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TOWN OF BROOKLINE, NEW HAMPSHIRE

MARCH 9, 1994

ZONING AND LAND USE ORDINANCE

BUILDING CODE

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ZONING ORDINANCE

BUILDING CODE

TOWN OF BROOKLINE, NEW HAMPSHIRE

March 9, 1994

ZONING AND LAND USE ORDINANCE

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ARTICLE I

PREAMBLE

In pursuance of authority conferred by Chapter 31, Sections 60-89, N.H. Revised Statutes Annotated, 1955, and for the purpose of promoting the health, safety, morals, property, convenience of general welfare, as well as efficiency and economy in the process of development, of the inhabitants of the incorporated Town of Brookline, New Hampshire, by securing safety from fire, panic, and other dangers, providing adequate area between buildings and various rights of way, by preserving the rural charm now attached to our town, the promotion of good civic design and arrangement, wise and efficient expenditure of public funds, and the adequate provision of public utilities and other public requirements, and by other means, now therefore the following ordinance is hereby enacted by the voters of the Town of Brookline, New Hampshire in official annual meeting convened.

ARTICLE II

DISTRICTS

For the purpose of this ordinance the entire Town of Brookline shall be divided into two districts which shall be called:

- A. Industrial-Commercial
- B. Residential-Agricultural District

These two districts may also include areas designated Regulatory Floodway as delineated on the Flood Insurance Maps of the Town of Brookline dated May 19, 1987, as prepared by the Federal Emergency Management Agency - Federal Insurance Administration.

Other overlay zones include the Wetlands Conservation District and the Aquifer Protection District.

ARTICLE III

GENERAL PROVISIONS

- A. No junk yard or place for the storage of discarded machinery, vehicles, glass, paper, cordage, garbage, refuse, or other waste or discarded materials shall be maintained in the Town, exclusive of the area known as the Town Dump.
- B. No owner or occupant of the land shall permit fire or other ruins to be left, but shall remove same to ground level within one year.
- C. Sanitary Protection
 - 1. No waste waters or sewage shall be permitted to run free into a public water body or be discharged in any way that may be offensive or detrimental to health.
 - 2. All dwellings and sanitary systems should be constructed and maintained in accordance with standards set and enforced by the New Hampshire Water Supply and Pollution Control Commission.

D. Within the Regulatory Floodway, any development or encroachment (including fill) which would result in any increase in flood levels during the base flood discharge is prohibited. For the purpose of this part, "development" is defined to mean "any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations."

ARTICLE IV

INDUSTRIAL-COMMERCIAL DISTRICT

A. LOCATION

1) The Industrial-Commercial District shall be:

- a) the area within 500 feet west of NH Route 13 from the northern and western boundary of lot G-52-1 to the southern lot line of G-27.
- b) the area between the old tract line approximately 528 feet west of the western boundary of G-27, northeastward along the old tract line to the western tip of G-52-2, and the western boundary of G-52-1 and Route 13.
- c) the area within 500 feet of NH Route 13 from a point 500 feet south of Route 130 North to North Mason Rd. on both sides of NH Route 13.
- d) lots K-76, K-77 and the area within 500 feet west of NH Route 13 from the Massachusetts State Line to the northern boundary of lot J-19.
- e) the area within 500 feet east of NH Route 13 from Bond St. south to South Main St., then following South Main St. to the southern boundary of lot H-23-1.
- f) lot G-20.
- g) lots K-81 and K-75.

B. USES PERMITTED

1. Excavations (as per Article IX)
2. Stores, shops, service stations and professional offices
3. Farming & Forestry
4. Lumber Yards and lumber mills
5. Health care facilities
6. Theaters
7. Hotels/motels
8. Warehousing, assembling & manufacturing
9. Day care centers
10. Office parks
11. Residential dwelling units existing prior to March 14, 1992.
12. Any use which does not offend by emission of smoke, dust, gas, noise, odor, or fumes.

C. LOT REQUIREMENTS

1. Frontage: Every building lot shall have at least 200 feet of frontage.
2. Setbacks:
Front: Each structure shall be setback at least 30 feet from the front lot line.
Side and Rear: Each structure shall be at least 20 feet from side and rear lot lines. In the case of a corner lot, the side distance shall be increased to 30 feet on the side bordering the frontage.
3. Land Area: Each building lot shall have at least 80,000 square feet.

ARTICLE V

RESIDENTIAL-AGRICULTURAL DISTRICT

A. LOCATION

- 1) The Residential-Agricultural District shall be:
 - a) all areas of town not designated as the Industrial-Commercial District.

B. USES PERMITTED

1. Single family dwellings, two family dwellings.
2. Churches synagogues, parish houses, convents, day nurseries, kindergartens, and day care centers.
3. Municipal buildings, schools, and institutions of higher learning.
4. Recreation and community center buildings and grounds for games and sports.
5. Home businesses
6. Farming and Forestry activities are permitted when incidental to primary residential use.
7. Any use injurious, obnoxious, or offensive to the neighborhood is prohibited.

C. LOT REQUIREMENTS

1. Frontage: Every building lot shall have at least 200 feet of frontage except back lots.
2. Setbacks:
Front: Each structure shall be setback at least 30 feet from the front lot line.
Side and Rear: Each structure shall be at least 15 feet from side and rear lot lines. In the case of a corner lot, the side distance shall be increased to 30 feet on the side bordering the frontage.
3. Land Area: Each building lot shall have at least 80,000 square feet.
4. Only one dwelling unit shall be permitted per minimum land area. A two-family house shall require two times the minimum land area.

5. Back Lots -Minimum lot area 5 acres. Minimum land area 5 acres per dwelling unit.
A back lot requires minimum frontage on a Class I, II, or V road of 30 feet for each dwelling.
No building shall be erected closer than 100 feet from an existing public road.
Duplexes require 10 acre minimum lot size.
A maximum of 25% of the minimum required lot size for a back lot (5 or 10 acres) can be wetlands, as required in the Wetlands Conservation District.

