



**TOWN OF GREAT BARRINGTON**

**ZONING BYLAW**

**PASSED BY ANNUAL TOWN MEETING**

**AND EFFECTIVE AS OF**

**MAY 2, 2011**

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## **SECTION 1.0 PURPOSE AND AUTHORITY**

### **1.1 TITLE**

This Bylaw shall be known as the "Zoning Bylaw of the Town of Great Barrington, Massachusetts," hereinafter referred to as "this Bylaw." The original date of this Bylaw was June 12, 1978. It has been amended thereafter from time to time by Town Meeting, and recodified and amended by Town Meeting on May 3, 2010, the effective date of this Bylaw.

### **1.2 AUTHORITY**

This Bylaw is adopted in accordance with the provisions of Chapter 40A of the General Laws, as amended by c. 808, Acts of 1975, and by Article 89 of the Massachusetts Constitution, the Home Rule Amendment, to regulate the use of land, buildings and structures to the full extent of the independent constitutional powers of cities and towns to protect the health, safety and general welfare of the present and future inhabitants of the town.

### **1.3 PURPOSE**

The purpose of this Bylaw is to promote the general interests of public health, safety and welfare, including but not limited to the following objectives:

- To prevent overcrowding of land; to secure safety from fire, flood, panic and other dangers; to conserve health; to lessen congestion in the streets; to encourage housing for persons of all income levels;
- To facilitate the adequate provision of transportation, water supply, drainage, sewerage, schools, parks, open space and other public requirements;
- To conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment;
- To preserve and increase amenities;
- To protect the town's significant environmental features such as floodplains and flood-prone areas, wetlands, all rivers, brooks, ponds, water resources and woodlands; areas of scenic beauty such as mountains and ridges; and sites and structures of historic importance;
- To preserve the natural, scenic and aesthetic qualities of the community;

- To minimize the adverse effects of development on the town's unique environmental and historic features;
- To further the objectives of the town's Comprehensive Master Plan;
- To employ cooperatively the various measures taken by the town's agencies, under diverse legislative authority, including the State Sanitary Code, Wetlands Protections Act, Subdivision Control Legislation and the State Building Code, for the protection and enhancement of the town's existing character, open spaces, and in the interests of the town's orderly growth; and,
- To promote a vital and diverse economic and cultural environment which will enable young people to remain and prosper in the community.

#### **1.4 APPLICABILITY**

The use, construction, repair, alteration, height, location, percentage of lot coverage by buildings and structures and the use of land in the Town of Great Barrington are hereby restricted and regulated as herein provided. No building, structure or land shall be used or occupied and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered unless in conformity with the regulations of this Bylaw, except those already lawfully existing as provided herein.

**1.4.1 Nonconformities.** Except as herein after provided, this Bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building permit or special permit issued before the first publication of notice of the public hearing on this Bylaw or any amendments thereto, but shall apply to any change or substantial extension of such use, to a building permit or special permit issued after the first notice or said public hearing, to any reconstruction, extension or structural change of such structure and to any alteration of a structure begun after the first notice of said public hearing to provide for its use in a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent except where alteration, reconstruction, extension or a structural change to a single or two family residential structure does not increase the nonconforming nature of said structure.

**1.4.2 Commencement of Construction or Operation.** Construction or operations under a building permit or special permit shall conform to any subsequent amendments to this Bylaw, unless the use or construction is commenced within a period of not more than six months after the issuance of the permit and in any case involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

## **1.5 OTHER LAWS**

In their interpretation and application, the provisions of this chapter shall be held to be minimum requirements. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted regulations or bylaws, the most restrictive or the one imposing the highest standards shall govern.

## **1.6 AMENDMENT**

**1.6.1 Town Meeting.** This Bylaw may be amended from time to time in an Annual or Special Town Meeting in accordance with G.L. c. 40A, s. 5.

**1.6.2 Public Hearing.** No zoning bylaw or amendment thereto shall be adopted at an Annual or Special Town Meeting until after the Planning Board has held a public hearing thereon for which a notice has been published, posted and mailed as provided in G.L. c. 40A, s. 5 and has made a report with recommendations to the town meeting or after 21 days shall have lapsed after such hearing without submission of such report.

**1.6.3 Two Years.** No proposed bylaw making a change in any existing zoning bylaw which has been unfavorably acted upon by a town meeting shall be considered on its merits by the town meeting within two years after the date of such unfavorable action unless the adoption of such proposed bylaw is recommended in the Report of the Planning Board to Town Meeting, if any.

## **1.7 SEVERABILITY**

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof.

## **SECTION 2.0 DISTRICTS**

### **2.1 ESTABLISHMENT**

For the purpose of this Bylaw, the Town of Great Barrington is hereby divided into the following districts:

#### **2.1.1 Residential Districts.**

R1A	One-Family Medium-Density Residential
R1B	One-Family High-Density Residential
R2	Acreage Residential
R3	General Residential
R4	Large Acreage Residential

#### **2.1.2 Business Districts.**

B	Downtown Business
B1	Neighborhood Business
B2	General Business
B2A	Transitional Business
B3	Downtown Business Mixed Use
DBP	Downtown Business Parking

#### **2.1.3 Industrial Districts.**

I	Light Industry
I2	Industrial Manufacturing / Multi-family

### **2.2 OVERLAY DISTRICTS**

The following overlay districts are also established:

FPOD	Floodplain Overlay District
WQPOD	Water Quality Protection Overlay District
WTOD	Wireless Telecommunications Overlay District
VCOD	Village Center Overlay District
DBP	Downtown Business Parking District
HMROD	Housatonic Mills Revitalization Overlay District

## **2.3 ZONING MAP**

The location and boundaries of the zoning districts are hereby established as shown on the map entitled the "[Zoning Map](#) of the Town of Great Barrington, Massachusetts," and dated May 1, 1974, bearing the signatures of the members of the Planning Board and being on file in the office of the Town Clerk, which map, as amended, with all explanatory matter thereon, is hereby made a part of this Bylaw.

## **2.4 DISTRICT BOUNDARIES**

The district boundary lines shall be as shown on the Zoning Map and indicated by the dimensions entered thereon. For purposes of interpretation of district boundaries as shown on the Zoning Map, the following rules shall apply:

**2.4.1 Center Lines.** Boundaries which appear to follow the center lines of streets, railroads or streams shall be construed to follow such lines.

**2.4.2 Shorelines.** Boundaries indicated as following shorelines of lakes or ponds shall be construed to follow such shorelines.

**2.4.3 Lot Lines.** Boundaries indicated as approximately following plotted lot lines shall be construed as following such lot lines.

**2.4.4 Parallel.** Boundaries which appear to run parallel to shorelines or lot lines shall be so construed.

**2.4.5 No Dimension Provided.** Distances not specifically indicated on the Zoning Map shall be determined by the scale of the map.

**2.4.6 Uncertainty.** In cases of uncertainty or disagreement concerning the exact location of a district boundary line or where physical features existing on the ground are at variance with those shown on the Zoning Map or in other circumstances not covered herein, the district boundary shall be determined by the Board of Appeals.

## **2.5 SPLIT LOTS**

By the grant of a special permit from the Board of Selectmen, the regulations of the less intensively restricted district may be carried over not more than 50 feet into the more restricted district.

## **SECTION 3.0 USE REGULATIONS**

### **3.1 PRINCIPAL USES.**

No land shall be used and no structure shall be erected or used except as set forth in the following Table of Use Regulations, including the notes to the Table, or as otherwise set forth herein, or as exempted by General Laws. Any building or use of premises not herein expressly permitted is hereby prohibited.

**3.1.1 Other Laws.** All uses permitted as of right or by special permit are subject to all applicable provisions of this Bylaw, including, but not limited to, overlay districts, general regulations and special regulations, and the regulations of the Board of Health and any other Town agencies.

**3.1.2 If Classified Under More than One Use.** Where an activity may be classified as more than one of the principal uses listed in the Table of Use Regulations, the more specific classification shall determine permissibility; if equally specific, the more restrictive shall govern.

**3.1.3 Symbols.** Symbols employed in the Table of Use Regulations shall mean the following:

- Y - Permitted as of right
- N - Prohibited
- BA - Special Permit/Board of Appeals
- PB - Special Permit/Planning Board
- SB - Special Permit/Board of Selectmen

**3.1.4 Table of Use Regulations.** The Table of Use Regulations shall be as follows:

**Table of Use Regulations**

PERMITTED USE		ZONING DISTRICT <sup>1,4</sup>												ADDITIONAL APPLICABLE REGULATIONS
		R1A	R1B	R2	R3	R4	B	B1	B2	B2A	B3	I	I2	
<b>A. Residential uses</b>														
(1)	Dwelling, Single family	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	SB	SB	
(2)	Dwelling, Two-family	SB	SB	SB	SB	SB	Y <sup>2</sup>	N	Y <sup>2</sup>	Y <sup>2</sup>	Y <sup>2</sup>	SB <sup>2</sup>	SB <sup>2</sup>	See also 8.1, 8.7.
(3)	Dwelling, multifamily	N	N	N	SB	N	SB	N	SB	SB	Y	SB <sup>3</sup>	SB <sup>3</sup>	See also 8.3
(4)	Assisted living residence	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	See also 8.8
(5)	Live/work units	N	N	N	N	N	N	N	N	N	Y	Y	Y	See also 9.4, 9.6.
(6)	Lodging house or tourist home for transient guests	SB	SB	SB	SB	SB	SB	N	SB	SB	SB	SB	SB	See also 7.16
(7)	Mixed use	N	N	N	N	N	SB	SB	SB	SB	SB	Y	Y	See also 8.4, 9.6.
(8)	Open Space Residential Development	N	N	PB	N	PB	N	N	N	N	N	N	N	See also 8.7
(9)	Planned unit residential development (PURD)	SB	SB	SB	SB	SB	SB	N	SB	SB	SB	N	N	See also 8.5
(10)	Publicly Financed Nonprofit Age-Restricted Housing	N	N	N	SB	N	SB	N	SB	SB	SB	N	N	See also 8.9
(11)	Trailer or mobile home	SB	SB	SB	SB	SB	SB	SB	SB	SB	N	SB	SB	See also 8.6
<b>B. Community, educational, &amp; recreational uses</b>														
(1)	Camping facilities	N	N	SB	N	SB	N	N	N	SB	N	N	N	See also 7.4
(2)	Cemeteries	N	N	SB	N	SB	N	N	N	N	N	N	N	
(3)	Child care center	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
(4)	Clubhouses or fraternal lodges not conducted for profit	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	

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PERMITTED USE		ZONING DISTRICT <sup>1,4</sup>												ADDITIONAL APPLICABLE REGULATIONS
		R1A	R1B	R2	R3	R4	B	B1	B2	B2A	B3	I	I2	
(5)	Commercial amusements, fairgrounds	N	N	N	N	N	SB	N	SB	N	N	SB	SB	
(6)	Community center operated by a municipal or private not-for-profit organization	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	
(7)	Educational use, exempt	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
(8)	Educational use, nonexempt	N	N	SB	N	SB	SB	N	SB	SB	SB	SB	SB	See also 7.6
(9)	Golf or country clubs	N	N	SB	N	SB	N	N	N	SB	N	SB	SB	
(10)	Hospitals, sanitariums, nursing or convalescent homes or philanthropic institutions, provided that no principal building so used shall be within 50 feet of any lot line	N	N	SB	N	SB	SB	N	SB	SB	SB	SB	SB	
(11)	Municipal parks and playgrounds, including recreational buildings therein	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
(12)	Public libraries, public museums, municipal buildings and facilities	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
(13)	Riding stables on less than 5 acres, provided that any buildings or structures are set back not less than 50 feet from any lot line	N	N	SB	N	SB	SB	N	SB	SB	N	SB	SB	
(14)	Ski tows, provided that any buildings or structures are set back not less than 50 feet from any lot line	N	N	SB	N	SB	SB	N	SB	N	N	SB	SB	
(15)	Summer camps operated for children on sites not less than 10 acres in area	N	N	SB	N	SB	N	N	N	SB	N	N	N	
(16)	Use of land or structures for religious purposes	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
<b>C. Office, retail and consumer service establishments</b>														
(1)	Banks and other financial institutions	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	
(2)	Fast-food eating establishments	N	N	N	N	N	SB	N	SB	N	N	N	N	See also 7.7, 7.9
(3)	Fuel storage and sales, excluding motor vehicle fuel stations	N	N	N	N	N	SB	N	SB	N	N	SB	SB	

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PERMITTED USE		ZONING DISTRICT <sup>1,4</sup>												ADDITIONAL APPLICABLE REGULATIONS
		R1A	R1B	R2	R3	R4	B	B1	B2	B2A	B3	I	I2	
(4)	Garages, public	N	N	N	N	N	SB	N	SB	N	SB	SB	SB	See also 9.7
(5)	Garden centers, including associated landscaping services	N	N	N	N	N	Y	N	Y	Y	Y	Y	Y	
(6)	General service establishment	N	N	N	N	N	SB	N	Y	N	SB	Y	Y	
(7)	Greenhouses, commercial, on less than 5 acres, provided that no heating plant for a greenhouse shall be within 50 feet from any side or rear lot line	N	N	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	
(8)	Hotels	N	N	N	N	N	SB	N	SB	SB	SB	SB	SB	See also 7.10
(9)	Institutional administrative offices or planned professional office developments or research centers, provided that in R-2 and R-4 Districts such uses are subject to special requirements	N	N	SB	N	SB	SB	SB	SB	SB	SB	SB	SB	See also 7.13
(10)	Kennel	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	See also 7.17
(11)	Large-scale commercial development	N	N	N	N	N	Y	SB	SB	N	SB	SB	SB	See also 7.9, 7.12, 9.6
(12)	Lumberyards	N	N	N	N	N	SB	N	SB	N	SB	SB	SB	
(13)	Motels or overnight cabins	N	N	N	N	N	SB	N	SB	N	SB	SB	SB	See also 7.10
(14)	Motor vehicle fuel station	N	N	N	N	N	SB	N	SB	N	N	SB	SB	See also 7.8
(15)	Motor vehicle general and body repair	N	N	N	N	N	SB	N	SB	N	N	SB	SB	
(16)	Motor vehicle sales rooms, including used car lots	N	N	N	N	N	SB	N	SB	N	N	SB	SB	
(17)	Offices	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	
(18)	Parking lots, commercial	N	N	N	N	N	SB	N	SB	N	SB	SB	SB	
(19)	Personal service establishment	N	N	N	N	N	Y	Y	Y	N	Y	Y	Y	
(20)	Professional offices	SB	SB	SB	SB	SB	Y	Y	Y	Y	Y	Y	Y	See also 7.14

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PERMITTED USE		ZONING DISTRICT <sup>1,4</sup>												ADDITIONAL APPLICABLE REGULATIONS
		R1A	R1B	R2	R3	R4	B	B1	B2	B2A	B3	I	I2	
(21)	Restaurants and other places for serving food, other than fast-food eating establishments	N	N	N	N	N	Y	SB	SB	SB	SB	SB	SB	See also 7.3
(22)	Retail stores or centers and/or wholesale sales and service with total aggregate floor area less than or equal to 20,000 square feet	N	N	N	N	N	Y	Y	Y	SB	Y	Y	Y	See also 7.3
(23)	Retail stores and shops for custom work or making of articles sold on the premises	N	N	N	N	N	Y	SB	Y	SB	Y	Y	Y	
<b>D. Agricultural uses</b>														
(1)	Agriculture, as defined by MGL c. 40A, s. 3, on tracts larger than 5 acres, including sales of products raised on premises on stands or structures erected in accordance with front yard setback requirements, provided that soil fertilizer shall be stored not less than 100 feet from any lot line, unless kept in air-tight containers	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
<b>E. Utilities, communication and transportation</b>														
(1)	Aviation field, public or private	N	N	N	N	SB	N	N	N	N	N	N	N	See also 7.2
(2)	Essential services	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
(3)	Freight terminals, truck or rail	N	N	N	N	N	SB	N	SB	N	N	SB	SB	
(4)	Low-power FM broadcast radio licensed by FCC													See also 7.15
(a)	Studio	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	
(b)	Antenna	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	
(5)	Passenger stations	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	

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PERMITTED USE		ZONING DISTRICT <sup>1,4</sup>												ADDITIONAL APPLICABLE REGULATIONS
		R1A	R1B	R2	R3	R4	B	B1	B2	B2A	B3	I	I2	
(6)	Personal wireless tower or structure as a principal (or accessory) use in the Overlay District, and the initial and any subsequent personal wireless service facility located upon that tower or structure (see Section 9.3 of this Bylaw)													See also 9.3
<b>F. Industrial, manufacturing and storage uses</b>														
(1)	Contractor's and Landscaper's yards	N	N	N	N	N	N	N	N	N	N	Y	Y	
(2)	Gravel, loam, sand and stone removal for commercial purposes	N	N	SB	N	SB	SB	N	SB	N	N	SB	SB	See also 7.5
(3)	Light manufacturing	N	N	N	N	N	N	N	N	N	SB	Y	Y	See also 6.4
(4)	Saw (log) mill and manufacture of forest products, provided that any saw (log) mill shall be located at least 200 feet from any lot line, and no piles of sawdust or other refuse shall be maintained within 100 feet of any lot line	N	N	N	N	N	N	N	N	N	N	SB	SB	
<b>G. Accessory uses</b>														
(1)	Any structure or use customarily incidental and subordinate to the principal permitted use in the district	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	See also 3.2, 7.1
(2)	Home occupation (low impact)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	See also 3.3
(3)	Adult day care	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	See also 8.8
(4)	An accessory use to a by-right use, whether or not on the same parcel, which is necessary in conjunction with scientific research or development or related production, provided that the Board of Selectmen finds that the proposed accessory use does not substantially derogate from the public good	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	See also 3.2

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		R1A	R1B	R2	R3	R4	B	B1	B2	B2A	B3	I		I2
(5)	Drive-up or drive-through facilities	N	N	N	N	N	SB	SB	SB	SB	SB	SB	SB	See also 7.9, 9.6
(6)	Family day care (small)	Y	Y	Y	Y	Y	SB	SB	SB	SB	SB	SB	SB	
(7)	Family day care (large)	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	
(8)	Home occupation (moderate impact)	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	See also 3.3
(9)	Incidental stripping of sod or removal of topsoil, gravel, loam, sand, stone or other earth materials	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
(10)	Keeping of horses, for whatever purpose, subject to Board of Health regulations and only on lots of 5 acres or more	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
(11)	Private garage or off-street parking for private automobiles registered at the premises	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	
(12)	Swimming pools, inground or aboveground. Pool must be surrounded by a continuous fence having a minimum of 4 feet height and with a gate that can be locked; so designed and built to restrain entry by unauthorized persons.	Y	Y	Y	Y	Y	SB	SB	SB	SB	SB	SB	SB	
(13)	Wind Energy Generator	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	SB	

**FOOTNOTES TO TABLE OF USE REGULATIONS:**

<sup>1</sup> Editor's Note: The Downtown Business B District was created pursuant to 6-1-1992 ATM, Art. 10. It was included in this Table of Use Regulations at the direction of the Town. The I-2 District was added to this table 5-7-2001 ATM, Art. 30. The DBP District was added to this table 5-7-2001 ATM, Art. 33. The W TOD District was added to this table 5-17-2004 ATM, Art. 17. The B-3 District was added to this table 5-14-2007 ATM, Art. 16.

<sup>2</sup> NOTE: Dimensional and lot size requirements and other conditions as set forth in 8.1.1 and 8.1.4 shall apply even where the use is permitted by right.

<sup>3</sup> NOTE: Multifamily dwellings may be permitted by special permit in the I-2 Zone. Multifamily dwellings shall not be permitted in the I Zone.

## **3.2 ACCESSORY USES**

**3.2.1 General.** A related minor use or structure which is either necessary to the operation or enjoyment of a lawful principal use, or appropriate, customarily incidental and subordinate to any such use, shall be permitted as an accessory use. Such use shall be permitted only on the same lot with the building to which it is accessory and shall be subject to the limitations set forth in this Bylaw.

### **3.2.2. Restrictions.**

1. No use shall be permitted in any district as an accessory use which increases the number of dwelling units on any lot beyond that which is permitted in that district or which constitutes in effect a conversion of a permitted use to one not permitted in that district, unless a dwelling unit is permitted as an Accessory Dwelling Unit in accordance with 8.2.
2. No accessory building shall be used as a dwelling unless permitted in accordance with 8.2 or except in an Industrial District for the accommodation of a night watchman or janitor.
3. An accessory building may be located within the required rear or side yard of the principal building, but shall not be located in the front yard or nearer to any street line than the minimum setback in the zoning district in which it is located. No accessory building shall be within 10 feet of any side or rear lot line.
4. An accessory building in a Residence District shall not exceed 15 feet in height above the ground level, and it shall not be located nearer than 10 feet to the principal building or occupy more than 10% of the total lot area. For definition of "height of a building," see Section 11.0.

**3.2.3 Boarders.** The renting of rooms or the furnishing of table board by a resident family to not more than three roomers or boarders is permitted, provided that no separate cooking facilities are maintained.

## **3.3 HOME OCCUPATIONS**

**3.3.1 Purpose.** It is the intent of this subsection to permit certain home occupations with reasonable safeguards in all zoning districts. It is not intended to allow retail stores in residential neighborhoods. The Inspector of Buildings shall issue a certificate of occupancy before such residence or accessory building(s) may be used for the purpose of a home occupation. Such certificate of occupancy shall be issued for the following incidental uses in the districts where permitted upon determination that all prescribed requirements and conditions are met for the applicable category as herein described.

**3.3.2 Permitted Home Occupations.** Low impact professional and customary home occupations, as defined in Section 11 of this Bylaw, are permitted in the primary building or accessory building(s) except as otherwise restricted by this Bylaw. If any professional or customary home occupation has more than one nonresident employee, it shall be considered a moderate impact home occupation and shall be subject to the requirements of Section 3.3.3.

**3.3.3 Home Occupations Allowed by Special Permit.** Moderate impact home occupations, as defined in Section 11 of this Bylaw, may be permitted in the primary building or accessory building(s) by special permit from the Board of Selectmen in accordance with Sections 3.3.4 and 10.4.

**3.3.4 Special Permit Procedures.** Application shall be made to the Board of Selectmen which shall conduct a public hearing.

1. Site plan review by the Planning Board shall be required.
2. The home occupation shall not involve the use or storage of heavy vehicles (gross vehicle weight exceeding 14,000 pounds) or heavy equipment or involve trucking or warehousing activities.
3. The only machinery used in the home occupation shall be powered by hand or electric motors of not more than five horsepower, or, in the case of air compressors, not more than eight horsepower.
4. The special permit shall authorize the home occupation for an initial period not exceeding one year. Renewal, and any subsequent renewals, of the permit may be granted by the special permit granting authority for a period not to exceed three years, upon certification by the Building Inspector that the home occupation continues to comply with this Bylaw. The special permit pertains only to the specific use of the original applicant and does not transfer with the property.

**3.3.5 Standards for Home Occupations.**

1. The principal residence of the owner/operator of every home occupation shall be the dwelling unit on the premises in which the home occupation operates.
2. Home occupations shall be conducted within the principal building and/or accessory building(s) and shall be clearly incidental and secondary to a dwelling. No outdoor display or storage of materials, goods, supplies or equipment shall be permitted.
3. The floor area for the home occupation shall not exceed 33% of the gross floor area of the dwelling unit and accessory building(s). In no case shall the space occupied by any home occupation(s) in an accessory building exceed 750 gross square feet on the same property.

4. There shall be no ongoing retail trade, salesrooms, show windows or displays. All materials or supplies shall be stored within the 33% of the gross floor area allowed for use as a home occupation.
5. Sale of articles produced elsewhere than on the premises and brought to the premises for the purpose of sale is not permitted. Catalog sales may be permitted at the discretion of the SPGA, provided that all other conditions of this Bylaw are met.
6. Home occupations shall conform to Section 6.5, Performance Standards, and the Town Code, Chapter 115, Noise Control.
7. Low impact home occupations may employ one person who is not residing on the premises on which such home occupation is allowed. Additional nonresident employees may be permitted only by special permit in accordance with Sections 3.3.4 and 10.4.
8. An off-street parking area shall be provided in compliance with requirements of this Bylaw.
9. Hours of operation. In no case shall the home occupation be open to the public, including clients, visitors and deliveries, at times neither earlier than 8:00 a.m. nor later than 8:00 p.m.
10. Home occupations shall comply with all local, state, or federal regulations pertinent to the activity pursued, and the requirements of or permission granted by this Bylaw shall not be construed as an exemption from such regulations.

## **SECTION 4.0 DIMENSIONAL REQUIREMENTS**

### **4.1 GENERAL**

**4.1.1 Compliance Required.** In each district, no land shall hereafter be used, occupied or changed and no structure or building shall hereafter be erected, altered, moved or used or occupied unless it complies with the provisions as set forth in the Schedule of Dimensional Requirements herein, except as provided in G.L. c. 40A, s. 6 for nonconforming circumstances. Variations and exceptions from these minimum requirements are set forth in the Notes to the Schedule of Dimensional Requirements, and as specifically provided elsewhere in this Bylaw.

#### **4.1.2 Schedule of Dimensional Requirements**

Please refer to the following page.

District	Minimum lot area (sq. ft.)	Width (ft.)	Minimum front yard <sup>1</sup> (ft.)	Minimum side yard (ft.)	Minimum rear yard (ft.)	Maximum lot coverage by buildings (percent)	Stories <sup>2,6</sup>	Height (ft.) <sup>2,6</sup>
<b>R1A</b>	10,000	100	25	20 <sup>3</sup>	30	20	2 ½	35
<b>R1B</b>	6,500	60	25	10	30	25	2 ½	35
<b>R2</b>	43,560 <sup>7</sup>	150	50	20 <sup>3</sup>	30	20	2 ½	35
<b>R3</b>	5,000	50	25	10	30	25	2 ½	35
<b>R4</b>	87,120	200	50	20	30	10	2 ½	35
<b>B<sup>8</sup></b>	5,000	50	0 <sup>9</sup>	0 <sup>10</sup>	0 <sup>10</sup>	75	3	40
<b>B1</b>	Dwellings 10,000	100	25	20	30	25 <sup>4</sup> 40 <sup>5</sup>	2 ½	35
	Other permitted uses: 5,000	50	25	10	10	75	3	40
<b>B2</b>	Dwellings 43,560 <sup>7</sup>	150	50	20	30	25 <sup>4</sup> 40 <sup>5</sup>	2 ½	35
	Other permitted uses 5,000	50	25	10	10	75	3	40
<b>B2A</b>	Dwellings 43,560	150	50	20	30	20	2 ½	35
	Other permitted uses 20,000	150	40	20	30	25	2 ½	35
<b>B3</b>	Existing buildings 5,000	50	0	0	10	75	4 <sup>11</sup>	40 <sup>11</sup>
	New structures 5,000	50	10	10	10	75	4 <sup>11</sup>	40 <sup>11</sup>
<b>I</b>	Dwellings 43,560 <sup>7</sup>	150	50	20	30	25	2 ½	35
	Other permitted uses 5,000	50	50	10	10	75	3	40
<b>I2</b>	Dwellings 43,560 <sup>7</sup>	150	50	20	30	25	2 ½	35
	Other permitted uses 5,000	50	50	10	10	75	3	40
	Multifamily dwellings 10,500	50	25	10	30	50	2 ½	35

#### **4.1.3 Notes to Schedule of Dimensional Requirements.**

1. For exceptions, see Section 4.2.4.
2. For exceptions, see Section 4.2.8.1. The height regulations do not apply to agricultural structures, antennae, belfries, chimneys, churches, cupolas, mixing plants, screening or loading towers for sand or rock, spires, ventilators, water tanks, wind energy generators, or other appurtenances usually required to be placed above roof level and not intended for human occupancy.
3. On a lot of record, at the effective date of this Bylaw, that is 70 feet or less in width in an R1A or R2 District, a dwelling may be erected or altered with a side yard not less than 10 feet in width.
4. For single family dwellings, two-family dwellings or multifamily dwellings, maximum lot coverage shall be 25% in an R3, B1 or B2 District.
5. For dwellings over a business use, maximum lot coverage shall be 75% in a B1 or B2 District.
6. For exceptions, see Section 4.2.8.2
7. Minimum lot area for dwellings as shown in the table for R2, B2 or I Districts may be reduced by 50% if the lot is served by both town sewer and water and by 25% if served by either town sewer or water.
8. In view of small or irregular lot sizes, replacement buildings are permitted in perpetuity, based on lot sizes and front, rear and side yards no less than and building coverage no greater than those existing as of the effective date of this Bylaw.
9. Zero front setbacks are encouraged for the purpose of maintaining the integrity and continuity of the street facade. The maximum front setback shall be five feet.
10. Existing side yards, rear yards and the rights-of-way shall be retained. Parking areas that currently exist to meet parking requirements for housing units shall be retained.
11. On lots in the B3 District of two acres or more, the height of a building shall be limited to 50 feet and 5 stories.

**4.1.4 No Overlap.** No part of a yard or other open space or off-street parking or loading space required for or in connection with any building or use for the purpose of complying with this Bylaw shall be included as part of such requirements similarly required for any other building or use.

**4.1.5 Reduction of Dimensions of Existing Yards or Lots.** No yard or lot existing on the effective date of this Bylaw shall be reduced in dimension or area below the minimum requirements set forth herein. Yards and lots created after the effective date of this Bylaw shall meet the minimum requirements established by this Bylaw unless lawful zoning relief has been granted.

