

Zoning Ordinance Amended at Town Meeting March 9, 1999

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***TOWN OF BROOKLINE, NEW HAMPSHIRE***

***ZONING AND LAND USE ORDINANCE***



*March 1999*

\$2/00

FILE 004

*ZONING AND LAND USE ORDINANCE*

<i>Adopted</i>	<i>March 12, 1968</i>
<i>Amended</i>	<i>March 7, 1972</i>
<i>Amended</i>	<i>March 6, 1973</i>
<i>Amended</i>	<i>March 8, 1977</i>
<i>Amended</i>	<i>November 2, 1982</i>
<i>Amended</i>	<i>March 12, 1985</i>
<i>Amended</i>	<i>March 10, 1987</i>
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<i>Amended</i>	<i>March 15, 1989</i>
<i>Amended</i>	<i>March 13, 1990</i>
<i>Amended</i>	<i>March 12, 1991</i>
<i>Amended</i>	<i>March 10, 1992</i>
<i>Amended</i>	<i>March 9, 1993</i>
<i>Amended</i>	<i>March 8, 1994</i>
<i>Amended</i>	<i>March 12, 1996</i>
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<i>Amended</i>	<i>March 10, 1998</i>
<i>Amended</i>	<i>March 9, 1999</i>



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**100.00 PREAMBLE**

In pursuance of authority conferred by Chapter 31, Sections 60-89, NH 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.

200.00 **DEFINITIONS**

- 200.01 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.
- 200.02 Accessory Dwelling Unit (ADU). A secondary dwelling, attached or detached, which is accessory and subordinate to a permitted principal single family dwelling unit in accordance with the provisions of Section 2000.00 – Accessory Dwelling Units (In-Law Apartments).
- 200.03 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.
- 200.04 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.
- 200.05 Apartment Building. A building intended to be occupied by three or more families living independently of each other.
- 200.06 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.
- 200.07 Camp. A building of such a nature that it may only be used for recreational and dwelling purposes during seasonal parts of the year.
- 200.08 Dwelling. A structure that is designed or used as a place of residence for one or more families.
- 200.09 Dwelling Unit. A single unit providing complete independent living facilities for one or more persons with permanent provisions for living, sleeping, eating, cooking and sanitation.
- 200.10 Elderly. For the purposes of this ordinance shall mean that portion of the population 65 years and older.
- 200.11 Family. Cohabitants of a single household who jointly share in the use of an entire dwelling unit.
- 200.12 Farm. Land on which farming takes place.
- 200.13 Farm Stand. A structure for the seasonal sale of agricultural, horticultural or silvicultural products.
- 200.14 Farming. This term shall have the same meaning as that set forth in RSA 21:34-a, as that term is from time to time amended. The definition of this term as of the date of the passage of this ordinance is set forth as follows: Any land or buildings or structures on or in which agriculture and farming operations are carried on and shall include the residence or residences of owners, occupants, or employees located on such land. Farming shall mean all operations of a farm such as the cultivation, conserving, and tillage of the soil, dairying, greenhouse operations, the production, cultivation, growing and harvesting of any agricultural, floricultural, sod or horticultural commodities, the raising of livestock, bees, fur-bearing animals, fresh water fish or poultry, or any practices on the farm as an incident to or in conjunction with such farming

operations including, but not necessarily restricted to, the following: preparation for market, delivery to storage or to market, or to carriers for transportation to market, of any products or materials from the farm; the transportation to the farm of supplies and materials; the transportation of farm workers; forestry or lumbering operations; the marketing or selling at wholesale or retail or in any other manner any products from the farm and of other supplies that do not exceed in average yearly dollar volume the value of products from such farm.

- 200.15 Floor 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.
- 200.16 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.
- 200.17 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.
- 200.18 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.
- 200.19 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.
- 200.20 Funeral Home. A building or part thereof used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation. Such building may contain space and facilities for embalming and the performance of other services used in preparation of the deceased for burial; the performance of autopsies and other surgical procedures; the storage of caskets, funeral urns, and other related funeral supplies; and the storage of funeral vehicles, but shall not include facilities for cremation. Where a funeral home is permitted, a funeral chapel shall also be permitted.
- 200.21 Home Business. A business operated within a residence and/or accessory structure that is incidental and subordinate to the use of the dwelling for residential purposes, does not change the residential character of the dwelling, and is in compliance with the criteria established for Home Businesses in Section 1700.
- 200.22 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.
- 200.23 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.

- 200.24 Lot Line. The established division line between lots or between a lot and a street.
- 200.25 Manufactured Housing. This term shall have the same meaning as that set forth in RSA 674:31, as that term is from time to time amended. The definition of this term as of the date of the passage of this ordinance is set forth as follows: Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein.
- 200.26 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.
- 200.27 Non-Conforming Lot. A lot which does not conform to the frontage or area requirements of the district in which it is located.
- 200.28 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.
- 200.29 Personal services. Establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel, such as beauty shops, dry cleaners and domestic services.
- 200.30 Portable Sign. A sign that is not permanently affixed to a building, other unmovable structure, or the ground.
- 200.31 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.
- 200.32 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.
- 200.33 Restaurant. An establishment in which food and drink are prepared, served and consumed primarily within the principal building.
- 200.34 Setback. The minimum horizontal distance between the street or way line and the line of the building.
- 200.35 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.

- 200.36 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.
- 200.37 Structure. Anything constructed that is of necessity attached directly or indirectly to the ground.
- 200.38 Subdivision Sign. A sign intended to identify the name of a residential subdivision.
- 200.39 Temporary Sign. A sign intended for use for a limited period of time.
- 200.40 Tourist Home. A dwelling in which accommodations are provided or offered for transient guests for compensation.
- 200.41 Two dwelling unit dwelling. A dwelling occupied by two families with two separate housekeeping units.
- 200.42 Tourist or Motor Courts. Two or more overnight cabins operated as part of a single business.
- 200.43 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 the water surface elevation more than one foot.
- 200.44 Wall sign. Any external sign which is painted on, incorporated into, or affixed to the wall or roof of a building.

**300.00 GENERAL PROVISIONS**

- 301.00** 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.
- 302.00** 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.
- 303.00 Sanitary Protection**
- 303.01** 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.
- 303.02** 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.
- 304.00** 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.
- 305.00** No subsurface storage of petroleum or related products (including gasoline) and the subsurface transmission of petroleum or related products through pipelines shall be allowed within Town, with the following exceptions: 1) Propane or liquefied natural gas; 2) Storage tanks in excess of 1,100 gallons. Storage tanks in excess of 1,100 gallons must comply with the New Hampshire Water Supply and Pollution Control Division's Code of Administrative Rules Part Ws 411, Control of Nonresidential Underground Storage and Handling of Oil and Petroleum Liquids.
- 306.00** 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."



**400.00     *DISTRICTS***

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

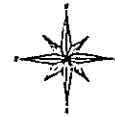
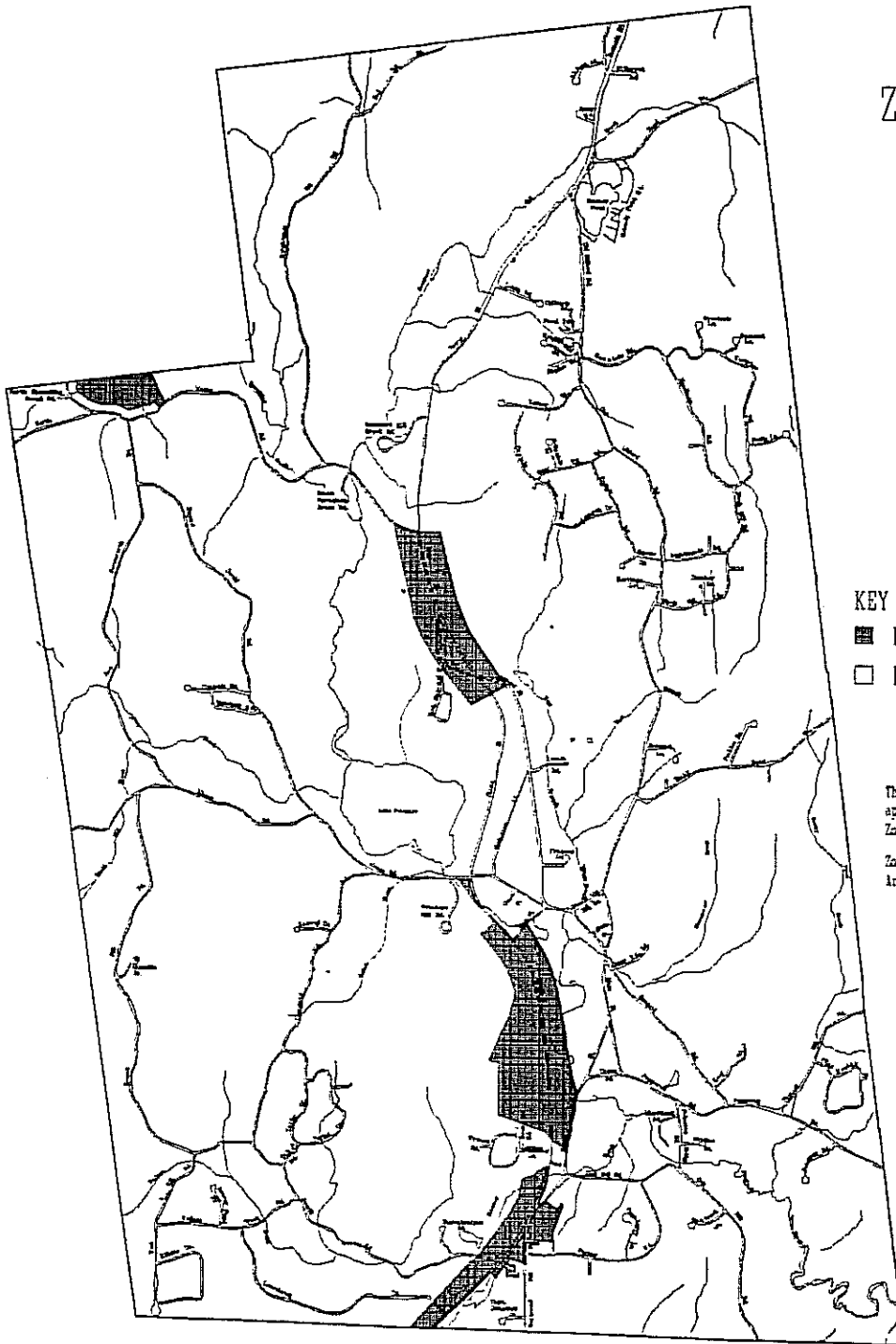
- A. Industrial-Commercial District
- B. Residential-Agricultural District

