

## Appendix F:

# Analysis of Existing Town of Bethlehem Zoning Regulations as they pertain to Agriculture

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September 2009

The Agricultural and Farmland Study Advisory Committee, together with Town Planning staff and American Farmland Trust, reviewed the “Schedule of Uses” Table for consistency with the goals for the Plan to protect agriculture as a land use and business. The table was reviewed with a desire towards identifying potential agriculturally related uses and complementary businesses that would support farms and help diversify farm income.

Currently, agricultural uses located in a County Agricultural District are allowed by right, regardless of the zoning district in which the property is located. In addition, the seasonal planting of crops is allowed by right in any zoning district. In certain zoning districts, new agricultural operations are subject to the site plan review process that follows the Site Plan Process Guidelines as set forth by the Commissioner of Agriculture and Markets.

Of all parcels of land coded by the assessor as agricultural, participating in the Agricultural District, or receiving agricultural assessment, 76% are located within three zoning districts – Residential A, Rural and Rural Light Industrial. Not surprisingly, these three zoning districts also contain the highest percentages of prime and statewide important soils, a USDA classification system that identifies good soils for agriculture. This review is focused on the uses allowed within these three zoning districts for this reason.

This review flags potential areas for expansion of the uses as currently allowed. It follows the Schedule of Uses chart found in the Zoning Law (Chapter 128) as adopted September 1, 2006, amended October 2008, and identifies opportunities for expansion or areas of concern. This review is intended to provide information for continued review and research by the Town to determine how best to meet the needs of agriculture while protecting public health, safety and other adjacent uses in each zone.

## **Zoning District Purpose (§128-24)**

### **R: 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.”

**RA:** Residential A (defined in the code with Residential B together).

“Areas of 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 non-agricultural uses. The purpose of these districts is to protect the residential viability of established residential settlements.”

*Since 32% of all agricultural parcels lie in this district, and 20% of the land area (acreage) in the district is agricultural, consider adding language that allows for continued agricultural use as compatible with the residential development occurring in this area of town.*

**RLI:** Rural Light Industrial (defined with Heavy Industrial)

“Areas of the town designated under these districts are those with good highway access 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.”

*Since 16% of all agricultural parcels lie in this district and 44% of the land area (acreage) in the district is agricultural use, consider adding language that allows for continued agricultural use and agricultural support businesses that may also require trucking or rail transportation to move goods and materials.*

**MED:** Mixed Economic Development District

“Areas of 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.”

*Although only 10% of the total agricultural land base in Bethlehem falls in this district this equates to nearly 50% of the entire acreage of the district. There appears to be some inconsistency in stating that significant agricultural uses do not exist. Consider modifying the definition to acknowledge present agriculture.*

**Discussion of Land Uses:**

This section discusses the current allowance of uses that may be complimentary to agriculture. Each use includes a table that indicates the current allowance and the type of land use review based on the Schedule of Uses. Note BR designates a use by right, subject to building permit and certificate of occupancy for certain improvements; SP designates a use allowed subject to site plan approval; and SUP designates a use permitted subject to special use permit and site plan approvals and the special permit criteria of §128-69F in addition to the criteria of Article VIII for certain designated use.

**Animal Hospital, Animal Clinic:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Animal Hospital, Animal Clinic	SP		SP
Definition			
Animal Hospital: An establishment for the medical and surgical care of sick or injured animals.			

This definition may restrict landowners in the RA district from operating a large animal clinic on their property, or if a veterinarian lives in this district, they may be prohibited from treating animals. (Note that this use may be allowed as a home occupation if it meets the requirements of §128-50 Home Occupation of the Town Zoning Law.

*Consider allowing an agricultural hospital, animal clinic in the RA district, or define an agricultural animal clinic separately and allow for its use.*

**Bed&Breakfast (B&B):**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Bed & Breakfast	SP	SP	
Definition			
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.			

Current regulations §128-45 Bed-and-Breakfasts of the Town Zoning Law specify that “establishments may not be used commercially for conference centers, weddings, concerts, a public restaurant, auctions, retreats or other for hire events.” Traditionally, farms diversify their income with a B&B in the old farmstead. Allowing for one-day events such as weddings or other private for-hire events would expand opportunities for farm income, while remaining compatible with existing farm use. One-day events could be subject to mass-gathering permits or other restrictions to limit the impact on the neighboring community.

*Consider allowing B&B use in RLI and allowing one-day events on properties with B&B’s.*

**Bulk Storage of Materials:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Bulk Storage of Materials			
Definition			
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.			