**4.1.6 Effect of Amendments on Existing Violations.** No lot created, structure built, or use established in violation of the provisions of this Bylaw, as such bylaw existed at the time of such violation, shall be deemed to have achieved any nonconforming status solely as the result of the adoption of a subsequent amendment.

**4.1.7 Provisions to be Minimum Requirements.** In their interpretation and application, the provisions of this Bylaw shall be held to be minimum requirements adopted for the promotion of the public health, safety or general welfare. Whenever the requirements of this Bylaw are at variance with the requirements of any other lawfully adopted rules, regulations or bylaws, the more restrictive or that imposing the higher standards shall govern.

## **4.2 SPECIAL REGULATIONS**

**4.2.1 More than One Principal Structure per Lot.** In any zoning district, more than one building or structure housing a principal permitted use may be erected or placed on a single lot of record, provided that area, width, frontage, yard and other requirements of this Bylaw shall be met for each building or structure as though it were on an individual lot, except as otherwise provided in this Bylaw.

**4.2.2 Street Frontage Requirement.** Every principal building or structure hereafter erected or moved shall be on a lot having frontage on a street. In no case shall said frontage be less than 80% of the required minimum lot width as provided for in the Schedule of Dimensional Requirements.

**4.2.3 Permitted Projections into Yards.** Ground story bay windows, oriels or balconies may project not more than three feet into any required rear yard or into any required side yard with a width of eight feet or more. No such structure shall have a width or greater dimension in excess of three times the distance of its projection.

1. Cornices and eaves may project not to exceed two feet into any required yard.
2. Sills, leaders, belt courses and similar ornamented or structural features may project not more than six inches into any required yard.
3. An open fire balcony or a fire escape may project into a required side yard or rear yard not to exceed four feet.

4. An uncovered porch or a covered porch with open or screened sides may project up to eight feet into a required front yard setback.
5. Uncovered or unenclosed steps or stairways leading to the basement or first floor of a building may project into a required front yard no more than 10 feet in any residence district.

#### **4.2.4 Contextual Setbacks.**

1. *Averaging.* Where at least 50% of the frontage on lots occupied by structures along both sides of a street between two intersecting streets, or, 50% of the frontage on lots occupied by structures for a distance of 300 feet on the same side of a street, contains front yards of greater uniform depth than is specified in the Schedule of Dimensional Requirements for the district within which such frontage is located, the average depth of such greater front yards shall be and shall remain the front yard requirement for such street or portion of street.
2. *Other.* Where, in a similar space, there is a variety in depth, all being above the minimum specified in the Schedule of Dimensional Requirements for the district, the smallest front yard depth existing within such frontage shall be the required minimum depth for all such front yards.
3. *Adjacent to Vacant Land.* For averaging purposes, if a vacant lot exists on one side of a lot, the minimum front yard set forth in the Schedule of Dimensional Requirements shall be considered the front yard setback for the vacant lot.

**4.2.5 Visibility at Intersections.** On a corner lot in any district where a front yard is required, nothing shall be erected, placed (including snow), planted or allowed to be or to grow in such a manner as materially to impede vision between a height of three and eight feet above the curb level within the triangular area formed by the intersection of any two street lines and a line joining points along said street lines 20 feet from the point of intersection of the two street lines.

**4.2.6 Uses Near Abutting Districts.** Whenever an industrial or business district abuts upon a residential district with no intervening street, highway, railroad or river, any structure or any industrial or business use in the district shall:

1. Be set back from the boundary of such residential district not less than the minimum yard required by the abutting district; and
2. Not exceed in height a plane which starts in the abutting district at the average ground level of its required setback and rises at a pitch of one vertical for every one horizontal (45°) toward the industrial or business district property in question.

**4.2.7 Front Yard.** In any business or industrial district, no building shall be erected nearer to the street line or established building line than is permitted in the adjacent residence district within a

distance of 50 feet from the residence district boundary line, except when such building is separated by a street from the residence district.

#### **4.2.8 Exceptions to Height Requirements.**

1. Dwellings on lots of five acres or more may be three stories or 40 feet in height.
2. In an I or I2 District, a manufacturing or industrial building or structure may be erected or altered to a height of four stories or 60 feet with a special permit from the Board of Selectmen.

#### **4.2.9 Fences.** The following requirements shall apply to fences in residential zoning districts.

1. Any fence over six feet in height as measured from the finished grade shall be considered a structure and shall comply with the setback requirements of this Bylaw except as provided by G.L. c. 40A, s. 6 for nonconforming circumstances. Any fence, regardless of height, shall be erected with its finished side facing the abutting property.
2. No fence within a required side or rear yard may exceed six (6) feet in height.
3. No fence within the front yard setback may exceed four (4) feet in height or be more than fifty (50) percent solid.
4. The Planning Board may, by special permit pursuant to Section 10.4, authorize a deviation from the requirements set forth in 4.2.9, 3.

### **4.3 REAR LOTS**

**4.3.1 General.** Rear lots shall be allowed only by special permit of the Planning Board in the Residence Districts. To be eligible for a rear lot, the original lot must have the minimum frontage required for the zoning district plus at least 40 feet. The rear lot may be created provided that all of the following conditions can be met for the rear lot:

1. The area of said rear lot is at least one and one-half (150%) the minimum area required in the district.
2. A building line is designated on the plan, and the width of the lot at that line equals or exceeds the number of feet normally required for street frontage in the district.
3. The width of the rear lot is at no point less than 40 feet, and its frontage is not less than 40 feet.
4. At the time of the creation of the rear lot, it shall be held in common and contiguous ownership with the front lot.

5. The front, rear, and side yards shall equal or exceed those required in the district.

6. The rear lot and its parent lot shall share a common driveway, approved as part of this special permit application.

**4.3.2 Limitation.** Not more than one (1) rear lot shall be created from a property, or a set of contiguous properties held in common ownership as of May 3, 2010. In order to be eligible for a rear lot, such property or set of contiguous properties held in common ownership as of May 3, 2010 shall not have been divided after such date. No further division of said property or properties shall be permitted after the creation of a rear lot. Documentation to this effect shall be submitted to the Building Commissioner. The Building Commissioner shall not issue a building permit for any rear lot without first establishing that compliance with this provision has been determined by the Planning Board.

## **SECTION 5.0 NONCONFORMING USES AND STRUCTURES**

### **5.1 APPLICABILITY**

This zoning bylaw shall not apply to structures or uses lawfully in existence or lawfully begun, or to a building or special permit issued before the first publication of notice of the public hearing required by G.L. c. 40A, s. 5 at which this zoning bylaw, or any relevant part thereof, was adopted. Such prior, lawfully existing nonconforming uses and structures may continue, provided that no modification of the use or structure is accomplished, unless authorized hereunder.

### **5.2 NONCONFORMING USES**

The Board of Appeals may award a special permit pursuant to Section 10.4 to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

**5.2.1** Change or substantial extension of the use.

**5.2.2** Change from one nonconforming use to another, less detrimental, nonconforming use.

### **5.3 NONCONFORMING STRUCTURES**

The Board of Appeals may award a special permit pursuant to Section 10.4 to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

**5.3.1** Reconstructed, extended or structurally changed.

**5.3.2** Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

### **5.4 VARIANCE REQUIRED**

Except as provided in Section 5.5, below, the reconstruction, extension or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a

new nonconformity, shall require the issuance of a variance from the Board of Appeals; provided, however, the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a special permit from the Board of Appeals.

## **5.5 NONCONFORMING SINGLE AND TWO FAMILY RESIDENTIAL STRUCTURES**

Nonconforming single and two family residential structures may be reconstructed, extended, altered, or structurally changed upon a determination by the Inspector of Buildings that such proposed reconstruction, extension, alteration, or change does not increase the nonconforming nature of said structure and provided that the gross floor area of the nonconforming structure is not increased by more than twenty-five percent (25%). For the purposes of this subsection only, the term “reconstruction” shall mean the renovation of a portion of a preexisting structure rather than demolition and replacement thereof.

The following circumstances shall not be deemed to increase the nonconforming nature of said structure:

**5.5.1 Insufficient Area.** Alteration to a structure located on a lot with insufficient area which complies with all current setback, yard, building coverage, and building height requirements.

**5.5.2 Insufficient Frontage.** Alteration to a structure located on a lot with insufficient frontage which complies with all current setback, yard, building coverage, and building height requirements.

**5.5.3 Other Encroachment.** alteration to a structure which encroaches upon one or more required yard or setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements.

**5.5.4 Exceptions Do Not Apply.** In the event that the Inspector of Buildings determines that the above exceptions do not apply, the Board of Appeals may by special permit pursuant to Section 10.4 allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. For the purposes of this subsection, the term “reconstruction” shall not mean the total demolition and rebuilding of the premises, which is governed by section 5.7, below.

## **5.6 ABANDONMENT OR NON-USE**

A nonconforming use or structure which has been abandoned, or not used for a period of two years, shall lose its protected status and be subject to all of the provisions of this zoning bylaw; provided, however, that the Board of Appeals, by the grant of a special permit, may authorize the

reestablishment of a nonconforming use or structure where such reestablishment shall not result in substantial detriment to the neighborhood.

## **5.7 RECONSTRUCTION AFTER CATASTROPHE OR DEMOLITION**

A nonconforming single family structure may be reconstructed after a catastrophe or after voluntary demolition in accordance with the following provisions. For the purposes of this subsection, the term “reconstruction” shall mean the rebuilding after catastrophe or the rebuilding after demolition of the building.

**5.7.1** Reconstruction of said premises shall commence within two years after such catastrophe or demolition.

**5.7.2** Building(s) may be reconstructed by right if located on the same footprint as the original nonconforming structure, and if only within the same gross floor area as the original nonconforming structure.

**5.7.3** In the event that the proposed reconstruction would (a) cause the structure to exceed the gross floor area of the original nonconforming structure or (b) cause the structure to be located other than on the original footprint, a special permit pursuant to Section 10.4 shall be required from the Board of Appeals prior to such demolition.

## **5.8 REVERSION TO NONCONFORMITY**

No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

## SECTION 6.0 GENERAL REGULATIONS

### 6.1 OFF-STREET PARKING AND LOADING

**6.1.1 Applicability.** No new building designated or intended to be used for any of the uses referred to below shall be constructed in any district unless accessory parking spaces are provided and maintained on the premises in the amount specified below and in accordance with the other requirements of this Section.

**6.1.2 Table of Parking Requirements.** The following requirements shall apply; provided however that in Zoning District B, there shall be no off-street parking required for permitted uses in existing buildings which are remodeled but not substantially expanded, as defined in Section 9.5.2:

PRINCIPAL USE	PARKING SPACE REQUIREMENT
Dwelling unit, except as otherwise provided in this Bylaw	Two parking spaces
Lodging house	One parking space for each two guests
Hotel, motel or overnight cabin	One parking space for each sleeping room
Hospital	One parking space for each bed
Nursing or convalescent home.	One parking space for each three beds, plus two spaces for each three employees serving on the shift having the greatest number of employees
Retail and/or wholesale sales and service establishment	One space for each 200 square feet of net usable floor area
Offices, banks and other financial institutions or professional buildings (other than medical or dental)	One space for each 300 square feet of net usable floor area
Professional offices, medical, dental or similar use	Five spaces for each professional occupant in building
Restaurant	One space for each 3 seats
Theaters and other places of assembly	One space for each 4 seats
Industrial uses	One parking space for each two employees, computed on the basis of the estimated maximum number of employees at any one time.

PRINCIPAL USE	PARKING SPACE REQUIREMENT
Mixed uses	The sum of the requirements for the individual uses - When other provisions specify fewer parking spaces for specific uses, the less restrictive shall apply.

**6.1.3 Location.** Any parking area of more than five spaces providing off-street parking under the provisions of this Bylaw for any nonresidential use in a residence district shall not be located in the required front yard and shall be at least 10 feet from any side or rear lot line. If a nonresidential use in a residence district is located on a corner lot, no parking area of more than five spaces shall be located within the designated front yard nor closer to the street line than twice the required setback for residences within that district in side and rear yards.

**6.1.4 Size of Parking Space.** The net area of each parking space, exclusive of access and maneuvering area, shall not be less than 180 square feet and the width of each parking berth shall not be less than nine feet, and shall be delineated on site. Up to 20 percent of the required parking spaces may be designed as compact car spaces. Any compact car spaces must be clearly designated as such on the site plan, and appropriate markings and signage must be installed on-site. Handicap parking spaces must meet Commonwealth of Massachusetts and American Disabilities Act requirements.

**6.1.5 Interpretation of Fractional Space.** When the application of a unit of measurement for parking spaces to a particular use or structure results in a fractional space, any fraction under 1/2 shall be disregarded, and fractions of 1/2 or over shall be counted as one parking space.

**6.1.6 Table of Loading Requirements.** No new building designed or intended to be used for any of the uses referred to below shall be constructed in any district unless accessory loading space is provided in accordance with the following requirements:

PRINCIPAL USE	LOADING REQUIREMENT
Any retail or service establishment, office building or hotel with 5,000 to 8,000 square feet of gross floor area devoted to any such uses	One loading space
Same, with 8,000 to 20,000 square feet gross floor area devoted to any such uses	Two loading spaces
Same, each additional 20,000 square feet of gross floor area devoted to any such uses	One additional loading space
Any manufacturing, industrial or storage establishment with over 5,000 square feet of gross floor area	Loading space adequate, in the opinion of the Inspector of Buildings, to accommodate the normal demands incidental to the proposed use of the premises.

**6.1.7 Size of Loading Berth.** The area of each loading berth shall be not less than 200 square feet, and it shall have a minimum clear height, including access to it from a street, of 14 feet.

**6.1.8 Joint Facilities.** Accessory parking spaces or loading spaces for commercial and manufacturing uses may be provided in facilities designed to serve jointly two or more buildings or uses, provided that the number of berths in such joint facilities shall not be less than the total required under the provisions of this Section.

**6.1.9 Special Permit.** The Planning Board may, by special permit pursuant to Section 10.4, authorize a deviation from any parking or loading requirement set forth in this Section 6.1.

## **6.2 ROUTE 7 LANDSCAPING REQUIREMENTS**

**6.2.1 Applicability.** These requirements shall apply to applications for site plan approval for land on both sides of Route 7 north (Stockbridge Road) from Belcher Square to the Stockbridge Town line and on Route 7 south (South Main Street) from Taconic Avenue to the Sheffield Town line.

**6.2.2 Exemptions.** These requirements shall not apply if a condition on a special permit places more stringent requirements, if the lot is used for single-family residential use, or if a new building is for use as a toolshed or similar accessory use to a structure that existed prior to the adoption of this provision.

**6.2.3 Certificate of Occupancy.** A permanent certificate of occupancy shall not be granted until all requirements of this Section have been met. Repeated failure to comply with provisions of these requirements may be considered a violation of the town's Zoning Bylaws.

**6.2.4 Appropriate Trees.** A suggested list of appropriate trees is available at the Town Clerk's office in the Great Barrington Town Hall.

**6.2.5 Buffer.** Any lot on which a new building is erected shall maintain a natural buffer of grass, shrubs, flowers and/or trees. This buffer shall be visible from Route 7.

**6.2.6 Depth of Buffer; Permitted Uses.** The dimensional depth of the buffer shall be lesser of either: the minimum front yard setback in the zoning district in which the property is located; or at least eight feet or two inches for every foot of frontage, whichever depth shall be greater, to a maximum depth of 50 feet. The depth of the buffer shall be measured from the property line and may include sidewalks and easements. Cars shall not be parked and goods shall not be displayed on the buffer. A freestanding sign may be installed on the buffer, provided that the sign has all necessary permits. Existing structures may remain and be altered to accommodate a similar or accessory use within the buffer area, provided that they were legally existing prior to adoption of this provision.

**6.2.7 Required Trees.** At least one deciduous tree shall be planted within the lot's front setback for every 50 feet of frontage on a lot on which a new building is erected. The tree or trees shall be planted between the roadway and the building line that is closest to the roadway, provided that this does not interfere with utilities.

1. This requirement shall not apply to a lot with less than 50 feet of frontage at the time a building permit is sought, provided that the lot is not used in combination with another lot. If the lot is used in combination with another property, such as for access/egress to a common parking area, the combined frontage of the lots shall be used to calculate the number of trees to be planted.

2. No deciduous tree having a trunk diameter of three inches or more measured at five feet above ground (three-inch diameter at breast height) and/or no upright evergreen of 12 feet or more in height may be removed from within a lot's front setback unless the tree is replaced on the lot by a healthy tree or trees from the list available at the Town Clerk's office. Each replacement tree shall be at least 1 1/2 inches in diameter measured at six inches above ground for a deciduous tree and at least six feet in height for an evergreen.

**6.2.8 Special Permit.** The Planning Board may, by special permit pursuant to Section 10.4, authorize a deviation from any requirement set forth in this Section 6.2.

### **6.3 GENERAL LANDSCAPING REQUIREMENTS**

**6.3.1 Applicability.** The requirements of this section shall apply to any nonresidential use and to multifamily dwellings except as governed by Section 6.3.

**6.3.2 Landscaping Requirements.** Some combination of planting, screening, or fencing shall be installed at the following locations:

1. Property line(s) which also bound residential districts shall be screened from nonresidential uses by means of plantings or maintenance of trees of a species common to the area and appropriate for screening, spaced to minimize visual intrusion, and providing an opaque year-round visual buffer between uses. Such plantings shall be provided and maintained by the owner of the property used for nonresidential purposes. No part of any building or structure or paved space intended for or use as parking area may be located within the buffer area. Planted buffer areas along property lines which also bound residential districts or uses shall be a minimum depth of 20 feet.

2. Any accessory receptacle or structure with a holding capacity of at least one hundred (100) cubic feet for temporary storage or solid or liquid waste materials, including garbage, rubbish, junk, discarded bulk items and similar waste items shall be screened, in accordance with this Section, from all adjacent premises and streets from which it would otherwise be visible.

3. Any HVAC equipment or other electrical equipment placed on the ground level shall be screened, in accordance with this Section, from all adjacent premises and streets from which it would otherwise be visible.

**6.3.3 Planted Area Requirements.** Planted areas shall contain an appropriate mix of the following types of plants. Plant species shall be appropriate to proposed use, siting, soils, and other environmental conditions and native species are encouraged. Invasive species, as identified by Massachusetts Division of Fisheries and Wildlife, shall be prohibited. Where the Planning Board determines that the planting of trees is impractical, the permit applicant may substitute shrubbery for trees.

1. Shrubs and hedges shall be at least 2.5 feet in height at the time of planting, and have a spread of at least 18 inches.
2. Grass is preferable to mulch where practical.
3. Existing trees with a caliper of six inches (6") or more shall be preserved wherever feasible.
4. Deciduous trees shall be at least two (2") inches in caliper as measured six (6") inches above the root ball at time of planting. Deciduous trees shall be expected to reach a height of 20 feet within ten years after planting. Evergreens shall be a minimum of eight (8') feet in height at the time of planting.

**6.3.4 Coordination with Site Plan Approval.** The Planning Board shall require a landscaping plan as part of the overall site plan for the premises. Such landscaping plan shall be at a scale sufficient to determine compliance with the specifications set forth in this Section.

**6.3.5 Maintenance of Landscaped Areas.** The owner of the property used for nonresidential purposes shall be responsible for the maintenance, repair and replacement of all landscaping materials installed in accordance with this section and shall have a continuing obligation to comply with the provisions set forth herein. All plant materials required by this Bylaw shall be maintained in a healthful condition.

**6.3.6 Special Permit.** The Planning Board may, by special permit pursuant to Section 10.4, authorize a deviation from any requirement set forth in this Section 6.3.

## **6.4 PERFORMANCE STANDARDS**

**6.4.1 General.** Hereafter, no land, building or structure in any district shall be used in a manner that creates any dangerous, injurious, noxious or otherwise objectionable fire, explosion or other hazard; noise or vibration, smoke, dust, dirt or other form of air pollution; electrical or other disturbance; glare or any other dangerous or objectionable substance, condition or element in any amount that adversely affects the surrounding area or premises. The determination of the

existence of any dangerous or objectionable elements shall be made at or beyond the property lines of the use creating such elements, wherever the effect is greatest. Any use already established on the effective date of this Bylaw shall not be altered or modified to conflict with, or further conflict with, these performance standards.

**6.4.2 Deposited Materials.** No materials or wastes shall be deposited upon a lot in such form or manner that they may be transferred off the lot by natural causes or forces.

**6.4.3 Fire Hazard; Pests.** All materials or wastes which constitute a fire hazard or which may be edible by or attractive to rodents or insects shall be stored outdoors only in closed containers.

**6.4.4 Discharges.** No discharge at any point into any public sewer, private sewage disposal system or stream, lake or pond or into the ground of any material of such nature or temperature as may contaminate any water supply or cause the emission of dangerous or offensive elements shall be permitted, except in accordance with standards approved by the Massachusetts Department of Public Health and the Board of Health of the Town of Great Barrington.

## **6.5 COMMON DRIVEWAY**

**6.5.1 Special Permit.** Common driveways, as set forth in Town Code Chapter 153, Article III, shall be allowed on special permit by the Planning Board.

## **SECTION 7.0 SPECIAL REGULATIONS**

### **7.1 SATELLITE TELEVISION ANTENNAS**

**7.1.1 Commercial Reception.** Commercial satellite television antennas used in the reception and transmission of radio and/or television signals for profit shall be subject to the special permit provisions of Section 10.4. Any addition, extension or alteration to any commercial satellite television antennas existing at the time of enactment of this section shall be subject to the provisions of Section 5.0.

### **7.2 AVIATION FIELDS**

**7.2.1 General.** Any aviation field, public or private, with essential accessories, shall comply with the following special requirements:

1. It shall be so located that it is not likely to become objectionable to adjoining and nearby property because of noise, traffic or other objectionable condition.
2. In accordance with Chapter 90 of the Massachusetts General Laws, as amended by Section 35B, no person shall erect or add to the height of any structure within a rectangular area lying 1,500 feet on either side of the extended center line of a runway or landing strip of an airport approved by the Commission for a distance of two miles from the end of such runway or landing strip so that the height thereof will be more than 150 feet above the level of such runway or landing strip, nor, within that portion of such area which is within a distance of 3,000 feet from the end of such runway or landing strip, so that the height thereof will be greater than a height above the level of such runway or landing strip determined by the ratio of one foot vertically to every 20 feet horizontally measured from the end of such runway or landing strip, unless a permit therefore has been granted by the Commission (Massachusetts Aeronautics Commission).

**7.2.2 Exemption.** The provisions of this Subsection shall not apply to structures which will be 30 feet or less in height above ground.

### **7.3 CERTAIN B2A USES**

**7.3.1 Retail.** In a B2A District, retail stores other than as described in the Table of Use Regulations shall not exceed 3,000 square feet in total floor area unless for at least one year prior to the filing of the request for special permit the structure was devoted to a use allowed in the zoning district by right or by special permit.

**7.3.2 Restaurants.** In a B2A District, restaurants shall not have a legal seating capacity exceeding 175 and shall not be fast-food eating establishments as in Section 11.0.

## **7.4 CAMPING FACILITIES**

**7.4.1 Purpose.** The purpose of the following special requirements is to provide regulations for areas developed for rental of sites for tents, campers or travel trailers for the use of vacationers and travelers, including sanitary, cooking, recreational and parking facilities for patrons.

**7.4.2 General.** The following conditions shall apply:

1. No building or structure shall be located within 100 feet of any property line.
2. No driveway providing access from the street for such use shall be located within 50 feet of any side lot line.
3. Camping sites, parking spaces for campers or trailers and unenclosed recreational facilities shall be located not less than 100 feet from any property line and shall be screened in such a manner as to be not visible from adjacent lots in residential or institutional use.
4. Where outdoor lighting is provided for activities after normal daylight hours, such lights shall be extinguished not later than 11:00 p.m. Lighting shall be so shielded as to cast no direct light upon adjacent property or public ways.
5. No public address system shall be permitted, except where such system is inaudible at any property line.
6. Within the development, vehicular and pedestrian circulation facilities shall be provided for safe and convenient use in accordance with accepted site planning standards.
7. The operator shall provide a minimum area of 2,400 square feet with a minimum width of 25 feet for each camp site, exclusive of any parking space.
8. Any such development having more than 25 camp sites shall have at least two access roadways from a public way.
9. Camping areas shall comply with the Commonwealth of Massachusetts Department of Health regulations and any other laws and regulations pertaining to the establishment and maintenance of such use. No special permit shall be issued by the Board of Selectmen unless and until the Board of Health of Great Barrington has approved water supply and waste and refuse disposal methods and other aspects of the development that come under its jurisdiction.

## **7.5 REMOVAL OF EARTH MATERIALS**

**7.5.1 General.** Removal of earth materials for commercial purposes, including gravel, loam, sand or stone, may be permitted by special permit from the Board of Selectmen, subject to the following special requirements:

1. No excavation, processing, loading or other operations, structures or facilities shall be closer than 50 feet of any property line.
2. No permit shall be issued under this subsection until a plan for rehabilitation of the land, showing existing and proposed final contours, and time schedule for completing the operation and restoring the land for its ultimate reuse has been approved by the Board of Selectmen.
3. A bond with surety satisfactory to the Board of Selectmen shall be furnished to the town and approved as to form by the Town Counsel in the amount sufficient in the opinion of the Board of Selectmen to secure performance of the restoration of the land in accordance with the approved plan and for preserving the sightliness of the area and for meeting the requirements of public safety.
4. The Board of Selectmen may impose conditions and restrictions with regard to length of time the permit will remain in force; the hours of the day during which activities related to the removal of earth materials may be conducted; the method of excavating earth materials; the routes of transporting excavated earth materials from the premises; the control of underground and surface drainage; the disposal of rocks, trees, stumps and other debris; the provision for landscaping, screening fencing or other barriers against nuisances and hazards to the public safety and welfare; and in order to protect the area from becoming an eyesore.

## **7.6 PRIVATE SCHOOLS, OTHER EDUCATIONAL USES AND GROUP RESIDENCES**

**7.6.1 General.** Private schools, other educational uses, and group residences shall be subject to the following special requirements.

**7.6.2 Required Information.** The Applicant shall submit an informational statement, as part of the special permit application, including the following:

1. Probable effect on attendance at public schools.
2. Increase in vehicular traffic.

3. Changes in numbers of legal residents.
4. Increase in municipal service and usage costs.
5. Effect on public utilities.
6. Requirements for fire and police protection.
7. Changes in tax revenue.
8. List of all required licenses and permits.

**7.6.3 Occupancy Permit.** No occupancy permit shall be granted until proof is received by the Inspector of Buildings that all applicable permits have been received.

**7.6.4 Special Permit; Group Home.** The Board of Selectmen may issue a special permit pursuant to Section 10.4 for a group home.

1. A group home or group residence must meet the dimensional requirements for residences as set forth in the Table of Dimensional Requirements, except that side yards must be at least 50 feet wide and back yards must be at least 60 feet deep. No reduction of lot area requirements may be made for town sewer and/or water.
2. A group home or residence may not exceed five residents except as specifically authorized by the special permit.

## **7.7 FAST-FOOD EATING ESTABLISHMENTS**

**7.7.1 General.** Fast-food eating establishments shall comply with the requirements and procedures listed below:

1. The application for a special permit shall comply with all applicable provisions of Section 10.4 and with Section 7.9 governing high-impact commercial uses.
2. Fast-food eating establishments with drive-in facilities shall be no closer than 1,500 feet apart as measured by a straight line connecting the closest points of the boundary lines of the respective properties.
3. As a condition of approval of a new or amended special permit, any preexisting, nonconforming signs shall be removed and all new signs shall conform to the Chapter 146 of the Town Code. No special permit signs shall be permitted.
4. The drive-up window lane shall be designed to provide for safe access and egress with an escape lane which shall be at least ten feet wide and which shall be of a sufficient

length so that the maximum number of vehicles on the site awaiting service during the peak hour of the establishment can be accommodated on the site without backing up onto any public street or blocking any required parking or loading area.

## **7.8 MOTOR VEHICLE FUEL STATION**

**7.8.1 General.** The following standards shall apply:

1. No motor vehicle fuel station or any of their appurtenances or accessory uses shall hereafter be erected or placed within 50 feet, measured on the street line, of any residence district.
2. No motor vehicle fuel station shall have an entrance or exit connected with a street at a point closer than 50 feet from a residence district, measured along the same or opposite side of the street, or closer than 300 feet, measured along the same or opposite side of the street, to a property owned or leased by a public or private school, public library, church, institution for the aged, the sick or dependent, or for children under 16 years of age, or a playground. The foregoing requirements shall not apply in the I (Light Industry) District.
3. Every motor vehicle fuel station hereafter established shall have its gasoline pumps and other accessory service facilities set back from any street line at least 15 feet for a station with islands parallel to the street line and 20 feet for a station with islands diagonal to the street line, and no filling shall be done except with cars standing on the property of the filling station. Any principal building in connection with a motor vehicle fuel station shall be set back at least 35 feet from any street line.
4. No motor vehicle fuel station shall hereafter be erected on a lot with an area of less than 10,000 square feet.

