TOWN OF BROOKLINE, NEW HAMPSHIRE

ZONING AND LAND USE ORDINANCE

March 2006

ZONING AND LAND USE ORDINANCE

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100.00 PREAMBLE

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

200.00 DEFINITIONS

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

200.02 *Accessory Dwelling Unit (ADU)*. A secondary dwelling, attached or detached, which is accessory and subordinate to a permitted principal single family dwelling unit in accordance with the provisions of Section 2000.00 – Accessory Dwelling Units (In-Law Apartments).

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

200.04 *Adult Sexually Oriented Business*. A business where one of its purposes is for the display and sale of sexually explicit goods and services including, but not limited to sexually explicit books, videos, movies, computer software, or other visual or audio representations, including ones which meet the definition of "harmful to minors" and/or "sexual conduct" as set forth in RSA 571-B:1; or instruments, devices, or paraphernalia which are designed or used in connection with "sexual conduct" as set forth in RSA 571-B:1, other than birth control devices. Examples of adult sexually oriented business uses include, but are not limited to places where a regular and substantial course of business operation involves the sale and display of sexually explicit goods and services such as: adult motels and theaters where sexually explicit films or videos are shown; places with mini-motion picture or coin operated displays; motels and theaters where sexually explicit films or videos are shown; adult cabaret; nude modeling studios; adult bookstores; escort agencies; or sexual encounter centers.

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

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

200.07 *Back Lots*. Lots which have less than the minimum frontage requirement but which meet lot size and setback requirements and can be serviced by a private driveway leading to a public road.

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

200.09 *Dwelling*. A structure that is designed or used as a place of residence for one or more families.

200.10 *Dwelling Unit*. A single unit providing complete independent living facilities for one or more persons with permanent provisions for living, sleeping, eating, cooking and sanitation.

200.11 *Elderly*. For the purposes of this Ordinance shall mean that portion of the population 65 years and older.

200.12 *Family*. Cohabitants of a single household who jointly share in the use of an entire dwelling unit.

200.13 *Farm*. Land on which farming takes place.

200.14 *Farm Stand*. A structure for the seasonal sale of agricultural, horticultural or silvicultural products.

200.15 *Farming*. This term shall have the same meaning as that set forth in RSA 21:34-a, as that term is from time to time amended. The definition of this term as of the date of the passage of this Ordinance is set forth as follows: Any land or buildings or structures on or in which agriculture and farming operations are carried on and shall include the residence or residences of owners, occupants, or employees located on such land. Farming shall mean all operations of a farm such as the cultivation, conserving, and tillage of the soil, dairying, greenhouse operations, the production, cultivation, growing and harvesting of any agricultural, floricultural, sod or horticultural commodities, the raising of livestock, bees, fur-bearing animals, fresh water fish or poultry, or any practices on the farm as an incident to or in conjunction with such farming operations including, but not necessarily restricted to, the following: preparation for market, delivery to storage or to market, or to carriers for transportation to market, of any products or materials from the farm; the transportation to the farm of supplies and materials; the transportation of farm workers; forestry or lumbering operations; the marketing or selling at wholesale or retail or in any other manner any products from the farm and of other supplies that do not exceed in average yearly dollar volume the value of products from such farm.

200.16 *Floor Area*. The gross horizontal area of a floor of the building excluding areas used for accessory garage purpose and basement areas. All horizontal dimensions shall be taken from the exterior faces of walls, including walls or other enclosures.

200.17 *Forestry*. The science of silviculture and the practice and art of managing and using for human benefit forestlands and the natural resources that occur in association with forestlands, including trees, other plants, animals, soil, water, and related air and climate. Forestry is exempt from site plan review if no off-site products are for sale, or if there is no change or expansion of use.

200.18 *Free Standing Sign*. A sign supported by one or more upright poles, columns, or braces placed in or on the ground and not attached to any building or structure.

200.19 *Front Yard*. A yard extending across the full width of the lot and lying between the front line of the lot and the nearest line of the principal building.

200.20 *Frontage*. That continuous portion of a lot line bordering on a highway, street, or right-of-way of class five or better, from which access is taken.

200.21 *Funeral Home*. A building or part thereof used for the preparation of the deceased for burial and the display of the deceased and rituals connected therewith before burial or cremation. Such building may contain space and facilities for embalming and the performance of other services used in preparation of the deceased for burial; the performance of autopsies and other surgical procedures; the storage of caskets, funeral urns, and other related funeral supplies; and the storage of funeral vehicles, but shall not include facilities for cremation. Where a funeral home is permitted, a funeral chapel shall also be permitted.

200.22 *Home Business*. A small-scale business operated within a residence and/or accessory structure whose primary commercial activity takes place at the location of the residence and/or the accessory structure ***or*** a business in which employees, other than employees who are residents of the home, are required to be on the property in a work related capacity. The business must be incidental and subordinate to the use of the lot for residential purposes and not detract from the residential character of the lot. All home businesses must comply with the criteria set forth in Section 1702.00 through Section 1706.

200.23 *Junk*. Unregistered motor vehicles no longer intended or in condition for legal use on the public highways; used parts of motor vehicles or old or used iron, metal, glass, paper, cordage, plastic,

rubber, cotton, or woolen wastes or discarded or second-hand material which has been a part or intended to be a part of any motor vehicle; or any machinery, scrap metal or other worn out, cast off, or discarded articles or materials ready for destruction or collected or stored for salvage or conversion to some use. Any article or material which unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new, shall not be considered as junk. Farm trucks, tractors, and machinery are excluded from the above definition.

200.24 *Junkyard*. Any business and any place of storage or deposit, whether in connection with another business or not, which has stored or deposited 2 or more unregistered motor vehicles which are no longer intended or in condition for legal use on the public highways, or used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste, or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle, the sum of which parts or material shall be equal to 2 or more motor vehicles. Junk yard shall also include any place of business or storage or deposit of motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap and where it is intended to burn material which are parts of a motor vehicle or cut up the parts thereof. This definition includes garbage dumps and sanitary landfills. This definition does not include any motor vehicle dealers registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126.

200.25 *Lot*. A lot is a registered or recorded parcel of land, occupied or capable of being occupied by one building or use and the building or uses accessory thereto, including such open spaces and yards as are required by this Ordinance. A lot may or may not be the land shown or described as a lot on the recorded deed or plan.

200.26 *Lot Line*. The established division line between lots or between a lot and a street.

200.27 *Manufactured Housing*. This term shall have the same meaning as that set forth in RSA 674:31, as that term is from time to time amended. The definition of this term as of the date of the passage of this Ordinance is set forth as follows: Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein.

200.28 *Motel*. A building or buildings containing units consisting of a room or a suite of rooms; each unit having a separate exterior entrance, to be offered as sleeping accommodations for transient guests for compensation, and where a general kitchen and dining room may be provided within the central building or in an accessory building.

200.29 *Non-Conforming Lot*. A lot which does not conform to the frontage or area requirements of the district in which it is located.

200.30 *Non-Conforming Use*. A non-conforming use is the use of any building or land lawfully occupied at the time of the passage of this Ordinance which does not conform to the regulations of the district in which it is located.

200.31 *Personal Services*. Establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel, such as beauty shops, dry cleaners and domestic services.

200.32 *Off-Premise Sign*. A sign which directs attention to a business, profession, commodity, service or entertainment that is not carried on, sold, or offered on the same premises.

200.33 *Portable Sign*. A sign that is not permanently affixed to a building, other unmovable structure, or the ground.

200.34 *Public Right-of-Way*. All town, state, and federal highways and roads and the land on either side of the same as covered by statutes to determine the widths of rights-of-ways.

200.35 *Rear Yard*. A yard extending across the full width of the lot and lying between the rear lot line of the lot and the nearest line of the principal building.

200.36 *Restaurant*. An establishment, in which food and drink are prepared, served and consumed primarily within the principal building.

200.37 *Setback*. The minimum horizontal distance between the street or way line and the line of the building.

200.38 *Side Yard*. A yard extending between the side lot line of the lot and the nearest line of the principal building and then extending from the front yard to the rear yard.

200.39 *Sign*. A structure, building wall, or other outdoor communication used to bring the subject thereof to the attention of the public or to display, identify and publicize the name and product or service of any person.

200.40 *Structure*. Anything constructed that is of necessity attached directly or indirectly to the ground.

200.41 *Subdivision Sign*. A sign intended to identify the name of a residential subdivision.

200.42 *Temporary Sign*. A sign intended for use for a limited period of time.

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

200.44 *Two Dwelling Unit Dwelling*. A dwelling occupied by two families with two separate housekeeping units.

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

200.46 *Regulatory Floodway*. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

200.47 *Wall Sign*. Any external sign which is painted on, incorporated into, or affixed to the wall or roof of a building.

300.00 GENERAL PROVISIONS

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

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

303.00 Sanitary Protection

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

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

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

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

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

400.00 DISTRICTS

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

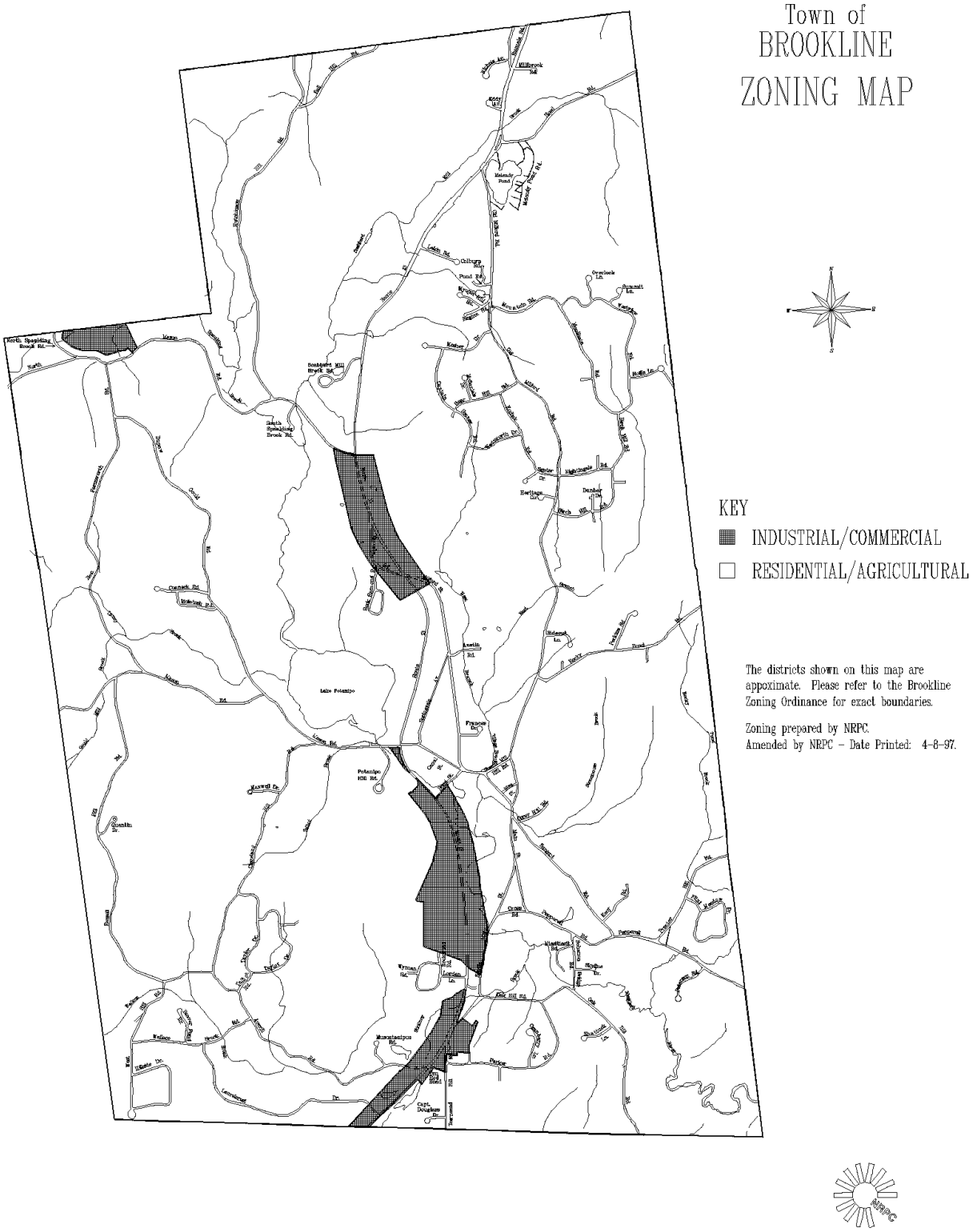
A. Industrial-Commercial District

B. Residential-Agricultural District

These two districts may also include areas designated Regulatory Floodway as delineated on the Flood Insurance Maps of the Town of Brookline dated May 19, 1987, as prepared by the Federal Emergency Management Agency - Federal Insurance Administration.

Other overlay zones include the Wetlands Conservation District and the Aquifer Protection District.

TOWN OF BROOKLINE
ZONING DISTRICTS



500.00 INDUSTRIAL-COMMERCIAL DISTRICT

501.00 Location

The Industrial-Commercial District shall be:

a. bounded by NH Route 13 to the east; the portion of all lots within 500 feet of NH Route 13, between the Massachusetts State Line and northern boundary of lot J-20; and lot J-19.

b. bounded by NH Route 13 to the east; Lot G-27; the portion of lot G-52 east of the old tract line (approximately 528 feet west of lot G-27); lot G-52-2; G-59; lot G-52-1; the portion of lot G-53 within 500 feet of NH Route 13, lot G-55; lot G-53-1; and lot G-54.

c. the area within 500 feet of NH Route 13 from a point 500 feet south of Route 130 North to North Mason Rd. on both sides of NH Route 13; and lot C-42.

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d. Lots K-76, K-77.

e. the area within 500 feet east of NH Route 13 from Bond St. south to South Main St., then following South Main St. to the southern boundary of Lot H-23-1.

f. Lot G-20.

g. Lots K-81 and K-75.

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

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

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

i. Lots F-2 and F-4.

502.00 Uses Permitted

a. Excavations (as per Section 1000)

b. Establishments offering goods for sale including dry goods, foods, hardware, clothing and apparel, motorized vehicles, and other general retail commodities

c. Farming & Forestry

d. Lumber Yards and lumber mills

e. Health care facilities

f. Theaters

g. Hotels/motels

h. Warehousing, assembling & manufacturing

i. Office parks

j. Residential dwelling units existing prior to March 14, 1992 and home businesses within these units subject to the provisions of Section 1700

k. Banks and financial institutions

l. Restaurants

m. Professional offices

n. Personal services and offices

o. Churches and associated parsonages

p. Public, private, or non-profit recreational facilities, fraternal orders, or membership clubs

q. Schools, nurseries and day care centers

r. Funeral homes

s. Automobile fueling, service and repair stations

t. Post offices

u. Police and fire stations

v. Any use which does not offend by emission of smoke, dust, gas, noise, odor, or fumes

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

x. Adult sexually oriented businesses in accordance with Section 504.00 of this Ordinance

503.00 Lot Requirements

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

503.02 Setbacks:

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

b. *Side and Rear*. Each structure shall be at least 15 feet from side and rear lot lines. In the case of a corner lot, the side distance shall be increased to 25 feet on the side bordering the frontage.

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

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

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

504.00 Adult Sexually Oriented Businesses

The purpose of this ordinance is to establish reasonable and uniform regulations to prevent the concentration of adult sexually oriented businesses within the Town of Brookline, NH; to promote the health, safety and general welfare of its citizens; and, to prevent problems of blight and deterioration which accompany and are brought about by the concentration of adult sexually oriented businesses. The provisions of this ordinance have neither the purpose nor the effect of imposing limitations or restrictions on the content of any communicative materials, including sexually oriented materials. It is neither the intent nor the effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

a. No adult sexually oriented business shall be permitted within five hundred (500) feet of a Residential-Agricultural District. With the exception of distances between two separate adult businesses, distance shall be measured in a straight line, without regard to intervening structures, from the closest property line or boundary of any adjacent district, place or use to the closest exterior wall or temporary or permanent physical divider for the structure housing the adult sexually oriented business.

b. No adult sexually oriented business shall be permitted within seven hundred fifty (750) feet of any public sports/ recreation park, church, place of worship, parish house, convent, public, parochial, or private school, drug free zone, kindergarten, licensed day care or nursery school, or State approved day care center.

c. No adult sexually oriented business shall be permitted within five hundred (500) feet of town boundaries.

d. No adult sexually oriented business shall be permitted within seven hundred fifty (750) feet of another existing adult sexually oriented business or one for which a non-residential site plan has been submitted. Distance shall be measured in a straight line, without regard to intervening structures, from the closest exterior wall or temporary or permanent physical divider for the a structure housing an adult sexually oriented business to the closest exterior

wall or temporary or permanent physical divider for another structure housing an adult sexually oriented business.

e. No adult sexually oriented business shall be permitted within a property, building, premise, structure, or other facility that contains an existing adult sexually oriented business or within one for which a certificate of occupancy has been applied.

f. No sexually explicit material or advertising shall be visible from outside the building.

g. No private viewing rooms or booths shall be constructed unless one side is always lighted and open to a public central area.

h. For those uses permitted in the district which sell sexually explicit goods and paraphernalia, such sexually explicit goods and paraphernalia must not be located within ready view to children and minors under the age of 18.

i. Hours of operation - 10 AM to 11 PM Monday to Saturday and 12 noon to 9 PM Sundays.

j. No one under 18 years of age allowed on the premises of an adult sexually oriented business.

k. The site shall be maintained daily in a condition that is free and clear of litter. All discarded sexual paraphernalia and/or packaging materials shall be placed in a locked dumpster.

l. The use shall not create undue traffic, congestion or hazard, including vehicular and pedestrian movement.

m. When reviewing site plan applications the planning board may impose reasonable restrictions for buffering, outdoor lighting, and landscaping and building aesthetics as provided in the 'Town of Brookline: Non-Residential Site Plan Regulations'.

n. Such a use will be subject to all other federal, state statutes and local permitting requirements.

