See Schedule of Area, Yard and Bulk Requirements, § 128-100.

B. Principal uses. See Schedule of Uses, § 128-99.

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

(1) Location. An accessory building shall not be located in a front yard. An accessory building may be located within the required side yard or rear yard setback, provided that such accessory building shall be set back not less than five feet from any lot line.

(2) Height. An accessory building shall not exceed 18 feet in height. See § 128-10, Exceptions, of this chapter.

(3) Maximum coverage. The total lot coverage of all accessory structures shall not exceed 5% of the total lot area.

D. Specific regulations for the district.

(1) Where private central water and sanitary sewer systems are required, they shall be designed and constructed to accommodate at least 120% of the population to be served. Each such private central water or sanitary sewer system shall be connected to a municipal system when such service becomes available within 500 feet of any lot served by such system, as measured along a street providing frontage for such lot, where

the capacity is available and such connection is permitted and approved by the district to which the connection is to be made.

(2) All streets shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.

E. Design guidelines. The following guidelines shall be considered by the Planning Board in the site plan and subdivision review of any new development project involving undeveloped land in the Multifamily District. The Planning Board shall use its discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(1) Encourage the installation of sidewalks.

(2) Off-street parking should be located at the side or rear of buildings.

(3) The incorporation of small, landscaped front yards is encouraged.

(4) The construction of any blank, windowless facade facing a corridor that provides frontage for the lot on which the building is located should be avoided.

(5) The primary entrances to any building should be oriented to the lot frontage.

(6) The number of off-street parking spaces provided should be the minimum necessary to adequately serve the intended use.

(7) Cross-easements should be used to provide shared access to parking whenever possible.

(8) Off-street parking lot and loading areas, accessory use structures or storage other than sheds should be screened from walkways and streets utilizing appropriate vegetation and/or fencing.

§ 128-32. Rural Riverfront District.

A. Minimum lot area, yard, setback and height requirements. See Schedule of Area, Yard and Bulk Requirements, § 128-100.

B. Principal uses. See Schedule of Uses, § 128-99.

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

(1) Location. An accessory building shall not be located in a front yard. For corner lots, a structure accessory to a single-family or a two-family residential use may be located in a front yard, opposite the side yard as determined by the Building Inspector, and shall have a minimum setback of not less than 20 feet from the front property line. An accessory building may be located within the required side yard or rear yard setback, provided that such accessory building shall be set back not less than five feet from any side or rear lot line and shall be located not less than three feet from the principal building unless fire rated as per applicable New York State Building Codes.

[Amended 10-8-2008 by L.L. No. 3-2008]

(2) Maximum coverage. The total lot coverage of all accessory structures shall not exceed 5% of the total lot area.

(3) Height. An accessory structure shall not exceed 25 feet in height. Agricultural use buildings may exceed the height regulations applicable to nonagricultural use buildings. See § 128-10, Exceptions, of this chapter.

D. Specific regulations for the district.

- (1) Land divisions pursuant to § 103-20 of the Town Subdivision Regulations are permitted.
- (2) Principal and accessory structures as part of a marina, campground or outdoor recreation facility shall be set back not less than 100 feet from all surrounding property lines. The setback shall not apply to a property line along the edge of the Hudson River.
- (3) Residential uses proposed for previously undeveloped property abutting a Rural, Mixed Economic Development, Rural Light Industrial, or Heavy Industrial District shall include a fifty-foot landscaped buffer set back from the adjoining district. The landscaped buffer shall be in addition to any other setback requirement for the lot and shall be planted with a mixture of evergreen and deciduous plantings. The Planning Board shall use its discretion to establish appropriate landscaped buffer setbacks for redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.
- (4) Notwithstanding any provision to the contrary, site plan review shall be required for all nonagricultural and nonresidential by-right uses proposed for property located within 100 feet of a residential district.
- (5) Notwithstanding the provisions of § 128-100 of this chapter, the minimum lot size and maximum density unit for a subdivision or a land division pursuant to Chapter 103, Subdivision Regulations, shall be the minimum required to provide the separation distances and meet the design standards where on-site water supply and sewage disposal systems are required by the County of Albany Department of Health.
- (6) All streets shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.

E. Design guidelines. The following guidelines shall be considered by the Planning Board in the site plan and subdivision review of any new development project involving undeveloped land in the Rural Riverfront District. The Planning Board shall use its discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

- (1) Where practicable, encourage the development of walkways and improvements to the public open spaces within the public rights-of-way of all corridors.
- (2) Encourage the preservation of a minimum of 50% open space in new subdivision design through the use of conservation subdivision.
- (3) Where practicable, allow for continued public access to the waterfront and areas with views of the Hudson River.
- (4) Existing tree rows and hedgerows, stone walls, and similar features should be retained in the development of any new use or the expansion of any existing use.
- (5) The number of off-street parking spaces provided should be the minimum necessary to adequately serve the intended use.
- (6) On-street parking should be discouraged.
- (7) Off-street parking lots and loading areas, accessory use structures or storage other than sheds should be screened from walkways and streets utilizing appropriate vegetation and/or fencing.
- (8) New buildings adjacent to existing structures should be designed in a manner consistent with the general architectural features of such existing structures in terms of form, materials, and fenestration and roof shape.

(9) All new streets in the Riverfront Rural District should be designed with rural characteristics, including minimal tree clearing, minimal grading and filling of existing topography, and usage of natural drainage where practicable.

(10) Major modifications to the existing landscape, such as extensive grading, clear-cutting of trees, or other similar activities, should be avoided.

§ 128-33. Hamlet District.

A. Minimum lot area, yard, setback and height requirements. See Schedule of Area, Yard and Bulk Requirements, § 128-100.

B. Principal uses. See Schedule of Uses, § 128-99.

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

(1) Location. An accessory building shall not be located in a front yard setback. For corner lots, a structure accessory to a single-family or a two-family residential use may be located in a front yard, opposite the side yard as determined by the Building Inspector, and shall have a minimum setback of not less than 20 feet from the front property line. An accessory building may be located within the required side yard or rear yard setback, provided that such accessory building shall be set back not less than five feet from any side or rear lot line and shall be located not less than three feet from the principal building unless fire rated as per applicable New York State Building Codes.

[Amended 10-8-2008 by L.L. No. 3-2008]

(2) Height. An accessory building shall not exceed 18 feet in height. See § 128-10, Exceptions, of this chapter.

(3) Maximum coverage. The total lot coverage of all accessory structures shall not exceed 5% of the total lot area.

D. Specific regulations for the district.

(1) No single building shall have a building footprint exceeding 5,000 square feet. Exceptions may be made only if the facades of larger buildings are articulated to appear as multiple buildings, each part of which does not exceed a maximum building footprint of 5,000 square feet.

(2) Parking in the front yard is prohibited. Off-street parking should be located at the side or rear of buildings.

(3) Drive-through facilities shall be located at the side or rear of buildings, out of view from public streets. Landscaping should be used to further reduce the visibility of drive-through facilities. Pedestrian safety and internal vehicular circulation shall be considered in the design of any drive-through facilities.

E. Design guidelines. The following guidelines shall be considered by the Planning Board in the site plan and subdivision review of any new development project involving undeveloped land in the Hamlet District. The Planning Board shall use its discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(1) Encourage the installation of sidewalks.

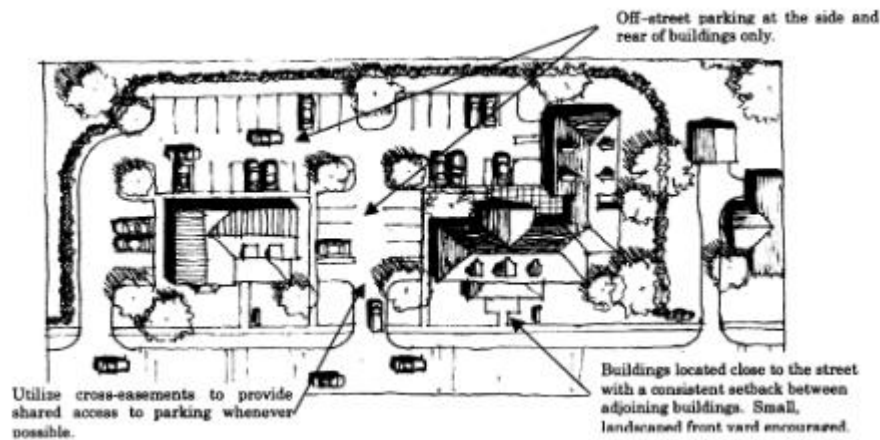
(2) The establishment of mixed-use, multistory dwellings is the preferred form of use.

(3) The concentration of multifamily dwelling units should be encouraged at or near the hamlet boundary to provide a graduation of density from the outer boundaries of the district.

(4) New or in-fill construction should be designed so as to be compatible with the general character of buildings on the street frontage. The setback, height, bulk, gable and pitch of roofs, use of porches, shutters and other exterior design elements should result in an overall design that complements the existing character of the streetscape.



Mixed-use residential over restaurant.



(5) The incorporation of small, landscaped front yards should be encouraged with any new residential or commercial use if building is not built to the sidewalk edge.

[Amended 10-8-2008 by L.L. No. 3-2008]

(6) The development of public parks, commons, or small pedestrian plazas with amenities such as benches and landscaping should be encouraged in the hamlets.

(7) The adaptive reuse of existing structures should be encouraged in such a way so as to complement the character of the existing hamlet.

(8) Where practicable, existing tree rows and hedgerows, stone walls, and similar features should be retained in the development of any new use or the expansion of any existing use.

(9) Additions to existing buildings should use materials and details complementary to those incorporated in the parent structure.

(10) Where practicable, new buildings adjacent to existing structures should be designed in a manner consistent with the general architectural features of such existing structures in terms of form, materials, and fenestration and roof shape.

(11) New buildings, or additions to existing buildings, should reflect any discernible pattern of window and door openings that is established among adjacent structures or is present in the existing building.



(12) The construction of any blank, windowless facade facing a corridor that provides frontage for the lot on which the building is located should be avoided.

(13) The utilization of ribbon or continuous strip glazing in any building facade should be avoided.

(14) New buildings should have a roof shape similar in proportion, form and character to that which is present on the majority of the existing structures having frontage on the same corridor. Dead-flat roofs are generally inconsistent with the existing character of the Town and should be avoided, except where the size or type of the building requires a flat roof and facade variations and other architectural features can disguise the flatness of the roof.

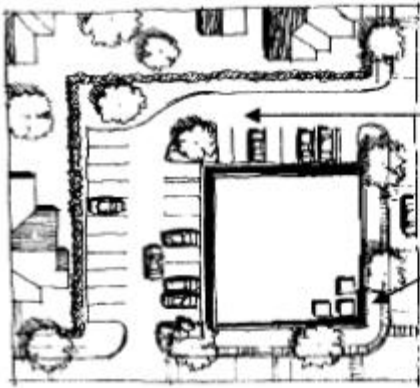
(15) Any large building facade and the sides visible from the street corridor should incorporate changes in plane and architectural features that give the appearance of several common-wall buildings.

(16) Major modifications to the existing landscape, such as extensive grading, clear-cutting of trees, or other similar activities, should be avoided to the extent possible.

(17) Where private central water and sanitary sewer systems are required they shall be designed and constructed to accommodate at least 120% of the population to be served. Each such private central water or sanitary sewer system shall be connected to a municipal system when such service becomes available within 500 feet of any lot served by such system, as measured along a street providing frontage for such lot, where the capacity is available and such connection is permitted and approved by the district to which the connection is to be made.

(18) All streets should be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.

(19) The primary entrances to any building should be oriented to the lot frontage. Secondary entrances should be oriented to parking, plazas or parks.



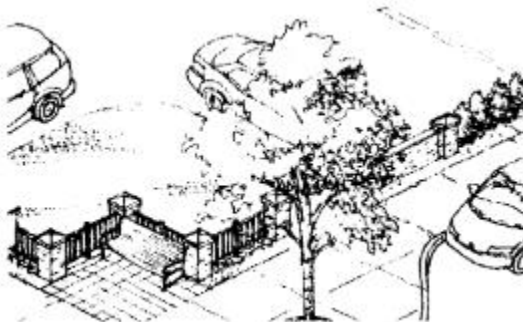
Drive thru facilities (if necessary) shall be located at the side or rear of buildings, out of view from public streets. Landscaping should be used to further reduce the visibility of drive-thru facilities. Pedestrian safety and internal vehicular circulation must be considered in the design of any drive-thru facilities.

Main façade and entrance facing the street. On a corner lot, main façades along both streets, and entrance at the corner. A secondary entrance to rear parking is strongly encouraged.

(20) The number of off-street parking spaces provided should be the minimum necessary to adequately serve the intended use.

(21) Where practicable, service alleys for deliveries and utility access should be established along rear property lines.

(22) On-street parking should be encouraged with nonresidential uses. Service alleys should access practicable, off-street parking spaces for residential uses.



Use landscaping, such as hedges, shrubs, or low walls of stone, brick, wood, wrought iron, or an acceptable substitute, to screen parking and create an edge along the sidewalk.

(23) Cross-easements should be used to provide shared access to parking whenever possible.

(24) Off-street parking lots and loading areas, accessory use structures or storage other than sheds should be screened from walkways and streets utilizing appropriate vegetation and/or fencing.

§ 128-34. Commercial Hamlet District.

A. Minimum lot area, yard, setback and height requirements. See Schedule of Area, Yard and Bulk Requirements, § 128-100.

B. Principal uses. See Schedule of Uses, § 128-99.

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

(1) Location. An accessory building may be located within the required front, side, or rear yard setback, provided that such accessory building shall be set back not less than two feet from any lot line.

(2) Height. An accessory building shall not exceed 18 feet in height. See § 128-10, Exceptions, of this chapter.

(3) Maximum coverage. The total lot coverage of all accessory structures shall not exceed 5% of the total lot area.

D. Specific regulations for the district. None.

E. Design guidelines. The following guidelines shall be considered by the Planning Board in the site plan and subdivision review of any new development project involving undeveloped land in the Commercial Hamlet District. The Planning Board shall use its discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(1) Encourage the installation of sidewalks.

(2) New or in-fill construction should be designed so as to be compatible with the general character of buildings on the street frontage. The setback, height, bulk, gable and pitch of roofs, use of porches, shutters and other exterior design elements should result in an overall design that complements the existing character of the streetscape.

(3) The incorporation of small, landscaped front yards is encouraged with any new residential or commercial use (if building is not built to the sidewalk edge).

(4) The development of public parks, commons, or small pedestrian plazas with amenities such as benches and landscaping is encouraged.

(5) Where practicable, existing tree rows and hedgerows, stone walls, and similar features should be retained in the development of any new use or the expansion of any existing use.

(6) Additions to existing buildings should use materials and details complementary to those incorporated in the parent structure.

(7) Where practicable, new buildings adjacent to existing structures should be designed in a manner consistent with the general architectural features of such existing structures in terms of form, materials, and fenestration and roof shape.

(8) New buildings, or additions to existing buildings, should reflect any discernible pattern of window and door openings that is established among adjacent structures or is present in the existing building.

(9) The construction of any blank, windowless facade facing a corridor that provides frontage for the lot on which the building is located should be avoided.

(10) The utilization of ribbon or continuous strip glazing in any building facade should be avoided.

(11) Dead-flat roofs are generally inconsistent with the existing character of the Town and should be avoided, except where the size or type of the building requires a flat roof and facade variations and other architectural features can disguise the flatness of the roof.

(12) Any large building facade and the sides visible from the transportation corridor should incorporate changes in plane and architectural features that give the appearance of several common-wall buildings.

(13) Major modifications to the existing landscape, such as extensive grading, clear-cutting of trees, or other similar activities, should be avoided to the extent possible.

(14) All streets shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.

(15) The primary entrances to any building should be oriented to the lot frontage. Secondary entrances should be oriented to parking, plazas or parks.

(16) The number of off-street parking spaces provided should be the minimum necessary to adequately serve the intended use.

(17) Where practicable, service alleys for deliveries and utility access should be established along rear property lines.

(18) Drive-through facilities should be located at the side or rear of buildings and landscaping should be used to reduce the visibility of such facilities.

(19) Pedestrian safety and internal vehicular circulation must be considered in the design of any drive-through facilities.

(20) On-street parking should be encouraged with nonresidential uses. Service alleys should access practicable, off-street parking spaces for residential uses.

(21) Cross-easements should be used to provide shared access to parking whenever possible.

(22) Off-street parking lots and loading areas, accessory use structures or storage other than sheds should be screened from walkways and streets utilizing appropriate vegetation and/or fencing.

§ 128-35. Rural Hamlet District.

A. Minimum lot area, yard, setback and height requirements. See Schedule of Area, Yard and Bulk Requirements, § 128-100.

B. Principal uses. See Schedule of Uses, § 128-99.

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

(1) Location. An accessory building shall not be located in a front yard. For corner lots, a structure accessory to a single-family or a two-family residential use may be located in a front yard, opposite the side yard as determined by the Building Inspector, and shall have a minimum setback of not less than 20 feet from the front property line. An accessory building may be located within the required side yard or rear yard setback, provided that such accessory building shall be set back not less than five feet from any side or rear lot line and shall be located not less than three feet from the principal building unless fire rated as per applicable New York State Building Codes.

[Amended 10-8-2008 by L.L. No. 3-2008]

(2) Height. An accessory structure shall not exceed 25 feet in height, and in no event shall an accessory nonagricultural use structure exceed the height of the principal structure. Agricultural use buildings may exceed the height regulations applicable to nonagricultural use buildings. See § 128-10, Exceptions, of this chapter.

(3) Maximum coverage. The total lot coverage of all accessory structures shall not exceed 5% of the total lot area.

D. Specific regulations for the district.

(1) Land divisions pursuant to § 103-20 of the Town Subdivision Regulations are permitted.

(2) Shopping centers of 10,000 gross square feet of building area or less are permitted subject to site plan approval.

(3) With the exception of shopping centers, no single building should have a building footprint exceeding 5,000 square feet. Exceptions may be made only if the facades of larger buildings are articulated to appear as multiple buildings, each part of which does not exceed a maximum building footprint of 5,000 square feet.

E. Design guidelines. The following guidelines shall be considered by the Planning Board in the site plan and subdivision review of any new development project involving undeveloped land in the Rural Hamlet District. The Planning Board shall use its discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(1) Encourage the installation of sidewalks.

(2) The establishment of mixed-use, multistory dwellings is the preferred form of use.

(3) New or in-fill construction should be designed so as to be compatible with the general character of buildings on the street frontage. The setback, height, bulk, gable and pitch of roofs, use of porches, shutters and other exterior design elements should result in an overall design that complements the existing character of the streetscape.

(4) The incorporation of small, landscaped front yards is encouraged with any new residential or commercial use (if building is not built to the sidewalk edge).

(5) The development of public parks, commons, or small pedestrian plazas with amenities such as benches and landscaping is encouraged.

(6) The adaptive reuse of existing structures is encouraged.

(7) Where practicable, existing tree rows and hedgerows, stone walls, and similar features should be retained in the development of any new use or the expansion of any existing use.

(8) Additions to existing buildings should use materials and details complementary to those incorporated in the parent structure.

(9) Where practicable, new buildings adjacent to existing structures should be designed in a manner consistent with the general architectural features of such existing structures in terms of form, materials, and fenestration and roof shape.

(10) New buildings, or additions to existing buildings, should reflect any discernible pattern of window and door openings that is established among adjacent structures or is present in the existing building.

(11) The construction of any blank, windowless facade facing a corridor that provides frontage for the lot on which the building is located should be avoided.

(12) The utilization of ribbon or continuous strip glazing in any building facade should be avoided.

(13) New buildings should have a roof shape similar in proportion, form and character to that which is present on the majority of the existing structures having frontage on the same corridor. Dead-flat roofs are generally inconsistent with the existing character of the Town and should be avoided, except where the size or type of the building requires a flat roof and facade variations and other architectural features can disguise the flatness of the roof.

(14) Any large building facade and the sides visible from the transportation corridor should incorporate changes in plane and architectural features that give the appearance of several common-wall buildings.

(15) All streets shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.

(16) The primary entrances to any building should be oriented to the lot frontage. Secondary entrances should be oriented to parking, plazas or parks.

(17) The number of off-street parking spaces provided should be the minimum necessary to adequately serve the intended use.

(18) Where practicable, service alleys for deliveries and utility access should be established along rear property lines.

(19) Drive-through facilities should be located at the side or rear of buildings and landscaping should be used to reduce the visibility of such facilities.

(20) Pedestrian safety and internal vehicular circulation must be considered in the design of any drive-through facilities.

(21) Service alleys should access practicable, off-street parking spaces for residential uses.

(22) Cross-easements should be used to provide shared access to parking whenever possible.

(23) Off-street parking lots and loading areas, accessory use structures or storage other than sheds should be screened from walkways and streets utilizing appropriate vegetation and/or fencing.

§ 128-36. General Commercial District.

A. Minimum lot area, yard, setback and height requirements. See Schedule of Area, Yard and Bulk Requirements, § 128-100.

B. Principal uses. See Schedule of Uses, § 128-99.

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

(1) Location. An accessory building or structure shall not be located in a front yard. An accessory building may be located within the required side yard or rear yard setback, provided that such accessory building shall be set back not less than 10 feet from any lot line.

(2) Height. An accessory building or structure shall not exceed 18 feet in height. See § 128-10, Exceptions, of this chapter.

(3) Maximum coverage. The total lot coverage of all accessory structures shall not exceed 5% of the total lot area.

D. Specific regulations for the district. Buildings, parking lots, loading areas, and access aisles facing or adjacent to a residential district shall be set back an additional 100 feet from the minimum yard setback to provide a visual and noise buffer. The one-hundred-foot additional buffer, as well as the minimum yard setback area, shall be planted with a mixture of evergreen and deciduous plantings at a height so as to adequately screen the parking area from neighboring properties and streets. The species type, location and planted height of such landscaping shall be subject to the approval of the Planning Board.

E. Design guidelines. The following guidelines shall be considered by the Planning Board in the site plan and subdivision review of any new development project involving undeveloped land in the General Commercial District. The Planning Board shall use its discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(1) Where practicable, existing tree rows and hedgerows, stone walls, and similar features should be retained in the development of any new use or the expansion of any existing use.

(2) The development of parks, commons, or small pedestrian plazas with amenities such as benches and landscaping should be encouraged.

(3) The creation of a safe pedestrian environment is a principal goal of the Town. The design of parking lots, access driveways, and streets should be designed to avoid and minimize the potential for pedestrian/vehicle conflicts.



Commercial developments may use small green spaces, courts, squares, parks, plazas, and similar spaces that can also function as community gathering places to provide transitions and ensure compatibility with surrounding noncommercial uses.

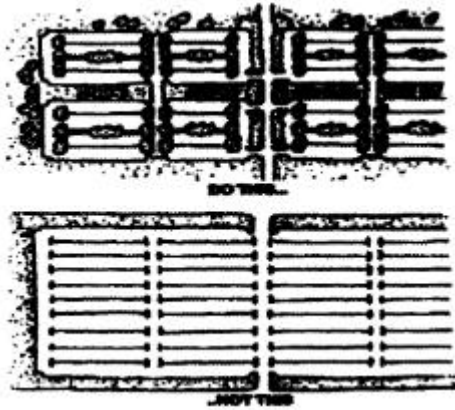
(4) The construction of any blank, windowless facade facing a corridor that provides frontage for the lot on which the building is located should be avoided.

(5) All streets shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.

(6) The primary entrances to any building should be oriented to the lot frontage. Secondary entrances should be oriented to parking, plazas or parks.

(7) The number of off-street parking spaces provided should be the minimum necessary to adequately serve the intended use.

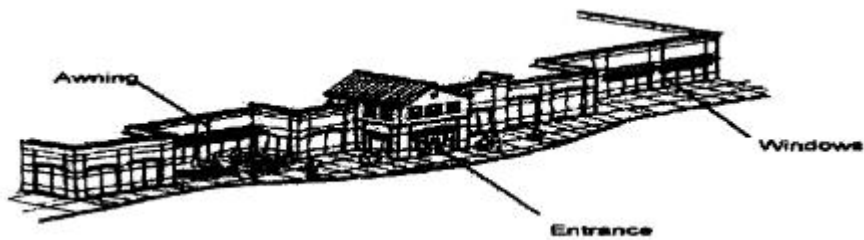
(8) Encourage the installation of sidewalks.



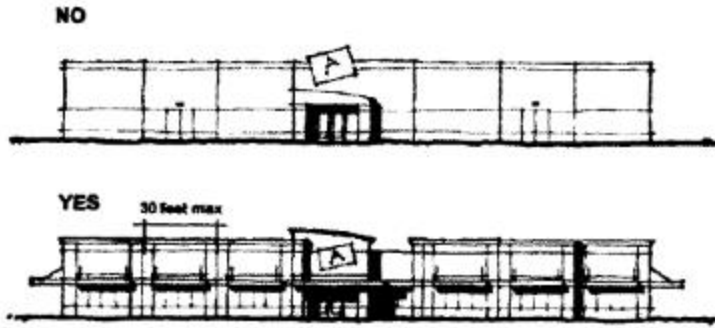
All parking islands must be generously landscaped with native vegetation.



A clear, on-site system of pedestrian walkways must be provided. The pedestrian system must connect buildings to one another, to parking areas, and to public streets and sidewalks.



Facades of large buildings must be subdivided and proportioned using features such as windows, entrances, arcades, arbors and awnings.



§ 128-37. Mixed Economic Development District.

A. General regulations.

(1) Development master plan required.

(a) No site plan or subdivision application shall be accepted or approved for any development project located on a parcel of land of five acres in size or more unless said application is preceded by Town Board approval of a development master plan encompassing the parcel and all other adjacent lands within the district owned and/or controlled by the project sponsor. For the purpose of this section, the term "parcel" shall be deemed to include all contiguous parcels, lots, sites and other contiguous land holdings within the Mixed Economic Development District that are owned and/or controlled by the project sponsor.

(b) A development master plan shall also be required on any parcel of less than five acres in size where the development project involves the subdivision of land.

(c) A development master plan shall consist of a concept plan for development or redevelopment of a parcel as defined above and shall be prepared and processed as described at Subsection E below. Such development may consist of a mixed development of primary and secondary uses, or a development of entirely primary uses. The development master plan shall show the primary and secondary uses proposed for development on the property and shall show a plan for the layout of lots. Where a mixed development is proposed, the building floor area devoted to secondary uses shall be limited as set forth below.

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

B. Permitted uses.

(1) Primary uses. Primary uses that are permitted in the district include office, light industrial, manufacturing and technology-based businesses and such other uses that are identified as permitted primary uses in the Schedule of Uses, § 128-99 of this chapter. Primary uses may comprise up to 100% of the gross floor area of the structure(s) on a development site.

(2) Secondary uses. Secondary uses that are permitted in the district include service businesses, restaurants, entertainment uses, small-scale retail uses, fitness clubs, and such other uses that are identified as permitted secondary uses in the Schedule of Uses, § 128-99 of this chapter. Secondary uses are intended to provide support services to primary uses in the Mixed Economic Development District and uses within the surrounding neighborhoods. The amount of building floor area devoted to secondary uses is intended to be restricted. Within the geographic area covered by an approved development master plan, the total gross floor area devoted to secondary uses shall not exceed 30% of the total gross floor area of all buildings located in said geographic area. Secondary uses are permitted on parcels that require a development master plan only when such uses are approved by the Town Board as part of the development master plan.

(3) Accessory uses. Uses that are customarily accessory to, incidental and subordinate to a primary use or a secondary use shall also be permitted on the same lot as the primary or secondary use.

(4) Residential uses.

(a) The establishment of one-, two-, three- and four-family dwellings is prohibited.

(b) Multifamily dwellings are permitted as a secondary use only when approved by the Town Board as part of a development master plan. The maximum residential use density is eight units per acre. Multifamily dwellings shall also be subject to the maximum floor area requirements for secondary uses as specified below.