## **7.9 HIGH-IMPACT COMMERCIAL USES**

**7.9.1 General.** The following special requirements apply to the following uses set forth in the Table of Use Regulations:

- C(2) Fast food eating establishments with drive-in facilities
- C(11) Large-scale commercial developments
- C(14) Motor vehicle fuel stations

**7.9.2 Submittals.** In addition to the plans and information required by Section 10.4, the applicant shall submit a comprehensive environmental impact study for evaluation and acceptance by the SPGA. Such environmental impact study shall include as a minimum the subjects listed below:

1. Traffic study including on-site and off-site traffic impacts and mitigation commitments; parking and travel demand management measures;
2. Provisions for pedestrians and bicycles;
3. Storm drainage analysis and mitigation measures including pre- and post-development peak flows and runoff volumes for the two-, ten- and one-hundred-year design storms; evaluation of water quality impacts;
4. Impacts on wetlands and floodplains, if applicable;
5. Methods for controlling erosion and sedimentation both during construction and permanent;
6. Water supply and sewage disposal methods and impacts;
7. Noise impacts and proposed control measures;
8. Site lighting impacts and control measures;
9. Historical and/or archaeological impacts on site or nearby, if applicable;
10. Solid waste handling and disposal, including construction or demolition debris;
11. Mitigation of potential adverse impacts on any adjacent property in residential, institutional or recreational use; and
12. Conformance with the Great Barrington Community Master Plan.

### **7.9.3 Special Requirements for Location and Accessways.**

1. The proposed use shall be located with relation to major thoroughfares and uses in the neighborhood in a manner that does not create traffic hazards or does not affect adversely other uses in the neighborhood.
2. The proposed use shall not draw excessive traffic to and through local streets in nearby residential areas.
3. The locations of any driveways that provide access and egress for the proposed use shall not be less than 100 feet from the adjacent lot line of a residence district, residential or institutional use, parkland or playground.
4. Within the property's boundaries, vehicular, pedestrian and bicycle circulation facilities shall be provided for safe and convenient use in accordance with good engineering and site planning standards.

5. No more than two driveways accessing the public way shall be permitted for any property. The use of common or shared internal driveways between adjacent commercial properties is encouraged and may be required by the SPGA as a condition of the special permit in appropriate circumstances.
6. Access driveways shall be no wider than 30 feet unless greater width is determined by the SPGA to be necessary, and shall intersect the public way at an angle as close to perpendicular as possible, but on no case, at an angle less than 60 degrees.
7. Access driveways shall be designed and constructed to meet or exceed the current standards for a subdivision way in the Town of Great Barrington, as set forth in the Rules and Regulations of the Planning Board.

#### **7.9.4 Parking Areas.**

1. Parking areas shall be designed and landscaped to minimize the adverse visual impact of such areas.
2. All required parking areas shall be paved with hard, all-weather surface, unless the SPGA determines that a certain percentage of the required parking may be preserved as landscaped area for possible future use if the parking demands so warrants, or as grassed area available for overflow parking.
3. Paved parking areas shall have adequate measures to control surface drainage on-site without adversely affecting adjacent properties or overloading downstream drainage facilities.
4. No parking area shall be located nearer to the street line than the required front setback distance. The SPGA may reduce this parking setback for a preexisting use upon a determination that the specific circumstances warrant a lesser setback and that adequate screening and landscaping will be provided.
5. No more than 20% of the parking on the property shall be located between the street line and the closest facade of the building on the site, unless the SPGA determines that this parking arrangement is not feasible.
6. Wheel stops or curbs shall be installed to prevent any vehicle using the parking area from encroaching on a public right-of-way, adjacent property, or reducing the usable width of a sidewalk to less than four feet.
7. With the exception of walkways and access driveways of the minimum practical width, the required setback area between the street line and any parking area shall be suitably landscaped with a mixture of trees, shrubs and ground cover. Where the parking area exceeds 50 parking spaces, landscaping shall also be included within the interior of

the parking area. The applicant shall submit a plan for adequate maintenance and upkeep of the landscaping.

8. The parking area shall include areas designated for storage of snow.

### **7.9.5 Lighting of Parking Areas.**

1. An adequate level of lighting shall be provided in parking areas of properties which will be used during the nighttime.

2. For walkways and assembly areas, low-intensity pedestrian-scale lighting and decorative fixtures are encouraged and do not require shielding of the light source, provided that they do not cause glare or wash onto adjacent residential properties in excess of one footcandle of illumination.

3. All lighting of parking areas and driveways shall be from pole-mounted fixtures, unless the SPGA determines that a wall-mounted spotlight or floodlight is necessary and appropriate. All pole lighting shall be downward directed and fully shielded so that the light fixture does not cause glare or shine directly onto an adjacent public way. The light source shall not be visible at any angle above a horizontal plane.

4. The bottom of the light source on a pole light shall be no higher than 17 feet above finish grade within the front setback from the street line, and no more than 25 feet above the finish grade elsewhere.

5. The lighting levels within the parking area shall be designed to the lowest level of illumination required for safety. This generally is achieved by maintained illuminance of 0.6 footcandles minimum and 2.4 footcandles average. Maximum illumination at any point shall not exceed ten footcandles.

6. Light fixtures shall be located and/or shielded so that illumination onto any adjacent property is no greater than 1.0 footcandles.

7. Applicant shall submit a computer-generated photometric plan at the same scale as the site plan, showing the locations of all fixtures, wattage and type of luminaire, and the computed footcandle readings at a grid no greater than 25 feet, for the entire site and on all adjacent properties to the zero footcandle illumination boundary. The plan shall include a table indicating the maintained horizontal illuminance (after depreciation) with computed footcandle values for the maximum, minimum, average maximum to minimum ratio and average to minimum ratio.

8. After the close of business, the parking area lights shall be shut off or reduced to a low level if needed for security. The applicant shall submit the proposed lighting hours for review by the SPGA.

## **7.10 HOTELS AND MOTELS**

**7.10.1 General.** Hotels and motels may be allowed by special permit in those districts shown in Section 3.1.4, Table of Use Regulations.

### **7.10.2 Room Limits.**

1. No hotel or motel shall contain more than 45 rental rooms.
2. The limit in District B2A shall be 30 rental rooms.

## **7.11 MUNICIPAL SANITARY LANDFILL**

**7.11.1 Purpose.** The primary purpose of establishing a sanitary landfill is to enable the Town to dispose of its solid waste in a modern, efficient and sanitary method free of the objectionable features of an open dump and to enable the town to select and designate new and alternate sites for sanitary landfill use.

**7.11.2 General.** The Board of Selectmen may designate the use of land for a sanitary landfill under municipal supervision in the R2, R4, B2 and I Districts after seeking the recommendation of the Planning Board and subject to state and local Board of Health approval.

**7.11.3 Procedures.** The Board of Selectmen shall search and seek out suitable locations for such sites seeking recommendations of the Planning Board in so doing. After due process of investigation as to soil type, suitable access, availability and suitable seclusion from view and after approval of the site by the state and local boards of health, the Board of Selectmen shall hold a public hearing thereon after such notice as it may direct, and render a decision, all conditional on the site being assigned in accordance with provisions of G.L. c. 111, s. 150A.

## **7.12 LARGE-SCALE COMMERCIAL DEVELOPMENT**

**7.12.1 General.** In the B1, B2, B3, I, and I2 Districts, a new or enlarged large-scale development may be allowed by special permit, and in the B District is allowed by right, up to a maximum gross floor area of 50,000 square feet. This use may be in one or more buildings on the same lot, and may consist of one or more retail and/or wholesale uses and related businesses such as restaurants, banks and offices. Uses greater than 50,000 square feet are not permitted except as provided herein.

1. In the B Downtown Business District, a building renovation or expansion may be subject to a special permit under Section 10.4.

**7.12.2 Special Permit.** A large-scale commercial development which had a gross floor area exceeding 50,000 square feet legally existing or approved as of May 5, 1997, may be allowed by special permit to expand up to 50% greater than that preexisting gross floor area.

1. A special permit application for a large-scale commercial development shall demonstrate full compliance with all applicable provisions of Section 10.4 and with Section 7.9, special requirements for high-impact commercial uses.

**7.12.3 Design Guidelines.** A large-scale commercial development shall be designed to be architecturally and functionally integrated, and to include building elements which are compatible with traditional architectural styles of Great Barrington. (Refer to Great Barrington Design Guidelines Workbook, a copy of which is on file in the office of the Town Clerk, for design guidelines and recommendations for building facade and roof treatments, storefronts and signage design, building materials and colors, site and parking layout, landscaping screening and site lighting.) Long straight walls are generally not considered appropriate. Proportion, size, configuration and appearance of the building(s) shall be harmonious with the neighboring buildings and structures. Layout of the site and building(s) shall emphasize pedestrian uses. Amenities such as benches and gardens are encouraged. Mechanical systems and loading areas shall be screened from view from the street and properties in any adjacent residential district. Noise attenuation measures shall be incorporated to minimize impacts on adjacent uses, especially near residential uses.

## **7.13 CERTAIN R2 OR R4 USES**

**7.13.1 Applicability.** This Section shall apply to institutional administrative offices, professional office developments, research laboratories or research centers in the R2 or R4 District.

### **7.13.2 Requirements.**

1. The minimum size of the lot for any one or combination of such uses shall be 10 acres.
2. The minimum width of the lot shall be 300 feet.
3. The maximum lot coverage by buildings and structures shall be 10%.
4. No building or structure, except signs as specified below, shall be located within 100 feet of any street line or property line.
5. Except with a special permit from the Board of Selectmen, no more than two development signs with combined total area not exceeding 100 square feet, denoting the name and address of the development or the names of occupants, may be erected and

maintained on the premises, provided that they are set back at least 50 feet from the front and side lot lines.

6. Off-street parking shall be provided in the amount equal to the total of the requirements for all uses in accordance with off-street parking regulations of this Bylaw. Parking or loading facilities which are located within 50 feet of any property line of abutting residential or institutional use shall be provided with a continuous screen along such property line.

7. No driveway providing access from the street to such property shall be closer than 50 feet from any adjacent property line.

8. No special permit shall be issued for any such use unless and until the Board of Health of Great Barrington has approved water supply and waste and refuse disposal methods and other aspect of the development which come under its jurisdiction.

## **7.14 PROFESSIONAL BUILDINGS IN RESIDENTIAL DISTRICTS**

**7.14.1 Applicability.** Professional buildings housing one or more members of a profession may be constructed or existing buildings may be altered to suit the needs of the tenant or tenants practicing a profession in the R1A, R1B, R2, R3 or R4 Districts, provided that the land and buildings comply with all applicable provisions of this Section and with the following special requirements.'

### **7.14.2 Requirements.**

1. In the R1A, R1B, R2 and R3 Districts, minimum lot size shall be one acre, with no one dimension less than 100 feet. Maximum percentage of lot coverage shall be 20%. Building and landscaping shall be in keeping with that of neighborhood. The minimum front and rear yards shall be, 50 feet, with a minimum side yard of 30 feet.

2. In the R4 District, minimum lot size shall be two acres, with no one dimension less than 200 feet. Maximum percentage of lot coverage shall be 10%. Building and landscaping shall be in keeping with that of the neighborhood. The minimum front and rear yards shall be 50 feet; minimum side yards 50 feet.

3. In all districts, retail sales may not be conducted as a principal use.

## **7.15 LOW-POWER FM BROADCAST RADIO STATION AND ANTENNA**

**7.15.1 General.** To place an antenna to serve a Low Power FM Broadcast Radio Station, the applicant must obtain a building permit. As a condition of such permit, the applicant shall agree

that should the Low Power FM Broadcast Radio Station cease to operate or lose its FCC license, then the antenna must be removed in a timely fashion.

## **7.16 TOURIST HOMES FOR TRANSIENT GUESTS**

**7.16.1 Special Permit and Site Plan Review Required.** The Board of Selectmen may grant a special permit in accordance with the provisions of Section 10.4 for conversion of an existing structure to a tourist home for transient guests within the zoning districts specified for such use in the Table of Use Regulations; provided, however, that no such conversion shall be permitted for a structure erected or enlarged less than 10 years before the date of application for said special permit, and provided also that no more than 10 rental rooms shall be permitted on any single piece of property or on contiguous properties under common or related ownership.

**7.16.2 Requirements.** A tourist home shall comply with the following requirements:

1. All repairs, renovations or construction specified in the application for said special permit shall be made to the satisfaction of the Inspector of Buildings before a certificate of occupancy is issued.
2. Fire escapes and/or outside stairways leading to a second or higher story shall, insofar as practicable, be located on the rear of the building; shall not be located on any building wall facing a street; and shall comply with Section 4.0.
3. One off-street parking space shall be provided for each room available for rent and for each owner and/or employee, with the location and number of such parking spaces to be approved by the Planning Board in the site plan review.
4. All parking areas and outdoor recreational facilities such as swimming pools, tennis courts and the like shall be screened from view by plantings or other suitable means approved by the Planning Board in the site plan review.
5. The addition of any added floor space, dining facilities, outdoor recreational facilities or facilities for serving alcoholic beverages not included in the original special permit application shall be allowed only after obtaining a modified special permit including those facilities.

## **7.17 KENNELS**

**7.17.1 Special Permit and Site Plan Review Required.** Kennels may be allowed only by special permit in accordance with Section 10.4 for the operation of a kennel within the zoning districts specified for such use in the Table of Use Regulations; provided, however, that kennels shall not be permitted in residential zoning districts on lots of less than five acres. Site Plan Review by the Planning Board shall be required.

## SECTION 8.0 SPECIAL RESIDENTIAL REGULATIONS

### 8.1 TWO-FAMILY RESIDENTIAL USE OF A SINGLE LOT

**8.1.1 Special Permit Required.** The special permit granting authority (SPGA) may grant a special permit in accordance with Section 10.4 for two-family residential use of a single lot in any zoning district specified for such use in the Table of Use Regulations. For the purposes of this section, any two dwelling units on a single lot, whether in the same building or in separate buildings, shall be considered two-family residential use, except where Section 4.2.1 or Section 8.2 applies. In the event of two dwelling units in separate buildings, all applicable requirements of this Bylaw shall apply. Nothing in this section shall be construed as to allow two dwelling units on a single lot, in separate buildings, when that lot is not at least twice the minimum lot area specified in Section 4.0. Before granting such a special permit, the SPGA shall conduct a site inspection of the property to ascertain its conformance with this Bylaw.

**8.1.2 Submittals.** Every application for a special permit for such two-family residential use shall be accompanied by site plans and floor plans acceptable to the SPGA and meeting all applicable requirements of this Bylaw.

**8.1.3 Site Plan Approval Required.** Two-family residential use of a single lot shall require site plan approval from the Planning Board.

**8.1.4 Conditions.** Every special permit issued in accordance with the provisions of this section shall contain the following conditions:

1. All repairs, renovations or construction specified by the applicant in his application shall be made to the satisfaction of the Inspector of Buildings before an occupancy permit is issued.
2. There shall be separate toilet, bath and kitchen facilities for each family.
3. Fire escapes and outside stairways leading to a second or higher story shall, where practicable, be located on the rear of the building, shall not be located on any building wall facing a street and shall comply with Section 4.2.3, Permitted Projections into Yards.
4. Two off-street parking spaces shall be provided for each dwelling unit, located in such a manner that permeable surfaces, including lawns and/or garden areas but exclusive of all structures, driveways, walkways and parking spaces, shall be no less than 15% of the total area of the property. When one of the dwelling units is 650 gross square feet or less, the two dwelling units shall require a total of three parking spaces. In the event that the required parking spaces cannot be provided on the property, the applicant shall, before the special permit is issued, present proof of a duly recorded permanent easement or deed

providing such off-street parking space on other property, and the special permit shall be conditioned upon such permanent easement or deed.

5. Drainage controls as deemed necessary by the SPGA shall be specifically described as an added condition of the special permit.

6. New construction of any two-family residence shall conform to all dimensional requirements of Section 4.0.

7. Any other conditions specified by the SPGA.

**8.1.5 Notice.** The SPGA shall notify the Inspector of Buildings of its approval of the issuance of a building permit in accordance with the provisions of Subsections 8.1.1 through 8.1.4.

## **8.2 ACCESSORY DWELLING UNIT (ADU)**

**8.2.1 General.** An accessory dwelling unit is permitted by right in the R2 and R4 zones. An accessory dwelling unit may be allowed by special permit in R1A, R1B, R3, B1, B2, B2A, B3, I, and I2 Zones. The special permit granting authority shall be the Planning Board except where an accessory dwelling unit is proposed in a nonconforming building, in which case a special permit issue by the Zoning Board of Appeals in accordance with Sections 5.3, 8.2, and 10.4 is required.

**8.2.2 Site Plan Approval.** Whether permitted by right or by special permit, any new accessory dwelling unit shall be subject to site plan review and approval based upon the criteria set forth herein and in Section 10.5. The Planning Board will conduct the site plan review in accordance with Section 10.5 and all criteria specified in Section 8.2. An approved site plan for accessory dwelling units is required prior to the issuance of the building permit by the Building Inspector. Abutters within 300 feet of the applicant's property must be notified in writing by certified mail by the applicant that the ADU is being proposed and that the Planning Board will be conducting a site plan review on a given place, time and date. Said notice shall be mailed not later than ten days prior to the site plan review meeting. The Applicant shall provide proof of mailing to the Planning Board. The Board of Health shall give its approval prior to the issuance of a building permit.

### **8.2.3 Requirements.**

1. Only one accessory dwelling unit may be established per primary single-family home, whether within the primary single-family home or on the same lot as the primary single-family home.

2. The existence of the accessory dwelling unit must be recorded by the applicant with the Registry of Deeds. Recording of the special permit decision will serve that purpose. If the ADU is allowed by site plan review, then the Planning Board will provide a certificate that must be recorded.

3. The ADU may not be in separate ownership from that of the single-family home in which it is located. The owner, or a member of the owner's family, must occupy one of the units in the residence.
4. The accessory dwelling unit may not in any case be larger than 650 gross square feet. If a dwelling unit greater than 650 gross square feet is created within a single-family home, the residence will be considered a two-family dwelling and will require a special permit in accordance with Section 8.1 of this Bylaw.
5. The structure in which the accessory unit is to be located must meet the zoning requirements for residences.
  6. One parking space shall be provided in addition to that required by the present building. All required parking spaces, including the parking space for the accessory dwelling unit, must be provided no closer to the street than the building setback line, unless other specified provisions are made and agreed to by the permit granting authority. The Planning Board may waive the parking requirements, however, if findings are made that there are adequate provisions for permanent off-street parking off-site, and those parking provisions are made part of the conditions of approval by special permit or site plan review.
  7. An accessory dwelling unit may be created within a new or a previously existing single-family structure. An accessory dwelling unit may be created within a new or previously existing accessory structure in the R2 and R4 zones, but in other zones only in accessory structures that were lawfully existing or lawfully begun prior to May 2, 2011.
  8. A home occupation may be allowed within the primary single-family unit and/or the accessory structure. Any such home occupation shall meet the provisions of Section 3.3.
  9. Where practicable, any new entrance necessitated by the accessory dwelling unit must be located on the rear or side of the building.
  10. Fire escapes and outside stairways leading to a second or higher story shall be located on the rear or side of the building, and, where practicable, shall not be located on any building wall facing a street and shall comply with Section 4.2.3.

### **8.3 MULTIFAMILY DWELLINGS**

**8.3.1 General.** The Board of Selectmen may grant a special permit in accordance with Section 10.4 for multifamily dwellings, including condominiums, in the zoning districts specified for such uses in the Table of Use Regulations. Before granting such a special permit, the Board of Selectmen shall also conduct a site inspection of the property.

**8.3.2 Definition.** For the purposes of this section, the placing of more than two dwelling units on a single lot, under any circumstances, shall be considered a multifamily use.

**8.3.3 Requirements.** Multifamily dwellings shall comply with all the following special requirements and procedures, as applicable, which shall be made conditions of the special permit:

1. In a multifamily development, more than one principal building may be permitted on a lot, provided that such lot meets the minimum lot width requirements for the respective zoning district as set forth in Section 4.0, and further provided that there shall be at least 3,500 square feet of lot area for each dwelling unit in a development of three units or four units, regardless of the number of principal buildings on the lot, and 5,000 square feet of lot area for each dwelling unit in a development of five or more units.
2. Permeable open space on the lot, including lawn and/or garden area but exclusive of structures, driveways, walkways and parking spaces, shall be no less than 50% of the total area of the property.
3. No portion of any enclosing wall of any building and no portion of any other permissible structure shall be nearer than 25 feet to any street line, 10 feet to any side lot line and 30 feet to the rear lot line.
4. Two off-street parking spaces shall be provided for each dwelling unit. No space shall be considered available for parking if such space reduces the effective width of a driveway providing access to more than one dwelling unit to less than 16 feet. In the event that the required parking spaces cannot be provided on the property, the applicant shall, before the special permit is issued, present proof of a duly recorded permanent easement or deed providing such off-street parking space on other property, and the special permit shall be conditioned upon such permanent easement or deed.
5. Within the development, vehicular and pedestrian circulation shall provide for safe and convenient use to the satisfaction of the Planning Board.
6. Front yards and all open areas shall be suitably landscaped and maintained with grass, trees, flowers, shrubs and/or walks. Such landscaping shall be specified in detail on the site plan and shall be made a condition of the special permit.
7. The proposed development shall be located with respect to major thoroughfares and uses outside the development as not to create traffic hazards or congestion. Before issuance of a special permit by the Board of Selectmen, the Chief of Police and the Highway Superintendent shall give their written approval of said location.
8. Fire escapes and outside stairways leading to a second or higher story shall, where practicable, be located on the rear of each building, shall not be located on any building wall facing a street.

9. Drainage controls as deemed necessary shall be specifically described as an added condition of the special permit.

**8.3.4 Procedures.** When filing an application with the Board of Selectmen, the applicant shall submit at least six copies of a site plan showing, in addition to all characteristics specified in Section 10.5, the general plan and elevations of the buildings, as well as provisions for proposed parking spaces, interior roadways, walkways, drainage and recreational facilities.

1. Such site plan, subject to such amendment thereof as may be required by the Planning Board under the provisions of this Bylaw shall be made a part of the building permit.
2. The Board of Selectmen shall notify the Inspector of Buildings of its approval of a special permit.

**8.3.5 Occupancy Permit.** All repairs, renovations or construction specified by the applicant in his application shall be completed to the satisfaction of the Inspector of Buildings before an occupancy permit is issued.

**8.3.6 Exemptions in Downtown B District and General Business B2 District.** The requirements of Section 8.3.3 shall not apply to any multifamily dwelling in a single existing building within the Downtown Business B District. Requirements 1. and 2. of section 8.3.3 shall not apply to any multifamily dwelling within the General Business B2 District.

## **8.4 MIXED USE DEVELOPMENT**

**8.4.1 General.** For mixed uses in the B, B2, I, and I2 zones, all of the following requirements shall apply. For mixed uses in the B3 zone, see Section 9.4.

### **8.4.2 Requirements.**

1. When residential use is combined with other nonresidential permitted uses, the controlling dimensional requirements shall be the less restrictive.
2. A minimum of 75% of street-level floor space shall be reserved for nonresidential use. Outside the Village Center Overlay District, the SPGA may reduce this requirement to a minimum of 50%.
3. In all districts except the B District, only one parking space per dwelling unit shall be required in addition to those required of other nonresidential permitted uses where it can be shown by the applicant that joint use of parking will be compatible and adequate for all occupants.
4. Except as specifically set forth in this section, a special permit under this section does not replace other requirements of this Bylaw.

## **8.5 PLANNED UNIT RESIDENTIAL DEVELOPMENT (PURD)**

**8.5.1 Special Permit Required.** The Board of Selectmen (SPGA) may grant a special permit in accordance with the provisions of Section 10.4 for the construction and occupancy of a planned unit residential development (PURD) in any zoning district specified for such use in the Table of Use Regulations.

**8.5.2 Permitted Uses.** In a PURD, the following uses may be permitted. No structure designed or intended for business use, except the development office, shall be a part of any PURD.

1. Single family dwellings.
2. Two-family dwellings.
3. Multifamily dwellings.
4. Assisted living residence;
5. Any mixture of single family, two-family, multifamily dwellings, and/or assisted living residence;
6. Accessory uses as regulated in Section 3.0.

**8.5.3 Density.** The following requirements relating to the density of population and intensity of land use by a PURD shall be met.

1. Minimum number of dwelling units: 10.
2. Maximum number of dwelling units: 60.
3. Separation of PURDs: In R2 and R4 Zoning Districts, the boundary of one PURD shall be no closer than one mile to the nearest boundary of another PURD in an R2 or R4 District, measured in a straight line connecting the closest points of the respective boundaries, nor shall the boundary of any PURD in an R2 or R4 District be contiguous to that of any PURD in any other zoning district. In R1A, R1B, R3, B and I Zoning Districts, the boundary of one PURD shall not be contiguous at any point to that of another PURD, regardless of district.
4. The minimum land area for a PURD shall be based on the following area requirements per dwelling unit:

DISTRICT	AREA (SQ. FT.)
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<b>DISTRICT</b>	<b>AREA (SQ. FT.)</b>
R4	30,000
R2	20,000
B2	20,000
I	20,000
R1A	9,000
R1B	7,500
R3	7,500

5. Minimum usable open space or common land per dwelling unit: 5,000 square feet. Such space shall not include wetlands, streams or any other area subject to protection under the Massachusetts Wetlands Protection Act, nor shall it include parking space, roadways, walkways, laundry drying areas or yards required under this Bylaw.

6. The maximum lot coverage by building shall be regulated in terms of percent by the Schedule of Dimensional Requirements.

**8.5.4 Requirements.** A PURD shall comply with all the following requirements and procedures, which shall be made conditions of the special permit.

1. The minimum off-street parking requirement shall be two parking spaces for each dwelling unit.

2. The maximum height of structures shall be as regulated in Section 4.0.

3. The maximum length of any exterior straight wall shall be 125 feet. There shall be an offset of at least 20 feet between straight walls.

4. The minimum distance between any two principal buildings where one or both contain three (3) or more dwelling units shall be not less than 50 feet. The minimum distance between any buildings that are one- or two-family dwellings shall be not less than 20 feet.

5. No portion of any enclosed wall of any building or other permissible structure shall be nearer than 20 feet to any roadway within the development or 10 feet to any parking area and shall not be nearer than 100 feet to any property line in R2, R4, B2 and I Districts nor nearer than 50 feet to any property line in R1A, R1B and R3 Districts.

6. A PURD having more than 40 dwelling units shall have a minimum of two access roadways to be separated by at least 100 feet. All roadways within the development shall conform in construction with the standards as set forth in the Planning Board's

Subdivision Regulations, and all public utilities shall be installed in accordance with said subdivision regulations.

7. Parking and recreation areas shall be designed and located to be safely and conveniently accessible from the buildings they are intended to serve. No space shall be considered available for parking that reduces the effective width of a driveway providing access to more than one dwelling unit to less than 16 feet.

8. The proposed development shall be located with relation to primary streets and uses outside the development in a manner that does not create traffic hazards or congestion. Before issuance of a special permit by the SPGA, the Chief of Police and the Highway Superintendent shall give their written approval of said location.

9. The proposed development shall be so located that essential community services, including water supply, sewage system, drainage system and police and fire protection, shall be available and adequate for the development, based on written reports and recommendations from appropriate town agencies. The SPGA shall, before granting a special permit, require written guarantees from the applicant, including such financial guarantees in the form of bank deposits, bonds or covenants as may be satisfactory to the SPGA and the Town Counsel, that suitable provision will be made assuring these services.

**8.5.5 Timeshares.** The rental or sale of any unit within a PURD on a time-sharing basis for temporary occupancy is permitted only in the B2 (General Business) zoning district.

**8.5.6 Common Land.** Land preserved in accordance with this Section shall be either deeded to and accepted by the Town of Great Barrington for park or open space use, conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space or, in the case of dwelling units for sale, either as condominiums or under cooperative ownership, conveyed to a corporation or trust owned or to be owned by the owners of dwelling units within the PURD. If such a corporation or trust is utilized, ownership thereof shall pass with conveyances of the dwelling units. In any case in which such land is not conveyed to the town, the applicant shall record in the Southern Berkshire Registry of Deeds a restriction acceptable to the SPGA and the Town Counsel and enforceable by the town providing that such land shall be kept in an open or natural state and not built upon for residential or other use nor developed for such accessory uses as parking and/or roadways. This restriction shall be provided before the special permit is granted and shall be recorded with the special permit.

**8.5.7 Procedures; Preliminary Land Development Plan.** Before applying for a special permit hereunder, the applicant shall file with the Planning Board a preliminary land development plan (PLDP) of the entire tract drawn to a scale adequate to represent all features of the property. Said PLDP shall show the following in sufficient detail to form a clear basis for discussion of the project and for preparation of the definitive land development plan (DLDP). Six copies of the PLDP shall be submitted by the applicant to the Planning Board, which shall set a date and time at which it will review the plan under its Subdivision Regulations. It shall,

within five days of receipt of the PLDP, notify the applicant, the SPGA, the Conservation Commission, the Board of Health and other town departments as it deems appropriate of the date and time of such meeting, and it shall transmit copies of the plans to said boards and departments. The review session shall be held not later than 35 days after receipt of the PLDP by the Planning Board. During the meeting, town boards and departments may suggest revisions and additions to be incorporated by the applicant in the definitive land development plan. The PLDP shall include, at a minimum:

1. Lot layout and dimensions.
2. Access road locations and widths.
3. Open space locations, and dimensions, and area calculations.
4. Location of major site features, such as existing stone walls, fences, large trees and rock outcroppings; all existing and proposed structures on the property; all existing and proposed driveways, walkways and parking areas; all bordering streets and/or highways; contours of elevation at intervals of no more than two feet; all existing and proposed wells and septic systems; drainage patterns; and other physical and topographical features of the property including but not limited to streams, ponds and wetlands.
5. An arrow indicating magnetic North.

