

BROOKLINE PLANNING BOARD

~~Proposed deleted items~~ *Proposed additions*

Amendment No. 2

800 NONCONFORMING USES, LOTS, AND STRUCTURES

900 LOTS OF RECORD

Reasons for the proposed changes:

Lots of Record are lots that have existed as separate lots since before zoning was started in Brookline. Lots of Record are often small or have less frontage than is currently required. Owners of lots of record should have a clear path to building and abutters will have protections when setbacks need to be reduced.

This proposed change will add a new section to Section 800 defining how vacant Nonconforming Lots of Record can be built on when the lot does not meet dimensional requirements. If the lot cannot be built on without going into setbacks, then a new Special Exception process is outlined.

Remove Section 900 since all the information is contained now in Section 800.

Recommended by the Planning Board.

800.00 NONCONFORMING USES, LOTS, AND STRUCTURES

801.00 Purpose and Intent

The Purpose and Intent of this Ordinance is to allow for the ~~lawful~~ continuance of *lawful* nonconforming uses, structures and lots, in accordance with the criteria outlined below and to allow for a reasonable level of alteration, expansion or change to occur ~~by special exception when it can be demonstrated that the proposed alteration, expansion or change will not change the nature of the use, unduly impact the neighborhood or provide inadequate subsurface disposal of waste.~~

802.00 Definitions

The following definitions shall apply to this section of the Ordinance. General definitions can be found in Section 200.

Pre-zoning nonconforming lot of record: *A lot in separate ownership, the deed recorded on or before 12 March 1968, that does not meet the current dimensional requirements of the Zoning District it is in.*

803.00 Nonconforming Uses

- A. Any nonconforming use may continue in its present use; however, it shall not be changed to another nonconforming use.
- B. Whenever a nonconforming use has been intentionally discontinued or abandoned for a period of one year the use shall not be reestablished.
- C. Any alteration, expansion or change of a nonconforming use shall be permitted by special exception by the Zoning Board of Adjustment if it finds that:
 - 1. The proposed alteration, expansion, or change will not change the nature and purpose of the present use; and
 - 2. The proposed alteration, expansion, or change would involve no substantially different effect on the neighborhood.

804.00 Nonconforming Lots

- A. *Nonconforming Lots with a structure.*

A nonconforming lot that has been developed with a structure may continue in its present use; however, any alteration or expansion shall comply with Sections ~~800.01~~ 803.00 and ~~800.03~~ 805.00.

- B. New septic systems, or any changes to existing septic systems, must comply with the NH Division of Water Supply and Pollution Control and the Town of Brookline in accordance with the provisions of RSA 485-A:38 and the Town of Brookline's Zoning Ordinance Section 303.02.

- C. *Substandard Pre-zoning nonconforming lot of record.*

A pre-zoning nonconforming lot of record in the Residential/Agricultural District, ~~which is recorded and taxed as a lot of record at the time of passage of this Ordinance and, pursuant to Zoning Ordinance Section 900,~~ may be used for a single family or two family dwelling unit dwelling with the following dimensional provisions: ~~any permitted use in the district in which it is located.~~

For a Single family dwelling unit

- 1. *minimum lot size of 44,000 square feet*
- 2. *minimum 150 feet of frontage on a Class V road or better*
- 3. *meets setback requirements*

For a Two-dwelling unit dwelling

- 1. *minimum lot size of 88,000 square feet*

2. *minimum 150 feet of frontage on a Class V road or better*
3. *meets setback requirements*

If a pre-zoning nonconforming lot of record cannot meet setback requirements for a dwelling unit or accessory structures, the owner may apply for a special exception from the Zoning Board of Adjustment. The Zoning Board of Adjustment shall grant a Special Exception if the following requirements are met:

1. *The proposed dwelling or accessory structure would not unduly impact the neighborhood, and*
2. *The proposed dwelling unit or structure and its proposed placement would be in keeping with the existing development of the neighborhood.*

805.00 Nonconforming Structures

- A. Any ~~lawful~~ nonconforming structure existing at the time of adoption of this Ordinance, may be occupied, operated and maintained.
- B. Any increase in the number of bedrooms requires a septic system that complies with the NH Division of Water Supply and Pollution Control and the Town of Brookline in accordance with the provisions of RSA 485-A:38 and the Town of Brookline Zoning Ordinance Section 303.02.
- C. Any alteration, expansion, or change of a structure which already extends into the front, side, or rear setbacks required for the zone shall be permitted by special exception by the Zoning Board of Adjustment if it finds that:
 1. The proposed alteration, expansion, or change will not change the nature and purpose of the present use; and
 2. The proposed alteration, expansion, or change would involve no substantially different effect on the neighborhood; and
 3. The proposed alteration, expansion, or change would extend no farther into the setback than that portion of the structure which already resides in that setback.
- D. Any development which would create a new extension into a setback shall require a variance from the Zoning Board of Adjustment.
- E. Accessory structures which can meet the setback requirements do not require a special exception or variance.

806.00 Appeals

All appeals shall be conducted in accordance with Section 2500 of this Ordinance.

807.00 Conflicts and Severability

This Section shall comply with Section 2900 of this Ordinance.

~~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 44,000 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 44,000 square feet for a single dwelling unit dwelling or 88,000 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 44,000 square feet for a single dwelling unit dwelling or 88,000 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* (See Appendix A: Table of Amendments, 2010) 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.