

TOWN OF BROOKLINE, NEW HAMPSHIRE

June 30, 1977

ZONING AND LAND USE ORDINANCE

BUILDING CODE

PRICE \$1.00

ZONING AND LAND USE ORDINANCE

Adopted	March 12, 1968
Amended	March 11, 1969
Amended	March 7, 1972
Amended	March 6, 1973
Amended	March 8, 1977

BUILDING CODE

Adopted	March 9, 1971
Amended	March 7, 1972
Amended	March 8, 1977

ARTICLE I

Preamble

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

ARTICLE II

Districts

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

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

ARTICLE III

General Provisions

A. No junk yard or place for the storage of discarded machinery, vehicles, glass, paper, cordage, garbage, refuse, or other waste or discarded materials shall be maintained in the Town, exclusive of the area known as the Town Dump.

B. No owner or occupant of land shall permit fire or other ruins to be left, but shall remove same to ground level within one year.

C. Sanitary Protection

1. No waste waters or sewage shall be permitted to run free into a public water body or be discharged in any way that may be offensive or detrimental to health.

2. All dwellings and sanitary systems should be constructed and maintained in accordance with standards set and enforced by the New Hampshire Water Supply and Pollution Control Commission.

D. Land Requirements for Dwellings

1. Frontage - Every building lot shall have a minimum frontage of 200 feet.

2. Front Yard - There shall be between the nearest right of way and the extreme front of any building a minimum depth of 30 feet.

3. Side and Back Yard - No building shall be located nearer than 15 feet to the property lines of any abutter.
4. Minimum Land Area - No lot shall have an area less than 80,000 square feet.
5. Only one dwelling unit shall be permitted per minimum land area. A two-family house shall require two times the minimum land area.

ARTICLE IV Industrial-Commercial District

A. Location

1. The Industrial-Commercial Districts shall be the area within 500 feet of Route 13 from the Massachusetts State Line as far north as Bond Street on the easterly side and as far north as Mason Road on the westerly side of said Route 13 and the area within 500 feet of Route 13 from a point 500 feet south of Route 130 North to Old Mason Road, on both sides of said Route 13.

B. Uses Permitted

1. All uses permitted in the Residential - Agricultural District shall be permitted in the Industrial-Commercial District.
2. Any Industrial or Commercial use which does not offend by emission of smoke, dust, gas, noise, odor, or fumes and (a) is located at least 30 feet from the edge of the right of way and not less than 20 feet from each side and rear boundary. (b) Provides adequate parking facilities for freight and delivery trucks, employee parking and for vehicles attracted to the business.

ARTICLE V Residential-Agricultural District

A. Location

1. All areas of the town not designated as Industrial-Commercial District shall be the Residential-Agricultural District.

B. Uses Permitted

1. Single Family and Two-Family dwellings.
2. Churches, synagogues, parish houses, convents, hospitals, sanatoriums, day nurseries and kindergartens, recreational and community center buildings and grounds for games and sports.
3. Municipal buildings, schools and institutions of higher education.
4. Residences may be used to house uses by the owner or tenant as offices for doctor, engineer, architect, lawyer, real estate and insurance or other recognized profession or home occupation such as hair-dressing, barber shops, dress-making, manufacture of craft products for sale, or manufacture of food products except that the number of persons employed at any one location shall not number more than four persons in addition to the owner or tenant.

5. Farming and forestry activities are permitted when incidental to primary residential use, but any use injurious, obnoxious, or offensive to the neighborhood is prohibited.

6. Home produce and products may be bought and sold and exposed for sale.

ARTICLE VI Mobile Homes

A. No Mobile Home dwelling shall be permitted in the Town of Brookline.

B. The provisions of this section shall not apply to the continued use and occupancy of any mobile home used as a dwelling as of the date of the passage of this section, nor to a mobile home hereafter acquired as a replacement by the owner of a mobile home so used.

ARTICLE VII Non-Conforming Uses and Buildings

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

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

ARTICLE VIII Definitions

1. Accessory Building - A subordinate building located on the same lot with the main building or use, the use of which is customarily incidental to that of the main building or to the use of land.

2. Accessory Use - A use customarily incidental to that of the main building or to the use of the land, not including the exterior storage of junk, dismantled or abandoned cars or any other storage detrimental to the health, safety or general welfare.