Currently, this use is only allowed by Special Use Permit in the Heavy Industrial district. The Committee expressed concern whether agricultural materials would qualify as bulk storage – examples including, animal feed, sawdust for bedding or mulch products in greenhouse/nursery businesses. In these cases, storage of such materials would be prohibited in any district but Heavy Industrial.

*Consider adding an exemption in this definition for storage of agricultural products, including but not limited to animal feed, bedding and fertilizer to be used during the course of the growing season.*

**Cold Storage Facilities:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Cold Storage Facilities	SP		SP
Definition			
The storage of materials, commodities or goods in a cold and typically refrigerated place for the purpose of preserving such materials, commodities or goods.			

Cold storage is defined as “The storage of materials, commodities or goods in a cold and typically refrigerated place for the purpose of preserving such materials, commodities or goods”. Cold storage facilities are often used on farms to store products for later sale, including apples and meat products.

*Consider allowing with approvals in the RA district.*

**Commercial Bakery, No Retail Sales:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Commercial Bakery, No Retail Sales	SP		SP
Definition			
Not available			

The current zoning law does not include a definition of the Commercial Bakery, No Retail Sales land use. Perhaps this use is intended for the production of baked goods on a large scale (manufacturing) for distribution to local commercial retail businesses (i.e. convenience stores, restaurants). As a complimentary use to agriculture, a commercial bakery would utilize produce (fruits and/or vegetables) grown on the farm or from local farms.

*Consider allowing with approvals in the RA district.*

**Commercial Recreation:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Commercial Recreation	SUP		SUP
Definition			
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.			

For many farms, commercial recreation is a compatible use to the farm operation that brings in additional income for the property. The definition of commercial recreation includes “riding rinks” while the definition of agriculture includes “employment of land 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...” There appears to be inconsistency between activities associated with the commercial recreation and agricultural land uses.

*Consider allowing limited commercial recreation in R and RLI districts as compatible with agriculture and changing the definition of commercial recreation to exclude riding rinks.*

**Day Camp, Vacation Campground:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Day Camp, Vacation Campground	SP		SP
Definition			
<p><u>Day Camp:</u> 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.</p> <p><u>Vacation Campground:</u> 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.</p>			

Current regulations §128-64 Vacation Campgrounds of the Town Zoning Law discusses scale and design considerations. The current definition does not specify what constitutes a “day camp”. The concern is that it could include activities that happen on farms, such as equestrian camps where lessons are provided and care of animals is taught. These activities may be appropriate in the RA district as the residents of the district would also be the consumers of the activity.

*Consider allowing day camps in the RA district or consider adding a definition for agricultural camps and allowing for its use in the RA district.*

**Fabrication Shop:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Fabrication Shop	SP		SP
Definition			
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.			

Most farms have a farm shop – a place on the farm where machinery is repaired and equipment renovated. In many instances, farmers will repair the machinery or equipment of other farmers as a diversified income stream. Such uses are compatible with agriculture and help support the farm economy as a whole. The question on whether this is restrictive to agriculture becomes, at what point does a farm shop become a “fabrication shop or machine shop” according to the zoning code.

*Consider... Review the concerns and considerations with the Committee*

**Farm Equipment Rentals, Sales & Repair:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Farm Equipment Rentals, Sales & Repair	SP		SP
Definition			
Not available			

Similar to the fabrication shop discussion above, farm equipment repair is often done on farms as a supplemental income. It is difficult to determine whether the code is restrictive since there is no definition of the use. The question that arises is the extent to which a farm equipment rentals, sales & repairs use becomes more than supporting the activities of the agricultural community. For example, farm equipment typically includes tractors and other heavy equipment that could also be purchased by the construction industry.

*Consider establishing a definition that is associated with agricultural activities.*

**Food Processing:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Food Processing			SP
Definition			
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.			

The Rural district may have acceptable sites to locate a food processing business (e.g. milk processing facility), since 31% of the zoning district is in agricultural use. The proximity to active farms would make it ideal to locate such businesses there; however, it is currently prohibited.

*Consider allowing for food processing in the R district.*

**Grain Storage, Processing and Distribution:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Grain Storage, Processing and Distribution			SUP
Definition			
Not available			

Currently the Zoning Law does not include a definition for Grain Storage, Processing and Distribution.

*Consider establishing a definition and agriculture should be exempt from this definition in all districts as farms store and sometimes process grain for animal feed.*

**Heavy Equipment Sales, Rental and Service:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Heavy Equipment Sales, Rental and Service			SP
Definition			
Not available			

Currently, the Zoning Law does not include a definition for Heavy Equipment Sales, Rental and Service. The concerns for this land use are similar to those of the Farm Equipment Rentals, Sales and Repair land use.