ARTICLE VI

MOBILE HOMES

- A. No trailer or mobile home shall be occupied or maintained as a living unit except in an approved Mobile Home District.
 1. Mobile Home District Requirements - The Planning Board may approve the location and designation of Mobile Home Districts within the Residential-Agricultural District and shall allow the placement of mobile homes on individual lots within Mobile Home Districts intended for occupancy as permanent single family dwellings. Any area approved as a Mobile Home District, in addition to conforming with the zoning ordinance, shall also satisfy the following conditions:
 - a. Each proposed Mobile Home District must be a minimum of twenty (20) contiguous acres in size.
 - b. Each proposed Mobile Home District must contain a buffer of not less than ten (10) feet wide which is planted and landscaped to provide a visual barrier between the Mobile Home District and all other adjacent property.
 - c. Each proposed Mobile Home District shall conform with the Subdivision Regulations now in existence or as may be amended.
 2. Application - Any application for the establishment and designation of a Mobile Home District shall be an attachment to, and a part of, the application for subdivision approval required by the Subdivision Regulations and shall contain certification by the owner (if different from applicant) of the request for Mobile Home District Designations.
- B. The provisions of this section shall not apply to the continued use and occupancy of any mobile home used as a dwelling as of the date of the passage of this section, nor to a mobile home hereafter acquired as a replacement by the owner of a mobile home so used.
- C. The placement of mobile homes is prohibited within the designated Regulatory Floodway, except in existing mobile home parks.

ARTICLE VII

NON-CONFORMING USES AND BUILDINGS

A. Any non-conforming use of land or building (other than uses specified) may continue in their present use, except that any non-conforming use or building may not be:

1. Changed to another non-conforming use.
2. Be re-established after discontinuance for one year except to use conforming to this ordinance.
3. Extended or enlarged except by approval of the Board of Adjustment.
4. Rebuilt after damage exceeding 50% of its value.

ARTICLE VIII

DEFINITIONS

1. Accessory Building - A subordinate building located on the same lot with the main building or use, the use of which is customarily incidental to that of the main building or to the use of the land.
2. Accessory Use - A use customarily incidental to that of the main building or to the use of the land, not including the exterior storage of junk, dismantled or abandoned cars, or any other storage detrimental to health, safety, or general welfare.
3. Alteration - Any change or modification to a building which modifies the structural plan, manner of construction, or the kind of material used, or in any way varies the character or its use.
4. Apartment Building - A building intended to be occupied by three or more families living independently of each other.
5. Back Lots - Lots which have less than the minimum frontage requirement but which meet lot size and setback requirements and can be serviced by a private driveway leading to a public road.
6. Camp - A building of such a nature that it may only be used for recreational and dwelling purposes during seasonal parts of the year.
7. Dwelling - A structure that is designed or used as a place of residence for one or more families.
8. Dwelling Unit - A dwelling or portion thereof designed for use by one family for residential purposes.
9. Family - Cohabitants of a single household who jointly share in the use of an entire dwelling unit.
10. Flood Area - The gross horizontal area of a floor of the building excluding areas used for accessory garage purpose and basement areas. All horizontal dimensions shall be taken from the exterior faces of walls, including walls or other enclosures.
11. Forestry--The science of silviculture and the practice and art of managing and using for human benefit forestlands and the

natural resources that occur in association with forestlands, including trees, other plants, animals, soil, water, and related air and climate. Forestry is exempt from site plan review if no off-site products are for sale, or if there is no change or expansion of use.

12. Free Standing Sign--A sign supported by one or more upright poles, columns, or braces placed in or on the ground and not attached to any building or structure.
13. Front Yard - A yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of the principal building.
14. Frontage - That continuous portion of a lot line bordering on a highway, street, or right-of-way of class five or better, from which access is taken.
15. Home Business - A secondary use of a dwelling unit constituting a livelihood of a person living in the dwelling, provided that there is: no change in the outside appearance of the dwelling; no outside storage or display, except for a conforming sign, or home produce and products (such as crafts and food products) which may be bought, sold and exposed for sale; no generation of excess traffic, sewerage, noise, or water needs. A home business may not have more than four employees, in addition to the home inhabitants.
16. Home Produce and Products - Everything of an agricultural nature grown, produced, conditioned or otherwise carried on the property of a resident, also such articles as are manufactured or altered by members of the household of a resident.
17. Junk - Unregistered motor vehicles no longer intended or in condition for legal use on the public highways; used parts of motor vehicles or old or used iron, metal, glass, paper, cordage, plastic, rubber, cotton, or woolen wastes or discarded or second-hand material which has been a part or intended to be a part of any motor vehicle; or any machinery, scrap metal or other worn out, cast off, or discarded articles or materials ready for destruction or collected or stored for salvage or conversion to some use. Any article or material which unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new, shall not be considered as junk. Farm trucks, tractors, and machinery are excluded from the above definition.
18. Lot - A lot is a registered or recorded parcel of land, occupied or capable of being occupied by one building or use and the building or uses accessory thereto, including such open spaces and yards as are required by this ordinance. A lot may or may not be the land shown or described as a lot on the recorded deed or plan.
19. Lot Line - The established division line between lots or between a lot and a street.
20. Mobile Home - A transportable structure designed to be used as a permanent dwelling, built in a factory, and moved to the building site in one or more sections instead of being build piece by piece by a contractor on a building site, placed on a foundation as is required for conventional housing, tied to all conventional and necessary utility systems, and which conforms to the United States Department of Housing and Urban De-

- velopment (HUD) Mobile Homes Construction and Safety Standards Code, as amended, as adopted under the National Mobile Homes Construction and Safety Standards Act of 1974, P.L. 93-383.
21. Motel - A building or buildings containing units consisting of a room or a suite of rooms; each unit having a separate exterior entrance, to be offered as sleeping accommodations for transient guests for compensation, and where a general kitchen and dining room may be provided within the central building or in an accessory building.
 22. Non-Conforming Lot - A lot which does not conform to the frontage or area requirements of the district in which it is located.
 23. Non-Conforming Use - A non-conforming use is the use of any building or land lawfully occupied at the time of the passage of this ordinance which does not conform to the regulations of the district in which it is located.
 24. Portable Sign--A sign that is not permanently affixed to a building, other unmovable structure, or the ground.
 25. Public Right-of-Way - All town, state, and federal highways and roads and the land on either side of the same as covered by statutes to determine the widths of rights-of-ways.
 26. Rear Yard - 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 principal building.
 27. Set Back - The minimum horizontal distance between the street or way line and the line of the building.
 28. Side Yard - A yard extending between the side lot line of the lot and the nearest line of the principal building and then extending from the front yard to the rear yard.
 29. Sign - A structure, building wall, or other outdoor communication used to bring the subject thereof to the attention of the public or to display, identify and publicize the name and product or service of any person.
 30. Structure - Anything constructed that is of necessity attached directly or indirectly to the ground.
 31. Subdivision Sign--A sign intended to identify the name of a residential subdivision.
 32. Temporary Sign--A sign intended for use for a limited period of time.
 33. Tourist Home - A dwelling in which accommodations are provided or offered for transient guests for compensation.
 34. Two-Family House - A dwelling occupied by two families with two separate housekeeping units.
 35. Tourist or Motor Courts - Two or more overnight cabins operated as part of a single business.
 36. Regulatory Floodway - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
 37. Wall sign--Any external sign which is painted on, incorporated into, or affixed to the wall or roof of a building.