**8.5.8 Procedures; Definitive Land Development Plan.** The definitive land development plan (DLDP) shall be filed with the Planning Board and the special permit application shall be filed with the SPGA, which shall hold a hearing in accordance with the provisions of Section 10.4. The Planning Board shall also hold a public hearing in accordance with its Subdivision Regulations to determine the appropriateness of any roadways in the PURD. The hearings may be held simultaneously, if members of both boards so vote. The Planning Board's endorsement of such roadway plan shall be in accordance with all provisions of its Subdivision Regulations. The DLDP shall contain, at a minimum, the same information as the PLDP including any changes made thereto and any other information requested by the Planning Board. The special permit application shall:

1. Be accompanied by two locus maps showing the location of the property. One shall be an enlarged section of a United States Geological Survey Map, and the other shall be a copy of the current Great Barrington Zoning Map, each indicating the location of the property by arrow or other suitable mark.
2. Be signed by the owner or owners of the property in question or, if the applicant is other than the owner of the property, shall be signed by the applicant and shall be accompanied by a letter from the owner authorizing the applicant to apply for the special permit. Said application shall also be accompanied by all appropriate fees. For the purposes of this section, an "applicant" shall be defined as a person, corporation, partnership or other legal entity having a legal or equitable interest in the property.

3. Contain elevation and floorplan views of the proposed dwellings.

**8.5.9. Decision.** In addition to the criteria set forth in section 10.4, the SPGA shall consider the following:

1. The proposed development shall be in harmony with the Master Plan of the community, as adopted and amended by the Planning Board.
2. Usable open space or common land shall be assured and maintained in accordance with the procedures prescribed herein.
3. The development plan shall contain specific time periods within which development of each section of the PURD will be started. Failure to start construction within those periods may be cause for issuance of a stop-work order by the Inspector of Buildings.

## **8.6 TRAILERS OR MOBILE HOMES**

**8.6.1 General.** As a temporary dwelling, one trailer, recreational vehicle, or mobile home may be permitted and used as a dwelling on any standard lot for not more than 60 days in any twelve-month period. A permit from the Building Inspector is required. The Board of Selectmen may, however, allow such use for a longer period of time by special permit in hardship cases, provided that a time limit of 12 months is imposed as part of the authorization.

## **8.7 OPEN SPACE RESIDENTIAL DEVELOPMENT (OSRD)**

**8.7.1 Purpose.** The primary purposes for the Open Space Residential Development (OSRD) bylaw are the following:

1. To encourage the permanent preservation of open space, agricultural land, forestry land, wildlife habitat, wetlands, steep slopes and historical and archaeological resources;
2. To enhance existing open space resources in the Town of Great Barrington by addition of adjacent lands, linkage of trail systems or wildlife habitat in a manner that is consistent with the Town of Great Barrington's Open Space and Recreation Plan;
3. To encourage development that consumes less open land and conforms to existing topography and natural features better than conventional subdivision design;
4. To minimize the total amount of land disturbance on the site;
5. To allow for greater flexibility and creativity in the design of residential development;

6. To facilitate the construction and maintenance of housing, streets, utilities and public services in a more economical and efficient manner;
7. To add to the visual amenities of the area for persons passing a site of residential development or overlooking it from nearby;
8. To encourage construction of diversified housing.

**8.7.2 Applicability.** Only those parcels located in an R2 or R4 district shall be eligible for an OSRD special permit. An OSRD may be allowed on parcels five acres or greater. Any subdivision of a parcel of five acres or greater in size which will create more than two additional residential lots may be undertaken by special permit application to the Planning Board for an OSRD.

1. Parcels less than five acres require a separate finding. Any subdivision of parcels less than five acres in size for residential purposes may be undertaken by special permit as an OSRD subdivision under this section if the Planning Board finds that the potentially smaller, fragmented open space area(s) to be created and preserved in the proposed design would provide a significant benefit to the public interest.

**8.7.3 Noncontiguous Parcels.** Parcels that are not contiguous shall not be eligible for special permit application as a single OSRD development, unless the Planning Board finds that the open space area(s) to be preserved in the proposed design would provide a significant benefit to the public interest.

**8.7.4 Permitted Residential Uses.** Residential uses permitted in OSRD developments shall be single or two-family dwellings.

**8.7.5 Land Division.** To be eligible for an OSRD Special Permit, the parcel(s) may be a subdivision or a division of land pursuant to G.L. c. 41, s. 81P.

**8.7.6 Ownership.** An OSRD may be owned under any form of ownership legally permitted in the Commonwealth of Massachusetts.

**8.7.7 Preliminary Discussion and Determination of Project Density.** Applicants must submit plans and materials for review by the Planning Board, prior to formal application for a special permit, to assist the Planning Board in making a determination regarding the maximum number of dwelling units to be permitted on the tract of land proposed for OSRD. The following items shall be submitted: a Base Plan and either a Mathematical Determination of Yield or a Yield Plan.

**8.7.8 Base Plan.** The Base Plan should contain sufficient information about ownership, property description, property access and natural resources to indicate the development potential of the property, and shall be prepared at an appropriate scale, based on the size of the property,

to convey the information accurately. The following information should be provided on a Base Plan:

1. Boundary survey of the property showing all easements;
2. The names and locations of all streets providing access to and abutting the property;
3. Topographic information at 10 feet or 3 meter contour lines, including delineation of slopes of 25% or greater;
4. The zoning district(s) the property is located in, including all overlay districts;
5. The location of areas of protected open space on the subject property or abutting the property, including, but not limited to, land under a Conservation Restriction, Agricultural Preservation Restriction or classified for taxation purposes under Chapter 61, Chapter 61A, or Chapter 61B of the General Laws;
6. The location of wetlands and vernal pools;
7. The location of lakes, streams, riverfront areas and other resources under the jurisdiction of the Wetlands Protection Act;
8. The location of land in agricultural use;
9. The location of land containing prime agricultural soil and soil of state and local importance, as defined in the Berkshire County, Massachusetts, Soils Rating Guide July 2002, or subsequent version, available from the Natural Resources Conservation Service;
10. Floodplain or floodway areas;
11. Sewage disposal capacity: either the location of municipal sewer mains; or evidence, as approved by the Board of Health, that the property has the capacity for on-site septic disposal as demonstrated by a representative sample of deep hole test pits and percolation test results along with evidence that the representative samples have been taken in locations that are consistent with the geology of the property;
12. The location of Estimated, Priority and Core Habitats as established by the Natural Heritage and Endangered Species Program of the Massachusetts Division of Fisheries and Wildlife.
13. North arrow and a graphic scale;
14. Areas believed to be developable;

15. Summary table indicating the total area of Developable Land. For the purposes of this section, Developable Land shall not include wetlands as defined in the Wetlands Protection Act (Chapter 131, Section 40 of Massachusetts General Laws), vernal pools, slopes of 25% or greater and areas subject to existing valid open space restrictions.

**8.7.8 Other Material.** Applicants may provide other information about the development suitability of the property, opportunities for alternative designs and how the project might accomplish the intent and purposes specified herein. Form B-1, Inventory of Constraints and Opportunities, as found in the Appendix of the Planning Board's Subdivision Regulations, Chapter 240, may be used to guide the discussion and to enhance understanding of the site.

**8.7.9 Determination of Yield.** Working with the Planning Board, applicants have two options to determine the maximum number of dwelling units to be permitted on a parcel(s) of land: a Mathematical Determination of Yield; or a Yield Plan.

1. *Mathematical Determination of Yield.* The Mathematical Determination of Yield is intended to be a simplified method to determine the maximum number of dwelling units allowed on the parcel(s). The Mathematical Determination of Yield is calculated as follows:

Step 1: Determine presumed area of Developable Land. Based on the material shown on and submitted with the Base Plan, the applicant shall work with the Planning Board to determine the presumed area of Developable Land.

Step 2: Calculate presumed amount of Developable Land. The Mathematical Determination of Yield assumes 30% of the Developable Land area is needed for infrastructure improvements. For the purposes of the Mathematical Determination of Yield, the presumed area of Developable Land determined in Step 1 is multiplied by 70% to indicate the total amount of Developable Land.

Example: On a 100 acre parcel, 60 acres are determined, after working with the Planning Board, to be the presumed area of Developable Land. The presumed amount of Developable Land is 42 acres ( $60 \times 0.7$ ).

Step 3: Calculate the maximum number of allowable lots. The maximum number of allowable lots is determined by taking the presumed amount of Developable Land and dividing it by the minimum lot area requirement in the zoning district as shown in Section 4.0, Schedule of Dimensional Requirements.

Example: From the example above, the amount of Developable Land is 42 acres. The minimum lot size in the R4 district is 2 acres. Therefore, the maximum number of allowable lots is 21 ( $42 \div 2.0$ ).

2. *Yield Plan.* A Yield Plan is intended to indicate the number of lots the applicant believes would be attainable if the parcel(s) were developed as a conventional

subdivision consistent with Great Barrington's Subdivision Rules and Regulations. In addition to the information shown on the Base Plan, the Yield Plan should show, using an appropriate scale, the locations of all streets and easements within the proposed development and the proposed layout of lots indicating the lot size, frontage and setbacks for all lots shown. The Yield Plan should contain sufficient information to indicate the Plan could comply with the Great Barrington Subdivision Rules and Regulations. This number of lots will be subject to validation once the applicant has obtained the applicable development permits and submitted suitable engineering studies necessary to substantiate the developable area of land.

**8.7.10 Determination of Final Project Density.** Based on the Mathematical Determination of Yield or Yield Plan, submitted to the Planning Board, the Planning Board shall determine the maximum number of lots that could be achieved on the parcel(s) , and shall notify the applicant in writing of its decision within 30 days of such submission.

1. The maximum number of lots shall be used in conjunction with the proposed amount of protected open space to determine the final project density. The greater the area proposed for protected open space, the greater the allowed increase in final project density.
2. The minimum area of the protected open space must be 50% of the area of Developable Land. When the 50% minimum area of the Developable Land is dedicated to protected open space, the permitted density allowed under the OSRD special permit may not exceed 125% of the number of lots determined by the Mathematical Determination of Yield or Yield Plan.
3. At this point, the maximum number of lots becomes the maximum number of dwelling units permitted, whether or not they are constructed as One or Two-Family Dwellings.

Example: Using the above example, the maximum number of allowable lots, as determined by the Mathematical Determination of Yield, is 21. With a dedication of 50% of the Developable Land area as protected open space the applicant could construct 26 dwelling units ( $21 \times 1.25 = 26.25$  [ignore fractions] = 26).

4. For every 1% above 50% of the total area of Developable Land dedicated to protected open space, the permitted maximum density allowed under the OSRD special permit may, at the sole discretion of the Planning Board, be increased 2% to a maximum density bonus of 50%.

Example: Using the example developed previously, if instead of the minimum 50% of the area of Developable Land dedicated to protected open space that percentage is increased to 62.5% then the applicant could construct 31 dwelling units ( $21 \times 1.5 = 31.5$  [ignore fractions] = 31).

### **8.7.11 Design Criteria and Considerations.**

1. Protected Open Space Requirements. Consistent with the purposes of this bylaw, the Planning Board must be satisfied, in its sole discretion, that the characteristics of the open space offered for preservation ensure an appropriate benefit to the public interest in exchange for the bonus provisions of OSRD design.
2. Site Context. Consistent with the purposes of this bylaw, the Planning Board must be satisfied, in its sole discretion, that the proposed development is consistent with the context of the neighboring property, considering such items as physical, transportation and cultural connections to surrounding land uses and activities.
3. Grouping of structures. There shall be grouping of principal structures and their associated accessory structures. This grouping must be based upon some common unifying and recognizable organizing principle, such as a courtyard, driveway, view orientation or parking area that defines the inter-relationship of the structures.
4. Protected Open Space Requirement. A minimum of fifty percent (50%) of the Developable Land area shall be protected open space.

Example: On a parcel with 100 acres of Developable Land, a minimum of 50 acres must be left as protected open space.

5. Contiguity of protected open space. Protected open space shall be contiguous to the maximum extent practicable, i.e., connected to other open space within or adjacent to the proposed OSRD development. The Planning Board may waive this requirement for all or part of the required protected open space where it finds, in its sole discretion, that allowing non-contiguous open space will promote the goals of this bylaw.
6. Areas used for rights of way, buildings, courtyards, parking, pools, tennis courts or other uses that create impervious surfaces or other intensive uses shall not be counted towards the total open space acreage required to be preserved, even though they may be held in common ownership by a single entity such as a homeowners' association and restricted from further development.
7. Pedestrian and bicycle circulation. Trails and bicycle paths may be provided to link residences with recreation facilities (including parkland and open space) and adjacent land uses where appropriate. Open Space dedicated to these uses may be counted towards the total protected open space acreage requirement.
8. Setbacks and protected open space. Required setbacks may, at the Planning Board's discretion, be counted towards the required protected open space provided that counting the setback as open space furthers the purposes of this Bylaw.
9. Areas devoted to wastewater disposal, storm water management systems and wellhead protection serving the OSRD may be counted towards the total open space acreage

required to be preserved. The area (to top of berm) of storm water management devices, such as retention and detention ponds, may be counted towards the total open space acreage required to be preserved.

**8.7.12 Ownership of Protected Open Space.** The protected open space shall be conveyed to:

1. The Town or its Conservation Commission and/or Parks Commission; or
2. a nonprofit organization, the principal purpose of which is the conservation of open space for the purposes set forth by the applicant; or
3. The Homeowners' Association. Maintenance of open space owned by a homeowners' association shall be permanently guaranteed by an arrangement providing for mandatory assessments for maintenance expenses to each ownership interest. Each such association shall be deemed to have assented to allow the Town to perform maintenance of such open space and associated facilities, if the association fails to provide adequate maintenance, and shall grant the Town an easement for this purpose. Before the Town performs such maintenance, the Town shall first provide fourteen (14) days written notice to the association as to the inadequate maintenance, and, if the association fails to complete such maintenance, the Town may perform it at the association's expense. Each individual deed, and the trust or articles of incorporation shall include language designed to effect these provisions. Documents creating such corporation, trust or association shall be submitted to the Planning Board for approval, and shall thereafter be recorded with the Registry of Deeds.

**8.7.13 Open Space Use Restriction.** Any proposed protected open space, unless conveyed to the Town or its Conservation Commission, shall be subject to a recorded restriction enforceable by the Town, providing that such land shall be perpetually kept in an open state, that it shall be preserved for exclusively agricultural, horticultural, wildlife management, educational or non-motorized recreational purposes, and that it shall be maintained in a manner which will ensure its suitability for its intended purposes.

**8.7.14 Encumbrances.** All areas to be set aside as protected open space shall be conveyed free of any mortgage interest, security interest, liens or other encumbrances.

**8.7.15 Monumentation.** Where the boundaries of the protected open space are not readily observable in the field, the Planning Board may require placement of surveyed bounds sufficient to identify the location of the open space being preserved.

**8.7.16 Dimensional Requirements.**

1. Minimum lot area. There shall be no minimum lot area for lots within an OSRD development.

2. Setbacks from original parcel(s) boundary. A buffer area of 100 feet shall be provided at the perimeter of the parcel(s), except for driveways necessary for access and egress to and from the site. No vegetation in this buffer area shall be disturbed, destroyed or removed, except for normal maintenance or to meet screening requirements. This requirement may be reduced, at the discretion of the Planning Board, to no less than 50 feet: where the land abutting the site is the subject of a permanent restriction for conservation or recreation; or where the land abutting the site is held by the Town for conservation or recreation purposes; or it is determined, by the Planning Board, that a smaller buffer will suffice to accomplish the purposes specified herein.
3. Minimum frontage. There shall be no minimum frontage for lots within an OSRD development.
4. Minimum side and rear yard. Except for the required setback from the original parcel(s) boundary, there shall be no minimum side and rear yard setbacks.
5. Minimum front yard. Every structure fronting on proposed new roads within the OSRD shall be set back a minimum of 20 feet from the traveled way. The minimum front yard setback from existing road rights of way shall be as required in the applicable zoning district.
6. No structure may be built in the road right of way.
7. Maximum lot coverage: There shall be no maximum lot coverage in an OSRD development.
8. Height of Building. The maximum height for buildings within an OSRD development shall conform to the requirements of the zoning district.

**8.7.17 OSRD Application for Special Permit and Preliminary Plan Review and Approval.**

The Planning Board, acting as the Special Permit Granting Authority (SPGA), may grant an OSRD Special Permit and concurrently approve a preliminary subdivision plan under the procedures outlined in G.L. c. 41, ss. 81S-81T and Chapter 240 of the Town Code (the Planning Board's Rules and Regulations Governing the Subdivision of Land). The Planning Board may, at its sole discretion, require studies to be prepared, at the applicant's expense, to make findings regarding access, water supply, sewage disposal, water quality, stormwater management, erosion control, rare and endangered species, and historic and archaeological sites, among other possible studies. The Planning Board's consultant(s) may be retained at the applicant's expense in accordance with G.L. c. 44, s. 53G. OSRD Application for Special Permit and Preliminary Plan Review and Approval requires the applicant to submit the following materials prior to scheduling the Planning Board's OSRD special permit hearing:

1. An application and required fee for the Special Permit on the latest form provided by the Planning Board;

2. A completed Form B-1 “Inventory of Constraints and Opportunities;”
3. Six copies of the OSRD Development Plan, which shall meet the requirements for a preliminary plan under Chapter 240 of Town Code (the Planning Board’s Rules and Regulations Governing the Subdivision of Land).

**8.7.18 OSRD Development Plan and Definitive Plan Review and Approval.** The final OSRD Development Plan may be approved by the Planning Board in the same manner as a definitive plan submitted for a conventional subdivision in accordance with G.L. c. 41, s. 81U and under Chapter 240 of Town Code (the Planning Board’s Rules and Regulations Governing the Subdivision of Land).

**8.7.19 Findings.** The application for OSRD may be approved, approved with conditions, or denied after the Planning Board determines whether the OSRD better promotes the purposes of this section than would a standard subdivision development, as defined by the Planning Board’s Rules and Regulations Governing the Subdivision of Land. The Planning Board’s findings, including the basis of such findings, shall be stated in the written decision of approval, conditional approval or denial of the application for special permit. The Planning Board shall impose conditions in its decision necessary to ensure compliance with this Section.

**8.7.20 Conditions.** Subdivision approval shall be conditioned to provide that no further division of land which increases the number of lots may occur without prior written approval from the Planning Board. Subdivision approval shall also be conditioned to provide that no alteration of protected open space may occur without prior written approval from the Planning Board.

**8.7.21 Minor Modifications.** Alteration of lot lines or layout of ways or grading shall require approval of the Planning Board, which may be granted without a formal special permit application, and shall comply with the requirements of this OSRD bylaw and the Rules and Regulations Governing the Subdivision of Land.

## **8.8 ASSISTED LIVING RESIDENCE**

**8.8.1 General.** A residential facility occupied primarily by persons 55 years of age and older including their spouses or surviving spouses, and including rooms occupied by resident staff personnel. An assisted living residence as defined in this bylaw, can include the full range of nursing care from total to only partial assistance. Such assisted elderly housing facility providing shared food preparation services but also allowing limited residential unit food preparation areas and providing common recreational, laundry, social, medical and service facilities for the exclusive use of residents of the assisted elderly housing.

**8.8.2 Special Permit.** Assisted living residences may be allowed by Special Permit from the Planning Board, or in the case of a PURD as set forth in Section 8.5 from the Board of Selectmen, if the following conditions are met:

1. The scale of the proposal does not detract from the residential character of the neighborhood.
2. The architecture of buildings is residential in character, particularly providing gabled roofs, predominately wood siding, an articulated footprint and varied facade. Alternate architectural styles or materials can be considered if appropriate to the site and not out of character with the neighborhood.
3. Public or private roads which lead to the property are of adequate design, width, and condition to handle proposed traffic.
4. Proposed traffic will not severely change the residential character of the neighborhood.
5. The Board of Health confirms that the assisted living residence can be accommodated with respect to onsite water, onsite septic disposal and any other standards of the Board of Health. In the case of public water or public sewer, the water district or Town sewer department, respectively, must certify in writing that the assisted living residence can be accommodated.
6. Parking areas are screened from adjacent streets and properties, and have additional landscaped areas within the parking area to reduce the impact of large paved areas.

**8.8.3 Signs.** Signs shall be limited to one identification sign no more than 6 square feet in area except for traffic/parking/pedestrian regulation signs as required by the Planning Board. A second identification sign may be allowed if the Planning Board determines it is needed.

**8.8.4 Lighting.** All lighting units shall be located no higher than 14 feet, with lights shielded to direct light downward. Lighting shall not cause glare onto abutting properties.

**8.8.5 Density.** The maximum number of residential units or beds allowed on a site shall be determined by the Planning Board based on such factors as but not limited to, impact on the neighborhood, affordability for residents, quality of life, and provision for adequate open space, recreational facilities, parking, landscaping, and buffers

**8.8.6 Parking.** Off-street parking requirements apply except that if the site plan submitted to the Planning Board meets off-street parking plan submittal requirements, the site plan approved in the Special Permit process shall be the approved off-street parking plan. Parking spaces shall be provided at the rate of one per unit and one for each employee on the largest shift.

**8.8.7 Conditions.** The Planning Board may impose additional restrictions or conditions to maintain the residential character of the neighborhood.

## **8.9 PUBLICLY FINANCED NONPROFIT AGE RESTRICTED HOUSING**

**8.9.1 Special Permit.** The Board of Selectmen may grant a special permit for publicly financed nonprofit age-restricted housing and/or for physically handicapped residents, constructed with financing through Federal Housing and Urban Development (HUD) assistance and/or as authorized under the provisions of G.L Chapter. 121, Sections. 26SS through VV, inclusive, as well as any other applicable sections of the General Laws, all as most recently amended. Said special permit may allow such housing in the zoning districts specified for such use in the Table of Use Regulations.

### **8.9.2 Conditions.**

1. There shall be no more than 60 dwelling units in the project. All units may be in one building.
2. The project shall be served by town water and town sewer.
3. There shall be a minimum of 1,700 square feet of lot area per dwelling unit.
4. In no case shall there be a total lot area of less than 1.5 acres.
5. The lot shall have frontage of not less than 150 feet on a public way.
6. No building shall have a front yard less than 50 feet from any public way, and all buildings shall have minimum rear and side yards as regulated in Section 4.0.
7. There shall be a distance of not less than 40 feet between buildings.
8. All driveways shall be constructed to a standard at least equal to the standards set forth in the Planning Board's Subdivision Regulations, and all public utilities shall be installed in accordance with said Subdivision Regulations.
9. No structure shall exceed 2 1/2 stories or 35 feet in height, except as otherwise provided herein.
10. Within the development, vehicular and pedestrian circulation facilities shall be provided for safe and convenient use in accordance with conventional and accepted site-planning standards and to the satisfaction of the Planning Board.
11. Front yards and all open areas shall be suitably landscaped and maintained with grass, trees, flowers, shrubs and/or walks. Such landscaping shall be specified in detail on the site plan and shall be made a condition of the special permit.
12. The proposed development shall be so located with respect to major thoroughfares and uses outside the development as not to create traffic hazards or congestion. Before

issuance of a special permit by the SPGA, the Chief of Police and the Highway Superintendent shall give their written approval of said location.

13. When filing an application with the SPGA, the applicant shall submit at least six copies of a site plan showing, in addition to all information required by Section 10.4, the general plan and elevations of the buildings, as well as provisions for proposed parking spaces, interior roadways, walkways, drainage and recreational facilities.

14. Such site plan, subject to such amendment thereof as may be required by the Planning Board under the provisions of this Bylaw, shall be made a part of the building permit.

15. All repairs, renovations or construction specified by the applicant in his application shall be completed to the satisfaction of the Inspector of Buildings before an occupancy permit is issued.

16. There shall be separate toilet, bath and kitchen facilities for each dwelling unit.

17. Fire escapes and outside stairways leading to a second or higher story shall, where practicable, be located on the rear of each building, shall not be located on any building wall facing a street and shall comply with Section 4.2.3.

18. Drainage controls as deemed necessary by the SPGA shall be specifically described as an added condition of the special permit.

19. The minimum off-street parking requirements shall be one space for each dwelling unit.

20. No straight wall shall be longer than 100 feet. There shall be an offset of at least 10 feet between straight walls.

## SECTION 9.0 SPECIAL DISTRICTS

### 9.1 FLOOD PLAIN OVERLAY DISTRICT (FPOD)

**9.1.1 Purpose.** The Flood Plain Overlay District (FPOD) has been established to provide that lands in the town subject to seasonal or periodic flooding shall not be used for residential or other purposes in such a manner as to endanger the health or safety of the occupants thereof, or of the public, and to assure the continuation of the natural flow pattern of the watercourses within the town in order to provide adequate and safe floodwater storage capacity to protect persons and property against the hazards of flood inundation. It is further intended to protect, preserve and maintain the water table and water recharge areas within the town so as to preserve present and potential water supplies for the public health and safety of the residents of the town.

**9.1.2 Location.** The general boundaries of the FPOD are shown on the Great Barrington Flood Insurance Rate Map (FIRM), dated July 19, 1982, as Zones A and A-1-30 to indicate the one-hundred-year floodplain. The exact boundaries of the district are defined by the flood profiles contained in the Flood Insurance Study, dated July 19, 1982. The floodway boundaries are delineated on the Great Barrington Flood Boundary and Floodway Maps (FBFM), dated July 19, 1982, and further defined by the floodway data tables contained in the Flood Insurance Study. These two maps, as well as the accompanying study, are incorporated in this Bylaw by reference and are on file with the Town Clerk, Planning Board, Inspector of Buildings and Board of Health.

**9.1.3 Zone A.** Within Zone A, where the one-hundred-year flood elevation is not provided on the FIRM, the developer/applicant shall obtain all existing flood elevation data, and they shall be reviewed by the Planning Board. If the data are sufficiently detailed and accurate, they shall be relied upon to require compliance with this Bylaw and the State Building Code. These two referenced maps and related study cover specifically the Housatonic River, Green River, Williams River and Alford Brook and related wetlands. There are other inland wetlands that are covered and are shown generally on a map prepared by Robert G. Brown & Associates, Inc., and entitled "Delineation and Description of the Green, Williams and Housatonic River Flood Plain and the Inland Wetlands in the Town of Great Barrington, Massachusetts," dated 1974. In cases of conflict between the Robert G. Brown and Associates, Inc., and FIRM and FBFM maps, the latter two maps shall govern. The base (one-hundred-year) flood elevations at any given point between any two successive control points (cross sections) as shown on the floodplain maps have been determined using topographic maps at a scale of 1:4,800, with a contour interval of five feet, this forming the flood boundary shown for the entire length of the Housatonic River, Green River, Williams River and Alford Brook on the series of Flood Boundary and Floodway Maps.

**9.1.4 Special Permit.** Any person desiring to establish any permitted use in a FPOD involving or requiring the erection of new structures and/or alteration or moving of existing structures or dumping, filling, transfer, relocation or excavation of earth materials or storage of materials or

equipment shall submit an application for a special permit to the Board of Selectmen in accordance with the provisions of Section 10.4. Such application shall describe in detail the proposed use of the property and the work to be performed and shall be accompanied by plans as specified therein. In addition to the information required thereby, such plans shall also include boundaries and dimensions of the lot, existing and proposed drainage easements, all existing and proposed fill, existing and proposed sewage disposal facilities, means of access and mean sea-level elevation, with contour separation of two feet or less, of the existing and proposed land surface, cellar floor and first floor.

**9.1.5 Submittals.** The SPGA shall ensure that the applicant provides sufficient information to determine:

1. That the floor level of areas to be occupied by human beings as living or working space shall be at a safe elevation;
2. That furnaces and utilities are protected from the effects of flooding and that the structure will withstand the effects of flooding in accordance with the State Building Code;
3. That the proposed construction, use or change of grade will not obstruct or divert the flood flow, reduce natural water storage or increase stormwater runoff so that water levels on other land are substantially raised or danger from flooding increased;
4. That safe vehicular and pedestrian movement to, over and from the premises is provided in the event of flooding; and
5. That the proposed methods of drainage and sewage disposal are approved by the Board of Health and will not cause pollution or otherwise endanger health in the event of flooding.

**9.1.6 Decision.** The SPGA may issue a special permit in compliance with all applicable provisions of this Bylaw, for establishment or alteration of a permitted use in a FPOD, provided that the SPGA determines the following. Such findings shall be in addition to the findings required by Section 10.4.

1. The use would otherwise be permitted if such land were not, by operation of this section, in the FPOD; and
2. The use of such land for the proposed purpose will not interfere with the general purpose for which such FPODs have been established.

**9.1.7 Conditions.** Special permits issued under this section may be subject to such conditions as the SPGA deems necessary in the interests of the public health, safety and welfare. The burden of proving that the proposed use will not endanger the health and safety of the occupants or the

public shall rest upon the applicant, who shall provide such engineering, ecological and hydrological data as may be required by the SPGA or any state or federal agency.

**9.1.8 Encroachment.** All encroachments, including fill, new construction, substantial improvements to existing structures and other developments in the floodway are prohibited unless certification by a professional engineer registered and licensed in the Commonwealth of Massachusetts is provided by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the one-hundred-year flood. Any encroachment meeting the above standard shall comply with the floodplain requirements of the State Building Code.

**9.1.9 Effect.** Granting of a special permit under this section by the SPGA does not in any way indicate compliance with the provisions of the Wetlands Protection Act, G.L. c. 131, s. 40, which provides, among other things, that no person shall remove, fill, dredge or alter any swamp, creek, river, stream, pond or lake or any land subject to flooding, except with a written permit from the Conservation Commission.