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

(5) Alternative calculation of maximum secondary uses. Applications for a development master plan for which, as of the effective date of this chapter, the Town Board has adopted resolutions making a State Environmental Quality Review Act determination pursuant to 6 NYCRR 617.7 of the State Environmental Quality Review Act and approving the draft environmental impact statement scoping document shall be subject to the following alternative calculation of maximum secondary uses. For such applications, secondary uses shall not comprise more than 30% of the developable acreage of the site, and the total gross floor area devoted to secondary uses shall not exceed 50% of the total floor area of all buildings located within the geographic area covered by an approved development master plan.

C. Site development standards for parcels that require a development master plan. The following site development standards shall apply to parcels of five acres or more that require or are covered under a site development master plan.

(1) Multifamily dwellings. Multifamily dwellings shall be considered a permitted secondary use on parcels requiring a development master plan and shall be subject to the maximum floor area requirements for secondary uses specified below. Multifamily dwellings may include attached single-family dwellings that are arranged in buildings containing five or more dwelling units.

(2) Maximum floor area for secondary uses. Subject to the above alternative calculation of maximum secondary uses, within the geographic area covered by a development master plan, the total gross floor area devoted to secondary uses shall not exceed 30% of the total gross floor area of all structures within said geographic area. The distribution of permitted floor area for secondary uses among the various lots that may comprise a development project shall be established by the Town Board at the time of approval of the development master plan.

(3) Timing of approval and construction for secondary uses. Within the geographic area covered by a development master plan, at no time shall the total amount of floor area devoted to secondary uses constructed or under construction exceed 50% of the total floor area constructed or under construction devoted to all uses within said geographic area. In addition, at no time shall the total amount of constructed floor area devoted to secondary uses exceed the maximum amount approved within the geographic area covered by a development master plan.

(4) Maximum impervious surface area. The maximum impervious surface area permitted within the geographic area covered by a development master plan shall be 60% of the land area within said geographic area. The calculation of maximum impervious surface area shall include the square footage of the footprint of all primary and secondary use structures, parking areas, driveways, private streets and other impervious surfaces but shall exclude sidewalks and public streets.

(5) Area, yard and bulk requirements. Except as otherwise provided in this section, the Town Board, as part of its review of a development master plan, shall determine the minimum area, yard, setback and bulk requirements for each development project. In making its determination, the Town Board shall be guided by the standards and requirements found elsewhere in this chapter for development projects of a similar nature.

(6) Height. The maximum height of buildings shall be the lesser of four stories or 60 feet west of the New York State Thruway and the lesser of three stories or 45 feet east of the New York State Thruway.

(7) Minimum lot size. The minimum lot size shall be one acre for individual lots within an area covered by a development master plan.

(8) Minimum lot size for mixed-use projects. The minimum lot size shall be two acres for individual lots supporting a mixed-use project within an area covered by a development master plan.

(9) Minimum setback to master plan boundary. The minimum yard setback to the boundary of the area covered by a development master plan shall be 100 feet where said boundary is adjacent to a residential zoning district or 50 feet where said boundary is adjacent to a nonresidential zoning district. This setback requirement shall not apply where the boundary coincides with the right-of-way of an existing public street. No parking areas, driveways, buildings or similar structures shall be permitted in the minimum yard setback, except that driveways providing direct access from adjoining lots shall be allowed.

(10) Minimum arterial setback. The minimum yard setback along an arterial highway shall be 30 feet from the highway property line or 80 feet from the center line of pavement of the arterial highway, whichever produces the greater distance. No parking areas, driveways, buildings or similar structures shall be permitted in the minimum yard setback, except that driveways providing direct access from the arterial shall be allowed.

(11) Signage. At the time of its approval of a development master plan, the Town Board shall establish sign standards for the development project, including the allowable number, maximum size, type, and style of signs. Individual signs shall be reviewed for conformance with the established standards and shall be subject to approval by the Planning Board as part of a subdivision or site plan application. In establishing said standards, the Town Board shall be guided by the general sign requirements found at § 128-59 of this chapter and the specific sign standards applicable to projects of a similar nature.

(12) Parking. Parking requirements in a Mixed Economic Development District shall be as required in § 128-56 of this chapter.

D. Site development standards for parcels that do not require a development master plan. The following site development standards shall apply to parcels that do not require, or are not covered under, a site development master plan.

(1) Minimum lot size. Minimum lot size shall be 10,000 square feet.

(2) Minimum front yard. Minimum front yard shall be 30 feet from the highway property line or 55 feet from the center line of pavement, whichever produces the greater distance. In the case of arterial highways, the minimum distance from the center line of pavement shall be 80 feet.

(3) Minimum side yard. Minimum side yard shall be 10 feet.

(4) Minimum rear yard. Minimum rear yard shall be 40 feet.

(5) Minimum highway frontage. Minimum highway frontage shall be 100 feet.

(6) Maximum building height. Maximum building height shall be 35 feet.

(7) Minimum lot depth. Minimum lot depth shall be 150 feet.

(8) Minimum lot width. Minimum lot width shall be 100 feet.

(9) Maximum lot coverage. Maximum lot coverage shall be 60%. The calculation of maximum lot coverage shall include the square footage of the footprint of all primary and secondary use structures, accessory structures, driveways and parking areas.

(10) Maximum floor area ratio for secondary uses. The maximum floor area ratio applicable to all secondary uses that are not part of a development master plan shall be 0.1.

(11) Signage. Signs shall be subject to the sign regulations found at § 128-59 of this chapter and the specific regulations applicable to signs in the Rural Hamlet District (RH) found at § 128-59D.

(12) Parking. Parking requirements shall be as required in § 128-56 of this chapter.

E. Miscellaneous standards.

(1) Accessory structures.

(a) An accessory building shall not be located in a front yard. An accessory building may be located within the required side yard or rear yard setback, provided that such accessory building shall be set back not less than five feet from any lot line.

(b) Height. An accessory building shall not exceed a height of 25 feet. (See also § 128-10, Exceptions, of this chapter.)

(c) Maximum coverage. The total lot coverage of all accessory structures shall not exceed 5% of the total lot area.

F. Procedures for approval of a development master plan. The development of any primary or secondary use(s) in a Mixed Economic Development District is subject to approval of a development master plan by the Town Board and site plan and/or subdivision approval by the Planning Board, as follows:

(1) Applicant. An application for approval of a development master plan shall be made in writing to the Town Board. Application shall be made by the owner(s) of the land(s) to be included in the project or by a person or persons holding an option to purchase the lands contingent only upon approval of the application. 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. All approved plans shall be binding on all owners and their successors and assigns.

(2) Applications. All applications for development master plan approval shall be in writing and on forms and in such quantity as may be prescribed by the Town Board. The application must include a Part 1 full environmental assessment form. 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 the lead agency, as satisfactory with respect to scope, content and adequacy. The application shall include the information and materials as described in § 128-40C(2) of this chapter, unless otherwise waived by the Department of Economic Development and Planning.

(3) Fees. An application shall be accompanied by an application fee as set by the Town Board. 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). Editor's Note: See Art. 8 of the Environmental Conservation Law. If the Town Board or the Planning Board requires professional review of the application by a designated private planning, engineering, legal or other consultant, or if it incurs other extraordinary expense to review documents or conduct special studies in connection with the proposed application, reasonable fees shall be paid for by the applicant and an escrow deposit will be required.

(4) Review and approval of a development master plan. The review and approval of a development master plan shall be conducted in accordance with the following procedures:

(a) Town Board review. An application for development master plan approval shall be submitted to the Town Board. Upon receipt of an application the Town Board shall notify the applicant of the place, date, and time of the meeting at which the application is to be considered and shall refer the application to the Planning Board for review and recommendation. The applicant or the applicant's representatives shall be present at meetings of the Town Board and the Planning Board at which the application is to be considered. 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.

(b) Planning Board review. Within 60 days of receipt of the application from the Town Board, the Planning Board shall make a recommendation to the Town Board as to whether in the opinion of the Planning Board the development master plan meets generally accepted planning and engineering standards for approval and whether it is generally in conformance with the Town Comprehensive Plan. The Planning Board shall also indicate any changes to the development master plan that, in the opinion of the Planning Board, are necessary or desirable to achieve one or more of the goals of the Town Comprehensive Plan, this chapter, or Chapter 103, Subdivision Regulations. Failure of the Planning Board to provide a recommendation within the specified time shall be deemed a recommendation to approve the development master plan.

(c) Town Board action. Within 62 days of receipt of a complete application, the Town Board shall hold a public hearing on the development master plan.

[1] Notice of the public hearing shall be published in the official newspaper at least five days prior to the date set for public hearing. The Town Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of the application, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that an application for a development master plan is under consideration by the Board. All notices shall include the name of the project, the location of the project site, and the date, place, time and subject of the public hearing at which the application will be reviewed. Such notice shall not be required for adjourned dates. Where required an agricultural data statement shall be mailed to the owners of land as identified by the applicant in the agricultural data statement.

[2] Within 62 days of the close of the public hearing the Town Board shall act to approve or disapprove the development master plan application. The time within which the Board must render its decision may be extended by mutual consent of the applicant and the Board.

[3] The Board may, if it feels it necessary in order to fully protect the public health, safety and welfare of the community, attach to its approval any additional conditions or requirements for the applicant to meet. Such requirements may include, but are not confined to, conditions related 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 requirements to meet the physical or social demands generated by the development. The Town Board shall establish at this time its requirements with respect to land use intensity and/or dwelling unit density, lot and bulk standards, signage standards, and the land uses that will be permitted, including any secondary and accessory uses. In considering the application, the Town Board shall be guided by the criteria in Subsection 1 below.

[4] The decision of the Board shall be filed in the office of the Town Clerk within five business days of the date such decision is rendered and a copy thereof shall be mailed to the applicant.

(5) Time limits. If construction work on the proposed development project is not begun within the time limits specified in the development master plan approval or if such work is not completed within the period of time specified by such development master plan approval, approval of the development master plan shall become null and void and all rights therein shall cease unless the Town Board, for good cause, authorizes an extension.

G. Approval of projects following approval of a development master plan.

(1) Site plan approval required. Site plan review and approval by the Planning Board as provided in § 128-71 of this chapter shall be required prior to the issuance of a building permit for development in a Mixed Economic Development District. Changes to a previously approved site plan shall also require site plan approval. The site plan application may address development of a portion of the area covered by a development master plan or it may address development of the whole area covered by the master plan. Development projects that do not require prior approval of a development master plan shall also require site plan approval.

(2) Subdivision approval. If the development proposal involves a land division or the subdivision of land as defined in this chapter and Chapter 103, Subdivision Regulations, the subdivision approval of 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.

(3) Conformity with development master plan required. The Planning Board shall not approve any site plan and/or subdivision within an area covered by an approved development master plan unless the Board finds that the site plan and/or subdivision is in substantial conformance with said master plan and all additional conditions and requirements imposed by the Town Board at the time of its approval of the master plan.

H. Request for changes to the development master plan. If during the site plan and/or subdivision review it becomes apparent that certain elements of the development master plan as approved by the Town Board are infeasible and in need of significant modification, the applicant shall then present a solution to the Planning Board. The Planning Board shall then determine whether or not the modified plan is still in keeping with the intent of the development master plan approval. If a negative decision is reached, the site plan and/or subdivision plat shall be considered as disapproved. The owner/applicant may then produce another site plan and/or subdivision plat in conformance with the approved development master plan. The owner/applicant may also apply directly to the Town Board for an amendment to the development master plan. Any such amendment shall be subject to the same procedures as a new application.

I. Design guidelines. The following guidelines shall be considered by the Town Board in its review of a proposed development master plan and by the Planning Board in its review of a site plan and/or subdivision plan. The Town Board and Planning Board shall use their discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(1) The development of parks, commons, or small pedestrian plazas with amenities such as benches and landscaping should be encouraged.

(2) Where practicable, existing tree rows and hedgerows, stone walls, and similar features should be retained in the development of any new use or the expansion of any existing use.

(3) New buildings, or additions to existing buildings, should reflect any discernible pattern of window and door openings that is established among adjacent structures or that is present in the existing building.

(4) The construction of any blank, windowless facade facing a corridor that provides frontage for the lot on which the building is located should be avoided.

(5) All streets shall be designed to permit the installation of electric, water, sewer, and gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.

(6) The primary entrances to any building should be oriented to the lot frontage. Secondary entrances should be oriented to parking, plazas or parks.

(7) Where practicable, the number of off-street parking spaces provided should be the minimum necessary to adequately serve the intended use.

§ 128-38. Heavy Industrial District.

A. Minimum lot area, yard, setback and height requirements.

(1) See Schedule of Area, Yard and Bulk Requirements, § 128-100.

(2) See § 128-10, Exceptions.

B. Principal uses.

[Amended 10-8-2008 by L.L. No. 3-2008]

(1) See Schedule of Uses, § 128-99.

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

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

(1) Location. An accessory building shall not be located in a front yard setback. An accessory building may be located within the required side yard or rear yard setback, provided that such accessory building shall be set back not less than 10 feet from any lot line.

(2) Height. An accessory building shall not exceed a height of 18 feet or a height of 50% of the height of the principal structure, whichever is greater. See § 128-10, Exceptions, of this chapter.

(3) Maximum coverage. The total lot coverage of all accessory structures shall not exceed 5% of the total lot area.

D. Specific regulations for the district.

(1) Buildings, parking areas, access aisles, and parking spaces for nonresidential uses facing or adjacent to property zoned for residential use shall be set back an additional 100 feet from the minimum yard setback to provide a visual and noise buffer. The one-hundred-foot additional buffer, as well as the minimum yard setback area, shall be planted with a mixture of evergreen and deciduous plantings at a height so as to adequately screen the parking area from neighboring properties and streets. The species type, location and planted height of such landscaping shall be subject to the approval of the Planning Board.

(2) All streets shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.

(3) All equipment, electrical substations, and mechanical devices shall be shielded from view from the main roadways.

(4) Warehousing or storage of products for distribution is permitted. All outdoor storage of goods or materials shall be screened from view from the main roadways.

E. Design guidelines. The following guidelines shall be considered by the Planning Board in the site plan and subdivision review of any new development project involving undeveloped land in the Heavy Industrial District. The Planning Board shall use its discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(1) Where practicable, existing tree rows and hedgerows, stone walls, and similar features should be retained in the development of any new use or the expansion of any existing use.

(2) Industrial processes and operations should be enclosed.

(3) Truck loading and unloading are confined to on-site areas. All loading and unloading areas should be shielded from view by the main roadways.

(4) All outdoor storage of goods or materials should be screened from view from the main roadways.

§ 128-39. Rural Light Industrial District.

A. Minimum lot area, yard, setback and height requirements.

(1) See Schedule of Area, Yard and Bulk Requirements, § 128-100.

(2) See § 128-10, Exceptions.

B. Principal uses. See Schedule of Uses, § 128-99.

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

(1) Location. An accessory building shall not be located in a front yard setback. Notwithstanding, a farm stand for the sale of agricultural products may be located within a front yard setback. For corner lots, a structure accessory to a single-family or a two-family residential use may be located in a front yard, opposite the side yard as determined by the Building Inspector, and shall have a minimum setback of not less than 20 feet from the front property line. An accessory building may be located within the required side yard or rear yard setback, provided that such accessory building shall be set back not less than five feet from any lot line.

(2) Height. An accessory building shall not exceed 25 feet in height. Agricultural use buildings may exceed the height regulations applicable to nonagricultural use buildings. See § 128-10, Exceptions, of this chapter.

(3) Maximum coverage. The total lot coverage of all accessory structures shall not exceed 5% of the total lot area.

D. Specific regulations for the district.

(1) Land divisions pursuant to § 103-20 of the Town Subdivision Regulations are permitted.

(2) Notwithstanding any other provision of this chapter to the contrary, site plan review shall be required for all nonagricultural and nonresidential by-right uses proposed for property located within 100 feet of a residential district.

(3) Subdivisions are allowed subject to the requirements of Chapter 103, Subdivision Regulations. In addition, residential structures associated with agricultural operations are permitted.

(4) Buildings, parking areas, access aisles, and parking spaces for nonresidential and nonagricultural uses facing or adjacent to property zoned for residential use shall be set back an additional 100 feet from the minimum yard setback to provide a visual and noise buffer. The one-hundred-foot additional buffer, as well as the minimum yard setback area, shall be planted with a mixture of evergreen and deciduous plantings at a height so as to adequately screen the parking area from neighboring properties and streets. The species type, location and planted height of such landscaping shall be subject to the approval of the Planning Board.

(5) All equipment, electrical substations, and mechanical devices shall be shielded from view from the main roadways.

(6) Warehousing and storage of products for distribution is permitted. All outdoor storage of goods or materials shall be screened from view from the main roadways.

E. Design guidelines. The following guidelines shall be considered by the Planning Board in the site plan and subdivision review of any new development project involving undeveloped land in the Rural Light Industrial District. The Planning Board shall use its discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas.

(1) Encourage the use of farmstead design.

(2) Where practicable, existing tree rows and hedgerows, stone walls, and similar features should be retained in the development of any new use or the expansion of any existing use.

(3) The creation of a safe pedestrian environment is a principal goal of the Town. The design of parking lots, access driveways, and streets shall be designed to avoid and minimize the potential for pedestrian/vehicle conflicts.

(4) All streets shall be designed to permit the installation of electric, water, sewer, gas and other utilities underground, either initially or at the time major improvements or upgrades are made to the street or the particular service.

(5) Buildings composed of closed-sided covered structures are encouraged.

(6) Truck loading and unloading is confined to on-site areas. All loading and unloading areas should be screened from view by the main roadways.

§ 128-40. Planned Development District.

A. Purpose. Planned development districts (PDD) are intended as floating zones to provide for new residential uses in which economies of scale or creative architectural or planning concepts may be utilized by the developer without departing from the spirit and intent of this chapter. In no case shall the regulations of this section be so interpreted as to circumvent the benefits of this chapter to the owners or residents of such development or the owners or residents of adjacent properties. Planned development districts and building projects within planned development districts may be established in accordance with the procedure specified below.

B. General regulations.

(1) Location. Planned development districts may be established at locations designated by the Town Board acting independently or on the basis of an application. In establishing the location of a PDD, compatibility with the Town Comprehensive Plan and the criteria for rezoning found at Subsection C(11) shall be considered.

(2) Permitted uses. All uses permitted within a planned development district shall be determined by the provisions of this section and the district plan approved at the time of rezoning to PDD. Permitted uses shall consist of primary uses, secondary uses and accessory uses as described below:

(a) Primary uses. Residential uses shall constitute the primary uses permitted in a PDD. Residences may be any of a variety of dwelling unit types as identified below. In developing a balanced community, the use of a variety of housing types shall be deemed most in keeping with this section:

[1] Single-family dwellings.

[2] Two-family dwellings.

[3] Three-family dwellings.

[4] Four-family dwellings.

[5] Multifamily dwellings.

[6] Senior citizen housing.

[7] Assisted and/or assistive living facilities.

[8] Any other residential use recommended by the Planning Board and approved by the Town Board.

(b) Secondary noncommercial uses. Secondary uses may consist of noncommercial religious, recreational, educational or community service uses specifically approved by the Town Board as part of a district plan. Such uses may include the following:

[1] Parks and recreational areas.

[2] Community buildings and activity spaces.

[3] Churches.

[4] Schools.

[5] Day-care center.

[6] Nursery school.

[7] Any other similar use as recommended by the Planning Board and approved by the Town Board.

(c) Secondary commercial and service uses.

[1] Neighborhood commercial and service business uses are permitted where:

[a] The scale of such uses is compatible with the scale and character of the planned development district and its surrounding neighborhoods;

[b] The uses can reasonably be expected to provide goods and/or services to surrounding residential neighborhoods; and

[c] Such uses are specifically approved by the Town Board as part of the rezoning and district plan.

[2] The total floor area of all structures devoted to secondary commercial and service uses shall not exceed 20% of the total floor area of all structures in the PDD.

(d) Customary accessory uses. Uses that are customary, incidental and subordinate to the principal use of a lot within the PDD shall also be permitted on said lot. See Article IV, Word Usage and Definitions, of this chapter.

(3) Intensity of land use. The Town Board shall, at the time of rezoning to PDD, and after recommendation from the Planning Board, establish as part of the district plan for each PDD the permitted land use intensity and/or dwelling unit density for the PDD. The determination of dwelling unit density shall be documented, including the facts, opinions and judgments relied on in the selection of the density. In no case shall the permitted density exceed the maximum density established at Subsection H of this section.

(4) Common property in a planned development district. Common property in a planned development district may consist of a parcel or parcels of land, together with improvements thereon, the ownership, use and enjoyment of which are shared by the individual lot owners and/or occupants of the district. When common property exists, arrangements satisfactory to the Town Board must be made for the improvement, operation and long-term maintenance of such common property following procedures approved by the New York State Attorney General. Responsibility for ownership and maintenance of all common property and facilities must be explicitly established by a legally binding instrument acceptable to the Town Attorney. For the purpose of this subsection, "common property" shall include both the land and any private facilities and/or improvements located thereon, including but not limited to private streets, driveways, infrastructure, parking areas, open space and recreation areas.

C. Establishment of a planned development district.

(1) Application. Application for establishment of a planned development district by amendment of this chapter shall be made in writing to the Town Board. Application 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.

(2) Application materials and 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 at § 128-22 of 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.

[Amended 11-14-2007 by L.L. No. 7-2007]

[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.

(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 Subsection C(6)(a), 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.

(4) Application fees. An application shall be accompanied by an application fee as set by the Town Board. 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.

(5) Initial determination and 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.

(6) Planning Board review.

(a) SEQRA recommendation and review period.

[Amended 10-8-2008 by L.L. No. 3-2008]

[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) 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.

(d) 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.

(e) 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.

(7) 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 Subsection C(11) of this section.

(a) 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 Subsection C(11) are satisfied by the application, what criteria are not satisfied, and the reasons for each.

(b) 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 Subsection C(11), and, if appropriate, may point out to the applicant what might be necessary in order to receive a favorable report.

(8) Town Board review.

(a) 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.

(b) 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.

(9) Town Board action. 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. 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. 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.

(10) 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.

(11) Criteria for rezoning to planned development district. 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 section.
- (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.

D. Approval of building projects within a planned development district.

(1) Site plan approval required.

(a) Site plan review and approval by the Town Planning Board as provided in § 128-71 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.

(b) 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 D(2) below.

(2) 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.

(3) 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.

(4) 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 Subsection C(3) of this section 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

E. Request for changes in district plan.

(1) 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.

(a) 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.

(b) 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.

(2) 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.

F. Procedures in planned development districts established prior to the effective date of this section.

(1) 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 section shall be processed in the manner prescribed at Subsection D preceding, 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.

(2) SEQR review. The Town Board shall serve as SEQR lead agency for building project reviews and amendments under this Subsection E. In conducting its review, the Town Board shall follow the same procedures as specified at Subsection C(3).

(3) Notwithstanding the referral requirement in Subsection F(1) 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.

G. Effect on previously established planned development districts 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.

H. Bulk regulations. For planned development districts the area, density and yard dimension regulations shall be as set forth below:

(1) Minimum area. The minimum area for establishment of a PDD is five acres. The calculation of area for a planned development district shall not include easements, existing parks, and existing streets or otherwise dedicated land; water areas in excess of 5% of the minimum gross acreage; lands designated on the Official Map for public purposes; or constrained lands as defined at § 128-22 of this chapter.

(2) Yard dimensions. Except as may otherwise be determined by the Town Board, the minimum setback along the perimeter of the PDD shall not be less than 50 feet. This setback shall apply to parking areas, buildings and other similar structures. Where the PDD abuts a Residential "A," Residential "B," Residential "C," Core Residential or Rural Riverfront District, the minimum yard setback area shall be planted with a mixture of evergreen and deciduous plantings at a height so as to provide, as much as practicable, a visual screen of the buildings and parking areas from neighboring properties and streets. The species type, location and planted height of such landscaping shall be subject to the approval of the Planning Board. This setback shall not apply to driveways, streets, utility rights-of-way or similar crossings that the Planning Board determines necessary in providing access to the PDD.

[Amended 10-8-2008 by L.L. No. 3-2008]

(3) Front yard.

[Amended 10-8-2008 by L.L. No. 3-2008]

(a) Except as may otherwise be determined by the Town Board, all buildings, including porches, hereafter erected shall have a minimum required front yard which shall be 60 feet from the center line of the pavement or roadway of the street or highway on which the building fronts or 35 feet from the street or highway property line of the street or highway on which the building fronts, whichever develops the greater front yard.

(b) Such buildings erected on a corner lot shall also have a front yard facing the side street or highway. Except as may otherwise be determined by the Town Board, this front yard shall also have a minimum

dimension of 60 feet measured from the center line of the pavement or roadway of said side street or highway or 35 feet from the street or highway property line of said side street or highway, whichever develops the greater front yard.

(4) Height. Height of a building in planned development districts shall not exceed 40 feet.

(5) Ingress and egress. Locations for ingress and egress shall be approved by the Town Board and shall be so arranged as to connect with existing state, county or Town highways or proposed Town highways.

(6) Off-street parking in planned development districts shall conform to the requirements of the Schedule of Off-Street Parking of this chapter. Editor's Note: See § 125-56, Off-street parking and loading. Parking areas shall provide the necessary space for maneuvering and driving. Where aisles are planned or indicated in such parking areas, said aisles shall be not less than 25 feet in width. In addition:

(a) Where a parking area is located in the front yard such parking shall be separated from the street or highway right-of-way by a lawn or planting area 20 feet or more wide. This provision shall not apply to single-family detached homes or other dwelling unit types where individual driveway access is provided to the dwelling unit.

(b) Parking and loading areas in a planned development district shall be adequately screened from any adjacent residence district.

(7) Maximum dwelling unit density. The maximum dwelling unit density in a PDD shall be five units per acre for detached single-family dwelling units and eight dwelling units per acre for attached single-family, two-family, three-family, four-family and multifamily dwelling units. The calculation of permitted density shall not include constrained lands.

§ 128-41. (Reserved)

ARTICLE VI. Supplementary Regulations

§ 128-42. General regulations.

A. Following the effective date of this chapter:

(1) Lot requirements. No lot shall be formed from part of a lot already occupied by a building unless such building, all yards and open spaces connected therewith and the remaining lot comply with all requirements prescribed by this chapter for the district in which said lot is located. No permit shall be issued for the erection of a building on any new lot thus created unless such building and lot comply with all the provisions of this chapter.

(2) Divided lots. Where a lot is divided by a zoning district boundary line so that a part of the lot is located in a residential district and a part is located in a nonresidential district, access to a nonresidential use on the nonresidential part of the property across the residential part of the property is prohibited if the nonresidential part has or can develop legal access on a public road.

(3) On a corner lot, front yards are required on both street frontages, and one yard other than the front yards shall be deemed to be a rear yard and the other or others shall be deemed to be side yards. The minimum district requirements for each shall be complied with.

(4) On a through lot, a front yard setback shall be required on both street frontages.

B. Previously issued permits. Nothing contained in this chapter shall require any changes in the plans, construction or designated use of a building complying with existing law, a permit for which shall have been duly issued prior to the date of this chapter and the footing and foundation shall have been completed, in accordance with such plans as have been filed, within two years from the date of the passage of this chapter.

§ 128-43. Agricultural uses and right to farm.

The Town of Bethlehem supports the use of land for agricultural purposes and through the Town Comprehensive Plan and this chapter has attempted to provide, to the fullest extent allowed by law, for the protection of agricultural uses and lands suitable for agricultural production. The Town supports the continued operation of active farm operations and has provided, through the regulations of this chapter and Chapter 103, Subdivision Regulations, the means for the Planning Board to approve nonagricultural land development subject to such conditions as may be required to assure the long-term viability of active farm operations and agricultural activities by limiting the potential for conflict between established farms and agricultural uses and newly established nonagricultural land uses. The Town supports sound agricultural practices necessary for the on-farm production, preparation and marketing of agricultural commodities and supports the farm protection policies set forth in § 308 of the Agriculture and Markets Law.

§ 128-44. Amateur radio communications towers.

[Amended 10-8-2008 by L.L. No. 3-2008]

A. Review authority. The Building Inspector is hereby authorized to review applications for a building permit pertaining to the construction of amateur radio communications towers.