3. Alteration - Any change or modification to a building which modifies the structural plan, manner of construction, or the kind of material used, or in any way varies the character of its use.

4. Apartment Building - A building intended to be occupied by three or more families living independently of each other.

5. Camp - A building of such a nature that it may only be used for recreational and dwelling purposes during seasonal parts of the year.

6. Dwelling - A structure that is designed or used as a place of residence for one or more families.
7. Dwelling Unit - A dwelling or portion thereof designed for use by one family for residential purposes.
8. Family - One or more persons related by blood, marriage or adoption occupying the premises and living as a single housekeeping unit.
9. 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.
10. 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.
11. Frontage - The distance between side lot lines measured along the street or way line.
12. Home Produce and Products - Everything of an agricultural nature grown, produced, conditioned or otherwise carried on the property of a resident, also such articles as are manufactured or altered by members of the household of a resident.
13. 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 be considered junk. Farm trucks, tractors and machinery are excluded from the above definition.
14. 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 a recorded deed or plan.
15. Lot Line - The established division line between lots or between a lot and a street.
16. Mobile Home - Any vehicle used or designed to be used as a conveyance on the public streets and highways and for occupancy as a dwelling or sleeping place for one or more persons and equipped with running water, a toilet, bathtub or shower, and cooking facilities, whether on a permanent foundation or not.
17. 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.
18. Non-Conforming Lot - A lot which does not conform to the frontage or area requirements of the district in which it is located.
19. 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.

20. 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-way.

21. 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.

22. Set Back - The minimum horizontal distance between the street or wayline and the line of the building.

23. 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.

24. 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.

25. Structure - Anything constructed that is of necessity attached directly or indirectly to the ground.

26. Tourist Home - A dwelling in which accommodations are provided or offered for transient guests for compensation.

27. Two-Family House - A dwelling occupied by two families with two separate housekeeping units.

28. Tourist or Motor Courts - Two or more overnight cabins operated as part of a single business.

ARTICLE IX Earth Removal

The removal of sand, gravel, clay, peat, quarried stone, sod and loam from the Town of Brookline, New Hampshire, shall be prohibited. The removal from any premises within the Town of Brookline of more than 500 cubic yards of the above earth products in any one year shall be prohibited except when incidental to and in conjunction with the construction of a town road or an excavation for the lawful construction of a building or except where such removal may be authorized by permit as an exception to this ordinance by the Board of Selectmen. Permits may be authorized at Selectmen's regular meetings with prior notice given by certified mail to the abutters and notices posted in three public places. Said permit shall be valid for a period not to exceed one year and may be renewed annually upon application. The Board of Selectmen may require submission of such plans, topographical surveys, drainage proposals, estimates and other information as said Board deems necessary, including without limitations:

- a. Control of the unfinished level and grading.
- b. Control of the placing of topsoil upon completion of excavation, seeding, and planting with approved materials to restore the area to a usable condition, protected from erosion and reforested as necessary.
- c. Control of temporary and permanent drainage.
- d. Disposition of boulders, vegetation stumps, and other debris including unused material and any structures used in connection with the operations.
- e. The construction of necessary fencing to protect against hazards.
- f. Vegetation to remain as a visual barrier.

g. Hours of operation except that hours of operation will not be limited during the normal working day.

h. Routing and means (including load limits) for transportation of materials.

i. Posting of a performance bond with sufficient sureties or other security in an amount sufficient to cover items "a" through "f" above, and any other conditions said Board may require.

1A. The proposed removal shall not extend within 100 feet of a way open to public use, whether public or private, or 50 feet from an adjacent property; and provided further that removal of topsoil from the premises or use in rough grading the slopes of the excavation is prohibited.

1B. Said removal activities in lawful operation at the time this amendment is adopted may continue unless or until abandoned for more than twelve (12) consecutive months however, unless specifically authorized by a new permit;

(a) The depth of excavation shall not be increased below the grade of the lowest point excavated on the effective date of this amendment, and

(b) The total horizontal area of excavation within the property shall not be increased by more than twenty-five (25) percent of its area on said effective date.

1C. The Board of Selectmen shall make investigation annually, or more frequently, if deemed necessary, to compliance with earth removal permits, a report of their investigations shall be kept on record at the Selectmen's office.

