

ARTICLE IX  
**General Regulations**

~ 171-35. Accessory uses. [Amended 5-4-1998 ATM, Art. 29]

A. General provisions. 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 chapter.

B. Restrictions, accessory buildings or uses.

(1) No use shall be permitted in any district as an accessory use which increases the number of dwelling units or the number of buildings 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.

(2) In residence districts, no use shall be permitted as an accessory use to a dwelling which involves or requires any construction features or alterations not residential in character.

(3) No accessory building shall be used as a dwelling except in an industrial district for the accommodation of a night watchman or janitor.

(4) An accessory building may be located within the required rear or side yard of the principal building, but it shall not be located 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.

(5) 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 Article II, ~ 171-5, Terms defined.

C. Home occupations. It is the intent of this subsection to permit certain home occupations with reasonable safeguards, within the spirit or intent of the regulations governing the residence 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:

(1) Permitted home occupations in any residence district.

(a) Professional home occupations include, but are not limited to, offices and studios of an architect, artist, attorney, author, clergyman, engineer, musician, physician, surgeon, dentist, real estate broker, accountant, financial advisor, consultant and teacher of not more than three pupils on the premises at any time, or similar, low-impact professions.

(b) Customary home occupations such as dressmaking, tailoring, millinery, home cooking, baking or preserving or similar domestic crafts, and telephone or mail services.

(c) The renting of rooms or the furnishing of table board by a resident family to not more than three roomers or boarders, provided that no separate cooking facilities are maintained.

(2) Home occupations allowed by special permit in any residence district [See Article X (Special Permits) for more information. Where conflicts occur between Article IX (General Regulations) and Article X, Article IX shall govern with respect to accessory uses.].

(a) Incidental use of the primary building and accessory building(s) by a resident tradesperson, including, but not limited to, carpenter, electrician, plumber, janitor, sheet metal worker, upholsterer, small engine repair person, landscaper, day-care (not to exceed six nonresident children at any one time) or other artisan, may be permitted, provided that all provisions of this chapter are met. Trades such as the servicing, maintenance, or restoration of motor vehicles are expressly prohibited in all residential zones.

(b) Application shall be made to the Board of Selectmen which shall conduct a public hearing. Proof of proper notice of the public hearing, given by the applicant to all abutters and neighbors within 300 feet of the subject property, shall be required at the time of application.

(c) A site plan review shall be required.

(d) 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.

(e) 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.

(f) 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 chapter. The special permit pertains only to the specific use of the original applicant and does not transfer with the property.

(3) Requirements for home occupations.

(a) 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.

(b) 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.

(c) The floor area for the home occupation shall not exceed 33% of the gross floor area of the dwelling unit and accessory building. Use of accessory buildings for the purposes of a home occupation, in all residence districts, shall be by special permit. In R-1-A, R-1-B and R-3 Zones, use of accessory buildings for the purpose of a home occupation shall not be allowed. 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. [Amended 5-12-2003 ATM, Art. 22]

(d) 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.

(e) 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 article are met.

(f) Home occupations shall conform to performance standards (~ 171-38) and the Bylaws, Chapter 115, Noise Control.

(g) Home occupations may employ one person who is not residing in the dwelling unit in which such home occupation is allowed.

(h) An off-street parking area shall be provided in compliance with requirements of this chapter.

(i) Hours of operation. In no case shall the home occupation be open to the public, including clients, visitors and deliveries, at times earlier than 8:00 a.m. nor later than 8:00 p.m.

(j) Traffic. Average daily traffic to and from the home occupation shall not exceed 16 motor vehicle trip ends.

(k) 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 chapter shall not be construed as an exemption from such regulations.

~ 171-36. Nonconforming structures, uses and lots.

A. Except as hereinafter provided, the provisions of this chapter shall not apply to structures or uses lawfully in existence before the enactment of this chapter or before any subsequent amendments thereto. Further, the provisions of this chapter shall not apply to:

(1) A building permit or special permit issued before the first publication of notice of the public hearing by the Planning Board on the applicable zoning bylaw or amendment. Any construction or operation under such building permit or special permit shall, however, conform to any amendment to this Zoning Bylaw unless the use or construction is commenced within six months after the issuance of the permit and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

(2) The alteration, reconstruction, extension or structural change to a one-family or two-family residence, provided that this does not increase the nonconforming nature of such structure.

(3) The expansion or reconstruction of existing structures for the primary purpose of agriculture, horticulture or floriculture.

B. Nonconforming lots of record and lots shown on a plan endorsed by the Planning Board under the Subdivision Control Law<sup>1</sup> are exempt from the provisions of this chapter to the extent provided in MGL c. 40A, ~ 6.