B. Purpose and intent. The purpose of this section is to establish regulations for the siting of amateur radio communications towers in order to accommodate such equipment as required by Federal Communications Commission Order dated September 16, 1985, known as "PRB-1," while protecting the public against any adverse impacts on aesthetic resources, assuring public safety and welfare, minimizing visual impacts through proper design, siting and screening, and avoiding potential physical damage to adjacent properties.

C. Preexisting amateur radio communications towers are exempt from the provisions of this section.

D. Application requirements. The applicant for a building permit under this section shall be required to provide the following information:

(1) A scaled plan or drawing of the proposed tower, with design data and documentation that the tower meets or exceeds applicable federal and state specifications.

(2) A sketch showing the lot or parcel and its dimensions, and all structural improvements thereon, on which the tower is to be located and showing the location of all structures on the lot or parcel, and the location of the proposed tower.

(3) Proof that the applicant is an amateur radio operator licensed by the Federal Communications Commission.

(4) Proof of insurance specifically covering the proposed tower.

(5) If the FCC license holder and operator is not the property owner, the property owner must also sign the application.

E. Building permit criteria. The Building Inspector, in reviewing the application for amateur radio communications towers, shall be guided by the following standards:

(1) The structural design of the proposed tower shall meet accepted engineering standards including wind-load requirements.

(2) The proposed tower shall be erected only in a rear or side yard.

(3) The proposed tower, including all masts and antennas, shall not exceed a height of ninety-five (95) feet above the ground and in no event shall be closer in horizontal distance than 1.25 the height of the tower to a principal dwelling or structure used for human habitation on any adjacent or neighboring property.

(4) No part of the proposed tower, including stays and guy or supporting wires, shall be in violation of the relevant district setbacks.

(5) If the base of a ground-based tower is visible from any public right-of-way or from adjacent property, then reasonable screening of the base may be required so long as such screening will not interfere with the reception or the transmission of signals.

(6) Towers shall not be located on drainage easements, public utility easements or on any reserved open space.

F. Approvals. The federal government has determined that amateur radio communications towers and the activities of a licensed operator are beneficial to the public health, safety and general welfare of the community. If the proposed tower meets the requirements of this section, then the building permit application shall be approved. Any approval shall contain the condition that the Building Inspector may enter the premises at any reasonable time to inspect the tower installation for its construction, stability and maintenance. The applicant shall at all times maintain a valid FCC license to operate the facility and shall provide a valid copy of his or her FCC license to the Building Inspector upon demand.

G. Abandonment and removal. The applicant shall remove the tower upon selling the property or when the applicant no longer holds a valid FCC license to operate as an amateur radio operator, unless the purchaser of the property or a member of the purchaser's immediate family is also a licensed amateur radio operator.

§ 128-45. Bed-and-breakfasts.

A. A bed-and-breakfast may have no more than five bedrooms for guests and may accommodate no more than 10 transient lodgers.

B. The bed-and-breakfast may offer meals to its lodgers only.

C. Bed-and-breakfast establishments may not be used commercially for conference centers, weddings, concerts, a public restaurant, auctions, retreats or other for-hire events.

D. Residence. The applicant/operator must be the owner and must reside full time in the residence that is to be the bed-and-breakfast facility unless an accessory structure is to be converted to a bed-and-breakfast, in which case the owner must reside in the principal residence on the same parcel as the accessory structure. If the principal residence and an accessory structure are to have bed-and-breakfast rooms, the total number of bedrooms allowed is still limited to five and the total number of transient lodgers is still limited to 10.

E. The applicant shall comply with all applicable health codes, building codes and other applicable laws. Upon request the operator shall provide documentation that all required permits, including but not limited to County Health Department, state, county and local highway permits, etc., have been obtained. Prior to the issuance of a certificate of occupancy, the applicant must show that all applicable permits have been received.

F. The dwelling shall comply with all applicable bulk regulations and other applicable provisions of this chapter.

§ 128-46. Conservation subdivisions.

See Chapter 103, Subdivision Regulations, § 103-18, Conservation subdivisions.

§ 128-47. Fences and freestanding walls.

[Amended 10-8-2008 by L.L. No. 3-2008]

A. Fences or freestanding walls not exceeding four feet in height may be erected anywhere on a lot, except as otherwise provided in this section.

B. Fences or freestanding walls in residential districts.

- (1) Fences or freestanding walls not exceeding four feet in height may be erected in the front yard.
- (2) Fences or freestanding walls greater than four feet in height but not more than six feet may be erected in the side and rear yards.
- (3) For corner lots, fences or freestanding walls not exceeding six feet in height may be located in the front yard, opposite the side yard, as determined by the Building Inspector. Said fence or freestanding wall shall have a minimum setback of 15 feet from the determined front yard property line.
- (4) Fences for pools, spas and hot tubs shall encompass the entire perimeter of the pool, spa or hot tub. Fences shall be located so as to prohibit permanent structures, equipment or similar objects from being used to climb the fence. Fences and appurtenances shall meet or exceed the minimum requirements as set forth for barriers under the Residential Code of New York State and shall be approved by the Building Inspector before installation. Fences for pools, spas and hot tubs shall also meet requirements of § 128-60.
- (5) Fences constructed for the purpose of enclosing a tennis court shall not exceed 10 feet in height and may not be located closer than 15 feet to any property line.
- (6) The use of dangerous materials such as crushed glass and razor wire is prohibited.
 - (a) Electric fencing and barbed wire are prohibited in residential districts, except when used for the following purposes:
 - [1] Confinement of livestock or other farm purposes where permitted.
 - [2] Enclosures of public utilities.
 - [3] Enclosures of properties or storage by commercial or industrial users.
 - (b) If barbed wire is used, it shall be canted in.

C. Fences or freestanding walls in the Heavy Industrial District, that abut a residential zoning district, shall not exceed eight feet in height, but may include an additional 18 inches of barbed wire at the top. If barbed wire is used it shall be canted in.

D. Fences in mixed-use and commercial districts.

- (1) Fences or freestanding walls not exceeding four feet in height may be erected in the front yard.
- (2) Fences or freestanding walls greater than four feet in height but not more than six feet may be erected in the side and rear yards.

E. Fences for agricultural uses may not exceed eight feet in height, shall not be solid (i.e., stockade-style fences or chain link fencing with vinyl slat inserts), and shall allow unimpaired visibility through the fence (i.e., standard chain link or other wire fence without vinyl slat inserts).

F. Fences designed to be structurally supported by posts, cross members or rails on one side only shall be erected with the posts, cross members or rails on the fence owner's side, and the finished side of the fence shall face adjacent properties.

G. No minimum distance shall be required between a fence or freestanding wall and a lot line, unless otherwise specified in this chapter.

H. Fences and freestanding walls in any zoning district shall be maintained in a structurally sound condition.

I. No hedge, freestanding wall, fence or other boundary structure, nor trees, shrubs and other landscaping, shall be located so as to cause danger to vehicular and pedestrian traffic by obstructing the view.

J. No fence or freestanding wall shall be located in a municipal right-of-way.

§ 128-48. Flag lots and shared driveways.

[Amended 10-8-2008 by L.L. No. 3-2008]

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

(1) The access to the flag lot shall be by way of a driveway placed within the flagpole or panhandle portion of the lot or parcel, as recorded.

(2) Only that portion of the lot having adequate width to meet the minimum lot width requirements and allow for provision of meeting the minimum yard and setback requirements of the district shall be counted as part of the minimum lot area. The accessway (i.e., the flagpole or panhandle) shall not be included in the calculation of minimum lot area.

(3) The accessway shall maintain a constant minimum width of not less than the minimum highway frontage as set forth in § 128-100 for the district in which the property is located.

(4) The flagpole shall not cross a flowing or intermittent stream, ravine, or similar topographic feature without provision of an adequate structure or fill and culvert to carry traffic.

(5) In no event shall a flag lot be used to access a private road.

(6) The flagpole shall be conveyed with the ownership of the rear lot or parcel and shall be considered a permanent part of that lot or parcel never to be resubdivided or conveyed separately from the parcel to which it provides access.

(7) A flag lot parcel shall not be approved which would create a flagpole that would be generally parallel to a public street, unless the flagpole is separated from the public street by a distance of not less than 200 feet.

(8) Adjoining flag lots. Adjoining flag lots are prohibited. The minimum distance between driveways serving individual flag lots shall be not less than 100 feet as measured along the public road or highway frontage. Lots located in the R, RR and RLI Districts shall be exempt from adjoining flag lot requirements of this subsection.

(9) Flag lots shall be permitted in both major and minor subdivisions at the discretion of the Planning Board. Flag lots must meet all area, yard and bulk requirements for the zoning district applicable and shall be so arranged as to provide suitable all-weather access for passenger and emergency vehicles.

(10) The length of the pole of the flag lot from the roadway to the front yard line shall not be less than 200 feet. See driveway construction requirements as provided in supplemental regulation § 128-66.

(11) Where one flag lot parcel is preexisting, the adjoining lot or parcel shall not be divided into a flag lot shape.

(12) Notwithstanding any inconsistent provisions of this chapter, flag lots shall be permitted for the erection and maintenance of single-family dwellings only.

(13) Flag lots may not be further subdivided.

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

C. Shared driveways. A shared driveway may be used to access no more than three buildable lots. In the instance of flag lots, shared driveways may be used to access a flag lot and not more than two lots adjoining the flag lot, provided that each such lot has frontage on a public road or public highway. The establishment of a shared driveway requires an access easement and an agreement or covenant setting forth the rights and obligations of the owners of the lots to share in the cost of maintaining and repairing the shared driveway. Such agreement or covenant is subject to the approval of the Town Attorney.

§ 128-49. Grading, erosion and sediment control.

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

- (1) Destroys fish habitat through blanketing of fish spawning and feeding areas.
- (2) Kills aquatic organisms required by fish by reducing sunlight penetration through the water column.
- (3) Kills fish directly through gill abrasion and fin rot.
- (4) Reduces the recreational value of water and makes it less attractive for swimming.
- (5) Increases risk to swimmers and boaters by impeding search and rescue efforts as water turbidity increases.
- (6) Adds to overall construction cost since new topsoil and base materials must be brought in to make up the lost difference.
- (7) Adds to taxpayer cost to remove accumulated soil from catch basins and pipes.
- (8) Introduces toxic materials into water bodies that contribute to algae blooms and degradation of drinking water sources, which require the construction of new and/or enhanced water treatment facilities to make water potable.

B. Intent. It is the intent of the Town of Bethlehem to ensure that all activities involving land disturbance in all areas of the Town are carried out so as to ensure the maximization of benefits to the public and the residents of the Town and the protection of the natural and man-made environment, by ensuring that soil erosion is controlled to the maximum extent practicable.

C. Regulated activities. The following activities shall require a grading, erosion and sediment control permit pursuant to this section:

[Amended 11-14-2007 by L.L. No. 7-2007]

- (1) Land disturbance of 0.25 acre but less than one acre of land within the designated MS4 Phase II stormwater areas of the Town.

(2) Land disturbance of one acre or more shall comply with this section and Chapter 98 of the Code of the Town of Bethlehem.

(3) Land disturbance within 100 feet of the of the bank of the following streams or within the one-hundred-year flood zone of said streams:

(a) Normans Kill Creek.

(b) Vloman Kill Creek.

(c) Onesquethawa Creek.

(d) Phillipin Kill Creek.

(e) Dowers Kill Creek south of Route 32.

(f) As used herein "bank" refers to the location of the mean high water level.

(4) Excavation or filling which exceeds a total of 200 cubic yards of material per acre within any parcel or any contiguous parcels in any twelve-month period.

D. Prohibited activities. The following activities are prohibited and no grading, erosion and sediment control permit shall be issued:

(1) Construction of improvements and land disturbance activities on an area within the angle of repose of 20% or greater. A waiver from this prohibition may be obtained upon review and acceptance of a report from the applicant's professional engineer certifying that such construction or land disturbance activities would not result in a failure of the slope or result in a danger to human health, welfare or property.

(2) Land disturbance activities that would alter or change the direction and/or quantity of water flow within any established drainage channel or that would change the direction and/or quantity of water flow across neighboring properties.

E. Exemptions. The following activities shall be exempt from the provisions of this section and no grading, erosion and sediment control permit shall be required:

(1) Editor's Note: Former Subsection E(1), which exempted activities for which a notice of intent has been filed, was repealed 11-14-2007 by L.L. No. 7-2007. This local law also provided for the redesignation of Subsection E(2), (3) and (4) as Subsection E(1), (2) and (3), respectively. Activities performed in conjunction with special use permit, site plan, or subdivision approvals granted by the Planning Board following the effective date of this chapter, so long as said activities are not commenced until after the grant of a permit/approval and so long as the application for said activities has been reviewed for conformance with this chapter and Chapter 98 of the Code of the Town of Bethlehem and approval has been conditioned upon compliance with the standards set forth herein, and further provided that the activities shall be subject to and not exempt from the provisions for inspections, enforcement, penalties and revocations set forth herein.

[Amended 11-14-2007 by L.L. No. 7-2007]

(2) Activities performed in conjunction with special use permit, site plan, or subdivision approvals granted by the Planning Board or Zoning Board of Appeals prior to the effective date of this chapter and Chapter 98 of the Code of the Town of Bethlehem, provided that such activities are commenced within one year of the date of approval.

[Amended 11-14-2007 by L.L. No. 7-2007]

(3) Activities performed in conjunction with the erection, structural alteration or movement of a structure or building for which a building permit is granted following the effective date of this chapter and Chapter 98 of the Code of the Town of Bethlehem, so long as said activities are not commenced until after the grant of a permit/approval as provided herein, and so long as the application for said activities has been reviewed for conformance with this chapter and approval has been conditioned upon compliance with the standards set forth in herein, and further provided that the activities shall be subject to and not exempt from the provisions for inspections, enforcement, penalties and revocations set forth in herein.

[Amended 11-14-2007 by L.L. No. 7-2007]

(4) (Reserved)

(5) Clearing or timber harvesting for the purpose of cutting firewood for personal use by a single household.

(6) Selective cutting of marketable timber.

(7) Household gardening.

(8) Removal of dead wood and diseased trees or cutting of trees on a scale that does not constitute timber harvesting.

(9) Repairs to occupied buildings.

(10) Routine road, highway or street maintenance.

(11) Routine maintenance and repair of existing structures or facilities.

(12) The placement, use and maintenance of improvements used in agricultural production.

(13) The removal of trees and vegetation in accordance with a forestry management plan approved by the State Department of Environmental Conservation.

(14) The removal of vegetation as required to establish safe sight line distances for driveway entrances.

(15) The removal of vegetation that threatens resident or public safety and removal of non-native plant species designated as "invasive."

(16) The removal of vegetation to comply with a governmental order.

(17) Activities performed in conjunction with the use of land for agricultural purposes, including tree plantations and tree harvesting and forestry.

F. Permit procedure.

(1) The Town Engineer is hereby designated to administer and implement this chapter by granting or denying grading, erosion and sediment control permits in accordance with its provisions.

(2) An application for a grading, erosion and sediment control permit shall be made to the Town Engineer and shall include the following information:

(a) A completed application form signed by the applicant and the owner and/or including a notarized statement signed by the owner authorizing the applicant to act as the owner's agent and binding the owner to the terms of this chapter and any permit issued hereunder.

(b) A plan of the proposed activity, drawn at a scale as determined by the Town Engineer, that adequately depicts the area of proposed improvements and/or disturbance using as a base map a current boundary and topographic survey of the property depicting all existing improvements and prepared by a New York State licensed land surveyor.

[1] The proposed plan shall depict all proposed improvements to the property and shall be prepared and certified by a professional engineer, a landscape architect, or an architect licensed by the State of New York, showing:

[a] The location of the proposed area of disturbance and its relationship to property lines, easements, buildings, roads, walls, and wetlands, if any, within 50 feet of the boundaries of said area.

[b] Existing topography of the proposed area of disturbance at a contour interval of not more than two feet. Contours shall be shown for a distance of 50 feet beyond the limits of the proposed area of disturbance, or greater than 50 feet if determined necessary by the Town Engineer in order to fully evaluate the application.

[c] Proposed final contours at a maximum contour interval of two feet, locations of proposed structures, underground improvements, proposed surface materials or treatment, and dimensional details of proposed erosion and sediment facilities, as well as calculations used in the siting and sizing of sediment basins, swales, grassed waterways, diversions and other similar structures.

[2] The Town Engineer may also require information depicting the watershed tributary to the proposed area of disturbance, including proposed controls and diversions of upland water.

[Amended 11-14-2007 by L.L. No. 7-2007]

[3] Except for applications involving one single-family dwelling, The Town Engineer may also require the depth to bedrock and depth to water table to be identified in all areas of disturbance.

[Amended 11-14-2007 by L.L. No. 7-2007]

(c) A soil erosion and sedimentation control plan designed utilizing the standards and specifications contained in the most recent version of New York State Standards and Specifications for Erosion and Sediment Control. The design, testing, installation, maintenance and removal of erosion control measures shall adhere to these standards and any conditions of this chapter and the erosion control permit. This plan shall:

[1] Describe or depict the temporary and/or permanent structural and vegetative measures that will be used to control erosion and sedimentation for each stage of the project, from land clearing to the finished stage;

[2] Delineate the area of the site that will be disturbed and include a calculation of the acreage or square footage so disturbed;

[3] Include a map drawn at a scale as determined by the Town Engineer that adequately depicts the location of erosion and sediment control measures, swales, grassed waterways, diversions and other similar structures;

[4] Provide dimensional details of proposed erosion and sedimentation facilities as well as calculations used in the siting and sizing of sediment basins, swales, grassed waterways, diversions and other similar structures;

[5] (Reserved) Editor's Note: Former Subsection F(2)(c)[5], which required a timetable and schedule for completion and installation of all elements of the erosion control plan, including proposed construction and disturbance, was repealed 11-14-2007 by L.L. No. 7-2007.

[6] Provide an estimate for the cost of implementing all elements of the erosion control plan; and

[7] Provide a maintenance schedule for erosion control measures.

(d) The details of any surface or subsurface drainage systems proposed to be installed, including special erosion control measures designed to provide for proper surface or subsurface drainage, both during the performance of the work and after its completion.

(e) Any special reports deemed necessary by the Town Engineer to evaluate the application, including but not limited to detailed soils, geologic or hydrologic studies.

(f) Except for applications involving one single-family dwelling, a written narrative explaining the nature of the proposal, including any future development anticipated for the property and whether alternative locations exist for the proposed activity.

(g) Copies of all applications, permits and approvals required by any other local, state or federal agency associated with the construction and site work/disturbance proposed by the applicant.

(h) An application fee in an amount as shall be established by the Town Board.

G. Review. The Town Engineer shall:

(1) Determine when an application is complete.

(2) Review the application to determine that the requirements of this section have been satisfied.

(3) Review each complete application and approve, approve with conditions or deny applications in accordance with this section within 62 days of the receipt of a complete application.

(4) Require the applicant and the applicant's contractor (if any) to execute a notarized statement binding the contractor to the terms of this section and any permit issued hereunder.

H. Criteria for granting permit. In granting a grading, erosion and sediment control permit, the Town Engineer shall find that all of the following conditions have been met:

(1) The proposed activity will not result in creep, sudden slope failure or additional erosion;

(2) The proposed activity will preserve and protect existing watercourses, floodplains and wetlands;

(3) The proposed activity will not adversely affect existing or proposed water supplies or sewage disposal systems; and

(4) The proposed activity will stabilize all earth cut and fill slopes by vegetative or structural means. Maximum exposed soil slopes shall be 33% unless otherwise approved by the Town Engineer.

I. Surety. In order to insure the full and faithful completion of all construction activities related to compliance with all conditions set forth by the Town in its issuance of a grading, erosion and sediment control permit, the owner/applicant shall provide, prior to construction, a cash escrow account certification or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town as the beneficiary. The security shall be in an amount to be determined by the Town Engineer based on submission of final design plans and shall be in a form acceptable to the Town Attorney. In addition, the owner/applicant shall name the Town of Bethlehem as an additional insured on all workmen's compensation and general liability insurance policies required to perform the work. The Town Engineer may waive the requirement of a surety where it finds that the amount of the surety is disproportionate to the estimated cost of the proposed activity or the work is determined to be low risk and is to be performed by the owner of the land.

J. Enforcement. Any activity that requires a grading, erosion and sediment control permit as provided herein, and is commenced without one, or is conducted contrary to the approved grading, erosion and sediment control permit, shall be deemed a public nuisance and may be restrained by an order to stop work, and/or injunction, and/or direct action by the Town to abate the condition, and/or any other manner provided by law as included in § 128-83. The Building Inspector and/or Town Engineer may issue a stop-work order for the entire construction and site work/disturbance project, or any specified portion thereof, if it is determined that any of the following conditions exist:

[Amended 11-14-2007 by L.L. No. 7-2007]

- (1) The construction or the site work/disturbance is being undertaken without a grading, erosion and sediment control permit as provided in this chapter;
- (2) The approved grading, erosion and sediment control permit has not been fully implemented;
- (3) The approved grading, erosion and sediment control permit is not being maintained; or
- (4) Any of the conditions of the permit are not being met.

K. For purposes of this section, a stop-work order is validly posted by posting a copy of the order on the site of the construction or site work/disturbance activity in reasonable proximity to said construction or site work/disturbance and in a location where the posted order is visible. Additionally, a copy of the order, in the case of work for which a permit has been issued, shall be mailed by first-class mail, certified return receipt, and one copy of the order shall be mailed by regular first-class mail to the address listed by the applicant and to the owner as the case may be. In the case of work for which no permit has been issued, a copy of the order shall be mailed by first-class mail, certified return receipt, and one copy of the order shall be mailed by regular first-class mail, to the person listed as owner of the property according to the latest roll maintained by the Town Assessor's office.

(1) In the case of a stop-work order for an activity for which a permit has been issued, if the applicant does not cease the activity and comply with the permit within one day of the date of the order, the permit may be revoked. In addition to revocation of the grading, erosion and sediment control permit, the authorized Town official(s) may revoke all or any portion of any other permits issued in accordance with the Town Code, including building permits. Upon a showing of compliance with the terms of the stop-work order and the grading, erosion and sediment control permit, the Town official(s) may reinstate the grading, erosion and sediment control permit and any other permit that may have been revoked.

(2) In the case of a stop-work order for an activity for which a permit has not been issued, if the owner does not immediately cease the activity and comply with the provisions of this chapter within one day of the date of the order, the authorized Town official(s) may request that the Town Attorney seek injunctive relief. In addition, the authorized Town official may revoke all or any portion of any other permits issued in accordance with the Town Code, including building permits, affecting the property. Upon a showing of compliance with the terms of this chapter and issuance of a grading, erosion and sediment control permit, the Town official may reinstate any other permit(s) that may have been revoked.

L. Ten days after posting and mailing of the stop-work order, the authorized Town official may issue a notice of intent to the applicant and the owner of the Town's intent to perform the work necessary to bring the project into compliance with this chapter. Within 14 days of the date of the notice of intent the Town may enter upon the property and commence work to abate the noncompliance and to bring the property into compliance with this chapter.

M. In the case of a stop-work order for an activity for which a permit has been issued, the Town shall use the surety posted by the applicant to implement the approved provisions of the permit and such other measures as may be required to prevent or minimize soil erosion and sedimentation conditions posing imminent and substantial danger to public health, safety, welfare or natural resources. The applicant, the owner and the contractor shall be jointly and severally liable for any additional costs incurred by the Town to undertake such work over the amount of the posted surety. All such unpaid additional amounts shall be a lien on the property and shall be assessed against the property as a special assessment as provided in the Town Law.

N. In the case of a stop-work order for an activity for which a permit has not been issued, the Town may implement such measures as may be required to prevent or minimize soil erosion and sedimentation conditions posing imminent and substantial danger to public health, safety, welfare or natural resources. The applicant, the owner and the contractor shall be jointly and severally liable for all costs incurred by the Town to undertake such work. All such unpaid amounts shall be a lien on the property and shall be assessed against the property as a special assessment as provided in the Town Law.

O. A stop-work order issued pursuant to this section constitutes a determination from which an administrative appeal may be taken to the Town.

P. All construction, land disturbance, and land clearing activities, whether undertaken pursuant to an erosion control permit or otherwise, shall be undertaken in a manner designed to minimize surface runoff, erosion and sedimentation. The construction and site work/disturbance authorized by a permit issued under this section shall be considered to be in conformance with these provisions if soils are prevented from being deposited onto adjacent properties, rights-of-way, public or private storm drainage systems, roads, streets or sidewalks, and wetlands or watercourses.

Q. Notwithstanding any other provisions of this chapter or conditions of the permit, the applicant is responsible for the prevention of damage to adjacent and nearby public and private property, wetlands, watercourses, rights-of-way, public streets, and public highways from erosion, sedimentation, settling, cracking and other damage or personal injury that may result from the construction and site work/disturbance undertaken by the applicant. The applicant shall be responsible for the prompt removal and correction of damages resulting from any soil, debris or other materials washed, spilled, tracked, dumped, placed or otherwise deposited onto adjacent and nearby public and private property, wetlands, watercourses, rights-of-way, public streets, and public highways, whether incident to the construction or the site work/disturbance undertaken by the applicant or resulting from the movement of vehicles and persons to and from the site.

R. The applicant, the landowner, and the contractor are all responsible for the successful implementation of the erosion control plan and the maintenance of all erosion control measures as depicted on the plan for the duration of the construction and site work/disturbance proposed by the applicant. The applicant, the landowner, and the contractor shall be jointly and severally liable for all costs incurred, including environmental restoration costs, resulting from noncompliance with the approved plan. The application for a permit shall constitute express permission by the applicant and the owner for the Building Inspector or other authorized Town officials to enter the property for the purposes of inspection for compliance with the erosion control plan permit. The application form shall contain a prominent provision advising of this requirement, and by signing the application the applicant, the landowner, and the contractor expressly waive any objection to authorized Town official(s) entering the property for the purpose of conducting an inspection.

S. At all times during the construction and site work/disturbance the erosion control plan shall be maintained in compliance with the permit, and the applicant, the owner, and the contractor shall be fully responsible for said maintenance. The Town Engineer may require that a new application for a grading, erosion and sediment control permit be filed if it finds that the prior approved plan was not properly implemented, or that the construction plans have been revised or altered, or that the site work/disturbance plans have been revised or altered. Changes to a plan for which a permit has been issued shall receive the prior review and approval of the Town Engineer before such changes may be implemented.

T. All grading, erosion and sediment control permits issued shall expire on the earlier of the completion of the work specified or one year from the date the permit is issued, unless otherwise renewed by the Town Engineer.

U. Where the activity subject to this chapter also requires a building permit, the Building Inspector shall not issue a building permit until the building permit application has been reviewed and approved by the Town Engineer for conformance with this section and Chapter 98 of the Code of the Town of Bethlehem.

[Amended 11-14-2007 by L.L. No. 7-2007]

§ 128-50. Home occupations.

A. Applicability. These provisions shall apply to any use that conforms to "home occupation" as defined in this chapter, provided that such use conforms to the standards set forth in this section.

B. Registration. Except as provided in Subsection E below, relating to de minimis use, the owner of a home occupation shall register the business with the Department of Economic Development and Planning. Said registration shall identify the owner of the property on which the home occupation is conducted; shall identify the operator of the home occupation if different from the owner of the premises; shall certify that the home occupation is a permitted home occupation; and shall certify compliance with the requirements for operation of a home occupation as set forth in this section.

C. Home occupation operations. All home occupations shall meet each of the following conditions:

(1) The home occupation shall be incidental to and secondary to the use of the dwelling for residential purposes. It shall be conducted in a manner which does not give the outward appearance of a nonresidential use or business being conducted on the premises, does not infringe on the right of neighboring landowners to the quiet enjoyment of their land, and does not alter the character of the district in which the lot is located.

(2) Except for de minimis uses as provided in Subsection E below, the portion of the dwelling unit that is used for the home occupation shall have or obtain a currently valid certificate of compliance.

[Amended 10-8-2008 by L.L. No. 3-2008]

(3) The home occupation shall be conducted only by a full-time resident of the premises.

(4) The home occupation shall be conducted wholly within an area not to exceed the equivalent of 30% of the total floor area of the dwelling unit or 600 square feet, whichever is less. In no case shall the home occupation cause the scale of use on the lot to exceed the maximum permitted. More than one home occupation may be conducted on a lot, provided that the total floor area of the dwelling devoted to all of the home occupations does not exceed the maximum floor area as provided herein.