600.00 RESIDENTIAL-AGRICULTURAL DISTRICT

601.00 Location

The Residential-Agricultural District shall be:

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

602.00 Uses Permitted

a. Single dwelling unit dwellings, two dwelling unit dwellings.

b. Churches, synagogues, parish houses, convents, day nurseries, kindergartens, and day care centers.

c. Municipal buildings, schools, and institutions of higher learning.

d. Recreation and community center buildings and grounds for games and sports.

e. Farming and Forestry activities are permitted when incidental to primary residential use.

f. Farm stands, provided that the stand is set back a minimum of 30 feet from abutting road right-of-way lines; the building area of the farm stand is not greater than two hundred (200) square feet; a minimum of two off-street parking spaces meeting the dimensional requirements of this Ordinance are provided; and the stand does not pose a threat to public health, safety and welfare. Year-round, permanent structures for the sale of farm products must receive Non-Residential Site Plan approval from the Planning Board.

g. Manufactured housing in approved Manufactured Housing Districts subject to the provisions of Section 700.

h. Any use injurious, obnoxious, or offensive to the neighborhood is prohibited.

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

602.01 Uses Permitted by Special Permit

a. Home businesses shall be allowed by special permit, and pursuant to authority provided by RSA 674:21, the Planning Board is authorized to determine whether such special permit shall issue, after a hearing in which the Planning Board determines that the proposed use is capable of being carried out in a manner consistent with the standards set forth in Section 1700 of this ordinance. Applications to the Planning Board to such a special permit shall be made in the same manner and subject to the same approval requirements of an application for non-residential site plan approval, as identified in section 6.2, submission requirements for home businesses.

603.00 Lot Requirements

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

603.02 *Setbacks*:

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

b. *Side and Rear*. Each structure shall be at least 15 feet from side and rear lot lines. In the case of a corner lot, the side distance shall be increased to 30 feet on the side bordering the frontage.

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

603.04 *Number of Dwelling Units*. Only one dwelling unit shall be permitted per individual building lot, except as provided in Section 2000.00, Accessory Dwelling Units. A two-family house shall require two times the minimum land area.

603.05 *Back Lots*.

a. Requires a minimum lot area of 5 acres, excluding wetlands.

b. A back lot requires minimum frontage on a Class I, II, or V road of 30 feet.

c. No building shall be erected closer than 100 feet from an existing public road.

d. Duplexes require 10 acre minimum lot size, excluding wetlands.

700.00 MANUFACTURED HOUSING

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

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

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

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

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

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

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

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

800.00 NONCONFORMING USES, STRUCTURES AND LOTS

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

800.01 Nonconforming Uses

a. Any nonconforming use may continue in its present use, however, it shall not be changed to another nonconforming use.

b. Whenever a nonconforming use has been intentionally discontinued or abandoned for a period of one year the use shall not be reestablished.

c. Any alteration, expansion or change of a nonconforming use or structure shall only be permitted by special exception by the Zoning Board of Adjustment if it finds that:

1. the proposed alteration, expansion or change will not change the nature and purpose of the original use; and

2. the proposed alteration, expansion or change would involve no substantially different effect on the neighborhood; and

3. any increase in heated living space which, in the judgment of the Zoning Board of Adjustment, is capable of increasing the number of bedrooms for a nonconforming dwelling or lot, may require that the septic system be approved by the NH Division of Water Supply and Pollution Control and the Town of Brookline in accordance with the provisions of RSA 485-A:38 and the Town's regulations for the number of bedrooms currently in the home or proposed for the home.

800.02 Nonconforming Lots

a. A nonconforming lot that has been developed with a structure may continue in its present use; however any alteration or expansion, shall comply with Section 800.03 c.

b. A nonconforming lot which is recorded and taxed as a lot of record at the time of passage of this Ordinance may be used for any permitted use in the district in which it is located. Every attempt shall be made to conform with the lot size/setback requirements of the zone.

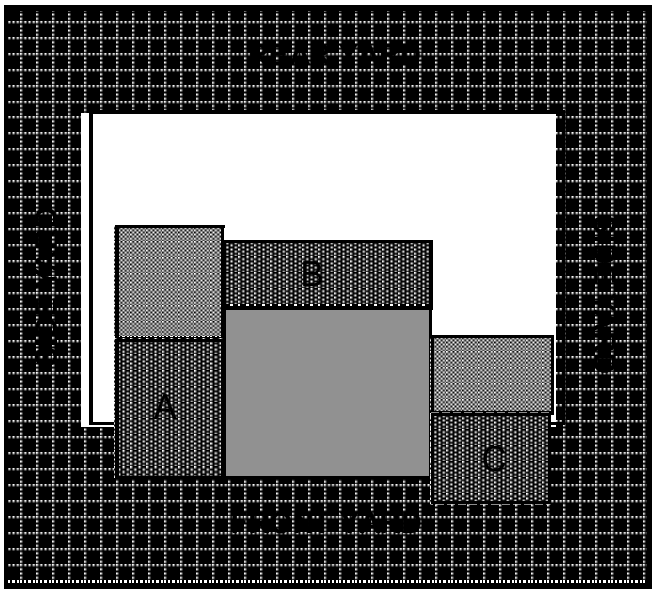
c. Where two (2) or more nonconforming, undersized, lots abut and are under common ownership, prior to the issuance of a building permit the parcels shall be merged into one lot and shall comply with the zoning requirements to the best of their ability. Every attempt shall be made to conform with the lot size/setback requirements of the zone.

d. Any changes to existing septic systems on nonconforming lots must comply with all local and state requirements for septic systems to the maximum extent possible.

800.03 Nonconforming Structures

Any lawful nonconforming structure existing at the time of adoption of this Ordinance, may be occupied, operated and maintained; however, any alteration, expansion or change of the structure that further aggravates a front, side or rear setback shall only be permitted by special exception in accordance with Section 800.01 c and the diagram below.

Expansions of structures with nonconforming setbacks
(not drawn to scale)



Explanation: Proposal "A" requires a special exception;
Proposal "B" requires no action by the Board of Adjustment;
Proposal "C" requires a grant of variance by the Board of Adjustment, provided, however, that in addition to meeting the legal standard for a variance, the proposal also meets the general criteria for a special exception found in this Ordinance;
Accessory structures that can meet the setbacks do not require a special exception.

900.00 LOT OF RECORD

901.00 Ownership Classifications

901.01 Where a lot in separate ownership, the deed to which is duly recorded on or before 12 March 1968 and which is recorded and taxed according to the 1972 tax records of the Town of Brookline, NH, does not conform to the area and frontage requirements of the zone in which it is located, such lot may be used for any purpose permitted in that zone on said date provided that such use conforms with the requirements of the Water Supply and Pollution Control Commission (WSPCC).

901.02 Any lot in separate ownership the deed to which is duly recorded between 13 March 1968 and 29 October 1971 and which is recorded and taxed according to the 1972 tax records of the Town of Brookline, NH, may be used for any purpose permitted between said dates in the zone in which it is located provided that it contains an area of 40,000 square feet, has a frontage of not less than 150 feet, and complies with the requirements of the WSPCC.

902.00 Requirements

902.01 Any person having a lot size of 40,000 square feet for a single dwelling unit dwelling or 80,000 square feet for a two-family dwelling, 150 feet of frontage, and who can meet the set back and side line requirements as set forth in the Zoning and Land Use Ordinance shall not require a variance in order to obtain a building permit.

902.02 Any person having a lot size of less than 40,000 square feet for a single dwelling unit dwelling or 80,000 square feet for a two-family dwelling, and/or less than 150 feet of frontage or who cannot meet the Zoning Ordinance requirements shall require a variance prior to the issuance of a building permit if the changes will either:

a. increase the exterior dimensions of the structure so that is not in compliance with the Building Code and Zoning Ordinance; or

b. increase the sewage flow as determined by New Hampshire Water Supply and Pollution Control Commission and the Brookline Health Codes.

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

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

1000.00 EARTH REMOVAL

1000.01 Excavation shall be deemed to be a use allowed by special exception in the Industrial-Commercial District as provided in RSA 674:33 IV.

1000.02 Excavations performed exclusively for the lawful construction, reconstruction, or maintenance of a class IV or V highway by the Town of Brookline shall be permitted within Town by special exception as provided in RSA 674:33 IV.

1000.03 The Zoning Board of Adjustment shall grant such a special exception upon a finding that the applicant has demonstrated that:

a. The excavation will not cause an unreasonable diminution in area property value or unreasonably change the character of the neighborhood;

b. The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof;

c. The excavation will not create any unreasonable nuisance or create health or safety hazards;

d. The excavation 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.

1100.00 WETLANDS CONSERVATION DISTRICT

1101.00 Purpose and Intent

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

a. Prevent the destruction of, or significant changes to, natural wetlands which provide flood protection, discharge and recharge of groundwater supplies, and continuing existence of important wildlife areas;

b. Prevent the development of structures and land uses on naturally occurring wetlands, which would contribute to pollution of surface and groundwater by sewage or toxic substances;

c. Protect sensitive, unique and unusual natural areas;

d. Protect the quality and quantity of existing and potential water supplies, aquifers and aquifer recharge areas;

e. Encourage those uses that can be appropriately and safely located in wetland areas.

1102.00 Definitions

For the purposes of the Wetlands Conservation District the following definitions apply:

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

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

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

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

1102.05 *Certified Soil Scientist:* A person qualified in soil classification and mapping who is certified by the State of New Hampshire Board of Natural Scientists, as defined by RSA 310-A:76, II.

1102.06 *Certified Wetland Scientist:* A person qualified to delineate wetland boundaries and prepare wetland maps who is certified by the State of New Hampshire Board of Natural Scientists, as defined by RSA 310-A:76, II-a.

1102.07 *Erosion Control Measures:* For purposes of this district, all construction and/or development shall incorporate design standards for erosion and sedimentation control which at a minimum reflect the standards set forth in the document, "Stormwater Management & Erosion & Sediment Control for Urban & Developing Areas in New Hampshire", DES, RCCD, 1992, and Chapter Env-Ws 415 of the NH Code of Administrative Rules.

1102.08 *Hydric Soils:* Soils that are saturated or flooded during a sufficient portion of the growing season to develop anaerobic conditions in the upper soil layers.

1102.09 *Natural Vegetative Buffer:* For purposes of this district shall mean, where existing, a natural woodland buffer shall be maintained within the Wetland Conservation District.

1102.10 *Prime Wetland:* Under the New Hampshire statute (RSA 482-A) for protecting wetlands from "despoliation and unregulated alteration", municipalities are able to designate some of their high value wetlands as "Prime Wetlands" (RSA 482-A:15). These designated wetlands are given special consideration by the Wetlands Board in permit application reviews within the scope of RSA 483-A and NH Code of Administrative Rules WT 700.

1102.11 *Primary Structure:* For purposes of this Ordinance a primary structure shall be considered the main structure on a lot that serves as a residence or a place of business.

1102.12 *Site Specific Soils Map:* A map developed from information prepared in accordance with "Site Specific Soils Mapping Standards for New Hampshire and Vermont," Society of Soil Scientists of Northern New England Publication No. 3, 1997, as amended.

1102.13 *Special Exception:* A use of land or buildings that may be permitted, subject to specific conditions that are set forth in the Ordinance. RSA 674:33 gives the local zoning board the power to grant those exceptions, which are clearly specified in the Ordinance.

1102.14 *Surface Waters:* Those waters, as defined by RSA 484-A:4, which have standing or flowing water at or on the surface of the ground. This includes but is not limited to rivers, streams, lakes, and ponds.

1102.15 *Wetland:* An area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal conditions, does support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to, swamps, marshes, bogs, vernal pools and similar areas. For the purpose of determining buffer zones for site plan and subdivision review wetland boundaries shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands, by either a certified soil scientist or a certified wetland scientist according to the Corps of Engineers Wetlands Delineation Manual, 1987, and the Regional Field Indicators for Identifying Hydric Soils in New England, 1998.

1102.16 *Wetlands Conservation District*: The Town of Brookline Wetlands Conservation District is defined as all wetland areas, surface water bodies, and the associated buffers as defined in Section *1102.04, Buffer Zone.* The limits of the Wetlands Conservation District are determined to include designated Prime Wetlands, as described in the Brookline Prime Wetlands Report dated January 1992.

1102.17 *Wet Meadow:* An area typically dominated by herbaceous non-woody vegetation less than three feet in height, saturated for long periods during the growing season, but seldom flooded. Wet meadows develop on predominantly poorly drained soil conditions as defined by "Site Specific Soils Mapping Standards for New Hampshire and Vermont," Society of Northern New England Publication No. 3, 1997, as amended.

1102.18 *Vernal Pool:* A confined basin depression which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, provides essential breeding habitat for certain amphibians and invertebrates and is free of adult fish populations.

1103.00 Jurisdiction

1103.01 *Buffer Zone*. For purposes of the Brookline Wetland Conservation District the buffer zone shall include an area of fifty (50) feet, measured on a horizontal plane from the delineated edge of a wetland or the mean high water mark of a surface water, as appropriate.

1103.02 *Relation to Other Districts*. In all cases where the Wetlands Conservation District is superimposed over another zoning district in the Town of Brookline, that district whose regulations are more restrictive shall apply.

1103.03 *State and Federal Regulations*. The Town of Brookline Wetlands Conservation District Ordinance is in addition to state and federal regulations governing wetlands and surface waters, including any permitting process.

1103.04 *Existing Unimproved Lots*. This Ordinance shall not prohibit the construction of, or additions to, principal and accessory structures within the buffer zone on unimproved lots that were approved for subdivision by the Planning Board or which otherwise legally existed on or before March 9, 1999. Unimproved lots that have been approved for subdivision or which otherwise legally existed on or before March 10, 2004 may use wetlands to satisfy up to 25% of the minimum lot area requirements. New construction on a legal previously approved vacant lot will only be permitted upon determination by the Planning Board that it is not reasonably feasible to locate the structure outside of the buffer zone, prior to the issuance of a building permit. Any construction permitted within the buffer zone shall minimize harm to the wetland or surface water. The Planning Board may seek input from the Conservation Commission during the review process. (March 10, 2004)

1103.05 *Existing Improved Lots*. For lots with improvements legally existing on or before March 9, 1999**,** all additions to principal and accessory structures, and the erection of new accessory structures within the Wetland Conservation District require a wetland special exception prior to the issuance of a building Permit.

1103.06 *Preexisting Uses*. This Ordinance shall not prohibit the continuation of a legally preexisting use in the Wetland Conservation District, however, the use may not be expanded without a special exception granted by the ZBA.

1103.07 *Prime Wetlands*. These wetlands are described in the Brookline Prime Wetlands Report dated January 1992, and are as follows:

Wetland Number	*Location*	*Tax Map Sheet*
2	W. of Route 13 near Milford	B
3	Scabbard Mill Brook N.	B
5	Palmer land w. of Route 13	B
6	Scabbard Mill Brook S.	B, D
9	Spaulding Brook	A, C
10	North Stream	C, E
12	Lake Potanipo	E, L
15	Talbot-Taylor area	G
16	Pout Pond	H
18	Wallace Brook	J
20	Nissitissit River/Campbell's Meadow	K

1103.08 *Prime Wetland Designation*. The designation of each prime wetland is included on separate maps correlated to the report. Both the aforementioned maps and report are incorporated in this Ordinance by reference and are on file at Town Hall. Designated prime wetland boundaries shall be delineated by either a certified soil scientist or a certified wetland scientist according to the Corps of Engineers Wetlands Delineation Manual, 1987, and the Regional Field Indicators for Identifying Hydric Soils in New England, 1998.

