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TOWN OF BROOKLINE, NEW HAMPSHIRE

MARCH 15, 1989

ZONING AND LAND USE ORDINANCE

BUILDING CODE

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ZONING AND LAND USE ORDINANCE

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ARTICLE I

Preamble

In pursuance of authority conferred by Chapter 31, Sections 60-89, N.H. Revised Statutes Annotated, 1955, and for the purpose of promoting the health, safety, morals, property, convenience of general welfare, as well as efficiency and economy in the process of development, of the inhabitants of the incorporated Town of Brookline, New Hampshire, by securing safety from fire, panic, and other dangers, providing adequate area between buildings and various rights of way, by preserving the rural charm now attached to our town, the promotion of good civic design and 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

These two districts may also include areas designated Regulatory Floodway as delineated on the Flood Insurance Maps of the Town of Brookline dated April 4, 1975 as prepared by the Federal Emergency Management Agency - Federal Insurance Administration.

ARTICLE III

General Provisions

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

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

C. Sanitary Protection

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

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

D. 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.

E. Within the Regulatory Floodway, any development or encroachment (including fill) which would result in any increase in flood levels during the base flood discharge is prohibited.

For the purposes of this part, "development" is defined to mean "any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations."

ARTICLE IV

Industrial-Commercial District

A. Location

1. The Industrial-Commercial 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 North 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 trailer or mobile home shall be occupied or maintained as a living unit except in an approved Mobile Home District.

1. Mobile Home District Requirements - The Planning Board may approve the location and designation of Mobile Home Districts within the Residential-Agricultural District and shall allow the placement of mobile homes on individual lots within Mobile Home Districts intended for occupancy as permanent single family dwellings. Any area approved as a Mobile Home District, in addition to conforming with the zoning ordinance, shall also satisfy the following conditions:

a. Each proposed Mobile Home District must be a minimum of twenty (20) contiguous acres in size.

b. Each proposed Mobile Home District must contain a buffer of not less than ten (10) feet wide which is planted and landscaped to provide a visual barrier between the Mobile Home District and all other adjacent property.

c. Each proposed Mobile Home District shall conform with the Subdivision Regulations now in existence or as may be amended.

2. Application - Any application for the establishment and designation of a Mobile Home District shall be an attachment to, and a part of, the application for subdivision approval required by the Subdivision Regulations and shall contain certification by the owner (if different from applicant) of the request for Mobile Home District Designations.

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

C. The placement of mobile homes is prohibited within the designated Regulatory Floodway, except in existing mobile home parks.

ARTICLE VII

Non-Conforming Uses and Buildings

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

1. Changed to another non-conforming use.
2. Be re-established after discontinuance for one year except to use conforming to this ordinance.

3. Extended or enlarged except by approval of the Board of Adjustment.

4. Rebuilt after damage exceeding 50% of its value.

ARTICLE VIII

Definitions

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

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

3. Alteration - Any change or modification to a building which modifies the structural plan, manner of construction, or the kind of material used, or in any way varies the character 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. Flood Area - The gross horizontal area of a floor of the building excluding areas used for accessory garage purpose and basement areas. All horizontal dimensions shall be taken from the exterior faces of walls, including walls or other enclosures.

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 as 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 the recorded deed or plan.

15. Lot Line - The established division line between lots or between a lot and a street.

16. Mobile Home - A transportable structure designed to be used as a permanent dwelling, built in a factory, and moved to the building site in one or more sections instead of being built piece by piece by a contractor on a building site, placed on a foundation as is required for conventional housing, tied to all conventional and necessary utility systems, and which conforms to the United States Department of Housing and Urban Development (HUD) Mobile Homes Construction and Safety Standards Code, as amended, as adopted under the National Mobile Homes Construction and Safety Standards Act of 1974, P.L. 93-383.

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.

29. Regulatory Floodway - The channel of a river or other water-course 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.