(5) The home occupation shall employ no more than two persons who are not resident in the dwelling unit.

(6) Signage for the home occupation shall conform to the requirements for signs as set forth in this chapter.

(7) Delivery and pickup of material or commodities to and from the premises by a commercial vehicle shall not exceed three trips per week, and the parking of delivery vehicles shall not impede or restrict the movement of traffic on adjacent streets.

(8) The building construction classification and fire separations for the structure shall comply with the applicable fire and building safety requirements of the Town for mixed use of residential and the applicable nonresidential use classification of such home occupation and shall be certified by the Building Inspector.

(9) There shall be no exterior display, exterior storage of materials or other exterior evidence of any home occupation except for signs and off-street parking.

(10) The home occupation shall not produce any odor, noise, vibration, smoke, dust, heat, or glare discernible at the property line.

(11) The home occupation shall not use, store, produce or dispose of any toxic or hazardous material.

(12) The home occupation may sell or offer for sale any articles or products that are wholly produced, grown, created or assembled on the lot and may provide repair services in connection with the trade of a dressmaker, milliner, seamstress, or tailor, furniture repair, reupholstering, or the trade of a locksmith or minor household appliance repair. Repair services may include the sale of replacement or repair products, products substantially produced on site, or accessories that are reasonably related to the principal product.

(13) The intensity of a home occupation use shall be restricted to no more than 20 vehicle trips per week, or five per day, generated by customers, clients or sales representatives.

D. Prohibited home occupations. The use of a residence for the following home occupations is prohibited:

- (1) Ambulance or taxi service.
- (2) Beauty salons and barbershops, except in the Rural District.
- (3) Dance studio, aerobic exercise studio, and gymnasium or health club.
- (4) Kennel.
- (5) Laundry service or dry-cleaning service.
- (6) Mortician, funeral home or hearse service.
- (7) Motor vehicle repair, sales or rental.
- (8) Parking garage or the rental of off-street parking spaces.
- (9) Restaurant, cafe or tavern.
- (10) Towing service.
- (11) Tractor-trailer operations, including parking, storage or repair.

E. De minimis use. Registration and site plan approval are not required for a home occupation use which meets each of the following standards:

[Amended 10-8-2008 by L.L. No. 3-2008]

- (1) No physical change to the exterior of a principal or accessory structure is required to accommodate the home occupation; and
- (2) The use is conducted on the site solely by persons utilizing the home as their primary residence; and
- (3) The home occupation has no nonresident employees; and
- (4) There is no sign or other exterior advertisement of the existence of the home occupation use; and
- (5) There is no exterior storage of materials, equipment, vehicles or other supplies used in conjunction with the home occupation; and
- (6) The home occupation meets the conditions listed under § 128-50C above.

§ 128-51. Incentive zoning.

A. Statement of policy. 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 a major subdivision plat to develop residential lots in accordance with the conservation subdivision standards of this chapter and Chapter 103, Subdivision Regulations, and applicants seeking approval of multifamily development projects.

B. Purpose. The purpose of the Town's system of incentive zoning is to advance the goals and policies expressed in the Town Comprehensive Plan and this chapter. 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 adoption of this chapter, 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. As set forth below the Town Board has established standards for the proper application of incentive zoning to a conservation subdivision layout and multifamily 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.

C. Grant of authority. In considering an application for approval of a conservation subdivision plat or multifamily development project the Planning Board is hereby authorized to adjust the maximum unit density requirements of the zoning district in which the property is located in exchange for one or more of the specifically identified incentives and in accordance with the standards and conditions set forth below.

D. Applicability. The incentives set forth herein shall be applicable only to land parcels zoned for residential uses for which an application for approval of a conservation subdivision pursuant to § 128-46 of this chapter and Chapter 103, Subdivision Regulations, of the Town Code, and applicants seeking approval of multifamily development projects pursuant to this chapter may be approved by the Planning Board.

E. Incentives. Notwithstanding any contrary provision of Town Law, this chapter, or Chapter 103, Subdivision Regulations, that limits or restricts the maximum unit density of a proposed conservation subdivision, an applicant for a conservation subdivision may apply for an incentive adjustment to the maximum unit density requirements of this chapter in exchange for the following benefits:

(1) Open space for conservation subdivisions.

(a) Tier 1 incentive. This incentive may be applied to any conservation subdivision. The calculation of the Tier 1 incentive is based on the maximum density for a conservation subdivision as determined by the Planning Board.

[1] For the permanent preservation of not less than 40% of the gross land area of a proposed conservation subdivision, a fifteen-percent increase to the maximum unit density for the zoning district may be approved; or

[2] For the permanent preservation of not less than 50% of the gross land area of a proposed conservation subdivision, a twenty-percent increase to the maximum unit density for the zoning district may be approved.

(b) Tier 2 incentive. The calculation of the Tier 2 incentive is based on the maximum density for a conservation subdivision prior to the addition of any Tier 1 incentive and shall be in addition to the Tier 1 incentive adjustment. In no event shall the total of the Tier 1 and Tier 2 adjustments exceed 50% of the base maximum density for the conservation subdivision as determined by the Planning Board. 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 fifteen-percent increase to the maximum unit density for the zoning district may be approved. Such dedication may be by permanent easement or conveyance of land in fee to the Town. 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 § 128-57 of this chapter and § 103-29 of Chapter 103, Subdivision Regulations, of the Town Code.

(2) Affordable housing for multifamily development.

(a) This incentive may be applied to any multifamily dwelling development project pursuant to this chapter. The calculation of the incentive is based on the maximum density for the project as determined by the Planning Board.

[1] If more than 25% of dwelling units qualify as affordable, ten-percent increase in the total number of units.

[2] If more than 33% of dwelling units qualify as affordable, fifteen-percent increase in the total number of units.

[3] If more than 50% of dwelling units qualify as affordable, twenty-percent increase in the total number of units.

(b) For the purposes of this Subsection E(2), "affordable housing" shall mean residential units available for a sales price or rental fee within the means of a household income which is 80% of the median income of the Town of Bethlehem as defined by the United States Department of Housing and Urban Development.

F. Findings. Before approving an adjustment to the maximum unit density requirements of this chapter in exchange for one or more of the identified benefits, the Planning Board shall make the following specific findings:

(1) The proposed adjustments would not have a significant adverse impact on the property, or to adjoining property, or to the neighborhood in which the property is situate.

(2) 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.

(3) The units designated as affordable housing under this section shall remain affordable by an annual certification to the Board identifying the occupancy of the units by qualified persons and families, and a 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.

(4) The units designated as affordable housing under this section shall remain affordable by an instrument approved by the Planning Board Attorney that shall be filed in the office of the Albany County Clerk.

(5) 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 Chairman of the Planning Board.

(6) The proposed adjustments would not adversely affect the public health, safety or welfare or those of the residents of the project or neighboring lands.

§ 128-52. Lighting.

A. General requirements.

(1) No artificial lighting shall shine directly upon any neighboring residential property located in a residential district or be so established that it shall shine directly upon any residential property or shall shine directly on or into any room or rooms, porches or patios of any residential property, nor shall any artificial lighting be maintained or operated from any structure or land in such a manner as to be a nuisance or an annoyance to neighboring residential properties or as to interfere with the physical comfort of the occupants of residential properties.

(2) Vegetation screens should not be employed to serve as the primary means for controlling glare. Rather, glare control should be achieved primarily through the use of such means as cutoff fixtures, shields and baffles, and appropriate application of fixture mounting height, wattage, aiming angle and fixture placement.

(3) Exterior lighting shall enhance the building design and the adjoining landscape. Lighting standards and building fixtures should be of a design and size compatible with the building and adjacent areas, as determined by the Planning Board.

(4) Security lighting should use the lowest possible illumination to effectively allow surveillance.

(5) Under-canopy lighting for such uses as gasoline service stations shall be recessed so that the lens cover is recessed or flush with the bottom surface (ceiling) of the canopy or shielded by the fixture or the edge of the canopy so that light is restrained to 85° or less from vertical.

(6) Luminaires used for playing fields and outdoor recreational uses shall be exempt from the height restriction, provided that all other provisions of this section are met and the light is used only while the field is in use.

(7) Awnings and canopies used for building accents over doors, windows, walkways, and the like shall not be internally illuminated (i.e., not lit from underneath or behind).

B. General guidelines.

(1) Where practical, exterior lighting installations should include timers, dimmers, sensors, or photocell controllers that turn the lights off during daylight hours or hours when lighting is not needed, to reduce overall energy consumption and eliminate unneeded lighting.

(2) Exterior lighting installations should be designed to avoid harsh contrasts in lighting levels.

(3) Fixtures and lighting systems used for safety and security shall be in good working order and shall be maintained in a manner that serves the original design intent of the system.

(4) Vegetation and landscaping shall be maintained in a manner that does not obstruct security lighting.

(5) Flashing sources of illumination are prohibited.

(6) Site lighting shall minimize light spill into the dark night sky.

C. To assure that site lighting does not adversely affect neighboring properties, the Building Inspector shall have the authority to require changes to the on-site lighting fixtures to reduce and minimize glare and the splaying of light at the property lines and to assure continuous compliance with this section. Such changes may include, but are not limited to, lower wattage bulbs, the addition of shields to deflect light, and changes to the angle of the fixtures or shields. Failure to implement the changes as directed by the Building Inspector shall be a violation of any permit or approval granted under this section.

D. Exterior lighting plan review.

(1) Where required by the Planning Board, an application for site plan approval shall include an exterior lighting plan depicting the number, location, mounting height, and type of proposed lighting fixture and level of illumination on the site. The exterior lighting plan shall include at least the following:

(a) Manufacturer specification sheets, cut sheets or other manufacturer-provided information indicating the specifications for all proposed lighting fixtures.

(b) The proposed location, mounting height, and aiming point of all exterior lighting fixtures.

(c) If building elevations are proposed for illumination, drawings shall be provided for all relevant building elevations showing the fixtures, the portions of the elevations to be illuminated, the luminance levels of the elevations, and the aiming point for any remote light fixture.

(d) Computer-generated photometric grid showing footcandle readings every 10 feet within the property or site and 10 feet beyond the property lines. Iso-footcandle contour-line style plans are also acceptable.

(2) Additional information may be requested following the initial lighting plan review.

E. Residential district lighting. Within a residential district, all new parking lot lighting and site lighting for developments other than single-family or two-family homes shall be designed in consideration of the following:

- (1) Illumination at the property line shall not exceed 0.1 footcandle.
- (2) Luminaires shall be full cutoff type unless otherwise determined by the Planning Board.
- (3) On a nonresidential premises outdoor light fixtures equipped with floodlights are prohibited.
- (4) Wall pack outdoor light fixtures located on a front or side facade of a building or structure shall be full cutoff.
- (5) Noncutoff outdoor light fixtures shall be limited to walkways, outdoor seating areas or other areas approved for such fixtures as part of a development plan.
- (6) No light will produce glare so as to cause illumination beyond the boundaries of the property on which it is located.
- (7) Freestanding lights shall be appropriate to the design of the structures and shall not exceed 15 feet in height. Wall-mounted light fixtures shall not be mounted higher than 12 feet above the ground level immediately below the location of the light fixture. Both freestanding and wall-mounted fixtures shall be fitted with movable shields to allow for the redirection of light to avoid glare and the splaying of light to off-site locations.

F. Commercial and mixed-use district lighting. Within a commercial and mixed-use district, all parking lot lighting and site lighting shall be designed in consideration of the following:

- (1) Illumination at the property line shall not exceed 0.2 footcandle.
- (2) Luminaires may be full cutoff or semicutoff as determined by the Planning Board.
- (3) Freestanding lights shall be appropriate to the design of the structures and shall not have a mounting height greater than 24 feet in height. Wall-mounted light fixtures shall not be mounted higher than 15 feet above the ground level immediately below the location of the light fixture. Both freestanding and wall-mounted fixtures shall be fitted with movable shields to allow for the redirection of light, to avoid glare and the splaying of light to off-site locations.
- (4) Wall pack outdoor light fixtures oriented toward an abutting residential district shall be full cutoff.
- (5) Noncutoff outdoor light fixtures shall be limited to walkways, outdoor seating areas or other areas approved for such fixtures as part of a development plan.
- (6) For exterior lighting installations and fixtures within 50 feet of a residential district, freestanding lighting fixtures shall be no higher than 15 feet above grade.
- (7) All outdoor light fixtures on a single-use site, shopping center, integrated center, business park or industrial park, including those on freestanding light poles and those attached to buildings, security lights, and architectural lights, shall be of consistent or compatible style, pole height, mounting height, color, intensity, design and materials with other outdoor light fixtures within the lot, out lot, single-use site, integrated center, business park or industrial park.

§ 128-53. Lots bordering streams.

A. No building permit shall be issued for the construction or installation of any permitted or accessory use in any district within 100 feet of the bank of the following streams or within the one-hundred-year flood zone of said streams:

- (1) Normans Kill Creek.
- (2) Vloman Kill Creek.

(3) Onesquethaw Creek.

(4) Phillipin Kill Creek.

(5) Dowers Kill Creek south of Route 32.

B. An application for a building permit for lots bordering streams shall be accompanied by a plot plan prepared and certified by a professional engineer or registered landscape architect. The intent of the design plan shall be to ensure that there will be no movement, storage or stockpiling of soil, sand, gravel, organic material or any other material that may potentially:

(1) Cause silt and eroded material to enter the stream during storm events or as a result of wind movement.

(2) Affect the efficiency or the capacity of the stream.

(3) Increase flood heights.

(4) Cause an increase in water flow velocity.

(5) Obstruct, catch or collect debris that would obstruct flow under flood conditions.

§ 128-54. Nonconforming uses.

A. Except as otherwise provided in this section, any lawfully permitted use(s) of land or structure(s) existing as of the effective date of this chapter that does not comply with the requirements of this chapter shall be deemed a nonconforming use and may be continued as provided herein.

B. Except as provided herein, no nonconforming use of a lot or lots shall be moved to another part of a lot or outside the lot, and no nonconforming use of a building or other structure shall be moved or extended to any part of the building or other structure not manifestly arranged and designed for such use at the time the use became nonconforming, and no building or other structure containing a nonconforming use shall be moved, unless the result of any such move is to eliminate or reduce the nonconformity.

C. No nonconforming use of land, buildings, or other structures shall be changed to any use which is substantially different in nature or purpose from the existing nonconforming use, except to a use which is permitted in the district in which the land, building, or other structure is located, unless the Zoning Board of Appeals finds that the new use will have no greater injurious impact upon the character of the neighborhood and of the community than the existing nonconforming use.

D. No nonconforming use of land, buildings, or other structures that is changed to conform or to more nearly conform to this chapter shall thereafter be changed to be less conforming.

E. No nonconforming use of land, buildings, or other structures which shall have been discontinued shall thereafter be resumed. Any one of the following items shall constitute prima facie evidence of discontinuance:

(1) Any positive act indicating intent to discontinue.

(2) Any conscious failure to take all necessary steps to resume the nonconforming use with reasonable dispatch in the circumstances.

(3) Cessation of the nonconforming use of a lot and/or structure for 12 consecutive months, or for a total of 18 months during any three-year period.

(4) Substitution of or change to a conforming use.

F. All nonconforming uses shall conform in all other respects to the requirements of the zoning district in which they are located.

§ 128-55. Nonconforming lots and structures.

A. Structures. Except as otherwise provided in this section, any lawfully permitted structure existing at the time of the effective date of this chapter which does not comply with the requirements of this chapter shall be deemed to be a nonconforming structure and may be continued as provided herein.

B. Lots. Except as otherwise provided in this section, any lot in existence at the time of the effective date of this chapter which does not comply with the requirements of this chapter shall be deemed to be a nonconforming lot.

(1) A nonconforming lot may be built upon for any purpose permitted in the zoning district in which it is located, without a variance, despite its failure to comply with the area, shape, or frontage requirements of this chapter, provided that:

(a) The nonconformity results solely from the adoption of this chapter (including any preceding zoning law or subsequent amendments); and

(b) The nonconformity has not been increased by any act or event subsequent to the effective date of this chapter.

(2) A nonconforming lot satisfying Subsection B(1)(a) and (b) above shall be designated an "eligible nonconforming lot." A lot shall remain an eligible nonconforming lot until the occurrence of any of the following events:

(a) Reduction in the lot's size, or any other increase in the degree of its nonconformity for any reason, other than the adoption of a more stringent zoning law;

(b) Acquisition after the effective date of this chapter by the owner of adjoining land which, when added to the original nonconforming lot, forms one or more lots complying with the area, shape, and frontage requirements of this chapter. In such case no portion of the lot(s) so formed shall thereafter qualify as an eligible nonconforming lot under this section, unless and until again made nonconforming by the adoption of a more stringent zoning law; or

(c) Acquisition after the effective date of this chapter by the owner of the lot of adjoining land which, when added to the original nonconforming lot, reduces its nonconformity but does not form a lot complying with the area, shape, and frontage requirements of this chapter. In such case, a new eligible nonconforming lot shall be formed which reflects the addition of the adjoining lot.

C. Compliance. Nothing herein is intended or shall be construed to affect any requirement of this chapter with respect to matters other than the area, shape and frontage of nonconforming lots. An eligible nonconforming lot shall be required to comply with all other requirements of this chapter, including those set forth in the Schedule of Uses and the Schedule of Area and Bulk Requirements, and with all other requirements of the Town, county, and state regarding the construction of buildings and supporting systems.

D. Completion. Notwithstanding any provision of law to the contrary, any building, extension, or alteration for which a permit has been duly granted, the actual construction of which has been started before the effective date of this chapter, or of a pertinent amendment thereto, may be completed in accordance with plans on file with the Building Inspector, provided that such actual construction proceeds in an expeditious manner and the building is completed within one year of the adoption of this chapter.

E. Rebuilding. A prior nonconforming structure may be rebuilt in the event of its total or partial destruction, provided the reconstruction commences within 24 months of said destruction, and further provided that the rebuilt structure occupies the same or a lesser amount of footprint and does not exceed the original height of the totally or partially destroyed structure. In the case of a structure of 4,000 gross square feet or greater and which is used for nonresidential purposes, such rebuilding shall require site plan review and approval by the Planning Board. The

rebuilding of a residential or a nonresidential structure of less than 4,000 gross square feet shall be exempt from site plan review and approval.

[Amended 10-8-2008 by L.L. No. 3-2008]

F. Repair. A prior nonconforming structure may be repaired or restored to a safe condition, provided that such repair does not increase the size of such structure.

G. Expansion. Notwithstanding any other provision of this section, a nonconforming structure may be expanded, enlarged or extended, provided that said expansion complies with the area, yard and bulk requirements for the district in which it is located and such expansion does not increase the nonconformity. Such expansion, enlargement, or extension shall be allowed only by special use permit from the Planning Board pursuant to § 128-69 of this chapter.

§ 128-56. Off-street parking and loading.

A. Off-street parking spaces shall be required for all structures and uses that are established constructed or rebuilt after the effective date of this chapter, except that:

[Amended 10-8-2008 by L.L. No. 3-2008]

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

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

B. Off-street parking space shall be provided for all dwellings. No portion of the right-of-way of an existing or proposed street or highway shall be used for parking space(s) for a residential use. A parking space may be fully enclosed (as a garage), covered (as a carport) or open. An open parking space shall have a minimum length of 20 feet and minimum width of nine feet, not including the access drive or maneuvering space.

C. Off-street parking space shall be provided for other uses as follows:

(1) Each off-street parking space shall measure not less than 20 feet in length with a minimum width of nine feet.

(2) The number, size and dimensions of parking spaces suitable for use by the physically handicapped shall comply with the requirements set forth in the New York State Uniform Fire Prevention and Building Code. Each area reserved for handicapped off-street parking shall have a minimum length of 20 feet and a minimum width of 16 feet. Spaces in a lot shall have a minimum clear width of eight feet and an adjoining access aisle having a minimum clear width of eight feet. Two accessible parking spaces are permitted to share a common access aisle.

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

[Amended 10-8-2008 by L.L. No. 3-2008]

E. In all residential districts, not including the Rural District, no more than two commercial vehicles per dwelling unit may be parked overnight on a single lot, subject to the following:

(1) In no instance shall a commercial vehicle in excess of 23 feet in length or 8,000 pounds in curb weight be parked overnight on a single lot without first obtaining a special use permit.

(2) Parking and storage of boats, trailers and recreational vehicles in the front yard as defined in § 128-22 is prohibited.

F. In the General Commercial, Heavy Industrial and Rural Light Industrial Districts, off-street parking shall not be permitted within 10 feet of any property line providing highway frontage to the property. Such setback area shall be considered as a minimum; however, additional setback area may be required if determined to be necessary by the Planning Board and in accordance with § 128-71 of this chapter. In addition, such setback area shall be suitably landscaped in accordance with the requirements of § 128-71 of this chapter.

G. Except as otherwise provided, off-street parking areas as required for any use within the General Commercial, Heavy Industrial and Rural Light Industrial Districts shall be located no closer than 15 feet to any side or rear property line, except as may be approved by the Planning Board for the purpose of providing adjacent properties joint driveway access from the street, off-street access between properties and shared parking areas. Where such setback is reduced, the Board may require that a comparable amount of site area be added to other setback areas on the same site.

H. If the Planning Board finds that compliance with the off-street parking requirements herein would have an adverse impact upon the physical environment or visual character of the area, and if the Board also finds that all of the parking required in the Schedule of Off-Street Parking will not be necessary for the anticipated use of the site, the Planning Board may reduce the amount of parking required to be constructed, provided that sufficient usable land is set aside to satisfy the parking requirements in the future should the need for such additional parking arise. The Planning Board shall, as a condition of any approval granted, retain the right to require the owner of the property to construct such additional parking whenever it finds that such parking is needed. If a proposed use is not listed in the Schedule of Off-Street Parking, the Planning Board shall use its discretion to determine the amount of parking to be required.

[Amended 10-8-2008 by L.L. No. 3-2008]

Schedule of Off-Street Parking

Uses	Spaces Required
Residential Uses	
One-, two-, three- and four-family dwelling	2 for each dwelling unit
Multifamily dwelling	1.5 for each dwelling unit
Multifamily dwelling, senior citizen/subsidized	1.1 for each dwelling unit
Bed-and-breakfast, inn, motel, hotel	1 for each guest room
Nonresidential Uses	
Bank, financial business	1 for each 400 square feet of office space and customer area
Bowling alley	5 for each alley

Schedule of Off-Street Parking

Uses	Spaces Required
Church or temple	1 for each 5 seating spaces in main assembly room
Funeral home	5 for each 1,000 square feet of gross floor area
Industrial or manufacturing	1 for each 2 employees on maximum working shift
Medical office	1 for each 200 square feet of gross floor area
Motor vehicle repair	1 for each 3 repair bays
Nightclub (including with restaurant)	1 for each 50 square feet of gross floor area
Nursing or convalescent home	1 for each 4 beds
Office	1 for each 300 square feet of gross floor area
Restaurant, no drive-through	1 for each 3 seats or 1 for each 75 square feet of gross floor area, whichever is greater
Restaurant, with drive-through	1 per 60 square feet of gross floor area plus 4 stacking spaces per drive-up window
Shopping center, retail use, service business	1 for each 250 square feet of gross floor area
School	2 for each classroom
Theater and other place of public assembly	1 for each 3 seating spaces
Wholesale, storage, freight terminal	1 for each 1,000 square feet of gross floor area

I. For any buildings having more than one use, parking space shall be required for each use.

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

[Amended 10-8-2008 by L.L. No. 3-2008]

K. Any parking facility for more than 40 cars shall provide landscaped areas within the parking lot equal to at least 10% of the gross parking lot area. This landscape area requirement shall be provided by landscaped end islands and landscaped center islands within the parking area. Landscaped end islands shall be a minimum of 15 feet in

width and landscaped center islands shall be a minimum of 18 feet in width. The number and type of plantings within the landscaped islands shall be determined by the Planning Board.

L. Loading facilities. Off-street loading facilities, appropriate for intended use, shall be provided for each nonresidential use and shall be so arranged as not to interfere with pedestrian or motor traffic on the public highway or any adjacent residential area. Such off-street loading facilities shall be confined to the side or rear yard, and screening shall be provided to minimize the view of any off-street loading or commercial use from any point along a property line common to any residential use or from any street. The number and dimension of the off-street loading spaces shall be determined by the Planning Board.

§ 128-57. Parkland reservation and fee requirements.

A. General provisions.

(1) In reviewing residential site plans, residential subdivisions and proposals for planned residential and mixed economic developments, the Planning Board, in the case of site plans and subdivisions, or the Town Board, in the case of planned residential and mixed economic developments, shall ensure that the park and recreation demands generated by new residential development are addressed in accordance with the provisions of this chapter.

(2) To the extent that this section is inconsistent with Town Law § 274-a, Subdivision 6, or § 277, Subdivision 4, or any other provision of Article 16 of Town Law, the provisions of this chapter are expressly intended to and do hereby supersede any such inconsistent provisions.

B. Reservation of land for public park, playground or recreation purpose.

(1) Land reservation requirement.

(a) Residential developments requiring site plan or subdivision approval. Where the Planning Board determines that suitable land for a public park, playground or other recreational purpose exists within the parcel boundaries of a proposed residential development, the Planning Board may require as a condition of site plan or subdivision approval that a portion of the development parcel be reserved for such purpose.

(b) Residential developments requiring planned residential development approval. Where the Town Board determines that suitable land for a public park, playground or other recreational purpose exists within the parcel boundaries of a proposed planned residential development, the Town Board may require as a condition of building project approval that a portion of the development parcel be reserved for such purpose.

(2) In determining whether or not to require the reservation of land for public park, playground or other recreational purpose, the Planning Board, in the case of residential site plans and subdivisions, or the Town Board, in the case of planned residential and mixed economic developments, shall be guided by the criteria and procedures outlined in Subsections C, D and E below.

C. Amount of land reservation. The minimum amount of land area to be reserved for public park, playground or other recreational purpose shall be determined by the number and type of new residential units located within the proposed residential development, according to the following schedule:

Unit Type	Amount of Land to be Reserved (square feet per dwelling unit)
Single-family detached	1,550
Single-family attached ¹	1,100
Two- to four-family unit ²	1,150

Unit Type	Amount of Land to be Reserved (square feet per dwelling unit)
Multifamily unit ³	925

Notes:

- ¹ Refers to single-family attached units such as townhouses where each dwelling unit sits on its own individual lot.
- ² Refers to units located in structures with two to four dwelling units, including condominium units, but excluding single-family attached units such as townhouses.
- ³ Refers to units located in structures with five or more dwelling units, including condominium units, but excluding single-family attached units such as townhouses.

D. Criteria for land reservation. In determining whether or not to require the reservation of land for public park, playground or recreational purposes, the Planning Board, in its review of residential site plans or subdivisions, or the Town Board, in its review of planned residential and mixed economic developments, shall consider the following factors:

- (1) Whether suitable land exists within the parcel boundaries of the proposed development, in terms of its size, shape, and dimensions, to reasonably accommodate a public park, playground or other recreation use;
- (2) Whether the characteristics of the land in terms of topography, soils, vegetative cover, hydrology and/or other natural features readily lend themselves to development of the site for active recreation use;
- (3) Whether there are state or federal regulatory restrictions that would limit the usefulness of the site for active recreation development;
- (4) Whether the site, in terms of its physical characteristics, would provide an attractive and safe area for recreational use;
- (5) Whether the site is located such that reasonable and safe pedestrian, bicycle and vehicular access can be provided between the site and surrounding residential areas;
- (6) Whether the character of the proposed residential development and that of the surrounding area is compatible with a public park and/or recreational use;
- (7) Whether the anticipated population of the proposed residential development, together with the population density of surrounding neighborhoods, is sufficient to justify development and long-term maintenance of a public park, playground or other recreation facility at the location;
- (8) Whether the site is located near or duplicates recreation facilities already provided in the area, particularly those providing the same type of recreation opportunities, including facilities located on public school grounds;
- (9) Whether development and long-term maintenance of the site would place an undue burden on the Town Parks and Recreation Department, given other commitments and priorities of that Department;
- (10) Whether the site contains any unique and significant physical, aesthetic or ecological features that would make it particularly suited for environmental education, trail development, a nature preserve, or other passive recreation use;
- (11) Whether reservation of the land is consistent with recommendations contained in the Comprehensive Plan for the Town of Bethlehem and/or the Master Plan for Parks and Recreation in the Town of Bethlehem, if any, in effect at the time the development application is made; and

(12) Whether reservation of the land is consistent with the general goals and objectives of the Town Parks and Recreation Department and the Town Board with respect to parks and recreation facility development.