C. Any increases in lot area, frontage, width, yard or depth requirements shall not apply to a lot for single-family or two-family residential use that at the time of recording or endorsement conformed to then-existing requirements.

D. The provisions of this chapter shall apply, however, to any change or substantial extension of a preexisting nonconforming use; to a building permit or special permit issued after the first publication of notice of the public hearing by the Planning Board on the applicable zoning bylaw or amendment; 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 for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

E. Special permit granting authority special permit.

(1) The special permit granting authority (SPGA) may authorize by a special permit, issued in accordance with the provisions of Article X of this chapter, the extension or alteration of a nonconforming structure or use, provided that no such extension or alteration shall be permitted unless the SPGA specifically finds that:

(a) Such change, expansion or alteration will not be substantially more detrimental to the neighborhood than the existing nonconforming use; and

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<sup>1</sup>Editor's Note: See Ch. 240, Planning Board's Subdivision Regulations.

(b) Any such expanded, altered or reconstructed structure or changed use will not be in greater nonconformity with open-space, yard and off-street parking requirements of this chapter and will not result in air or water pollution, odor, glare or electrical interference nor significantly increase noise, traffic or night operation.

Such findings shall be in addition to the findings required by ~ 171-45B of this chapter.

(2) The SPGA may impose reasonable conditions, safeguards or limitations on such special permits to lessen any possible adverse impact on adjacent uses or on the neighborhood.

(3) In the absence of a special permit issued in accordance with the provisions of Subsection E(1), no expansion, extension, alteration, reconstruction or change in a preexisting nonconforming structure or use shall be permitted, other than as expressly provided elsewhere in this section.

(4) The Zoning Board of Appeals shall be the special permit granting authority for the purpose of this section. [Added 5-3-1993 ATM, Art. 14]

F. Land owned, leased or rented by an occupant or owner at the time the property becomes nonconforming may be used for the express purpose of providing off-street parking or off-street loading areas in an amount not to exceed the limits set forth in this chapter.

G. In any case in which the district boundary line crosses a building that existed at the time such boundary line was established, a use permitted in the less restricted of the two districts may be permitted as a nonconforming use during the existence of said building in that part of the building situated within the more restricted district.

H. A nonconforming structure damaged by fire, explosion or other catastrophe may be rebuilt, provided that such rebuilding, reconstruction or restoration is undertaken within two years of such catastrophe, and the structure, as rebuilt or restored, is not in greater nonconformity with the provisions of this chapter. Such rebuilt, reconstructed or restored structure may be enlarged or changed in use in accordance with the provisions of Subsection E herein.

I. Nothing in this chapter shall be deemed to restrict the normal maintenance and repair of nonconforming structures nor to prevent reconstruction to a safe condition of any structure or part thereof declared to be unsafe by any official charged with protecting the public safety and ordered by said official to be made safe.

J. Abandonment.

(1) No nonconforming use that has been abandoned shall thereafter be reestablished. No structure or land formerly devoted to a nonconforming use that has been abandoned shall thereafter be devoted to any use other than those permitted in the applicable district. The term "abandonment" as used herein shall mean the voluntary discontinuance of a use, or nonuse for two years or more. Any of the following shall constitute prima facie evidence of abandonment:

- (a) Any positive act indicating such intent.
- (b) Dedication of the premises to another use.
- (c) Removal of the characteristic equipment and furnishings of the nonconforming use from the premises and failure to replace them with the same or similar equipment within two years.
- (d) Failure to renew any license required for the nonconforming use.
- (e) Advertising the property for sale or lease after discontinuance of the nonconforming use.
- (f) Discontinuance of the nonconforming use of land for a period of two years or more.
- (g) Discontinuance of the nonconforming use of a building or portion thereof for a period of two years or more.

(2) In all cases of apparent or alleged abandonment of a nonconforming use, the burden of proof as to the absence of abandonment shall lie on the owner of the property.

~ 171-37. Floodplain restrictions.

A. General provisions. The general boundaries of the Floodplain District 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 chapter by reference and are on file with the Town Clerk, Planning Board, Inspector of Buildings and Board of Health. 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 chapter 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.

B. Any person desiring to establish any permitted use in a Floodplain District 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 special permit granting authority (SPGA) on Form SP-2 (long form) in accordance with the provisions of Article X of this chapter. 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 in ~ 171-41C, D and E of this chapter. In addition to the information required by those sections, 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.