ARTICLE IX

EARTH REMOVAL

Excavation shall be deemed to be a use allowed by special exception in the Industrial-Commercial District as provided in RSA 674:33 IV and the Zoning Board of Adjustment shall grant such a special exception upon a finding that the applicant has demonstrated that:

1. The excavation will not cause an unreasonable diminution in area property value or unreasonably change the character of the neighborhood;
2. The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof;
3. The excavation will not create any unreasonable nuisance or create health or safety hazards;
4. The excavation operation shall not remove more than 75,000 cubic yards annually;
5. The excavation site shall contain natural buffers or other visual buffers to adequately protect the health, safety, and welfare of abutters and Town residents. This buffer shall be used to minimize noise impact, dust impact, visual impact and biological impact of the excavation;
6. The excavation will not cause erosion of adjacent property;
7. The excavation will not destroy a habitat of an endangered species;
8. The length of the operation shall not exceed three (3) years from the date of Planning Board Excavation Site Plan approval; and
9. A period of at least three (3) years has elapsed since any previous excavation on the subject property, or on any contiguous parcels.

The Planning Board shall not grant an extension of an excavation permit unless extenuating circumstances exist. A limit of one extension of an excavation permit shall not exceed a period of one (1) year.

No new development can be approved or built on a lot which has an existing excavation until reclamation has been completed, as this will be considered premature development.

Any excavation must also meet the Excavation Regulations and get an Excavation Permit from the Planning Board.

In addition, the excavation will adhere to the Brookline Zoning and Land Use Ordinance including, but not limited to the Aquifer Protection Ordinance and Wetlands Conservation District.

ARTICLE X

LOT OF RECORD

Where a lot in separate ownership, the deed to which is duly recorded on or before 12 March 1968 and which is recorded and taxed according to the 1972 tax records of the Town of Brookline, N.H., does not conform to the area and frontage requirements of the zone in which it is located, such lot may be used for any purpose permitted in that zone on said date provided that such use conforms with the requirements of the Water Supply and Pollution Control Commission (WSPCC). Any lot in separate ownership the deed to which is duly recorded between 13 March 1968 and 29 October 1971 and which is recorded and taxed according to the 1972 tax records of the Town of Brookline, N.H., may be used for any purpose permitted between said dates in the zone in which it is located provided that it contains an area of 40,000 square feet and has a frontage of not less than 150 feet and complies with the requirements of the WSPCC.

An application requesting a permit to occupy a lot not conforming in size and/or frontage as otherwise required under this ordinance shall be accompanied by the original or a certified copy of the recorded deed in question.

Exceptions to the Requirements for a Variance (Non-Conforming Lots):

- A. Single Family Dwellings: Any person having a lot size of 40,000 sq. ft. and 150' frontage and who can meet the set back and side line requirements as set forth in the Zoning and Land Use Ordinance shall not require a variance in order to obtain a building permit. Any person having a lot size of less than 40,000 sq. ft. and/or 150' frontage or who cannot meet the Zoning Ordinance requirements shall require a variance prior to the issuance of a building permit if the changes will either:
 - 1) increase the exterior dimensions of the structure so that it is not in compliance with the Building Code and Zoning Ordinance or
 - 2) increase the septic flow as determined by New Hampshire Water Supply and Pollution Control Commission or the Brookline Health Codes.
- B. Two-Family Dwellings: Any person having a lot size of 80,000 sq. ft. and 150' frontage and who can meet the set back and side line requirements as set forth in the Zoning and Land Use Ordinance shall not require a variance in order to obtain a building permit. Any person having a lot size of less than 80,000 sq. ft. and/or 150' frontage or who cannot meet the Zoning Ordinance requirements shall require a variance prior to the issuance of a building permit if the changes will either:
 - 1) increase the exterior dimensions of the structure so that it is not in compliance with the Building Code and Zoning Ordinance or
 - 2) increase the septic flow as determined by New Hampshire Water Supply and Pollution Control Commission or the Brookline Health Codes.

ARTICLE XI

ENFORCEMENT

- A. It shall be the duty of the Board of Selectmen and the Board is hereby given power and authority to enforce the provisions of this ordinance.
- B. Upon well-founded information that this ordinance is being violated, the selectmen shall take immediate steps to enforce the provisions of this ordinance by seeking an injunction in the Superior Court or by any other legal action.

ARTICLE XII

BOARD OF ADJUSTMENT

Within thirty days after the adoption of this ordinance and thereafter as terms expire or vacancies occur, the Board of Selectmen shall make appointments to a Board of Adjustment of five members conforming in duties to the provisions of Chapter 31 of the New Hampshire Revised Statutes Annotated 1955. Thereafter as terms expire or vacancies occur, the Board of Selectmen shall be responsible for filling vacancies and maintaining full membership on the Board of Adjustment. The Board of Adjustment here provided shall conform in membership and terms of office to the provisions of Section 37, New Hampshire Revised Statutes Annotated, 1955. In addition to the general powers granted, said Board of Adjustment by said Chapter 31, it may, in harmony with and subject to its provisions:

- A. Permit a non-conforming temporary use for an initial period of not more than one year. A permit may be renewed by the Board of Adjustment for a period of not more than one year. (total period not to exceed two years)
- B. Permit in the Residential-Agricultural District an Industrial or Commercial use which a public hearing demonstrates that it can meet the requirements of Article IV, paragraphs B-12, C-1, C-2, and C-3, and is not otherwise detrimental to the neighborhood.

ARTICLE XIII

WETLANDS CONSERVATION DISTRICT

1. PURPOSE AND INTENT

The purpose of this Wetlands Conservation District ordinance is to protect the public health, safety and general welfare by controlling and guiding the use of land areas which have been found to be subjected to high water tables for extended periods of time. It is intended that this ordinance shall:

1. prevent the destruction of, or significant changes to, natural wetlands which provide flood protection, discharge and recharge of groundwater supplies, and continuing existence of important wildlife areas;
2. prevent the development of structures and land uses on naturally occurring wetlands which would contribute to pollution of surface and groundwater by sewage or toxic substances;
3. protect sensitive, unique and unusual natural areas;
4. protect the quality and quantity of existing and potential water supplies, aquifers and aquifer recharge areas;
5. encourage those uses that can be appropriately and safely located in wetland areas.