1103.09 *Wetlands Incorrectly Delineated*. In the event that an area has been incorrectly delineated as part of the Wetland Conservation District or as a Prime Wetland, and evidence to that effect is presented to the satisfaction of the Planning Board or their representative in site plan reviews or subdivision, or to the satisfaction of the Board of Selectmen or their representative in other cases, or the Conservation Commission, the restrictions contained in this Ordinance shall not apply. Wetland boundaries shall be delineated by either a certified soil scientist or a certified wetland scientist according to the Corps of Engineers Wetlands Delineation Manual, 1987, and the Regional Field Indicators for Identifying Hydric Soils in New England, 1998.

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

a. manmade ditches and swales

b. sedimentation/detention basins or ponds

c. manmade agricultural/irrigation ponds and swales

d. fire ponds, drafting basins and cisterns

e. a septage or manure lagoon

f. silage pits

g. an isolated wetland or surface water of 3000 s.f. or less which does not meet the definition of a bog, vernal pool, or wet meadow

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

a. A Wetland Functions and Values Assessment (using the New Hampshire Method for the Evaluation of Wetlands) be performed by a Certified Soil Scientist or Certified Wetland Scientist, at the applicant's expense.

b. The results of this assessment indicate that the wetland is of such value that the proposed use will not conflict with the purpose of this Ordinance.

c. Under no circumstances shall this apply to any designated Prime Wetland.

1104.00 Wetlands Conservation District Permitted Uses

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

a. Forestry and tree farming, using the best management practices, as defined in Section *1102.02,* to protect streams from damage and to prevent sedimentation;

b. Cultivation and harvesting of crops according to recognized soil conservation practices, *as defined in "Best Management Practices for Agriculture in New Hampshire", Department of Agriculture, Markets and Food, June, 1995,* including the protection of wetlands from pollution caused by fertilizers, pesticides and herbicides used in such cultivation;

c. State-approved water impoundments;

d. Construction of wells and water feed lines for water supply;

e. Maintenance of existing drainage ways, such as streams, creeks or other paths of normal runoff water;

f. Conservation areas, nature trails, parks and recreation uses consistent with the purpose and intent of this Ordinance;

g. Dry hydrants, drafting basins and fire protection ponds.

1105.00 Special Provisions

1105.01 Construction or enlargement of septic tank or leach field shall follow New Hampshire state regulations regarding setbacks from wetland areas (75'), except in those locations where the soil type is coarse textured with rapid to very rapid permeability, as referenced in the Soil Survey for Hillsborough County, where a 125′ setback shall be required from the edge of any wetland that shall be protected by the Wetland Conservation District.

1105.02 Construction involving the erection of any structure and alteration of the ground surface configuration, which requires a building permit, shall not occur within any portion of the Wetland Conservation District, without required approvals. The applicant must provide written documentation in compliance with Section 1102.15 to the Building Inspector, prior to the issuance of a building permit, verifying that the proposed construction is in compliance with the buffer zone requirements of this Ordinance.

1105.03 There shall be no net increase in peak flow or overall volume of stormwater runoff in the Wetland Conservation District as a result of any development, in accordance with "Stormwater Management and Erosion and Sediment Control for Urban and Developing Areas in New Hampshire", DES,

RCCD, 1992, and Chapter ENV-Ws 415 of the "NH Code of Administrative Rules. Calculations shall be based on 2 and 10 year storm events.

1105.04 If any section, provision, portion, clause or phrase of this Ordinance shall be held to be invalid or unconstitutional by any court or competent authority, such holding shall not affect, impair, or invalidate any other section, provision, portion, clause or phrase of this Ordinance.

1106.00 Special Exceptions

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

The Zoning Board of Adjustment via special exception in other matters, after proper public notice and public hearing, may grant permission for the following uses within the Wetland Conservation District and buffer, provided the proposed use does not conflict with the Wetland Conservation District and is otherwise permitted by the Zoning Ordinance, and following review and findings of fact from the Brookline Conservation Commission:

a. Additions to existing structures may be permitted by special exception within the buffer zone as long as all these conditions apply:

   1. Permitted to expand within the buffer zone up to 600 square feet beyond the footprint that existed on March 9, 1999**.**

   2. The expansion may only be permitted to occur away from the edge of the wetland or high water mark, except if a finding made in accordance with Section 1103.11 determines that there will be no negative impact on the wetland and a previous disturbance prior to the adoption of this Ordinance is documented, then the expansion or disturbance may occur to within 25 feet.

   3. There is no limit to the expansion outside the buffer zone;

   4. Appropriate erosion control measures must be in place prior to construction, properly inspected and maintained through stabilization, and removed with appropriate disposal of silt, debris and erosion control materials;

   5. any disturbance to the surrounding buffer zone due to construction must be repaired upon completion of the project.

b. Accessory structures may be permitted by special exception within the buffer zone as long as all these conditions apply:

   1. There is no land outside the buffer zone where the accessory structure could reasonably be placed;

   2. The accessory structure does not exceed twenty feet in height;

   3. The accessory structure and associated limits of construction must be setback at least 25 feet from the delineated edge of the wetland or surface;

4. The accessory structure must have a total building footprint no larger than two hundred fifty (250) square feet;

5. The land on which the accessory structure is to be built must have a slope no greater than 25%;

6. Appropriate erosion control measures must be in place prior to construction, properly inspected and maintained through stabilization, and removed with appropriate disposal of silt, debris and erosion control materials;

7. Any disturbance to the surrounding buffer zone due to construction must be repaired upon completion of the project.

c. Unimproved lots that have been approved for subdivision or which otherwise legally existed on or before March 10, 2004 may use wetlands to satisfy up to 25% of the minimum lot size requirements if granted a special exception by the Zoning Board of Adjustment.

1106.02 The following uses shall be permitted in the Wetland Conservation District without a special exception, provided applicable erosion control measures are in place, there is repair and restoration of any disturbed areas and all available mitigation measures to address changes in water quality and quantity as required by Town Staff and recommended by the Conservation Commission are employed. However, all projects listed below together with any disturbance of the buffer zones involved therein shall be presented to the Conservation Commission, with a request for review in writing, as required by the New Hampshire Wetlands Bureau, for its intervention, opinion, recommendations and/or approval.

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

b. Drainageways, swales, culverts, and other devices to control the volume and timing of stormwater runoff.

c. Stormwater detention basins, settling basins and other methods of improving the quality of stormwater runoff.

d. Regrading of the ground surface within the buffer zone of the Wetland Conservation District but not inside the wetland boundaries.

1106.03 The following conditions must be met in order for the special exception to be granted:

a. The proposed use is essential to the reasonable use of land outside the Wetlands Conservation District;

b. The Brookline Conservation Commission may require design construction and maintenance methods be prepared by a professional engineer (PE) and shall include restoration of the site, as nearly as possible to its original grade and condition. In the case of a development which involves only a single-family or a two-family dwelling unit or the carving out of a single lot

designated for construction of only a single-family or two-family dwelling unit, this requirement may be waived by the BCC, with a written request by the applicant;

c. Provision is made for wildlife access corridors to promote the free migration of wildlife along the length of the Wetland Conservation District;

d. No applications for special exception shall be considered unless all applicable state and federal permits are in place.

1107.00 Prohibited Uses in the Wetland Conservation District

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

a. Salt storage sheds

b. Automobile junk yards

c. Solid or hazardous waste facilities

d. Use of fertilizer, except lime and/or wood ash

e. Bulk storage of chemicals, petroleum products or hazardous materials

f. Sand and gravel excavations as defined in RSA 155-E

g. Processing of excavated materials

h. Dumping or disposal of snow collected from roadways or parking areas

1200.00 FLOODPLAIN ORDINANCE

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

1201.00 Definition of Terms

1201.01 *Area of Shallow Flooding*. Means a designated AO, AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

1201.02 *Area of Special Flood Hazard*. Is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, VO, or V1-30, VE, or V.

1201.03 *Base Flood*. Means the flood having a one percent chance of being equaled or exceeded in any given year.

1201.04 *Basement*. Means any area of the building having its floor subgrade (below ground level) on all sides.

1201.05 *Building*. *S*ee Structure.

1201.06 *Breakaway Wall*. Means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation.

1201.07 *Development*. Means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

1201.08 *FEMA*. Means the Federal Emergency Management Agency.

1201.09 *Flood or Flooding*. Means a general and temporary condition of partial or complete inundation of normally dry land areas from:

a. The overflow of inland or tidal waters.

b. The unusual and rapid accumulation or runoff of surface waters from any source.

1201.10 *Flood Boundary and Floodway Map*. (FLOODWAY) is an official map of the community, on which the Federal Emergency Management Agency has delineated the "Regulatory Floodway". This map

should not be used to determine the correct flood hazard zone or base flood elevation, the Flood Insurance Rate Map (FIRM) will be used to make determination of flood hazard zones and base flood elevations.

1201.11 *Flood Elevation Study*. Means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevation, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood related erosion hazards.

1201.12 *Flood Hazard Boundary Map*. (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the flood, mudslide (i.e., mudflow) related erosion areas having special hazards have been designated as Zones A, M, and/or E.

1201.13 *Flood Insurance Rate Map*. (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community.

1201.14 *Flood Insurance Study*. See Flood Elevation study.

1201.15 *Flood Plain or Flood-Prone Area*. Means any land area susceptible to being inundated by water from any source (see definition of flooding).

1201.16 *Floodproofing*. *M*eans any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

1201.17 *Floodway*. See regulatory floodway.

1201.18 *Functional Dependent Use*. Means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship facilities, but does not include long-term storage or related manufacturing facilities.

1201.19 *Highest Adjacent Grade*. Means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

1201.20 *Historic Structure*. Means any structure that is:

a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

   1. By an approved state program as determined by the Secretary of the Interior, or

2. Directly by the Secretary of the Interior in states without approved programs

1201.21 *Lowest Floor*. Means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a buildings lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.

1201.22 *Mean Sea Level*. Means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

1201.23 *Manufactured Home*. Means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" also includes part trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term "manufactured home" does not include part trailers, travel trailers, and other similar vehicles.

1201.24 *Manufactured Home Park or Subdivision*. Means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

1201.25 *New Construction*. Means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

1201.26 *100 year Flood*. See base flood.

1201.27 *Recreational Vehicle*. Means a vehicle which is (i) built on a single chassis; (ii) 400 square feet or less when measured at the largest horizontal projection; (iii) designed to be self propelled or permanently towable by a light duty truck, and (iv) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

1201.28 *Regulatory Floodway*. Means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point. These areas are designated as floodways on the Flood Boundary and Floodway Maps.

1201.29 *Riverine*. Means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

1201.30 *Special Flood Hazard Area*. Means an area having special flood, mudslide (i.e., mudflow) and/or flood related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M, or E. (see area of special flood hazard).

1201.31 *Structure*. Means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

1201.32 *Start of Construction*. Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other

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

1201.33 *Substantial Damage*. Means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

1201.34 *Substantial Improvement*. Means any combination of repairs, reconstruction, alteration, or improvements to a structure in which the cumulative cost equals or exceeds fifty (50) percent of the market value of the structure. The market value of the structure should be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places.

1201.35 *Violation*. Means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

1201.36 *Water Surface Elevation*. Means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in flood plains of coastal or riverine areas.

1202.00 Provisions

1202.01 All proposed development in any special flood hazard areas shall require a permit.

1202.02 The Building Inspector shall review all building permit applications for new construction or substantial improvements to determine whether proposed building sites will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall;

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

b. be constructed with materials resistant to flood damage,

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

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

1202.03 Where new and replacement water and sewer systems (including on-site systems) are proposed in flood-prone areas the applicant shall provide the Building Inspector with assurance that new and replacement sanitary sewage systems will be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of flooding.

1202.04 The Building Inspector shall maintain for public inspection, and furnish upon request, any certification of flood-proofing and the as built elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and include whether or not such structures contain a basement. If the structure has been floodproofed, the as built elevation (in relation to mean sea level) to which the structure was floodproofed. This information must be furnished by the applicant.

1202.05 The Building Inspector shall review proposed developments to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. It shall be the responsibility of the applicant to certify these assurances to the Building Inspector.

1202.06 In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Board of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Inspector.

With the altered or relocated portion of any watercourse, the applicant shall submit to the Building Inspector, certification provided by a registered professional engineer assuring that the flood carrying capacity of the watercourse has been maintained.

Along watercourses that have a designated Regulatory Floodway no encroachments, including fill, new construction, substantial improvements, and other development are allowed within the designated Regulatory Floodway that would result in any increase in flood levels within the community during the base flood discharge. In Zone A the Building Inspector shall obtain, review, and reasonably utilize any floodway data available from a Federal, State, or other source as criteria for requiring that development meet the floodway requirements of this section. Along watercourses that have not had a regulatory floodway designated, no new construction, substantial improvements or other development (including fill) shall be permitted within Zones A1-30 and AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

1202.07 In special flood hazard areas the Building Inspector shall determine the 100 year flood elevation in the following order of precedence according to the data available:

a. In Zones A1-30, AH, AE, V1-50, & VE refer to the elevation provided in the communities Flood Insurance Study and accompanying FIRM or FHBM.

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

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

1202.08 The Building Inspector's 100 year flood elevation determination will be used as criteria for requiring in Zones A1-30, AE, AH, AO and A that:

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

b. 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 hydrostated and hydrodynamic loads and the effects of buoyancy and;

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

c. All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest flood of the manufactured home is at or above the base flood level; and be securely anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces;

d. Recreational vehicles placed on sites within zones A1-30, AH, and AE shall either (i) be on the site for fewer than 180 consecutive days, (ii) be fully licensed and ready for highway use, or (iii) meet all standards of section 60.3 (b) (1) of the National Flood Insurance Program regulations and the elevation and anchoring requirements for Manufactured Homes in paragraph (c) (6) of section 60.3

e. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted providing the enclosed areas meet the following requirements:

1. the enclosed area is unfinished or flood resistant, usable solely for parking of vehicles, building access or storage;

2. the area is not a basement;

3. shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must

either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

a) a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

b) the bottom of all openings shall be no higher than one foot above grade.

c) openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;

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

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

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

1202.11 The Building Inspector shall not in any case be liable for any damage resulting from construction done under his permit whether or not such construction is in conformity with the provisions of the Ordinance.

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

1202.13 Every person, persons, firm, or corporation violating any of the provisions of this Ordinance shall be fined as determined by the Board of Selectmen for each day such violation may exist.

1203.00 Variance and Appeals Procedure

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

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

a. that the variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense.

b. that if the requested variance is for activity within a designated regulatory floodway, no increase in flood levels during the base flood discharge will result.

c. that the variance is the minimum necessary, considering the flood hazard, to afford relief.

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

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

1300.00 AQUIFER PROTECTION ORDINANCE

1301.00 Purpose and Intent

The Town of Brookline adopts this Ordinance for the promotion of the health, safety, and general welfare of its residents by preserving, maintaining and protecting from contamination the existing and potential ground water resources of the Town and protecting the surface waters that are fed by groundwater. The purpose is to be accomplished by regulating 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), and including home businesses, that might reduce the quality of water that is now -- and in the future will be -- available for use by municipalities, individuals and industries.

1302.00 Definitions

Any term not defined here shall have the same meaning as defined in Section 200 of this Ordinance.

1302.01 *Aquifer*. Geologic formation composed of rock, stratified sand and/or gravel that contains significant amounts of potentially recoverable water.

1302.02 *Domestic Wastewater*. Wastewater from human sanitary uses including, but not limited to bathing, clothes washing and toilets.

13.02.03 *Ground Water*. Subsurface water that occurs beneath the water table in soils and geologic formations. In this Ordinance the term refers to the slowly moving subsurface water present in aquifer recharge areas.

1302.04 *Hazardous Waste*. Materials or liquids that pose a threat to the environment, whether in use, storage, or transit, including without exception hazardous wastes identified and listed in accordance with the State of New Hampshire Department of Environmental Services Hazardous Waste Rules, Env-Wm 110-1000.

1302.05 *Impervious*. Not readily permitting the infiltration of water.

1302.06 *Impervious Surface*. A surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete unless unsealed cracks or holes are present. Asphalt, earthen, wooden, or gravel surfaces, or other surfaces which could react with or dissolve when in contact with the substances stored on them are not considered impervious surfaces.

1302.07 *Junkyard*. Any business and any place of storage or deposit, whether in connection with another business or not, which has stored or deposited 2 or more unregistered motor vehicles which are no longer intended or in condition for legal use on the public highways, or used parts of motor vehicles or old iron, metal, glass, paper, cordage, or other waste, or discarded or secondhand material which has been a part, or intended to be a part, of any motor vehicle, the sum of which parts or material shall be equal to 2 or more motor vehicles. Junk yard shall also include any place of business or storage or deposit of motor vehicles purchased for the purpose of dismantling the vehicles for parts or for use of the metal for scrap and where it is intended to burn material which are parts of a motor vehicle or cut up the parts thereof. This definition includes garbage dumps and sanitary landfills. This definition does not include any motor vehicle dealers registered with the director of motor vehicles under RSA 261:104 and controlled under RSA 236:126.

