Great Barrington Planning Board  
Public Hearing  
Proposed Zoning Amendments

The Great Barrington Planning Board will hold public hearings pursuant to MGL Ch. 40A, s. 5, on Thursday, March 10, 2022 at 6:00 PM, and on Thursday, March 24, 2022 at 6:00 PM, via Zoom remote video/teleconference webinar, to provide an opportunity to comment on the following proposed changes to the Zoning Bylaw:

March 10, 2022, 6:00 PM

1. Amendments to the Floodplain Overlay District regulations and definitions;
2. Amendments to the Accessory Dwelling Units regulations; and,
3. Clerical amendments regarding Lodging Houses and Tourist Homes.

March 24, 2022, 6:00 PM

4. Amendments to Sections 4.2.1 and 8.1 of the Zoning Bylaw which regulate the two-family use of a single lot.

A copy of all of the above proposed amendments is attached on the following pages. It may be reviewed on the Planning Board page of the town website at https://www.townofgb.org/planning-board or in the Town Clerk’s office at Town Hall, 334 Main Street, Great Barrington.

Any person wishing to be heard on these matters should attend the Hearing, or submit comments in writing prior to 4:00 PM the day of the hearing. For more information you may contact the Planning Department at crembold@townofgb.org or 413-528-1619, x. 2401.

The Zoom link / dial-in information for both meetings is the same:
https://us02web.zoom.us/j/88092135879?pwd=Qi9xYlk0ZEpRNU9vN002V0pTdzhSQT09
Webinar ID: 880 9213 5879
Passcode: 528528
By Telephone (audio only), dial: +1 929 205 6099
Planning Board’s Proposed Zoning Amendments for 2022 Annual Town Meeting

**Article ____: Floodplain Overlay District**

*Purpose of the Amendments:* These amendments are proposed in order to ensure the Town’s local zoning regulations reflect at least the minimum requirements of the National Flood Insurance Program (NFIP) so that the community can continue to participate in the program.

To see if the Town will vote to amend Section 9.1, Floodplain Overlay District, and Section 11.0, Definitions, of the Zoning Bylaw, as set forth in this article.

Proposed deletions of existing text are **struck through**
Proposed insertions are _underlined_

Amend Section 9.1 as follows:

**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 Definitions.** Pertinent definitions of flood zones delineated in Great Barrington (e.g., Zone A, Zone A1-30, etc.) may be found in the US Code of Federal Regulations, Title 44, Part 64.3. Additional terms applicable to the FPOD are found in Section 11 of this Bylaw and US Code of Federal Regulations, Title 44, Part 59.

**9.1.23 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.

In A Zones, in the absence of FEMA Base Flood Elevation data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A and as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.

The two above-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.

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 Floodways. 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.

In A Zones along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

9.1.45 Special Permit Required. 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, or parking of recreational vehicles, shall submit an application for a special permit to the Special Permit Granting Authority (SPGA) Selectboard in accordance with the provisions of Section 10.4. The Selectboard shall be the SPGA for floodplain special permits.

Such special permit 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. All plans shall be prepared and certified by a professional engineer registered and licensed in the Commonwealth of Massachusetts.
The special permit application shall include a checklist of all local, state and federal permits that will be necessary in order to carry out the proposed development in the FPOD. The applicant must acquire all necessary permits, and must submit the completed checklist demonstrating that all necessary permits have been acquired prior to issuance of any permit by the Building Inspector.

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 Selectboard 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;

2. The use of such land for the proposed purpose will not interfere with the general purpose for which such FPODs have been established;

3. That the floor level of areas to be occupied by human beings as living or working space shall be at an elevation in accordance with the State Building Code;

4. 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;

5. 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;

6. That safe vehicular and pedestrian movement to, over and from the premises is provided in the event of flooding, and

7. 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.
8. If Zones AO and AH exist on the applicable FIRM, adequate drainage paths must be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

9.1.7 Conditions. Special permits issued under this section may be subject to such conditions as the Selectboard 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.