E. Referral required.

(1) Site plan and subdivision applications. Prior to making any final determination that land within a proposed residential development will be reserved for public park, playground or other recreational purpose, the Planning Board, in the case of site plans or subdivisions, shall first refer the proposal to both the Town Board and the Administrator of Parks and Recreation for their input on the matter. If no response is rendered within 30 days of the date of referral, the Planning Board may make a final determination. A referral is not necessary where the Planning Board makes a determination that it will not require the reservation of land within the residential development.

(2) Planned residential development applications. Prior to making any final determination that land within a proposed residential development will be reserved for public park, playground or other recreational purpose, the Town Board, in the case of planned residential and mixed economic developments, shall first refer the proposal to the Administrator of Parks and Recreation for his/her input on the matter. If no response is rendered within 30 days of the date of referral, the Town Board may make a final determination. A referral is not necessary where the Town Board makes a determination that it will not require the reservation of land within the residential development.

F. Findings required. Prior to making any final determination that land will be reserved for public park, playground or other recreational purpose, the Planning Board, in the case of residential site plans and subdivisions, or the Town Board, in the case of planned residential and mixed economic developments, shall make a finding, in accordance with § 274-a, Subdivision 6, or § 277, Subdivision 4, of the New York State Town Law, that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the Town. The finding shall include an analysis of the criteria of Subsection D(1) through (12) above.

G. Timing of land reservation. The reservation of public park, playground or recreation land shall occur prior to the issuance of the first building permit for any dwelling unit located within the approved residential development.

H. Satisfaction of land reservation requirement. The land reservation requirement of this section shall be satisfied by:

(1) The presentation to the Town of a metes and bounds description of the site that is proposed to be reserved for public park, playground or recreation purposes;

(2) The placing of a notation upon the approved plan indicating that the land is so reserved and cannot be further subdivided or built upon except for such purposes; and

(3) The placing of deed restrictions upon the site. Said deed restrictions shall be in a manner and form acceptable to the Town Attorney and shall indicate that the land is reserved for public park, playground or recreational purposes and cannot be further subdivided or built upon except for such purposes. Said deed restrictions shall be filed in the office of the County Clerk, and upon their filing the land so reserved shall become part of the Official Map of the Town of Bethlehem.

I. Fee in lieu of public park, playground or recreational land.

(1) Fee in lieu of land reservation. Where the Planning Board, in the case of residential site plans and subdivisions, or the Town Board, in the case of planned residential and mixed economic developments, does not require the reservation of land for a public park, playground or other recreational purpose, the approving Board shall instead require that a fee in lieu of said land be paid to the Town as a condition of project approval.

(2) Amount of fee. The fee to be paid the Town shall be determined by the number and type of new residential units located within the proposed residential development, according to the following schedule:

[Amended 10-8-2008 by L.L. No. 3-2008]

Unit Type	Fee Amount (per dwelling unit)
Single-family detached	\$1,550
Single-family attached ¹	\$1,100
Two- to four-family units ²	\$1,150
Multifamily units ³	\$925

Notes:

- ¹ Refers to single-family attached units such as townhouses where each dwelling unit sits on its own individual lot.
- ² Refers to units located in structures with two to four dwelling units, including condominium units, but excluding single-family attached units such as townhouses.
- ³ Refers to units located in structures with five or more dwelling units, including condominium units, but excluding single-family attached units such as townhouses.

(3) Findings required. Prior to requiring the payment of a fee in lieu of the reservation of land, the Planning Board, in the case of site plans or subdivisions, or the Town Board, in the case of planned residential and mixed economic developments, shall make a finding, in accordance with § 274-a, Subdivision 6, or § 277, Subdivision 4, of the Town Law and § 128-57 of this chapter, that the proposed residential development presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan or within such building project.

(4) Timing of fee payment. Payment of the fee shall be made to the Town at the time of application for a building permit for each approved dwelling unit. Fees may be paid on a unit-by-unit basis consistent with the number of units covered in each building permit application.

(5) Fees to constitute separate trust fund. All fees collected pursuant to this section shall be placed in a separate trust fund(s) to be established and used by the Town exclusively for the acquisition of public park, playground or recreation land and/or the improvement of public park and recreation facilities.

J. Credits.

(1) Credit for previous land reservations and fee payments. Notwithstanding the provisions found elsewhere in this section, credit shall be given for previous land reservations and/or fee payments that were made pursuant to this section or Chapter 103, Subdivision Regulations, of the Town Code, at the time of a prior residential development approval.

(2) Credit for land previously reserved. Any land reservation required pursuant to this section shall be reduced by an amount equal to the area of land reservation required for the approved dwelling unit(s) or lot(s) at the time of previous subdivision, site plan or planned residential development approval.

(3) Credit for fees previously paid. Any park and recreation fee required pursuant to this section shall be reduced by an amount equal to the park and recreation fee required for the approved dwelling unit(s) or lot(s) at the time of previous subdivision, site plan or planned residential development approval.

(4) Credit for on-site facilities. In instances where private recreation facilities are provided on site for the benefit of residents of the development, the recreation fee required pursuant to this section may be reduced by an amount equal to 50% of the required fee or 50% of the cost of such on-site facilities, whichever is less. Acceptable facilities shall include clubhouses, swimming pools, tennis courts, playgrounds, athletic fields, and

other similar facilities for active recreation use. The acceptability of on-site facilities and any subsequent reduction in fee shall be determined by the Planning Board, in the case of site plans or subdivisions, or the Town Board, in the case of planned residential and mixed economic developments. The cost of any on-site facilities for which credit is sought shall be fully documented and may include the cost of materials and labor only.

§ 128-58. Satellite dishes and antennas.

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

§ 128-59. Signs.

A. Purpose. The purpose of this section is to promote and protect the public health, welfare and safety by regulating existing and proposed on-premises advertising signs and signs of all types within the Town of Bethlehem. This section is intended to protect property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the community, preserve the scenic and natural beauty and provide a more enjoyable and pleasing community. It is further intended to reduce distractions and obstructions that may adversely affect traffic safety, reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way, provide more visual open space and maintain the generally high level of the community's appearance and attractiveness. This section is intended to promote attractive signs that clearly present the visual message in a manner that is compatible with their surroundings and to ensure that signs aid orientation and adequately identify uses and activities to the public. The appearance, character and quality of a community are affected by the location, size, construction and graphic design of its signs. Therefore, such signs should convey their messages clearly and simply to be compatible with their surroundings.

B. General regulations.

(1) No person, firm or corporation shall hereafter erect, re-erect, construct or structurally alter a sign or sign structure without first obtaining a permit issued by the Building Inspector.

(2) Every application for a sign permit shall be accompanied by plans to scale showing the area of the sign; the position of the sign in relation to nearby buildings or structures; the location of the building, structure or lot to which or upon which the sign is to be attached or erected; the method of illumination, if any; and statements indicating compliance with appropriate construction standards.

(3) No sign shall be erected which, in the opinion of the Building Inspector, may cause hazardous or unsafe conditions. If such signs exist, they shall be removed upon direction of the Building Inspector following notification to the owner.

(4) No sign, other than an official traffic sign, shall be erected within the right-of-way of any public street or highway.

C. General standards.

(1) Unless otherwise provided for in this section, no sign shall have more than two sides. The maximum allowable square footage of a two-sided sign shall be the sum of both sides, unless otherwise specified.

(2) All illuminated signs shall bear the Underwriters' Laboratories, Inc., seal in conformance with U.S. 48 or be inspected and certified by a Town-authorized electrical inspection company.

(3) All freestanding signs shall be designed and constructed to withstand a wind pressure of not less than 30 pounds per square foot of surface area.

(4) All signs, including wall signs and projecting signs, shall be securely anchored and shall not swing or move in any manner.

(5) All signs shall be constructed of durable materials and shall be maintained in a good condition.

(6) Except for the Hamlet (H), Commercial Hamlet (CH) and Rural Hamlet (RH) Districts, no sign shall project beyond property lines or over public sidewalk areas.

(7) Projecting signs shall have no more than two faces. The exterior edge of a projecting sign shall extend not more than five feet from the building face or $\frac{1}{3}$ the width of the sidewalk over which it is suspended, whichever is less. No part of a projecting sign shall extend into a vehicular traffic area. A projecting sign suspended over a pedestrian traffic area shall have a clearance of not less than seven feet six inches. No sign shall project from an awning.

(8) On multistory buildings, projecting signs shall be attached to the building above first-story windows and below second-story windowsills. On one-story buildings, projecting signs shall be attached above first-story windows and below the roofline. The size and location of a projecting sign shall complement neighboring signs.

(9) No wall sign shall be higher than the building to which it is attached.

(10) Illumination of any sign shall not produce a direct glare beyond the limits of the property. Ground-mounted spotlights used to illuminate a sign shall be shielded.

(11) All wiring to a freestanding sign shall be underground and/or concealed within the sign structure.

D. Signs in the H, CH and RH Districts.

(1) On all nonresidential and mixed-use premises, wall signs with a maximum total area of one square foot per linear foot of building facade are permitted. The maximum length of a wall sign shall be $\frac{2}{3}$ of the width of the face of the building on which the sign is located. In addition, in H Districts, one freestanding sign is permitted which shall not exceed 20 square feet in area per side or 10 feet in height. In CH and RH Districts, one freestanding sign is permitted which shall not exceed 32 square feet in area per side or 10 feet in height. Freestanding signs shall be set back not less than 10 feet from the highway right-of-way or 35 feet from the highway center line, whichever is greater.

(2) On home occupation premises, one freestanding or wall sign is permitted, the total area of which shall not exceed four square feet. Freestanding signs shall be set back not less than 10 feet from the highway right-of-way or 35 feet from the highway center line, whichever is greater. The height of the freestanding sign shall not exceed six feet above the finished grade.

(3) On multifamily premises, one freestanding and one wall sign are permitted. Wall signs shall have a maximum area of 20 square feet. Freestanding signs shall have maximum area of 15 square feet per side and a maximum height of six feet. Freestanding signs shall be set back a minimum of 10 feet from any highway right-of-way or 35 feet from any highway center line, whichever is greater.

(4) One sandwich/sidewalk sign of eight square feet or less per side is permitted, provided that such signage is not placed so as to impede, restrict or otherwise interfere with pedestrian or vehicular traffic. Such signs shall not be permanently affixed to any structure, shall be displayed only during hours of operation, and shall be located between the building facade and the street. All other portable signs are prohibited.

(5) Agricultural premises may also place in an off-site location not more than one sandwich board, chalkboard, or reader board type sign measuring not more than eight square feet in area per side.

(6) Signs in these districts may be lit by external means only.

E. Signs in the RLL, RA, RB, RC, CR and MR Districts.

(1) On all nonresidential premises, one wall sign and one freestanding sign are permitted. Wall signs shall have a maximum area of 10 square feet. Freestanding signs shall have a maximum area of 10 square feet per side and a maximum height of six feet in height above the finished grade. Freestanding signs shall be set back a

minimum of 10 feet from any highway right-of-way or 35 feet from any highway center line, whichever is greater.

(2) On home occupation premises, one freestanding or wall sign is permitted. Such sign shall not exceed four square feet in area and shall be set back not less than 10 feet from the highway right-of-way or 35 feet from the highway center line, whichever is greater. No freestanding sign shall exceed six feet in height above the finished grade.

(3) Agricultural premises may also place in an off-site location not more than one sandwich board, chalkboard, or reader board type sign measuring not more than eight square feet in area per side.

(4) On multifamily premises, one freestanding and one wall sign are permitted. Wall signs shall have a maximum area of 20 square feet. Freestanding signs shall have maximum area of 15 square feet per side and a maximum height of six feet. Freestanding signs shall be set back a minimum of 10 feet from any highway right-of-way or 35 feet from any highway center line, whichever is greater.

(5) Projecting signs are prohibited. Portable signs are prohibited except as allowed for agricultural premises.

(6) Signs in these districts may be lit by external means only.

F. Signs in the RR District.

(1) On all nonresidential premises, one wall sign and one freestanding sign are permitted. Wall signs shall have a maximum area of 40 square feet. Freestanding signs shall have a maximum area of 32 square feet per side and a maximum height of eight feet above the finished grade. Freestanding signs shall be set back a minimum of 10 feet from any highway right-of-way or 35 feet from any highway center line, whichever is greater.

(2) On home occupation premises, one freestanding or wall sign is permitted. Such sign shall not exceed four square feet in area and shall be set back not less than 10 feet from the highway right-of-way or 35 feet from the highway center line, whichever is greater. No freestanding sign shall exceed six feet in height above the finished grade.

(3) Agricultural premises may also place in an off-site location not more than one sandwich board, chalkboard, or reader board type sign measuring not more than eight square feet in area per side.

(4) On multifamily premises, one freestanding and one wall sign are permitted. Wall signs shall have a maximum area of 20 square feet. Freestanding signs shall have maximum area of 20 square feet per side and a maximum height of eight feet. Freestanding signs shall be set back a minimum of 10 feet from any highway right-of-way or 35 feet from any highway center line, whichever is greater.

(5) Projecting signs are prohibited. Portable signs are prohibited except as allowed for agricultural premises.

(6) Signs in these districts may be lit by external means only.

G. Signs in the R and C Districts.

(1) On all nonresidential premises, wall signs are permitted with a maximum total area of one square foot per linear foot of building facade. The maximum length of a wall sign shall be 2/3 of the width of the face of the building on which the sign is located. In addition, one freestanding sign is permitted that shall not exceed 40 square feet in area per side nor 15 feet in height. All freestanding signs shall be set back not less than 10 feet from the highway right-of-way or 35 feet from the highway center line, whichever is greater.

(2) On home occupation premises, one freestanding or wall sign is permitted. Such sign shall not exceed four square feet in area. Freestanding signs shall be set back not less than 10 feet from the highway right-of-way or 35 feet from the highway center line, whichever is greater. The height of a freestanding sign shall not exceed six feet above the finished grade.

(3) Agricultural premises may also place in an off-site location not more than one sandwich board, chalkboard, or reader board type sign measuring not more than eight square feet in area per side.

(4) On multifamily premises, one freestanding and one wall sign are permitted. Wall signs shall have a maximum area of 32 square feet. Freestanding signs shall have maximum area of 32 square feet per side and a maximum height of 10 feet. Freestanding signs shall be set back a minimum of 10 feet from any highway right-of-way or 35 feet from any highway center line, whichever is greater.

(5) One sandwich/sidewalk sign of eight square feet or less per side is permitted, provided that such signage is not placed so as to impede, restrict or otherwise interfere with pedestrian or vehicular traffic. Such signs shall not be permanently affixed to any structure, shall be displayed only during hours of operation, and shall be located between the building facade and the street.

H. Signs in the MED and PDD Districts. As approved by the Planning Board.

I. Signs in the I and RLI Districts.

(1) On all nonresidential premises, wall signs are permitted with a maximum total area of one square foot per linear foot of building facade. The maximum length of a wall sign shall be 2/3 of the width of the face of the building on which the sign is located. In addition, one freestanding sign is permitted that shall not exceed 40 square feet in area per side nor 20 feet in height and shall be set back not less than 10 feet from the highway right-of-way or 35 feet from the highway center line, whichever is greater.

(2) On home occupation premises, one freestanding or wall sign is permitted. Such sign shall not exceed four square feet in area and shall be set back not less than 10 feet from the highway right-of-way or 35 feet from the highway center line, whichever is greater. The height of the freestanding sign shall not exceed six feet above the finished grade.

(3) Agricultural premises may also place in an off-site location not more than one sandwich board, chalkboard, or reader board type sign measuring not more than eight square feet in area per side.

(4) On multifamily premises, one freestanding and one wall sign are permitted. Wall signs shall have a maximum area of 32 square feet. Freestanding signs shall have maximum area of 32 square feet per side and a maximum height of 10 feet. Freestanding signs shall be set back a minimum of 10 feet from any highway right-of-way or 35 feet from any highway center line, whichever is greater.

J. Signs in shopping centers and shopping malls.

(1) Notwithstanding any other provision of this section, a shopping center or shopping mall is permitted one freestanding sign per street front. Such freestanding sign(s) shall not exceed 100 square feet in area per side and shall not exceed 20 feet in height. Such sign(s) shall be set back not less than 15 feet from any highway right-of-way or 40 feet from any highway center line, whichever is greater, and shall not be placed within 15 feet of any other property line.

(2) Each tenant is permitted one wall sign. Such wall sign shall not exceed the lesser of 10% of the area of the facade of the portion of the shopping center leased by the tenant or 125 square feet. Such sign shall not exceed the height of the facade. If the space such tenant occupies has more than one side of the enclosed center/mall building and therefore more than one facade, the tenant shall be allowed a maximum of two signs to be placed on the building's facade, one on each facade; the total area of both signs shall not exceed 10% of the total facade area.

(3) Wall signs shall be securely affixed to the facade of the building.

(4) Projecting signs are prohibited. Portable signs are prohibited except for sidewalk/sandwich board signs with a maximum area of eight square feet per side that are permitted between the building and the parking.

K. Nonconforming signs. Wall and freestanding signs in existence on the date of enactment of this chapter that do not conform to the dimensions or placement of this section may continue to be used as legal nonconforming signs. A legal nonconforming sign shall not be enlarged, and if it is removed from its location for other than routine cleaning, maintenance or repainting, it shall be made to conform to this section.

L. Prohibitions.

(1) No off-premises signs shall be allowed other than as permitted for agricultural premises and as stated in the exempt signs provisions of this section. Editor's Note: See Subsection M, Exempt signs.

(2) No sign shall be illuminated by or contain flashing, intermittent, rotating or moving lights, except to show time, date and/or temperature.

(3) No sign shall contain any moving parts.

(4) No sign shall impair or cause confusion of vehicular or pedestrian traffic in its design, color or placement.

(5) No sign shall be mounted on the roof of any building or structure.

(6) Temporary advertising banners shall be prohibited.

[Added 10-8-2008 by L.L. No. 3-2008]

M. Exempt signs. The following signs are exempt from these provisions:

(1) Decorative banners, flags, posters, placards and streamers on residential premises.

(2) Decorative banners on nonresidential premises not containing any words, labels, figures or descriptions.

(3) Permanent monument signs as part of a decorative entryway for pedestrian or vehicular traffic.

(4) Historical markers, tablets and statues, memorial signs and plaques; names of buildings and dates of erection when cut into any masonry surface or when constructed of bronze, stainless steel or similar material; and emblems installed by governmental agencies or religious or nonprofit organizations, not exceeding six square feet.

(5) Flags and insignia of any government.

(6) On-premises directional signs for the convenience of the general public, identifying public parking areas, fire zones, entrances and exits, not exceeding four square feet per face and six feet in height. Business names and personal names shall be allowed, excluding advertising messages.

(7) Number and name plates identifying residences mounted on the house, building, apartment or mailbox, not exceeding two square feet in area.

(8) Lawn signs identifying residences, not exceeding one square foot. Such signs are to be nonilluminated except by a light that is an integral part of a lamppost if used as a support.

(9) Private owner merchandise sale signs for garage sales and auctions located on the premises, not exceeding four square feet, for a period not exceeding seven days in any one month.

(10) On-premises "No Trespassing" or "Private Property" or similar signs.

(11) Temporary, nonilluminated "For Sale," "For Rent," "For Lease," "Opening Soon" and "Coming Soon" real estate signs and signs of a similar nature concerning the vacant or improved real property upon which the sign

is located, provided such signs do not exceed six square feet per side in a residential district and 32 square feet per side in a nonresidential district.

(12) Temporary, nonilluminated window signs and posters not exceeding 10% of the total window surface of a building.

(13) At a gasoline dispensing station, integral graphics or attached price signs on gasoline pumps and one portable sign per station not exceeding 16 square feet.

(14) Drive-through menu boards.

(15) Temporary informational and directional signs for meetings, conventions and other assemblies displayed only for the duration of the event.

(16) One sign, not exceeding six square feet in a residential district or 32 square feet in a nonresidential district, listing the architect, engineer, contractor and/or owner on premises where construction, renovation or repair is in progress.

(17) Political posters and similar signs as long as they are not placed within the right-of-way of any Town street or highway or on any other Town-owned property.

N. Substitution clause. Any sign authorized pursuant to this chapter may contain a noncommercial message constituting a form of expression in lieu of other copy.

§ 128-60. Swimming pools, spas and hot tubs.

A. Building permit. No person or persons, association or corporation shall erect or install, or dismantle or abandon, a swimming pool, spa or hot tub within the Town of Bethlehem without first obtaining a building permit.

[Amended 10-8-2008 by L.L. No. 3-2008]

B. Fee. Building permit shall include a fee as set by the Town Board.

C. Accessory to dwelling. Swimming pools, spas or hot tubs may be erected or installed only as an accessory to a dwelling and for the private use of the owner or occupants and their family and guests.

D. Installation. Installation shall meet or exceed the requirements as set forth in the Residential Code of New York State as well as the provisions set forth in this section.

E. Location. No swimming pool, spa or hot tub shall be installed, constructed or maintained in a front yard, within 10 feet of any side or rear property lines, or on any easement or right-of-way. Pools shall be located away from overhead power lines.

F. Water. Swimming pools, spas and hot tubs may be filled from a private water source (i.e., private well or water service company) or domestic water supply. Hydrant filling is prohibited. Enclosures must be complete, including fencing if required, before water is put into the pool, spa or hot tub.

G. Prohibited connections. Installation of a permanent or temporary plumbing connection between a potable public or private water supply system and a pool, spa or hot tub is prohibited.

H. Electric. A third party inspection shall be performed by a Town-approved, certified electrical inspection agency for compliance with the National Electrical Code and recorded in the Building Department.

I. Fencing. Fencing shall comply with § 128-47. Fences shall be structurally sound, durable and must be maintained in such condition to prevent and prohibit accidental or unauthorized entrance to the pool. A permanent protective fence shall be installed so as to encompass the entire perimeter of the pool, spa or hot tub. Fences shall

be located so as to prohibit permanent structures, equipment or similar objects from being used to climb the fence. Fences and appurtenances shall meet or exceed the minimum requirements as set forth for barriers under the Residential Code of New York State and shall be approved by the Building Inspector before installation.

(1) In-ground pools, spas or hot tubs. Fences shall be a minimum of four feet in height and a maximum of six feet in height above grade, measured on the side of the fence that faces away from the swimming pool. Spas or hot tubs with lockable tops shall be exempt from said requirements.

[Amended 10-8-2008 by L.L. No. 3-2008]

(2) Aboveground pools, spas or hot tubs. The provisions for fencing shall not apply to aboveground pools, spas or hot tubs less than 24 inches in height. Pools greater than four feet in height are also exempt, provided that the stairs are removable or designed to be secured in a manner to prevent access. Where the top of the pool is above grade, the fence is authorized to be at ground level or mounted on top of the pool. The maximum vertical clearance between the top of the pool and the bottom of the fence shall be four inches.

(3) Pool structures used as a fence. Where an aboveground pool structure is used as a fence or where the fence is mounted on top of the pool structure and the means of access is a ladder or steps, then the ladder or steps shall be capable of being secured locked or removed to prevent access or the ladder or steps shall be surrounded by a fence. When the ladder or steps are secured, locked, or removed, any opening created shall not allow the passage of a four-inch-diameter sphere.

(4) Dwelling unit wall as a fence. Where a wall of a dwelling serves as part of a fence, one of the following shall apply:

[Amended 10-8-2008 by L.L. No. 3-2008]

(a) Doors with direct access to the pool, spa or hot tub through a dwelling unit wall shall be equipped with an alarm which produces an audible warning when the door and its screen are opened. The alarm shall be capable of being heard throughout the house during normal household activities; or

(b) The pool shall be equipped with a powered safety cover. Spas or hot tubs with a lockable top or safety cover which complies with the state code shall be exempt; or

(c) Other means of protection, such as self-closing doors with self-latching devices, which are approved by the administrative authority.

J. Access gate. Access gates shall open outward away from the pool, spa or hot tub and shall contain a self-closing, self-latching, lockable device. Where the release mechanism of the self-latching device is located less than 54 inches from the bottom of the gate, the release mechanism shall be located on the pool, spa or hot tub side of the gate at least three inches below the top of the gate.

K. Existing pools. The Building Inspector is hereby authorized and directed to inspect swimming pools, spas and hot tubs existing at the time of the adoption of this chapter. If a fence is required, the Building Inspector shall verify that said fence is in compliance with the foregoing provisions. If a fence does not comply with the provisions of this chapter, alterations or repairs shall be made within 30 days. If a required fence is not in place at the time of the inspection, immediate action shall be taken to erect a temporary fencing, and permanent fencing shall be installed within 30 days.

L. Lighting. Lighting shall be permitted in, on, or about a pool, spa or hot tub, except that said lighting shall cast no light, glare or reflection onto abutting properties as required in § 128-52, Lighting.

M. Area of pools. Swimming pools shall not occupy more than 10% of the total area of the premises.

N. Grading, erosion and sediment control. An application for a swimming pool shall also be subject to requirements of § 128-49. When regrading a lot with on-site excavated materials, the applicant shall submit a grading plan showing the existing and proposed finished grades.

O. Subsurface drainage. All subsurface drainage from a swimming pool, spa or hot tub shall be directed in a manner so as to prevent sewage from being siphoned, flooded or otherwise discharged into said swimming pool.

P. Surface drainage. All areas immediately surrounding the pool, spa or hot tub shall have positive drainage away from the structure or shall be routed to a pool gutter as applicable. Drainage shall not be directed to adjoining lots or properties or interfere with existing and/or natural drainage patterns.

Q. Abandonment of pool. Should the owner abandon a swimming pool, the area occupied by the swimming pool shall be returned to its original grade and approximately to the same condition as before the swimming pool was constructed, and the owner shall obtain a building permit for and notify the Building Inspector of the abandonment so that an inspection of the site may be made and the records of the permit marked accordingly.

[Amended 10-8-2008 by L.L. No. 3-2008]

R. Exempt pools. This chapter shall not apply to a wading pool or to a portable pool that contains less than 24 inches of water, or to any pool or spa with a power safety cover that is in compliance with the Residential Code of New York State, or to any facility to which the regulations of the State Sanitary Code apply.

§ 128-61. Telecommunication facilities.

A. It is the purpose of this section to accommodate the communications needs of residents and businesses consistent with the applicable federal and state regulations while protecting the health, safety and general welfare of the residents of the Town of Bethlehem by:

(1) Facilitating the provision of wireless telecommunication and other communication services to the residents and businesses of the Town while simultaneously preserving the character, appearance and aesthetic resources of the Town;

(2) Minimizing the adverse visual effects of telecommunications towers and facilities through development of locational and approval criteria;

(3) Protecting the scenic, historic, environmental, natural and man-made resources of the Town;

(4) Preserving the property value of the community;

(5) Minimizing the undue proliferation and height of communications towers throughout the community;

(6) Avoiding potential harm to adjacent persons and properties from tower failure, noise, falling objects and attractive nuisances through setback and height limitations; and

(7) Encouraging the shared use of existing and approved towers in order to reduce the number of towers needed to serve the community where reasonably possible, so as to minimize and mitigate the adverse visual impacts of towers and their facilities.

B. These regulations are intended to be consistent with the Telecommunications Act of 1996 in that:

(1) They do not prohibit, or have the effect of prohibiting, the provision of personal wireless services;

(2) They are not intended to be used to unreasonably discriminate among providers of functionally equivalent services; and

(3) They do not regulate personal wireless services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning such emissions.