C. The SPGA may issue a special permit, in accordance with the provisions of Article X and in compliance with all applicable provisions of this chapter, for establishment or alteration of a permitted use in a floodplain, provided that the SPGA determines:

(1) The use would otherwise be permitted if such land were not, by operation of this section, in the Floodplain District; and

(2) The use of such land for the proposed purpose will not interfere with the general purpose for which such Floodplain Districts have been established, as specified in ~ 171-9D of this chapter.

Such findings shall be in addition to the findings required by ~ 171-45B of this chapter.

D. Conditions.

(1) 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.

(2) Without limiting the generality of the foregoing, the SPGA shall ensure that the applicant provides sufficient information to determine:

(a) That the floor level of areas to be occupied by human beings as living or working space shall be at a safe elevation;

(b) 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;

(c) 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;

(d) That safe vehicular and pedestrian movement to, over and from the premises is provided in the event of flooding; and

(e) 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.

(3) Specific provisions to ensure the foregoing shall be made conditions of any special permit issued under this section.

E. 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.

F. 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, MGL c. 131, ~ 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.

~ 171-37.1. Water Quality Protection District. [Added 5-6-1991 ATM, Art. 11; amended 5-15-2006 ATM, Art. 14]

A. Purpose of district. The purpose of the Water Quality Protection District is to:

(1) 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;

(2) Preserve and protect existing and potential sources of drinking water supplies;

(3) Conserve the natural resources of the Town;

(4) Prevent temporary and permanent contamination of the environment; and

(5) 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.

B. Scope of authority. The Water Quality Protection District 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 Water Quality Protection District must additionally comply with the requirements of this district. Uses prohibited in the underlying zoning districts shall not be permitted in the Water Quality Protection District. In the case of a conflict between two provisions of this section, the more restrictive shall apply.

C. Definitions.

(1) The Water Quality Protection District comprises five zones with different degrees of protection. The highest degree of protection is reserved for the Inner Zone, also known as "Zone I," when referring to the area within a radius of 100 feet to 400 feet from a wellhead, and "Zone A," when referring to the first 400 feet from a surface water supply (Long Pond or East Mountain Reservoir). The Outer Zone lies further from the protected water source and is known as "Zone II" when referring to the aquifer recharge area for a wellhead, and as "Zone B" when referring to the watershed within 1/2 mile of a surface water supply. The fifth protected zone is the Stream and Lake Protection Zone. For further clarification, see the definitions below.

(2) For the purposes of this section, the following terms are defined below:

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

DEP --Massachusetts Department of Environmental Protection.

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

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  
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. 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:

- (a) Between the surface water source and the upper boundary of the bank;
- (b) 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
- (c) 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:**

(a) 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).

(b) 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 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.

D. Establishment and delineation of Water Quality Protection District. For the purposes of this district, there are hereby established within the Town certain Water Quality Protection Areas, 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.

E. 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.

F. Permitted uses.

(1) 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.

(2) The following uses are permitted within the other zones of the Water Quality Protection District, provided that all necessary permits, orders, or approvals required by local, state, or federal law are also obtained:

- (a) Conservation of soil, water, plants, and wildlife;
- (b) 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;
- (c) Foot, bicycle and/or horse paths, and bridges (Horse paths are not permitted in Zone A.);
- (d) Normal operation and maintenance of existing water bodies and dams, splash boards, and other water control, supply and conservation devices;
- (e) Maintenance, repair, and enlargement of any existing structure, subject to Subsection G and Subsection H;
- (f) Residential development, subject to Subsections G and H;
- (g) Farming, gardening, nursery, conservation, forestry, harvesting, and grazing, subject to Subsections G and H;
- (h) Construction, maintenance, repair, and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts, and tunnels;

(i) Underground storage tanks related to the permitted activities are not categorically permitted.

G. Prohibited uses.

District: (1) The following uses are prohibited within the Water Quality Protection

(a) Landfills and open dumps as defined in 310 CMR 19.006;

(b) Automobile graveyards and junkyards, as defined in MGL c. 140B, ~ 1;

(c) Landfills receiving only wastewater and/or septage residuals including those approved by the DEP pursuant to MGL c. 21, ~ 26 through 53; MGL c. 111, ~ 17; MGL c. 83, ~ 6 and 7, and regulations promulgated thereunder;

(d) Facilities that generate, treat, store, or dispose of hazardous waste that are subject to MGL c. 21C and 310 CMR 30.00, except for:

[1] Very small quantity generators as defined under 310 CMR 30.000;

[2] Household hazardous waste centers and events operated in accordance with 310 CMR 30.390 (not permitted in Zone A);

[3] Waste oil retention facilities required by MGL c. 21, ~ 52A (not permitted in Zone A);

[4] Water remediation treatment works approved by DEP for the treatment of contaminated ground- or surface waters;

(e) 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;

(f) Storage of liquid hazardous materials, as defined in MGL c. 21E, and/or liquid petroleum products unless such storage is:

[1] Above ground level; and

[2] On an impervious surface; and

[3] Either:

[a] In container(s) or aboveground tank(s) within a building; or

[b] 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.