9.1.8. Subdivisions. All subdivision proposals and development proposals in the floodplain overlay district shall be reviewed to assure that: (1) Such proposals minimize flood damage; (2) Public utilities and facilities are located & constructed so as to minimize flood damage; and (3) Adequate drainage is provided. When proposing subdivisions or other developments greater than 50 lots or 5 acres (whichever is less), the proponent must provide technical data to determine base flood elevations for each developable parcel shown on the design plans.

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.

9.1.9. Recreational Vehicles. If otherwise permitted in accordance with this Zoning Bylaw, in A1-30, AH, AE Zones, V1-30, VE, and V Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the zone’s regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.

9.1.10 Community Floodplain Administrator. The Town of Great Barrington hereby designates the Building Inspector to be the official floodplain administrator for the Town.

9.1.11 Variances from Building Code Floodplain standards. Should a proponent be granted a Building Code Variance by the Commonwealth, the proponent shall notify the Building Inspector in writing, and the Town will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community’s files.

The Town shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood
level will result in increased premium rates for flood insurance up to amounts as high as $25 for $100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

9.1.12. Variances to local Zoning Bylaws related to community compliance with the National Flood Insurance Program (NFIP). The Zoning Board of Appeals may issue a variance from these floodplain bylaws in accordance with the requirements set out by State law, and may only be granted if:

1) Good and sufficient cause and exceptional non-financial hardship exist;
2) the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and
3) the variance is the minimum action necessary to afford relief.

9.1.13 Limitations. The floodplain management regulations found in this section shall take precedence over any less restrictive conflicting local laws, ordinances or codes. The degree of flood protection required by this bylaw is considered reasonable but does not imply total flood protection. Granting of a special permit under this section by the Selectboard 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.

9.1.14 Watercourse alterations and New data. In a riverine situation, the Building Inspector shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities, especially upstream and downstream
- Bordering States, if affected
- NFIP State Coordinator
  Massachusetts Department of Conservation and Recreation
  251 Causeway Street, 8th floor
  Boston, MA 02114
- NFIP Program Specialist
  Federal Emergency Management Agency, Region I
  99 High Street, 6th Floor
  Boston, MA 02110

If the Town acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.)

Notification shall be submitted to:
FEMA Region I Risk Analysis Branch Chief
99 High St., 6th floor, Boston, MA 02110

And copy of notification to:
Massachusetts NFIP State Coordinator
MA Dept. of Conservation & Recreation, 251 Causeway Street, Boston, MA 02114
Amend Section 11.0 by adding the following definitions under a new entry FLOODPLAIN OVERLAY DISTRICT:

**FLOODPLAIN OVERLAY DISTRICT:** The following definitions shall apply in the FPOD. Reference is also made to 44 CFR §59.

DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

FLOOD BOUNDARY AND FLOODWAY MAP means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

FLOOD HAZARD BOUNDARY MAP (FHBM.) An official map of a community issued by the Federal Insurance Administrator, where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E.

FLOODWAY. The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

HIGHEST ADJACENT GRADE means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE means any structure that is:
(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
   (1) By an approved state program as determined by the Secretary of the Interior or
   (2) Directly by the Secretary of the Interior in states without approved programs.

NEW CONSTRUCTION. Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted
by the authority having jurisdiction, including any subsequent improvements to such structures. 
New construction includes work determined to be substantial improvement.

RECREATIONAL VEHICLE means a vehicle which is:
(a) Built on a single chassis;
(b) 400 square feet or less when measured at the largest horizontal projection;
(c) Designed to be self-propelled or permanently towable by a light duty truck; and
(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for
recreational, camping, travel, or seasonal use.

REGULATORY FLOODWAY - see FLOODWAY.

SPECIAL FLOOD HAZARD AREA. The land area subject to flood hazards and shown on a Flood 
Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, 
VE or V1-30.