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.

TOWN OF BROOKLINE  
ZONING DISTRICTS

Town of  
BROOKLINE  
ZONING MAP



KEY

-  INDUSTRIAL/COMMERCIAL
-  RESIDENTIAL/AGRICULTURAL

The districts shown on this map are approximate. Please refer to the Brookline Zoning Ordinance for exact boundaries.

Zoning prepared by NEPC  
Amended by NEPC - Date Printed: 4-8-97.



**500.00 INDUSTRIAL-COMMERCIAL DISTRICT**

**501.00 Location**

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.
- h. A portion of Tax Map Parcel A-6 of approximately 35 acres, located within the following boundaries:

Beginning at a point on the northerly side of the North Mason Road, said point being 800 feet easterly of the centerline intersection of North Mason Road and Ben Farnsworth Road; thence by said northerly sideline of said North Mason Road

1. Easterly 250 feet to a point; thence through said Tax Map Parcel A-6
  2. Northerly perpendicular to the Brookline/Milford Town Line to a point on said Town Line; thence by said Town Line
  3. Westerly to a point, said point being 200 feet easterly of and perpendicular to the easterly sideline of Spaulding Brook Road; thence by a line 200 feet easterly from and parallel to said easterly sideline of Spaulding Brook Road
  4. Southwesterly and Southeasterly to a point that is 200 feet northerly of and perpendicular to said northerly sideline of North Mason Road; thence by a line that is 200 feet northerly from and parallel to said northerly sideline of North Mason Road
  5. Easterly to a point that is directly opposite and perpendicular to the point of beginning; thence
  6. Southerly 200 feet to the point of beginning.
- i. Lots F-2 and F-4.

**502.00**      *Uses Permitted*

- a. Excavations (as per Section 1000)
- b. Establishments offering goods for sale including dry goods, foods, hardware, clothing and apparel, motorized vehicles, and other general retail commodities
- c. Farming & Forestry
- d. Lumber Yards and lumber mills
- e. Health care facilities
- f. Theaters
- g. Hotels/motels
- h. Warehousing, assembling & manufacturing
- i. Office parks
- j. Residential dwelling units existing prior to March 14, 1992 and home businesses within these units subject to the provisions of Section 1700
- k. Banks and financial institutions
- l. Restaurants
- m. Professional offices
- n. Personal services and offices
- o. Churches and associated parsonages
- p. Public, private, or non-profit recreational facilities, fraternal orders, or membership clubs
- q. Schools, nurseries and day care centers
- r. Funeral homes
- s. Automobile fueling, service and repair stations
- t. Post offices
- u. Police and fire stations
- v. Any use which does not offend by emission of smoke, dust, gas, noise, odor, or fumes

- w. Telecommunication towers and co-location of telecommunication facilities on existing towers or structures which are in compliance with Section 1900 and subject to Planning Board review and approval under the Non-Residential Site Plan regulations

**503.00**     *Lot Requirements*

**503.01**     Frontage. Every building lot shall have at least 150 feet of frontage.

**503.02**     Setbacks:

- a. *Front.* Each structure shall be setback at least 30 feet from the front lot line.
- b. *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 25 feet on the side bordering the frontage.

**503.03**     Land Area. Each building lot shall be at least one (1) acre.

**503.04**     Site Coverage. No more than seventy-five percent (75%) of the gross area of any lot may be occupied by structures and impervious surfaces. Commercial buildings, structures and parking areas in existence as of March 12, 1996 that exceed the permitted lot coverage within the district may be maintained at, or rebuilt to, the existing level. Any increase in impervious area will not be permitted.

**503.05**     Building Height. Except for structures not intended for human occupation (such as chimneys, water towers, and church spires), maximum building height is 35 feet.

**600.00 RESIDENTIAL-AGRICULTURAL DISTRICT**

**601.00 Location**

The Residential-Agricultural District shall be:

- a. all areas of town not designated as the Industrial-Commercial District.

**602.00 Uses Permitted**

- a. Single dwelling unit dwellings, two dwelling unit dwellings.
- b. Churches, synagogues, parish houses, convents, day nurseries, kindergartens, and day care centers.
- c. Municipal buildings, schools, and institutions of higher learning.
- d. Recreation and community center buildings and grounds for games and sports.
- e. Home businesses in compliance with the requirements of Section 1700 of these regulations and subject to Planning Board review under the Non-Residential Site Plan Review regulations, particularly Section 5.2, Submission Requirements for Home Businesses.
- f. Farming and Forestry activities are permitted when incidental to primary residential use.
- g. Farm stands, provided that the stand is set back a minimum of 30 feet from abutting road right-of-way lines; the building area of the farm stand is not greater than two hundred (200) square feet; a minimum of two off-street parking spaces meeting the dimensional requirements of this ordinance are provided; and the stand does not pose a threat to public health, safety and welfare. Year-round, permanent structures for the sale of farm products must receive Non-Residential Site Plan approval from the Planning Board.
- h. Manufactured housing in approved Manufactured Housing Districts subject to the provisions of Section 700.
- i. Any use injurious, obnoxious, or offensive to the neighborhood is prohibited.
- j. Telecommunication towers and co-location of telecommunication facilities on existing towers or structures which are in compliance with Section 1900 and subject to Planning Board review and approval under the Non-Residential Site Plan regulations.

**603.00 Lot Requirements**

**603.01 Frontage.** Every building lot shall have at least 200 feet of frontage except back lots.

**603.02 Setbacks:**

- a. *Front.* Each structure shall be setback at least 30 feet from the front lot line.

- b. *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.

603.03 Land Area. Each building lot shall have at least 80,000 square feet.

603.04 Number of dwelling units. Only one dwelling unit shall be permitted per minimum land area. A two-family house shall require two times the minimum land area.

603.05 Back Lots.

- a. Requires a minimum lot area of 5 acres.
- b. Requires a minimum land area of 5 acres per dwelling unit.
- c. A back lot requires minimum frontage on a Class I, II, or V road of 30 feet for each dwelling.
- d. No building shall be erected closer than 100 feet from an existing public road.
- e. Duplexes require 10 acre minimum lot size.
- f. 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.

**700.00 MANUFACTURED HOUSING**

**701.00** No trailer or manufactured house shall be occupied or maintained as a living unit except in an approved Manufactured Housing District.

**701.01** Manufactured Housing District Requirements. The Planning Board may approve the location and designation of Manufactured Housing Districts within the Residential-Agricultural District and shall allow the placement of manufactured housing on individual lots within Manufactured Housing Districts intended for occupancy as permanent single dwelling unit dwellings. Any area approved as a Manufactured Housing District, in addition to conforming with the zoning ordinance, shall also satisfy the following conditions:

- a. Each proposed Manufactured Housing District must be a minimum of twenty (20) contiguous acres in size.
- b. Each proposed Manufactured Housing 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 Manufactured Housing District and all other adjacent property.
- c. Each proposed Manufactured Housing District shall conform with the Subdivision Regulations now in existence or as may be amended.

**701.02** Application. Any application for the establishment and designation of a Manufactured Housing 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 Manufactured Housing District Designations.