2. DISTRICT BOUNDARIES

2.1. Wetlands Conservation District Definition

The Town of Brookline Wetlands Conservation District is defined as those areas delineated as very poorly drained or poorly drained soils by the U.S. Department of Agriculture, Soil Conservation Services (SCS) publication, Soil survey of HILLSBOROUGH COUNTY, NEW HAMPSHIRE, EASTERN PART, issued October 1981, as amended. The Wetlands Conservation District also includes those areas where site-specific field survey by a soils scientist qualified by the New Hampshire State Conservation Committee locates poorly or very poorly drained soils not identified in the SCS published soil survey. The limits of the Wetlands Conservation District are determined to include Prime Wetlands as defined in section 2.2.

2.2 Prime Wetlands

Prime Wetlands:

Prime Wetlands shall be defined as those areas designated Prime Wetlands within the scope of RSA 483-A and NH Code of Administrative Rules WT 700. These wetlands are described in the Brookline Prime Wetlands Report dated January 1992, and are as follows:

Wetland Number	Location	Tax Map Sheet
2	W. of Route 13 near Milford	B
3	Scabbard Mill Brook N.	B
5	Palmer land w. of Route 13	B
6	Scabbard Mill Brook S.	B,D
9	Spaulding Brook	A,C
10	North Stream	C,E
12	Lake Potanipo	E,L
15	Talbot-Taylor area	G
16	Pout Pond	H
18	Wallace Brook	J
20	Nissitissit River/Campbells Meadow	K

The delineation of each prime wetland is included in separate maps correlated to the report. Both the aforementioned maps and report are incorporated in this ordinance by reference and are on file at Town Hall.

2.3. Construction Buffer

The Wetlands Construction buffer includes 25 feet from the edge of the Wetlands Conservation District.

2.4. Wetlands Incorrectly Delineated

In the event that an area has been incorrectly delineated as part of the Wetland Conservation District or as a Prime Wetland, and evidence to that effect is presented to the satisfaction of the Planning Board or their representative in site plan reviews or subdivision, or to the satisfaction of the Board of Selectmen or their representative in other cases, or the Conservation Commission, the restrictions contained in this ordinance shall not apply.

2.5. Establishment of a District

The limits of the Wetlands Conservation District are hereby determined to be wetland areas of one (1) acre or more in size, or wetland areas of any size if contiguous to surface waters such as lakes, ponds, rivers, streams or brooks.

2.6. Relation to Other Districts

In all cases where the Wetlands Conservation District is superimposed over another zoning district in the Town of Brookline, that district whose regulations are more restrictive shall apply.

3. WETLANDS CONSERVATION DISTRICT PERMITTED USES

Permitted uses are those that do not result in the erection of any structure or alter the surface configuration by the addition of fill, and that are otherwise permitted by the Brookline zoning ordinance. Such uses include the following:

1. forestry and tree farming, using the best management practices to protect streams from damage and to prevent sedimentation;
2. cultivation and harvesting of crops according to recognized soil conservation practices, including the protection of wetlands from pollution caused by fertilizers, pesticides and herbicides used in such cultivation;
3. State approved water impoundments;
4. construction of wells for water supply;
5. maintenance of existing drainage ways, such as streams, creeks or other paths of normal runoff water;
6. conservation areas, nature trails, parks and recreation uses consistent with the purpose and intent of this ordinance;
7. dry hydrants and fire protection ponds.

4. SPECIAL PROVISIONS

Special provisions of this ordinance shall include:

1. Wetland Conservation District areas, excluding bodies of water, may be used to satisfy minimum lot area requirements provided that portion which is wetland does not exceed twenty-five (25) percent of the minimum required lot area, and provided that the remaining lot area is sufficient in size and configuration to adequately accommodate all required utilities, such as sewage disposal and water supply.
2. Construction or enlargement of septic tank or leach field shall follow New Hampshire state regulations regarding setback from wetland areas (75'), except in those locations where the soil type is coarse textured soil with rapid to very rapid permeability, as referenced in the SCS publication, where a 125' setback shall be required to any area of the Wetland Conservation District.
3. No construction which requires a building permit shall occur within 25 feet of the Wetland Conservation District.
4. If any section, provision, portion, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by any court or competent authority, such holding shall not affect, impair, or invalidate any other section, provision, portion, clause or phrase of this ordinance.

5. SPECIAL EXCEPTIONS

The Planning Board, in site plan reviews or subdivisions, and the Zoning Board of Adjustment via special exception in other matters, after proper public notice and public hearing, may grant permission for the following uses within the Wetland Conservation District and buffer.

1. Streets, roads, and other access ways and utility right of way easements, including power lines and pipe lines, if essential to the productive use of land not so zoned and if so located and constructed as to minimize any detrimental impact of such uses upon the Wetlands Conservation District;
2. The undertaking of a use not otherwise permitted in the Wetland Conservation District and buffer, which may include the erection of a structure, dredging, filling, draining, or otherwise altering the surface configuration of the land, if it can be shown that such proposed use will not conflict with the purpose and intentions of this ordinance and if such proposed use is otherwise permitted by the zoning ordinance.

Proper evidence to this effect shall be submitted in writing to the Planning Board or the Board of Adjustment and shall be accompanied by the findings of a review by the Hillsborough County Conservation District.

ARTICLE XIV

FLOODPLAIN ORDINANCE

The following regulations shall apply to all lands designated as special flood hazard areas by the Federal Emergency Management Agency in its "Flood Insurance Study for the Town of Brookline N.H." together with the associated Flood Insurance Rate Maps and Flood boundary and Floodway maps of the Town of Brookline dated April 4, 1975 which are declared to be a part of this Ordinance.

1. DEFINITION OF TERMS

Area of shallow flooding - means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard - is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FIRM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, VO, or V1-30, VE, or V.

Base flood - means the flood having a one percent chance of being equalled or exceeded in any given year.

Basement - means any area of the building having its floor subgrade (below ground level) on all sides.

Building - see Structure.

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

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.

Flood or Flooding - means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- a. The overflow of inland or tidal waters.
- b. The unusual and rapid accumulation or runoff of surface waters from any source.

Flood Boundary and Floodway Map - (FLOODWAY) is an official map of the community, on which the Federal Emergency Management Agency has delineated the "Regulatory Floodway". This map should not be used to determine the correct flood hazard zone or base flood elevation, the Flood Insurance Rate Map (FIRM) will be used to make determination of flood hazard zones and base flood elevations.

Flood elevation study - means an examination evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevation, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood related erosion hazards.