1302.08 *Leachable Wastes*. Waste materials, including solid wastes, sludge and agricultural wastes that are capable of releasing contaminants to the surrounding environment.

1302.09 *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.

1302.10 *Non-domestic Wastewater*. Wastewater generated from other than human sanitary uses including but not limited to industrial and commercial wastewater, and a combination of domestic and non-domestic wastewater (for example a home business that would generate wastewater amounts in excess of a normal household).

1302.11 *Outdoor Storage*. Storage of materials where they are not protected from the elements by a roof, walls and a floor with an impervious surface.

1302.12 *Protective Well Radius*. The area around a well which must be maintained in its natural state as required by Env-Ws 378 or 379 (for community water systems) and Env-Ws 372.13 (for other public water systems).

1302.13 *Public Water System*. A system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

1302.14 *Regulated Substance*. Petroleum, petroleum products, including gasoline; and substances listed under 40 CFR 302, 7-1-90 edition, excluding the following substances: ammonia; sodium hypochlorite; sodium hydroxide; acetic acid; sulfuric acid; potassium hydroxide; potassium permanganate; and propane and other liquefied fuels which exist as gases at normal atmospheric temperature and pressure.

1302.15 *Secondary Containment*. A structure such as a berm or dike with an impervious surface which is adequate to hold at least 110% of the volume of the largest regulated substances container that will be stored there.

1302.16 *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, landscape refuse and sludge.

1302.17 *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.

1302.18 *Surface Water*. Streams, lakes, ponds and tidal waters, including marshes, water courses, and other bodies of water, natural or artificial.

1303.00 District Boundaries

The extent of the Aquifer Protection District shall be the outermost edge of the surficial extent of all aquifer deposits presently designated as stratified drift, 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, South-central 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. In all cases, the more restrictive requirement(s) and permitted uses shall apply.

1304.00 Permitted Uses

Permitted uses, with the exception of those expressly prohibited in Section 1305.00, shall be the same as the underlying zoning districts within which the aquifer lies. All uses must comply with the Performance Standards unless specifically exempt under Section 1309.00. Other permitted uses are:

a. Industrial or commercial uses, including home businesses, which do not discharge non-domestic wastewater on site (domestic wastewater only in approved septic systems);

b. Residential and Agricultural Development;

c. Other Uses:

   1. Activities designed for conservation of soil, water, plants, and wildlife.

   2. Outdoor recreation, nature study, boating, fishing and hunting where otherwise legally permitted.

d. Subsurface storage of propane/liquefied natural gas.

1305.00 Prohibited Uses

The following uses are prohibited:

a. Outdoor storage and disposal of solid wastes, other than above ground brush and stump dumps less than 6 (six) feet above the E.S.H.W.T. (Estimated Seasonal High Water Table);

b. Subsurface storage of regulated substances, including gasoline, and the subsurface transmission of regulated substances, including gasoline, through pipelines;

c. The disposal of non-domestic wastewater, including animal manure;

d. The covering of more than 15% of the lot in the Residential Zone and 15% of the lot in the Commercial-Industrial Zone by impervious surfaces;

e. Storage of road salt or other de-icing chemicals unless covered and on an impervious surface with berms on any open sides;

f. Excavation of sand or gravel, excepting fire ponds and operations conducted in accordance with an approved Earth Removal Permit issued pursuant to Section 1000 of the Town of Brookline Zoning Ordinance where such operations will be permitted to within 6 (six) feet of the ESHWT;

g. Storage/treatment/disposal of hazardous waste or the sitting or operation of a hazardous waste disposal facility as defined under RSA 147-A;

h. Dumping of snow containing de-icing chemicals brought in from other parts of town(s);

i. The siting or operation of a junkyard;

j. The siting or operation of a wastewater or septage lagoon; and

k. The siting or operation of a solid waste landfill.

1306.00 Conditional Uses

1306.01 The Planning Board may grant a conditional use permit for a use which is otherwise permitted within the underlying district, if the use is or involves:

a. Above ground storage, handling and use of regulated substances in quantities exceeding 100 gallons (aggregate) or 800 pounds dry weight (aggregate) at any one time, provided that an adequate plan is in place to prevent, contain and minimize releases from catastrophic events such as spills or fires which may cause large releases of regulated substances.

b. Any use that will render impervious more than 15% or 2,500 square feet of any lot, whichever is greater, up to a maximum of 30% of a lot in the Residential District and 60% of the lot in the Industrial-Commercial District.

1306.02 In granting Conditional Use approval the Planning Board must determine:

a. That the proposed use is not a Prohibited Use defined under Section 1305.00

b. The use will be in compliance with the applicable Performance Standards of Section 1307.

c. The use is in compliance with all applicable local, state and federal requirements.

1306.03 The Planning Board may, at its discretion, require a performance guarantee or bond, in an amount and with surety conditions satisfactory to the Board, to be posted to ensure completion of construction of any facilities required for compliance with the Performance Standards.

1307.00 Performance Standards

The following Performance Standards apply to all uses in the Aquifer Protection District unless exempt under Section *1309.00*.

a. For any use that will render impervious more than 15% or more than 2,500 square feet of any lot, whichever is greater, a stormwater management plan shall be prepared which the Planning Board determines is consistent with the Stormwater Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, Rockingham County Conservation District, August 1992, and Best Management Practices for Urban Stormwater Runoff, NH Department of Environmental Services, January 1996, as updated and amended.

b. Stormwater management plans prepared pursuant to Paragraph a. shall demonstrate that stormwater recharged to groundwater will not result in violation of Ambient Groundwater Quality Standards (Env-Wm 1403) at the property boundary.

c. Animal manure, fertilizers, and compost must be stored in accordance with the Manual of Best Management Practices for Agriculture in New Hampshire, NH Department of Agriculture, Markets and Food, August 1998, and any subsequent revisions.

d. All regulated substances stored in containers with a capacity of 5 gallons or more must be stored in product-tight containers on an impervious surface designed and maintained to prevent flow to exposed soils, floor drains and outside drains in accordance with Env-Ws 421.

e. Facilities where regulated substances are stored must be inspected bi-weekly by the facility owner or his designate and must be secured against unauthorized entry by means of doors and/or gates which are locked when authorized personnel are not present.

f. Outdoor storage areas for regulated substances must be protected from exposure to precipitation and must be located at least 50 feet from surface water or storm drains, at least 75 feet from private wells and outside the protective well radius of public water supplies, in accordance with Env-Ws 421.

g. Secondary containment must be provided for outdoor storage of regulated substances in an aggregate of 275 gallons or more on any particular property, in accordance with Env-Ws 421.

h. Containers in which regulated substances are stored must be clearly and visibly labeled and must be kept closed and sealed when material is not being transferred from one container to another.

i. Whenever a business is required to notify the NH Department of Environmental Services (DES) of a release, including but not limited to the requirements of Env-Wm 4112 and Env-Wm 1403, the Town of Brookline Emergency Management (EM) Director must also be notified. Furthermore, the EM Director must also be notified when a business notifies the NH DES of a failed tank tightness test.

1308.00 Existing Non-Conforming Uses

Existing nonconforming uses may continue without expanding or changing to another nonconforming use, but must be in compliance with all applicable state and federal requirements, including Env-Ws 421, Best Management Practices and Performance Standards c, d, e and h of Section 1307.

1309.00 Exemptions

The following uses are exempt from the specified provisions of this Ordinance as long as they are in compliance with all applicable local, state and federal requirements.

a. Any private residence is exempt from all Performance Standards except 1307.00 c.
Animal wastes shall be handled in accordance with a manure storage and management plan approved by the Hillsborough County Conservation District.

b. Any business or facility, including home businesses, where regulated substances are in quantities of less than 5 gallons is exempt from Performance Standards 1307.00 e through g.

c. Storage of heating fuels for on-site use or fuels for emergency electric generation provided that storage tanks are indoors on a concrete floor or have corrosion control, leak detection for both tank and piping, and secondary containment in place is exempt from Performance Standard 1307.00 e.

d. Storage of motor fuel in tanks attached to vehicles and fitted with permanent fuel lines to enable the fuel to be used by that vehicle is exempt from Performance Standards 1307.00 e through h.

e. Storage and use of office supplies is exempt from Performance Standards 1307.00 e through h.

f. Temporary storage of construction materials on a site where they are to be used is exempt from Performance Standards 1307.00 e through g.

g. The sale, transportation and use of pesticides, if compliant with RSA 430:49 XXVL, are exempt from all provisions of this Ordinance.

h. Household hazardous waste collection projects regulated under NH Code of Administrative Rules Env-Wm 401.03(b)(1) and 501.01(b) are exempt from Performance Standards 1307.00 e through g.

i. Underground storage tank systems and aboveground storage tank systems that are in compliance with applicable state rules are exempt from inspection under Section 1310.00 of this Ordinance provided adequate documentation, including but not limited to state tank registrations, state permit to operate, inventory monitoring records and tank tightness test, is available and is on file with the Brookline Fire Department and the Emergency Management Director.

1310.00 Maintenance and Inspection

1310.01 For uses requiring Planning Board approval for any reason, a narrative description of maintenance requirements for structures required to comply with the Performance Standards shall be recorded so as to run with the land on which the structures are located at the Hillsborough County Registry of Deeds. The description shall comply with the requirements of RSA 478:4-a.

1310.02 *Inspections*

a. Inspections may be required to verify compliance with Performance Standards. Such inspections will be performed by the Conservation Commission at reasonable times with prior notice to the landowner.

b. All properties within the Aquifer Protection District known to the Conservation Commission as using or storing regulated substances in containers with a capacity of 5 gallons or more, except for facilities where all regulated substances storage is exempt from this Ordinance under Section 1309.00, shall be subject to inspections under this section.

c. The Board of Selectmen may require a fee for compliance inspections. The fee shall be paid by the property owner. A fee schedule shall be established by the Board of Selectmen as provided for in RSA 41-9:a.

1311.00 Releases and Tank Tightness Test Failures

Whenever a business is required to notify the NH Department of Environmental Services of a release, including but not limited to the requirements of Env-Wm 4112 and Env-Wm 1403, the Town of Brookline Emergency Management Director must also be notified. Furthermore, the EM Director must also be notified when a business notifies the NH DES of a failed tank tightness test.

1312.00 Administration

All subdivision proposals and other proposed new developments within the Aquifer Protection 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 shall be located 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.

1313.00 Conservation Commission Review

The Conservation Commission shall review, within a reasonable time (not to exceed 60 days from date of submittal of a plan to the Planning Board), each plan for development in the Aquifer Protection 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.

1314.00 Incorrectly Delineated Zones

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

1315.00 Enforcement

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

1316.00 Validity and Conflict with Other Ordinances

1316.01 *Validity*. Should any section or provisions of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

1316.02 *Conflict With Other Ordinances*. This Ordinance shall not repeal, annul, or in any way impair or remove the necessity of compliance with any other ordinance, law, regulation or by-law. Where this

Ordinance imposes a higher standard for the promotion and protection of health, safety and welfare, the provisions of this Ordinance shall prevail.

1400.00 GROWTH MANAGEMENT / RESIDENTIAL PHASING ORDINANCE

1401.00 Purpose

1401.01 Based on the Master Plan, which assesses and balances community development needs and considers regional development needs, the following Ordinance is deemed necessary to manage the rate of growth in the Town for the following reasons:

The Town of Brookline has had a Growth Limitation Ordinance in place in recent years which combined a feature which controlled the issuance of building permits together with a conscious effort to impose phasing requirements as a condition of subdivision approval. Both of these mechanisms were necessary to address the growth issue in view of the inventory of existing lots. As part of the Town's continuing effort to review growth issues and to determine the efficacy or necessity of particular growth control regulations, the Town believes that it is now reasonable to replace the previously existing building permit limitation which provided for growth management, with a regulation that seeks to distribute the impact of any new subdivision over a period of time that will allow the Town to react to the provision of services occasioned by such development in a controlled and reasonable manner and to plan for those impacts in an orderly way. Accordingly, the purpose of this ordinance is to provide a mechanism which imposes a requirement of phasing as a condition of subdivision approval in a consistent and orderly manner, in order to:

a. Promote public health, safety, convenience, welfare, and prosperity;

b. Ensure that adequate and appropriate facilities are available to individuals who may come to be located in the Town of Brookline, New Hampshire, and allow the Town the opportunity to absorb increases in Town services in an orderly way;

c. Prevent scattered or premature development of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of drainage, transportation, schools, fire protection or other public services, or necessitate the excessive expenditure of public funds for the supply of such services;

d. Provide for the harmonious development of the municipality and its environs; and

e. Insure that Brookline does not receive more than its fair share of the regional population growth. As shown in the Master Plan, Brookline is growing faster in recent years than most of the communities in the Nashua region.

1401.02 Providing for the phasing of all future subdivision approvals serves the Master Plan directed goal of allowing the Town a sufficient amount of time to plan for school and municipal expansions occasioned thereby.

1402.00 Authority

This ordinance is adopted as an Innovative Zoning Provision as provided for in RSA 674:21 (I)(b).

1403.00 Application

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

1404.00 Definitions

1404.01 *Building Permit*. A building permit obtained for the construction of a new single family home or duplex. (A duplex requires only one building permit). This Ordinance does not apply to non-residential building permits or permits for expansion or alteration of existing structures.

1404.02 *Calendar Year*. January 1 to December 31.

1405.00 Effective Date

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

1406.00 Annual Review and Minimum Permits Available

1406.01 *Annual Review*

The growth rate which the Town has attempted to achieve in recent years has been a 3% growth rate based on the number of dwellings that were in existence on November 30th of any given year. This growth rate has been based on an analysis of the appropriate factors as required by law. This ordinance seeks to create an objective standard for phasing which considers the size of the subdivision and allows for a phased build out, depending on the number of lots in the subdivision, which standards are set forth in the table and rules contained in the following sections. While the process contained herein does not correlate directly with the intended growth rate, it is the intent and desire of the Town that this rate of growth be maintained as nearly as possible in future years. To that end, this ordinance will be reviewed annually by the Planning Board in order to determine the extent to which that goal was achieved and, in the event that modifications in the table or regulations are necessary to accomplish said goal, the planning board is directed to present appropriate modifications for the consideration of the voters at future meetings, in accordance with the process set forth in § 1407, below.

1406.02 *Minimum Permits*.

The intent of this section is to ensure that each developer will be assured a number of permits that is appropriate to the size of his/her subdivision and investment. The intent of this section is also to ensure that each subdivision receive a building permit, not for a subdivider to create small subdivisions or to sell off individual lots circumventing the purpose of this Ordinance.

# of new building lots	Year One	Year Two	Year Three	Year Four	Year Five	Year Six	Year Seven	Year Eight	Year Nine	Year Ten	Year Eleven +
Less than 10	1 *	1	1	1	1	1	1	1	1		
10 – 19	2 *	2	2	2	2	2	2	2	2	1	
20 – 29	3 *	3	3	3	3	3	3	3	3	2	
30 – 39	4 *	4	4	4	4	4	4	4	4	3	
40 +	5 *	5	5	5	5	5	5	5	5	5	5

Notes: This table shows the number of building permits available for various size subdivisions for the years following Brookline Planning Board approval. Year One denotes the year in which the subdivision was approved by the Brookline Planning Board. * If there is no house on the original pre-existing undeveloped buildable lot (parent parcel), then an additional building permit is available the first year. The example provided for a subdivision of "Less than 10" lots is for a 9-lot subdivision. The other above examples provided are for the maximum size subdivision in each category (19, 29 and 39 lots, respectively) so as to illustrate the full build-out period for subdivisions in each size range. A 55-lot subdivision is illustrated for the "40+" size category. If more than 55 lots are involved, either a maximum of five or the remaining number of permits, whichever is less, are available in subsequent years until the total number of permits available in the subdivision is issued.

a. Each subdivision may receive their building permit allocation at any time during the calendar year as illustrated in the table above.

b. A subdivision may bank and carry over a maximum of one year's building permit allocations to the next calendar year. Any allocation that is carried over from the first year and not used by the end of the second year is postponed to the end of the subdivision buildout.

The following examples are meant to help understand the intent of this section. The ability to hold permits and carry them over one (1) year may make capital expenditures, such as road construction, more affordable. It is not intended to allow additional permits to be issued, or more than the maximum of two (2) year's permits to be issued in any calendar year. The carry over may be exercised multiple times, however, Example 3 demonstrates the risk of miscalculating.

(Example 1) A 29-lot subdivision would be eligible for a maximum of three (3) building permits in a calendar year. If the developer chose to hold these permits until the following calendar year, there would then be a maximum of six (6) building permits available. If the entire six (6) available permits were used, the following calendar year there would only be three (3) permits available. The result of a carry over can never exceed a total of two (2) year's available permits, in this example six (6) permits.