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. Vegetation to remain as a visual barrier.
- f. Hours of operation except that hours of operation will not be limited during the normal work day.
- g. Routing and means (including load limits) for transportation of materials.
- h. Posting of a performance bond with sufficient sureties or other security in an amount sufficient to cover items "a" through "e" 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 the 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 and subject to its provisions:

A. Permit a non-conforming temporary use for an initial period of not more than one year. A permit may be renewed by the Board of Adjustment for a period of not more than one year.
(total period not to exceed two years)

B. Permit in the Residential-Agricultural District an Industrial or Commercial use which a public hearing demonstrates that it can meet the requirements of Article IV, paragraphs B-2, B-2a, and B-2b, and is not otherwise detrimental to the neighborhood.

ARTICLE XIII

Wetlands Conservation District

1. PURPOSE AND INTENT

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

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

2. DISTRICT BOUNDARIES

2.1. Wetlands Conservation District Definition

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

2.2. Wetlands Incorrectly Delineated

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

2.3 Establishment of a District

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

2.4 Relation to Other Districts

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

3. WETLANDS CONSERVATION DISTRICT PERMITTED USES

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

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

4. SPECIAL PROVISIONS

Special provisions of this ordinance shall include:

1. Wetland Conservation District areas, excluding bodies of water, may be used to satisfy minimum lot area requirements provided that portion which is wetland does not exceed twenty-five (25) percent of the minimum required lot area, and provided that the remaining lot area is sufficient in size and configuration to adequately accommodate all required utilities, such as sewage disposal and water supply.

2. Construction or enlargement of septic tank or leach field shall follow New Hampshire state regulations regarding setback from wetland areas (75'), except in those locations where the soil type is coarse textured soil with rapid to very rapid permeability, as referenced in the SCS publication, where a 125' setback shall be required to any area of the Wetland Conservation District.

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

5. SPECIAL EXCEPTIONS

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

1. Streets, roads, and other access ways and utility right of way easements, including power lines and pipe lines, if essential to the productive use of land not so zoned and if so located and constructed as to minimize any detrimental impact of such uses upon the Wetlands Conservation District;

2. The undertaking of a use not otherwise permitted in the Wetland Conservation District, which may include the erection of a structure, dredging, filling, draining, or otherwise altering the surface configuration of the land, if it can be shown that such proposed use will not conflict with the purpose and intentions of this ordinance and if such proposed use is otherwise permitted by the zoning ordinance.

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

ARTICLE XIV

Floodplain Ordinance

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

1. DEFINITION OF TERMS

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

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

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

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

Building - see Structure.

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

Development - means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

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

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

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

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

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

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

Flood Insurance Study - see Flood Elevation study.

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

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

Floodway - see regulatory floodway.

Functional dependent use - means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade - means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Lowest floor - means the lowest 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.

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

Manufactured Home - means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes park 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 park trailers, travel trailers, and other similar vehicles.

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

100 year flood - see base flood.

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

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

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

Structure - means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

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

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

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

2.

All proposed development in any special flood hazard areas shall require a permit.

3.

The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a floodprone area, all new construction and substantial improvements shall;

a. be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic load, including the effects of buoyancy,

b. be constructed with materials resistant to flood damage,

c. be constructed by methods and practices that minimize flood damages,

d. be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located components during conditions of flooding.

4.

Where new and replacement water and sewer systems (including on-site systems) are proposed in floodprone areas the applicant shall provide the Building Inspector with assurance that new and replacement sanitary sewage systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

5.

The Building Inspector shall maintain for public inspection, and furnish upon request, any certification of flood-proofing and the as built elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and include whether or not such structures contain a basement. If the structure has been floodproofed, the as built elevation (in relation to mean sea level) to which the structure was floodproofed. This information must be furnished by the applicant.

6.

The Building Inspector shall review proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. It shall be the responsibility of the applicant to certify these assurances to the Building Inspector.