## **9.2 WATER QUALITY PROTECTION OVERLAY DISTRICT (WQPOD)**

**9.2.1 Purpose.** Water Quality Protection Overlay Districts (WQPOD) are established in the Town of Great Barrington for the following purposes:

1. To preserve and protect the lakes, ponds, streams, brooks, rills, marshes, swamps, bogs and other water bodies and watercourses in the town.
2. To protect, preserve and maintain the water supplies and water recharge areas within the town, so as to preserve present and potential sources of groundwater and surface water supply for the public health and safety.
3. To protect the community from the detrimental use and development of land and waters within the watershed protection district.
4. To conserve the watershed areas of the Town of Great Barrington for the health, safety, welfare and enjoyment of its people now and for the future.
5. To promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions, and businesses of the Town of Great Barrington;
6. To preserve and protect existing and potential sources of drinking water supplies;
7. To conserve the natural resources of the Town;

8. To conserve as open space a green belt corridor associated with all waterways to preserve wildlife habitat, help maintain wildlife populations, and encourage passive recreational uses where legally permitted.

**9.2.2 Overlay District.** The WQPOD is an overlay district superimposed on the other zoning districts. This overlay district shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. Uses in the underlying zoning districts that fall within the WQPOD must additionally comply with the requirements of this district. Uses prohibited in the underlying zoning districts shall not be permitted in the WQPOD. In the case of a conflict between two provisions of this section, the more restrictive shall apply.

**9.2.3 Definitions.** For the purposes of this Section, the terms defined in Section 11, "Water Quality Protection Overlay District" shall apply.

**9.2.4 Establishment and Delineation.** For the purposes of this district, there are hereby established within the Town certain WQPODs, consisting of surface water supplies, their watersheds and tributaries, wellheads and their aquifers or recharge areas which are delineated on a map, and the Stream and Lake Protection Zone. This map is at a scale of one inch to 2,000 feet and is entitled "Water Quality Protection District Map, Town of Great Barrington," dated May 15, 2006. This map is hereby made a part of the Zoning Bylaw and is on file in the Office of the Town Clerk.

**9.2.5 District Boundary Disputes.**

1. If the location of the district boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a special permit application to the special permit granting authority (SPGA). Any application for a special permit for this purpose shall be accompanied by adequate documentation.
2. The burden of proof shall be upon the owner(s) of the land to show where the bounds should be located. At the request of the owner(s), the Town may engage a professional engineer, surveyor, hydrologist, geologist, or soil scientist to determine more accurately the boundaries of the district with respect to individual parcels of land, and may charge the owner(s) for the cost of the investigation.
3. The determination of the location and extent of Zone II and Zone B shall be in conformance with the criteria set forth in 310 CMR 22.00 and in the Massachusetts DEP's Guidelines and Policies for Public Water Systems.

**9.2.6 Permitted Uses; Zone A and Zone I.** Only uses related to the operation and maintenance of the public water supply are permitted in the Zone A and Zone I (the Inner Zone) defined in 310 Code of Massachusetts Regulations 22.00.

**9.2.6 Permitted Uses; Other Zones.** The following uses are permitted within the other zones of the WQPOD, provided that all necessary permits, orders, or approvals required by local, state, or federal law are also obtained:

1. Conservation of soil, water, plants, and wildlife;
2. Outdoor recreation, nature study, boating, fishing, and hunting where otherwise legally permitted; no motorized recreational vehicles including, but not limited to, snowmobiles, all-terrain vehicles (ATV's), and dirt bikes, shall be permitted in the Inner Zone;
3. Foot, bicycle and/or horse paths, and bridges (Horse paths are not permitted in Zone A.);
4. Normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
5. Maintenance, repair, and enlargement of any existing structure, subject to other requirements herein;
6. Residential development, subject to other requirements herein;
7. Farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to other requirements herein;
8. Construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels;
9. Underground storage tanks related to the permitted activities are not categorically permitted.

**9.2.7 Prohibited Uses.** The following uses are prohibited within the WQPOD:

1. Landfills and open dumps as defined in 310 CMR 19.006;
2. Automobile graveyards and junkyards, as defined in G.L. c. 140B, s. 1;
3. Landfills receiving only wastewater and/or septage residuals including those approved by the DEP pursuant to G.L. c. 21, ss. 26 through 53; G.L. c. 111, s. 17; G.L. c. 83, ss. 6 and 7, and regulations promulgated thereunder;
4. Facilities that generate, treat, store, or dispose of hazardous waste that are subject to G.L. c. 21C and 310 CMR 30.00, except for:
  - a. Very small quantity generators as defined under 310 CMR 30.000;

- b. Household hazardous waste centers and events operated in accordance with 310 CMR 30.390 (not permitted in Zone A);
  - c. Waste oil retention facilities required by G.L. c. 21, s. 52A (not permitted in Zone A);
- 5. Water remediation treatment works approved by DEP for the treatment of contaminated groundwater or surface water;
- 6. Petroleum, fuel oil, and heating oil bulk stations and terminals, including, but not limited to, those listed under Standard Industrial Classification (SIC) Codes 5983 and 5171 as established by the United States Office of Management and Budget, not including liquefied petroleum gas;
- 7. Storage of liquid hazardous materials, as defined in G.L. c. 21E, and/or liquid petroleum products unless such storage is:
  - a. Above ground level; and
  - b. On an impervious surface; and
  - c. Either: In container(s) or aboveground tank(s) within a building; or: Outdoors in covered container(s) or aboveground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater.
- 8. Storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
- 9. Storage of sodium chloride, calcium chloride, chemically treated abrasives or other deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate (Uncovered storage of salt in water supply areas is forbidden by G.L. c. 85, s. 7A.);
- 10. Storage of animal manure unless covered or contained within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
- 11. Earth removal, consisting of the removal of soil, loam, sand, gravel, or any other earth material to within four feet of historical high groundwater as determined from monitoring wells and historical water table fluctuation data compiled by the United States Geological Survey, except for excavations for building foundations, roads, or utility works; all sand and gravel excavation operations are prohibited in Zone A;

12. Discharge to the ground of nonsanitary wastewater including industrial and commercial process wastewater, except:
  - a. The replacement or repair of an existing treatment works that will not result in a design capacity greater than the design capacity of the existing treatment works;
  - b. Treatment works approved by the DEP designed for the treatment of contaminated ground- or surface water and operating in compliance with 314 CMR 5.05(3) or 5.05(13); and
  - c. Publicly owned treatment works.
13. Stockpiling and disposal of snow and ice containing deicing chemicals brought in from outside the District;
14. Storage of commercial fertilizers and soil conditioners, as defined in G.L. c. 128, s. 64, or pesticides, as defined in G.L. c. 132B, s. 2, unless such storage is within a structure, with an impermeable cover and an Environmental Protection Agency-approved liner, designed to prevent the generation and escape of contaminated runoff or leachate; in no case shall such structure be located within 400 feet of a surface drinking water source or public water system wellhead;
15. On-site subsurface sewage disposal systems subject to 310 CMR 15, other than replacement systems, that discharge more than 440 gallons per acre per day.

**9.2.8 Prohibited Uses; Stream and Lake Protection Zone.** In addition to the above prohibited uses, the following uses are prohibited in the Stream and Lake Protection Zone:

1. New structures or expansion of existing structures by more than 10% of the existing gross floor area. For exceptions see 9.2.13.1.
2. Leaching fields for new, nonreplacement, on-site subsurface sewage disposal systems. For exceptions see 9.2.13.1.

**9.2.9 Prohibited Uses; Inner Zone.** The following uses may be permitted in the Outer Zone, but are expressly prohibited in the Inner Zone:

1. New or expanded underground storage tanks (310 CMR 22.20B);
2. Motor vehicle repair operations;
3. Cemeteries (human and animal) and mausoleums;
4. Solid waste combustion facilities or handling facilities as defined in 310 CMR 16.00;

5. Land uses that result in the rendering impervious of more than 15%, or more than 20% with artificial recharge, or 2,500 square feet of any lot, whichever is greater; and
6. Commercial outdoor washing of vehicles, commercial car washes.

**9.2.10 Design Requirements.** Where premises being developed lie partially outside of the Water Quality Protection District, potential pollution sources, such as the leaching field of an on-site subsurface sewage disposal system, shall be located outside of the district, unless the applicant demonstrates to the satisfaction of the Board of Health that such location is not feasible.

**9.2.11 Nonconforming Uses.** Continuation of a legally preexisting nonconforming use shall be allowed, provided that:

1. The nonconformity shall not be increased or expanded.
2. The replacement of any underground fuel storage tanks shall conform to the following:
  - a. The total capacity of the replaced tanks shall not be exceeded.
  - b. The replacement tanks shall be of noncorroding, double-walled construction and shall conform to all applicable state and federal regulations in effect at the time of replacement.
  - c. A leak-detection system shall be installed in the void between the walls of the tank. All records of leak tests and/or alarms shall be kept on site and shall be available for inspection by the Building Inspector, Fire Department, Board of Health or any of their authorized agents.
  - d. The replacement tanks and piping shall be installed within a secondary containment system that shall conform to all applicable state and federal regulations in effect at the time of the installation.
  - e. All inventory records and tank testing records maintained for fuel oil and chemical storage tanks shall be made available to the Building Inspector, Fire Department, and Board of Health upon request during normal business hours.
  - f. Any application, along with drawings submitted with the application, for a Town permit for the installation, removal, or replacement of underground storage tanks within the Water Quality Protection District shall be forwarded to the Planning Board. The Planning Board shall review the application within 21 days of receipt for conformity with this section. If the Planning Board finds the application does not conform to the requirements of this section, it shall inform the issuing authority who shall withhold such permit until the Planning Board has

confirmed in writing that the application conforms to the requirements of this section.

g. Any and all state and federal requirements and permits shall be met and obtained as required, including, specifically, those established or required by 527 CMR 9.00 (Tanks and Containers, Board of Fire Prevention Regulations).

3. The continued operation of a legally preexisting gravel extraction bed shall conform to the following:

a. Excavation shall remain at least four feet above the mean high-water table, as established by data compiled by the United States Geological Survey.

b. The open bed area shall not exceed the existing bed at the effective date of this bylaw or two acres, whichever is less.

c. All areas no longer in active use for a period of one year shall be closed in the following manner:

1. The area shall be graded smooth with a slope not to exceed 10%, raked, and all stones greater than five inches shall be removed.

2. Topsoil shall be added to a depth of at least three inches after compaction.

3. Topsoil shall be compacted, by rolling, to a uniform density.

4. The area shall be seeded, in the recommended manner, with a fast-growing ground cover seed mix recommended by the United States Soil Conservation Service. Reseeding shall be done monthly until the ground cover is fully established.

**9.2.12 Uses and Activities Requiring a Special Permit.** The following uses and activities are permitted only upon the issuance of a special permit by the Board of Selectmen (SPGA) under such conditions as it may require:

1. Enlargement or alteration of existing uses that do not conform to the WQPOD;

2. Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, permitted in the underlying zoning district (except as prohibited hereunder). Such activities shall require a special permit to prevent contamination of groundwater;

3. Any use that will render impervious more than 15% of any lot or parcel or 2,500 square feet, whichever is greater. A system for groundwater recharge must be provided

which does not degrade groundwater quality. For nonresidential uses, recharge shall be by stormwater infiltration basins or similar system covered with natural vegetation, and dry wells shall be used only where other methods are infeasible. For all nonresidential uses, all such basins and wells shall be preceded by oil, grease, and sediment traps to facilitate removal of contamination. Any and all recharge areas shall be permanently maintained in full working order by the owner. Special permits for nonresidential uses as described in this subsection are not allowed in the Surface Water Source Protection Zones A and B.

### **9.2.13 Procedures for Issuance of Special Permit.**

1. The special permit granting authority (SPGA) under this section shall be the Board of Selectmen. Such special permit shall be granted if the SPGA determines, in conjunction with the Board of Health, the Conservation Commission, the Town Engineer/Department of Public Works, and the Planning Board that the intent of this section, as well as its specific criteria, are met. The SPGA shall not grant a special permit under this section unless the petitioner's application materials include, in the SPGA's opinion, sufficiently detailed, definite, and credible information to support positive findings in relation to the standards given in this section. The SPGA shall document the basis for any departures from the recommendations of the other Town boards or agencies in its decision. The SPGA may grant an exemption from the provisions of 9.2.8 numbers 1. and 2. if it determines that there is no practicable and substantially equivalent economic alternative and that there shall be no significant adverse impact.
2. Upon receipt of the special permit application, the SPGA shall transmit one copy to the Planning Board, Board of Health, the Conservation Commission, Town Engineer/Department of Public Works, and Fire District for their written recommendations. Failure to respond in writing within 35 days of receipt shall indicate approval or no desire to comment by the agency. The necessary number of copies of the application shall be furnished by the applicant.
3. The SPGA may grant the required special permit only upon finding that the proposed use meets the following standards, those specified in 9.2.7, 9.2.8, and 9.2.9 and any regulations or guidelines adopted by the SPGA. The proposed use must:
  - a. In no way, during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Water Quality Protection District; and
  - b. Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.

4. All special permit applications shall comply with Section 10.4 and the requirements of this Section. In the case of conflict between two portions of this Bylaw, the more stringent requirements shall apply.

5. The applicant shall file at least seven copies of a site plan and attachments. The site plan shall be drawn at a proper scale as determined by the SPGA and be stamped by a Massachusetts professional engineer. All additional submittals shall be prepared by qualified professionals. The site plan and its attachments shall at a minimum include the following information where pertinent:

a. A complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;

b. For those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief, and Board of Health. The plan shall include:

1. Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage, or vandalism, including spill containment and clean-up procedures;

2. Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;

3. Evidence of compliance with the regulations under the Massachusetts Hazardous Waste Management Act, 310 CMR 30.000, including obtaining an EPA identification number from the DEP.

4. Proposed down-gradient location(s) for groundwater monitoring well(s), should the SPGA deem the activity a potential groundwater threat.

**9.2.14 Regulations.** The SPGA may adopt regulations to govern design features of uses and activities. Such regulations shall be consistent with the subdivision control regulations adopted by the Planning Board.

**9.2.15 Enforcement.** Written notice of any violations of this bylaw shall be given by the Building Inspector to the responsible person as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation, and may also identify the actions necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance.

1. A copy of such notice shall be submitted to the Board of Selectmen, Planning Board, Board of Health, Conservation Commission, Town Engineer, Department of Public Works, and Fire District. The cost of containment, clean-up, or other action of compliance shall be borne by the owner and operator of the premises.

### **9.3 WIRELESS TELECOMMUNICATION OVERLAY DISTRICT (WTOD)**

**9.3.1 Purposes.** The purposes of the WTOD are to:

1. Preserve the character and appearance of the Town while simultaneously allowing adequate personal wireless services to be developed.
2. Protect the scenic, historic, environmental and natural or man-made resources of the community.
3. Provide standards and requirements for planning, regulation, placement, construction, monitoring, design, modification and removal of personal wireless service facilities.
4. Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify personal wireless service facilities.
5. Preserve property values.
6. Minimize the total number and height of towers throughout the community.
7. Locate towers so that they do not have negative impacts such as, but not limited to, attractive nuisance, noise and falling objects, on the general safety, welfare and quality of life of the community.
8. Require owners of towers and personal wireless service facilities to configure them so as to minimize and mitigate the adverse visual impact of the towers and facilities where possible.
9. Require tower sharing and the clustering of personal wireless service facilities where possible.

**9.3.2 Overlay District.** The WTOD is an overlay district mapped over other districts. It modifies and where there is inconsistency, supersedes the regulations of those other districts. Except as so modified or superseded, the regulations of the underlying districts remain in effect.

**9.3.3 Location.** The WTOD includes the properties listed below. These properties are included by reason of their potential to provide technically feasible and accessible locations for the siting

of wireless telecommunications facilities that will provide adequate wireless telecommunications services to the Town of Great Barrington. The WTOD is defined, delineated and mapped on the set of eight maps entitled "Wireless Telecommunications Overlay District, s. 171-9D(3) WTOD, Town of Great Barrington, MA" and incorporated by reference herein. Also incorporated by reference herein are the plots of coverage entitled "Radial Plots from Proposed Overlay District" which provide engineering data to support the choices of properties for the WTOD, and showing that these sites will provide adequate coverage for the FCC licensed wireless telecommunications providers who are doing business in Great Barrington.

Map Key	Location	Assessor's Map #	Parcel #
1	East of Long Pond Road	34	9
1	East of Long Pond Road	34	12
1	East of Long Pond Road	34	12A
1	East of Long Pond Road	26	85.2
2	Transfer Station	35	21
3	WSBS Tower	29	5
4	Butternut Tower	42	24
5.2	Berkshire Heights Area	23	3
5.3	Berkshire Heights Area	31	57 and 58
6	Vossberg Hill	30	112A and 112B
7	VFW	30	48

**9.3.4 Consistency with Federal Law.** These regulations are intended to be consistent with the Telecommunications Act of 1996 in that they do not prohibit or have the effect of prohibiting the provision of personal wireless services; they are not intended to be used to unreasonably discriminate among providers of functionally equivalent services; 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.

1. Any decision by the SPGA to deny an application for a special permit under this Bylaw shall be in conformance with Sec. 332 (47 U.S.C. §332) (7)(b)(iii) of the Act, in that it shall be in writing and supported by substantial evidence contained in a written record.

**9.3.5 Definitions.** For the purposes of this Section, the terms defined in Section 11, "Wireless Telecommunication Overlay District" shall apply.

**9.3.6 Applicability.** Any use of lands within the WTOD for the purposes of placement, construction, modification or removal of personal wireless telecommunications services, towers or antennas shall be subject to these requirements.

1. Exempted Wireless Telecommunications Uses. This Section specifically exempts the following wireless telecommunications facilities: police, fire, ambulance and other emergency dispatch; amateur (ham) radio; citizens band radio; low-power FM radio stations, any existing commercial radio tower, radio dispatch services for local businesses. No personal wireless service facility shall be considered exempt from this Bylaw for any reason, whether or not said facility is proposed to share a tower or other structure with such exempt uses.

**9.3.7 Provision of Independent Consultants.** Upon submission of an application for a special permit under this Section, the SPGA may hire independent consultants whose services shall be paid for by the applicant(s) under the terms of Selectmen's Policies and Procedures in accordance with Chapter 44, Section 53G, of the Massachusetts General Laws. These consultants shall each be qualified professionals with a record of service to municipalities in one of the following fields: a) telecommunications engineering, b) structural engineering, c) monitoring of electromagnetic fields and, if determined necessary by the SPGA, d) other consultants.

1. In the event the SPGA elects to hire an independent consultant, the independent consultant(s) shall be selected after consultation with the Town Manager, Planning Board, the Board of Health and the Conservation Commission, which may propose a list of qualified candidates.

**9.3.8 Application Requirements; Tower or Structure and Initial Facility.** No personal wireless tower or structure shall be erected, constructed, modified or installed, nor shall the initial personal wireless service facility be mounted upon any such personal wireless tower or structure without first obtaining a special permit from the SPGA. Applications shall be submitted using the Long Form Application (SP-2), in accordance with the requirements of Section 10.4. A special permit is required of the first personal wireless service facility to be mounted on the personal wireless tower or structure so that the Town can have the opportunity to assess the impacts of the new facility in accordance with the purposes of this Bylaw. The following information must also be submitted.

1. Copies of all submittals and showings pertaining to: FCC licensing; environmental impact statements; FAA notice of construction or alteration; aeronautical studies; and all data, assumptions and calculations relating to service coverage and power levels regardless of whether categorical exemption from routine environmental evaluation under the FCC rules is claimed.

2. The exact legal name, address or principal place of business and phone number of the applicant. If any applicant is not a natural person, it shall also give the state under which it was created or organized.

3. The name, title, address and phone number of the person to whom correspondence or communications in regard to the application are to be sent. Notice, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant.
4. Name, address, phone number and written consent to apply for this permit, of the owner of the property on which the proposed tower shall be located, or of the owner(s) of the tower or structure on which the proposed facility shall be located.
5. Details of proposed method of financial surety as required herein.
6. Any applicant for a permit or a special permit under this Bylaw shall provide a written commitment that if the applicant receives a permit or special permit under this Bylaw, that the applicant shall abide by the requirements herein as they may apply.
7. The applicant shall provide a written, irrevocable commitment valid for the duration of the existence of the personal wireless tower or structure, to rent or lease available space for collocation on the tower or structure at fair-market prices and terms, without discrimination to other personal wireless service providers.
8. If an applicant for a special permit for a personal wireless tower or structure is not simultaneously applying for a personal wireless service facilities special permit, it shall provide a copy of its existing lease/contract with a personal wireless service provider showing that the provider is legally obligated to locate its personal wireless service facility on the personal wireless tower or structure in question. A special permit under this section shall not be granted for a tower to be built on speculation (without a contract or lease with a personal wireless service provider).

**9.3.9 Required Plans.** The following required plans and engineering plans shall also be submitted. Such plans shall be prepared, stamped and signed by a professional engineer licensed to practice in Massachusetts. (NOTE: Survey plans should also be stamped and signed by a professional land surveyor registered in Massachusetts). Plans shall be on twenty-four-inch by thirty-six-inch sheets, on as many sheets as necessary, and at scales which are no smaller (i.e. no less precise) than listed below. Each plan sheet shall have a title block indicating the project title, sheet title, sheet number, date, revision dates, scale(s), and original seal and signature of the P.E. and other professionals who prepared the plan. The plan shall show the following information:

1. Location map. Copy of a portion of the most recent U.S.G.S. Quadrangle map, at a scale of 1:25,000, and showing the area within at least two miles from the proposed tower site. Indicate the tower or structure location and the exact latitude and longitude (degrees, minutes and seconds).
2. Vicinity map. At a scale of no less than one inch equals 100 feet (1:1,200) with contour intervals no greater than 10 feet (three meters) showing the entire vicinity within

a one-thousand-foot radius of the tower or structure site, and including the topography, public and private roads and driveways, buildings and structures, bodies of water, wetlands, landscape features, historic sites, habitats for endangered species.

3. Abutter's map. Indicate the property lines of the proposed tower site parcel and all abutters within 300 feet of the tower site parcel (from assessors maps or available surveys). Include the names of all abutters within 300 feet of the tower site parcel. Indicate any access easement or right-of-way needed for access from a public way to the tower, and the names of all abutters or property owners along the access easement or who have deeded rights to the easement.

4. Proposed site plans: Proposed facility site layout, grading and utilities at a scale of not less than one inch equals 20 feet and with topography drawn with a minimum of two-foot contour intervals.

5. Proposed personal wireless tower or structure location and any appurtenances, including supports and guy wires, if any, and any accessory building (communication equipment shelter or other). Indicate property boundaries and setback distances to the base(s) of the tower and to the nearest corners of each of the appurtenant structures to those boundaries, and dimensions of all proposed improvements.

6. Proposed utilities, including distance from source of power, sizes of service available and required, locations of any proposed utility or communication lines, and whether underground or above ground.

7. Limits of areas where vegetation is to be cleared or altered, and justification for any such clearing or alteration.

8. Locations of any wetlands or streams and location and description of any direct or indirect wetlands alteration proposed.

9. Detailed plans for drainage of surface and/or subsurface water; plans to control erosion and sedimentation, both during construction and as a permanent measure.

10. Plans indicating locations and specifics of proposed screening, landscaping, ground cover, fencing, etc; any exterior lighting or signs.

11. Plans of proposed access driveway or roadway and parking area at the tower site. Include grading, drainage, and traveled width. Include a cross section of the access drive indicating the width, depth of gravel, paving or surface materials. Include a road profile of the proposed access driveway or road.

12. Proposed personal wireless tower or structure and appurtenances at a scale of not less than one inch equals 10 feet.

13. An elevation of the proposed personal wireless tower or structure and any guy wires or supports. Show all proposed antennas, including their location on the personal wireless tower or structure.
14. Detail proposed exterior finish of the personal wireless tower or structure.
15. A professional engineer's written description of the proposed tower's structure or of the structure proposed for the mounting of personal wireless facilities and its capacity to support additional antennas or other communications facilities at different heights and the ability of the personal wireless tower or structure to be shortened or added to in the future to adapt to changing communications conditions or demands.
16. Proposed antennas.
17. Number of antennas and repeaters, as well as the exact locations of antenna(s) and of all repeaters (if any) located on a map as well as by degrees, minutes and seconds of latitude and longitude.
18. Mounting locations on personal wireless tower or structure, including height above ground.
19. Antenna type(s), manufacturer(s), model number(s).
20. For each antenna, the antenna gain and antenna radiation pattern.
21. Number of channels per antenna, projected and maximum.
22. Power output, in normal use and at maximum output for each antenna and all antennas as an aggregate.
23. Output frequency of the transmitter(s).
24. Proposed communications equipment shelter.
25. Floor plans, elevations and cross sections at a scale of no smaller than 1/4 inch equals one foot (1:48) of any proposed appurtenant structure.
26. Representative elevation views, indicating the roof, facades, doors and other exterior appearance and materials.
27. Sight lines.
28. A plan map of a circle of two miles radius of the facility site on which any visibility of the proposed tower from a public way shall be indicated. The locations from which the

photographic simulation or profile drawing required below were taken shall also be indicated upon this plan.

29. If the proposed personal wireless tower or structure is visible from a public way, then the applicant shall submit either a photo simulation of the proposed tower or structure from one or more locations along the public way, or a profile drawing which shall utilize the U.S.G.S. Quadrangle map, at a scale of 1:25,000, and submit profile drawings on a horizontal scale of one inch equals 400 feet with a vertical scale of one inch equals 40 feet. Trees shall be shown at existing heights and at projected heights in 10 years.

30. Any applicant for a permit or a special permit under this Bylaw shall provide a set of radial plot maps from each location in the WTOD showing the projected coverage from each location. The purpose of this provision is to identify any potential gaps in wireless service and to assist the Town in planning for future wireless communication coverage.

**9.3.10 Balloon Test.** Within 35 days of submitting an application, the applicant shall arrange to fly, or raise upon a temporary mast, a four-foot diameter brightly colored balloon at the maximum height and at the location of the proposed tower. The dates (including a second date, in case of poor visibility on the initial date), times and location of this balloon test shall be advertised, by the applicant at seven and 14 days in advance of the first test date in a newspaper with a general circulation in the Town of Great Barrington. The applicant shall inform the SPGA and the Planning Board, in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least eight consecutive daylight hours for no less than five days within a fourteen-day period within the dates chosen. Visibility and weather conditions must be adequate for interested citizens to be able to clearly see the balloon test, or further tests may be required by the SPGA.

**9.3.11 Application Requirements for Facilities on Previously Permitted Tower or Structure.** Where a personal wireless tower or structure has received a special permit under this Bylaw and at least one personal wireless service provider (which has obtained a special permit under this section) is providing personal wireless services from the personal wireless tower or structure, and the facility remains in full compliance with the terms and conditions of this Bylaw and the special permit, then any other provider of personal wireless services may place a personal wireless service facility at that personal wireless tower or structure without obtaining a special permit. The provider shall provide the following information to the Board of Selectmen, Planning Board and Building Inspector in order to obtain a building permit to allow the mounting of its equipment at the site, and must agree in writing to comply with the conditions set forth in this Section. The Board of Selectmen and the Planning Board have 15 days to review that information and provide comments and concerns to the Building Inspector. The Town may require the provider to pay for the Town to hire an independent consultant as set forth herein.

1. All information set forth in Sections 9.3.8.1 - 9.3.8.6, 9.3.9 and 9.3.9.16-23.
2. Applicant shall comply with the terms of Section 6.1 where applicable.

### **9.3.12 General Requirements.**

1. New towers shall be set at least one time the height of the tower, plus 50 feet from any boundaries of the WTOD site within which the tower is located and from any dwelling unit within the WTOD. A personal wireless tower or structure shall comply with the setback requirements set forth for the applicable district.
2. No personal wireless tower or structure or personal wireless service facility shall be located any closer than 500 feet to any dwelling unit located outside the WTOD in existence at the time of installation of the personal wireless tower or structure or personal wireless service facility.
3. If the personal wireless tower or structure facility or tower site is in a wooded area, a vegetated buffer strip of undisturbed trees shall be retained for at least 50 feet in depth around the entire perimeter except where the access drive is located. The applicant may, at the discretion of the SPGA, be required to obtain a financial surety to cover the cost of the remediation of any damage to the landscape which occurs during the clearing of the site.
4. Fencing and signs. The area around the personal wireless tower or structure and communication equipment shelter(s) shall be completely fenced for security to a height of six feet and gated. Use of razor wire is not permitted. A sign no greater than two square feet indicating the name of the facility owner(s) and a twenty-four-hour emergency telephone number shall be posted adjacent to the entry gate. In addition, "no trespassing" or other warning signs may be posted on the fence.
5. Communication equipment shelters and accessory buildings shall be designed to be architecturally similar and compatible with each other, and shall be no more than 15 feet high. The buildings shall be used only for the housing of equipment related to this particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building.
6. New towers shall not exceed 150 feet, not including whip antennas or lightning rods, subject to a maximum future expansion of 10% by approval of the SPGA to eliminate the need for another tower in the immediate area.
7. Tower finish. New tower(s) shall have a galvanized finish unless otherwise required. The SPGA may require the tower(s) to be painted or otherwise camouflaged to minimize the adverse visual impact. The SPGA may also require personal wireless service facilities and repeaters to be painted or otherwise camouflaged to minimize the adverse visual impact.
8. Personal wireless towers or structures must be of a type which will maximize potential sharing. The applicant must demonstrate the future utility of such personal wireless tower or structure for expansion of service for the applicant and other future applicants.