**702.00** The provisions of this section shall not apply to the continued use and occupancy of any manufactured housing used as a dwelling as of the date of the passage of this section, nor to a manufactured house hereafter acquired as a replacement by the owner of a manufactured house so used.

**703.00** The placement of manufactured housing is prohibited within the designated Regulatory Floodway, except in existing manufactured housing parks.



**800.00 NON-CONFORMING USES AND BUILDINGS**

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:

- a. Changed to another non-conforming use.
- b. Re-established after discontinuance for one year.
- c. Extended or enlarged except by approval of the Board of Adjustment.

**900.00 LOT OF RECORD**

**901.00 Ownership Classifications**

**901.01** 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, NH, 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).

**901.02** 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, NH, 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, has a frontage of not less than 150 feet, and complies with the requirements of the WSPCC.

**902.00 Requirements**

**902.01** Any person having a lot size of 40,000 square feet for a single dwelling unit dwelling or 80,000 square feet for a two-family dwelling, 150 feet of 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.

**902.02** Any person having a lot size of less than 40,000 square feet for a single dwelling unit dwelling or 80,000 square feet for a two-family dwelling, and/or less than 150 feet of 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:

- a. increase the exterior dimensions of the structure so that is not in compliance with the Building Code and Zoning Ordinance; or
- b. increase the sewage flow as determined by New Hampshire Water Supply and Pollution Control Commission and the Brookline Health Codes.

**902.03** 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.

**902.04** A lot shall not be used as a building site unless it has frontage in the amount specified in the ordinance on a Class V or better road and access is obtained directly from a Class V or better road.

**1000.00 EARTH REMOVAL**

- 1000.01** Excavation shall be deemed to be a use allowed by special exception in the Industrial-Commercial District as provided in RSA 674:33 IV.
- 1000.02** Excavations performed exclusively for the lawful construction, reconstruction, or maintenance of a class IV or V highway by the Town of Brookline shall be permitted within Town by special exception as provided in RSA 674:33 IV.
- 1000.03** The Zoning Board of Adjustment shall grant such a special exception upon a finding that the applicant has demonstrated that:
- a. The excavation will not cause an unreasonable diminution in area property value or unreasonably change the character of the neighborhood;
  - b. The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof;
  - c. The excavation will not create any unreasonable nuisance or create health or safety hazards;
  - d. The excavation operation shall not remove more than 75,000 cubic yards annually;
  - e. 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;
  - f. The excavation will not cause erosion of adjacent property;
  - g. The excavation will not destroy a habitat of an endangered species;
  - h. The length of the operation shall not exceed three (3) years from the date of Planning Board Excavation Site Plan approval; and
- 1001.00** 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.
- 1002.00** 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.
- 1003.00** Any excavation must also meet the Excavation Regulations and get an Excavation Permit from the Planning Board.
- 1004.00** 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.

**1100.00 WETLANDS CONSERVATION DISTRICT**

**1101.00 Purpose and Intent**

The purpose of the Wetlands Conservation District 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 subject to high water tables for extended periods of time. It is intended that this ordinance shall:

- a. 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;
- b. 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;
- c. protect sensitive, unique and unusual natural areas;
- d. protect the quality and quantity of existing and potential water supplies, aquifers and aquifer recharge areas;
- e. encourage those uses that can be appropriately and safely located in wetland areas.

**1102.00 Definitions:** For the purposes of the Wetlands Conservation District the following definitions apply:

**1102.01 Accessory Structure:** For purposes of this ordinance an accessory structure shall be considered any structure that serves and is in addition to a primary structure. Examples of an accessory structure include, but are not limited to sheds, gazebos and detached garages.

**1102.02 Best Management Practices:** When referring to forestry, Best Management Practices are defined in a publication entitled "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" prepared by the New Hampshire Department of Resources and Economic Development, and Wt. 304.05 Logging Operations, Rules Governing Wetlands, April 21, 1997, as amended. When referring to stormwater management and erosion and sediment control, technical standards are contained in "Stormwater Management and Erosion and Sediment Control for Urban and Developing Areas in New Hampshire", DES, RCCD, 1992 and "Manual of Best Management Practices to Control Non-point Source Pollution: A Guide for Citizens and Town Officials," DES, November, 1997. When referring to agriculture, Best Management Practices are defined in the publications entitled "Manual of Best Management Practices for Agriculture in New Hampshire", Department of Agriculture, Markets & Food, June 1995, and "Best Management Wetlands Practices For Agriculture" July 1993, as amended.

**1102.03 Bog:** A wetland area distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage and/or highly acidic soil and/or water conditions.

**1102.04 Buffer Zone:** An upland area adjacent to a wetland or surface water where construction is not permitted.

- 1102.05 Certified Soil Scientist: A person qualified in soil classification and mapping who is certified by the State of New Hampshire Board of Natural Scientists, as defined by RSA 310-A:76, II.
- 1102.06 Certified Wetland Scientist: A person qualified to delineate wetland boundaries and prepare wetland maps who is certified by the State of New Hampshire Board of Natural Scientists, as defined by RSA 310-A:76, II-a.
- 1102.07 Erosion Control Measures: For purposes of this district, all construction and/or development shall incorporate design standards for erosion and sedimentation control which at a minimum reflect the standards set forth in the document, "Stormwater Management & Erosion & Sediment Control for Urban & Developing Areas in New Hampshire", DES, RCCD, 1992, and Chapter Env-Ws 415 of the NH Code of Administrative Rules.
- 1102.08 Hydric Soils: Soils that are saturated or flooded during a sufficient portion of the growing season to develop anaerobic conditions in the upper soil layers.
- 1102.09 Natural Vegetative Buffer: For purposes of this district shall mean, where existing, a natural woodland buffer shall be maintained within the Wetland Conservation District.
- 1102.10 Prime Wetland: Under the New Hampshire statute (RSA 482-A) for protecting wetlands from "despoliation and unregulated alteration", municipalities are able to designate some of their high value wetlands as "Prime Wetlands" (RSA 482-A:15). These designated wetlands are given special consideration by the Wetlands Board in permit application reviews within the scope of RSA 483-A and NH Code of Administrative Rules WT 700.
- 1102.11 Primary Structure: For purposes of this ordinance a primary structure shall be considered the main structure on a lot that serves as a residence or a place of business.
- 1102.12 Site Specific Soils Map: A map developed from information prepared in accordance with "Site Specific Soils Mapping Standards for New Hampshire and Vermont," Society of Soil Scientists of Northern New England Publication No. 3, 1997, as amended.
- 1102.13 Special Exception: A use of land or buildings that may be permitted, subject to specific conditions that are set forth in the ordinance. RSA 674:33 gives the local zoning board the power to grant those exceptions, which are clearly specified in the ordinance.
- 1102.14 Surface Waters: Those waters, as defined by RSA 484-A:4, which have standing or flowing water at or on the surface of the ground. This includes but is not limited to rivers, streams, lakes, and ponds.
- 1102.15 Wetland: An area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions, does support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, bogs, vernal pools and similar areas. For the purpose of determining buffer zones for site plan and subdivision review wetland boundaries shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands, by either a certified soil scientist or a certified wetland scientist according to the Corps of Engineers Wetlands Delineation Manual, 1987, and the Regional Field Indicators for Identifying Hydric Soils in New England, 1998.

- 1102.16 Wetland Conservation District: The Town of Brookline Wetlands Conservation District is defined as all wetland areas, surface water bodies, and the associated buffers as defined in Section 1102.04 Buffer Zone. The limits of the Wetlands Conservation District are determined to include designated Prime Wetlands, as described in the Brookline Prime Wetlands Report dated January 1992.
- 1102.17 Wet Meadow: An area typically dominated by herbaceous non-woody vegetation less than three feet in height, saturated for long periods during the growing season, but seldom flooded. Wet meadows develop on predominantly poorly drained soil conditions as defined by "Site Specific Soils Mapping Standards for New Hampshire and Vermont," Society of Northern New England Publication No. 3, 1997, as amended.
- 1102.18 Vernal Pool: A confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, provides essential breeding habitat for certain amphibians and invertebrates and is free of adult fish populations.
- 1103.00 Jurisdiction
- 1103.01 Buffer Zone. For purposes of the Brookline Wetland Conservation District the buffer zone shall include an area of fifty (50) feet, measured on a horizontal plane from the delineated edge of a wetland or the mean high water mark of a surface water, as appropriate.
- 1103.02 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.
- 1103.03 State and Federal Regulations. The Town of Brookline Wetlands Conservation District Ordinance is in addition to state and federal regulations governing wetlands and surface waters, including any permitting process.
- 1103.04 Existing Unimproved Lots: This ordinance shall not prohibit the construction of or additions to principal and accessory structures within the buffer zone on unimproved lots that were approved for subdivision by the Planning Board or which otherwise legally existed on or before March 9, 1999. New construction on a legal previously approved vacant lot will only be permitted upon determination by the Planning Board that it is not reasonably feasible to locate the structure outside of the buffer zone, prior to the issuance of a building permit. Any construction permitted within the buffer zone shall minimize harm to the wetland or surface water. The Planning Board may seek input from the Conservation Commission during the review process.
- 1103.05 Existing Improved Lots: For lots with improvements legally existing on or before March 9, 1999, all additions to principal and accessory structures, and the erection of new accessory structures within the Wetland Conservation District require a wetland special exception prior to the issuance of a building Permit.
- 1103.06 Preexisting Uses: This Ordinance shall not prohibit the continuation of a legally preexisting use in the Wetland Conservation District, however, the use may not be expanded without a special exception granted by the ZBA.
- 1103.07 Prime Wetlands: These wetlands are described in the Brookline Prime Wetlands Report dated January 1992, and are as follows:

<u>Wetland Number</u>	<u>Location</u>	<u>Tax Map Sheet</u>
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

**1103.08** Prime Wetland Designation: The designation of each prime wetland is included on 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. Designated prime wetland boundaries shall be delineated by either a certified soil scientist or a certified wetland scientist according to the Corps of Engineers Wetlands Delineation Manual, 1987, and the Regional Field Indicators for Identifying Hydric Soils in New England, 1998.

**1103.09** 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. Wetland boundaries shall be delineated by either a certified soil scientist or a certified wetland scientist according to the Corps of Engineers Wetlands Delineation Manual, 1987, and the Regional Field Indicators for Identifying Hydric Soils in New England, 1998.

**1103.10** Wetlands Exempt: The regulations and restrictions set forth in this District shall not apply to the following wetland areas or their buffer zones:

- a. manmade ditches and swales
- b. sedimentation/detention basins or ponds
- c. manmade agricultural/irrigation ponds and swales
- d. fire ponds, drafting basins and cisterns
- e. a septage or manure lagoon
- f. silage pits
- g. an isolated wetland or surface water of 3000 s.f. or less which does not meet the definition of a bog, vernal pool, or wet meadow

**1103.11** *Reduction of the Wetland Conservation District Buffer Zone*: A special exception for a reduction of the buffer zone may be granted by the ZBA if all the following conditions are met:

- a. A Wetland Functions and Values Assessment (using the New Hampshire Method for the Evaluation of Wetlands) be performed by a Certified Soil Scientist or Certified Wetland Scientist, at the applicant's expense.
- b. The results of this assessment indicate that the wetland is of such value that the proposed use will not conflict with the purpose of this ordinance.
- c. Under no circumstances shall this apply to any designated Prime Wetland.

**1104.00** *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:

- a. Forestry and tree farming, using the best management practices, as defined in Section 1102.02, to protect streams from damage and to prevent sedimentation;
- b. Cultivation and harvesting of crops according to recognized soil conservation practices, as defined in "Best Management Practices for Agriculture in New Hampshire", Department of Agriculture, Markets and Food, June, 1995, including the protection of wetlands from pollution caused by fertilizers, pesticides and herbicides used in such cultivation;
- c. State approved water impoundments;
- d. Construction of wells and water feed lines for water supply;
- e. Maintenance of existing drainage ways, such as streams, creeks or other paths of normal runoff water;
- f. Conservation areas, nature trails, parks and recreation uses consistent with the purpose and intent of this ordinance;
- g. Dry hydrants, drafting basins and fire protection ponds.

**1105.00** *Special Provisions*

**1105.01** Wetland Conservation District areas, excluding bodies of water, may be used to satisfy minimum lot area requirements provided that the lot contains at least 60,000 square feet of dry area in conventional developments, or 32,670 square feet of dry area in open space developments, which is sufficient in size and configuration to adequately accommodate all required utilities, such as sewage disposal and water supply, and does not include areas of steep slopes over 25%.

**1105.02** Construction or enlargement of septic tank or leach field shall follow New Hampshire state regulations regarding setbacks from wetland areas (75'), except in those locations where the soil type is coarse textured with rapid to very rapid permeability, as referenced in the Soil Survey for



Hillsborough County, where a 125' setback shall be required from the edge of any wetland that shall be protected by the Wetland Conservation District.

1105.03 Construction involving the erection of any structure and alteration of the ground surface configuration, which requires a building permit, shall not occur within any portion of the Wetland Conservation District, without required approvals. The applicant must provide written documentation in compliance with Section 1102.15 to the Building Inspector, prior to the issuance of a building permit, verifying that the proposed construction is in compliance with the buffer zone requirements of this ordinance.

1105.04 There shall be no net increase in peak flow or overall volume of stormwater runoff in the Wetland Conservation District as a result of any development, in accordance with "Stormwater Management and Erosion and Sediment Control for Urban and Developing Areas in New Hampshire", DES, RCCD, 1992, and Chapter ENV-Ws 415 of the "NH Code of Administrative Rules. Calculations shall be based on 2 and 10 year storm events.

1105.05 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.

1106.00 *Special Exceptions*

1106.01 Evidence to support the request for a special exception shall be submitted in writing to the Zoning Board of Adjustment, with fees for proper notification, accompanied by written review of findings of fact from the Conservation Commission and the Planning Board. The Conservation Commission may require review by the Natural Resource Conservation Service, upon submission of applicable fees by the applicant for this service.

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, provided the proposed use does not conflict with the Wetland Conservation District and is otherwise permitted by the Zoning Ordinance, and following review and findings of fact from the Brookline Conservation Commission:

- a. 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;
- b. Drainageways, swales, culverts, and other devices to control the volume and timing of stormwater runoff.
- c. Stormwater detention basins, settling basins and other methods of improving the quality of stormwater runoff.
- d. Regrading of the ground surface within the buffer zone of the Wetland Conservation District but not inside the wetland boundaries.
- e. Additions to existing structures may be permitted by special exception within the buffer zone as long as all these conditions apply:

- (1) permitted to expand up to 1/3 the existing size within the zone;
  - (2) the expansion may only be permitted to occur away from the edge of wetland or high water mark;
  - (3) there is no limit to the expansion outside the buffer zone;
  - (4) appropriate erosion control measures must be in place prior to construction, properly inspected and maintained through stabilization, and removed with appropriate disposal of silt, debris and erosion control materials;
  - (5) any disturbance to the surrounding buffer zone due to construction must be repaired upon completion of the project.
- f. Accessory structures may be permitted by special exception within the buffer zone as long as all these conditions apply:
- (1) there is no land outside the buffer zone where the accessory structure could reasonably be placed;
  - (2) the accessory structure does not exceed twenty feet in height;
  - (3) the accessory structure and associated limits of construction must be setback at least 25 feet from the delineated edge of the wetland or surface water;
  - (4) the accessory structure must have a total building footprint no larger than two hundred fifty (250) square feet;
  - (5) the land on which the accessory structure is to be built must have a slope no greater than 25%;
  - (6) appropriate erosion control measures must be in place prior to construction, properly inspected and maintained through stabilization, and removed with appropriate disposal of silt, debris and erosion control materials;
  - (7) any disturbance to the surrounding buffer zone due to construction must be repaired upon completion of the project.

1106.02 The following conditions must be met in order for the special exception to be granted:

- a. The proposed use is essential to the reasonable use of land outside the Wetlands Conservation District;
- b. The Brookline Conservation Commission may require design construction and maintenance methods be prepared by a professional engineer (PE) and shall include restoration of the site, as nearly as possible to its original grade and condition. In the case of a development which involves only a single-family or a two-family dwelling unit or the carving out of a single lot designated for construction of only a single-family or two-family dwelling unit, this requirement may be waived by the BCC, with a written request by the applicant;

- c. Provision is made for wildlife access corridors to promote the free migration of wildlife along the length of the Wetland Conservation District;
- d. No applications for special exception shall be considered unless all applicable state and federal permits are in place.

**1107.00**     *Prohibited Uses in the Wetland Conservation District*

Land uses that pose a particular threat to wetlands and surface waters shall be prohibited within the Wetland Conservation District:

- a. Salt storage sheds
- b. Automobile junk yards
- c. Solid or hazardous waste facilities
- d. Use of fertilizer, except lime and/or wood ash
- e. Bulk storage of chemicals, petroleum products or hazardous materials
- f. Sand and gravel excavations as defined in RSA 155-E
- g. Processing of excavated materials
- h. Dumping or disposal of snow collected from roadways or parking areas

## 1200.00 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 NH" 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.

### 1201.00 Definition of Terms

- 1201.01 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.
- 1201.02 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 FHBM. 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.
- 1201.03 Base flood. Means the flood having a one percent chance of being equaled or exceeded in any given year.
- 1201.04 Basement. Means any area of the building having its floor subgrade (below ground level) on all sides.
- 1201.05 Building. See Structure.
- 1201.06 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.
- 1201.07 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.
- 1201.08 FEMA. Means the Federal Emergency Management Agency.
- 1201.09 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.
- 1201.10 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.