ARTICLE X Lot of Record

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

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

ARTICLE XI
Enforcement

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

B. Upon well-founded information that this ordinance is being violated, the selectmen shall take immediate steps to enforce the provisions of this ordinance by seeking an injunction in the Superior Court or by any other legal action.

ARTICLE XII
Board of Adjustment

Within thirty days after the adoption of this ordinance and thereafter as terms expire or vacancies occur, the Board of Selectmen shall make appointments to a Board of Adjustment of five members conforming in duties to the provisions of Chapter 31 of the New Hampshire Revised Statutes Annotated, 1955. Thereafter as terms expire or vacancies occur, the Board of Selectmen shall be responsible for filling vacancies and maintaining full membership on the Board of Adjustment. The Board of Adjustment here provided shall conform in membership and terms of office to the provisions of Section 37, New Hampshire Revised Statutes Annotated, 1955. In addition to the general powers granted, said Board of Adjustment by said Chapter 31, it may, in harmony with an 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 at public hearing demonstrates that it can meet the requirements of Article IV, paragraphs B-2; B-2a; and B-2b, and is not otherwise detrimental to the neighborhood.

ARTICLE XIII
Residential Construction

1. The number of residential building permits which may be issued to any record holder in any building year shall be limited to the following:

a. A record holder of a total of 10 or less acres in the Town of Brookline may obtain one permit per building year.

b. A record holder of a total of more than 10 but less than 25 acres in the Town of Brookline may obtain two permits per building year.

c. A record holder of a total of 25 acres or more but less than 50 acres in the Town of Brookline may obtain three permits per building year.

d. A record holder of a total of 50 acres or more in the Town of Brookline may obtain four permits per building year.

e. Only Undeveloped Land shall be considered in determining the acreage for the purposes of subparagraphs a, b, c, and d above.

f. Contiguous parcels under one ownership, shall be considered in their entirety in determining the acreage for the purpose of subparagraphs a, b, c, d and e above.

g. The residential building permits which may be granted under this paragraph must meet all requirements of the Zoning and Land Use Ordinance and Land Subdivision Regulations as they may apply.

2. For the purpose of this article, the following definitions shall apply:

a. Record Holder shall mean the owner of the land for which a residential building permit is sought, who has owned said land continuously since April 1st in the year prior to the Building Year in which the application for a building permit or transfer of rights to a building permit is made; said ownership shall be established by a deed recorded at the Hillsborough County Registry of Deeds on or before said April 1st in the year prior to said Building Year.

b. The building year shall run from April 1st through March 31st and be identified by the year in which April 1st falls.

c. A grantee shall mean a successor in title to the lands or a portion of the lands of a record holder.

d. Undeveloped land shall mean land without residential housing or other structures as recited on the tax assessment records.

e. Lot of Record shall mean:

1. A building lot of less than 160,000 sq. ft. taxed as a lot by the Town in 1976; OR

2. Any parcel which has been laid out on a subdivision plan and approved by the Planning Board prior to March 1, 1977.

3. The first building year shall be from April 1, 1977 to March 31, 1978 and shall be identified as the 1977 Building Year.

4. A record holder may transfer to a grantee the rights to a residential building permit as presented in paragraph 1, by notifying the Planning Board. Notification of such transfers of rights shall be made to the Planning Board in writing within 60 days of the conveyance of the land for which a building permit is sought. Said transfer shall constitute a release by a record holder to a grantee of the record holder's right to apply for a residential building permit so transferred and shall convey to the grantee the same rights to apply for a residential building permit or permits as the record holder possessed under Article XIII. Such transferred rights shall terminate if not exercised within the building year which such rights may be issued.

5. A record holder or his grantee of a lot of Record existing prior to April 1, 1977 shall not be subject to this Article XIII in obtaining a building permit for construction on said Lot of Record. The acreage which is subject to building permits issued to or available to a record holder or grantee pursuant to this paragraph 5, shall not be considered in computing the acreage of said record holder or grantee under paragraph 1.

ARTICLE IV Amendments

This ordinance may be amended when the proposed amendments have been given

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

ARTICLE XV Penalty

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

ARTICLE XVI Saving Clause

The invalidity of any provisions of this ordinance shall not effect the validity of any other provision.