(Example 2) On a 29-lot subdivision, the developer has carried his maximum number of permits for the first year, three (3), over to the second year. There are now six (6) permits available. The developer only uses four (4) permits in the second year. There are now five (5) permits available in the third year – two (2) carried over from the previous year and three (3) permits available for the calendar year. Any portion of a previous year's permits may be carried over to the following calendar year up to the maximum permits allowed in a two-year period.

(Example 3) On a 29-lot subdivision, the developer carried over his maximum number of permits for the first year, three (3), over to the second year. There are now six (6) permits available. The developer only uses one (1) permit, leaving five (5) unused permits for the second year. The developer may only carry over three (3) permits to the third year. The maximum number of permits that can be carried over to the following calendar year is three

(3). In this example, two (2) permits were deferred to the end of the subdivision buildout period because of a failure to use the permits in earlier years.

1406.07 *Expiration*. A building permit expires and becomes invalid if construction, which is deemed to be installation of footing and foundation, has not started within six (6) months from the date of issuance (as explained in the Brookline Building Code).

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

1407.00 Sunset Clause

This article expires at Town Meeting 2008, unless the following occurs:

An annual review by the Planning Board to determine if the population and growth data, in conjunction with the CIP, justifies the continued application of this Ordinance. If, after making findings, the Board feels that this article is no longer appropriate, it is no longer effective. If, after making findings, the Board feels that this article is both appropriate and necessary to meet the purposes outlined above, this article would be effective for another year, when another annual review shall occur.

1500.00 OPEN SPACE DEVELOPMENT

Open Space Development is necessary to meet the goals established in this article and in the Brookline Master Plan. Therefore, an Open Space Development plan will be required for all developments of the minimum tract size or greater. An Open Space Development plan will not be required when in the judgment of the Planning Board topography, wetlands, soils or other considerations prevent the proposal from accomplishing the purposes of this article, or when an Open Space Development is unnecessary to meet the purposes of this Ordinance. All conventional subdivision plan applicants shall submit evidence to the Planning Board, at a public hearing, documenting the constraints that make a conventional subdivision a preferable choice.

1501.00 Purpose

a. To promote the conservation of the natural environment, and the development of the community in harmony with the natural features of the land.

b. To provide for an efficient use of land, streets, and utility systems.

c. To stimulate alternative approaches to land and community development.

d. To establish living areas within the Town that provide for a balance of community needs, such community needs as adequate recreation and open space areas, and pedestrian and vehicular safety.

e. To maintain the rural character of Brookline.

f. To maintain the current density of Brookline (1 unit per 80,000 sq. ft.)

g. To promote residential construction on the most appropriate and buildable areas of a tract of land.

1502.00 Zone/Location

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

1503.00 Permitted Uses

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

1504.00 Open Space

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

1504.02 A minimum of thirty-five (35) percent of the gross tract area shall be set aside as open space for low-impact recreation, agriculture, or conservation uses, intended for the use and enjoyment of the residents of this development and/or the general public. This open space shall be permanently restricted through easement or deed. Though the open space cannot be resubdivided, accessory structures and improvements appropriate for low-impact recreation, agriculture, or conservation uses are allowed subject to Planning Board approval.

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

1505.00 Dimensional Requirements

1505.01 *Density*. The maximum density of an Open Space Development shall be the same as for a conventional development in the Residential-Agricultural District. An Open Space Development shall have no more lots than can be created using conventional development on the same land.

1505.02 *Frontage*. 80 feet minimum per lot.

1505.03 *Setbacks*. 15 front, rear, and side per lot, from the property lines. There shall be a 50 foot perimeter setback from houses on the perimeter of the building area.

1505.04 *Lot Size*. Each building lot shall have a minimum of 1 acre, excluding wetlands. Only one dwelling unit shall be permitted per individual building lot, except as provided in Section 2000.00, Accessory Dwelling Units. A two family structure shall require two times the minimum land area.

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

1506.00 Open Space Ownership and Management

1506.01 The open space shall be conveyed to a homeowners association, whose membership includes all the owners of lots or units contained in the tract. Where the Planning Board feels that it is in the best interests of the Town, this land may be conveyed to the Town (subject to the approval of voters at Town Meeting), or shall be permanently protected in other suitable ways which would ensure the continued use of the land for intended purposes and proper maintenance of the land.

1506.02 The developer shall be responsible for the formation of the homeowners association of which the developer or owner shall be a member until a majority of the lots of record are sold.

1506.03 The homeowners association shall be structured so as to provide that the membership and obligation of unit purchasers in the homeowners association will be automatic upon the conveyance of title or lease of dwelling units.

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

1507.00 Procedures

1507.01 All Open Space Developments, as is the case with conventional developments, shall go through the subdivision review process and meet the review criteria as outlined in the subdivision regulations.

1508.00 Other Provisions

1508.01 All Open Space Developments must also meet the requirements listed in other articles of this Zoning Ordinance, except those which are superseded in this article.

1600.00 SIGN ORDINANCE

1601.00 Purpose and Intent

The purpose of this Ordinance is:

a. To preserve the aesthetics and rural character of Brookline.

b. To enhance traffic safety.

c. To encourage signage and lighting which aid communication, orientation, identify activities, and express local history and character.

1602.00 General Provisions

1602.01 *Sign Permits.* Unless specifically exempted or otherwise regulated in this ordinance, a permit is required for all permanent signs.

1602.02 *Application.* Any person intending to erect or make a major alteration to a sign shall, before doing so, obtain a permit from the Building Inspector. Repairs, general upkeep, and minor alterations of wording and graphics shall be exempt from the permit process.

Applicants shall submit design documents that include:

a. A scale drawing of the proposed sign, showing size, height, lighting, and single or double sided.

b. All proposed materials shall be indicated, including the support system configuration and design.

c. The location of the proposed sign on the lot shall be included, showing all dimensions and measurements to property lot lines, principal building, edge of roadways and other permanent structures.

Permit fees shall be established by the Board of Selectmen and paid upon application.

1602.03 *Administration.*

a. Reviews

1. The Building Inspector shall review and act upon all applications for sign permits and amendments thereto, within 5 working days after filing. If the application or amendment conforms to the Sign Ordinance and is complete, the Building Inspector shall issue the sign permit. If the application or amendment does not conform or is not complete, the Building Inspector shall notify the applicant in writing, stating any deficiencies and advising the applicant of the right to amend and resubmit the application.

2. Any permit issued shall become invalid if the sign is not erected within 6 months after the date of issuance.

b. Appeal

Any applicant or agent who has been denied a sign permit or otherwise aggrieved may appeal such decision to the Zoning Board of Adjustment as set forth in RSA 676:5 or ZBA Rules of Procedures.

c. Violations

Violations of this Ordinance shall be subject to fines and penalties as specified in N.H. R.S.A. 676 and as may be amended.

1602.04 *Exempt Signs*. The following signs are except from this ordinance but must comply with other applicable State Regulations:

a. Political signs.

b. Event Specific signs for non-profit organizations.

c. Historical signs/plaques.

d. Trail signs.

1602.05 *Trades signs*. Trades people shall be allowed one temporary sign not to exceed 16 square feet on a property without a permit while their work is actively being performed on the property.

1602.06 *Real Estate Signs*. Without review or approval, any sign advertising the sale, lease or rental of the premises, or a portion thereof, upon which the sign is located can remain until 15 days after the closing of the sale, the rental or lease of the premises. Any sign must conform to the following standards:

a. Only one wall or ground sign per premises, two on corner lots.

b. Maximum area: 6 square feet for residential signs, 32 square feet for Commercial-industrial signs.

c. Off-site real estate signs advertising the location of a property for sale, an open house or a subdivision are limited to one sign per intersection per real estate company. Name riders shall not be permitted on off premise signs. A maximum of two off premise for sale signs will be permitted for any particular property. In addition, two (2) open house signs may be displayed off-site. In the case of subdivision marketing and multiple listings by a real estate company, a maximum of two (2) off premise signs will be permitted.

1602.07 *Subdivision Signs*. Signs associated with the development, construction, and financing of a subdivision are allowed only with Planning Board approval. Permits are not required.

1602.08 *Prohibited Signs*

a. Wall signs that extend above the roof peak of the building.

b. Moving, blinking and rotating signs that interfere obstruct or impair vision or traffic or in any manner create a hazard to the health and welfare to the general public.

c. Signs in the road right-of-way.

d. Any other signs that interfere obstruct or impair vision or traffic or in any manner create a hazard to the health and welfare to the general public.

e. Electronic message boards, video display panels or other electronic matrix display devices.

1602.09 *Grandfather Clause.* Signs which legally exist as of March 9, 2005 shall be considered exempt from the provisions of this article.

1603.00 General Sign Requirements

1603.01 *Design guidelines*. All signs shall be constructed of durable material and maintained in good condition at all times. Signs should complement the building on which they are located and add to the community image as a whole. Materials, color, lettering, and shape should be compatible with surrounding building materials, colors, and textures. Use of sandblasted, carved, or painted signs of traditional materials, such as wood, granite, or metal, is encouraged.

1603.02 *Lighting*. Lighting for the Commercial/Industrial district as well as Residential Home Businesses shall comply with the Lighting ordinance (Section 2300) as well as any requirements in this ordinance.

1603.03 Signs such as banners, sandwich boards, reader boards and alike shall be calculated within the total allowed square footage.

1603.04 Supporting structure. Size of supporting structure and framework not containing the signs are not included in computation of signs size.

1604.00 Residential District Requirements

1604.01 *Number.* Approved home businesses are allowed one sign per street or road on which they have frontage.

1604.02 *Size*. Total square footage of signs shall be 25 square feet or less, with individual signs not exceeding 16 square feet. On two-sided signs, only one side is used to compute the sign's area.

1604.03 *Height*. Signs shall not exceed 8 feet in height. This is measured from the top of the sign to the surrounding grade of the ground.

1604.04 *Lighting*.

a. Internally lit signs are not allowed.

b. Bottom mounted sign lighting shall not be used.

c. Hours of sign lighting must not exceed the hours of operation.

1605.00 Commercial/Industrial District Requirements

1605.01 *Requirements.*

a. Commercial and industrial buildings are allowed multiple signs with a total area not to exceed 64 square feet per building, including buildings with multiple occupants.

b. On two-sided signs, only one side is used to compute the sign's area.

c. Fascia or awning signs shall not exceed 35% of the building length occupied by the applicant and not more than 2 feet in height.

d. Free standing signs shall not exceed 20 feet in height. This is measured from the top of the sign to the surrounding grade of the ground.

e. Internally lit signs are permitted in the Industrial/Commercial district, but shall not create a nuisance or excessive glow/glare.

1606.00 Off-Premise Signs

The purpose of this section is to allow permanent, off-premise signs to provide direction to businesses and points of interest.

1606.01 *Size.* Off-premise signs shall conform to the following dimensions: 30 inches wide, 8 inches high. Letter size shall be a minimum of 3 inches and a maximum of 4 inches in height.

1606.02 *Number*. No more than one off-premise sign is allowed per lot in the residential district, and no more than one sign per 100 feet of lot frontage in the commercial-industrial district.

1607.00 Sign Master Plan

1607.01 *Intent.* For some developments in the Industrial-Commercial District, the standard sign regulations may not provide a solution that accommodates the needs of the public and businesses. In these cases, an individual master plan that supports the goals of this ordinance may be an improved solution.

1607.02 *Qualifications.* Within the Commercial-Industrial District, a Sign Master Plan may be adopted if any of the following condition apply:

a. 3 or more contiguous commercial or industrial units in a development.

1607.03 *Requirements.* Development of a sign master plan shall be governed by the general sign ordinance, as modified by specifications of this section. The master plan shall include placement, design, color coordination, visibility, messages, and compatibility with the general design of the development.

a. Each Master Planned development shall meet all requirements of the Commercial-Industrial district, except that the signage shall be 80 square feet maximum. Informational and directional signage, with the exception of uniform traffic control devices, shall be consistent with the general sign design of the development and is exempt from the sign area calculation provided it does not contain advertising and shall be no more than 2 square feet.

b. Groups of related signs are encouraged to express uniformity, create a harmonious appearance, and provide a visual and aesthetic coordination of the information presented to the public.

c. Height and physical placement should be consistent through out the master planned area.

1607.04 *Approval process*. The sign master plan, including a site plan shall be reviewed by the Planning Board at a public hearing. The approved Master Plan shall be submitted to the Building Inspector for a permit.

1700.00 HOME BUSINESSES

1701.00 Purpose and Intent

The Town of Brookline receives a relatively large number of applications for home-based businesses, owing to the rural character of the town and to the rising popularity of home employment due to technological advances. While the town may legally prohibit all commercial activities in the residential-agricultural district, it recognizes that many Home Businesses may be beneficial to the community as a whole and can be carried on with minimal or no impact on the neighborhood in which they are situated. Therefore, the Town of Brookline has determined that the right to conduct a home business should be subject to an initial screening by an appropriate land use board to determine if the proposed use complies with the standards enunciated herein and, upon such determination, the issuance of a special permit to conduct such use. Therefore, pursuant to RSA 674:21, the Planning Board is authorized to conduct a hearing on any request for a special permit to conduct a home business, and shall determine, at said hearing, whether the proposed use is compatible with the standards set forth below. The Planning Board, in exercising this authority, following hearing, may grant the permit, deny the permit, or grant the permit subject to reasonable restrictions, as it deems necessary to preserve the character of residential neighborhoods and to provide residents freedom from nuisance and potential negative impacts resulting from commercial activity in residential areas.

1701.01 Definition of a Home Business

A small-scale business operated within a residence and/or accessory structure whose primary commercial activity takes place at the location of the residence and/or the accessory structure ***or*** a business in which employees, other than employees who are residents of the home, are required to be on the property in a work related capacity. The business must be incidental and subordinate to the use of the lot for residential purposes and not detract from the residential character of the lot. All home businesses must comply with the criteria set forth in Section 1702.00 through Section 1706. (March 10, 2004)

1702.00 General Requirements

1702.01 A Home Business which is evident to the general public shall be required to apply for and obtain an approval pursuant to the Non-Residential Site Plan Review regulations adopted by the planning board that govern such uses. Evidence of the Home Business includes but is not limited to the following: increased traffic, external signs, external display of goods, vehicle or equipment parking and storage, septic expansion, and request for a building permit.

1702.02 The Home Business shall be secondary to the use of the property as a residence. The home business can occupy up to 25% of the combined gross floor area of the existing home and/or any accessory structures, or 1,500 sq.ft., whichever is less.

1702.03 No additions or changes shall be made to the residence that will make it impractical to revert the building to purely residential use.

1702.04 Objectionable circumstances such as noise, vibration, dust, smoke, excessive traffic, electrical disturbances, odors, heat, glare, visual disharmony or other offensive emissions shall not be produced in excess of that normally associated with residential use. .

1702.05 Home Businesses shall be conducted by the resident, resident members of the owner's family, a resident tenant, or resident members of the tenant's family. Two employees, in addition to home inhabitants, are permitted to work on the premises.

1702.06 All signs must comply with the requirements of Section 1600, Sign Ordinance.

1702.07 Home business activities apparent to the general public shall be limited to the hours between 8:00 a.m. and 7:00 p.m..

1702.08 Sufficient off-street parking shall be provided for any non-resident employees, customers and suppliers who may be normally expected to need parking spaces at one time. Driveways may be used for client parking.

1702.09 Home Businesses shall be conducted in accordance with all Town regulations, state laws and licensing requirements.

1702.10 Once a proposed home business has obtained a special permit from the Planning Board and operation of the use has commenced, the continuation of such use shall remain subject to compliance with the standards of this section. In the event that a home business is operated in a manner that violates the standards of this section, then the Building Inspector may direct such business to be brought into compliance, or, alternatively, to cease such violation. Any such directive shall be appealable to the Zoning Board of Adjustment pursuant to RSA 676:5.

1703.00 Non-Conforming Home Businesses

1703.01 The following shall apply to any nonconforming home business in existence at the time of the passage of this ordinance, and as amended. Although such a home business may not conform to the standards specified in this section, the following provisions shall apply:

a. No nonconforming home business may be extended to occupy a greater area of land upon which the business is situated than is owned by the property owner at the time of adoption of this ordinance, and as amended.

b. If any nonconforming use is discontinued, changed, or abandoned, any subsequent home business shall conform to the standards specified in this ordinance.

c. If any use is wholly discontinued for any reason, except pursuant to a valid order of a court of law, for a period of six months, it shall be conclusively presumed that such use has been abandoned, and all future home businesses shall comply with the standards of this ordinance.

1704.00 Day Care as a Home Business

1704.01 Child day care operations operated out of a private home must comply with the standards provided herein. All day care operations must satisfy the applicable criteria as set forth in RSA 170-E and the rules of the New Hampshire Department of Health and Human Services.