Flood Hazard Boundary Map - (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zones A, M, and/or E.

Flood Insurance Rate Map - (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study - see Flood Elevation study.

Flood plain or Flood prone area - means any land area susceptible to being inundated by water from any source (see definition of flooding).

Flood proofing - means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway - see regulatory floodway.

Functional 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 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.

Lowest floor - means the lowest flood of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a buildings lowest floor: Provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Mean Sea Level - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Manufactured Home - means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes part trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include part trailers, travel trailers, and other similar vehicles.

Manufactured home park or subdivision - means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

100 year flood - see base flood.

Recreational Vehicle - means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projection; (iii) designed to be self propelled or permanently towable by a light duty truck, and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway - means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point. These areas are designated as floodways on the Flood Boundary and Floodway Maps.

Riverine - means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Special Flood Hazard area - means an area having special flood, mudslide (i.e., mudflow) and/or flood related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M, or E. (see area of special flood hazard).

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.

Start of Construction - includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; or does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation

on the property of accessory buildings, such as garages or sheds no occupied as dwelling units or not part of the main structure.

Substantial improvement - means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty (50) percent of the market value of the structure. The market value of the structure should be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places.

Water surface elevation - means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in flood plains of costal or riverine areas.

2. All proposed development in any special flood hazard areas shall require a permit.
3. The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a floodprone area, all new construction and substantial improvements shall;
 - a. be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic load, including the effects of buoyancy,
 - b. be constructed with materials resistant to flood damage,
 - c. be constructed by methods and practices that minimize flood damages,
 - d. be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located components during conditions of flooding.
4. Where new and replacement water and sewer systems (including on-site systems) are proposed in floodprone areas the applicant shall provide the Building Inspector with assurance that new and replacement sanitary sewage systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

5. The Building Inspector shall maintain for public inspection, and furnish upon request, any certification of flood-proofing and the as built elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and include whether or not such structures contain a basement. If the structure has been floodproofed, the as built elevation (in relation to mean sea level) to which the structure was floodproofed. This information must be furnished by the applicant.
6. The Building Inspector shall review proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. It shall be the responsibility of the applicant to certify these assurances to the Building Inspector.
7. In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector.

With the altered or relocated portion of any watercourse, the applicant shall submit to the Building Inspector, certification provided by a registered professional engineer assuring that the flood carrying capacity of the watercourse has been maintained.

Along watercourses that have a designated Regulatory Floodway no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the designated Regulatory Floodway that would result in any increase in flood levels within the community during the base flood discharge. In Zone A the Building Inspector shall obtain, review, and reasonable utilize any floodway data available from a Federal, State, or other source as criteria for requiring that development meet the floodway requirements of this section. Along watercourses that have not had a regulatory floodway designated, no new construction, substantial improvements or other development (including fill) shall be permitted within Zones A1-30 and AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

8. In special flood hazard areas the Building Inspector shall determine the 100 year flood elevation in the following order of precedence according to the data available:

a. In Zones A1-30, AH, AE, V1-50, & VE refer to the elevation provided in the communities Flood Insurance Study and accompanying FIRM or FHBM.

b. In unnumbered A zones the Building Inspector shall obtain, review, and reasonably utilize any 100 year flood elevation data available from Federal, State, development proposals submitted to the community (example subdivisions, site approvals, etc.) or other source.

c. In Zone AO the 100 year flood elevation is determined by adding the elevation of the highest adjacent grade to the depth number specified on the FIRM or if no depth number is specified on the FIRM at least two feet.

The Building Inspector's 100 year flood elevation determination will be used as criteria for requiring in Zones A1-30, AE, AH, AO and A that;

a. all new construction and substantial improvements of residential structures have the lowest floor (including basement) elevated to or above the 100 year flood level;

b. that all new construction and substantial improvements of nonresidential structures have the lowest floor (including basement) elevated to or above the 100 year flood level; or together with attendant utility and sanitary facilities, shall;

1. be floodproofed so that the 100 year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

2. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy and;

3. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section;

c. all manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest flood of the manufactured home is at or above the base flood level; and be securely anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces;

d. recreational vehicles placed on sites within zones A1-30, AH, and AE shall be either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet all standards of section 60.3 (b) (1) of the National Flood Insurance Program regulations and the elevation and anchoring requirements for Manufactured Homes in paragraph (c) (6) of section 60.3

e. for all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted providing the enclosed areas meet the following requirements;

1. the enclosed area is unfinished or flood resistant, usable solely for parking of vehicles, building access or storage;

2. the area is not a basement;

3. shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

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

b. the bottom of all openings shall be no higher than one foot above grade.

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

f. proposed structures to be located on slopes in Special Flood Hazard Areas, Zones AH and AO, shall include adequate drainage paths to guide flood waters around and away from the proposed structures.

9.

a. This ordinance may be amended by a majority vote of any legal Town meeting when such amendment is included in the Official Town Warrant.

b. It shall be the duty of the Board of Selectmen to enforce the provisions of this ordinance.

c. The Building Inspector shall not in any case be liable for any damage resulting from construction done under his permit whether or not such construction is in conformity with the provisions of the ordinance.

d. The invalidity of any provision or part of a provision of this ordinance shall not affect the validity of any other provisions.

e. Every person, persons, firm, or corporation violating any of the provisions of this ordinance shall be fined as determined by the Board of Selectmen for each day such violation may exist.

f. Any person aggrieved by a decision of the Building Inspector may appeal to the Board of Adjustment as set up in the Brookline Zoning and Land Use Ordinance.

ARTICLE XV

BROOKLINE AQUIFER PROTECTION ORDINANCE

Section I. Purpose and Intent

The town of Brookline adopts this Ordinance for the promotion of the health, safety, and general welfare of its residents by protecting the ground water resources of the Town from adverse development or land use practices generally related to commercial/industrial land use (such as but not limited to the disposal or storage of solid wastes, sludge, subsurface waste disposal, road salting materials, gas or other petroleum products) that might reduce the quality of water that is now--and in the future will be--available for use by municipalities, individuals and industries.

Section II. District Boundaries

The extent of the Aquifer Protection District shall be the outermost edge of the surficial extent of all aquifer deposits presently designated as stratified drift, and shaded light blue, as supported by information included in the U.S.G.S. (United States Geological Survey) Aquifer Delineation study entitled "Geohydrologic Appraisal of the Nashua Area, Southcentral New Hampshire, by K. W. Toppin, (1986)" or most recent studies. The Aquifer Protection District is a zoning overlay district which imposes additional requirements and restrictions to those of the underlying, base district zoning. In all cases, the more restrictive requirement(s) and permitted uses shall apply.