C. Telecommunication facilities regulated and covered under these regulations shall include the following: personal wireless radio telecommunication facilities (PWRT) using an automated high-capacity system with two or more multichannel fixed base stations arranged as part of an integrated cellular system providing radio telecommunication from the fixed (immobile) base stations to mobile stations. Such personal wireless radio telecommunication facilities employ low-power transmitting and receiving and automatic handoff between base stations of communications in progress to enable channels to be reused at short distances for the purposes of voice, data or paging transmissions. Cellular systems may also employ digital techniques such as voice encoding and decoding, data compression, error correction and time or code division multiple access in order to increase system capacities. Personal wireless radio telecommunication facilities ("PWRT facilities") shall include cellular services, personal communication services (PCS), specialized mobile radio services, and paging services.

D. Definitions. As used in this section, the following terms shall have the meaning indicated:

ANTENNA

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

BASE STATION

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

BY-RIGHT FACILITIES

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

CELLULAR COMMUNICATION SYSTEM

A radio telecommunication service provided using a cellular system.

COLLOCATION

The location of one or more PWRT facilities at a common site.

EXEMPT FACILITIES

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

(1) Amateur radio and satellite facilities so long as such facilities are operated by a licensed amateur operator;

(2) Civil emergency facilities; and

(3) Home satellite facilities where installed on residential premises solely for the use of the residents of that premises and not offered for resale to off-premises locations.

LATTICE TOWER

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

MONOPOLE TOWER

A freestanding tower consisting of a single pole.

PAGING SERVICE

A numeric, text and voice messaging service.

PERSONAL COMMUNICATION SYSTEM

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

SPECIALIZED MOBILE RADIO SERVICES

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

STEALTH TECHNIQUE

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

E. By-right facilities.

(1) In order to encourage the appropriate location and collocation of telecommunication systems in the Town of Bethlehem, the following PWRT facilities shall be permitted by right:

(a) On monopole or lattice towers in existence prior to the date of this chapter anywhere in the Town so long as no change or alteration to the height or appearance of the existing structure is required.

(b) On existing structures located anywhere in the Town so long as no part of the PWRT facility exceeds the height of the existing structure and so long as no change or alteration of the height or appearance of the existing structure is required.

(2) Standards. A by-right PWRT facility shall meet the following additional standards and requirements:

(a) Towers shall not be artificially lighted.

(b) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment shall be of a neutral color identical to or closely compatible with the color of the supporting structure.

(c) Except for towers constructed and in use prior to the effective date of this chapter, towers that are no longer in service as part of a PWRT facility network shall be removed within 90 days of the cessation of the use of the tower.

(d) The applicant shall post a security deposit or bond in an amount satisfactory to the Planning Board and in a form acceptable to the Town Attorney to assure the removal of those portions of the PWRT facility and any base station and ancillary support structures which were not in place prior to the effective date of this chapter.

(3) Data. An application for approval of a by-right PWRT facility shall contain the following:

(a) An application for construction of a PWRT facility shall contain all the information ordinarily required by the Building Inspector for the issuance of the building permit.

(b) An application for construction of a PWRT facility shall include a report certifying that the electromagnetic emissions from the PWRT facility will be within the threshold limits established by the Federal Communications Commission and certifying that the proposed facility will not cause interference with existing communication devices.

(c) Upon installation of the PWRT facility the applicant shall submit to the Building Inspector an as-built survey of the PWRT facility, including a certification as to the finished height above ground level of the structure, certified to the Town of Bethlehem by a land surveyor or professional engineer licensed to practice in the State of New York.

(d) Documentation of intent from the owner of the existing PWRT facility to allow collocation and shared use.

(e) An engineer's report certifying that the proposed shared use of an existing structure or tower will not diminish the structural integrity and safety of the existing structure or tower.

(f) A copy of its Federal Communications Commission (FCC) license.

F. Special use permit facilities.

(1) All PWRT facilities that do not meet the standards for by-right location shall be subject to special use permit and site plan approval by the Planning Board pursuant to Article VII of this chapter.

(2) In addition to any other authority conferred under this chapter, the Planning Board is authorized to attach the following conditions on the granting of a special permit/site plan approval for a PWRT facility:

- (a) Increased setback, side line and rear line requirements.
 - (b) Measures to ensure the construction of a safe and adequate access road to the facility.
 - (c) Utilization of stealth techniques to minimize the visual impact of the facility.
 - (d) Measures to secure the facility from intruders, including fences and chained entryways.
 - (e) Measures to ensure the proper maintenance and continued vitality of the plantings and landscaping done to properly screen the tower compound from adjacent properties.
- (3) The special use permit shall expire five years from the date of approval unless an application for renewal is made, and approved, prior to the date of expiration.
- (4) The tower and ancillary facilities shall be removed upon expiration of the special use permit, abandonment or decommissioning by the applicant.
- (5) Collocation is required for telecommunication facilities unless:
- (a) There are no other usable existing structures in the area for telecommunication facility services.
 - (b) Collocation cannot achieve the minimum reasonable technical needs of the proposed telecommunication facility.
 - (c) Structural or other engineering limitations, absent reasonable refurbishment, are demonstrated by clear and convincing evidence to be prohibitive.
 - (d) The telecommunication operator, after thorough and good faith efforts disclosed to the Town, is unable to secure permission from the tower or structure owner to collocate.
- (6) The clustering of towers and structures on a common site should be considered if collocation cannot be facilitated.
- (7) Visual appearance.
- (a) Unless such a structure cannot achieve the applicant's purposes as disclosed in its application and supporting data, the Planning Board shall have the authority to require the applicant to furnish an alternative proposal using stealth techniques or some other alternative structure at the proposed site, rather than a conventional tower, in order to better achieve the least impact on the visual environment.
 - (b) The height of any new tower shall be the minimum required to establish and maintain adequate service, but in no event shall the height of any new tower exceed three times the maximum building height for the zoning district in which the tower is to be located as set forth in the Schedule of Area, Yard and Bulk Requirements of this chapter. Editor's Note: The Schedule of Area, Yard and Bulk Requirements is included at the end of this chapter.
 - (c) All equipment shelters and accessory structures shall be architecturally uniform and shall not exceed 12 feet in height.
 - (d) All equipment shelters used shall only be used for housing of equipment related to the particular facility on the particular site.
- (8) Materials and colors for a proposed utility structure(s) shall be of an appearance that is compatible with any surrounding structures and/or vegetation to the maximum extent practicable and as approved by the Planning Board.

(9) All towers and monopoles shall be set back from all property lines, structures habitable by people on the same parcel as the tower or monopole or aboveground power lines a distance equal to 150% of the height of the tower or the minimum setback requirement for the zoning district in which the tower or monopole is located, whichever is greater. Towers may be located on lots of less than the minimum acreage for the district so long as the PWRT facility is unmanned and can meet the setback, side yard and rear yard setback requirements set forth herein.

(10) Location.

(a) No tower or monopole shall be located:

[1] Closer than 300 feet, on a horizontal plane, to any structure existing at the time of application which is, or is able to be, occupied or habitable on the property of any school (both public and private).

[2] Closer than 300 feet, on a horizontal plane, to an existing dwelling unit on a parcel other than the parcel on which the subject tower or PWRT facility is located or any day-care center, hospital, nursing home, church, synagogue, or other place of worship.

(b) Subject to the provisions of Subsection F(10)(a)[1] and [2] above, the Planning Board shall determine appropriate distance setbacks from any school, power line, dwelling unit or other structures, whether on or off the parcel, on which a tower or monopole shall be based. Visibility of the tower or monopole from such structures and consideration for the safety of the users or occupants of such structures in the event of the structural failure of the tower or monopole shall also be considered.

(11) Tower facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent properties. The standard buffer shall consist of a landscaped strip at least six feet wide outside the perimeter of the compound. The plantings shall consist of alternately spaced evergreens having a height of not less than six feet above the height of the ground elevation at the time of installation. The Planning Board may waive these landscaping requirements where the Board determines that the amount and type of existing on-site vegetation is adequate to fully screen the facility.

(12) Existing mature trees and natural land forms on the site shall be preserved to the maximum extent possible.

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

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

(1) A photo simulation of the proposed facility as seen from the north, south, east and west from the facility. The photo simulation shall be keyed to a location map. Photographs for the photo simulation shall be taken during periods when deciduous leaf cover is minimal (i.e., during the late autumn, winter, and early spring months), and shall only be taken when there is no precipitation, fog, or more than 50% cloud cover, in order to present a worst-case scenario for visual impact assessment purposes. Prior to performing the visual test, the applicant shall meet with the Planning Board to obtain the Board's consent as to the date and time on which the visual test will be conducted and photographs for the photo simulation will be taken. The applicant shall also inform the Board as to the manner in which the visual test will be conducted (i.e., a crane test or balloon test). The Board may require the visual test to be performed on more than one day when the Board determines that additional time for the visual test is required in order to provide neighboring and nearby landowners and residents adequate time to observe the test. Notice of the test shall be published in the official newspaper at least five days prior to the date set for testing. The Planning Board may provide that the testing be further

advertised in such manner as it deems most appropriate for full public notification, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that a visual test will be conducted. All notices shall include the date, time and manner in which the visual test will be conducted and shall state the reason for the test.

(2) An application for construction of a PWRT facility shall include a report certifying that the electromagnetic emissions from the PWRT facility will not exceed the threshold limits established by the Federal Communications Commission and certifying that the proposed facility will not cause interference with existing communication services.

(3) A certification by a licensed professional engineer as to wind loading and the ability of the supporting structure to accommodate the facility and any additional users.

(4) A statement by the applicant as to all other alternative sites, including other alternative sites not owned or operated by the applicant, in any area considered and the reasons for their rejection.

(5) A statement by the applicant that locating the facility in a by-right location is not practical or feasible and the reasons supporting that determination.

(6) A graphic depicting the location of all of the applicant's existing wireless communication facilities located in or otherwise serving the Town of Bethlehem.

(7) A graphic depicting the geographic area to be served by the proposed facility.

(8) A copy of the applicant's FCC operating license.

(9) Upon installation of the PWRT facility the applicant shall submit to the Building Inspector an as-built survey of the facility, including a certification as to the finished height above ground level of the structure, certified to the Town of Bethlehem by a land surveyor or professional engineer licensed to practice in the State of New York.

(10) Documentation from an expert qualified in the field of telecommunications and radio frequency engineering showing that the tower and/or facility is needed to provide adequate coverage to an area of the Town that currently has inadequate coverage, including a sealed, graphical depiction of the inadequate coverage area.

H. For applications involving tower construction or modification to accommodate a PWRT facility:

(1) The applicant shall provide written documentation of any existing and planned facility sites in the Town of Bethlehem and within a seven-mile radius of the proposed site in which it has a legal or equitable interest, whether by ownership, leasehold or otherwise. For each such facility site, it shall demonstrate with written documentation that the facility site is not already providing, or does not have the potential to provide, adequate coverage and/or adequate capacity to the Town of Bethlehem. The documentation shall include, for each facility site listed, the exact location (in longitude and latitude, to degrees, minutes and seconds), ground elevation, height of antennas on tower or structure, output frequency, number of channels, power input and maximum power output per channel. Potential adjustments to these existing facility sites, including changes in antenna type, orientation, gain, or power output, shall be specified. Radial plots from each of these facility sites, as they exist, and with adjustments as above, shall be provided as part of the application.

(2) The applicant shall demonstrate with written documentation that it has examined all existing towers or structures located in the Town of Bethlehem and within a seven-mile radius of the proposed site in which the applicant has no legal or equitable interest to determine whether those existing facility sites can be used to provide adequate coverage and/or adequate capacity to the Town of Bethlehem. The documentation shall include, for each site examined, the exact location (in longitude and latitude, to degrees, minutes and seconds), ground elevation, height of tower or structure, type of antennas proposed, proposed antenna gain, height of proposed antennas on tower or structure, proposed output frequency, proposed number of channels, proposed power input and proposed maximum power output per channel. Radial plots from each of these sites shall be provided as part of the application. This report shall demonstrate good faith efforts to secure shared use from the owner of each then existing tower or structure on which a PWRT facility is then located as well as

documentation of the physical, technical and/or financial reasons why shared use is not practical in each case. Written requests and responses for shared use shall be provided.

(3) The applicant shall demonstrate with written documentation that it has analyzed the feasibility of repeaters or non-tower-mounted PWRT facilities in conjunction with all sites listed in compliance with Subsection H(1) and (2) above to provide adequate coverage and/or adequate capacity to the Town of Bethlehem. Radial plots indicating such consideration shall be provided as part of the application.

(4) The applicant shall also submit a three-year build-out plan for the proposed and other sites within the Town and within adjacent towns and villages, clearly demonstrating the applicant's plan for other structures, proposed application and building dates, and justification for additional structures. Additionally, the three-year build-out plan must take into consideration known and potential changes in technology.

(5) An applicant for a new tower must demonstrate the structure's ability to handle additional collocators and must identify the maximum number of collocators which could be supported on the structure.

(6) Documentation of intent from the owner and/or lessee of the facility to allow collocation and shared use shall be provided.

I. Annual certification. After the issuance of a special permit, the Planning Board may condition its approval on the owner/operator of the facility certifying annually (on January 1 of each year), by an independent licensed engineer, that the facility is operating in compliance with FCC emissions standards and in compliance with the existing special permit and site plan.

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

§ 128-62. Temporary shelters.

A. Vehicle, trailer or vessel serving as building. Any movable vehicle, trailer or dockside vessel that is used or occupied for the purpose of providing shelter to persons, animals or property shall be subject to the regulations contained in this chapter applicable to its particular use.

(1) Residential use. Camping trailers and recreational vehicles shall be occupied for residential purposes in campgrounds or trailer camps only. Dockside vessels may be occupied for residential purposes within a marina only. It shall be unlawful for any person to occupy a camping trailer or recreational vehicle on any lot, other than in a campground or trailer camp, for more than 30 days in any twelve-month period.

(2) Commercial use. Any construction office trailer shall be identified in the applicable building permit issued by the Building Inspector and shall be removed from the premises prior to the issuance of a certificate of occupancy. Such trailer may have electric and heating capable of temporary connection to site utilities. Each construction office trailer shall be subject to the fee set forth in the current fee schedule adopted by the Town Board, which shall be due and payable at the time that an application for a certificate of occupancy is made.

(3) Temporary storage.

(a) Commercial trailers may be placed on any lot for the purpose of storage, accessory to any permitted commercial use, provided that a permit is first obtained from the Building Inspector.

(b) Dockside vessels may be used for the purpose of storage, accessory to any permitted commercial or industrial use, provided that a permit is obtained from the Building Inspector.

(c) The permit referred to in Subsection A(3)(a) and (b) above shall be valid for the length of time specified thereon not to exceed nine months. Such permit shall not be renewable. The fee for such permit shall be as set forth in the current fee schedule adopted by the Town Board.

(4) Permanent storage. Commercial trailers may be placed on any lot in the Rural, Heavy Industrial and Rural Light Industrial Districts for the purpose of permanent (i.e., greater than nine months) storage, accessory to any permitted nonresidential, nonagricultural use, provided that a permit is first obtained from the Building Inspector.

§ 128-63. Terraces, patios, decks, porches, bay windows and fire escapes.

A. Terraces and patios. A ground-level terrace or patio shall not be considered in the determination of lot coverage or the minimum setbacks to the property lines, provided that such terrace or patio is unroofed and without walls, parapets or other forms of enclosure and does not extend above the elevation of the ground on which it is located. Such terrace or patio may have an open guard railing not more than three feet in height and shall not project into any yard to a point closer than four feet to any lot line.

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B. Decks. A deck that is structurally supported by piers or other structural means shall be considered in the determination of the minimum setback to the property line but not in lot coverage so long as it remains uncovered.

C. Porches. Any open or enclosed porch shall be considered a part of the building in the determination of minimum setback to the property line or lot coverage.

D. Bay windows. Bay windows, including their cornices and eaves, may project into any required setback not more than three feet; provided, however, that the sum of such projections on any wall does not exceed 1/3 of the length of said wall.

E. Fire escapes. Open fire escapes, exit landings and exit stairs may extend into any required setback not more than four feet six inches.

§ 128-64. Vacation campgrounds.

A. Density. Density shall be four to eight campsites per acre as approved by the Planning Board.

B. Minimum lot size. The minimum lot size shall be 10 acres.

C. Minimum campsite area. The minimum campsite area shall be 3,000 square feet in area with a minimum average width of 30 feet.

D. Yard and space requirements are as follows:

(1) Yard requirements, campground:

(a) Front yard setback: 100 feet.

(b) Side yard setback: 50 feet.

(c) Rear yard setback: 100 feet.

(2) Highway frontage: 200 feet.

(3) No camping space shall be within 50 feet of any property line or within 100 feet of any watercourse which is part of any public water supply system.

E. Minimum spacing between campsite pads: 80 feet extremity to extremity.

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

G. Sewage disposal. The site shall be provided with a municipal or approved private sanitary sewage disposal system. Only flush toilets shall be provided.

H. Lavatories or other hand-washing facilities shall be provided at a ratio of one for each 15 sites (without water and sewage hookups) for each gender.

I. At least one travel trailer sanitary dumping station shall be provided for every 100 campsites or less.

J. Sewage treatment facility. The design shall be based on the water supply design flow, plus infiltration, and approved by the County Health Department.

K. Solid waste disposal. The owner of a campground shall provide for the collection of refuse and garbage daily and shall also conveniently locate flytight refuse containers on each campsite. Refuse containers shall be cleaned, covered and maintained as often as may be necessary to prevent the breeding of insects and attracting of vermin.

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

M. Campground stores. Campground stores are permitted to be located within the campground site and may be part of the office.

N. Ancillary facilities. Plans for ancillary facilities, such as stores, offices, swimming pools, service buildings, etc., shall be submitted to the Planning Board for site plan approval along with the overall development.

O. Landscaping. The entire site except for areas covered by structures or service or parking areas shall be suitably landscaped. All landscaping shall be approved by the Planning Board and properly maintained after planting.

P. Screening. All campground sites shall be screened from the view of adjacent properties and adjoining public highways by means of an opaque screen of plant materials and/or fencing. All screening shall be approved by the Planning Board, properly maintained after placement and located within the required front, rear and side yards.

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

R. Annual period of closing. The campground must close annually from December 15 to March 15. Any habitable structures or vehicles, other than those of the owner/caretaker, must be locked and made unavailable for occupancy during that time period. Occupancy by an individual or group of individuals in any form of permitted temporary, movable or portable shelter shall be for a period of not longer than 120 days in any twelve-month period.

S. Recreational facilities. Recreational facilities, such as swimming pools, beaches, golf courses, tennis courts, and camp recreational facilities, shall be for campsite guests only.

T. Fire protection. The property owner shall ensure that adequate fire protection equipment is on the premises at all times, as required by the New York State Fire Code.

U. Public phone. Each campground shall have at least one public telephone.

§ 128-65. Senior citizen housing.

The following regulations shall apply to any application requesting approval of senior citizen housing:

A. Senior citizen housing shall be arranged as individual dwelling units for occupancy by senior citizens and their families. Senior citizen dwellings may be located in structures having one, two, three, four or multiple dwelling units.

B. Accessory uses, including buildings and facilities, which are reasonably necessary to meet the proper maintenance, administration, security, off-street parking, storage, fencing and utility system needs of the development are permitted. In addition, the following accessory uses are permitted, provided that such facilities are restricted in their use to residents of the development and their guests:

(1) Meeting rooms, multipurpose rooms, lounges, lobby areas or other similar common spaces.

(2) Game rooms, art and craft rooms, workshops, jacuzzis, exercise rooms, libraries or other similar indoor recreation or leisure facilities.

(3) Outdoor sitting areas, game areas, walking trails or other similar outdoor recreation or leisure facilities.

C. The following accessory uses are permitted, provided that such facilities are managed as part of the building or complex of buildings and restricted in their use to residents of the building or building complex and their guests, and further provided that there are no external advertising signs for such facilities:

(1) A common kitchen and dining room.

(2) A beauty and/or barber shop, provided that the maximum floor area devoted to such use is no more than 250 square feet.

(3) A self-service laundry.

(4) A convenience shop for daily needs such as food items, prescription and nonprescription drugs, newspapers and small household items and similar items, provided that the maximum floor area devoted to such use is no more than 400 square feet.

(5) A coin-operated vending machine room, provided that the maximum floor area devoted to such use is no more than 250 square feet.

(6) Office space for a doctor, medical infirmary or clinic and/or social service delivery.

D. Occupancy restrictions. Occupancy of dwelling units within a senior citizen housing project shall be for residential purposes only. Occupancy restrictions shall be the subject of restrictive covenants of record that are enforceable by the Town. Occupancy shall be limited to elderly families as defined and described below. The Planning Board shall require the project sponsor to file such covenants, deed restrictions, or other encumbrances deemed necessary to comply with the occupancy provisions of this section, which conditions shall be met prior to the issuance of a building permit for such housing.

E. Elderly family defined. Notwithstanding the definition of "family" found in § 128-22 of this chapter, for purposes of this section an elderly family shall consist of:

(1) A single person 55 years of age or older;

(2) Two or three persons, all of whom are 55 years of age or older;

(3) A married couple, the husband or wife of which is 55 years of age or older;

(4) One child residing with a parent who is 55 years of age or older, provided that said child is over the age of 18;

(5) The surviving spouse of a person 55 years of age or older, provided that the surviving spouse was duly registered as a resident of the development at the time of the elderly person's death; or

(6) One adult, 18 years of age or older, residing with a person who is 55 years of age or older, provided that said adult is essential to the long-term care of the elderly person as certified by a physician duly licensed in New York State.

F. Temporary occupancy. The surviving child of a person 55 years of age or older may continue to reside in the development for a period of six months following the death of the elderly or physically handicapped person, provided that said child was duly registered as a resident of the development at the time of the elderly or physically handicapped person's death.

G. Guests. Temporary occupancy by guests of families who reside in a senior citizen multifamily dwelling project shall be permitted, provided that such occupancy does not exceed 30 days in any calendar year. The time limits as specified in this subsection shall not apply in instances where temporary occupancy exceeding 30 days is required in the public interest. Guests staying overnight shall be required to register their temporary occupancy with the project manager or building superintendent.

H. Exceptions. Notwithstanding the provisions of this section, one unit in a senior citizen dwelling project may be occupied by a building superintendent or project manager and his/her family.

I. Parking ratio. Parking spaces shall be provided at the ratio indicated in the Schedule of Off-Street Parking found at § 128-56H of this chapter. If the Planning Board finds that compliance with the off-street parking requirements will not be necessary for the anticipated use of the site, the Board may reduce the amount of parking required to be constructed, provided that sufficient usable land is set aside to satisfy the parking requirements in the future should the need for such additional parking arise. The Planning Board shall, as a condition of any approval granted, retain the right to require the owner of the property to construct such additional parking whenever it finds that such parking is needed.

[Amended 10-8-2008 by L.L. No. 3-2008]

J. Outdoor recreation. Usable outdoor recreation space shall be provided at the ratio of 50 square feet per dwelling unit. Such space shall consist of both active and passive recreation amenities, such as patio areas, shaded sitting areas, and walking or jogging trails.

§ 128-66. Driveway construction.

A. Driveways over 100 feet in length shall be constructed in accordance with Town specifications.

(1) Minimum width of driveway shall be 11 feet.

(2) All turns in the driveway shall have turning radii, or widened width, to accommodate emergency vehicles.

(3) Driveway grades shall not exceed 10%.

(4) Construction of driveway shall be in accordance with Town Highway Specifications and accommodate emergency vehicle loadings for the soil conditions present. Asphalt surfacing is optional; however, the driveway must be paved from the edge of existing roadway pavement to the limits of the public road right-of-way.

(5) When necessary, adequately designed driveway culverts shall be installed in all driveways to accommodate local drainage patterns.

(6) A placard identifying the house number of the residence shall be installed, adjacent to the driveway, at the public road right-of-way line. The numerals shall not be less than four inches in size.

B. Driveways over 200 feet in length shall be constructed in accordance with Town specifications.

(1) Refer to specifications outlined in Subsection A for driveways over 100 feet.

(2) A water meter pit shall be installed by the property owner. It shall be located adjacent to and outside of the public road right-of-way. All water meters are radio read meters and are furnished and installed by the Town.

§ 128-67. (Reserved)

ARTICLE VII. Special Use Permit and Site Plan Review

§ 128-68. Purpose; consistency required; applicability; exemptions.

A. Purpose. The purpose of this section is to provide regulations governing the standards for review and design, and due process, for special use permit approval and site plan approval. These regulations are designed to protect the community from traffic congestion, noise, flooding, excessive soil erosion, excessive noise and odor and other forms of pollution; to provide for design that will be in harmony with the appropriate and orderly development of the district in which it is located; and to ensure that the impact of new development and redevelopment is mitigated by compliance with reasonable conditions. The Town of Bethlehem values the mixed-use character of the Town and wishes to encourage residential and nonresidential growth involving reuse of existing structures and development of new structures in a manner that is protective of the rural, historic, scenic, and environmental character of the Town. These regulations are also designed to ensure that land development conforms to the Town's planning goals and objectives as expressed in its Comprehensive Plan.

B. Consistency requirement. Before approving any use that is subject to special use permit and/or site plan approval, the Planning Board must make a written finding that the proposed use is one that is allowed within the district in accordance with the Schedule of Uses, that it meets the special use permit performance standards and/or site plan approval criteria as specified herein, and that the site layout, site design and architectural appearance would, as determined by the Planning Board, enhance and be protective of the aesthetic, existing, historic and environmental features of the surrounding neighborhood. In preparing a plan for development of land the applicant shall give attention to the goals, objectives and the land use policies of the Town in the specific area in which the development is proposed. The Planning Board shall determine whether the site use, site design and architecture proposed by an applicant comply with the land use and environmental protection policies and objectives of the Town of Bethlehem, including those expressed in the Town Comprehensive Plan.

C. Applicability.

(1) Special use permit approval by the Planning Board, in accordance with this article, is required for the following uses and activities:

(a) All uses and uses accessory thereto which require special use permit approval as set forth in the Schedule of Uses, § 128-99.

(b) All uses that require special use permit approval as set forth in Article VIII of this chapter.

(c) The expansion, enlargement or extension of a structure containing a nonconforming use pursuant to § 128-54.

(d) The expansion, enlargement or extension of a nonconforming structure pursuant to § 128-55.

(2) Site plan approval by the Planning Board, in accordance with this article, is required for the following uses and activities:

(a) All uses and uses accessory thereto which require site plan approval as set forth in the Schedule of Uses, § 128-99.

(b) All uses and uses accessory thereto which require special use permit approval pursuant to the Schedule of Uses, § 128-99, and Article VIII of this chapter.

(c) A change of use involving a nonconforming use to another nonconforming use.

(d) A change of use involving a nonconforming use to a conforming use, other than uses permitted by right.

(e) A change to an approved site plan.

(f) Activities for which a use variance has been granted by the Zoning Board of Appeals.

(g) Other than normal maintenance and repair, the expansion, enlargement, extension or addition(s) to a conforming building containing a conforming use which is not otherwise exempt pursuant to Subsection D below.

(h) Nonagricultural and nonresidential uses, including by-right uses, on property in the Hamlet, Commercial, Mixed Economic Development, or Industrial Districts where such property is located within 100 feet of a Residence "A," Residence "B," Residence "C," Core Residential, Multifamily, or Rural Riverfront District.

D. Exemptions. The following activities are exempt from site plan approval (Also see § 128-71B, Application waiver.):

[Amended 10-8-2008 by L.L. No. 3-2008]

(1) Construction, extension, or alteration of a single-family residential dwelling and accessory structures thereto on a lot legally in existence as of the date of adoption of this chapter.

(2) Construction of a single-family residential dwelling on a lot approved by the Planning Board for residential purposes pursuant to the Chapter 103, Subdivision Regulations, of the Town Code.

(3) Construction, extension, or alteration of a 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.

(4) Subject to the standards in § 128-72 of this chapter, the seasonal planting, cultivation and harvesting of field crops, fruits, vegetables, and horticultural specialties, including nursery stock, ornamental shrubs, and ornamental trees and flowers, whether as part of an existing, new, or expanded agricultural operation, and not involving the construction or alteration of any structure.

(5) Construction, extension, expansion, or alteration of the interior of a building or structure.

(6) Routine property maintenance activities, including repainting, repair, and in-kind replacement.

§ 128-69. Special use permit review and approval.