1704.02 A child day care operation involving a household's own children and up to three (3) unrelated non-resident children does not require a home business site plan review and does not require a state license. However, such a day care operation must comply with all other federal, state and local health code and other requirements that may apply.

1704.03 A child day care operation involving four (4) to twelve (12) non-resident children requires home business site plan review and a state license. Such a day care operation must provide at least 35 square feet of heated floor space per child, and the total must comply with the 25% rule (1702.02) to qualify as a home business. A day care operation involving greater than twelve (12) non-resident children is considered a group child care center, which shall be considered a full business use not permitted as a home occupation.

1704.04 Any non-exempt child care business operated in a non-residential building requires a home business site plan review and a state license. Such a day care operation must provide at least 35 square feet of heated floor space per child.

1705.00 Prohibited Uses and Limitations

1705.01 The home business may not involve any process which results in the discharge of any hazardous material (as defined by the State of New Hampshire) into the ground or into any surface waters.

1705.02 The Home Business cannot involve any use hazardous to the public health, safety and welfare.

1705.03 The maintenance or repair of automobiles or motor vehicles shall not be permitted as a home business.

1705.04 Home businesses shall not involve the on-site use or storage of heavy equipment such as back-hoes, graders, dump trucks, tractor trailers, semi-trucks and other large vehicles or stationary equipment of an industrial nature. When a controversy arises as to whether a certain piece of equipment or vehicle falls into the class of prohibited heavy equipment, the Planning Board shall make a finding as to whether or not such equipment or vehicle is prohibited as part of the home business operation prior to taking final action on the application.

1705.05 Traffic generated by the Home Business shall not create safety hazards or be substantially greater in volume than would normally be expected with residential use. Any business that generates more than an average of twenty-four (24) business-related trips per day is prohibited.

1706.00 Procedure

1706.01 Requests for Home Businesses shall be presented to the Planning Board in accordance with Sections 3.2, Submission Procedures, and 6.2, Submission Requirements for Home Businesses, of the Non-Residential Site Plan Review regulations.

1800.00 DRIVEWAY ORDINANCE

1801.00 Authority

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

1802.00 Purpose

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

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

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

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

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

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

1803.00 Definitions

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

1803.02 *Common Driveway*. A private driveway that serves as a common access from a public road for two (2) or more lots.

1803.03 *Driveway Inspector*. A local official designated by the Selectmen with the responsibility of certifying that the specifications set forth in this Ordinance are met.

1804.00 Permit and Penalty

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

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

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

1805.00 Requirements

1805.01 *Design Features*

a. Maximum width at property line--Twenty-five (25) feet

b. Minimum distance from intersection--One hundred (100) feet

c. Minimum sight distance--Two hundred (200) feet

d. No driveway shall intersect the street at less than a sixty (60) degree angle

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

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

All driveway aprons shall be paved or bonded to be paved prior to the issuance of a Certificate of Occupancy. From April 1 to September 30 the driveway apron shall be paved prior to the issuance of a Certificate of Occupancy. Driveway aprons that cannot be paved between October 1 and March 31 shall provide the Town with a bond for paving prior to the issuance of a Certificate of Occupancy. All bonded driveways shall be paved between April 1 and July 1 of the following spring. Arrangements shall be made with the Driveway Inspector to schedule.

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

1806.00 Common Driveways

A common driveway is permitted to serve as access to all legal frontage lots in all zoning districts in accordance with all other provisions of the Zoning Ordinance and Section 7 of the Town of Brookline Subdivision Regulations to a maximum of four (4) lots.

1807.00 Easement and Bond

1807.01 The applicant shall as a condition of the granting of the permit, be required to provide to the Town of Brookline, an easement to the extent deemed necessary for the purposes of entering upon the premises of the applicant to control or maintain surface drainage.

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

1807.02 All funds provided to the Town in satisfaction of this obligation shall be deposited in an escrow savings account maintained by the Town for said purpose, and portions of said funds may be withdrawn by the Selectmen from time to time to apply against the cost of any portion of said construction which the Town is obliged to undertake to complete. Provided, however, that no funds shall be expended by the Town at any site in excess of the amount on deposit pertaining to such site.

1808.00 Fees

1808.01 No permit shall be issued until payment of a fee, which shall be established by the Selectmen, is paid to the Town of Brookline.

1809.00 Other Provisions

1809.01 Driveways existing as of March 12, 1996 are exempt from this Ordinance unless the driveway is being relocated.

TOWN OF BROOKLINE, NEW HAMPSHIRE

DRIVEWAY PERMIT APPLICATION

Application Date:_____

Permit Number:_____

Lot Number:_____

Subdivision (if applicable):_____

Owner (or applicant):_____

Address of Applicant:_____

Phone Number of Applicant: _____

Street Address of Driveway:_____

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1) The driveway will be inspected by the Driveway Inspector, who will ensure that the driveway is in compliance with Section 7 of the Brookline Subdivision Regulations.

2) The fee for a driveway permit, as established by the Brookline Board of Selectmen. I have submitted this fee.

3) Any necessary State permits such as Wetlands, Timber Cutting, and Curb Cut permits have already been obtained. Curb cuts need to be shown on the subdivision plans.

4) On any paved road, the driveway needs to be paved 15 feet from the edge of the road, or from the road to the property line, whichever distance is smaller, to encourage proper drainage and sedimentation & erosion control. This paving is required unless other specifications are made by the Town Road Agent as per Section 1800 of the Zoning Ordinance.

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

Signature of Applicant: _____

Fee Paid:_____ ❑ CASH ❑ CHECK #_____

1900.00 TELECOMMUNICATION FACILITIES ORDINANCE

1901.00 Authority

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

1902.00 Purpose and Goals

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

a. Preserve the authority of Brookline to regulate and to provide for reasonable opportunity for the siting of telecommunications facilities, by enhancing the ability of providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;

b. Reduce adverse impacts such facilities may create, including, but not limited to, impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values;

c. Provide for co-location and minimal impact siting options through assessment of technology, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town;

d. Permit the construction of new towers only where all other reasonable opportunities have been exhausted, and to encourage the users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas;

e. Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon the Town;

f. Provide constant maintenance and safety inspections for any and all facilities;

g. Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and Building code compliance. Provide a mechanism for the Town to remove these abandoned towers to protects the citizens from imminent harm and danger; and

h. Provide for the removal or upgrade of facilities that are technologically outdated.

1903.00 Definitions

1903.01 *Alternative Tower Structure*. Innovative siting techniques such as artificial trees, clock towers, bell towers, steeples, light poles, and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

1903.02 *Antenna*. Any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

1903.03 *Co-Location*. The use of an existing tower or an existing telecommunications facility, for multiple purposes or users.

1903.04 *Elevation*. The measurement of height above sea level.

1903.05 *Guy wires*. A cable used to secure and steady a tower.

1903.06 *Guyed Tower*. A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.

1903.07 *Height*. The vertical distance measured from the average elevation of the finished grade surrounding the tower or other structure to the highest point on the tower or other structure, including antennas.

1903.08 *Lattice Tower*. A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.

1903.09 *Monopole*. A type of mount that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel antennas arrayed at the top, constructed without guy wires.1903.10 Preexisting towers and antennas. Any tower or antenna lawfully constructed or permitted prior to the adoption of this Ordinance. Also, any tower or antenna lawfully constructed in accordance with this Ordinance that predates an application currently before the Town.

1903.10 *Secondary Use*. A use of land or of a building or portion thereof which is unrelated to the principal use of the land or building.

1903.11 *Telecommunications Facilities*. Any structure, antenna, tower, or other device that provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), and personal communications services (PCS), and common carrier wireless exchange access services.

1903.12 *Tower*. A structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice or monopole towers but not including guyed towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures, and the like.

1904.00 Applicability

1904.01 *Public Property*

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

1904.02 *Amateur Radio, Receive-Only Antennas*

This Ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for receive only antennas. This application adopts the provisions and limitations as referenced in RSA 674:16, IV. In addition, no commercial uses/providers shall operate on a private, amateur or receive only tower.

1904.03 *Essential Services and Public Utilities*

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

1905.00 Siting Standards

1905.01 *General Provisions*

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

a. Antennas and towers may be considered either principal or secondary uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

b. For purposes of determining whether the installation of a tower or antenna complies with district development standards, the dimensions of the entire lot shall control, even though the antennas and towers may be located on leased parcels within such lots.

c. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this Ordinance, shall not be deemed to constitute the expansion of a nonconforming use or structure.

d. Applicants receiving approval to construct new telecommunication towers must execute a written agreement with the Town specifying that the applicant agrees to provide for maximum shared use of the tower with other telecommunication providers and with governmental agencies at industry standard lease rates. This agreement shall include use by the Town for municipal communication purposes. The applicant shall also provide notice to all commercial carriers in the region that a new facility is to be erected and that an opportunity for co-location exists.

1905.02 *Districts Permitted*

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

1906.00 Bonding, Security, and Insurance

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

1907.00 Removal of Abandoned Antennas and Towers

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

1908.00 Waivers

1908.01 *General*

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

a. The granting of the waiver will not be detrimental to the public safety, health, or welfare or be injurious to other property and will promote the public interest.

b. The waiver will not, in any manner, vary the provisions of the Town's Zoning Ordinance or Master Plan.

c. The waiver will substantially secure the objectives, standards, and requirements of this Ordinance.

d. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:

1. Topography and other site features.

2. Availability of alternative site locations.

3. Geographic location of the property.

4. Size/magnitude of the project being evaluated and availability of co-location.

1908.02 *Conditions*

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

1908.03 *Procedures*

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

2000.00 ACCESSORY DWELLING UNITS (IN-LAW APARTMENTS)

2001.00 Purpose

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

2002.00 Requirements/Limitations

2002.01 Accessory Dwelling Units shall be secondary and accessory to a principal single family dwelling unit.

2002.02 In granting a special exception, the Board of Adjustment must find that the secondary unit is developed in a manner which does not alter the character or appearance of the principal dwelling unit as a single family residence.

2002.03 Only one accessory dwelling unit shall be allowed per principal dwelling unit and/or lot.

2002.04 An ADU is not permitted in any principal dwelling in which the owner of record of the principal dwelling does not personally reside.

2002.05 There shall be no alterations, enlargements, or extensions of the existing structure which alter its character or appearance as a single-family residence (or other detached accessory structure, when applicable).

2002.06 Any necessary additional entrances or exits shall be located to the side or rear of the building whenever possible.

2002.07 An accessory dwelling unit shall not be considered to be an additional dwelling unit for the purpose of determining minimum lot size.

2002.08 Attached accessory dwelling units shall be designed to allow for re-incorporation into the principal dwelling unit.

2002.09 At least one (1) common interior access between the principal dwelling structure and the accessory dwelling unit shall be maintained. A second means of egress from the accessory dwelling unit shall be provided for in accordance with the provisions of Section 2002.03.

2002.10 Detached accessory dwelling units are only allowable when located on a lot that has twice the minimum required lot size. A detached accessory dwelling unit cannot be converted to a principal dwelling unit.

2002.11 The gross living area of an accessory dwelling unit shall not be less than 350 square feet or not greater than 1,000 square feet.

2002.12 The above grade gross living area of the principal dwelling shall not be reduced to less than 1200 square feet.

2002.13 Attached accessory dwelling units shall occupy no more than 40% of the total heated above grade floor area of the principal dwelling.

2002.14 A building permit for an accessory dwelling unit must be approved and issued prior to the construction of an accessory dwelling unit. An accessory dwelling unit shall have an interconnected fire alarm system.

2002.15 The Emergency Management Director shall determine the house number for the accessory dwelling unit at the time of building permit application.

2002.16 Adequate off street parking shall be provided to serve the combined needs of the principal dwelling unit and the accessory dwelling unit.

2002.17 Adequate provisions must exist or be made for ingress, egress and turning of vehicles within the site.

2002.18 The existing, replacement or proposed septic system must be certified by a licensed septic designer or engineer as adequate to support the accessory dwelling unit in accordance with New Hampshire RSA 485-A:38 and the Town of Brookline septic regulations.

2003.00 Accessory Dwelling Unit Certificate of Occupancy

If a property containing an approved accessory dwelling unit is conveyed and the new owner wishes to maintain the accessory unit, the new owner shall apply for a certificate of occupancy for the dwelling unit. The purpose of this section is to ensure that one of the two dwelling units is owner occupied.

2004.00 Procedural Requirements

2004.01 An application for special exception approval under the auspices of this Section shall include the following items:

a. All plans submitted with any application for an accessory dwelling unit building permit should denote, describe and/or identify the intended accessory dwelling unit area as such.

2005.00 Existing Illegal Accessory Dwelling Units

2005.01 Accessory dwelling units constructed prior to the adoption of this Ordinance without a building permit or certificate of occupancy shall apply to the Board of Selectmen for a determination of compliance with this Ordinance. There shall be an amnesty period of 180 days from the date of adoption of this Ordinance in which to make an application for a determination and in which no penalty will be assessed for an illegal nonconforming accessory dwelling unit.

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

a. a determination of compliance with Section 2002.00 and a certificate of occupancy.

b. a conditional determination of compliance with Section 2000.00 and a description of the corrective changes needed to bring the accessory dwelling unit into compliance. The required changes shall be completed within 90 days of the date of the determination of conditional

compliance. Upon successful completion of the required changes, the Board of Selectmen [Building Inspector] shall issue a certificate of occupancy; or

c. a determination of noncompliance with one or more of the requirements of Section 2000.00, together with a listing of those requirements and conditions for which compliance cannot be achieved through corrective changes.

2006.00 Failure to Comply

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

2007.00 Enforcement Authority

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

2100.00 IMPACT FEES

2101.00 Purpose

2101.01 This ordinance is enacted pursuant to RSA 674:16 and 674:21, and in order to:

a. Promote public health, safety, convenience, welfare, and prosperity;

b. Ensure that adequate and appropriate facilities are available to individuals who may come to be located in the Town of Brookline, New Hampshire;

c. Prevent scattered or premature development of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of drainage, transportation, schools, fire protection or other public services, or necessitate the excessive expenditure of public funds for the supply of such services;

d. Provide for the harmonious development of the municipality and its environs; and

e. Ensure the proper arrangement and coordination of streets.

2102.00 Definitions

Any term not defined here shall have the same meaning as defined in Section 200.00 of this Ordinance.

2102.01 *Impact Fee*. A fee or assessment imposed upon development, including subdivision, building construction or other land use change, in order to help meet the needs occasioned by that development for the construction or improvement of capital facilities owned or operated by the municipality, including and limited to water treatment and distribution facilities; wastewater treatment and disposal facilities; sanitary sewers; storm water, drainage and flood control facilities; public road systems and rights-of-way; municipal office facilities; public school facilities; the municipality's proportional share of capital facilities of a cooperative or regional school district of which the municipality is a member; public safety facilities; solid waste collection, transfer, recycling, processing and disposal facilities; public library facilities; and public recreational facilities not including public open space.

2102.02 *Off-site Improvement / Exaction.* Those improvements that are necessitated by a development but which are located outside the boundaries of the property that is subject to a subdivision plat or site plan approval by the planning board. Such off-site improvements shall be limited to any necessary highway, drainage and sewer and water upgrades pertinent to that development.

2103.00 Authority

2103.01 The Planning Board may, as a condition of approval of any subdivision or non-residential site plan, and when consistent with applicable Board regulations, require an applicant to pay an impact fee for the applicant's fair share of off-site improvements to public facilities affected by the development.

2103.02 Nothing in this section shall be construed to limit the existing authority of the Planning Board to disapprove proposed development which is scattered or premature, or which would require an excessive expenditure of public funds, or which would otherwise violate applicable ordinances and regulations. Nothing in this section shall be construed to limit the Planning Board's authority to require off-site work to be performed by the applicant in lieu of paying an impact fee, or the Board's authority to impose other types of conditions of approval. Nothing in this section shall be construed to affect types of fees governed by other statutes, town ordinances or regulations.

2104.00 Assessment Methodology and Establishment and Review of Fees

2104.01 *Proportionality*

The amount of the impact fee shall be calculated by the Planning Board to be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee.

2104.02 *Existing Deficiencies*

Upgrading of existing facilities and infrastructures, the need for which is not created by new development, shall not be paid for by impact fees.

2104.03 *Impact Fee Schedule*

The Impact Fee Schedule shall be prepared in accordance with RSA 674:21, and shall be calculated using the following factors, based upon the most recent data available or a conservative estimate:

a. A determination of the size of the capital facility.

b. An estimate of the proportion of users from future Brookline households subject to the impact fee that will use the facility when it has reached its capacity.

c. Projections of future users based upon residential building permit projections.

d. Estimates of the cost of the facility to the Town of Brookline, including financing and excluding non-municipal funding sources.

e. Credits subtracted from a base fee accounting for property taxes paid by the proportion of the project to be financed by impact fees.

f. A fee assessed per housing unit or the most appropriate factor for the specific impact fee being charged.

g. A determination of the number of building permits that will need to be issued in order to finance the impact fee.

h. An accounting of the number of permits issued, with a maximum number of permits to be assessed an impact fee prior to the fee's termination.

i. Exemptions, if any.