9. The use of repeaters to assure adequate coverage, or to fill holes within areas of otherwise adequate coverage, while minimizing the number of required towers is permitted and encouraged. An applicant who has received a personal wireless service facility special permit under this Bylaw, may, with at least 30 days written notice to the SPGA, Planning Board, the Board of Health, Conservation Commission, Building Inspector and Town Clerk, install one or more additional repeaters by right. Site plan review before the Planning Board shall be required and any conditions or recommendations proposed by the Planning Board shall become conditions of the building permit. The Planning Board shall publish written notice of the public meeting date at least 14 days in advance. Applicants shall detail the number, location, power output, and coverage of any proposed repeaters in their systems and provide engineering data to justify their use.

10. Commercial advertising shall not be allowed on any antenna, tower, or accessory building or communication equipment shelter.

11. Unless required by the Federal Aviation Administration no night lighting of towers, or the personal wireless service facility, is permitted except for manually operated emergency lights for use when operating personnel are on site.

12. No tower or personal wireless service facility that would be classified as a hazard to air navigation, as defined by the Federal Aviation regulations (Title 14 CFR), is permitted.

13. There shall be no teleport(s) within the Town of Great Barrington.

14. Each personal wireless tower or structure or personal wireless service facility shall be located within the WTOD so as to provide adequate coverage and adequate capacity with the least number of towers and antennas which is technically and economically feasible.

**9.3.13 Appropriate Siting within the WTOD.** Towers and personal wireless service facilities shall be located so as to minimize the following potential impacts:

1. Visual/aesthetic. Towers shall, when possible, be sited off ridgelines, and where their visual impact is less detrimental to highly rated scenic areas.

2. Diminution of residential property values. Siting shall be in as low population density areas as possible.

3. Safety, in cases of structural failure and attractive nuisance.

4. Safety from excessive electromagnetic radiation, in case the tower or personal wireless service facility is found to exceed the FCC guidelines.

**9.3.14 Preferences.** The following locations are ranked in order of preference:

1. Shared use of existing towers shall be encouraged.
2. Clustering of towers: Applications for towers adjacent to existing towers shall be encouraged, provided that the existing tower(s) are already fully utilized.
3. The use of municipal lands where appropriate shall be encouraged.
4. The use of repeaters either within or outside the WTOD to provide adequate coverage without requiring new tower(s) shall be encouraged.

**9.3.15 Evaluation by Independent Consultants and Others.** Upon submission of a complete application for a special permit under this Bylaw, the SPGA shall provide its independent consultant(s), if any, with the full application for their analysis and review.

1. Applicants for any special permit under this Bylaw shall obtain permission from the owner(s) of the proposed property(s) or facilities site(s) for the Town's independent consultant(s), to conduct any necessary site visit(s).
2. The SPGA may request input from the Chiefs (or their designees) of Fire, Police and other emergency services regarding the adequacy for emergency access of the planned drive or roadway to the site.

**9.3.16 Approval Criteria.** In acting on the special permit application, the SPGA shall proceed in accordance with the procedures and timelines established for special permits in Section 10.4. In addition to the findings required by Section 10.4, the SPGA shall, in consultation with the independent consultant(s), make all the applicable findings before granting the special permit, as follows:

1. That the applicant has agreed to rent or lease available space on the personal wireless tower or structure, under the terms of a fair-market lease, without discrimination to other personal wireless service providers;
2. That proposed personal wireless tower or structure or personal wireless service facility will not have an undue adverse impact on historic resources, scenic views, residential property values, natural or man-made resources;
3. That the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities; and
4. That the proposal shall comply with OET Bulletin 65 regarding emissions of electromagnetic radiation and that the evaluation protocols set forth in this Bylaw are in place and shall be paid for by the applicant; and

**9.3.17 Evaluation of Compliance; Inspection.** After the granting of a special permit and before the applicant's personal wireless service facilities begin transmission, the applicant shall provide, or may pay for an independent consultant, hired by the Town, to provide an evaluation of the existing radio frequency radiation at and around the proposed facility site and/or any repeater locations to be utilized for applicant's personal wireless service facility, by using OET Bulletin 65 protocols. A report of the evaluation shall be prepared and submitted to the Board of Selectmen, the Planning Board, the Board of Health, the Town Engineer, the Building Inspector and the Town Clerk.

**9.3.18 Ongoing Evaluation of Conditions.** After transmission begins, the owner(s) of any personal wireless service facility(s) located on any facility site shall provide, or may pay for an independent consultant, hired by the Town, to provide ongoing assessment and evaluation of the EMF radiation emitted from said site, and to report results of said evaluation, as follows:

1. There shall be routine annual assessment of RF emissions by the applicant or by an independent consultant using either actual field measurement of radiation, or by utilizing the OET Bulletin 65 protocol. This assessment shall evaluate levels of RF emissions from the personal wireless service facility site's primary antennas as well as from repeaters (if any). A report of the monitoring results shall be prepared by the independent consultant and submitted to the Board of Selectmen, the Planning Board, the Board of Health, the Town Engineer, the Building inspector and the Town Clerk.
2. Any major modification of existing personal wireless service facility, or the activation of any additional permitted channels, shall require new evaluation.

**9.3.19 Excessive Emissions.** Should the evaluation of a personal wireless service facility site reveal that the site exceeds the levels allowed under OET Bulletin 65, then the owner(s) of all facilities utilizing that site shall be so notified. The owner(s) shall submit to the SPGA and the Building Inspector a plan for reduction of emissions to a level that complies with OET Bulletin 65 within 10 business days of notification of noncompliance. That plan shall reduce emissions to the standard within 15 days of initial notification of noncompliance. Failure to accomplish this reduction of emission within 15 business days of initial notification of noncompliance shall be a violation of the special permit and subject to penalties and fines as specified in Section 10.1. Such fines shall be payable by the owner(s) of the facilities with antennas on the facility site, until compliance is achieved.

**9.3.20 Structural Inspection.** Tower owner(s) shall provide inspection reports from a professional engineer assessing the structural integrity and safety of the tower(s) at intervals of three years from initial certificate of occupancy for guyed towers and five years for monopoles and nonguyed lattice towers. The inspection report shall be submitted to the Board of Selectmen, the Town Engineer, the Building Inspector, and the Town Clerk. Any major modification of an existing facility which includes changes to tower dimensions may require new structural inspection.

**9.3.21 Unsafe Structure.** Should the inspection of any tower reveal any structural defect(s) which render(s) that tower unsafe, the following actions must be taken. Within 10 business days of notification of unsafe structure, the owner(s) of the tower shall submit a plan to remediate the structural defect(s). This plan shall be initiated within 10 days of the submission of the remediation plan, and completed as soon as reasonably possible. Failure to accomplish this remediation of structural defect(s) within 10 business days of initial notification shall be a violation of the special permit and subject to penalties and fines as specified in Section 10.1. Such fines shall be payable by the owner(s) of the tower, until compliance is achieved.

**9.3.22 Removal Requirements.** Any personal wireless service facility which ceases to operate for a period of one year shall be removed. "Cease to operate" is defined as not performing the normal functions associated with the personal wireless service facility and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the personal wireless facility site shall be remediated such that all personal wireless service facility improvements which have ceased to operate are removed. If all personal wireless service facilities on a tower have ceased to operate, the tower shall also be removed, and the site shall be revegetated. Existing trees shall only be removed if necessary to complete the required removal. The applicant shall, as a condition of the special permit, provide a financial surety, or other form of financial guarantee payable to the Town of Great Barrington and acceptable to the SPGA, to cover the cost of removal of the personal wireless service tower or personal wireless service facility and the remediation of the landscape, should the personal wireless service tower or personal wireless service facility cease to operate.

**9.3.23 Fees and Insurance.**

1. Each personal wireless tower or structure or personal wireless service facility shall be insured by the owner(s) against damage to persons or property. The owner(s) shall provide a certificate of insurance to the Selectmen's office on an annual basis.
2. A schedule of fees for towers and personal wireless service facilities permitting and renewal, any monitoring of emissions and inspection of structures, and any other fees shall be established by the SPGA as provided for in Section 10.4. This schedule may be amended from time to time.

**9.4 DOWNTOWN MIXED-USE B3 DISTRICT**

**9.4.1 Purpose.** The Downtown Mixed-Use B3 District is a transitional area between the downtown business core and the residential neighborhoods. It is designed to protect the traditional character of these areas and to assist in revitalizing, preserving, and expanding the character of the traditional downtown core. The district is designed to enhance the downtown by providing a pleasing mix of land uses that work together and result in a lively, prosperous town center, that serves as an attractive place to live, work, shop, and recreate. Mixed uses may occur vertically or horizontally. Development and redevelopment in the district is intended to respect the traditional scale, massing, and character of the downtown. The district is intended to foster a

positive pedestrian environment with active pedestrian amenities. Specific objectives of the Downtown Mixed-Use District are to:

1. Allow for different types of compatible land uses close together or in the same building to encourage pedestrian and public transit travel and reduce the use of personal automobiles;
2. Encourage infill and redevelopment of commercial, residential, and mixed-use development while preserving and enhancing the overall character of the district;
3. Allow flexibility in development standards in recognition of the challenge of developing small scale mixed-use buildings;
4. Encourage shared parking to promote a compact walkable town center, maximize pedestrian safety, and minimize the number of curb cuts.
5. Maintain or increase the supply of affordable dwelling units.

**9.4.2 Location.** The Downtown Mixed-Use B-3 District is shown on a map entitled "Proposed B3 District," which is hereby incorporated into the Zoning Bylaw, and includes the following land as shown on the 2006 Great Barrington Assessors' Maps:

Map 19	Parcels 118, 119, 120, 121, 127, 128, 130, 135A, 136, 137, 138, 138A, and 139
Map 20	Parcels 2, 5, 8, 8A, 12, 12A, 13, 14, 15, 16, 17, and 61

**9.4.3 Definitions.** For the purposes of this Section, the terms defined in Section 11, "Downtown Mixed Use B3 District" shall apply.

**9.4.4 Permitted Uses.** Permitted uses in the Downtown Mixed-Use B3 District are enumerated in Section 3.1.4, the Table of Use Regulations. The permitted uses are intended to promote mixed use and compatibility between residential and nonresidential uses.

**9.4.5 Dimensional Requirements.** Dimensional requirements in the Downtown Mixed-Use B3 District shall be as set forth in Section 4.0. The dimensional requirements reflect the proximity to downtown.

1. The maximum number of dwelling units permitted by right shall be based on a minimum area of 5,000 square feet of land per dwelling unit, except that one two-family dwelling may be permitted on a lot of at least 5,000 square feet. The minimum area of land required per dwelling unit may be reduced through incentives described in this section and granted by special permit.

**9.4.6 Open Space.** The Minimum open space required shall be 20% of the total lot area, subject to reduced requirements earned through incentives described in this section and granted by

special permit. For the purpose of this section, "open space" shall be defined as yards, playgrounds, walkways and other areas not covered by parking and driveways; such open space need not be accessible to the public.

**9.4.7 Parking.** Parking requirements for residential dwelling units shall be two parking spaces for each of the first five units and 1 1/2 spaces for each additional unit; parking requirements for related uses shall be calculated in accordance with Section 6.1. Parking requirements for business (nonresidential) uses shall be calculated in accordance with the minimum requirements in Section 6.1.2 the Table of Required Minimum Parking. Parking areas shall be safely and conveniently accessible from the buildings they serve. No parking space shall reduce the effective width of a driveway providing access to more than one dwelling unit to less than 12 feet. Parking requirements shall be met by any combination of the following:

1. Off-street parking on site;
2. Provision of new on-street parking with permission of the Town. Parallel parking spaces shall not be less than eight feet by 23 feet.

**9.4.8 Site Plan Review.** A development on a parcel or parcels in excess of 10,000 square feet of land shall be subject to site plan review by the Planning Board. No building permit for such a development shall be issued by the Building Inspector until the Planning Board has conducted site plan review in accordance with Section 10.5.

**9.4.9 Special Permit.** Uses indicated in the Table of Use Regulations, and any development or redevelopment in excess of 20,000 square feet of gross floor area, regardless of use, shall require a special permit. A special permit shall be required for any project seeking to use the density or open space incentives defined in this section. The Board of Selectmen (SPGA) may grant a special permit in accordance with the provisions of Section 10.4.

**9.4.10 Development Incentives.** To encourage specific attributes of development beneficial to the Town, the following incentives are offered by special permit.

1. Incentives for mixed use. Due to the proximity of this B3 District to the downtown core, and to promote the public enjoyment of development in this district, the following incentives are offered to promote mixed use, affordable housing, community-supporting activities, river appreciation and community open space. Uses may simultaneously qualify for one or more incentives defined in this subsection.
2. Density incentives reduce land area per dwelling unit as set forth in Section 9.4.5. The maximum density incentive is a 50% reduction in required land area per dwelling unit.
  - a. Mixed use: for each 1,000 square feet of nonresidential use, reduce the minimum land area required per unit by 1%.

- b. Affordable housing: for each unit of affordable housing reduce the minimum land area required by 5%.
  - c. Density incentives are cumulative.
3. Open space incentives reduce total open space requirements as set forth in Section 9.4.7. The maximum open space incentive is a 50% reduction in total open space requirement.
- a. Community-supporting activity: for the first use that the SPGA certifies as a legitimate community-supporting activity, reduce the minimum open space required per unit by 5%. For additional uses occupying at least 1,000 square feet that the SPGA certifies as a legitimate community-supporting activity, reduce the minimum open space required per unit by 5% for each 1,000 square feet. For the purpose of this section, a "community-supporting activity" is defined as use or ownership by either a nonprofit organization or an educational or arts organization which provides services to the community.
  - b. River appreciation: for a nonresidential use that facilitates the public enjoyment of the riverfront, as determined by the SPGA, reduce the minimum open space required per unit up to 15%.
  - c. Community open space: for a nonresidential use that allows permanent public access to open space within the development, as determined by the SPGA, reduce the minimum open space required per unit up to 15%.
  - d. Open space incentives are cumulative.

**9.4.11 Affordable Housing.** To promote the development of affordable housing units in the Town. All new residential development in this district containing more than four dwelling units shall contribute to affordable housing.

- 1. New construction of more than four and fewer than 10 dwelling units shall include either: A contribution to an established Municipal Affordable Housing Trust Fund to be used for the development of affordable housing in accordance with this Section; or construction and offering of at least one affordable unit within the development in accordance with this Section.
- 2. Any project of 10 or more dwelling units shall designate 10% of the units within the development as affordable units, and includes a contribution to the Municipal Affordable Housing Trust fund for fractional units as defined herein

The Building Inspector shall not issue a building permit or the SPGA shall deny any application for a special permit for development or redevelopment under this section if the applicant does not comply with the following requirements:

1. For construction of 10 units or any multiple of 10, one of each 10 units shall be an affordable unit. For each unit sold prior to provision of the required affordable housing units, a performance security, in the amount of 3.5% of the sales price of each unit, shall be placed in escrow to be held by the Municipal Affordable Housing Trust Fund. Such contributions to escrow shall be made at time of closing for each unit sold and shall be returned to the developer in proportion to the completion of the affordable housing units. For purposes of this section, "completion" means a certificate of occupancy under the State Building Code has been issued.
2. When the total number of units is not evenly divisible by 10, applicants under this section shall either:
  - a. Construct one additional affordable unit in addition to those required pursuant hereto; or
  - b. Contribute, at time of closing, 3.5% of the sales price of each fractional unit to the Municipal Affordable Housing Trust Fund. Fractional units are determined as follows:
    1. For construction of more than four but less than 10 dwelling units, the number of fractional units is the total number of units.
    2. For construction of more than 10 units or any multiple of 10, the number of fractional units is determined by subtracting the largest multiple of 10 from the total number of units.
3. Income and asset limits for purchasers or renters: To ensure that only eligible households purchase or rent affordable housing units, the purchaser or renter of an affordable unit shall be required to certify that his/her annual income does not exceed 80% of the area-wide median household income adjusted for household size, as determined by the United States Department of Housing and Urban Development ("HUD") and using HUD's rules for attribution of income to assets, as may be revised from time to time.
4. The maximum housing cost for affordable units created under this section shall be as set forth in the Local Initiative Program Guidelines of the Massachusetts Department of Housing and Community Development ("DHCD"), dated November 2006, or as subsequently amended.
5. Preservation of affordability. Each affordable unit created in accordance with this section shall have limitations governing its resale. The purpose of these limitations is to preserve the long-term affordability of the unit and to ensure its continued availability for low- and moderate-income households.

6. The developer or redeveloper of any project under this section shall execute and properly record a LIP Regulatory Agreement and Deed Rider in the form required under the Local Initiative Program Guidelines, which constitute "affordable housing restrictions" as defined in G.L. c. 184, s. 31, and provide for affordability in perpetuity.

7. The purchaser of any affordable unit under this section shall execute and properly record an Affordable Housing Deed Rider for Projects in Which Affordability Restrictions Survive Foreclosure, or as it may be subsequently amended, in the form used for so-called Local Action Unit (LAU) homeownership projects under the regulations of the DHCD. This deed rider establishes the formulas for maximum resale price, and provides an option to purchase to the municipality if an eligible purchaser cannot be found.

**9.4.12 Affordable Housing; Specific Requirements.** The purpose of this subsection is to provide for the development of affordable units in compliance with various initiative programs developed by state and local government. This subsection does not apply to construction of four or fewer dwelling units on the same lot. Provided that there are more than four dwelling units in a development subject to this Section, at least 10% of the units shall be established as affordable units:

1. Affordable housing units shall be constructed and made available for occupancy coincident with and in proportion to the development of market-rate units.
2. All affordable units shall be situated within the development in no less desirable locations than market-rate units in the development;
3. All affordable units shall be no less accessible to public amenities, such as open space, than the market-rate units;
4. All affordable units shall be integrated with the rest of the development;
5. All affordable units shall be compatible in design, appearance, construction and quality of materials with other units; interior features of affordable units shall comply in all respects to the minimum design and construction standards set forth in Section III of the Local Initiative Program Guidelines cited below.

**9.4.13 Affordable Housing Units; Marketing Plan.** Applicants under this section shall submit a marketing plan to the Building Inspector or SPGA for approval, which describes how the affordable units will be marketed to potential home buyers or tenants. This plan shall include a description of the lottery or other process to be used for selecting buyers or tenants and shall comply with all applicable provisions of state law regarding marketing of, and tenants or buyer selection for, affordable units.

1. Local preference shall be given to the maximum extent permitted by law.

## **9.5 DOWNTOWN BUSINESS B DISTRICT**

**9.5.1 Purpose.** The Downtown Business District is designed to protect the traditional character of the central business area which has historically served Great Barrington and surrounding communities. The district is composed of blocks representing the wide spectrum of 19th century commercial architectural styles. It is important to recognize this area as a distinct zone to protect its character and ensure that it continues to function as an economic center and a densely developed area of pedestrian-oriented business.

**9.5.2 Applicability.** All proposed changes to the exterior of structures within the district shall require a meeting with the Design Advisory Committee. Any substantial structural change shall require a special permit from the Board of Selectmen. A substantial structure change is defined as one which involves: changing the height of a structure or increasing the size of a structure's footprint or square footage of any aboveground floor by more than 25% or 1,000 square feet, whichever is smaller.

**9.5.3 Permitted Uses.** Permitted uses in the Downtown Business District are set forth in Section 3.1.4, the Table of Use Regulations.

**9.5.4 Special Permit Granting Authority.** The special permit granting authority shall be the Board of Selectmen.

**9.5.5 Design Review.** The purpose of design review is to preserve, enhance and raise awareness of the town's cultural, economic and historical resources by providing for a review of all changes in the appearance of structure and sites which may affect these resources. The review procedures are intended to: enhance the social and economic viability of the town by preserving property values and promoting the attractiveness of the town as a place to live, visit and shop; encourage the conservation of buildings and groups of buildings that have aesthetic or historic significance; prevent alterations that are incompatible with the existing environment or that are of inferior quality or appearance; encourage flexibility and variety in future development. All new structures, alterations or additions to existing structures which affect the exterior architectural appearance of a building shall be subject to review by the Design Advisory Committee, provided that the action occurs on land which is located in the Downtown Business B District.

**9.5.6 Design Advisory Committee.** A Design Advisory Committee is hereby established to review applications for all actions that are subject to the provisions of this section and to work cooperatively with owners of land, buildings and businesses. The Design Advisory Committee shall make recommendations to the appropriate decision making body and/or the applicant concerning compliance of the proposed action to the design review standards in this section. The Design Advisory Committee shall consist of seven members, constituted as follows:

1. Building Inspector (ex officio, nonvoting member).
2. Planning Board member, selected by the Planning Board.

3. Historic District Commission member, selected by the Historic District Commission.
4. Architect, appointed by the Board of Selectmen.
5. Landscape architect, appointed by the Board of Selectmen.
6. Three members from the general public, appointed by the Board of Selectmen.

The terms of all appointed members shall be five years. The Historic Commission member and the Planning Board member shall serve for one-year terms.

#### **9.5.7 Design Advisory Committee; Procedures.**

1. Applications for all actions subject to review by the Design Advisory Committee shall be made by completing an application form and submitting it to the Building Inspector. Application forms are available from the Building Inspector's office. Further information about the application process is set forth in the Rules and Regulations of the Design Advisory Committee.
2. Submittal Requirements. Applicants to the Design Advisory Committee shall address all standards listed in 9.5.8 below. If the project involves a variance, special permit or building permit, any information required for it should be included. The Committee may request additional information if it deems to be relevant. Each application shall be accompanied by photographs of the existing buildings and/or site, showing the area to be modified. The following scaled drawings shall accompany the application, unless this requirement is waived by the Design Advisory Committee:
  - a. Small scale (minimum 1/8 inch equals one foot zero inches) elevation showing the existing building with proposed changes and adjacent buildings.
  - b. Large scale (minimum 1/2 inch equals one foot zero inches) elevation showing proposed changes.
  - c. Section details (minimum 1/2 inch equals one foot zero inches).
  - d. Building plans as submitted to the Building Inspector.
3. Process. The Building Inspector shall transmit copies of the application to the Design Advisory Committee. The Committee shall review the application, meet with the applicant and provide its recommendations, in writing, to the applicant and the Building Inspector within 30 days. If the application for design review is associated with an application for a variance or a special permit, the Building Inspector shall immediately transmit the Design Advisory Board's recommendation to the Planning Board or the Zoning Board of Appeals, whichever is relevant.

**9.5.8 Design Review Standards.** The standards which are described below are intended to provide a guide to the applicant and the Design Advisory Committee for the design review of proposed actions. These standards shall not be regarded as inflexible requirements, and they are not intended to discourage creativity, invention or innovation; rather, they are intended to focus attention on design principles which enhance the visual appearance of the community.

1. General principles.

a. Every reasonable effort shall be made to preserve the distinguishing original qualities of a building, structure or site and its environment. The removal or alteration of any historic material or architectural features should be avoided whenever possible.

b. Distinctive features or examples of skilled craftsmanship which characterize a building, structure or site shall be treated with sensitivity.

c. All new development shall be treated harmoniously to the use, scale and architecture of existing buildings in the vicinity that have a functional or visual relationship to the proposed building.

d. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical architectural or cultural material and when such design is compatible with the surrounding environment.

2. Design review standards. The Design Advisory Committee shall consider, at a minimum, the following standards in the course of a design review of a proposed action:

a. Height. The height of any proposed alteration should be compatible with the style and character of the surrounding buildings.

b. Proportions of windows and doors. The proportions and relationships between doors and windows should be compatible with the architectural style and character of the surrounding area.

c. Relationships of building masses and spaces. The relationship of a structure to the open space between it and adjoining structures should be compatible.

d. Roof. The design and shape of the roof should be compatible with the architectural style of the surrounding buildings.

e. Landscape. The landscape should be compatible with the character and appearance of the surrounding area. Native species for landscaping are encouraged. Invasive species are prohibited.

f. Scale. The scale of the structure should be compatible with its architectural style and the character of the surrounding buildings.

g. Architectural details. Architectural details, including signs, materials, colors and textures, shall be compatible with a building's original architectural style in a manner that preserves and enhances the character of the surrounding area.

## **9.6 VILLAGE CENTER OVERLAY DISTRICT (VCOD)**

**9.6.1 Purpose.** The purpose of the Village Center Housing Overlay District (VCOD) section is to

1. Foster a mix of uses;
2. Encourage greater pedestrian activity as a part of these activities;
3. Encourage preservation of historic buildings;
4. Encourage economic revitalization; and
5. Promote mixed-use buildings.

**9.6.2 Location.** The VCOD boundaries shall be as follows: In the Great Barrington village center, the VCOD shall include Main Street from the Brown Bridge on the north to the intersection of Main Street and Maple Avenue on the south, starting at the origin of Main Street at the intersection of State Road and continuing south to Maple Avenue. Specifically, the VCOD shall include the land of underlying zoning districts and the land shown on the 2009 Great Barrington Assessors' Maps, as follows:

Map 14	Parcels 1-7, 25-38, 73-77, 174-228, 237-238, and 310
Map 19	Parcels 53-93C, 96, 97, 100, 101, 107, 113, 114, 124, 125, 129, 131-135, 140-144, and 146-152A
Map 22	Parcels 1, 3, 3A, and 14-17

**9.6.3 Applicability.** Within the VCOD, all proposed changes to the exterior of structures, new construction, replacement of an existing structure and any substantial structural change to an existing structure shall require review by the Design Advisory Committee and a special permit pursuant to Section 10.4. A substantial structural change is defined, for the purpose of this section, as one which involves: changing the height of a structure; increasing the size of the footprint of a structure by more than 25% or 1,000 square feet, whichever is smaller; or

increasing the square footage of any above ground floor by more than 25% or 1,000 square feet, whichever is smaller.

**9.6.4 Special Permit.** The special permit granting authority (SPGA) for the VCOD shall be the Board of Selectmen (except for special permits for extension or alteration of nonconforming structures or uses, which remains the purview of the Zoning Board of Appeals as set forth in 5.0).

**9.6.5 Criteria.** In addition to the findings required in Section 10.4, the SPGA must also find that the proposed use meets the following criteria, to the extent practicable:

1. Improves village vitality and walkability;
- 2.. Promotes mixed-use;
3. Promotes economic revitalization.

**9.6.6 Procedures.** Upon the filing of an application for a special permit under this section, the Building Inspector shall notify the applicant that design review is required and transmit a copy of the special permit application to the Design Advisory Committee, which shall promptly schedule a meeting with the applicant. No special permit shall be issued by the SPGA until the Design Advisory Committee has reviewed the proposed change and submitted a report to the SPGA, except that if a report is not received by the SPGA within 30 days from the date the application was submitted, the SPGA shall assume approval of the application by the Design Advisory Committee.

**9.6.7 Uses Permitted by Right.** The following uses are permitted by right in the VCOD, whether or not permitted in the underlying District:

1. Retail stores and/or wholesale sales and service with total aggregate gross floor area less than 10,000 square feet;
2. Mixed use;
3. Live/work units.

**9.6.8 Uses by Special Permit.** The following uses may be allowed by Special Permit:

1. Retail stores and/or wholesale sales and service with total aggregate gross floor area of 10,000 or more square feet, but less than 20,000 square feet;
2. Large scale commercial development of 20,000 or more square feet, but less than 50,000 square feet may be allowed only in buildings existing as of the date of adoption of this Section;

3. Garages, public.

**9.6.9 Uses Not Permitted.** All uses permitted in the underlying District as shown in Section 3.1.4 are permitted in the VCOD, except as otherwise prohibited in this Section. The following uses are not permitted:

1. Motor vehicle fuel stations;
2. Fuel storage and sales;
3. Gravel, loam, sand and stone removal;
4. Municipal sanitary landfill.
5. Retail establishments with drive-thru facilities;
6. Food establishments with drive-thru facilities;
7. Motor vehicle repair shop, and similar businesses.

**9.6.10 Exceptions; Dimensional Requirements.** Dimensional requirements in the VCOD are as follows:

1. Structures that have solely residential uses shall be the same as in the underlying District as shown in Section 4.0.
2. Structures, regardless of use, on the west side of Main Street south of Castle Street shall be the same as in the underlying District as shown in Section 4.0
3. For all other uses the requirements shall be shown as in Section 4.0 as non-residential principal uses.

**9.6.11 Parking Requirements.** Parking requirements in Section 6.1 do not apply in the VCOD, except as provided in this section.

1. For permitted uses in existing buildings in the B District, including those that are remodeled but not substantially expanded, there shall be no off-street parking required.
2. For permitted uses in existing buildings in the other underlying Districts that are not substantially expanded as defined in this Section, except for any building greater than 10,000 square feet, parking is required as follows: (a) the same number of existing off-street parking spaces must be retained; (b) additional off-street or off-site parking is not required.

3. For permitted uses in new buildings or existing buildings that are substantially expanded as defined in this Section or any building greater than 10,000 square feet, parking is required as follows: (a) the parking requirements for residential uses in 6.1.2 do not apply; (b) the parking requirements for business or industrial uses in 6.1.2 through 6.1.6 shall be calculated as follows: the sum of the required parking for each use multiplied by 0.5 with the product rounded down to the nearest whole number, plus handicapped parking as may be required by law or building code (Example: 3 spaces required for retail, 4 spaces required for offices:  $(3 + 4) \times 0.5 = 3.5$ , so 3 spaces, + 1 handicapped space, = 4 spaces are required); (c) existing parking may be counted as meeting the parking requirements above; and (d) some or all parking requirements may be waived if the SPGA grants a special permit pursuant to section 6.1.9.

**9.6.12 Design Review.** Applications for Special Permit under this section are subject to 9.5.8, Design Review Standards, with the following additional provisions:

1. General Principles.

- a. Encourage improvements of 1900's buildings and new buildings to be of complementary height and style for mixed use (commercial, retail and residential).
- b. Encourage off-street parking to be located to minimize visual impact from the street and utilize access from side streets when practicable.
- c. Encourage reinforcement of the streetwall through zero front-yard setbacks when practicable.