- 1201.11 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.
- 1201.12 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.
- 1201.13 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.
- 1201.14 Flood Insurance Study. See Flood Elevation study.
- 1201.15 Flood plain or Flood prone area. Means any land area susceptible to being inundated by water from any source (see definition of flooding).
- 1201.16 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.
- 1201.17 Floodway. See regulatory floodway.
- 1201.18 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.
- 1201.19 Highest adjacent grade. Means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
- 1201.20 Historic Structure. Means any structure that is:
- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
  - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

1. By an approved state program as determined by the Secretary of the Interior, or
2. Directly by the Secretary of the Interior in states without approved programs

- 1201.21** Lowest floor. Means the lowest floor 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.
- 1201.22** 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.
- 1201.23** 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.
- 1201.24** 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.
- 1201.25** New Construction. Means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.
- 1201.26** 100 year flood. See base flood.
- 1201.27** 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.
- 1201.28** 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.
- 1201.29** Riverine. Means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
- 1201.30** 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).

- 1201.31 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.
- 1201.32 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; nor 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, not occupied as dwelling units or not part of the main structure.
- 1201.33 Substantial Damage. Means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- 1201.34 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.
- 1201.35 Violation. Means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.
- 1201.36 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 coastal or riverine areas.
- 1202.00 Provisions
- 1202.01 All proposed development in any special flood hazard areas shall require a permit.
- 1202.02 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.

1202.03 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.

1202.04 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.

1202.05 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.

1202.06 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 reasonably 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.

**1202.07** 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.

**1202.08** 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 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.

1202.09 This ordinance may be amended by a majority vote of any legal Town meeting when such amendment is included in the Official Town Warrant.

1202.10 It shall be the duty of the Board of Selectmen to enforce the provisions of this ordinance.

1202.11 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.

1202.12 The invalidity of any provision or part of a provision of this ordinance shall not affect the validity of any other provisions.

1202.13 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.

1203.00 *Variance and Appeals Procedure*

1203.01 Any order, requirement, decision or determination of the building inspector made under this ordinance may be appealed to the Zoning Board of Adjustment as set forth in RSA 676:5.

1203.02 If the applicant, upon appeal, requests a variance as authorized by RSA 674:33, I(b), the applicant shall have the burden of showing in addition to the usual variance standards under state law:

- a. that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.
- b. that if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.
- c. that the variance is the minimum necessary, considering the flood hazard, to afford relief.

**1203.03** The Zoning Board of Adjustment shall notify the applicant in writing that: (i) the issuance of a variance to construct below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions.

**1203.04** The community shall (i) maintain a record of all variance actions, including their justification for their issuance, and (ii) report such variances issued in its annual or biennial report submitted to FEMA's Federal Insurance Administrator.

**1300.00    *BROOKLINE AQUIFER PROTECTION ORDINANCE***

**1301.00    *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.

**1302.00    *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.

**1303.00    *Permitted Uses***

Permitted uses, with the exception of those expressly prohibited in Section 1304, shall be the same as those districts within which the aquifer district lies. Other permitted uses are:

- 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.
- d. Subsurface storage of propane/liquefied natural gas.

**1304.00    *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 (i.e. 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 Section 1000 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).

**1305.00    *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.

**1306.00    *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.

**1307.00 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.

**1308.00 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.

**1309.00 Enforcement**

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

**1310.00 Validity and Conflict with Other Ordinances**

**1310.01 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

**1310.02 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.

**1311.00 Definitions**

**1311.01 Aquifer.** Geologic formation composed of stratified sand and gravel that contains a potential to yield potable water.

**1311.02 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.

**1311.03 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.

**1311.04 Leachable Wastes.** Waste materials, including solid wastes, sludge and agricultural wastes that are capable of releasing contaminants to the surrounding environment.

- 1311.05 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.
- 1311.06 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.
- 1311.07 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.

**1400.00 GROWTH MANAGEMENT ORDINANCE**

**1401.00 Purpose**

**1401.01** 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:

- a. 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.
- b. Provide taxpayers a slower rate of growth and prevent an unacceptably high growth in the tax rate;
- c. Allow the Town the opportunity to absorb increases in Town services in an orderly way;
- d. 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.

**1401.02** 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.

**1402.00 Authority**

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

**1403.00 Application**

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

**1404.00 Definitions**

**1404.01** 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.

**1404.01** Calendar Year. January 1 to December 31.

**1405.00 Effective Date**

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



**1406.00 Requirements**

**1406.01 Calculation of available permits.**

- a. The number of building permits that may be issued in any calendar year for the construction of new dwelling units will reflect a three (3) percent annual growth rate in dwellings:
- a. For calculation purposes, the Planning Board has determined that the number of dwellings as of January 1, 1994 is 1,232.
- 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. The number of permits to be available in each calendar year shall be determined by subtracting the actual number of dwellings in Town in the current year from the target number of dwellings for that year as defined by this ordinance, adding next year's target number of building permits to that figure, and then subtracting buildable phased subdivision lots, approved undeveloped subdivision lots, and developable lots of record. If the resulting figure is zero or negative, no more than the minimum number of building permits required in Section 1406.01 (d) shall be distributed. If the figure is positive, that number shall be added to the stated minimum in Section 1406.01 (d).
- d. A minimum of 10 building permits shall be available annually.

**1406.02 Minimum permits.**

- a. All subdivisions which apply for a building permit within the building year shall receive at least one (1) building permit per year. Subdivisions with ten (10) to nineteen (19) approved lots which apply for a building permit within the building year shall receive at least two (2) permits per year; subdivisions with twenty (20) to twenty-nine (29) approved lots which apply for a building permit within the building year shall receive at least three (3) permits per year; subdivisions with thirty (30) to thirty-nine (39) approved lots which apply for a building permit within the building year shall receive at least four (4) permits per year; subdivisions with forty (40) or more approved lots which apply for a building permit within the building year shall receive at least five (5) permits per year. The intent of this section is to ensure that each developer will be assured a number of permits that is appropriate to the size of his/her subdivision and investment. The intent of this section is also to ensure that each subdivision receive a building permit, not for a subdivider to create small subdivisions or to sell off individual lots circumventing the purpose of this ordinance.
- d. Each subdivision may receive their minimum building permit allocation at any time during the calendar year, and are not required to wait until the quarterly allocation date for issuance. These building permits shall be exempt from the quarterly building permit cap described in Section 1406.04 and the quarterly allotment distribution process described in Section 1406.06.

**1406.03 Permit allocation periods.** Building permits will be issued in four periods of allocation, on February 15th, May 15th, August 15th and November 15th of each year. For the 1997 calendar year only, the first allocation date shall be April 15th instead of February 15th. One-half of the

total number of available permits for the calendar year, rounded to the nearest whole number, will be issued in each of the first two allocation periods. Building permit applications must be received no later than 2:00 p.m. on the 13th of each issuance month.

*1406.04*     Permit limitation. The total number of permits which any one subdivision may receive in each of the first and second allocation periods is limited to no more than one-half of the total available permits for the calendar year.

*1406.05*     Carry-over. In the event that the complete allotment of permits is not used in a period of allocation, the remaining permits shall be carried forward and shall be available during the next allocation period. In the event that the complete annual allotment of permits is not used after the fourth allocation date, the remaining permits shall be available on a first-come, first-served basis. Any permits remaining at the end of the calendar year shall not be carried forward to the next calendar year.

*1406.06*     Allocation procedure. In the event that the total number of permits applied for exceeds the total number available during any allocation period, the following allocation formula shall be used:

- a. Each subdivision eligible for at least one building permit, which has not yet received a permit if applied for within the building year, shall be granted one building permit. If the total number of building permits issued at this session exceeds the quarterly allotment, no additional permits shall be issued until the following allocation period.
- b. If sufficient permits remain, each subdivision eligible for at least two building permits, which has not yet received more than one permit if applied for within the building year, shall receive one additional permit in the order in which the building permit applications were received. Permits so granted shall not exceed the quarterly permit allotment.
- c. If sufficient permits remain, each subdivision eligible for at least three building permits, which has not received more than two permits within the building year shall receive one additional permit in the order in which the building permit applications were received. Permits so granted shall not exceed the quarterly permit allotment.

*1406.07*     Expiration. 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).

*1406.08*     Transferability. A lot can be transferred with or without a building permit. Building permits are tied to lots and cannot be transferred between lots.

*1407.00*     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.

**1500.00 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 judgment 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.

**1501.00 Purpose**

- a. To promote the conservation of the natural environment, and the development of the community in harmony with the natural features of the land.
- b. To provide for an efficient use of land, streets, and utility systems.
- c. To stimulate alternative approaches to land and community development.
- d. 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.
- e. To maintain the rural character of Brookline.
- f. To maintain the current density of Brookline (1 unit per 80,000 sq. ft.)
- g. To promote residential construction on the most appropriate and buildable areas of a tract of land.