A. Reviewing agency. Pursuant to Town Law § 274-b, Subdivision 2, the Planning Board is hereby empowered to review and approve, approve with modifications and/or conditions, or disapprove special use permit applications as provided in this chapter.

B. General. All uses allowed subject to special use permit approval are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case. Special permit uses are specifically declared to be allowed within the district in which they are located, provided that the Planning

Board makes a written finding that the individual case meets the special use permit performance standards of this chapter.

C. Approval required. Where special use permit approval is required by this chapter, no building permit or certificate of occupancy shall be issued by the Building Inspector until such special use permit has been approved by the Planning Board as provided herein. In addition, no premises shall be occupied or used and no permanent certificate of occupancy shall be issued until all of the requirements of this chapter and any conditions of special use permit approval have been complied with. All uses allowed by special use permit are subject to the requirements for site plan approval unless site plan approval is waived by the Planning Board as set forth herein. The site plan review under § 128-71 shall be conducted in unison with the review of the special use permit application, and the Planning Board shall, at the time it issues its decision on the special use permit application, also issue its decision on the site plan. No authorization is granted for a waiver of the special use permit requirements of this article, and no authorization is granted to separate the review of the special use permit from the review of the site plan.

D. Compliance. All applications for any use allowed subject to the issuance of a special use permit shall be accompanied by a sworn statement by the owner of subject property that the proposed use will be constructed and operated in accordance with the standards and qualifications hereinafter set forth. The Planning Board shall not issue a permit to allow any use subject to the special use permit provisions of this chapter unless said Board first finds that the use, as proposed, shall be in compliance with the standards set forth in this section.

E. Violations. No special use permit or site plan approval shall be issued for any use or construction where there is on the subject property an existing violation of any chapter of the Town of Bethlehem Code or the New York State Building Code. Further, upon written report or receipt of a notice of violation or order to cease and desist from the Building Inspector, the Planning Board shall not review, hold public meetings or public hearings, or take action regarding an application for special use permit approval until notified by the Building Inspector that such violation has been cured or ceased by the applicant. However, the Planning Board may, upon written recommendation of the Building Inspector, review and act on an application involving property for which there is a violation where such application is a plan to cure the violation and bring the property, or use of the property, into compliance with this chapter.

F. Special use permit 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. 2.

(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 § 128-56 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.

(21) Stormwater management. The proposed use shall be designed to be in compliance with Chapter 98 of the Code of the Town of Bethlehem.

[Added 11-14-2007 by L.L. No. 7-2007]

G. Additional safeguards and conditions; measurement of standards.

(1) Additional safeguards and conditions. 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.

[Amended 11-14-2007 by L.L. No. 7-2007]

(2) Measurement of standards. The determination of the existence of any dangerous or objectionable condition shall be made at:

(a) 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

(b) The property lines of the use creating the condition, such as noise, vibration, glare or odor.

H. Noncomplying uses deemed prohibited. Any use which is unable to meet the performance standards required in this section, as determined by the Planning Board, shall be deemed a prohibited use and a special use permit shall be denied by said Board.

I. Applications. All applications for special use permit approval shall be in writing and on forms and in such quantity as may be prescribed by the Planning Board. Application forms and instructions are available from the Secretary to the Planning Board. The application must include an environmental assessment form and all necessary documentation to comply with the State Environmental Quality Review Act (SEQRA). Editor's Note: See Art. 8 of the Environmental Conservation Law. 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. Prior to submittal of a formal application for special use permit approval, applicants are encouraged to meet with the Department of Economic Development and Planning to review the proposed application and obtain a clear understanding of the application requirements and the requirements of this chapter. 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.

J. Agricultural data statement. An application for a special use permit 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.

K. Fees. An application for a special use permit shall be accompanied by an application fee as set by the Town Board. 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). 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, reasonable fees shall be paid for by the applicant and an escrow deposit will be required pursuant to § 128-85 of this chapter.

L. Procedures. Within 62 days of receipt of a complete application, the Planning Board shall hold a public hearing. Notice of the public hearing shall be published in the official newspaper at least five days prior to the date set for public hearing. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of the application, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that an application for a

special use permit is under consideration by the Board. All notices shall include the name of the project, the location of the project site, and the date, place, time and subject of the public hearing at which the application will be reviewed. Such notice shall not be required for adjourned dates. If an application for special use permit approval 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.

M. Notice to Park Commission. At least five days before such hearing, the Planning Board shall mail notices thereof to the Regional State Park Commission having jurisdiction over any state park or parkway within 500 feet of the property affected by such appeal.

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

[Amended 10-8-2008 by L.L. No. 3-2008]

- (1) The boundary of any city, village, or town;
- (2) The boundary of any existing or proposed county or state park or other recreation area;
- (3) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway;
- (4) The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines;
- (5) The existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated; or
- (6) The boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the Agriculture and Markets Law.

O. Referral to neighboring municipalities. Pursuant to General Municipal Law § 239-nn, for a special use permit review under this section involving property located within 500 feet of an adjacent municipality, notice of any public hearing shall be given by mail or electronic transmission to the clerk of the adjacent municipality not less than 10 days prior to the date of said hearing.

P. Time of decision. The Planning Board shall decide the special use permit application within 62 days after the close of the public hearing, subject to compliance with the requirements of SEQRA and General Municipal Law §§ 239-l and 239-m. In rendering its decision the Board shall approve, disapprove or approve with modifications and conditions the special use permit application. The time within which the Board must render its decision may be extended by mutual consent of the applicant and the Board. The decision of the Board shall be filed in the office of the Town Clerk within five business days of the date such decision is rendered and a copy thereof shall be mailed to the applicant.

Q. Findings. In rendering its decision concerning any special use permit application, the Planning Board shall consider the nature of the proposed activity, the performance standards of Subsection E, and the applicable design standards of Articles V and VIII of this chapter, including the nature, arrangement and appearance of all proposed structures, improvements and uses of the lot, including their potential impact on adjacent properties and land uses. The Planning Board shall issue its findings in writing to support its decision on the application.

R. Expiration. A special use permit shall be deemed to authorize only the particular special use or uses applied for and shall expire if:

(1) Construction has not been commenced within one year and has not been completed within two 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 special use or uses shall have ceased for more than 12 consecutive months for any reason.

(3) The special use permit has expired.

S. Extensions. Extensions may be granted at the discretion of the Planning Board.

T. Compliance with SEQRA. The Planning Board shall comply with the provisions of SEQRA under Article 8 of the Environmental Conservation Law and 6 NYCRR 617.

U. Appeals. Any person aggrieved by any decision of the Planning Board hereunder may apply to the Supreme Court for review pursuant to § 274-b, Subdivision 9, of the Town Law.

§ 128-70. Conceptual site plan review.

A preapplication review is recommended prior to submission of a formal application for site plan approval. The preapplication conference is intended to reduce the review time for Planning Board consideration of proposed site plans by allowing early review of a development plan by the Development Planning Committee. A request for conceptual plan review may be submitted to the Department for review by the Development Planning Committee. The Development Planning Committee shall notify the applicant of the place, date, and time of the meeting at which the conceptual site plan is to be considered. The applicant, or the applicant's representatives, shall be present at the meeting to discuss the application. The preapplication review shall be limited to a review of the basic concept of the proposal and to resolve problems with meeting the requirements of this chapter which might occur during formal Planning Board consideration. The preapplication review and consultation shall be nonbinding. 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. Nothing herein shall be construed to prevent an applicant from submitting a formal application for site plan review and approval to the Planning Board. 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.

§ 128-71. Site plan review and approval.

A. Site plan application. An application for site plan approval shall be submitted to the Planning Board on forms provided by the Board for such purpose. The application form shall be complete and shall be accompanied by a detailed site plan and an environmental assessment form. The site plan shall use as a base map an accurate boundary and topographic survey of the property depicting all existing improvements and grades prepared by a New York State licensed land surveyor. 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 USGS datum, 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 of 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.
- (10) The location of all existing and proposed roads, driveways, parking and loading areas, including access and egress drives.
- (11) A table stating the number of parking and loading spaces required under this chapter and the number proposed.
- (12) The location of outdoor storage areas.
- (13) The location of fire access roads and fire protection features.
- (14) 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.
- (15) The location, design and description of water supply and sewage disposal facilities.
- (16) The location, design and description of stormwater management facilities, including proposed grading plan.
- (17) The location, height, size and design of all signs.
- (18) The location, height, caliper and species of all proposed landscape plantings on a landscape plan.
- (19) The location and design of building-mounted and freestanding lighting and communication facilities.
- (20) The location, type and design of all waste and refuse storage and handling facilities.
- (21) The character and type of all power distribution and transmission lines.
- (22) The location and description of all subsurface site improvements and facilities.
- (23) 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.
- (24) 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.

[Amended 11-14-2007 by L.L. No. 7-2007]

- (25) Phasing of development, if any.
- (26) A signature block for Planning Board endorsement of approval.

(27) Date, North arrow and tax identification numbers of all parcels included in the application.

(28) The name and address of the owner of the property proposed for development.

(29) The name and address of the applicant, if different than owner.

(30) Any other information as may be deemed by the Planning Board as necessary to determine and provide for the proper enforcement of this chapter.

B. Application 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 Planning Board may determine that the 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 Board 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 Planning Board.

C. Information waiver. The Department of Planning and Economic Development may grant a waiver from the information requirements contained herein where it determines that such information is not relevant to, or is not otherwise required to, conduct the review of the application.

D. State environmental quality review. 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.

E. Site plan design criteria. The following criteria are intended to provide a framework for development within which the site designer is free to exercise creativity, invention, and innovation while recognizing the general historic, scenic and visual qualities inherent to the Town of Bethlehem, with a particular emphasis on compatibility with the surrounding neighborhood. These criteria, together with the design criteria for the district in which the property is located as set forth in Article V of this chapter, should be considered by the Planning Board during the review of any application requiring site plan approval under this chapter, and the Planning Board is hereby authorized to use its discretion to determine whether one or more of these criteria apply to a particular application. The Planning Board is also authorized to use its discretion as to the applicability of these guidelines to redevelopment projects involving the conversion or the rehabilitation of existing structures and previously disturbed land areas. The specific application of one or more of these criteria, the district design criteria, or any other standard established by this chapter to an application pending before the Planning Board shall be determined solely by the Planning Board. The following standards are in addition to any other site plan, special use permit, and subdivision requirements of this chapter and the Town Subdivision Regulations. Editor's Note: See Ch. 103, Subdivision Regulations.

(1) Relationship of structures and buildings to site.

(a) In the site plan design, consideration should be given to the use of existing building forms and layouts which are evidence of the distinctive historic development of the area and, in particular, of any specially designated or recognized scenic and historic districts within the vicinity of the proposed development. The importance of local historic, architectural, environmental and other features of significance to the property and of nearby properties should be recognized as an integral element in the review process.

(b) The site should be planned to accomplish a desirable transition with the streetscape to provide for adequate planting, safety and economy of pedestrian movement, and safe ingress and egress and parking for vehicles.

(c) Site planning in which setbacks and yards are in excess of the minimum area and bulk requirements is encouraged to provide a variation in relationship between buildings.

(d) Parking should, wherever feasible, be located to the rear or sides of buildings, so as not to interfere with the front landscape treatment.

(e) Without restricting the permissible limits of the applicable zoning district, the height and scale of each building should be compatible with its site and the existing, or anticipated, adjoining buildings. The Planning Board should determine the visual compatibility of a proposed use or site plan change, including concerns for the proportion of the front facade, proportion and arrangement of windows and other openings within the facade (i.e., fenestration), roof shape, and the rhythm and spacing of structures along the street front or roadway, including consideration of setbacks and the treatment of yards.

(f) The Planning Board should encourage the use of a combination of common materials, landscaping, buffers, screens and visual interruptions to create attractive transitions between buildings of different architectural styles.

(g) Newly installed and renovated utility services, and service revisions necessitated by exterior alterations, shall be underground unless otherwise allowed by the Planning Board.

(2) Relationship of nonresidential uses to residential districts.

(a) Site plans proposed for nonresidential uses adjacent to a residential district should be reviewed with regard to the impact of the development on that district. The Planning Board is hereby expressly authorized to require such additional front, side and rear yard setbacks as may be required to ensure that the nonresidential use does not interfere with the quiet enjoyment of neighboring residential property within a residential district.

(b) Buildings and parking areas proposed for nonagricultural nonresidential uses, including by-right uses, on property in the mixed-use districts and the commercial districts where such property is adjacent to, or is located within 100 feet of, a residential district shall be required to meet the following additional setbacks:

[1] If the property proposed for development is located in a commercial district and adjoins property located in a residential district, all site improvements shall be set back an additional 100 feet from the minimum yard setback.

[2] If the property proposed for development is located in a commercial district and is within 100 feet of property located in a residential district, all site improvements shall be set back an additional 50 feet from the minimum yard setback.

(c) The additional setbacks are intended to provide a visual and noise buffer between residential and nonresidential uses. The additional setback, as well as the minimum yard setback area, shall be planted with a mixture of evergreen and deciduous plantings at a height so as to provide, as much as practicable, a visual screen of the nonresidential improvements from residential uses. The species type, location and planted height of such landscaping shall be subject to the approval of the Planning Board.

(3) Landscape, buffering and site treatment.

(a) Where possible, natural or existing topographic features and patterns that contribute to the beauty and character of a site or neighborhood should be preserved.

(b) Grades of walks, parking spaces, terraces, and other paved areas should provide an inviting appearance and should be of such width, as determined by the Planning Board, to easily accommodate pedestrian movement.

(c) Landscape treatment should be provided to enhance architectural features, strengthen vistas and visual corridors and provide shade.

(d) Unity of design should be achieved by repetition of certain plant varieties and other materials and by coordination with adjacent developments.

(e) Plant material should be selected for interest in its structure, texture and color and in consideration of its ultimate growth pattern. Vegetation indigenous to the area and others that will be harmonious with the design and exhibit a good appearance should be used.

(f) In locations where plants will be susceptible to injury by pedestrian or motor traffic, appropriate curbs, tree guards, or other devices should be installed and maintained. The Planning Board may require the use of markers to delineate curbing and other sensitive features to alert snowplow operators of the existence of such features and curbing.

(g) Parking areas and trafficways should be enhanced with landscaped islands containing trees and tree groupings. The interior (i.e., nonperimeter) areas of a proposed parking area should be appropriately landscaped, and such landscaping shall comprise not less than 10% of the land area of the proposed parking facility.

(h) Screening of service yards, commercial vehicles, commercial trailers, passenger vehicles, parking areas, refuse containers, and other places that tend to be unsightly should be accomplished by use of walls, fencing, planting, or combinations of these with all such enclosures being compatible in material, texture, and color with the principal building or buildings on the site.

(i) Landscaping should be designed and maintained so as not to create hazardous conditions.

(j) Landscaping shall be maintained to preserve its original integrity and intended purpose during the life of the proposed use or project. All approvals granted under this section are expressly conditioned on the maintenance of the approved landscaping during the life of the proposed use or project.

(k) The Board may, at its discretion, consult with one or more persons or firms having experience in landscape architecture and landscape planting as to the appropriate design of lawns and open spaces around proposed buildings and uses and the appropriate species, size and number of plants to be installed. The reasonable cost of any landscaping review shall be borne by the applicant.

(4) Building design.

(a) Proposed building design shall recognize compatible building forms indigenous to the community and the neighborhood in which the project is located. In particular, building design should consider the existing and historic character of the surrounding neighborhood. Adaptive reuse of existing structures is strongly encouraged.

(b) Materials proposed for new structures and the rehabilitation/redesign of existing structures should have good architectural character and should be selected for harmony with traditional building materials. Except when wholly impractical, natural materials should be used.

(c) Building components such as windows, rooflines, doors, eaves, and parapets should have well-designed proportions and relationships to one another and be compatible with the existing and historic character of the surrounding neighborhood.

(d) Mechanical equipment such as air conditioners, satellite dishes, or other utility hardware located on roofs, the ground, or buildings should be screened from public view with materials harmonious with the building, specified as to color so as to blend with their surroundings, or located so as not to be visible from any public way or lands.

(e) Where a proposed project includes signage affixed to the exterior wall of a building or structure, the Planning Board shall review such signs for consistency with the overall building design, including the size, shape and color of letters and symbols.

(5) Water supply and sewage disposal. Projects shall comply with all Health Department standards for water supply and sewage treatment and disposal.

(6) Parking and loading.

(a) Parking shall not be located within a minimum front, side or rear yard setback. The Planning Board may allow parking spaces within a yard setback line if it finds that such parking will not detract from the aesthetic character of the area and is otherwise consistent with the purposes of this section.

(b) The Planning Board shall determine the dimensional requirements for access and internal driveways for the particular use proposed and may require larger dimensions for site driveways and access roads than the minimum dimensions for site driveways and access roads stated elsewhere in this chapter. Driveways for nonresidential uses shall, as much as practicable, be located so that they are aligned with a street or driveway opposite the proposed use.

(c) Notwithstanding the requirements for off-street loading spaces as specified in § 128-56 of this chapter, the Planning Board may require additional space(s) for delivery vehicle loading, may require larger dimensions for each loading space, may require additional setback from adjacent buildings and structures, and may require larger dimensions and means of access for vehicles to such loading spaces than may be stated elsewhere in this chapter.

(d) The design of each parking area and access driveway shall provide adequate room for snow storage.

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

[Added 10-8-2008 by L.L. No. 3-2008]

(7) Material and equipment storage and waste containers.

(a) Material and equipment other than as shown on an approved site plan shall be stored so as not to be substantially visible from adjoining or nearby properties and public roads. Storage of materials should be within wholly enclosed structures approved for such use or should be screened from view by fencing or landscaping, or a combination of fencing and landscaping, as determined by the Planning Board. In no case shall the height of stored material exceed the height of such screening. No outdoor storage of material shall be permitted within 100 feet of any residential district or any property used for residential purposes.

(b) Adequate facilities for disposal of refuse shall be provided. All refuse disposal units, or locations for deposit of refuse, should be screened from view and designed so as to be fireproof and/or fire-retardant and to prevent access by rodents, dogs, cats, and vermin. All such enclosures should remain closed at all times and shall be designed to prevent blowing of paper and refuse.

(8) Ecological considerations.

(a) 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 two years old) delineation of the on-site wetlands together with a tabulation of the amount of disturbance, if any, to the on-site wetlands. If the amount of proposed disturbance exceeds the threshold for coverage under the United States Army Corps of Engineers (ACOE) Nationwide Permit Program, the application shall also include a jurisdictional determination by the ACOE.

(b) If the site contains wetlands that are classified as state-protected freshwater wetlands, the site plan shall include a delineation of the on-site wetland and the wetland buffer and shall include the signature of the New York State Department of Environmental Conservation personnel charged with verifying the extent and location of the wetland boundary.

(c) The proposal should conform with the existing geological and topographic features, to the end that the most appropriate use of land is encouraged.

(9) Drainage. The proposed development shall be so designed as to provide for proper surface water management through a system of controlled drainage that preserves existing drainage patterns and protects other properties and the environment. The stormwater management design shall include controls for water quantity and water quality as required under the Phase II stormwater program in accordance with the latest State Pollutant Discharge Elimination System permit and Chapter 98 of the Code of the Town of Bethlehem.

[Amended 11-14-2007 by L.L. No. 7-2007]

(10) Traffic.

(a) All entrance and exit driveways should be located with due consideration for traffic flow, so as to afford maximum safety to traffic on public streets, and shall meet all current design standards of the appropriate state, county or Town authority unless specifically waived or modified by that authority. No entrance or exit should be located within 75 feet of any street intersection, except if aligned directly opposite that intersection.

(b) On-site circulation should be designed for ease of use and to connect safely with adjoining properties where appropriate.

(11) Pedestrian circulation. Pedestrian circulation should be separated from motor vehicle circulation. Appropriate walkways should be provided on the site and its approaches as determined by the Planning Board.

(12) Architectural review. In addition to the requirements of this section and Chapter 103, Subdivision Regulations, during review of any site plan the Planning Board may, at its discretion, consult with one or more persons or firms having experience in building architecture and design matters as to the appropriate design of building exterior facades, fenestration, rooflines, lighting, massing, color and materials. In reviewing the architectural appearance of proposed buildings and landscaping the Planning Board should evaluate the compatibility of the proposed development with that found elsewhere in the vicinity of the project. The architectural review authority of the Planning Board shall not be limited by the provisions of this section but shall extend to the full authority to conduct such reviews as may be conferred on the reviewing agency by the Town Law, the State Environmental Quality Review Act, and this chapter, as amended. The reasonable cost of any architectural consultation and review shall be borne by the applicant pursuant to § 128-85 of this chapter.

(13) Lighting. See § 128-52.

F. Fees. An application for a site plan approval shall be accompanied by an application fee as set by the Town Board. 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). 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, reasonable fees shall be paid for by the applicant and an escrow deposit will be required pursuant to § 128-85 of this chapter.

G. Approval procedure. Except those applications for which the Planning Board has waived site plan review, within 62 days of receipt of a complete application, the Planning Board may hold a public hearing. If the Board determines that a public hearing will be held, notice of the public hearing shall be published in the official newspaper at least five days prior to the date set for public hearing. The Planning Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of the application, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that an application for a site plan approval is under consideration by the Board. All notices shall include the name of the project, the location of the project site, and the date, place, time and subject of the public hearing at which the application will be reviewed. Such notice shall not be required for adjourned dates. If an application for site plan approval 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. The Planning Board shall comply with the provisions of General Municipal Law §§ 239-l and 239-m, as amended.

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

[Amended 10-8-2008 by L.L. No. 3-2008]

- (1) The boundary of any city, village, or town;
- (2) The boundary of any existing or proposed county or state park or other recreation area;
- (3) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway;
- (4) The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines;
- (5) The existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated; or
- (6) The boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the Agriculture and Markets Law.

I. Referral to neighboring municipalities. Pursuant to General Municipal Law § 239-nn, for a site plan permit review under this section involving property located within 500 feet of an adjacent municipality, notice of any public hearing shall be given by mail or electronic transmission to the clerk of the adjacent municipality not less than 10 days prior to the date of said hearing.

J. Time of decision. Within 62 days of close of the public hearing, or within 62 days of receipt of a complete application for which the Board has determined that a public hearing will not be held, the Planning Board shall approve, approve with modifications, or disapprove the site plan application. 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 mailed 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. Within 60 days of the date of approval, or approval with modifications, the applicant shall present 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. 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 Chairperson and filed with the Planning Board and the Building Inspector.

K. Decision. In rendering its decision concerning any site plan application, the Planning Board shall consider the standards of § 128-71E and the applicable design standards of Article V of this chapter and shall consider the nature, arrangement and appearance of all proposed structures, improvements and uses of the lot, including their potential impact on adjacent properties, architectural features and land uses, such that:

[Amended 10-8-2008 by L.L. No. 3-2008]

- (1) They will have a harmonious relationship with the existing and planned development of contiguous lands and adjacent neighborhoods.
- (2) They will have no material adverse effect upon the desirability of such neighborhoods for the uses contemplated by this chapter.
- (3) They will be properly related to the uses, goals and policies for land development as expressed in the Town Comprehensive Plan.

(4) Pedestrian and vehicular access, traffic circulation and the general layout of the site are properly planned with regard to the safety of vehicles and pedestrians using the site, as well as those on neighboring properties and streets.

(5) New structures will be sited to take advantage of solar access insofar as practical, including the orientation of proposed buildings with respect to sun angles, the shading and windscreen potential of existing and proposed vegetation on and off the site, and the impact of solar access to adjacent uses and properties.

(6) The site plan shall reflect an awareness of and sensitivity to the views, terrain, soils, plant life and other unique qualities of the site and shall, to the extent practical, preserve and enlarge upon these assets for recreation, scenic or conservation purposes.

L. Time limit. The site plan approval shall be void if construction is not started within one year of the date of Planning Board approval and completed within two years of the date of such approval. Prior to its expiration, the site plan approval may be renewed by request of the applicant for up to two additional ninety-day periods.

M. Surety. The Planning Board may require in its issuance of a site plan 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. The security shall be in an amount to be determined by the Town Engineer based on submission of final design plans and shall be in a form acceptable to the Town Attorney or his/her designee. In addition, the owner/applicant shall name the Town of Bethlehem as an additional insured on all workmen's compensation and general liability insurance policies required to perform the work.

[Amended 10-8-2008 by L.L. No. 3-2008]

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

[Amended 10-8-2008 by L.L. No. 3-2008]

O. Appeals. Any person aggrieved by any decision of the Planning Board may apply to the Supreme Court for review pursuant to § 274-a of the Town Law.

§ 128-72. Site plan review and approval for new agricultural uses.

Agricultural uses in existence as of the effective date of this chapter and agricultural uses located in a county agricultural district are permitted by right.

A. The seasonal planting of crops will be exempt from site plan review.

B. For instances where site plan review is required, the Planning Board shall refer to Site Plan Process Guidelines as set forth by the Commissioner of Agriculture and Markets.

C. Fencing must comply with district requirements.

ARTICLE VIII. Standards for Certain Uses Requiring Special Use Permit Review

§ 128-73. Accessory apartments.

A. One dwelling unit serving as an accessory apartment shall be permitted as an accessory use within a single-family dwelling in any residential district subject to special use permit approval by the Planning Board. The accessory apartment shall be located within the principal building. Notwithstanding the foregoing, within the Rural District, the Rural Riverfront District and the Rural Light Industrial District, the accessory apartment may be located within the principal building or within a detached or attached accessory building on the same lot. The certificate of occupancy for the principal use shall clearly identify such accessory dwelling unit and its floor area.

[Amended 10-8-2008 by L.L. No. 3-2008]

B. In addition to the above, an accessory apartment shall comply with the following provisions:

- (1) The apartment shall be clearly subordinate to the single-family dwelling unit.
- (2) The number of bedrooms in the apartment shall be not more than two.
- (3) The floor area of the apartment shall be greater than 400 square feet.
- (4) The floor area devoted to the apartment shall be less than 40% of the entire floor area of the single-family dwelling or 1,000 square feet, whichever is less.
- (5) The apartment and single-family dwelling shall have a safe and proper means of entrance, clearly marked for the purpose of firesafety and mail service.
- (6) If the water supply is from a private source, the applicant shall certify that the water supply is potable and of adequate flow.
- (7) The applicant shall certify that the sewage disposal system is adequate for the two units. Failure to correct promptly any resulting sewage system problem shall result in revocation of the special permit.
- (8) No special permit shall be granted in any case where the County Department of Health has determined that the water or sewage system serving the dwelling or dwellings in question is for any reason not capable of handling the additional demand that would be imposed upon it in the event the special permit were issued thereunder.
- (9) Stairways leading to any floor or story above the first floor shall be located within the walls of the building wherever practicable. Stairways and fire escapes shall be located on the rear wall in preference to either side wall. In no instance shall a stairway or fire escape be located on any wall fronting on a street.
- (10) The owner(s) of the single-family lot upon which the accessory apartment is located shall occupy at least one of the dwelling units on the premises.
- (11) Any apartment within a single-family dwelling that is in existence at the time of the adoption of this subsection shall be subject to the provisions outlined above.

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

[Added 10-8-2008 by L.L. No. 3-2008]

§ 128-74. Adult business uses.

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

B. Adult business uses, as defined in § 128-22 of this chapter, are to be restricted in the following manner, in addition to any other requirements of the Code:

(1) Adult business uses are permitted only in the Heavy Industrial District.

(2) Adult business uses shall not be located within a one-thousand-foot radius of any residential district or any property used for residential purposes. For measurement purposes, the distance shall be measured in a straight line, without regard to intervening structures or objects, from the closest structural wall of such adult use to the boundary line of such residential district or residential property.

(3) Adult business uses shall not be located within a one-thousand-five-hundred-foot radius of another adult use. For measurement purposes, the distance between adult business uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest structural wall of any adult use to the closest structural wall of any other adult use.

(4) Adult business uses shall not be located within a one-thousand-foot radius of any school, nursery school, day-care center, educational institution, place of worship, park or playground, historic or scenic resource and civic or cultural facility. For measurement purposes, the distance between an adult business use and other such named uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest structural wall of such adult use to the closest property boundary of such school, nursery school, day-care center, educational institution, house of worship, park or playground, historic or scenic resource and civic or cultural facility.