7.

In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector.

Within 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.

8.

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

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

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

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

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

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

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

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

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

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

c. all manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor 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. 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;

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

9.

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

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

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

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

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

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

ARTICLE XV

BROOKLINE AQUIFER PROTECTION ORDINANCE

Section I. Purpose and Intent

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

Section II. District Boundaries

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

Section III. Permitted Uses

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

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

Section IV. Prohibited Uses

The following uses are prohibited:

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

Section V. Non-conforming Uses

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

Section VI. Administration

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

- a) All such proposals are consistent with the need to protect the groundwater of the Town of Brookline and adjacent communities;
- b) For the purpose of minimizing or eliminating leakage or discharges from septic systems into the groundwater,

- all systems shall be at least 4 (four) feet above the estimated seasonal high water table;
- c) On site waste disposal systems are located so as to avoid or minimize groundwater contamination;
 - d) Streets, roads, and parking areas are constructed so that direct application of road salt is not required for winter safety, and so that runoff from such uses is channeled to avoid or minimize groundwater contamination;
 - e) Any increase in surface storm water generated by development is kept on-site and handled in such a manner as to allow the water to infiltrate into the ground before leaving the site;
 - f) Written approval of the State of New Hampshire Water Supply and Pollution Control Division has been obtained.

Section VII. Conservation Commission Review

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

Section VIII. Incorrectly Delineated Zones

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

Section IX. Enforcement

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

Section X. Validity and Conflict With Other Ordinances

- A. Validity: Should any section or provisions of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance

- B. Conflict With Other Ordinances: This Ordinance shall not repeal, annul, or in any way impair or remove the necessity of compliance with any other ordinance, law regulation or by-law. Where this Ordinance imposes a higher standard for the promotion and protection of health, safety and welfare, the provisions of this Ordinance shall prevail.

Section XI. Definitions

- Aquifer: Geologic formation composed of stratified sand and gravel that contains a potential to yield potable water.
- Ground Water: All the water found beneath the surface of the ground. In this Ordinance the term refers to the slowly moving subsurface water present in aquifer recharge areas.
- Hazardous Waste: Materials or liquids that pose a threat to the environment, whether in use, storage, or transit, including without exception hazardous waste identified and listed in accordance with the State of New Hampshire Dept. of Environmental Services Hazardous Waste Rules, dated August 1988, Section HE-P-1905.03, or latest update.
- Leachable Wastes: Waste materials, including solid wastes, sludge and agricultural wastes that are capable of releasing contaminants to the surrounding environment.
- Non-Conforming Use: Any building or land lawfully occupied by a use at the time of passage of the Ordinance or amendment thereto which does not conform after the passage of this Ordinance or amendment thereto with the regulations of the district in which it is situated.
- Structure: Anything constructed or erected, except a boundary wall or fence, the use of which requires location on the ground or attachment to something on the ground. For the purposes of this Ordinance, buildings are structures.

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

ARTICLE XVI

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 XVII

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 XVIII

SAVING CLAUSE

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

ARTICLE XIX

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 and March 8, 1988. Amendments have been incorporated in this ordinance as printed.

BROOKLINE BUILDING CODE

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

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

2. The Building Inspector shall be appointed by the Board of Selectmen to serve for a term of three years. He shall issue any and all building permits requested within fifteen days after receiving written application for such permit accompanied by a plan of the proposed building or alteration, provided such plans are in accordance with the provisions of this ordinance and the Zoning and Land Use Ordinance of the Town. Such permits shall expire and become invalid if construction has not 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. Building fees, procedures, and Building Inspector's compensation shall be set by the Board of Selectmen after due notice and public hearing.

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

A. No permit for a new dwelling shall be issued unless it contains at least 575 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.

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 is in conformity with the provisions of the ordinance.

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

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

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

11. 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 cannot 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. This ordinance shall take effect upon its passage.