**1502.00 Zone/Location**

**1502.01** The use of an Open Space Development is limited to the Residential-Agricultural District as shown on the Zoning Map.

**1503.00 Permitted Uses**

**1503.01** All uses allowed in the Residential-Agricultural District are allowed in an Open Space Development.

**1504.00 Open Space**

**1504.01** All land not devoted to house lots, roads, and driveways shall be set aside as permanent open space.

**1504.02** 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.

1504.03 Not more than 45 percent of the open space shall consist of open water, wetlands and slopes greater than 25 percent.

**1505.00 Dimensional Requirements**

1505.01 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.

1505.02 Frontage. 80 feet minimum per lot.

1505.03 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.

1505.04 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.

1505.05 Development Tract Size. An Open Space Development tract shall have a minimum of 20 acres.

**1506.00 Open Space Ownership and Management**

1506.01 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.

1506.02 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.

1506.03 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.

1506.04 Open Space Development land which counts towards the minimum open space requirements or towards the minimum lot size cannot be put in current use.

**1507.00 Procedures**

1507.01 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.

**1508.00 Other Provisions**

1508.01 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.

**1600.00 SIGN ORDINANCE**

**1601.00 Purpose and Intent**

The purpose of this ordinance is:

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

**1602.00 Illumination**

**1602.01** Sign illumination cannot glare onto abutting lots.

**1602.02** A sign can only be illuminated between midnight and 6 a.m. if it is advertising an on-site business that is open at that time.

**1603.00 Size**

**1603.01** Approved home occupations are allowed two signs totaling no more than 25 square feet of signage.

**1603.02** Commercial and industrial buildings are allowed one free standing sign per building. Buildings with multiple unconnected driveway entrances to separate businesses are allowed one free standing sign per entrance. Individual occupants are also allowed a wall sign.

**1603.03** On two-sided signs, only one face is used to compute the sign's area.

**1603.04** Signs shall not exceed 20 feet in height. This is measured from the top of the sign to the surrounding grade of the ground.

**1603.05** Signs of less than three square feet are not regulated by this ordinance.

**1603.06** Maximum sign size is 42 square feet.

**1604.00 Temporary Signs**

**1604.01** 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.

**1604.02** Temporary signs must meet requirements listed elsewhere in this ordinance.

**1604.03** Only one temporary sign per lot is permitted.

**1604.04** 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.

- 1604.05 No temporary sign can be lighted.
- 1604.06 Portable signs can only be used as temporary signs.
- 1605.00 Prohibited Signs**
- 1605.01 Off-premise signs are allowed only with Planning Board review and approval.
- 1605.02 Wall signs that extend above the roof peak of the building.
- 1605.03 Moving, blinking, or rotating signs.
- 1605.04 Signs in the road right-of-way.
- 1605.05 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.
- 1606.00 Subdivision Signs**
- 1606.01 Permanent and temporary subdivision signs are allowed only with Planning Board approval.
- 1607.00 Grandfather Clause**
- 1607.01 All signs which legally exist as of March 14, 1992 shall be considered exempt from the provisions of this article.
- 1608.00 Permit Process**
- 1608.01 After passage of this ordinance any person intending to erect or make an alteration to a sign shall, before doing so, obtain a permit from the Board of Selectmen. Repairs, general upkeep, and minor alterations of wording and graphics shall be exempt from the permit process.
- 1608.02 Permit fees and procedures shall be set by the Board of Selectmen after due notice and public hearing.

**1700.00 HOME BUSINESSES**

**1701.00 Purpose and Intent**

The Town of Brookline receives a relatively large number of applications for home-based businesses, owing to the rural character of the town and to the rising popularity of home employment due to technological advances. While the town may legally prohibit all commercial activities in the residential-agricultural district, it recognizes that many Home Businesses may be beneficial to the community as a whole and can be carried on with minimal or no impact on the neighborhood in which they are situated. Therefore, by placing reasonable restrictions on these activities and allowing only Home Businesses which meet those standards, the town intends to preserve the character of residential neighborhoods and to guarantee all residents freedom from nuisance and potential negative impacts resulting from commercial activity in residential areas. No authorized Home Business shall be permitted to operate in a manner that exceeds the requirements set forth in this ordinance.

**1702.00 General Requirements**

- 1702.01** A Home Business which is evident to the general public shall be required to apply for and obtain an approval pursuant to the Non-Residential Site Plan Review regulations adopted by the planning board that govern such uses. Evidence of the Home Business includes but is not limited to the following: increased traffic, external signs, external display of goods, vehicle or equipment parking and storage, septic expansion, and request for a building permit.
- 1702.02** The Home Business shall be incidental and secondary to the principal use of the dwelling as a residence.
- 1702.03** No additions or changes shall be made to the residence that will make it impractical to revert the building to purely residential use.
- 1702.04** Objectionable circumstances such as noise, vibration, dust, smoke, excessive traffic, electrical disturbances, odors, heat, glare, visual disharmony or other offensive emissions shall not be produced in excess of that normally associated with residential use. Determination of an objectionable circumstance shall be made by the Board of Adjustment either upon complaint or upon request for investigation by the Building Inspector.
- 1702.05** Home Businesses shall be conducted by the resident, resident members of the owner's family, a resident tenant, or resident members of the tenant's family. Four employees, in addition to home inhabitants, are permitted on the premises.
- 1702.06** All signs must comply with the requirements of Section 1600, Sign Ordinance.
- 1702.07** Traffic generated by the Home Business shall not create safety hazards or be substantially greater in volume than would normally be expected with residential use.
- 1702.08** Sufficient off-street parking shall be provided for any non-resident employees, customers and suppliers who may be normally expected to need parking spaces at one time. Driveways may be used for client parking.



- 1702.09** The Home Business shall be operated within the principal or accessory building.
- 1702.10** Home Businesses shall be conducted in accordance with all Town regulations, state laws and licensing requirements.
- 1703.00** *Procedure*
- 1703.01** Requests for Home Businesses shall be presented to the Planning Board in accordance with Sections 3.2, Submission Procedures, and 5.2, Submission Requirements for Home Businesses, of the Non-Residential Site Plan Review regulations.

**1800.00 DRIVEWAY ORDINANCE**

**1801.00 Authority**

Pursuant to the provisions of RSA 236:13, the following driveway ordinance is hereby established for the Town of Brookline, NH

**1802.00 Purpose**

**1802.01** In as much as driveways and entrances are, in effect, intersections, they require certain controls as to size and location in order to provide safe and efficient access to property fronting on the road.

**1802.02** To provide for the proper and suitable discharge and control of surface drainage in and around the driveway.

**1802.03** To ensure the public safety through the orderly control of traffic movement onto and from highways, streets, and roadways.

**1802.04** To provide a uniform practice and procedure relative to the design and construction of driveway entrances and exits.

**1802.05** To prevent the existence of unsafe conditions resulting from improper placements of any driveway.

**1802.06** To prevent erosion or other damage to existing Town roads from the construction of driveways.

**1803.00 Definitions**

**1803.01** Driveway. Any improved or unimproved area serving as an area of access, entrance, exit, or approach from any or to any parcel of land, regardless of public or private ownership.

**1803.02** Driveway Inspector. A local official designated by the Selectmen with the responsibility of certifying that the specifications set forth in this ordinance are met.

**1804.00 Permit and Penalty**

**1804.01** Anyone desiring to construct, alter or relocate a driveway in order to obtain access to an existing or proposed street or roadway, shall first apply for and obtain a permit from the Building Inspector's office.

**1804.02** This permit shall provide for the construction, alteration or relocation of such driveway in accordance with the following specifications:

- a. No use of such driveway (except of a temporary nature during construction) shall take place until the Driveway Inspector inspects the construction of the driveway and certifies that the driveway conforms to the specifications set forth in this ordinance.

**1805.00 Requirements**

**1805.01 Design Features**

- a. Maximum width at property line--Twenty-five (25) feet
- b. Minimum distance from intersection--One hundred (100) feet
- c. Minimum sight distance--Two hundred (200) feet
- d. No driveway shall intersect the street at less than a sixty (60) degree angle

**1805.02** Driveways shall be so located as to most adequately protect the safety of the traveling public.

**1805.03** On any paved road, the driveway shall be paved 15 feet from the edge of existing pavement or to the property line, whichever distance is lesser, unless other specifications are made by the Driveway Inspector as per this article.

All driveways shall be paved or bonded to be paved prior to the issuance of a Certificate of Occupancy. Driveways that cannot be paved between October 1 and March 31 shall be paved between April 1 and July 1 of the following spring. Arrangements must be made with the Driveway Inspector to schedule.