Section III. Permitted Uses

Permitted uses, with the exception of those expressly prohibited in Section IV, shall be the same as those districts within which the aquifer district lies.

- a) Industrial or commercial uses which discharge no (non-human) wastes on site (human wastes only in approved septic systems);
- b) Residential and Agricultural Development;
- c) Other Uses:
 - 1) Activities designed for conservation of soil, water, plants, and wildlife.
 - 2) Outdoor recreation, nature study, boating, fishing and hunting where otherwise legally permitted.

Section IV. Prohibited Uses

The following uses are prohibited:

- a) Outside storage and disposal of solid waste, other than above ground brush and stump dumps (the base of such dumps shall be at least 6 (six) feet above the E.S.H.W.T. (Estimated Seasonal High Water Table);
- b) Subsurface storage of petroleum or related products (including gasoline) and the subsurface transmission of petroleum or related products through pipelines;
- c) The disposal of liquid or leachable wastes that are non-human wastes;
- d) The covering of more than 30% of the lot in the Residential Zone, and 60% of the lot in the Commercial/Industrial Zone by impervious surfaces (ie material on the ground that does not allow surface water to penetrate into the soil);
- e) Storage of road salt unless covered and on an impervious surface;
- f) Excavation of sand or gravel, except those conducted in accordance with an approved Earth removal Permit issued pursuant to Article IX of the Town of Brookline Zoning Ordinance (excavation shall be permitted to within 6 [six] feet of the ESHWT), and excavations permitted for fire ponds;
- g) Storage/processing/disposal of hazardous waste;
- h) Dumping of snow containing de-icing chemicals brought in from other parts of town(s).

Section V. Non-conforming Uses

A non-conforming use may be continued and may be replaced or repaired, with the approval of the Planning Board, if the Board believes that the continuing use will not be more detrimental to the protected areas. A non-conforming use which has been discontinued for 12 months may not be resumed.

Section VI. Administration

All subdivision proposals and other proposed new developments within the Aquifer Conservation District shall be reviewed by the Planning Board and shall conform to the provisions of this ordinance and further shall assure that:

- a) All such proposals are consistent with the need to protect the groundwater of the Town of Brookline and adjacent communities;
- b) For the purpose of minimizing or eliminating leakage or discharges from septic systems into the groundwater, all systems shall be at least 4 (four) feet above the estimated seasonal high water table;
- c) On site waste disposal systems are located so as to avoid or minimize groundwater contamination;

- d) Streets, roads, and parking areas are constructed so that direct application of road salt is not required for winter safety, and so that runoff from such uses is channeled to avoid or minimize groundwater contamination;
- e) Any increase in surface storm water generated by development is kept on-site and handled in such a manner as to allow the water to infiltrate into the ground before leaving the site;
- f) Written approval of the State of New Hampshire Water Supply and Pollution Control Division has been obtained.

Section VII. Conservation Commission Review

The Conservation Commission shall review, within a reasonable time (not to exceed 60 days from date of submittal of plan to the Planning Board), each plan for development in the Aquifer Conservation District and shall make a recommendation to the Planning Board to approve, approve with conditions and/or recommendations, or disapprove the plan, with reasons for disapproval.

Section VIII. Incorrectly Delineated Zones

Where the bounds, as delineated, are in doubt or in dispute, the burden of proof shall be upon the owner(s) of the land in question to show where they should be properly located. At the request of the owner(s), the Town may engage a professional geologist or soil scientist to determine more accurately the location and extent of an aquifer, and may charge the owner(s) for all or part of the cost of the investigation. The delineation can be modified by the Planning board upon receipt of findings of the detailed on-site survey techniques.

Section IX. Enforcement

These regulations shall be enforced by the Board of Selectmen or its duly authorized representatives.

Section X. Validity and Conflict With Other Ordinances

- A. **Validity:** Should any section or provisions of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance
- B. **Conflict With Other Ordinances:** This Ordinance shall not repeal, annul, or in any way impair or remove the necessity of compliance with any other ordinance, law regulation or by-law. Where this Ordinance imposes a higher standard for the promotion and protection of health, safety and welfare, the provisions of this Ordinance shall prevail.

Section XI. Definitions

Aquifer: Geologic formation composed of stratified sand and gravel that contains a potential to yield potable water.

Ground Water: All the water found beneath the surface of the ground. In this Ordinance the term refers to the slowly moving subsurface water present in aquifer recharge areas.

Hazardous Waste: Materials or liquids that pose a threat to the environment, whether in use, storage, or transit, including without exception hazardous wastes identified and listed in accordance with the State of New Hampshire Dept. of Environmental Services Hazardous Waste Rules, dated August 1988, Section HE-P-1905.03, or latest update.

Leachable Wastes: Waste materials, including solid wastes, sludge and agricultural wastes that are capable of releasing contaminants to the surrounding environment.

Non-Conforming Use: Any building or land lawfully occupied by a use at the time of passage of the Ordinance or amendment thereto which does not conform after the passage of this Ordinance or amendment thereto with the regulations of the district in which it is situated.

Structure: Anything constructed or erected, except a boundary wall or fence, the use of which requires location on the ground or attachment to something on the ground. For the purposes of this Ordinance, buildings are structures.

Solid Wastes: Useless, unwanted, or discarded solid material with insufficient liquid content to be free flowing. This includes but is not limited to rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse.

ARTICLE XVI

GROWTH MANAGEMENT ORDINANCE

Purpose

Based on the Master Plan, which assesses and balances community development needs and considers regional development needs, the following ordinance is deemed necessary to flatten the rate of growth in the Town for the following reasons:

- Meet the demand for the schools with the existing capacity, especially the Hollis/Brookline Junior High which is closest to capacity. The Elementary and High Schools are projected to be over capacity in 1995-1996. This is noted in Table IX-13 of the Master Plan.
- Provide taxpayers a slower rate of growth and prevent an unacceptably high growth in the tax rate;
- Allow the Town the opportunity to absorb increases in Town services in an orderly way;
- Insure that Brookline receives its fair share of the regional population growth. As shown in Table IX-2 of the Master Plan, Brookline is growing faster in recent years than all communities in the Nashua region.

The Master Plan recommends a 3% growth rate maximum. This would still allow Brookline to grow faster than all nearby communities while allowing the Town time to plan for school expansions.

Authority

This article is adopted as a growth management ordinance under RSA 674:22.