(5) Not more than one adult business use shall be located in the same building or upon the same lot or parcel of land.

(6) No loudspeakers or sound equipment shall be used for adult business uses that can be discerned by the public from public or semipublic areas.

§ 128-75. Junkyards.

A. The establishment of a new junkyard use, and the expansion or alteration of a junkyard in existence as of the effective date of this chapter, shall be subject to special use permit review and approval pursuant to § 128-69 of this chapter.

B. Junkyards are permitted only in the Heavy Industrial District. In addition, no display, storage, or collection of junk or junk cars, and no more than one unregistered vehicle, shall be permitted in a location visible from adjoining properties, or public roads, in any district.

C. A special use permit for a junkyard use shall be valid for five years and may be renewed. It shall be the responsibility of the owner/applicant to apply for a renewal of the special use permit before the expiration date. The Town will not provide any notice to the owner/applicant of the pending expiration of said permit.

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

E. No junkyard hereafter established shall be licensed to operate if such yard, or any part thereof, shall be within 500 feet of a church, school, hospital, public building or place of public assembly.

§ 128-76. Kennels.

A. The establishment of a new kennel use, and the expansion or alteration of a kennel in existence as of the effective date of this chapter, shall be subject to special use permit review and approval.

B. The minimum lot area is five acres. In addition, no dog kennel, runway or exercise pen shall be located within 200 feet of any lot line.

[Amended 10-8-2008 by L.L. No. 3-2008]

§ 128-77. Mining and mineral extraction.

A. Purpose.

(1) Mined materials such as clay, sand, silt, gravel, and rock for construction purposes. Facilities to contribute to the supply of these materials are necessary to support construction activity in a cost-effective manner. Providing a reasonable supply of competitively priced extractive materials is a goal of the Town.

(2) While the Town of Bethlehem wishes to contribute to the continued supply of mined materials, it believes that it must protect the health and welfare of its residents by confining mining and mineral extraction to certain specific zones where such activities will be a specially permitted use along with the several other uses permitted in those zones.

(3) The health of the residential, agricultural, and business community in the Town of Bethlehem is an essential goal of the Town. This goal requires that adverse effects to the environment, such as excessive noise and dust, degradation of water resources, and other hazards to the public, be mitigated or avoided entirely. Accordingly, the special use permit requirements will be used by the Town to determine whether a mining or mineral extraction use is appropriate for the neighborhood in which it is proposed and whether the use can be operated in a manner that meets the criteria for approval of a special use permit pursuant to this chapter. These standards are designed to work in conjunction with Environmental Conservation Law § 23-2701 et seq.

B. The Town recognizes that processing is an integral part of mining and mineral extraction processes. However, the Town is also mindful that processing is one of the more invasive of the activities that is part of mining and mineral extraction activity in terms of noise and other environmental hazards. If the processing of mined products is permitted as a standalone use in the designated zones it would give soil mines a potential for a life well beyond the exhaustion of materials available from the site where the processing machinery is located. It is the Town's intention not to permit this to occur by providing that the permitted uses in the zones where mining and mineral extraction are allowed do not include the processing of materials not mined at the subject site. The Town considers the processing of material taken from other sites to be an industrial activity and not included within the uses permitted in the zones where mining and mineral extraction are permitted uses.

C. While state law has denied to the Town the power to regulate the reclamation of land used for mining and mineral extraction, it is the purpose and intention of the Town to make full use of special permit powers granted to it by state law. To protect the health and welfare of its residents and to achieve the goals of the Town as stated above, it is the intention of the Town that the special permit powers described herein be utilized to the full extent permitted by law.

D. Exemptions. The following, to the extent specified herein, are exempt from the permitted zone requirements of this section:

- (1) Excavation in conjunction with utility installation, which is to be backfilled;
- (2) Excavation in conjunction with a development project that has a special use permit approval, site plan approval or subdivision approval and where the excavation is incidental to the development project;
- (3) Excavation in conjunction with road construction within the limits of the right-of-way or slope rights of any Town, county, or state highway, or for the sole purpose of building roads and slopes incidental thereto which lie within the area of a subdivision approved by the Planning Board;
- (4) Excavation which by its nature lasts for a matter of hours or days, e.g., graves, septic tanks, swimming pools, etc., and does not involve removal of material from the property;
- (5) Agricultural drainage work incidental to agricultural operations, including farm ponds, if no material is removed from the property;
- (6) Excavation for structures, parking areas, and rights-of-way;
- (7) Regrading of property for aesthetic purposes that does not affect existing drainage, if no material is removed from the property;
- (8) Dredging operations under the jurisdiction of the United States Army Corps of Engineers and other governmental entities;
- (9) Excavation in conjunction with the drainage maintenance or improvements under Town, county or state jurisdiction;
- (10) The improvement of a single lot or parcel of land in connection with construction of a dwelling, multifamily dwelling, building, or any other structure or structures for which a building permit has been issued; and
- (11) The excavation, in any calendar year, of not more than 200 cubic yards of material per acre within any parcel or any contiguous parcels in any twelve-month period, provided that no more than 750 cubic yards of material may be removed from any parcel in any calendar year.

E. Location. Mining and mineral extraction are allowed in the districts as shown on the Schedule of Uses of this chapter, subject to special use permit review and approval. Editor's Note: The Schedule of Uses is included at the end of this chapter.

F. Special use permits.

- (1) No mining or mineral extraction activity shall be conducted within the Town without the issuance of a special use permit.
- (2) An application for a special use permit shall not be complete unless it is accompanied by the requisite filing fee, a complete copy of the application to the New York State Department of Environmental Conservation for a mining permit, 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.
- (3) The Planning Board is authorized, pursuant to § 128-85 of this chapter, to retain the services of consultants having expertise in the field of mining and mineral extraction. The reasonable cost of any consultation and review shall be borne by the applicant.

(4) The special use permit 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:

- (a) Any conditions of special use permit approval pursuant to § 128-69 of this chapter.
- (b) 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.
- (c) Any limitations or prohibitions on the routing of mineral transport vehicles on Town roads.
- (d) 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.
- (e) 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.

G. It is the intention of this chapter to obtain and this chapter does, therefore, include all power and authority granted by New York State law to the Town to enforce all conditions of an applicant's mining permit, any special use permits hereunder and the conditions of the applicant's mined land reclamation permit.

§ 128-78. Public cemeteries.

A. No public cemetery, or the expansion or extension of a public cemetery in existence as of the date of adoption of this section, shall hereafter be established without a special use permit issued by the Planning Board.

B. In the case of an existing public cemetery the Planning Board may use its discretion to waive the requirement of site plan review and approval.

C. In addition to the standards of § 128-69 for issuance of a special use permit, public cemeteries shall comply with the following additional requirements:

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

§ 128-79. Family cemeteries.

The establishment of a family cemetery must comply with the following criteria:

- A. The cemetery shall be an accessory use.
- B. The cemetery shall not be located in a floodplain or within 250 feet of a reservoir or watercourse.
- C. The cemetery shall not be located within 100 feet of any dwelling.

§ 128-80. (Reserved)

ARTICLE IX. Administration and Enforcement

§ 128-81. Building Inspector.

A. This chapter shall be enforced by the Building Inspector.

B. No building shall hereafter be erected or structurally altered within the area covered by the Zoning Map until a permit authorizing the same shall have been issued by the Building Inspector.

C. 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. 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.

E. 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.

§ 128-82. Building permits and certificates of occupancy.

A. Building permits. Building permits shall be required and issued pursuant to Chapter 53, Building Construction and Fire Prevention Administration, of the Town Code. No person shall alter or add to any existing structure, or construct a new structure or part thereof, nor change the use of any building, without a valid zoning and building permit as required by Chapter 53 and issued by the Building Inspector.

[Amended 10-8-2008 by L.L. No. 3-2008]

B. 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. Editor's Note: So in original. 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.

§ 128-83. Penalties for offenses.

[Amended 6-11-2008 by L.L. No. 1-2008]

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.

§ 128-84. Application and inspection fees.

A. Application fees. An application for subdivision, site plan, special use permit and variance approval shall be accompanied by a fee as set by the Town Board.

B. Inspection fees. Prior to commencement of any work in a development with a road that has site plan approval, the developer shall deposit into an escrow account a sum of money to be determined by the Town Board. Said sum shall be based on the estimated cost to the Town of professional review 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 review 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 escrow and governed pursuant to the provisions of this chapter.

§ 128-85. Engineering, legal and consulting fees.

A. Escrow. In connection with any application for a special permit, site plan approval, subdivision approval, zoning amendment, other local law change, planned development district, special exception permit, use variance, area variance, interpretation, or other land use application or appeal, the reviewing department may, in addition to the requirements of SEQRA and inspections, require an applicant to deposit an initial sum of money into an escrow account in advance of the review of the application. Said sum shall be based on the estimated cost to the Town of securing professional consultant services to review the application. For the purpose of this section, professional review services shall be defined as, but not limited to, those services provided by engineers, lawyers, architects, landscape designers, certified surveyors, property appraisers, planners and related professionals.

B. Said escrow shall be used to pay the reasonable and necessary costs of a proper and thorough professional review of the application. 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).

C. The initial deposit by the applicant shall be in an amount as determined by the reviewing department, 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 Town for deposit in a Town of Bethlehem non-interest-bearing escrow 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.

D. In the event that the previously established escrow fees are insufficient to pay for the necessary cost of review, then the Town shall require the applicant to make additional payments to the escrow fund, and until such payment is made by the applicant review of the application shall be suspended.

E. Upon receipt and approval by the reviewing department 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.

F. 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 Town 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 Town 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.

G. 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 department that such moneys will be insufficient to meet vouchers yet to be submitted, the reviewing department shall cause the applicant to deposit additional sums as the department deems necessary or advisable in order to meet such expenses or anticipated expenses.

H. In the event the applicant fails to deposit the requested review fees into an escrow account, any application review, approval, permit or certificates of occupancy shall be withheld or suspended by the reviewing department, 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 the Town Board, Planning Board or Zoning Board of Appeals 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.

I. The Town Board, the Planning Board or the Zoning Board of Appeals, 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 department on the applicant under authority of this section have been paid to the Town.

J. Upon completion of the review of an application or upon the withdrawal of an application, and after all fees already incurred by the Town have been paid and deducted from the escrow account, any balance remaining in the escrow account shall be refunded within 60 days after the applicant's request.

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

L. 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 Town 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.

M. 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.

N. 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 Chairman 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 Chairman affixing his signature to the site plan.

O. 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 Chairman shall determine from the reviewing department if all outstanding professional review fees have been paid by the applicant prior to affixing his 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 Chairman affixing his signature to the site plan.

P. This section shall apply to all land use permit applications and requested local law changes pending before the Town Board, Planning Board or Zoning Board of Appeals as of the effective date of this chapter. All professional review fees incurred by the Town thereafter shall be paid as provided herein.

§ 128-86. (Reserved)

ARTICLE X. Zoning Board of Appeals

§ 128-87. Creation, appointment and organization.

A. There shall be a Zoning Board of Appeals of five members, pursuant to the provisions of § 267 of the Town Law.

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.

C. Town Board members ineligible. No person who is a member of the Town Board shall be eligible for membership on such Board of Appeals.

D. 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.

E. 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.

F. Upon appointment the member shall file with the Town Clerk an oath of office as may be prescribed by the Town Board.

G. 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.

H. 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.

I. 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 himself or herself 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.

J. 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 his or her absence, the Acting Chair may administer oaths and compel the attendance of witnesses.

K. 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.

§ 128-88. Training requirements.

A. Within the first two years after initial appointment, the Zoning Board of Appeals member shall attend a training program at an appropriate level relating to the duties of Zoning Board of Appeals members, approved in the manner herein provided. All other Zoning Board of Appeals members shall attend training programs of appropriate level during their term of office, approved in the manner herein provided.

B. After discussion and consultation with the Chairperson, the Town Board shall establish, by resolution, a list of approved programs and the required minimum hours of attendance to satisfy the training requirements as set forth herein. The Town Board may, from time to time, modify and amend the list of approved programs by resolution, after discussion and consultation with the Chairperson.

C. The Town Board shall choose programs that relate to the duties of Zoning Board of Appeals members. These may include courses, workshops or training programs sponsored by groups such as the New York State Association of Towns, the New York State Department of State, the New York State Department of Environmental Conservation, the New York State Planning Federation, certified training providers, or other appropriate entities.

D. All training provided or required pursuant to this section shall be at Town cost.

E. By December 31 of each year, members of the Zoning Board of Appeals shall file with the Town Clerk proof of attendance at any training programs required by this section.

F. Noncompliance with the minimum requirements relating to training shall be deemed a proper cause for removal from office. A Zoning Board of Appeals member who fails to attend the programs as provided in this section and specified pursuant to the resolutions promulgated thereunder shall be subject to removal following the procedures set forth in § 267 of the Town Law.

§ 128-89. Procedure.

A. Form. All applications made to the Board of Appeals shall be in writing and on forms prescribed by the Board. Every appeal or application shall refer to the specific provision of this chapter involved and shall, with specificity, set forth the interpretation that is claimed and/or the specific nature of the variance which is applied for and the grounds on which it is claimed the interpretation or the variance should be granted. In addition, an application for a use variance 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 upon which the project is proposed; 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.

B. Meetings, minutes and records. Meetings of the Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officers Law. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question or, if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions.

C. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals shall be filed in the office of the Town Clerk within five business days of the date of vote and decision and shall be a public record.

D. Assistance. The Zoning Board of Appeals shall have the authority to call upon any department, agency or employee of the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board. Such department, agency or employee shall be reimbursed for any expenses incurred as a result of such assistance.

E. Jurisdiction. Unless otherwise provided by local law or ordinance, the jurisdiction of the Zoning Board of Appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation or determination made by an administrative official charged with the enforcement of this chapter. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the Town.

F. Rehearing. A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the Board not previously reheard may be made by any member of the Board. A unanimous vote of all members of the Board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided that the Board finds that any of the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

G. Time of appeal. An appeal shall be taken within 60 days after the filing of any order, requirement, decision, interpretation or determination of the administrative officer charged with the enforcement of such ordinance or local law, by filing with such administrative officer and with the Zoning Board of Appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall immediately transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken. The cost of sending or publishing any notices relating to such appeal shall be borne by the appealing party and shall be paid to the Board of appeals prior to the date set for hearing on such appeal.

H. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative officer charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the Zoning Board of Appeals, after the notice of appeal has been filed with the administrative officer, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be

granted by the Zoning Board of Appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and for due cause shown.

I. Hearing on appeal. The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and shall cause public notice of said hearing to be published in a paper of general circulation in the Town at least five days prior to the date thereof. The Board may provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of the application, including the prominent placement of one or more signs on the premises that is the subject of the application notifying interested persons that an application is under consideration by the Board. All notices shall include the name of the applicant, the location of the property involved in the appeal or interpretation, a brief description of the matter that is the subject of the application, and the date, place, time and subject of the public hearing at which the application will be reviewed. Such notice shall not be required for adjourned dates. If an application for use variance contains an agricultural data statement, a copy of the 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. Provided that due notice shall have been published as above provided and that there shall have been substantial compliance with the remaining provisions of this subsection, the failure to give notice in exact conformity herewith shall not be deemed to invalidate any action taken by the Zoning Board of Appeals.

J. Costs. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the Board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.

K. Time of decision. The Zoning Board of Appeals shall decide upon the appeal within 62 days after the close of the public hearing. The time within which the Zoning Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board. Every decision of the Zoning Board of Appeals shall be by resolution, each of which shall contain a full record of the findings of the Board in the particular case.

L. Default denial. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the Board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the enforcement officer within the time allowed by Subsection K herein, the appeal shall be deemed as denied. The Board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to a rehearing process.

M. Filing of decision and notice. The decision of the Zoning Board of Appeals on the appeal shall be filed in the office of the Town Clerk within five business days of the date such decision is rendered and a copy thereof shall be mailed to the applicant.

N. Notice to parties and Park Commission. At least five days before such hearing, the Zoning Board of Appeals shall mail notices thereof to the parties and to the Regional State Park Commission having jurisdiction over any state park or parkway within 500 feet of the property affected by such appeal.

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

[Amended 10-8-2008 by L.L. No. 3-2008]

- (1) The boundary of any city, village, or town;
- (2) The boundary of any existing or proposed county or state park or other recreation area;
- (3) The right-of-way of any existing or proposed county or state parkway, thruway, expressway, road or highway;

(4) The existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines;

(5) The existing or proposed boundary of any county- or state-owned land on which a public building or institution is situated; or

(6) The boundary of a farm operation located in an agricultural district, as defined by Article 25-AA of the Agriculture and Markets Law.

P. Referral to neighboring municipalities. Pursuant to General Municipal Law 239-nn, for a use variance review under this section involving property located within 500 feet of an adjacent municipality, notice of any public hearing shall be given by mail or electronic transmission to the clerk of the adjacent municipality not less than 10 days prior to the date of said hearing.

Q. Compliance with the State Environmental Quality Review Act. The Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act (SEQRA) under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in 6 NYCRR 617.

R. Time limit. Any area variance or use variance which has been granted by the Zoning Board of Appeals pursuant to this article shall be void if construction is not started within one year of the date of approval, and completed within two 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.

[Amended 10-8-2008 by L.L. No. 3-2008]

(1) Exception. Notwithstanding the time limitations placed on the start and completion of construction in Subsection R above, for any project requiring site plan approval subsequent to the granting of an area variance or use variance, said variance shall be void if construction is not started within two years of the date of approval and completed within three years of the date of such approval.

(2) Extension of time. Notwithstanding the time limitations cited herein, the Zoning Board of Appeals may grant an extension to the time limits on the start and completion of construction, not to exceed two years, where the Board finds that the applicant has exercised due diligence in pursuing construction of the project.

S. Violations. Upon written report or receipt of a notice of violation or an order to cease and desist from the Building Inspector for a violation of this chapter, the Zoning Board of Appeals shall not review, hold public meetings or public hearings, and shall take no action regarding an application for area variance approval, use variance approval, or interpretation until notified by the Building Inspector that such violation has been cured or ceased by the applicant. However, the Board may, upon written recommendation of the Building Inspector, review and act on an application involving property for which there is a violation where such application is a plan to cure the violation and bring the property or use of the property into compliance with this chapter.

§ 128-90. Permitted actions.

A. 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.

B. Public projects and improvements. 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 the interests" test set forth in Matter of County of Monroe, 72 N.Y.2d 338. Upon a finding of applicability under the "balancing of the 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:

- (1) Located on public land or public facilities, whether financed by public or private funds; and
- (2) Located on private land or private facilities but paid for, in part or in whole, by public funds.

C. Use variances. The Zoning Board of Appeals, on appeal from the decision or determination of the administrative officer charged with the enforcement of this chapter, shall have the power to grant use variances, as defined in the New York State Town Law. No such use variance shall be granted by the Board of Appeals without a showing by the applicant that zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Zoning Board of Appeals for each and every permitted use under the zoning regulations for the particular district where the property is located that:

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

D. Use variance approval and conditions. In granting a use variance the Zoning Board of Appeals shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant and at the same time preserve and protect the character of the neighborhood and health, safety and welfare of the community. The Board may grant approval of a use variance on such conditions as the Board may find reasonable and necessary to preserve and protect the character of the neighborhood and the health, safety and welfare of the community. Said conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such use variance may have on the neighborhood or community.

E. Area variances. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative officer charged with the enforcement of this chapter, to grant area variances as defined in the Town Law. In making its determination, Zoning Board of Appeals 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 Board shall also consider whether:

- (1) 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;
- (2) The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (3) The requested area variance is substantial;
- (4) The proposed variance will have an adverse effect or impact on the physical or environment conditions in the neighborhood or district; and
- (5) The alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

F. Area variance approval and conditions. In granting an area variance the Zoning Board of Appeals shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant and at the same time preserve and protect the character of the neighborhood and health, safety and

welfare of the community. The Board may grant approval of an area variance on such conditions as the Board may find reasonable and necessary to preserve and protect the character of the neighborhood and the health, safety and welfare of the community. Said conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such area variance may have on the neighborhood or community.

G. 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 or Town Zoning Administrator.

H. Fees. The application for an interpretation or variance by the Zoning Board of Appeals pursuant to this chapter shall be accompanied by a fee that shall be fixed, from time to time, by the Town Board by resolution.

I. Review. Any person aggrieved by any decision of the Zoning Board of Appeals may apply to the Supreme Court for review pursuant to § 267-c of the Town Law.

§ 128-91. (Reserved)

ARTICLE XI. Amendments

§ 128-92. Procedure.

A. The Town Board may from time to time, on its own motion, on petition or on recommendation of the Planning Board, amend, supplement or repeal the regulations and provisions of this chapter in the manner provided by Town Law.

B. State Environmental Quality Review Act (SEQRA). The Town Board shall be considered to be the lead agency in any action initiated under these procedures.

C. The Town Board, by resolution adopted at a regular or special meeting, shall fix the time and place of a public hearing on the proposed amendment and cause 10 days' public notice thereof to be given stating the purport of the proposed amendment.

D. Decision. An amendment that has been approved by the Planning Board shall be adopted by a simple majority of the Town Board. No amendment of this chapter that has not been approved by the Planning Board shall be adopted except by a super-majority vote (majority plus one) of the full Town Board membership.

E. Whenever the majority of the taxpayers in any district shall present to the Town Board a petition duly signed and acknowledged requesting an amendment, supplement, change, modification or repeal of the regulations prescribed for such district, or of the Zoning Map including such district, it shall be the duty of the Town Board to hold a public hearing thereon and cause notice thereof to be given in the manner prescribed above.

§ 128-93. Referral to Planning Board.

Every such proposed amendment or change, unless initiated by the Planning Board, shall be referred to the Planning Board for its report thereon before the public hearing provided for by Town Law. The date of the Town Board resolution to refer such proposed amendment or change to the Planning Board shall be deemed to be the initiation of proceedings. Failure on the part of the Planning Board to report its recommendation to the Town Board within 45 days after initiation of proceedings therefor shall be deemed approval thereof, unless such proceedings have been previously terminated by the Town Board or by the petitioner.

A. In recommending the adoption of any such proposed amendment, the Planning Board shall:

(1) State its reasons for such recommendation, describing any condition that it believes makes the amendment advisable.

(2) Specifically set forth the manner in which, in its opinion:

(a) The amendment would be in harmony with the Comprehensive Plan; and

(b) The amendment would be in furtherance of the purposes set forth in Article I of this chapter.

(3) In recommending the rejection or revision of any proposed amendment, the Planning Board shall similarly state its reasons.

B. Nothing herein shall be construed to prevent the Town Board from acting on a proposed amendment prior to receipt of the Planning Board's recommendation as specified in Subsection A of this section; provided, however, that the proposed amendment shall be adopted by a super-majority vote (majority plus one) of the full Town Board membership.

§ 128-94. Other referrals.

The Town Clerk shall forward one copy of the proposed amendment to each of the following as applicable:

A. County. The Albany County Department of Planning together with a full statement of the proposed action, as defined in § 239-m of the General Municipal Law.

B. Municipalities. Each of the municipalities adjoining the Town of Bethlehem.

§ 128-95. (Reserved)

ARTICLE XII. Miscellaneous Provisions

§ 128-96. Conflicts with other laws.

Where this chapter imposes greater restrictions than required by any other law, ordinance, or regulation, the provisions of this chapter shall govern. Where the provisions of any other law, ordinance, or regulation impose greater restrictions than are required by this chapter, the provisions of such law, ordinance or regulation shall govern.

§ 128-97. Exemptions.

A. Site plan. A site plan approval application shall be exempt from the requirements of this chapter, as amended, if, as of the effective date of this chapter, the Planning Board has adopted a resolution granting conditional site plan approval and said conditional approval has not expired.

B. Subdivision. An application for subdivision approval shall be exempt from the requirements of this chapter and Chapter 103, Subdivision Regulations, as amended, if, as of the effective date of this chapter, the Planning Board has approved a resolution granting preliminary subdivision approval for major subdivisions and sketch plan approval for minor subdivisions and said approval has not expired.

§ 128-98. (Reserved)

ARTICLE XIII. Use and Area Schedules

§ 128-99. Schedule of Uses.

A. Refer to chart at end of chapter.

B. For Planned Development District see § 128-40.

§ 128-100. Schedule of Area, Yard and Bulk Requirements.

A. Refer to chart at end of chapter.

B. For Planned Development District see § 128-40.

§ 128-101. (Reserved)

§ 128-102. (Reserved)

Attachments:

128a Sched of Uses

128b Sched of Area Yard Bulk Reg

128c Zoning Map

CHAPTER DL. DISPOSITION LIST

§ DL-1. Disposition of legislation.

CHAPTER DL. DISPOSITION LIST

The following is a chronological listing of legislation of the Town of Bethlehem adopted since January 1, 2004, indicating its inclusion in the Code or the reason for its exclusion. [Enabling legislation which is not general and permanent in nature is considered to be non-Code material (NCM).] Consult municipal records for disposition of prior legislation.

§ DL-1. Disposition of legislation.

L.L. No.	Adoption Date	Subject	Disposition
1- 2004	1-14-2004	Exemptions for persons with disabilities and limited incomes amendment	Ch. <u>111</u> , Art. <u>V</u>
2- 2004	1-14-2004	Partial exemption for aged persons amendment	Ch. <u>111</u> , Art. <u>I</u>
3- 2004	4-8-2004	Moratorium	NCM
4- 2004	4-27-2004	Vehicles and traffic amendment	Ch. <u>119</u>
5- 2004	6-14-2004	Vehicles and traffic amendment	Ch. <u>119</u>
6- 2004	9-22-2004	Vehicles and traffic amendment	Ch. <u>119</u>
7- 2004	9-22-2004	Vehicles and traffic amendment	Ch. <u>119</u>
8- 2004	10-22-2004	Vehicles and traffic amendment	Ch. <u>119</u>

L.L. No.	Adoption Date	Subject	Disposition
1- 2005	4-5-2005	Moratorium	NCM
2- 2005	8-24-2005	Subdivision regulations amendment; zoning amendment	See Ch. <u>128</u>
3- 2005	10-26-2005	Rezoning certain property	NCM
1- 2006	2-22-2006	Eligible funds veterans exemption amendment	Ch. <u>111</u> , Art. <u>III</u>
2- 2006	3-8-2006	Vehicles and traffic amendment	Ch. <u>119</u>
3- 2006	4-12-2006	Vehicles and traffic amendment	Ch. <u>119</u>
4- 2006	8-23-2006	Subdivision regulations; zoning; rescind Chs. 41, 106 and 113	Chs. 103; 128
5- 2006	10-25-2006	Vehicles and traffic amendment	Ch. <u>119</u>
1- 2007	2-28-2007	Taxation: exemption for persons with disabilities and limited incomes amendment	Ch. <u>111</u> , Art. <u>V</u>
2- 2007	2-28-2007	Taxation: partial exemption for aged persons amendment	Ch. <u>111</u> , Art. <u>I</u>
3- 2007	2-28-2007	Vehicles and traffic amendment	Ch. <u>119</u>
4- 2007	4-25-2007	Vehicles and traffic amendment	Ch. <u>119</u>
5- 2007	5-23-2007	Pesticides amendment	Ch. <u>87</u>
6- 2007	8-22-2007	Vehicles and traffic amendment	Ch. <u>119</u>
7- 2007	11-14-2007	Solid waste amendment; stormwater management; subdivision regulations amendment; zoning amendment	Chs. 97; 98; 103; 128
1- 2008	6-11-2008	Zoning amendment	Ch. <u>128</u>
2- 2008	6-25-2008	Taxation: assessment of converted condominiums	Ch. <u>111</u> , Art. <u>VI</u>
3- 2008	10-8-2008	Subdivision regulations amendment; trailers and trailer camps amendment; zoning amendment	Chs. 103; 115; 128

L.L. No.	Adoption Date	Subject	Disposition
4- 2008	10-22-2008	Vehicles and traffic amendment	Ch. <u>119</u>
1- 2009	1-28-2009	Zoning Map amendment	NCM
2- 2009	2-11-2009	Taxation: eligible funds veterans exemption	Ch. <u>111</u> , Art. <u>III</u>
3- 2009	2-25-2009	Stormwater management amendment	Ch. <u>98</u>