**1805.04** Upon any application for a driveway permit, the applicant shall confer with the Driveway Inspector who shall determine specifications as to sloping, culverts, and other aspects of construction of said driveway in order to properly provide for adequate drainage, snow removal, safety, etc. to prevent undue interference with the proper use of existing access roads. It shall be a requirement of construction that such specifications of the Driveway Inspector be complied with prior to use of such driveway.

**1806.00 Easement and Bond**

**1806.01** The applicant shall as a condition of the granting of the permit, be required to provide to the Town of Brookline, an easement to the extent deemed necessary for the purposes of entering upon the premises of the applicant to control or maintain surface drainage.

The applicant shall provide a letter of credit or cash bond in the sum of \$1,000.00 or up to an amount necessary as security for the proper construction of the paved portion of the driveway, and such culvert, piping, ditching, loaming and seeding, or other efforts incidental to and necessary for the proper discharge and control of surface and sub-surface drainage in and around the vicinity of the proposed driveway, both on the property of the applicant or on the property of the Town. The performance surety shall also cover damages to the road surface, edges and shoulders along the frontage of the property.

**1806.02** All funds provided to the Town in satisfaction of this obligation shall be deposited in an escrow savings account maintained by the Town for said purpose, and portions of said funds may be withdrawn by the Selectmen from time to time to apply against the cost of any portion of said construction which the Town is obliged to undertake to complete. Provided, however, that no funds shall be expended by the Town at any site in excess of the amount on deposit pertaining to such site.

**1807.00    *Fees***

**1807.01**    No permit shall be issued until payment of a fee, which shall be established by the Selectmen, is paid to the Town of Brookline.

**1808.00    *Other Provisions***

**1808.01**    Driveways existing as of March 12, 1996 are exempt from this ordinance unless the driveway is being relocated.

TOWN OF BROOKLINE, NEW HAMPSHIRE  
DRIVEWAY PERMIT APPLICATION

Application Date: \_\_\_\_\_

Permit Number: \_\_\_\_\_

Lot Number: \_\_\_\_\_

Subdivision (if applicable): \_\_\_\_\_

Owner (or applicant): \_\_\_\_\_

Address of Applicant: \_\_\_\_\_

Phone Number of Applicant: \_\_\_\_\_

Street Address of Driveway: \_\_\_\_\_

- 1) The driveway will be inspected by the Driveway Inspector, who will ensure that the driveway is in compliance with Section 7 of the Brookline Subdivision Regulations.
- 2) The fee for a driveway permit is \$25, as established by the Brookline Board of Selectmen in October, 1990. I have submitted this fee.
- 3) Any necessary State permits such as Wetlands, Timber Cutting, and Curb Cut permits have already been obtained. Curb cuts need to be shown on the subdivision plans.
- 4) On any paved road, the driveway needs to be paved 15 feet from the edge of the road, or from the road to the property line, whichever distance is smaller, to encourage proper drainage and sedimentation & erosion control. This paving is required unless other specifications are made by the Town Road Agent as per Section 1800 of the Zoning Ordinance.

I have read and understand the above and Section 7 and Section 1800 (attached) which pertain to driveways. The driveway that I propose is in compliance with those regulations.

Signature of Applicant: \_\_\_\_\_

Fee Paid: \_\_\_\_\_

☐ CASH

☐ CHECK # \_\_\_\_\_

**1900.00 TELECOMMUNICATION FACILITIES ORDINANCE**

**1901.00 Authority**

This ordinance is adopted by the Town of Brookline in accordance with the authority granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21 and procedurally under 675:1, II.

**1902.00 Purpose and Goals**

In recognition of the requirements of the federal Telecommunications Act of 1996, this ordinance is designed and intended to balance the interests of the residents of Brookline, telecommunications providers, and telecommunications customers in the siting of telecommunications facilities within the town of Brookline so as to ensure coordinated development of communications infrastructure while preserving the health, safety and welfare of the Town and its residents. This Ordinance establishes general guidelines for the siting of telecommunications towers and antennas to enhance and fulfill the following goals:

- a. Preserve the authority of Brookline to regulate and to provide for reasonable opportunity for the siting of telecommunications facilities, by enhancing the ability of providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;
- b. Reduce adverse impacts such facilities may create, including, but not limited to, impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values;
- c. Provide for co-location and minimal impact siting options through assessment of technology, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town;
- d. Permit the construction of new towers only where all other reasonable opportunities have been exhausted, and to encourage the users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas;
- e. Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon the Town;
- f. Provide constant maintenance and safety inspections for any and all facilities;
- g. Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and Building code compliance. Provide a mechanism for the Town to remove these abandoned towers to protect the citizens from imminent harm and danger; and
- h. Provide for the removal or upgrade of facilities that are technologically outdated.

**1903.00 Definitions**

- 1903.01** Alternative tower structure. Innovative siting techniques such as artificial trees, clock towers, bell towers, steeples, light poles, and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.
- 1903.02** Antenna. Any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.
- 1903.03** Co-location. The use of an existing tower or an existing telecommunications facility, for multiple purposes or users.
- 1903.04** Elevation. The measurement of height above sea level.
- 1903.05** Guy wires. A cable used to secure and steady a tower.
- 1903.06** Guyed tower. A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.
- 1903.07** Height. The vertical distance measured from the average elevation of the finished grade surrounding the tower or other structure to the highest point on the tower or other structure, including antennas.
- 1903.08** Lattice tower. A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.
- 1903.09** Monopole. A type of mount that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel antennas arrayed at the top, constructed without guy wires.
- 1903.10** Preexisting towers and antennas. Any tower or antenna lawfully constructed or permitted prior to the adoption of this ordinance. Also, any tower or antenna lawfully constructed in accordance with this ordinance that predates an application currently before the Town.
- 1903.11** Secondary use. A use of land or of a building or portion thereof which is unrelated to the principal use of the land or building.
- 1903.12** Telecommunications facilities. Any structure, antenna, tower, or other device that provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), and personal communications services (PCS), and common carrier wireless exchange access services.
- 1903.13** Tower. A structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice or monopole towers but not including guyed towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures, and the like.

**1904.00 Applicability**

**1904.01**     *Public Property*

Antennas or towers located on property owned, leased, or otherwise controlled by the Town may be exempt from the requirements of this ordinance, except that uses are only permitted in the zones and areas as delineated in Section 1904.03. This partial exemption shall be available if a license or lease authorizing such antenna or tower has been approved by the governing body and the governing body elects, subject to state law and local ordinance, to seek the partial exemption from this ordinance.

**1904.02**     *Amateur Radio, Receive-Only Antennas*

This ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.

**1904.03**     *Essential Services and Public Utilities*

Telecommunications facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for telecommunications facilities is a use of land, and is subject to the Town's zoning ordinance and all other applicable ordinances and regulations.

**1905.00**     *Siting Standards*

**1905.01**     *General Provisions*

The uses listed in this section are deemed to be permitted uses in the designated district in accordance with all other applicable ordinances and regulations of the Town including Non-residential Site Plan Review and approval by the Planning Board.

- a. Antennas and towers may be considered either principal or secondary uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.
- b. For purposes of determining whether the installation of a tower or antenna complies with district development standards, the dimensions of the entire lot shall control, even though the antennas and towers may be located on leased parcels within such lots.
- c. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance, shall not be deemed to constitute the expansion of a nonconforming use or structure.
- d. Applicants receiving approval to construct new telecommunication towers must execute a written agreement with the Town specifying that the applicant agrees to provide for maximum shared use of the tower with other telecommunication providers and with governmental agencies at industry standard lease rates. This agreement shall include use by the Town for municipal communication purposes. The applicant shall also provide notice to all commercial carriers in the region that a new facility is to be erected and that an opportunity for co-location exists.



**1905.02**     *Districts Permitted*

New tower construction and co-location of telecommunication facilities shall be permitted in the Industrial-Commercial District and Residential-Agricultural District subject to all applicable local, state and federal regulations and Non-Residential Site Plan review and approval by the Planning Board.

**1906.00**     *Bonding, Security, and Insurance*

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event that the tower is abandoned and the tower owner is incapable and/or unwilling to remove the tower in accordance with Section 1907. Bonding and surety shall be consistent with the provisions in the Subdivision Regulations. Furthermore, the Planning Board shall require submission of proof of adequate insurance covering accident or damage.

**1907.00**     *Removal of Abandoned Antennas and Towers*

Any antenna or tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within ninety (90) days of receipt of a declaration of abandonment from the Town notify the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed according to RSA 676:4, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within ninety (90) days, the Town may execute the security and have the tower removed. If there are two or more uses of a single tower, this provision shall not become effective until all uses cease using the tower.

**1908.00**     *Waivers*

**1908.01**     *General*

The Planning Board may approve waivers to the requirements of Section 1900 where it finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing terms, or the purposes of these regulations may be served to a greater extent by an alternative proposal. The purpose of granting waivers under the provisions of this ordinance shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by the terms of the ordinance. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

- a. The granting of the waiver will not be detrimental to the public safety, health, or welfare or be injurious to other property and will promote the public interest.
- b. The waiver will not, in any manner, vary the provisions of the Town's Zoning Ordinance or Master Plan.
- c. The waiver will substantially secure the objectives, standards, and requirements of this ordinance.