2104.04 *Computation of Impact Fees*

a. The amounts of the impact fees shall be determined using the values contained in the Impact Fee Schedules for the following types of facilities:

1. School Facilities

2. Municipal Facilities

3. Public Libraries

4. Public Recreation Facilities

2104.05 *Review of Impact Fees*

The Planning Board shall review an established impact fee schedule on an annual basis, based upon a recommendation of the Capital Improvements Committee. The Planning Board shall modify the impact fee schedule if it finds that new data is available that will refine the schedule. This may include the replacement of figures used in the impact fee schedule with more accurate or recent projections, data and figures.

2104.06 *Relationship to the Capital Improvements Program*

Whenever an impact fee or off-site improvement is assessed in accordance with this ordinance, the project shall become part of the Capital Improvements Program (CIP) as an administrative adjustment. The CIP, when modified by the Town, shall include all projects that are funded through impact fees and all off-site improvements / exactions.

2105.00 Off-site Improvements / Exactions

2105.01 *Ability to assess off-site improvements / exactions*

An improvement that is required by the Planning Board for either a site plan or subdivision that is necessary for the project to operate properly shall be considered to be an off-site improvement or exaction. Off-site improvements for site specific applications shall be assessed on a case by case basis and shall be in addition to other impact fees imposed pursuant to this ordinance. The applicant shall be assessed their proportionate share for the need for the project. In cases where it is determined that such an improvement is necessary for the proper functioning of the project, the Planning Board shall so notify the applicant and the applicant may be required to present to the Board a study which identifies the proportionate share of the cost of such improvement that the applicant's project necessitates. The Board may, at the expense of the applicant, refer such study to a consultant of its own to determine the reliability of the findings which shall be considered by the Board to arrive at a resolution of this issue. The applicant shall be assessed their proportionate share for the need for the project. In cases where it is determined that an improvement is necessary for the proper functioning of a site plan or subdivision, but that the applicant, for whatever reason, is determined to contribute more than its proportionate share to the improvement under this section, and, therefore, that the improvement will also accommodate other future development, the Town, at the request and expense of the applicant, may establish a separate project related impact fee that assesses other future site plans or subdivision for their proportionate share of the improvement to reimburse the applicant for such disproportionate share of the improvement to reimburse the applicant for such disproportionate contribution. Such impact fees shall be provided to the original applicant with any interest.

2106.00 Administration

2106.01 *Accounting*

In accord with RSA 673:16, II and RSA 674:21, V(c), impact fees shall be accounted for separately, shall be segregated from the Town's general fund, may be spent upon order of the Board of Selectmen, and shall be used solely for the capital improvements for which they are collected, or to recoup the cost of capital improvements made in anticipation of the needs for which the fees were collected to meet.

2106.02 *Assessment*

All impact fees imposed pursuant to this section shall be assessed prior to, or as a condition for, the issuance of a building permit or other appropriate permission to proceed with development, as determined by the Planning Board. . The amount of the impact fee to be imposed is that which is in place at the time of subdivision or site plan approval.

2106.03 *Reserved*

2106.04 *Collection*

Impact fees shall be collected as a condition for the issuance of a certificate of occupancy; provided, however, in projects where off-site improvements are to be constructed simultaneously with a project's development, and where a municipality has appropriated the necessary funds to cover such portions of the work for which it will be responsible, that municipality may advance the time of collection of the impact fee to the issuance of a building permit. Nothing in this section shall prevent the Planning Board and the assessed party from establishing an alternate, mutually acceptable schedule of payment.

2106.05 *Refund*

Any portion of an impact fee which has not become encumbered or otherwise legally bound to be spent for the purpose for which it was collected, shall be refunded, with any accrued interest, to the assessed party or successor in interest:

a. When the subdivision or site plan approval expires under the respective rules of the Planning Board, or under the terms of the decision, without having become vested under RSA 674:39, and without any extension being granted by the Planning Board; OR

b. When such approval is revoked under RSA 676:4-a; OR

c. Six years after its collection, or, if any extension of approval is granted by the Planning Board, six years after such extension is granted; OR

d. Six years after its collection, whenever the calculation of an impact fee has been predicated upon some portion of capital improvement costs being borne by the Town, and the Legislative Body of the Town has failed to appropriate the Town's share of the capital improvement costs.

2107.00 Appeals

In accord with RSA 676:5, III, appeals of the decision of the Planning Board in administering this ordinance may be made to Superior Court, as provided in RSA 677:15.

2200.00 HOUSING FOR OLDER PERSONS DEVELOPMENTS

The Town of Brookline recognizes the need to provide special housing opportunities for older persons. Such housing must be well sited and designed to meet the special needs of this age group. Housing for Older Person Developments may be located as an overlay zone wherever the conditions described in the sitting requirement standards, below, can be met. Housing for Older Person Developments shall be reviewed under the site plan regulations of the Town of Brookline in addition to the requirements of this ordinance. Whenever a conflict occurs between this ordinance and the site plan regulations, the more restrictive requirements shall apply.

2201.00 Purpose and Intent

a. It is a goal of the Town of Brookline to promote the development of housing designed to meet the special needs of older persons.

b. This ordinance operates as an Overlay Zoning District.

c. It is the intent of the Town of Brookline to provide for the special needs of older persons by allowing for Housing for Older Persons developments with unique dimensional and institutional requirements that meet the social, mobility and safety needs of this age group.

d. Housing developed in this section must be established and maintained in compliance with all applicable state and federal laws with respect to such housing and/or medical care, including the Fair Housing Act, as amended, 42 USC Sec 3601 et seq., NH RSA 354-A:15 and the NH Code of Administrative Rules, Hum 300 et seq.

e. Pursuant to RSA 354-A:15, II and III, it is recognized that prohibitions against housing discrimination do not apply to housing for older persons, which conforms to all applicable rules and regulations.

f. The intent of this ordinance is to foster development of housing for older persons while detailing local planning standards and promoting consistency with land use policies in the Brookline master plan, zoning ordinance and subdivision and site plan regulations.

g. It is the intent of this ordinance to regulate the intensity and mix of different types of dwelling units required to meet the needs of those citizens so as to provide ample indoor and outdoor livable space and to retain a sense of personal identity, intimacy and human scale within the development.

h. It is the intent of this ordinance to review the density, scale and spacing of buildings, and the traffic circulation and parking pattern within the development to ensure that adequate light, air, privacy, community space, landscaping and open space for passive and active recreation are provided within the development.

2202.00 Definitions

2202.01 *Housing for Older Persons (HOP)*

A development qualifies as HOP when in compliance with all applicable Federal, State and Local laws, regulations and rules. Section 2200.00 of Brookline's zoning ordinance references some specific statutes, rules and requirements. The Fair Housing Amendments Act of 1988, 42 U.S.C. 3607(b)(2), as amended, including the Housing for Older Persons Act (HOPA) of 1995, supports

the Town of Brookline's requirement that restrictions shall be established in legal covenant and approved by Town Counsel, which restricts the occupancy of units within a development specifically designed for older persons as defined in RSA 354-A:15 II, where units are intended for, and solely occupied by, persons 62 years of age and older. Housing for Older Person developments must meet all the standards of this ordinance as described herein. HOP is an Open Space/Cluster development and is an Innovative Land Use Control as set forth in RSA 674:21, I(f) and subject to additional requirements found in Brookline's zoning ordinance and site plan regulation.

2203.00 Sitting Requirements

2203.01 Development Tract Size. A single parcel of land with a minimum of twenty (20) contiguous acres of land. Multiple lots must be consolidated prior to approval under this ordinance. As an Overlay District, and requiring a single parcel of land, HOP developments are exempt from the single dwelling per building lot requirement of the zoning ordinance, as approved by the Planning Board following Site Plan review and recorded at the Hillsborough County Registry of Deeds (HCRD). Land divided by a legally accepted or dedicated pre-existing public road shall not be deemed contiguous. Following approval, the development site may not be re-subdivided.

2203.02 Development and Unit Requirements.

a. Open Space – There shall be an open space component to every housing for older persons development. At least forty (40) percent of the total tract area must be set aside as permanently protected open space for low-impact recreation, conservation, agriculture or forestry-related uses. No more than 45% of the required open space can consist of wetlands or slopes exceeding 25%. (*same requirement as for open space developments*)

   At least fifty (50) percent of the required open space area shall be available and managed for the passive or active recreational activities of the residents. This area may consist of walking trails, informal meeting areas, gardens, active recreation areas, or other recreational amenities.

   The open space shall be either conveyed to an association of unit owners in the development, or, where the Planning Board finds it in the public interest, this land may be conveyed to the Town (*subject to approval of the voters at Town Meeting*) or shall be permanently protected in other suitable ways which would ensure the continued use and maintenance of the land for its intended purpose.

b. Dimensional Requirements

   1. Frontage: Tracts being developed for Housing for Older Persons developments require at least fifty (50) feet of frontage on a public road.

   2. Dwelling Unit Density: Each dwelling unit requires a minimum of one-half (.5) acre of contiguous non-steep slope upland associated with it. Adequate and appropriate on-site space must be provided for parking, buildings, wells, septic systems and all other infrastructure and utilities, regardless of the maximum allowable density. The tract must be able to accommodate wells and septic systems for all units in a manner that meets Brookline and State of New Hampshire requirements. Community well and septic systems are permitted provided they meet all Brookline and State of New Hampshire requirements.

   3. Site Perimeter Buffer: Each development must be situated within a permanently protected undeveloped site perimeter buffer, identified on the site plan, not less than 50 feet wide,

which, unless it is already wooded and satisfactory to the Planning Board, must be planted and landscaped so as to provide a visual barrier between the development and adjacent properties. The Planning Board may require additional buffer width where unique circumstances of an abutting use or property warrant. The site perimeter buffer shall count towards the required minimum protected open space.

4. Setbacks and unit separation: All structures shall be set back at least 25 feet from the 50-foot site perimeter buffer. In addition, developments located on public roads must meet the standard building setbacks as specified for the applicable district in the Brookline Zoning Ordinance. All housing units / buildings must be separated by at least thirty-five (35) feet.

5. Unit Standards: There shall be no more than two (2) bedrooms per dwelling unit. Each unit must contain at least seven hundred and fifty (750) square feet of living space. Units may be single and detached or attached in duplex fashion, with a maximum of two units per building. Attached garages and breezeways are acceptable but do not count towards the minimum required living space. Each building with dwelling unit(s) must be a one-story structure.

The following standards will be reviewed in accordance with the Town of Brookline site plan regulations and/or design guidelines:

c. Building Design

Architectural renderings of a typical unit, the community center and all accessory buildings shall be provided to the Planning Board for evaluation in accordance with the site plan review regulations and design guidelines to ensure that the proposed development is appropriate in scale and arrangement in relation to the underlying district, the prominence of the site, viewsheds, adjacent land uses and the surrounding neighborhood.

d. Landscape Plan

A landscaping plan describing the number, species and location of all plantings within the site perimeter buffer and the development itself shall be submitted for the Planning Board's review. No invasive species may be used as planting materials.

e. Parking

There shall be a minimum of two (2) off-street parking spaces per dwelling unit. Where deemed to enhance the appearance, design and functionality of the development, shared driveways for up to four (4) dwelling units are acceptable.

f. Pedestrian Linkage and Circulation

The use of interconnecting walkways, trails and natural walking paths shall be an integral part of all Housing for Older Persons developments. These pedestrian amenities shall be designed to facilitate access between housing units, the Community Center, active recreation areas, open space areas and public trails and ways that may exist outside of the development. Primary (paved) walkways in proximity to housing units and the Community Center shall meet American with Disabilities (ADA) requirements. Natural walking and hiking trails are exempt from this requirement.

g. Lighting

All roads, primary walkways and access to buildings shall be adequately lighted. The use of "full cut-off" lighting is required. Every effort shall be made to prevent light trespass, nuisance glare and over illumination due to excess wattage or inappropriate light fixtures. A lighting plan shall be submitted for the Planning Board's review, which shall be consistent with the standards found in the current lighting ordinance and site plan regulations. Lighting of common and public areas shall be independently controlled from that for the residential units.

2204.00 Community Center

2204.01 Community Center requirements. Each Housing for Older Persons development must provide a Community Center intended to serve as the locus of community life and activities for the residents. Whenever possible, the Community Center shall be centrally located in relation to the housing units. The Community Center must be a minimum of one thousand (1,000) square feet in size, and must include an activities / social room as well as a kitchen, laundry room and bathroom facilities. The main entrance to the community center must be handicapped accessible. The community center requires one parking space to be provided per 200 sq.ft. of interior heated space. At least two handicapped parking spaces must be provided adjacent to the handicapped accessible main entrance.

2205.00 Safety Considerations

2205.01 Unit Identification

Each dwelling unit shall have an address number, of contrasting color to the structure, a minimum of six (6) inches in height, visible from the street and/or driveway serving the unit.

2205.02 Common Driveway Identification

All common driveways must be identified with signage and markers per the requirements of section 1806.00, Common Driveways, of the Brookline Zoning Ordinance; and section 7.4, Common Driveways, of the Brookline Driveway Regulations.

2206.00 Exemptions

Housing for Older Persons developments shall be exempt from the Brookline Growth Management Ordinance, due to the minimal impacts on Town services associated with this type of development.

2207.00 Compliance

It is the responsibility of applicants to certify at the time of an application before the Planning Board that a development will comply with all applicable rules and regulations established by the New Hampshire Human Rights Commission, for age discrimination in housing, including, if required by the Human Rights Commission, that every development shall provide significant facilities and services specifically designed to meet the physical and social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons, as set forth in NH Administrative Rules Hum 302.03, as the same may from time to time be amended. Furthermore, while the Planning Board will not define what constitutes significant facilities and services, information that may be required by the Human Rights Commission in evaluating an application shall be submitted to the Planning

Board, including a description of applicable provisions of the Human Rights Commission administrative rules and regulations, and whether there are requests for exemptions.

In the event the foregoing 62 year old age restriction is determined to be in violation of the laws of the State of New Hampshire, then in order to qualify as Housing For Older Persons, the development must contain an age restriction that complies with New Hampshire RSA 354-A:15, and as the same may from time to time be amended.

Every Older Persons development shall certify annually their full compliance with the age requirements set forth in this section and the method for determining compliance shall be incorporated in the Association Documents, and approved by Town Counsel. A notarized legal copy of the annual age certification shall be provided to the Towns designated enforcement body (Selectmen/Code Enforcement Officer) and to the Planning Board, to verify compliance.

2208.00 Enforcement, Conflict and Severability

Enforcement, conflict and severability shall be in accordance with Sections 2400.00, ENFORCEMENT, 2800.00, CONFLICT and SEVERABILITY of the Brookline zoning ordinance. Additional enforcement action under applicable local, state and federal law shall insure full compliance with the purpose and intent and specific requirements of the Housing for Older Persons ordinance and Brookline's Land Use Laws.

2300.00 OUTDOOR LIGHTING

2301.00 Purpose and Intent

The purpose of this ordinance is to preserve the rural atmosphere and dark skies of Brookline. One key difference between rural towns and cities is the darkness of the night sky and the amount of glare and sky glow resulting from outdoor lighting. Natural dark skies are the nighttime aspect of rural character. Increasing light pollution and glare from inappropriate lighting degrades such rural character. Effective outdoor lighting can help preserve the dark night sky while maximizing safety and security by minimizing glare and light trespass. This regulation is intended to enhance public safety and welfare by providing for adequate and appropriate outdoor lighting, providing for lighting that will complement the character of the town, reduce glare, minimize light trespass, reduce the cost and waste of unnecessary energy consumption and prevent the degradation of the night sky.

2302.00 Definitions

a. *Full-Cutoff (FCO)*. A light fixture with a shield such that all of its light output is aimed below horizontal to the ground. Full cut-off fixtures cut off all upward transmission of light.

b. *Flood or Spot Luminaires*. Any downward facing light fixture or lamp that incorporates a reflector or refractor to concentrate the light output into a directed beam in a particular direction.

c. *Glare*. Direct view of a light source that results in discomfort to the observer and possible temporary visual impairment.

d. *IESNA*. Illuminating Engineering Society of North America. An organization that recommends standards for the lighting industry.

e. *Light Trespass*. The shining of light produced by a luminaire beyond the boundaries of the property on which it is located.

f. *Light Pollution*. Night-sky brightness (skyglow) caused by the scattering of light in the atmosphere. Sources include light projected above the horizontal plane or light reflected from illuminated sources such as roadways.

g. *Lumen*. A measure of light energy generated by a light source.

h. *Luminaire*. Complete lighting unit including fixture, lamp, and other parts.

i. *Temporary Lighting*. The specific illumination of an outside area or object by any man-made device located outdoors that produces light by any means for a period of less than 30 days, with at least 180 days passing before being used again. All seasonal and temporary lighting should be rated less than 1,800 lumens.