## **9.7 DOWNTOWN BUSINESS PARKING DISTRICT**

**9.7.1 Purpose.** The Downtown Business Parking (DBP) District is an overlay district designed to provide municipal and/or commercial parking facilities while protecting the traditional character of the central business area.

**9.7.2 Location.** The DBP District shall consist of the land shown on the 2001 Great Barrington Assessor's Map 19, Lot Nos. 140, 141, 142, 142A, 143, 144, 146, 147, 148, 149, 149A, 150, 150A, 151, and portions of 152 and shown on the map entitled "Downtown Business Parking District, May 2001," on file in the office of the Town Clerk.

**9.7.3 Dimensional Requirements and Permitted Uses.** Permitted uses and dimensional requirements in the Downtown Business Parking District shall be the same as in the B-2 District; provided, however, that for commercial parking lots and any commercial building(s) attached to a commercial parking lot, the schedule of dimensional requirements for such commercial parking lots and attached commercial building(s) shall be the same as in the Downtown Business District.

## **9.8 HOUSATONIC MILLS REVITALIZATION OVERLAY DISTRICT**

**9.8.1 Purpose.** The purposes of the Housatonic Mills Revitalization Overlay District (HMROD) are:

1. To encourage the revitalization of the existing buildings to benefit the general health and welfare of our residents and the region;
2. To promote the economic health and vitality of the Town by encouraging the preservation, reuse, renovation, and redevelopment of underutilized historic structures;
3. To allow for the adaptive reuse of historic structures in a way that preserves their relationship to the Housatonic River as well as the character of nearby residential and commercial neighborhoods;
4. To create employment opportunities both short term and long term;
5. To maintain or increase the supply of affordable dwelling units;
6. To encourage and provide for the coordinated and mixed development of residential, business, industrial, manufacturing, institutional, and/or educational uses;
7. To allow for a mix of new land uses appropriate to the needs of the community, to the scale of surrounding neighborhoods, and to the landscape;
8. To create new mixed use areas at appropriate locations, densities, heights and mixtures of use;
9. To encourage flexibility in site and architectural design, restoration and building massing;
10. To maintain a consistently high level of design quality;
11. To promote development that maximizes pedestrian and bicycle activity, access, and safety;
12. To promote environmentally sustainable development; and,
13. To promote public access to the Housatonic River for scenic and recreational purposes.

**9.8.2 Establishment and Location.** The HMROD is hereby established as an overlay district. All regulations pertaining to the underlying district(s) shall continue to be in full force and effect, except to the extent that the provisions of this Section modify, amend, or supersede such underlying requirements or provide an alternative to such requirements. A special permit issued pursuant to this Section shall replace special permits required under other Sections of this Bylaw. Where standards or other requirements listed as part of this Section conflict with those in the underlying district, the provisions of this Section shall apply.

The HMROD shall consist of the land shown on the 2010 Great Barrington Assessors' Map 2,

Lot Numbers 21, 21A, 21B, 22, 22A, 23A, 23B, 48, 48A, 48B, 49, 50, 51, 52, 53, 54, 55, 56, 57, 57A, 58, 59, 66, and a portion of 75, and shown on the map entitled “Housatonic Mills Revitalization Overlay District, May 2011,” on file in the office of the Town Clerk.

**9.8.3 Applicability.** Within the HMROD, the construction of new structures, and the reconstruction, extension, alteration, or substantial structural change of an existing structure that is nonconforming in the underlying zoning district, shall require a special permit issued in accordance with this Section and Section 10.4.

An alteration is defined, for the purposes of this Section, as any change that retains, extends, or increases a nonconformity of an existing structure, or as any change to an existing structure to provide for a substantially different purpose or use.

A substantial structural change is defined, for the purpose of this Section, as a change which involves: changing the height of a structure; increasing the size of the footprint of a structure by more than 10% or 2,000 square feet, whichever is smaller; increasing the square footage of any above ground floor by more than 10% or 2,000 square feet, whichever is smaller; or, demolition of any structure or portion thereof greater than 1,000 square feet. A special permit shall not be required for emergency demolition or repair of existing structures or utilities to ensure the health and safety of residents.

The Special Permit Granting Authority (SPGA) for the HMROD shall be the Planning Board.

**9.8.4 Infill.** New structures conforming to the underlying zoning may be constructed by right. New Structures in the HMROD not in conformance with the underlying zoning may be permitted by SP in accordance with this Section

**9.8.5 Expansion of Existing Buildings.** Existing buildings, through a special permit under this Section, may be expanded provided that such expansion is consistent with the existing building’s historic character and scale and does not cause substantial detriment.

**9.8.6 Intensity of Use.** More than one principal structure per lot may be allowed by special permit.

**9.8.7 Use Regulations.**

1. Permitted Uses. All uses permitted by right in the underlying zoning districts are permitted by right in the HMROD.
2. Prohibited Uses. The following uses are prohibited in the HMROD, whether or not permitted in the underlying zoning districts:
  - a. Fuel storage and sales, excluding motor vehicle fuel stations.

3. **Special Permits.** An applicant may apply for an HMROD special permit to redevelop all or portions of the HMROD in a coordinated fashion. One special permit may be sought for multiple uses or structures. Applicable adaptive reuse of a historic structure within the HMROD may be conducted upon the issuance of a special permit in accordance with this Section and Section 10.4.

**9.8.8 Dimensional Standards.** The SPGA may waive or reduce the requirements of Sections 4.1 and 4.2 of this Bylaw only if it determines that the requested waivers or reductions further the purposes of this Section. In place of these requirements, the following dimensional standards shall apply:

1. Structures to be demolished may be replaced within the existing footprint.
2. **Setbacks for Non-residential and Mixed Use:** Setbacks shall be the lesser of the minimum setbacks required in the underlying district or the average setback between two buildings that pre-date this Zoning Bylaw and are either currently occupied or shall be re-occupied as part of a coordinated development permitted under this Section. The SPGA may reduce front, side and rear yard setbacks to as low as zero (0) feet as part of a Special Permit.
3. Primary entrances to proposed and existing buildings shall be situated on pedestrian amenities (e.g., sidewalks, plazas or open space) having a minimum width of five (5) feet;
4. Setbacks shall be consistent with the character of the existing street and shall not preclude pedestrian access;
5. Access for loading and emergency vehicles is maintained;
6. Natural light and air circulation are maintained.

**9.8.9 Parking and Loading.** The parking and loading requirements for the use as established in Section 6.1 shall apply to the individual uses in the HMROD. As part of a special permit application under this Section, an applicant may request reductions to these requirements or alternative methods of achieving the requirements. Such alternative methods may include:

1. **On-Site Parking, Non-competing Uses.** In mixed-use developments, applicants may propose a reduction in parking requirements if, based on an analysis of peak demands, which shall include considerations of public transit options, if any, it can be demonstrated to the SPGA that the peak demands of proposed uses do not overlap
2. **Off-Site Parking:** Separate from, or in conjunction with on-site parking provisions, an applicant may use off-site parking to satisfy parking requirements in accordance with the following conditions:

- a. Off-site parking shall be within fifteen hundred (1,500) feet of the property for which it is being requested.
  - b. Off-site parking spaces shall be subject to a legally binding agreement that will be presented to the SPGA as a condition of the special permit.
3. Public Parking: The SPGA, at its discretion, may allow spaces within a public lot to be used as a supplement to other acceptable parking arrangements.

**9.8.10 Affordable Housing.** All new residential development permitted in accordance with this Section and containing more than four dwelling units shall comply with the requirements of Sections 9.4.11 through 9.4.13, with the additional requirement that any project of 10 or more dwelling units shall designate 20% of the units within the development as affordable units, and include a contribution to the Municipal Affordable Housing Trust Fund for fractional units as defined and set forth in Sections 9.4.11 through 9.4.13.

**9.8.11 Procedures.** An application for a special permit shall be filed in accordance with the requirements of Section 10.4.

**9.8.12 Criteria.** In addition to the findings required in Section 10.4, the SPGA must also find that the proposal does not contravene the purposes of this Section.

## **SECTION 10.0 ADMINISTRATION AND PROCEDURES**

### **10.1 ENFORCEMENT**

**10.1.1 Enforcement by Inspector of Buildings.** This Bylaw shall be enforced by the Inspector of Buildings.

**10.1.2 Compliance Required.** No permit shall be issued by the Inspector of Buildings unless the application for said permit indicates compliance with this Bylaw and any other applicable town bylaws and regulations, the State Sanitary Code and regulations of the Board of Health, the Planning Board's Subdivision Control Regulations, the Wetlands Protection Act, and all other applicable state and federal regulations. The applicant shall be responsible for identifying and obtaining all required local, state and federal permits and approvals for the project and for informing the Inspector of Buildings and other permit granting authorities of the status of each approval.

**10.1.3 Permit Required.** No building or other structure shall be erected, moved, added to or structurally altered without a permit issued therefor by the Inspector of Buildings. Failure to obtain a building permit shall be a violation of this Bylaw and shall be punishable as provided herein.

**10.1.4 Certificate of Occupancy.** It shall be unlawful to use or permit the use of any building or structure or part thereof created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure under the terms of a building permit issued by the Inspector of Buildings until a certificate of occupancy is issued therefor by the Inspector of Buildings, stating that such building or structure or part thereof and the proposed use thereof, conform to the terms of the building permit, all provisions of this Bylaw or an order of the Zoning Board of Appeals. Failure to obtain a certificate of occupancy shall be a violation of this Bylaw and shall be punishable as provided herein.

**10.1.5 Violations.** If the Inspector of Buildings shall find or shall have reasonable grounds to believe that any of the provisions of this Bylaw are being violated, he shall notify in writing the person responsible for such violations and the record owner of the premises, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings or structures, removal of illegal additions, alterations or structural changes; discontinuance of any illegal work being done; or shall take any other authorized action to ensure compliance with or to prevent violation of the provisions of this Bylaw.

**10.1.6 Aggrieved Persons.** Whenever a violation of this Bylaw occurs or is alleged to have occurred, any aggrieved person may file a written complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the Inspector of Buildings. He shall record such complaint, immediately investigate and take action thereon as provided by this Bylaw, and notify

the complainant in writing of any action or refusal to act, and the reasons therefor, within 14 days of receipt of such complaint. A copy of such letter, with a copy of the written complaint, shall be forwarded forthwith to the Board of Selectmen. The decision of the Inspector of Buildings may be appealed within 30 days to the Zoning Board of Appeals in accordance with G.L. c. 40A, ss. 8 and 15.

**10.1.7 Penalties.** Whoever violates any provisions of this Bylaw or fails to comply with any of its requirements shall, upon conviction thereof be fined not more than \$300 for each offense. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town from taking such other lawful action as it deems necessary to prevent or remedy any violation.

**10.1.8 Noncriminal Disposition.** In addition to the procedures as described above, the provisions of this Bylaw may also be enforced by the Inspector of Buildings by noncriminal disposition pursuant to the provisions of G.L. c. 40, s. 21D. Each day on which a violation exists shall be deemed to be a separate offense. The penalty for violation of any provision of this Bylaw shall be \$25 for the first offense; \$50 for the second offense; \$100 for the third offense; and \$200 for the fourth and each subsequent offense.

## **10.2 ZONING BOARD OF APPEALS**

**10.2.1 Membership; Terms of Office.** There shall be a Board of Appeals consisting of five members elected by the voters for terms of such length and so arranged that the term of one such electee shall expire each year and that, thereafter, one member shall be elected at each annual election. In addition thereto, there shall be two associate members appointed jointly by the Board of Selectmen and the Board of Appeals for terms of one and two years for the first appointment and, thereafter, each year one appointment for a term of two years. The Chairman of the Board of Appeals may designate any such associate member to sit on the Board and act in the case of the absence, inability to act or conflict of interest on the part of a regular member thereof or, in the event of a vacancy on said Board, may designate any such associate member to sit as a member of the Board and act until said vacancy is filled. No person shall serve on the Planning Board and the Board of Appeals at one time.

**10.2.2 Powers.** The Board of Appeals shall have and exercise all the powers granted to it by Chapters 40A, 40B, and 41 of the General Laws and by this Bylaw. The Board's powers are as follows:

1. To hear and decide applications for special permits where designated as special permit granting authority in this Bylaw.
2. To hear and decide appeals or petitions for variances from the terms of this Bylaw, with respect to particular land or structures, as set forth in G.L. c. 40A, s. 10. The Board of Appeals shall not grant use variances.

3. To hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of G.L. c. 40A, ss. 8 and 15.

4. To hear and decide comprehensive permits for construction of low or moderate income housing by a public agency or limited dividend or nonprofit corporation, as set forth in G.L. c. 40B, ss. 20-23.

**10.2.3 Regulations.** The Board of Appeals may adopt rules and regulations for the administration of its powers.

**10.2.4 Fees.** The Board of Appeals may adopt reasonable administrative fees and technical review fees for petitions for variances, administrative appeals, and applications for comprehensive permits.

### **10.3 PLANNING BOARD**

**10.3.1 Establishment.** The town has voted to establish the existing Planning Board, under G.L. c. 41 s. 81A, and the members of the Planning Board now in office shall serve as members of the Planning Board under Section 81A, with all the powers and duties allowed planning boards as detailed in MGL C.41 §81A through 81GG, inclusive.

**10.3.2 Powers.** The Planning Board shall have the following powers and those established by the General Laws.:

1. To hear and decide applications for special permits as provided in this Bylaw, subject to any general or specific rules therein contained and subject to any appropriate conditions and safeguards imposed by the Board.
2. To review and decide applications for site plan approval.

**10.3.3 Associate Member.** The Planning Board is authorized to have one associate member. The associate member shall be appointed for a three-year term by a majority vote of the members of the Planning Board and the Board of Selectmen. The Chairman of the Planning Board may designate the associate member to sit on the Planning Board for the purposes of acting on a special permit or site plan review application, or any other matter for which a quorum is required, in case of an absence, inability to act or conflict of interest on the part of any member of the Board or in the event of a vacancy on the Board.

**10.3.4 Rules and Regulations.** The Planning Board shall adopt rules and regulations not inconsistent with the provisions of the Zoning Bylaw for conduct of its business and otherwise carrying out the purposes of said Chapter 40A, and shall file a copy of such rules in the office of the Town Clerk.

**10.3.5 Fees.** The Planning Board may adopt reasonable administrative fees and technical review fees.

## **10.4 SPECIAL PERMITS**

**10.4.1 Special Permit Granting Authority.** Unless specifically designated otherwise, the Board of Selectmen shall act as the Special Permit Granting Authority.

**10.4.2 Criteria.** Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Bylaw, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment; and
6. Potential fiscal impact, including impact on town services, tax base, and employment.

**10.4.3 Procedures.** An application for a special permit shall be filed in accordance with the rules and regulations of the Special Permit Granting Authority.

1. The SPGA shall, within five business days (Saturdays, Sundays and legal holidays excluded) after acceptance of a special permit application, transmit copies of the application, along with all accompanying plans and maps, to the Board of Health, the Planning Board, the Selectmen and the Conservation Commission and to any other town departments, at the discretion of the SPGA. It shall be the responsibility of the applicant to provide sufficient copies for such transmittal.
2. The SPGA or its designated representative shall mark on the face of each copy the date of such transmittal and the boards and departments to which it was transmitted. The application shall be deemed received by all such boards and departments two business days after such transmittal (Saturdays, Sundays and legal holidays excluded). Any board or department to which such an application is transmitted for review shall make in writing such recommendations as it deems appropriate; provided, however, that failure to

make recommendations within 35 calendar days of receipt by the board or department shall be deemed lack of opposition to the application.

3. Any town board or department may recommend and the SPGA may impose such additional requirements and restrictions for any use under 3.1.4, Table of Use Regulations, or for any other special permit required by this Bylaw, as in the judgment of the reviewing boards and departments are necessary for the protection of public health, safety and welfare, the environment and neighboring uses.

**10.4.4 Conditions.** Special permits may be granted with such reasonable conditions, safeguards, or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this Bylaw. Such conditions, safeguards or limitations may include, but are not limited to, the following:

1. Front, side and rear yards greater than the minimum required by this Bylaw.
2. Screening buffers or planted strips and/or fences or walls as specified by the SPGA.
3. Design and installation of lighting to minimize glare into the night sky and spill into adjacent properties.
4. Limitations on the size, number of occupants, method and/ or time of operation, time duration of the permit and/or extent of facilities.
5. Requirements as to number and/or location of driveways and/or other traffic features, off-street parking and/or loading and/or other specific features beyond the minimums required by this Bylaw.

Any conditions, safeguards or limitations shall be imposed in writing and shall be made a part of the special and building permit.

**10.4.5 Plans.** Unless otherwise provided the rule or regulation of the Special Permit Granting Authority, an applicant for a special permit shall submit a plan in substantial conformance with the requirements of Section 10.5.3, herein.

**10.4.6 Regulations.** The Special Permit Granting Authority may adopt rules and regulations for the administration of this section.

**10.4.7 Fees.** The Special Permit Granting Authority may adopt reasonable administrative fees and technical review fees for applications for special permits, which shall be filed in the office of the Town Clerk.

**10.4.8 Lapse.** Special permits shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within 24 months following the filing of the special permit

approval (plus such time required to pursue or await the determination of an appeal referred to in G.L. c. 40A, s. 17, from the grant thereof) with the Town Clerk.

## **10.5 SITE PLAN REVIEW**

**10.5.1 Applicability.** The following types of activities and uses require site plan review by the Planning Board:

1. Construction, exterior alteration or exterior expansion of, or change of use within, a municipal, institutional, commercial, industrial, or multi-family structure;
2. Construction or expansion of a parking lot for a municipal, institutional, commercial, industrial, or multi-family structure or purpose involving more than 6 spaces;
3. Grading or clearing more than ten percent (10%) of a lot or 10,000 square feet, whichever is the lesser, except for the following: landscaping on a lot with an existing structure or a proposed single or two family dwelling; clearing necessary for percolation and other site tests, work incidental to agricultural activity, work in conjunction with an approved subdivision plan, or work pursuant to an earth removal permit.
4. Any other instance required by this Bylaw.

### **10.5.2 Procedures.**

1. Use, Structure, or Activity Available As of Right. An application for a building permit to perform work as set forth herein available as of right shall be accompanied by an approved Site Plan. Prior to the commencement of any activity set forth herein available as of right, the project proponent shall obtain site plan approval from the Board. Applications shall be submitted as set forth in the Planning Board's rules and regulations. The Board shall review and act upon the site plan, with such conditions as may be deemed appropriate, within sixty (60) days of its receipt, and notify the applicant of its decision. The decision of the Board shall be upon a majority of the Board as constituted and shall be in writing. No building permit shall be issued by the Building Inspector without the written approval of the site plan by the Board, or unless 60 days lapse from the date of the submittal of the site plan without action by the Board.
2. An application for site plan approval shall be accompanied by a fee, as set forth in the Board's Rules and Regulations.
3. The applicant may request, and the Board may grant by majority vote, an extension of the time limits set forth herein.

4. No deviation from an approved site plan shall be permitted without modification thereof.

**10.5.3 Submittal Requirements.** When specific requirements are not provided elsewhere in this Bylaw, the following general submittal requirements apply unless waived by the Planning Board

1. Plot plan of the entire tract, signed by a licensed surveyor or engineer, drawn to a scale adequate to represent all features of the property, clearly portraying the following:
  - a. Lot layout and dimensions.
  - b. Access road locations and widths and all intersections and driveways located within 200 feet of any portion of the tract.
  - c. Open space locations and dimensions.
  - d. Location of major site features, such as existing stone walls, fences, large trees and rock outcroppings.
  - e. All existing and proposed structures on the property.
  - f. All existing and proposed driveways, walkways and parking areas.
  - g. All bordering streets and/or highways; contours of elevation at intervals of no more than two feet.
  - h. All existing and proposed wells and septic systems.
  - i. Existing and proposed drainage patterns and stormwater drainage calculations.
  - j. All proposed stormwater management devices including but not limited to inlets, pipes, swales, and infiltration, retention and detention devices.
  - k. Existing and proposed landscaping; limits of clearing; erosion and sediment control to be used during construction.
  - l. Existing and proposed lighting, including heights, fixtures, and types of lighting.
  - m. Other physical and topographical features of the property including but not limited to streams, ponds, floodplains and wetlands.
  - n. An arrow indicating magnetic North.



- e. Sight lines at the intersections of the proposed driveways and streets.
- f. Existing and proposed traffic controls in the vicinity of the proposed development; proposed pedestrian and bicycle ways and design elements to maximize pedestrian and bicycle safety and usage.
- g. Proposed transit design elements to maximize transit safety and usage; and projected post-development traffic volumes and Level of Service (LOS) of intersections and streets likely to be affected by the proposed development.
- h. Increases in vehicular traffic on adjacent public ways, including impact on existing traffic signals, and, if indicated, a plan to remediate identified deficiencies.
- i. Proposed measures to minimize traffic conflict and mitigate any affected intersections or ways.

**10.5.4 Waiver of Submittal Compliance.** The Board may, upon written request of the applicant, waive any of the submittal requirements of Section 10.5.3 where the project involves relatively simple development plans or constitutes a minor site plan.

**10.5.5 Approval.** Site Plan approval shall be granted upon determination by the Board that the plan meets the following objectives. The Board may impose reasonable conditions at the expense of the applicant, including performance guarantees, to promote these objectives. Any new building construction or other site alteration shall provide adequate access to each structure for fire and service equipment and adequate provision for utilities and stormwater drainage consistent with the functional requirements of the Planning Board's Subdivision Rules and Regulations. New building construction or other site alterations shall be designed with consideration of the qualities of the specific location, the proposed land use, the design of building form, grading, egress points, and other aspects of the development, in order to:

1. Minimize the volume of cut and fill, the number of removed trees 6" caliper or larger, the length of removed stone walls, the area of wetland vegetation displaced, the extent of stormwater flow increase from the site, soil erosion, and threat of air and water pollution.
2. Maximize pedestrian and vehicular safety, both on the site and accessing and exiting the site.
3. Minimize obstruction of scenic views from publicly accessible locations.
4. Minimize visual intrusion by controlling the visibility of parking, storage, or other outdoor service areas viewed from public ways or premises residentially used or zoned.

5. Minimize glare from headlights, minimize light glare into the night sky, and minimize overspill into adjacent properties.
6. Minimize unreasonable departure from the character, materials, and scale of buildings in the vicinity, as viewed from public ways and places.
7. Minimize contamination of groundwater from on-site waste-water disposal systems or operations on the premises involving the use, storage, handling, or containment of hazardous substances.
8. Ensure compliance with the provisions of this Zoning Bylaw, including parking and landscaping.

**10.5.6 Lapse.** Site plan approval shall lapse after one year from the grant thereof if a substantial use thereof has not sooner commenced except for good cause. Such approval may, for good cause, be extended in writing by the Board upon the written request of the applicant.

**10.5.7 Regulations.** The Board may adopt reasonable regulations for the administration of site plan review.

**10.5.8 Fee.** The Board may adopt reasonable administrative fees and technical review fees for site plan review.

**10.5.9 Appeal.** Any decision of the Board pursuant to this Section shall be appealed in accordance with G.L. c. 40A, s. 17 to a court of competent jurisdiction.

## **10.6 FINAL UNFAVORABLE DECISIONS**

No appeal, application or petition which has been unfavorably and finally acted upon by the Special Permit Granting Authority or the Board of Appeals shall be acted favorably upon within two years after the date of final unfavorable action unless said Special Permit Granting Authority or Board of Appeals finds, by a unanimous vote of a board of three members or by a vote of four members of a board of five members or two-thirds vote of a board of more than five members, specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings, and unless all but one of the members of the Planning Board consents thereto and after notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered. Any petition for a variance or application for a special permit which has been transmitted to the Special Permit Granting Authority or Board of Appeals may be withdrawn, without prejudice by the petitioner prior to the publication of the notice of a public hearing thereon, but thereafter be withdrawn without prejudice only with the approval of the Special Permit Granting Authority or the Board of Appeals.

## **SECTION 11.0            DEFINITIONS**

In this by-law, the following terms and constructions shall apply unless a contrary meaning is required by the context or is specifically prescribed in the text of the by-law. Words used in the present tense include the future. The singular includes the plural and the plural includes the singular. The word "shall" is mandatory and "may" is permissive or discretionary. The word "and" includes "or" unless the contrary is evident from the text. The word "includes" or "including" shall not limit a term to specified examples, but is intended to extend its meaning to all other instances, circumstances, or items of like character or kind. The word "lot" includes "plot"; the word "used" or "occupied" shall be considered as though followed by the words "or intended, arranged, or designed to be used or occupied". The words "building," "structure," "lot," or "parcel," shall be construed as being followed by the words "or any portion thereof." The word "person" includes a firm, association, organization, partnership, company, or corporation, as well as an individual. Terms and words not defined herein but defined in the Commonwealth of Massachusetts state building code shall have the meaning given therein unless a contrary intention is clearly evident in this by-law.

**ACCESSORY BUILDING:** A subordinate building, the use of which is customarily incidental to that of a principal building and located on the same lot therewith.

**ACCESSORY DWELLING UNIT:** a subordinate dwelling unit within a primary single-family home or on the same lot as a primary single family home, with provisions for independent cooking, living, sanitation and sleeping.

**ACCESSORY USE:** A use customarily incidental and subordinate to the principal use and located on the same lot therewith.

**ADULT DAY CARE FACILITY:** A social day care or adult day health facility as those terms are defined by the Commonwealth's Department of Elder Affairs.

**AGRICULTURE:** Agriculture, horticulture, viticulture, floriculture, silviculture or aquaculture exempted by the provisions of G.L. c. 40A. s. 3 on a parcel of five acres or more and where the primary use of the land is agriculture, horticulture or floriculture. For such purposes, land divided by a public or private way or a waterway shall be construed as one parcel.

**ARTIST STUDIO:** A studio for the work of an artist, sculptor, craftsman, artisan or the like with or without incidental sales of such work.

**ASSISTED LIVING RESIDENCE:** An accessory facility licensed pursuant to G.L. c. 19D.

**ATTIC:** The space between the ceiling beams of the top story and the roof rafters.

**CAMPING FACILITY:** An area or tract of land on which accommodations for temporary occupancy are located or may be placed, including cabins, tents, and major recreational vehicles or trailer, which is primarily used for recreational purposes and retains an open air or natural character.

**CELLAR:** That portion of a building which is partly or completely below grade and having at least 1/2 its height below grade.

**CHILD CARE CENTER:** A day care center or school age child care program, as those terms are defined in G.L. c. 15D, s. 1A.

**CLUBHOUSE OR FRATERNAL LODGE, NOT FOR PROFIT:** Buildings, structures and premises used by a nonprofit social or civic organization, or by an organization catering exclusively to members and their guests for social, civic, recreational, or athletic purposes which are not conducted primarily for gain and provided there are no vending stands, merchandising, or commercial activities except as may be required generally for the membership and purposes of such organization.

**COMMERCIAL AMUSEMENT:** Buildings, structures, and premises for indoor and/or outdoor recreation, including, but not limited to, fairgrounds for fairs, animal racing, circuses, and other similar exhibitions.

**COMMERCIAL PARKING LOT:** Any lot or structure, available to the public, whether operated for gain or not, and which is used principally for the short-term parking of motor vehicles, and which is not used for the repair of motor vehicles.

**COMMUNITY CENTER OPERATED BY A MUNICIPAL OR PRIVATE NOT-FOR-PROFIT ORGANIZATION:** Indoor and/or outdoor facilities such as playgrounds, gym, swimming pool, exercise rooms, recreational areas, meeting rooms, food service, and similar compatible uses as determined by the SPGA during the special permit approval process.

**CONTRACTOR'S YARD:** Premises used by a building contractor or subcontractor for storage of equipment and supplies, fabrication of subassemblies, and parking of wheeled equipment.

**DOWNTOWN B3 MIXED USE DISTRICT:** The following definitions apply in the Downtown Mixed Use B3 District:

***AFFORDABLE UNITS:*** Housing units that are affordable to and occupied by individuals and families whose annual income is less than 80% of the area-wide median income as determined by HUD, adjusted for household size and using HUD's rules for attribution of income to assets. Affordability shall be assured in perpetuity through the use of an affordable housing restriction as defined in G.L. c. 184, s. 31. Affordable units shall 1) meet the standards set out in 760 CMR 45.03, Local Action Units, as set forth in 760 CMR 45.00, Local Initiative Program, and further described in the DHCD's Local Initiative Program Guidelines, dated November 2006, or as subsequently amended; or 2)

be created as affordable units within an approved MGL c. 40B Comprehensive Permit application. Such units shall be created and restricted so as to be eligible for inclusion, as low- or moderate-income units, on the Town's Subsidized Housing Inventory as maintained by the DHCD.

**COMMUNITY SUPPORTING ACTIVITY:** Activity sponsored by a nonprofit or educational or arts organization that provides services to members of the community either directly (for example, by providing medical services at a reduced cost) or through programs available to community members (for example, by offering theater programs, or classes in which community members may participate).

**MUNICIPAL AFFORDABLE HOUSING TRUST FUND:** A trust fund established by the Town in accordance with G.L. c. 44, s.55C for the specific purpose of providing for the creation and preservation of affordable housing in the Town for the benefit of low and moderate income households.

**QUALIFIED PURCHASER:** An individual or family with household income that does not exceed 80% of the area median income, with adjustments for household size, as reported by HUD and the DHCD's Local Initiative Program.