ARTICLE XVII 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, and March 6, 1973 and March 8, 1977. Amendments have been incorporated in this ordinance as printed.)

BROOKLINE BUILDING CODE

Pursuant to the authority granted and subject to the provisions thereof by Chapter 156, Sections 1, 2, 3, 3a, 4b, 4c, and 5, and 156-A of the N. H. R. S. S. as amended the following ordinance is hereby enacted by the voters of the Town of Brookline, New Hampshire in official Town Meeting convened.

1. After passage of this ordinance any person intending to erect or make an alteration to a building shall, before doing so, obtain a building permit from the building inspector. Repairs, general upkeep and minor interior alterations of existing buildings shall be exempt from the provisions of this ordinance.

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

3. The building permit fees are as follows:

<u>Construction Cost</u>	<u>Fee</u>
under \$1, 000	\$ 2.00
\$1, 000 to \$15, 000	\$ 5.00
\$15, 000 and over	\$ 10.00

This fee shall be paid to the building inspector when the permit is issued. The building inspector will remit \$1.00 and a copy of the permit to the Selectmen for the records. This fee will then be put onto the town treasure. The balance of the fee shall be retained by the building inspector as compensation for his duties.

4. Buildings and alterations shall comply with the following specifications

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

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

C. Buildings: Must be framed according to good building practices and outside walls shall be covered with permanent materials customarily used such as wood, fire resistant shingles, siding, cinderblock, or other acceptable materials. In determining good building practices, the National Building Code shall be used as a standard.

D. Chimney Construction:

(a) No chimney shall be built, erected, or altered below the roof unless

containing a tile or brick lining and with an iron clean-out door at or near its base, and shall extend at least two feet above the highest point where it passes through the roof. No chimney shall be built, erected or altered below the roof having wood or combustible materials within one inch of the chimney and shall be supported on foundations of masonry, concrete, or other non-combustible material. Prefabricated or factory-built chimneys that are approved by a nationally recognized testing laboratory shall be installed in accordance with the conditions of approval. An outside chimney shall have at least four inches of masonry between the lining and the abutting walls to which it is attached. Each source of combustion shall have its own separate flue.

(b) No smoke pipes shall be installed or erected so as to be within twelve inches of any combustible floor, ceiling, wall or partition unless amply protected with noncombustible material. No smoke pipes shall be installed or erected which pass into or through partitions or walls or combustible material except when guarded by a double collar of metal with an air space of at least six inches or by at least six inches of brick or other non combustible material.

(c) Fireplaces shall have hearths of brick, stone, tile, or other approved non-combustible material supported on fire-proof slab. Such hearths shall extend at least 16 inches outside the face of the fireplace opening. The combined thickness of the hearth and supporting construction shall not be less than six inches at any point.

E. Roofs: No roof of any building shall be covered or recovered in whole or in part save with non-combustible or fire-resistant roofing material.

F. Electrical Wiring: All electrical wiring shall conform with approved methods and practices for safety to life and property. Compliance with the National Electrical Code shall be the prima facie evidence of such approved methods and practices.

G. Sewerage: All dwellings and all commercial public or industrial buildings shall be connected to a private sewerage disposal system, construction of which shall comply with the requirements for individual sewerage disposal systems prescribed by the New Hampshire Water Supply and Pollution Control Commission.

H. Plumbing: All materials and methods shall conform with the National Plumbing Code.

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

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

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

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

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

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

11. Exceptions to the Requirements for a Variance:

A. Single Family Dwellings: Any person having a lot size of 40,000 sq. ft. and 150' frontage and who can meet the set back and side line requirements as set forth in the Zoning and Land Use Ordinance shall not require a variance in order to obtain a building permit. Any person having a lot size of less than 40,000 sq. ft. and/or 150' frontage or who can not meet the set back requirements shall require a variance prior to the issuance of a building permit.

B. Two-Family Dwellings: Any person having a lot size of 80,000 sq. ft. and 150' frontage and who can meet the set back and side line requirements as set forth in the Zoning and Land Use Ordinance shall not require a variance in order to obtain a building permit. Any person having a lot size of less than 80,000 sq. ft. and/or 150' frontage or who cannot meet the set back or side line requirements shall require a variance prior to the issuance of a building permit.

12. Effect: This ordinance shall take effect upon its passage.