Application

This article only applies to those lots shown on subdivision plans accepted by the Planning Board after November 24, 1993.

Definitions

Building Permit: A building permit obtained for the construction of a new single family home or duplex. (A duplex requires only one building permit). This ordinance does not apply to non-residential building permits or permits for expansion or alteration of existing structures.

Calendar Year: January 1 to December 31.

Effective Date

This ordinance will not become effective until January 1, 1994.

Requirements

1. The number of building permits that may be issued to any individual, partnership, or corporation in any calendar year shall be limited to the following:
 - a) The total number of building permits which can be issued in a calendar year is stated in section 4. If the total number is not issued, then those can carry over to the next calendar year.
 - b) The building permits shall be distributed on a first-come-first-served basis. If there is a greater demand than supply, then a waiting list shall be established. Any permits that expire shall be given to the people on the waiting list (also first-come-first-served).
2. A building permit expires and becomes invalid if construction, which is deemed to be installation of footing and foundation, has not started within six (6) months from the date of issuance (as explained in the Brookline Building Code).
3. A lot can be transferred with or without a building permit. Building permits are tied to lots and cannot be transferred between lots.
- 4a. The maximum number of building permits that may be issued per year will reflect a 3% annual growth rate in dwellings.
- b. Although lots existing prior to November 24, 1993 are exempt from limitations on building permits, the building permits issued on those lots will be included in the building permit calculation.
- c. A minimum of 10 building permits may be issued annually.
5. For calculation purposes, the Planning Board has determined that the number of dwellings as of January 1, 1994 is 1,232.

Sunset Clause

This article expires at Town Meeting 1997, unless the following occurs:

An annual November review by the Planning Board to determine if the population and growth data, in conjunction with the CIP, justifies the continued application of this ordinance. If, after making findings, the Board feels that this article is no longer appropriate, it is no longer effective. If, after making findings, the Board feels that this article is both appropriate and necessary to meet the purposes outlined above, this article would be effective for another year, when another annual review shall occur. After making findings, the Planning Board may change the number of permits issued annually based on data received during the year to ensure the goals of the ordinance.

ARTICLE XVII

OPEN SPACE DEVELOPMENT

Open Space Development is necessary to meet the goals established in this article and in the Brookline Master Plan. Therefore, an Open Space Development plan will be required for all developments of the minimum tract size or greater. An Open Space Development plan will not be required when in the judgement of the Planning Board topography, wetlands, soils or other considerations prevent the proposal from accomplishing the purposes of this article, or when an Open Space Development is unnecessary to meet the purposes of this Ordinance. All conventional subdivision plan applicants shall submit evidence to the Planning Board, at a public hearing, documenting the constraints that make a conventional subdivision a preferable choice.

A. PURPOSE

1. To promote the conservation of the natural environment, and the development of the community in harmony with the natural features of the land.
2. To provide for an efficient use of land, streets, and utility systems.
3. To stimulate alternative approaches to land and community development.
4. To establish living areas within the Town that provide for a balance of community needs, such community needs as adequate recreation and open space areas, and pedestrian and vehicular safety.
5. To maintain the rural character of Brookline.
6. To maintain the current density of Brookline (1 unit per 80,000 sq.ft.)
7. To promote residential construction on the most appropriate and buildable areas of a tract of land.

B. ZONE/LOCATION

1. The use of an Open Space Development is limited to the Residential-Agricultural District as shown on the Zoning Map.

C. PERMITTED USES

1. All uses allowed in the Residential-Agricultural District are allowed in an Open Space Development.

D. OPEN SPACE

1. All land not devoted to house lots, roads, and driveways shall be set aside as permanent open space.
2. A minimum of thirty-five (35) percent of the gross tract area shall be set aside as open space for low-impact recreation, agriculture, or conservation uses, intended for the use and enjoyment of the residents of this development and/or the general public. This open space shall be permanently restricted through easement or deed. Though the open space cannot be resubdivided, accessory structures and improvements appropriate for low-impact recreation, agriculture, or conservation uses are allowed subject to Planning Board approval.
3. Not more than 45 percent of the open space shall consist of open water, wetlands and slopes greater than 25 percent.

E. DIMENSIONAL REQUIREMENTS

Density: The maximum density of an Open Space Development shall be the same as for a conventional development in the Residential-Agricultural District (1 unit per 80,000 square feet). An Open Space Development shall have no more lots than can be created using conventional development on the same land.

Frontage: 80 feet minimum per lot.

Setbacks: 15 front, rear, and side per lot, from the property lines. There shall be a 50 foot perimeter setback from houses on the perimeter of the building area.

Lot Size: Each building lot shall have a minimum of 1 acre. Only one dwelling unit shall be permitted per minimum land area. A two family structure shall require two times the minimum land area.

Development Tract Size: an Open Space Development tract shall have a minimum of 20 acres.

F. OPEN SPACE OWNERSHIP & MANAGEMENT

1. The open space shall be conveyed to a homeowners association, whose membership includes all the owners of lots or units contained in the tract. Where the Planning Board feels that it is in the best interests of the Town, this land may be conveyed to the Town (subject to the approval of voters at Town Meeting), or shall be permanently protected in other suitable ways which would ensure the continued use of the land for intended purposes and proper maintenance of the land.
2. The developer shall be responsible for the formation of the homeowners association of which the developer or owner shall be a member until a majority of the lots of record are sold.

3. The homeowners association shall be structured so as to provide that the membership and obligation of unit purchasers in the homeowners association will be automatic upon the conveyance of title or lease of dwelling units.
4. Open Space Development land which counts towards the minimum open space requirements or towards the minimum lot size cannot be put in current use.

G. PROCEDURES

1. All Open Space Developments, as is the case with conventional developments, shall go through the subdivision review process and meet the review criteria as outlined in the subdivision regulations.

H. OTHER PROVISIONS

1. All Open Space Developments must also meet the requirements listed in other articles of this Zoning Ordinance, except those which are superseded in this article.

ARTICLE XVIII
SIGN ORDINANCE

A. Purpose/Intent

The purpose of this ordinance is:

1. To preserve the aesthetics and rural character of Brookline.
2. To enhance traffic safety by reducing roadside distraction.
3. To encourage signage and lighting which aid communication, orientation, identify activities, and express local history and character.

B. Illumination

1. Sign illumination cannot glare onto abutting lots.
2. A sign can only be illuminated between midnight and 6 am if it is advertising an on-site business that is open at that time.