**QUALIFIED TENANT:** An individual or family with household income that does not exceed 60% of the area median income, with adjustments for household size, as reported by HUD and the DHCD's Local Initiative Program.

**DWELLING, MULTIFAMILY:** A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

**DWELLING, ROW:** A building consisting of a series of three or more noncommunicating dwelling units having a common wall between each two adjacent dwelling units.

**DWELLING, SINGLE FAMILY:** A detached residential dwelling unit, other than a mobile home, designed for and occupied by one family only.

**DWELLING, TWO-FAMILY:** A detached residential building containing two dwelling units, designed for occupancy by not more than two families.

**DWELLING UNIT:** One or more rooms constituting a separate, independent housekeeping establishment with cooking, living, sanitary and sleeping facilities for the use of one family.

**EDGE OF PAVEMENT:** The line between a paved and an unpaved surface.

**EDUCATIONAL USE, EXEMPT:** Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic, or

by a religious sect or denomination, or by a nonprofit educational corporation, as set forth by G.L. c. 40A, s. 3.

**EDUCATIONAL USE, NONEXEMPT:** Educational facilities not exempted from regulation by G.L. c. 40A, s. 3.

**ESSENTIAL SERVICES:** Services provided by a public service corporation or by governmental agencies through erection, construction, alteration, or maintenance of gas, electrical, steam, or water transmission or distribution systems and collection, communication, supply, or disposal systems whether underground or overhead, but not including wireless communications facilities. Facilities necessary for the provision of essential services include poles, wires, drains, sewers, pipes, conduits, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar equipment in connection therewith.

**FAMILY:** One or more individuals related by blood, marriage or adoption, or not more than five individuals who are not so related, living together as a single housekeeping unit.

**FAMILY CHILD CARE HOME, LARGE OR SMALL:** Any private residence operating a facility as defined in G.L. c. 15D, s. 1A.

**FAST-FOOD EATING ESTABLISHMENT:** A type of restaurant, with or without a drive-up window for serving customers in motor vehicles, which has as its principal business the sale of pre-prepared or quickly prepared foods or drinks, often using disposable containers or wrappers, for consumption either on or off the premises.

**FLOOR AREA, GROSS (GFA):** The floor area within the perimeter of the building under consideration, including the thickness of exterior walls, and without deduction for hallways, stairs, closets, thickness of walls, columns or other features.

**FLOOR AREA, NET USABLE (NUFA):** The portion of gross floor area less exterior walls, less vertical penetrations such as stairwells and elevator shafts, and less any common areas not leased to tenants.

**GALLERY:** A room or building devoted to the exhibition of works of art.

**GARAGE, PRIVATE:** A garage not available to the public, used for storage purposes only, and in which no business, service or industry connected directly or indirectly with motor vehicles is conducted.

**GARAGE, PUBLIC:** Any garage, other than a private garage, available to the public, operated for gain, and which is used for long-term (more than 24 hours) storage or repair of motor vehicles.

**GARDEN CENTER:** A facility that has live nursery products planted outdoors in the ground, for sale or display, on at least 15% of its developed site from at least May through September of

each year, that provides nursery and related items for use in and around gardens and that may also provide Christmas trees and other items related to holidays.

**GENERAL SERVICE ESTABLISHMENT:** Any establishment or repair shop where the repair and maintenance of household items, except motor vehicles, occurs, or where crafts, skills or professional trades are performed, including but not limited to appliance repair, artisans, bakers, builders, caterers, carpenters, contractors, electricians, plumbers, upholsterers; and similar uses. Does not include kennels.

**GROUP RESIDENCE:** A residence or group home established for the purpose of serving the living, educational, training or rehabilitational needs of children or adults, such as those with physical or mental handicaps or learning disabilities, under the supervision of persons trained and licensed for such purpose.

**HABITABLE SPACE:** Space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space and similar areas are not considered habitable space.

**HALF-STORY:** That portion of a building under a sloping roof, the cubic contents of which are never more than 1/2 of that of the story below. If the cubic contents are greater, it shall be deemed a story.

**HEIGHT OF A BUILDING:** The vertical distance measured, in the case of flat roofs, from the curb level to the level of the highest point of the roof beams adjacent to the street wall and, in the case of pitched roofs, from the curb level to the mean height level of the gable. Where no roof beams exist or there are structures wholly or partly above the roof, the height shall be measured from the curb level to the level of the highest point of the building. Where the walls of the building do not adjoin the street line or there is no curb, the average level of the finished ground surface along the main front wall of the building may be taken in measuring its height instead of the curb level.

**HIGH-IMPACT RETAIL:** Any establishment as set forth in 7.9.1 of this Bylaw.

**HOME OCCUPATION, CUSTOMARY:** Low impact home occupations including but not limited to: baking or preserving, dressmaking, home cooking, millinery, tailoring, or similar domestic crafts, and telephone or mail services.

**HOME OCCUPATION, LOW IMPACT:** Professional or customary home occupations as defined in this Bylaw, which do not have more than one nonresident employee, and which have no impact on the neighborhood character.

**HOME OCCUPATION: MODERATE IMPACT:** Any home occupation which has more than one nonresident employee, or whose noise, lighting, odor, traffic, or other impacts are minor and may not alter the neighborhood character, including but not limited to: Physician, surgeon, dentist, resident tradesperson (including, but not limited to, artisan, carpenter, electrician,

plumber, janitor, sheet metal worker, upholsterer, small engine repair person, landscaper), family child care home (including large), yoga and personal wellness studios, and similar professions. Trades such as the servicing, maintenance, or restoration of motor vehicles are expressly prohibited in all residential zones.

**HOME OCCUPATION, PROFESSIONAL:** Low impact home occupations including but not limited to: offices and studios of an accountant, architect, artist, attorney, author, clergyman, consultant, engineer, financial advisor, musician, real estate broker, or similar low-impact professions that provide individual or one-on-one personal services, and teacher of not more than three pupils on the premises at any time.

**HOSPITAL:** An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, and other physical or mental conditions and including, as an integral part of the institution, related facilities, including laboratories, outpatient facilities, training facilities, medical offices, and staff residences.

**HOTEL:** A building whose rental rooms are accessed via an interior common corridor where lodging is provided for paying guests, with or without public dining facilities, and having 11 or more rental rooms.

**INCIDENTAL STRIPPING OF SOD OR REMOVAL OF TOPSOIL, GRAVEL, LOAM, SAND, STONE OR OTHER EARTH MATERIALS:** Such activity is incidental when incidental to or required in connection with any of the following operations: erection of a building or structure on a lot for which a permit has been properly issued; construction of a road in an approved subdivision; in connection with the grading of a premises not below the level of adjoining streets and in such a way as not to leave exposed boulders.

**KENNEL:** A facility or premises for the boarding, breeding, day care, or other purpose of keeping more than three dogs three months old or over, but not including private residences or that portion of a veterinary clinic that may board dogs for limited periods in connection with veterinary services.

**LANDSCAPER'S YARD:** See CONTRACTOR'S YARD.

**LARGE SCALE COMMERCIAL DEVELOPMENT:** Retail stores or centers and/or wholesale sales and service with total aggregate gross floor area greater than 20,000 square feet and less than 50,000 square feet, including all floors and buildings on the property, but not including area in an attic or cellar used for storage or utilities

**LIGHT MANUFACTURING:** Research or testing laboratory, printing-plant, manufacturing establishment, or other assembly, packaging, finishing or processing use, including food processing and packaging, provided that all operations shall confine disturbing smoke, fumes, dust, odors, vibrations and noise to the premises.

**LIVE/WORK UNITS:** Space used by artists, craftspeople or persons engaged in creative services for the following two purposes: making items and/or performing services and residing on the premises. Such residency shall be limited to one family per unit.

**LOADING SPACE:** Accommodation off the street for loading and unloading of trucks, in the form of one or more truck berths located either within a building or in open space on the same lot.

**LOT:** That area of land in one ownership occupied or intended to be occupied by one principal building or use, or by a group of principal buildings together with accessory buildings, including such yards or open spaces as are arranged or designed to be used in connection with such buildings; provided, however, that no part of the lot that provides access to a proposed building site or to an existing building shall be less than 40 feet in width.

**LOT, CORNER:** Any lot that occupies the interior angle at the intersection of two street lines which make an angle of less than 135° with each other, the owner of a corner lot having the privilege of specifying which street lot line shall be deemed the front line and being required, when requesting a building permit, so to specify.

**LOT COVERAGE:** The portion of the lot area, expressed as a percent, that is covered by buildings and structures. Structures below the finished grade shall not be included in calculating the lot coverage.

**LOT FRONTAGE:** The distance along the street line measured between the side lot lines, provided that at no place shall the depth of lot frontage be less than the required front yard of the zoning district in order to qualify for lot frontage under this Bylaw.

**LOT LINE:** The boundary between lots or between a lot and a street.

**LOT WIDTH:** The distance along the building setback line measured parallel to or concentric with the street line.

**MIXED USE:** A combination of uses in a building or on a lot in the Business Zones (B, B1, B2, B2A, B3, I, and I2) that includes a residential use.

**MOBILE HOME:** A detached single-family dwelling unit with substantially all of the following characteristics:

- Mobile homes must meet American Standard Association Code Provision A-119-1.
- Mobile homes must contain at least 500 square feet of living area.
- All occupied mobile homes must be installed in conformance with the Massachusetts Building Code and any special requirements as prescribed in an issued special permit.

- Designed for long-term occupancy and containing sleeping accommodations, flush toilet, a tub or shower, bath and kitchen facilities, with plumbing and electrical connections provided for attachment to outside systems.
- Designed to be transported after fabrication on its own wheels or on flat bed or other trailers or detachable wheels.
- Arriving at the site where it is to be occupied as a dwelling complete, including major appliances and furniture, and ready for occupancy except for minor and incidental unpacking and assembly operations, location on foundation supports, connections to utilities and the like.

**MOTEL:** A building or buildings intended and designed for transient, overnight or extended occupancy, divided into separate units within the same building, whose rental rooms are accessed by their own exterior doors, having 11 or more rental rooms, and with or without a public dining facility. If such motel has independent cooking facilities, such unit shall not be occupied by any guest for more than four (4) continuous months, nor may the guest reoccupy any unit within thirty (30) days of a continuous four-month stay, nor may the guest stay more than six (6) months in any calendar year. No occupant of such motel may claim residency at such location.

**MOTOR VEHICLE FUEL STATION:** Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, including sales of packaged and prepared foods, but not to include body work, painting, or major repairs.

**MOTOR VEHICLE REPAIR SHOP:** A building, or part thereof, for vehicle repair, service, and detailing. Vehicles include within its meaning the following: cars, trucks, vans, recreational vehicles, and mobile construction equipment. Repair, service, and detailing includes within its meaning the following: structural body repairs, refinishing, and/or painting of motor vehicles; minor repairs, such as lubricating, tune-ups, adjusting, repairing brakes, tire service and general automotive service, and; major repairs, such as major overhaul of engines or transmissions.

**MOTOR VEHICLE SALES OR RENTAL:** The sale or lease of motor vehicles, including boats and trailers, whether new or used.

**MUNICIPAL FACILITIES:** Facilities owned or operated by the Town of Great Barrington.

**NONCONFORMING BUILDING:** Any existing structure or building which does not conform to the height, density or yard regulations for the district in which such use is located.

**OFFICE:** A building or part thereof, for the transaction of business or the provision of services exclusive of the receipt, sale, storage, or processing of merchandise.

**OPEN SPACE RESIDENTIAL DEVELOPMENT:** The following definitions shall apply with regard to Open Space Residential Development:

**CONDOMINIUM:** A form of property ownership providing for individual ownership of space in a structure together with an individual interest in the land on which the structure is located or other parts of the structure in common with other owners.

**CONVENTIONAL SUBDIVISION DEVELOPMENT:** A subdivision or other development of land prepared in compliance with the requirements of the underlying zoning district in which it is located.

**COOPERATIVE:** A multi-family development owned and maintained by the residents under an arrangement where the entire structure and real property are under common ownership as contrasted to a condominium dwelling where individual units are under separate individual ownership.

**HOMEOWNERS' ASSOCIATION:** A corporation, trust or association owned jointly by the owners of the lots or dwelling units in a development in which ownership passes with conveyance of the lots or dwelling units.

**OPEN SPACE RESIDENTIAL DEVELOPMENT:** A subdivision or other development authorized by special permit in accordance with the requirements of this Bylaw in which some or all of the lots may not conform to the lot area, frontage, setback, or yard requirements of this Bylaw and in which a minimum of 50% of the developable area of the property is to be permanently protected open space.

**PROTECTED OPEN SPACE:** Undeveloped land with restrictions or easements placed on it for permanent protection.

**PARKING SPACE:** Accommodation for the parking of a motor vehicle on a lot provided for restricted use in connection with a particular business or private enterprise or as an adjunct to a housing development or private residence, whether operated for gain or not or whether cooperatively established and operated or not. Such parking spaces may consist of parking lots, private garages or other structures and accessories at or below grade.

**PASSENGER STATION:** Transportation facility for passengers by rail, bus, or other common carrier, parking and other accessory facilities typically found in a passenger terminal, including food service.

**PERSONAL SERVICE ESTABLISHMENT:** Any establishment primarily engaged in providing services involving the care of, repair, maintenance, or customizing of personal properties that may be worn or carried about the person or are a physical part of the person, including but not limited to barbers, body artists, clothes cleaners, decorators, florists, garment makers, hair dressers, manicurists, massage therapist, photographers, printers, shoe repairers, yoga and personal wellness studios, undertakers; and similar uses. Does not include medical and dental offices, veterinarians, or kennels.

**PREMISES:** Any lot, area or tract of land, whether used in connection with a building or not.

**PROFESSIONAL OFFICE:** Building housing members of a recognized profession such as doctors, lawyers, dentists, architects, civil engineers, optical services, podiatrists, chiropractors and medical clinic, subject to special requirements in residential districts and that do not include retail sales as a principal use.

**PROPERTY LINE:** The line between two abutting properties.

**PLANNED UNIT RESIDENTIAL DEVELOPMENT:** Any multifamily development consisting of 10 or more dwelling units on a single lot or on separate lots within the same development, whether for rental or for sale, either as condominiums or under cooperative ownership.

**REAR LOT:** A lot with an area one and one-half (1.5) times the minimum area required for the zoning district in which it lies, and with at least 40 feet of frontage, as further defined in Section 4.3.

**RESTAURANT:** A building, or portion thereof, containing tables and/or booths which is designed, intended and used for the indoor sales and consumption of food prepared on the premises, except that food may be consumed outdoors in landscaped terraces, designed for dining purposes, which are adjuncts to the main indoor restaurant facility. The term "restaurant" shall not include any "fast food eating establishment."

**RETAIL ESTABLISHMENT:** A facility selling goods but not specifically listed in the Section 3.1.4, the Table of Use Regulations.

**RETAIL, HIGH-IMPACT:** See "HIGH IMPACT RETAIL."

**RETAIL STORE OR SHOP FOR SALE OF CUSTOM WORK OR ARTICLES MADE ON THE PREMISES:** any manufacturing or fabrication shall be considered a light manufacturing operation incidental to retail or service use and involves products customarily sold on the premises by the producer to the customer.

**SANITARY LANDFILL:** the dumping, compacting and coverage (with suitable soil) of solid waste, all in accordance with procedures to be determined with sanitary engineering advice and acceptable to the Board of Health and Board of Selectmen.

**SAW LOG MILL AND MANUFACTURE OF FOREST PRODUCTS:** Any saw (log) mill shall be located at least 200 feet from any lot line; and No piles of sawdust or other refuse shall be maintained within 100 feet of any lot line.

**SIGN:** As regulated by Town Code Chapter 146, any device visible from a public place whose design is to convey commercial or noncommercial messages by means of graphic presentation of

alphanumeric or pictorial symbols or representations. Noncommercial flags or any governmental flags displayed from flagpoles or staffs will not be considered to be signs.

**STORY:** That portion of a building included between the surface of any floor and the surface of the next floor above it or, if there be no floor above it, then the space between such floor and the ceiling next above it, provided that a cellar, a stairway or elevator penthouse or a roof structure housing machinery incidental to the operation of the building shall not be considered a story.

**STREET:** A public way or a private way, either shown on a plan approved in accordance with the Subdivision Control Law or otherwise qualifying a lot for frontage under the Subdivision Control Law.

**STREET LINE:** The right-of-way line of a street as established under public authority or as shown on a plan approved by the Planning Board, or, if neither of the above apply, a line parallel to the center line of the street measured back a distance equal to 1/2 of the normally required right-of-way.

**STRUCTURE:** A combination of materials assembled at a fixed location to give support or shelter, such as a building, framework, retaining wall, tent, reviewing stand, platform, bin, fence, sign, flagpole, recreational tramway, mast for radio antenna or the like.

**TIMESHARE:** [time-share, time share] A dwelling unit where the exclusive right of use, possession or occupancy circulates among various owners or lessees thereof in accordance with a fixed or floating time schedule on a periodically recurring basis, whether such use, possession or occupancy is subject to either a time-share estate, in which the ownership or leasehold estate in property is devoted to a time-share fee (tenants in common, time-span ownership and interval ownership) and a time-share lease or time-share use, including any contractual right of exclusive occupancy that does not fall within the definition of time-share estate, including but not limited to a vacation license, prepaid hotel reservation, club membership, limited partnership or vacation bond.

**TOURIST HOME:** Any establishment renting more than three and less than 11 rooms on a nightly basis, whether seasonally or year-round, regardless of whether meals are served and regardless of any other designation, such as inn, country inn, bed and breakfast inn, guest house or the like.

**USE:** The purpose for which a structure or lot is arranged, designed or intended to be used, occupied or maintained.

**WATER QUALITY PROTECTION OVERLAY DISTRICT:** The following definitions shall apply in the WQPOD:

**AQUIFER:** Geologic formation composed of rock, sand or gravel that contains significant amounts of potentially recoverable water.

**CLASS A SURFACE WATER SUPPLY:** Surface water bodies used for drinking water supply such as Long Pond and East Mountain Reservoir.

**DEP:** Massachusetts Department of Environmental Protection.

**HAZARDOUS MATERIAL:** Any substance or mixture of physical, chemical, or infectious characteristics posing a significant, actual, or potential hazard to water supplies or other hazards to human health if such substance or mixture was discharged to land or water in the Town of Great Barrington. Hazardous materials include, without limitation, synthetic organic chemicals; petroleum products; heavy metals; radioactive or infectious wastes; acids and alkalis; solvents and thinners in quantities greater than normal household use; and all substances defined as hazardous or toxic under Massachusetts General Laws, Chapters 21C and 21E and 310 CMR 30.00.

**IMPERVIOUS SURFACE:** Material or structure on, above, or below the ground that does not allow precipitation or surface water to penetrate directly into the soil.

**LANDFILL:** A facility established in accordance with a valid site assignment for the purposes of disposing solid waste into or on the land, pursuant to 310 CMR 19.006.

**NONSANITARY WASTEWATER:** Wastewater discharges from industrial and commercial facilities containing wastes from any activity other than collection of sanitary sewage, including, but not limited to, activities specified in the Standard Industrial Classification (SIC) Codes set forth in 310 CMR 15.004(6).

**OPEN DUMP:** A facility which is operated or maintained in violation of the Resource Conservation and Recovery Act [42 U.S.C. §4004(a)(b)], or the regulations and criteria for solid waste disposal.

**POTENTIAL DRINKING WATER SOURCES:** Areas which could provide significant potable water in the future.

**RECHARGE AREAS:** Areas that collect precipitation or surface water and carry it to aquifers. Recharge areas include areas designated by DEP as Zone I, Zone II, or Zone III, as defined below.

**SEPTAGE:** The liquid, solid, and semisolid contents of privies, chemical toilets, cesspools, holding tanks, or other sewage waste receptacles. Septage does not include any material which is a hazardous waste, pursuant to 310 CMR 30.000.

**SLUDGE:** The solid, semisolid, and liquid residue that results from a process of wastewater treatment or drinking water treatment. Sludge does not include grit, screenings, or grease and oil which are removed at the headworks of a treatment facility.

**STREAM AND LAKE PROTECTION ZONE:** The land area within a five-hundred-foot distance will apply to the Green River and its upstream tributaries of the water supply gallery only, and three-hundred-foot lateral distance of the upper boundary of the bank of:

Alford Brook  
East Mountain Reservoir  
Fountain Pond  
Housatonic River [see \* Note]  
Hubbard Brook  
Konkapot Brook  
Lake Mansfield  
Long Pond Brook  
Muddy Brook  
Roaring Brook  
Root Pond  
Round (Mercer's) Pond  
Seekonk Brook  
Stony Brook  
Thomas and Palmer Brook  
Williams River

and the land area within a two-hundred-foot lateral distance of the upper boundary of the bank of all tributaries to these bodies of water or tributaries to any Class A surface water source.

\* Note: In the urban centers, meaning those properties served by public water and sewer, the Stream and Lake Protection Zone shall not apply to the Housatonic River.

**SURFACE WATER SOURCE PROTECTION ZONE A (INNER ZONE):** The land area:

- Between the surface water source and the upper boundary of the bank;
- Within a four-hundred-foot lateral distance from the upper boundary of the bank of a Class A surface water source as defined in 314 CMR 4.05 (3) (a); and
- Within a two-hundred-foot lateral distance from the upper boundary of the bank of a tributary or associated surface water body.

***SURFACE WATER SOURCE PROTECTION ZONE B (OUTER ZONE):*** The land area within 1/2 mile of the upper boundary of the bank of a Class A surface water source, as defined in 314 CMR 4.05 (3) (a), or the edge of the watershed, whichever is less. Zone B includes, by definition, the land area in Zone A.

***SURFACE WATER SOURCE PROTECTION ZONE C:*** The land area not designated as Zone A or B within the watershed of a Class A surface water source as defined in 314 CMR 4.05 (3) (a).

***TREATMENT WORKS:*** Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.

***TRIBUTARY:*** For Surface Water Protection Zones A and B: Any body of running, or intermittently running, water which moves in a definite channel, naturally or artificially created, in the ground due to a hydraulic gradient, and which ultimately flows into a Class A surface water source, as defined in 314 CMR 4.05(3)(a).

- For the Wellhead Protection Zones I and II and the Stream and Lakes Protection Zone: A perennial stream as defined under the Massachusetts Wetlands Protection Act Regulations. (310 CMR 10.00).

***VERY SMALL QUANTITY GENERATOR:*** Any public or private entity, other than residential, which produces less than 27 gallons (100 kilograms) a month of hazardous waste or waste oil, but not including any acutely hazardous waste as defined in 310 CMR 30.136.

***WASTE OIL RETENTION FACILITY:*** A waste oil collection facility for automobile service stations, retail outlets, and marinas which is sheltered and has adequate protection to contain a spill, seepage, or discharge of petroleum waste products in accordance with MGL c. 21, ~ 52A.

***WATER QUALITY PROTECTION OVERLAY DISTRICT:*** The zoning district established pursuant to this section and defined to overlay other zoning districts in the Town of Great Barrington. The Water Quality Protection District includes, for the purposes of this section, Surface Water Source Protection Area Zone B, Wellhead Protection Area Zone II, and the Stream and Lakes Protection Zone. Each of these protection zones shall be considered equivalent in terms of their permitted uses and prohibitions unless specifically noted otherwise. Surface Water Source Protection Area Zone A is included (with more restrictions) in Zone B, as is Wellhead Protection Zone I in Zone II.

**WELLHEAD PROTECTION ZONE:** The area controlled by DEP Wellhead Protection Regulation, 310 CMR 22.21(2). See Zone I, II, and III below.

**ZONE I (INNER ZONE):** The one-hundred- to four-hundred-foot protective radius around a public water system well or wellfield which must be owned by the water supplier or controlled through a conservation restriction.

**ZONE II (OUTER ZONE):** The area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days of pumping at safe yield with no recharge from precipitation), as defined in 310 CMR 22.00.

**ZONE III:** The land area beyond the area of Zone II from which surface water and groundwater drain into Zone II, as defined in 310 CMR 22.00.

**WIRELESS TELECOMMUNICATIONS OVERLAY DISTRICT:** The following definitions shall apply in the WTOD:

**ACT:** The Telecommunications Act of 1996.

**ANTENNA:** A device which is attached to a tower, or other structure for transmitting and receiving electromagnetic waves.

**AVAILABLE SPACE:** The space on a tower or structure to which antennas of a personal wireless service provider are both structurally able and electromagnetically able to be attached.

**BASE STATION:** The primary sending and receiving site in a wireless telecommunications network. More than one base station and/or more than one variety of personal wireless service provider can be located on a single tower or structure.

**CHANNEL:** The segment of the radiation spectrum from an antenna, which carries one signal. An antenna may radiate on many channels simultaneously.

**COMMUNICATION EQUIPMENT SHELTER:** A structure located at a base station designed principally to enclose equipment used in connection with personal wireless service transmissions.

**DBM:** Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to 1 milliwatt.

**ELECTROMAGNETICALLY ABLE:** The determination that the new signal from and to the proposed new antennas will not significantly interfere with the existing signals from and to other facilities located on the same tower or structure as determined by a

qualified professional telecommunications engineer. The use of available technologies to alleviate such interference shall be considered when making this determination.

**EMF:** Electromagnetic frequency radiation.

**EVALUATION:** Either the measurement, by the use of instruments in the field, of the radiation from a site as a whole, or from individual personal wireless service facilities, towers, antennas or repeaters; or the calculation of radio frequency radiation levels from such locations utilizing the FCC's OET Bulletin 65, the National Council on Radiation Protection and Measurements Reports 86 and 119, or other applicable standards approved by the FCC and used in accordance with FCC requirements and instructions.

**EVALUATION PROTOCOL:** The levels of radio frequency radiation emissions shall be assessed by calculations utilizing the FCC's OET Bulletin 65 or any other current applicable guidelines. The SPGA may, as the technology changes, require, by written regulation, the use of other evaluation protocols. A copy of the evaluation protocol shall be on file with the Town Clerk.

**FACILITY SITE:** A property, or any part thereof, which is owned or leased by one or more personal wireless service providers and upon which one or more personal wireless service facility(s), including any personal wireless tower or structure on which the personal wireless service facility may be mounted, and required landscaping are located.

**FCC:** Federal Communication Commission. The government agency responsible for regulating telecommunications in the United States.

**MONOPOLE:** A single self-supporting vertical pole with no guy wire anchors, usually consisting of a galvanized or other unpainted metal pole with below grade foundations.

**OET BULLETIN 65:** The FCC's Office of Engineering and Technology bulletin, published in August 1997, and entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields", and any associated appendices or supplements, including Supplement C (dated January 2001) entitled "Additional Information for Evaluating Compliance of Mobile and Portable Devices with FCC Limits for Human Exposure to Radiofrequency Emissions." These provide a protocol for calculating or predicting the strength of electromagnetic fields near personal wireless service facilities and towers. Bulletin 65 may be found on the FCC website at <[http://www.fcc.gov/Bureaus/Engineering\\_Technology/Documents/bulletins/oet65/oet65.pdf](http://www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet65/oet65.pdf)>.

**PERSONAL WIRELESS SERVICE FACILITY:** All equipment (including any repeaters) with which a personal wireless service provider broadcasts and receives the radio frequency waves which carry their services and all locations of said equipment or any part thereof. This facility may be sited on one or more personal wireless towers or structure(s) owned and permitted by another owner or entity.

***PERSONAL WIRELESS SERVICE PROVIDER:*** An entity, licensed by the FCC to provide personal wireless services to individuals or institutions.

***PERSONAL WIRELESS SERVICES:*** Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange services. These services include: cellular services, personal communication services (PCS), specialized mobile radio services and paging services.

***PERSONAL WIRELESS TOWER OR STRUCTURE:*** A tower or existing structure upon which one or more personal wireless service facilities may be installed.

***RADIATION PROPAGATION STUDIES OR RADIAL PLOTS:*** Computer-generated estimates of the radiation emanating from antennas or repeaters sited on a specific tower or structure. The height above ground, power input and output, frequency output, type of antenna, antenna gain, topography of the site and its surroundings are all taken into account to create these simulations. They are the primary tool for determining whether a site will provide adequate coverage for personal wireless services facility proposed for that site.

***REPEATER:*** A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas which are not able to receive adequate coverage directly from a base station.

***STRUCTURALLY ABLE:*** The determination that a tower or structure is capable of carrying the load imposed by the proposed new antennas under all reasonably predictable conditions as determined by professional structural engineering analysis.

***TELEPORT:*** A facility utilizing satellite dishes of greater than 2.0 meters in diameter designed to uplink to communications satellites for transmitting in the C-Band (four to six GHz) spectrum.

***TOWER:*** A lattice structure or framework, or monopole, in excess of 15 feet tall, which is designed to support personal wireless service transmission, receiving and/or relaying antennas and/or equipment.

***YARD:*** An unoccupied space open to the sky on the same lot with a building or structure.

***YARD, FRONT:*** A yard extending across the full width of the lot and lying between the street line of the lot and the nearest line of the building. The depth of a front yard shall be the minimum distance between the building and the front lot line.

***YARD, REAR:*** A yard extending across the full width of the lot and lying between the rear lot line of the lot and the nearest line of the building. The depth of a rear yard shall be the minimum distance between the building and the rear lot line.

**YARD, SIDE:** A yard between the side lot line of the lot and the nearest line of the building and extending from the front yard to the rear yard or, in the absence of either of such yards, to the front or rear lot lines, as may be. The width of a side yard shall be the minimum distance between the building and the side lot line.

**ZONING ACT:** Chapter 40A of the Massachusetts General Laws.