(g) Storage of sludge and septage, unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;

(h) 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 MGL c. 85, ~ 7A.);

(i) Storage of animal manure unless covered or contained within a structure designed to prevent the generation and escape of contaminated runoff or leachate;

(j) 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;

(k) Discharge to the ground of nonsanitary wastewater including industrial and commercial process wastewater, except:

[1] 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;

[2] 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

[3] Publicly owned treatment works.

(l) Stockpiling and disposal of snow and ice containing deicing chemicals brought in from outside the District;

(m) Storage of commercial fertilizers and soil conditioners, as defined in MGL c. 128, ~ 64, or pesticides, as defined in MGL c. 132B, ~ 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;

(n) 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.

(2) In addition to the above prohibited uses, the following uses are prohibited in the Stream and Lake Protection Zone:

(a) New structures or expansion of existing structures by more than 10% of the existing gross floor area;

(b) Leaching fields for new, nonreplacement, on-site subsurface sewage disposal systems.

(3) The following uses may be permitted in the Outer Zone, but are expressly prohibited in the Inner Zone:

(a) New or expanded underground storage tanks (310 CMR 22.20B);

(b) Motor vehicle repair operations;

(c) Cemeteries (human and animal) and mausoleums;

(d) Solid waste combustion facilities or handling facilities as defined in 310 CMR 16.00;

(e) 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

(f) Commercial outdoor washing of vehicles, commercial car washes.

#### H. Design requirements.

(1) 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.

#### I. Nonconforming uses.

(1) Continuation of a legally preexisting nonconforming use shall be allowed, provided that:

(a) The nonconformity shall not be increased or expanded.

(b) The replacement of any underground fuel storage tanks shall conform to the following:

[1] The total capacity of the replaced tanks shall not be exceeded.

[2] 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.

[3] 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.

[4] 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.

[5] 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.

[6] 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.

[7] 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).

(c) The continued operation of a legally preexisting gravel extraction bed shall conform to the following:

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

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

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

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

[b] Topsoil shall be added to a depth of at least three inches after compaction.

[c] Topsoil shall be compacted, by rolling, to a uniform density.

[d] 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.

J. Uses and activities requiring a special permit. The following uses and activities are permitted only upon the issuance of a special permit by the special permit granting authority (SPGA) under such conditions as it may require:

(1) Enlargement or alteration of existing uses that do not conform to the Water Quality Protection District;

(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 under Subsection G). 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.

K. 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 Subsection G(15) and (16) 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 Subsection G of this section, 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) 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.

(5) All special permit applications shall comply with Article X of this Chapter 171 and the requirements of this section. In the case of conflict between two portions of the bylaw, the more stringent requirements shall apply. 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.

(6) The SPGA shall hold a hearing, in conformity with the provision of MGL c. 40A, ~ 9, within 65 days after the filing of the application. Notice of the public hearing shall be given by publication and posting and by first-class mailings to parties of interest as defined in MGL c. 40A, ~ 11. The decision of the SPGA and any extension, modification, or renewal thereof shall be filed with the SPGA and Town Clerk within 90 days following the closing of the public hearing. Failure of the SPGA to act within 90 days shall be deemed as a granting of the permit. However, no work shall commence until the certificate of approval, as required by MGL c. 40A, ~ 9, is recorded in the Registry of Deeds.

#### L. Enforcement.

(1) 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.

(2) 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.

M. Severability. A determination that any portion or provision of this section is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any special permit previously issued thereunder.

~ 171-38. Performance standards.

A. Hereafter, no land, building or structure in any district shall be used or occupied for manufacturing or other nonresidential purposes in such a manner so as to create 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 such amount as to adversely affect 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 chapter shall not be so altered or modified as to conflict with, or further conflict with, these performance standards.

B. 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.

C. 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.

D. 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 can 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.

~ 171-39. Private schools, other educational uses and group residences not otherwise provided for.

The Board of Selectmen may issue a special permit for any such use not regulated by ~ 171-16B(2)(a), subject to the following special requirements:

A. Submission of an informational statement, including the following:

- (1) Probable effect of 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.

B. Occupancy permit shall not be granted until proof is received by the Inspector of Buildings that all applicable permits have been received.

C. A group home or group residence must meet the dimensional requirements for residences as set forth in ~ 171-18, 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.

D. A group home or residence may not exceed five residents. except as specifically authorized by a special permit.