C. Size

1. Approved home occupations are allowed two signs totalling no more than 25 square feet of signage.
2. Commercial and industrial buildings are allowed one free standing sign per building. Individual occupants are also allowed a wall sign.
3. On two-sided signs, only one face is used to compute the sign's area.
4. Signs shall not exceed 20 feet in height. This is measured from the top of the sign to the surrounding grade of the ground.
5. Signs of less than three square feet are not regulated by this ordinance.
6. Maximum sign size is 42 square feet.

D. Temporary Signs

1. Temporary signs are allowed to be placed for 30 days per year without review and approval. When the 30 days has elapsed, the sign shall be removed.
2. Temporary signs must meet requirements listed elsewhere in this ordinance.
3. Only one temporary sign per lot is permitted.

4. A sign advertising the sale, lease or rental of the premises upon which the sign is located can remain until such transaction occurs. It must be removed after that time. This sign can be no larger than 6 square feet in area.
5. No temporary sign can be lighted.
6. Portable signs can only be used as temporary signs.

E. Prohibited Signs

The following signs are prohibited:

1. Off-premise signs are allowed only with Planning Board review and approval.
2. Wall signs that extend above the roof peak of the building.
3. Moving, blinking, or rotating signs.
4. Signs in the road right-of-way.
5. Signs that interfere, obstruct or impair vision or traffic or in any manner create a hazard to the health and welfare to the general public.

F. Subdivision Signs

1. Permanent and temporary subdivision signs are allowed only with Planning Board approval.

G. Grandfather Clause

1. All signs which legally exist as of March 14, 1992 shall be considered exempt from the provisions of this article.

ARTICLE XIX

AMENDMENTS

This ordinance may be amended when the proposed amendments have been given at least two public hearings at least fifteen days apart, notice of which has been published in a paper of general circulation in the town and notice thereof also posted in at least three public places in town. Copies of the proposed amendments shall be on file, and copies shall be made available at the office of the Town Clerk two weeks prior to the date of the meeting at which action is to be taken and a copy of the proposed amendment shall be on display the day of the meeting. The following question shall be placed on the official ballot by the Town Clerk: "Shall the zoning amendments as proposed by the Planning Board be adopted for this town?"

ARTICLE XX

PENALTY

Every person, persons, firm or corporation violating any of the provisions of this ordinance shall be fined not more than ten dollars upon conviction for each day such violation may exist.

ARTICLE XXI

SAVING CLAUSE

If any section, clause, provision or portion of this ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect or impair any other section, clause, provision or portion of this ordinance.

ARTICLE XXII

WHEN EFFECTIVE

This ordinance shall take effect upon its passage.

(This ordinance was passed at the annual Town Meeting of March 12, 1968 and was amended by a vote of the townspeople at the annual Town Meetings of March 7, 1972, March 6, 1973, March 8, 1977, November 2, 1982, March 12, 1985, March 10, 1987, March 8, 1988, March 15, 1989, March 13, 1990, March 12, 1991, March 10, 1992, March 9, 1993, and March 8, 1994. Amendments have been incorporated in this ordinance as printed.)

BROOKLINE BUILDING CODE

Pursuant to the authority granted and subject to the provisions thereof by Chapter 156, Sections 1, 3, 3a, 4b, 4c, and 5, and 156-A of the N.H.R.S.A. as amended this following ordinance is hereby enacted by the voters of the Town of Brookline, New Hampshire in official Town Meeting convened.

1. After passage of this ordinance any person intending to erect or make an alteration to a building shall, before doing so, obtain a permit from the Building Inspector. Repairs, general upkeep, and minor interior alterations of existing buildings shall be exempt from the provisions of this ordinance. Accessory buildings of 100 square feet or less shall not require a building permit but shall be required to meet all setback requirements.

2. The Building Inspector shall be appointed by the Board of Selectmen to serve for a term of three years. He shall issue any and all building permits requested within fifteen days after receiving written application for such permit accompanied by a plan of the proposed building or alteration, provided such plans are in accordance with the provisions of this ordinance and the Zoning and Land Use Ordinance of the Town. Such permits shall expire and become invalid if construction, which is deemed to be installation of footing and foundation, has not started within six (6) months from the date of issuance. He shall also inspect the foundation, framing, plumbing and electrical wiring of the building during its construction for compliance with the terms of this ordinance and the Zoning and Land Use Ordinance and report any violation to the Board of Selectmen.

3. Building fees, procedures, and Building Inspector's compensation shall be set by the Board of Selectmen after due notice and public hearing.

4. Buildings and alterations shall comply with the following specifications:

A. No permit for a new dwelling shall be issued unless it contains at least 576 square feet of first floor living area.

B. Foundations: All structures shall be set on solid foundations of concrete, brick, stone or other acceptable masonry except in special cases where buildings are to be used for accessory use, industrial use, warehouse, and the like, the Building Inspector may waive the requirement of this section and permit the use of metal or masonry piers.

C. Buildings: Must be framed according to good building practices and outside walls shall be covered with permanent materials customarily used such as wood, fire resistant shingles, siding, cinderblock, or other acceptable materials. In determining good building practices, the BOCA National Building Code, as recommended and maintained by the Building Officials and Code Administrators International, Inc. (1990) and CABO Building Codes (1992) shall be used as a standard.

D. No building or structure erected or altered as specified in a Building Permit issued under the terms of this Ordinance shall be occupied or used, as a whole or in part, until a Certificate of Occupancy has been issued by the Building Inspector. A temporary Certificate of Occupancy may be issued for a building or structure or any part thereof before the entire work covered by the permit shall have been completed provided the Building Inspector deems life or public welfare shall not be endangered by the occupancy.

5. This ordinance may be amended by a majority vote of any legal Town Meeting when such amendment is included in the official Town Warrant.

6. Enforcement: It shall be the duty of the Board of Selectmen and The Board is hereby given power and authority to enforce the provisions of this ordinance.

7. Exculpatory Clause: The building inspector shall not in any case be liable for any damage resulting from construction done under his permit whether or not such construction is in conformity with the provisions of the ordinance.

8. Separability Clause: The invalidity of any provisions of this ordinance shall not affect the validity of any other provisions.

9. Penalty: Every person, persons, firm, or corporation violating any of the provisions of this ordinance shall be fined not more than ten dollars upon conviction for each day such violation may exist.

10. Board of Appeals: Any person aggrieved by a decision of the building inspector may appeal to the Board of adjustment as set up in the Brookline Zoning and Land Use Ordinance, Article XII, said Board shall have the power by a vote of the majority of its members, upon an appeal to vary the application of any provisions of the Building Code to any particular case, when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of such building regulations or public interest.

11. This ordinance shall take effect upon its passage.