- d. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:
1. Topography and other site features.
  2. Availability of alternative site locations.
  3. Geographic location of the property.
  4. Size/magnitude of the project being evaluated and availability of co-location.

1908.02 Conditions

In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of this ordinance.

1908.03 Procedures

A petition for any such waiver shall be submitted in writing by the applicant with the application for Planning Board Review. The petition shall state fully the grounds for the waiver and all of the facts relied on by the applicant. Failure to submit petition in writing shall require an automatic denial of the waiver request."

**2000.00 ACCESSORY DWELLING UNITS (IN-LAW APARTMENTS)**

**2001.00 Purpose**

2001.01 For the purpose of providing expanded housing opportunities and flexibility in household arrangements to accommodate family members or non-related elderly people of a permitted, owner-occupied, single family dwelling, while maintaining aesthetics and residential use compatible with homes in the neighborhood. Accessory dwelling units (ADU) shall be permitted by special exception granted by the Board of Adjustment in the Residential/Agricultural District.

**2002.00 Requirements/Limitations**

- 2002.01 Accessory Dwelling Units shall be secondary and accessory to a principal single family dwelling unit.
- 2002.02 In granting a special exception, the Board of Adjustment must find that the secondary unit is developed in a manner which does not alter the character or appearance of the principal dwelling unit as a single family residence.
- 2002.03 Only one accessory dwelling unit shall be allowed per principal dwelling unit and/or lot.
- 2002.04 An ADU is not permitted in any principal dwelling in which the owner of record of the principal dwelling does not personally reside.
- 2002.05 There shall be no alterations, enlargements, or extensions of the existing structure which alter its character or appearance as a single-family residence (or other detached accessory structure, when applicable).
- 2002.06 Any necessary additional entrances or exits shall be located to the side or rear of the building whenever possible.
- 2002.07 An accessory dwelling unit shall not be considered to be an additional dwelling unit for the purpose of determining minimum lot size.
- 2002.08 Attached accessory dwelling units shall be designed to allow for re-incorporation into the principal dwelling unit.
- 2002.09 At least one (1) common interior access between the principal dwelling structure and the accessory dwelling unit shall be maintained. A second means of egress from the accessory dwelling unit shall be provided for in accordance with the provisions of Section 2002.03.
- 2002.10 Detached accessory dwelling units are only allowable when located on a lot that has twice the minimum required lot size. A detached accessory dwelling unit cannot be converted to a principal dwelling unit.
- 2002.11 The gross living area of an accessory dwelling unit shall not be less than 350 square feet or not greater than 1,000 square feet.

- 2002.12 The above grade gross living area of the principal dwelling shall not be reduced to less than 1200 square feet.
- 2002.13 Attached accessory dwelling units shall occupy no more than 40% of the total heated above grade floor area of the principal dwelling.
- 2002.14 A building permit for an accessory dwelling unit must be approved and issued prior to the construction of an accessory dwelling unit. An accessory dwelling unit shall have an interconnected fire alarm system.
- 2002.15 The building inspector shall determine the house number for the accessory dwelling unit at the time of building permit application.
- 2002.16 Adequate off street parking shall be provided to serve the combined needs of the principal dwelling unit and the accessory dwelling unit.
- 2002.17 Adequate provisions must exist or be made for ingress, egress and turning of vehicles within the site.
- 2002.18 The existing, replacement or proposed septic system must be certified by a licensed septic designer or engineer as adequate to support the accessory dwelling unit in accordance with New Hampshire RSA 485-A:38 and the Town of Brookline septic regulations.

**2003.00 *Term of Special Exception Approval***

- 2003.01 Any special exception granted to permit the creation of an accessory dwelling unit in accordance with Section 2002.01 through 2002.18 is to benefit the original applicant. The special exception shall expire when the owner of record of the principal dwelling conveys the property by sale or ceases to personally occupy either the principal dwelling unit or the accessory dwelling unit. In the event the special exception approval expires, one of the following provisions must be met:
- a. The original applicant shall notify the Board of Selectmen of such occupancy termination. Violators shall be charged \$25.00 per day, plus court costs and/or attorneys' fees.
  - b. If a new owner of record of the principal dwelling desires to maintain the existence of the previously approved accessory dwelling unit, application for a new special exception approval to benefit the new owner of record must be made within 60 days of the property's conveyance.

**2004.00 *Procedural Requirements***

- 2004.01 An application for special exception approval under the auspices of this Section shall include the following items:
- a. All plans submitted with any application for an accessory dwelling unit building permit should denote, describe and/or identify the intended accessory dwelling unit area as such.

**2005.00 *Existing Legal Nonconforming and Illegal Accessory Dwelling Units***

- 2005.01 Accessory dwelling units constructed prior to the adoption of this Ordinance without a building permit or certificate of occupancy shall apply to the Board of Selectmen for a determination of

compliance with this Ordinance. There shall be an amnesty period of 180 days from the date of adoption of this Ordinance in which to make an application for a determination and in which no penalty will be assessed for an illegal nonconforming accessory dwelling unit.

2005.02 Applications shall be accompanied by the filing fee, plans, and other documents requested by the Selectmen, or Selectmen's agent to enable them to evaluate compliance with Section 2000.00. The Board of Selectmen [Building Inspector] shall issue one of the following:

- a. A determination of compliance with Section 2002.00 and a certificate of occupancy.
- b. A conditional determination of compliance with Section 2000.00 and a description of the corrective changes needed to bring the accessory dwelling unit into compliance. The required changes shall be completed within 90 days of the date of the determination of conditional compliance. Upon successful completion of the required changes, the Board of Selectmen [Building Inspector] shall issue a certificate of occupancy; or
- c. A determination of noncompliance with one or more of the requirements of Section 2000.00, together with a listing of those requirements and conditions for which compliance cannot be achieved through corrective changes.

**2006.00**     *Failure to Comply*

2006.01 If the owner fails to comply with the requirements of this section, the use of the accessory dwelling unit shall be terminated within 6 months of the date of notice from the Board of Selectmen [Building Inspector]. The owner shall be subject to penalty under RSA 676:17 for each day the accessory dwelling unit fails to comply with the requirements of this section after March 9, 1999.

**2007.00**     *Enforcement Authority*

2007.01 The Board of Selectmen shall be the final authority on compliance and enforcement issues of this article.

**2100.00 ENFORCEMENT**

**2101.00** 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.

**2102.00** 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.

**2200.00 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 Section 500, paragraphs 502 (v) and 503 and is not otherwise detrimental to the neighborhood.

**2300.00 AMENDMENTS**

**2301.00** 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?"

**2302.00** The Planning Board has the authority to assign such section numbers to the Zoning Ordinance and Building Code as it may deem appropriate provided that no substantive change to the ordinance shall occur as a result of this renumbering.

**2400.00    *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.

**2500.00    *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.

**2600.00    *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, March 8, 1994, March 12, 1996, March 11, 1997, March 10, 1998, and March 9, 1999. Amendments have been incorporated in this ordinance as printed.)

APPENDIX A: TABLE OF AMENDMENTS

- IV, A**      *Location. 1997:* Add portion of Tax Map Parcel A-6 to district. (*new section 501*)
- B**      *Uses Permitted. 1997:* Clarify list of permitted uses by specifying 11 previously unspecified activities. Add home businesses as permitted use. (*new section 502*)
- C**      *Lot Requirements. 1997:* Reduce frontage, side and rear setback, and land area requirements. Add building height limitation. (*new section 503*)
- V, B**      *Uses Permitted. 1997:* Replace "single (two) family dwelling" terminology with "single (two) dwelling unit dwelling". Add farm stands as new permitted use. Specify manufactured housing as currently permitted use. (*new section 602*)
- VI**      *1997:* Replace "Mobile Home" terminology with "Manufactured Housing". (*new section 700*)
- VII, A**      *1997:* Reword provision #2. Delete provision #4 which prohibits rebuilding after damage exceeding 50% of value. (*new section 800*)
- VIII**      *1997:* Update definitions for dwelling unit and manufactured housing. Remove home produce and products definition. Replace "Two-family house" term with "two dwelling unit dwelling". Add definitions for farm, farm stand, farming, funeral home, personal services, and restaurant. (*new section 200*)
- XIII, D**      *Special Provisions. 1997:* Clarify dry area requirement. (*new section 1104.01*)
- XVI, F**      *Requirements. 1997:* Add description of building permit allocation procedure. Add provisions to allow a minimum number of building permits based on subdivision size, and to allocate permits on a quarterly basis. (*new section 1406*)
- XVIII, H**      *1997:* Add new provision for a sign permit process. (*new section 1608*)

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