**Home Occupations:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Home Occupations	BR	SP	BR
Definition			
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.			

**Review the concerns and considerations with the Committee**

**Inn:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Inn	SP	SP	SP
Definition			
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.			

**Review the concerns and considerations with the Committee**

**Junkyard:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Junkyard			
Definition			
Any place of storage or deposit, whether in connection with another business or not, where two (2) 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.			

The storage of agricultural equipment (such as tractors) should be exempt from this definition as farm equipment that is no longer functioning often serves an important purpose to provide parts for new equipment. Currently, the Town does not recognize the storing of agricultural equipment on agricultural lands as junk yards.

*Consider exempting the storage of agricultural equipment from the definition of junkyard.*

**Kennel:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Kennel	SUP		SUP
Definition			
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.			

Current regulations §128-76 Kennels of the Town Zoning Law discusses bulk regulations, which include a minimum lot area of 5 acres and the location of a kennel, runway or exercise pen located 200 feet from any lot line. The breeding of dogs could be a compatible use to a farm business, helping to bring in additional revenue to the farm.

*Consider allowing the kennel use in the RA district.*

**Lumber Yard, Mill:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Lumber Yard, Mill	SP		SP
Definition			
Not available			

Currently, the Zoning Law does not include a definition for lumber yard, mill; however, it the land use is allowed in the R and RLI zoning districts.

*Consider... Review the concerns and considerations with the Committee*

**Nursery:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Nursery	BR		BR
Definition			
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.			

Similar to the definition of a nursery, the definition of “agriculture” in the Zoning Code includes, “the employment of land... for horticulture, floriculture or viticulture... silva-culture...” Since agriculture is allowed in the RA district, than by the definition included, nurseries should be allowed as well.

Consider adding definition of greenhouse and including its use as part of the definition of agriculture. NYS Agricultural and Markets Law provides a fact sheet on how the Agricultural District defines a greenhouse for agricultural purposes.

*Consider allowing for nursery use in RA district. Define greenhouse and include its use as part of the definition of agriculture.*

**Public Utilities:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Public Utilities			
Definition			
Not available			

Currently, the Zoning Law does not include a definition for public utilities; and the use is not allowed in the R, RA, or RLI zoning districts. If the definition includes utility lines, often that is a compatible use with agriculture as several of the agricultural lands in the Town have utility lines that traverse the land.

*Consider adding definition for public utilities and list compatible zoning districts and type of land use review*  
*Consider adding definition for alternative energy generation (wind, solar, methane digestion) and include its use in the chart.*

**Riding Academy:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Riding Academy	BR		BR
Definition			
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.			

Riding academies are typically associated with an agricultural use. Agriculture as a use is allowed in the RA district with site plan approval and the definition of agriculture includes “the employment of land... for stabling and training equines, including but not limited to providing riding lessons, training clinics and schooling shows...” There appears to be inconsistency between activities associated with riding academies and agricultural land uses.

*Consider allowing “Riding Academies” by site plan approval in the RA to remain consistent with current definition of agriculture.*

**Slaughter Plants, Packing Houses, Animal by-Products Rendering and other such Animal Processing Activities:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
<b>Slaughter Plants, Packing Houses, Animal by-Products Rendering and other such Animal Processing Activities:</b>			
Definition			
Not available			

Currently, the Zoning Law does not include a definition; and the use is not allowed in the R, RA, or RLI zoning districts. Typically, these activities are compatible with agriculture and support the business of agriculture.

*Consider developing a definition for this land use and allowing for “Animal Processing” in the R and/or RLI zones.*

**Telecommunications Facilities, Non Co-located Facilities:**

Land Use	Zoning District		
	Rural (R)	Residential A (RA)	Rural Light Industrial (RLI)
Telecommunications Facilities, Non Co-located Facilities	SUP	SUP	SUP
<b>Definition</b>			
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.			

Current, regulations require an area variance for a new telecommunication facility that exceeds a height of three times the maximum height of the specific zoning district. The undeveloped areas of agricultural lands may accommodate telecommunication facilities and provide a secondary means of income (through land leasing) to the agricultural landowner.

***Consider... Review the concerns and considerations with the Committee***

Additional land uses that are not listed or may be listed as a use but may not be defined or vice versa include: **garage, commercial; parking garage; religious camp or retreat; service business; conservancy; greenhouse; library; museum; art gallery; restaurant – commercial kitchen and/or value added kitchen; service business; and alternative energy sources (i.e. solar, wind, biomass, etc.)**