START OF CONSTRUCTION. The date of issuance of a permit for new construction and 
substantial improvements to existing structures, provided the actual start of construction, repair, 
reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after 
the date of issuance. The actual start of construction means the first placement of permanent 
construction of a building (including a manufactured home) on a site, such as the pouring of a slab 
or footings, installation of pilings or construction of columns. Permanent construction does not 
include land preparation (such as clearing, excavation, grading or filling), the installation of streets 
or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary 
forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling 
units or not part of the main building. For a substantial improvement, the actual “start of 
construction” means the first alteration of any wall, ceiling, floor or other structural part of a 
building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE means, for floodplain management purposes, a walled and roofed building, 
including a gas or liquid storage tank, that is principally above ground, as well as a manufactured 
home.

SUBSTANTIAL REPAIR OF A FOUNDATION. When work to repair or replace a foundation 
results in the repair or replacement of a portion of the foundation with a perimeter along the base 
of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation 
measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, 
column or pier supported foundation, the building official shall determine it to be substantial repair 
of a foundation. Applications determined by the building official to constitute substantial repair of 
a foundation shall require all existing portions of the entire building or structure to meet the 
requirements of 780 CMR.

VARIANCE means a grant of relief by a community from the terms of a flood plain management 
regulation.

VIOLATION means the failure of a structure or other development to be fully compliant with the 
community's flood plain management regulations. A structure or other development without the 
elevation certificate, other certifications, or other evidence of compliance required in 44 CFR §60.3 
is presumed to be in violation until such time as that documentation is provided.
ARTICLE ______: Accessory Dwelling Units (ADU)

Purpose of the Amendments: This amendment will ensure the zoning bylaw requirement regarding ADU size utilizes a measurement consistent with other portions of the zoning bylaw; instead of measuring by gross square footage, the ADU will be measured by net usable square feet. This will also serve to clarify and distinguish an ADU’s living area from what might be other areas, of an accessory building, such as utility or garage areas.

To see if the Town will vote to amend Section 8.2.3, item 2, as follows:

Proposed deletions of existing text are struck through
Proposed insertions are underlined

Amend 8.2.3, item 2, as follows:

2. An ADU may not in any case be larger than 900 gross square feet of net usable floor area. If a dwelling unit greater than 900 gross square feet of net usable floor area is created within a single-family home, the residence will be considered a two-family dwelling and will be subject to the requirements of Section 8.1 of this Bylaw.
ARTICLE  ____: Lodging Houses and Tourist Homes for Transient Guests

Purpose of the Amendments: This amendment will ensure the zoning bylaw references to these uses are consistent and defined. The two terms mean the same thing, but the existing title of section 7.16 and the existing definitions are not clear on this point.

To see if the Town will vote to amend the Zoning Bylaw as follows:

Amend the title of Section 7.16 as follows:

7.16 LODGING HOUSES OR TOURIST HOMES FOR TRANSIENT GUESTS

And, amend Section 11.0, Definitions, by adding a new definition for Lodging Houses, as follows:

LODGING HOUSE: See Tourist Home.
Article ____: Two-Family Residential Use

Purpose of the Amendments: These amendments are proposed in order to correct internal inconsistencies in the Town’s zoning regulations governing two-family residential uses, and to ensure that two-family residential use of a single lot in two separate principal structures is not overly restrictive. In 2014, the Town amended the zoning regulations to allow two-family use of a single lot. However those amendments inadvertently did not delete restrictive language in Sections 4.2.1 and 8.1.1 which could be interpreted in a way that makes it impossible to build two separate single family structures on otherwise conforming lots. This proposal will address that issue. This proposal also removes the requirement that a lot be twice the minimum size in order to have two separate single family structures on it.

To see if the Town will vote to amend Sections 4.2.1 and 8.1.1 of the Zoning Bylaw as set forth in this article.

Proposed deletions of existing text are struck through
Proposed insertions are underlined

Amend Sections 4.2.1 and 8.1.1 as follows:

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.

8.1.1 General. The two-family residential use of a single lot is permitted as set forth in Section 3.1.4, 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.