

## **BROOKLINE PLANNING BOARD**

### Amendment No. 3

#### **1000 Earth Removal**

Reasons for the proposed changes:

Proposed deletion of the current Earth Removal Ordinance and substitute this new Excavation Ordinance.

This proposed change swaps out the old Earth Removal Ordinance for an Excavation Ordinance. The new Ordinance makes clear when an Excavation Permit is required and the process for applying for an Excavation Permit.

Recommended by the Planning Board.

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**New!**

#### ***1000.00 Excavation Ordinance***

##### ***1001.00 Purpose and Intent***

*The purpose of this Ordinance is to:*

- 1. provide for reasonable opportunities for excavation;*
- 2. minimize safety hazards which can be created by open excavations;*
- 3. ensure that the public health and welfare will be safeguarded;*
- 4. protect natural resources and the environment; and*
- 5. maintain the aesthetic features of the Town.*

*To meet the intent of this Ordinance, no earth materials in the Town shall be excavated except in conformance with this Ordinance and Regulations.*

##### ***1002.00 Definitions***

*Definitions shall have the meaning as noted in Section 200 and further in the Excavation Site Plan Review Regulations.*

***Incidental Excavation*** means excavation of earth which has met the standards of Section 1000.05 and has been granted an exemption by the regulator.

***Regulator*** means the Planning Board of the Town of Brookline.

##### ***1003.00 Projects requiring a permit***

*Any excavation of earth in Brookline is required to obtain a permit unless exempt under SECTION 1005.00 Exemptions. The Regulator is the determining authority if an Excavation Site Plan Permit is required.*

##### ***1004.00 Procedure***

- 1. Permit Application Process:*

- a. *Applicants must follow the Application process outlined in the Excavation Site Plan Review Regulations, including, but not limited to, an Excavation Plan and Reclamation Plan that include the items outlined in Sections XI and XII.*
  - b. *Applications must demonstrate the project will meet the Operational Standards in Section VIII*
2. *Permit Renewal Process:*
- a. *Applicants may renew an excavation permit every three (3) years provided that the excavation has been actively removing material the prior two (2) years. If no material has been removed for two (2) years, the permit will be considered expired and an applicant must provide the Planning Board a new Excavation Site Plan application.*

### ***1005.00 Exemptions***

*The following excavations are exempt from needing an Excavation Permit and may have other conditions or requirements.*

1. *Excavations performed exclusively for the lawful construction, reconstruction, or maintenance of a Class IV or Class V highway by the Town of Brookline.*
2. *Incidental excavations will not remove more than 1,000 cubic yards of earth from a site.*
3. *Incidental excavations that will remove more than 1,000 cubic yards of earth from a site will need review from the Regulator per the Excavation Site Plan Review Regulations to determine if an Excavation Site Plan is required.*
4. *Excavation that is incidental to agricultural activities, normal landscaping, or minor topographical adjustments.*
5. *Excavation from a granite quarry for the purposes of producing dimensional stone, if such an excavation requires a permit under RSA 12-E (Mining and Reclamation).*

### ***1006.00 Appeals***

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

### ***1007.00 Conflicts and Severability***

*This Section shall comply with Section 2900 of this Ordinance.*

## **~~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 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;
- ~~e.~~ — The excavation will not cause erosion of adjacent property;
- ~~f.~~ — The excavation will not destroy a habitat of an endangered species.

~~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.