2303.00 Applicability

The lighting requirements of this section shall apply to all new non-residential developments requiring site plan approval from the Brookline Planning Board.

Though they are not subject to permitting through this ordinance, residential homeowners are encouraged to use full cutoff lighting fixtures and prevent light trespass onto neighboring properties. Residential lighting guidelines can be obtained at Town Hall during normal business hours.

2304.00 Lighting Standards

a. Any luminaire or lamp of 4,000 or more lumens shall be full cutoff as installed.

b. Flood or spot luminaires shall be full cutoff if they are 1,500 lumens or more. The center beam from flood or spot lights shall not be angled any greater than 45 degrees from a downward pointing direction.

c. The maximum height of any luminaire shall not exceed 25 feet.

d. Commercial lighting shall meet minimum IESNA illumination levels while not exceeding IESNA uniformity ratios and average illuminance recommendations.

e. Outdoor signage illumination shall comply with these regulations. In addition, there shall be no light trespass to any other property or glare when viewed from the road. Bottom-mounted outdoor sign lighting shall not be used.

f. Outdoor lighting at places of business or public venues shall be turned off no later than one hour after closing, except what is needed for basic security. Vacant parking lots shall not remain lighted except as needed for basic security and as specified in section 1602.00 of the Brookline Zoning Ordinance. In addition, there shall be no light trespass to any other property or glare when viewed from the road.

g. No outdoor sporting or entertainment event requiring outdoor lighting shall start after 10:00 p.m. or extend beyond 11:00 p.m.

2305.00 Special Uses

a. All temporary emergency lighting needed by police or fire departments or other emergency vehicles shall be exempt from these requirements.

b. Hazard warning lighting required by federal regulatory agencies are exempt, except that all such night lighting must be red and must be shown to be close to the federally required minimum lumen output required for such task.

c. The use of searchlights by civil authorities for public safety.

d. Temporary lighting of low wattage for public festivals, celebrations, or holiday observances are exempt except where they create a hazard or nuisance from glare. Such light shall not light trespass. Wherever possible lighting should be full cut-off.

e. Airport lighting for navigational purposes is exempt.

f. Sports venue lighting is exempt from any lumens per acre standards for the playing field only. Full-cutoff fixture design is required and light trespass requirements apply.

2306.00 Prohibitions

a. The use of search lights for advertising purposes is prohibited.

b. The nighttime use of white or white strobe lighting on communications towers is prohibited.

c. Illumination of outdoor advertising off-site signs between the hours of 11:00 p.m. and sunrise is prohibited.

d. The use of laser source light or any similar high intensity light for outdoor advertising or entertainment, when projected above the horizontal, is prohibited.

2307.00 Grandfathering of Nonconforming Luminaires

a. Any luminaire lawfully in place prior to this ordinance shall be grandfathered indefinitely except in the case of change, repositioning or replacement described below.

b. Any significant change or replacement to an existing luminaire, such as lamp type, structural alteration, movement, repositioning, replacement or removal of the luminaire cover must meet the standards of this ordinance.

2308.00 Lighting Plan

Applicants for site plan or subdivision review with outdoor lighting fixtures shall submit evidence that the proposed work will comply with the standards of this ordinance. The evidence submitted shall contain but not be limited to the following:

a. The location of the site where outdoor lighting fixtures will be installed.

b. Scaled plans indicating the location of outdoor lighting fixtures on the site, the height of each fixture and the type(s) of outdoor lighting proposed and the level of wattage and initial lumens for all light sources.

c. A description of the outdoor lighting fixtures including but not limited to manufacturer's catalog descriptions and drawings. The required plans and descriptions shall be sufficiently complete to enable the Planning Board to readily determine compliance with the requirements of this ordinance. If such plans and descriptions cannot enable this ready determination, by reason of the nature or configuration of the devices, fixtures, or lamps proposed, the applicant shall submit further evidence of compliance enabling such determination. Examples of recommended lighting fixtures are available from the Town Planning Board Office and the Building Inspectors Office.

d. For plans showing a high level of illumination, the Planning Board may require an iso-lux / footcandle plan indicating levels of illumination, in footcandles, at ground level. The maintained horizontal illuminance standards set by the Illuminating Engineering Society of North America (IESNA) shall be observed.

e. If any subdivision proposes to have installed street or common or public area outdoor lighting, the final plat shall contain a statement certifying that the applicable provisions of the Town of Brookline will be adhered to.

f. Should any outdoor light fixture, or the type of light source therein, be changed after the permit has been issued, a change request must be submitted to the building inspector for his

approval, together with adequate information to assure compliance with this code, which must be received prior to substitution.

2309.00 Law Governing Conflicts

Where any provision of local, county, state or federal law conflicts with any provision of this ordinance, the most restrictive shall govern unless other specified by law.

2310.00 Separability

The invalidity of a section of this ordinance shall not have any effect upon the validity of any other section or provision.

2400.00 ENFORCEMENT

2401.00 It shall be the duty of the Board of Selectmen and the Board is hereby given power and authority to enforce the provisions of this Ordinance. The Board of Selectmen has the authority to appoint a Code Enforcement Officer (CEO) to enforce this Ordinance under their general supervisory authority.

2402.00 Upon well-founded information that this Ordinance is being violated, the Board of Selectmen or Code Enforcement Officer shall take immediate steps to enforce the provisions of this Ordinance pursuant to applicable laws, including but not limited to RSA 676:15-17, as amended.

2403.01 *Procedures.* The Selectmen may adopt rules of procedure for governing the manner in which the Code Enforcement Officer will be expected to address land use violation complaints. Information of alleged violation of these ordinances shall be provided in writing to the Code Enforcement Officer or Board of Selectmen and shall be investigated by the Code Enforcement Officer, the Board of Selectmen or their designee.

a. Minimum written information of alleged violations of these ordinances shall include a description of the alleged violation(s), the location of the alleged violation, the name, address and telephone number of the individual providing the information of the alleged violation(s) and the date of submission to the town authority.

b. The Brookline Code Enforcement Officer or the Board of Selectmen shall provide a copy of the complaint to the owner of the property of the alleged violation.

c. An appeal of an administrative decision may be made pursuant to applicable to laws, including but no limited to RSA 676:5, Appeals to the Board of Adjustment, as amended.

2500.00 BOARD OF ADJUSTMENT

Within thirty days after the adoption of this Ordinance and thereafter as terms expire or vacancies occur, the Board of Selectmen shall make appointments to a Board of Adjustment of five members conforming in duties to the provisions of Chapter 31 of the New Hampshire Revised Statutes Annotated 1955. Thereafter as terms expire or vacancies occur, the Board of Selectmen shall be responsible for filling vacancies and maintaining full membership on the Board of Adjustment. The Board of Adjustment here provided shall conform in membership and terms of office to the

provisions of Section 37, New Hampshire Revised Statutes Annotated, 1955. In addition to the general powers granted, said Board of Adjustment by said Chapter 31, it may, in harmony with and subject to its provisions:

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

b. Permit in the Residential-Agricultural District an industrial or commercial use which a public hearing demonstrates that it can meet the requirements of Section 500, paragraphs 502 (v) and 503 and is not otherwise detrimental to the neighborhood.

2600.00 AMENDMENTS

2601.00 This Ordinance may be amended in accordance with RSA Chapter 675, Enactment and Adoption Procedures, as amended.

2700.00 FINES AND PENALTIES

The penalties for violation of any of the provisions of this title, including but not limited to any local ordinance, code, regulation, or any provision, specification or condition of any application, plat or plan approved by, or any requirement or condition of a permit or decision issued by any local administrator or Land Use Board acting under the authority of this title shall be subject to such sanctions as are authorized by the Court pursuant to applicable laws, including, but not limited to RSA 676:15-17, as amended.

2800.00 CONFLICT AND SEVERABILITY

2800.01 If any section of this Ordinance is found to be in conflict with any other section of the Ordinance or with any local, state, or federal regulation, the more stringent standard shall apply. The invalidity, unconstitutionality or illegality of any Section or provision of this Ordinance or of any zoning district boundary shown on the zoning map shall not have any effect upon the validity, constitutionality or legality of any other Section, provision or zoning district boundary.

2900.00 WHEN EFFECTIVE

This Ordinance shall take effect upon its passage.

(This Ordinance was passed at the annual Town Meeting of March 12, 1968 and was amended by a vote of the townspeople at the annual Town Meetings of March 7, 1972, March 6, 1973, March 8, 1977, November 2, 1982, March 12, 1985, March 10, 1987, March 8, 1988, March 15, 1989, March 13, 1990, March 12, 1991, March 10, 1992, March 9, 1993, March 8, 1994, March 12, 1996, March 11, 1997, March 10, 1998, March 9, 1999, March 14, 2000, March 13, 2001, March 13, 2003, March 10, 2004 and March 8, 2005 Amendments have been incorporated in this Ordinance as printed.)

#210I-22

APPENDIX A: TABLE OF AMENDMENTS

IV, A ***1997*:** Add portion of Tax Map Parcel A-6 to district *(new section 501).*

B ***1997*:** Clarify list of permitted uses by specifying 11 previously unspecified activities. Add home businesses as permitted use *(new section 502).*

C ***1997*:** Reduce frontage, side and rear setback, and land area requirements. Add building height limitation *(new section 503).*

V, B ***1997*:** Replace "single (two) family dwelling" terminology with "single (two) dwelling unit dwelling". Add farm stands as new permitted use. Specify manufactured housing as currently permitted use *(new section 602).*

VI ***1997*:** Replace "Mobile Home" terminology with "Manufactured Housing" *(new section 700).*

VII,A ***1997*:** Reword provision #2. Delete provision #4 which prohibits rebuilding after damage exceeding 50% of value *(new section 800).*

VIII ***1997*:** Update definitions for dwelling unit and manufactured housing. Remove home produce and products definition. Replace "Two-family house" term with "two dwelling unit dwelling". Add definitions for farm, farm stand, farming, funeral home, personal services, and restaurant *(new section 200).*

XIII, D ***1997*:** Clarify dry area requirement *(new section 1104.01).*

XVI, F ***1997*:** Add description of building permit allocation procedure. Add provisions to allow a minimum number of building permits based on subdivision size, and to allocate permits on a quarterly basis. *(new section 1406)*

XVIII, H ***1997:*** Add new provision for a sign permit process *(new section 1608).*

200.23 ***2000:*** Add a new definition as *Section 200.23, Junkyard,* and renumber subsequent sections.

200.30 ***2000:*** Add a new definition as *Section 200.30, Off-Premise Sign,* and renumber subsequent sections.

800.00 ***2000:*** Amend *Section 800.00, Non-Conforming Uses and Buildings,* to better define non-conforming uses, structures and lots, and to allow for reasonable expansion and alteration. (See *Sections 800.00 - 800.03*.)

1000.00 ***2000:*** Amend *Section 1000.00, Earth Removal,* to allow for some flexibility in the amount of material that can be removed on an annual basis while maintaining the maximum for the 3-year time frame.

1000.03 ***2000:*** Special Exception, Item d amended.

1105.01 ***2000:*** Amend the Special Provisions Section of the Wetlands Conservation District to allow a maximum of 25% of the minimum lot area to be wetland.

1106.01 ***2000:*** Amend the Special Exceptions section of the Wetlands Conservation District to eliminate the written review of findings of fact from the Planning Board. Also amend Item 3 to clarify the conditions under which expansions of existing structures within the buffer will be permitted.

1300.00 ***2000:*** Repeal the existing language in *Section 1300.00, Brookline Aquifer Protection Ordinance*, and replace with a new Section *1300.00, Aquifer Protection Ordinance*.

1406.02 ***2000:*** Amend *Section 1406.02, Minimum Permits,* Item c, of the Growth Management Ordinance to allow a subdivision to bank and carry over a maximum of one year's building permit allocations.

1603.05 ***2000:*** Amend *Section 1603.05*, which limits the application of the Sign Ordinance to signs larger than 3 square feet to exclude off-premise signs.

1604.04 ***2000:*** Delete *Section 1604.04* of the Sign Ordinance dealing with real estate rental/sale signs and replace it with newly worded *Section 1604.04*.

1605.01 ***2000:*** Delete *Section 1605.01*, dealing with off-premise signs, and replace it with *Section 1607.00, Off-Premise Signs*, and renumber subsequent sections.

1607.00 ***2000:*** Replacement section for Off-Premise Signs. (See also new *Sections 1607.01 & 1607.02*.)

1800.00 ***2000:*** Amend *Section 1800.00, Driveway Ordinance*, to define (*Section 1803.01*) and allow for the use of common driveways to serve more than one dwelling unit (*1806.00*), and renumber subsequent sections.

1805.03 ***2000:*** Amend *Section 1805.03* to clarify when driveways are to be paved or bonded prior to the issuance of a certificate of occupancy.

2000.00 ***2000:*** Amend *Section 2000.00, Accessory Dwelling Units*, to remove the reference to elderly (*2001.00*), to clarify who is to determine the house numbers for the accessory dwelling unit (*2002.15*), to eliminate the terms for a special exception, and replace it with the requirement that new owners of a home with an accessory dwelling unit obtain a certificate of occupancy to certify that the home is owner-occupied (*Section 2003.00* eliminated and replaced), and to eliminate the reference to "existing legal non-conforming" accessory dwelling units from the title of *Section 2005.00*.

2500.00 ***2000:*** Delete *Section 2500.00*, Saving Clause, and replace it with a new *Section 2500.00, Conflict and Severability*.

200.04 ***2001:*** Add a new definition as *Section 200.04, Adult Sexually Oriented Business*, and renumber subsequent sections.

502.00 ***2001:*** Amend the Industrial-Commercial District, *Section 502.00, Permitted Uses*, to allow Adult Sexually Oriented Businesses as a permitted use.

504.00 ***2001:*** Add a new section to the Industrial-Commercial District, *Section 504.00, Adult Sexually Oriented Business*, to define the location and operation standards for these types of businesses within the district.

1000.03 ***2001:*** Amend the criteria for granting a special exception for Earth Removal, *Section 1000.03,* by deleting the limitation on the maximum amount of material that can be removed in a three year period and by deleting the three year time limit on excavation permits.

1300.00 ***2001:*** Amend *Section 1300.00 Aquifer Protection Ordinance*, by replacing the terms "human waste" and "non-human waste" with the terms "domestic wastewater" and "non-domestic wastewater" throughout this Section and add definitions for "domestic wastewater" and "non-domestic wastewater" to *Section 1302.00, Definitions,* and renumber subsequent sections.

1904.02 ***2001:*** Amend the Telecommunications Ordinance, *Section 1904.02, Amateur Radio, Receive Only Facilities,* to prohibit commercial use of private amateur radio towers.

2100.00 ***2001:*** Add a new section, *Section 2100.00, Impact Fees*, to allow for the assessment of fees imposed upon new development, including subdivision and non-residential site plans, and renumber subsequent sections.

2200.00 ***2001:*** Renumber to become *Section 2300.00* and change all references to such within the Ordinance.

2300.00 ***2001:*** Renumber to become *Section 2400.00* and change all references to such within the Ordinance.

2400.00 ***2001:*** Delete *Section 2400.00, Penalty* and replace it with a new section, Section 2400.00, Fines and Penalties. Renumber to become *Section 2500.00* and change all references to such within the Ordinance.

2600.00 ***2001:*** Renumber to become *Section 2600* and change all references to such within the Ordinance.

1106.01 ***2003***: Amend the wetland ordinance such that certain minor work in the wetland buffer zone no longer requires a special exception.

2200.00 ***2003***: Add a new section, "Housing for Older Persons Developments", and renumber subsequent sections accordingly.

2300.00 ***2003***: Add a new section, "Outdoor Lighting", and renumber subsequent sections accordingly.

200.22 ***2004***: Include a new definition of home business consistent with the revised text of section 1700.

602.01 ***2004***: Provide a new subsection 602.01 to provide for the granting of special permits by the Planning Board for home businesses that meet the requirements of section 1700.

603.05 (f) ***2004***: Delete this section of the back lot provisions so as not to allow the use of wetlands to satisfy the minimum lot size requirements and renumber subsequent sections accordingly.

1103.04 ***2004***: Amend this section to state that the ordinance will not prohibit the use of wetlands to satisfy 25% of the minimum lot size on unimproved lots that were approved for subdivision by the Planning Board or which otherwise legally existed on or before March 10, 2004.

1105.01 2004: Delete this section of the wetland ordinance entirely so as not to allow the use of wetlands to satisfy minimum lot size requirements and renumber subsequent sections.

1106.01 (c) 2004: Add a new section to provide for special exception review by the ZBA to allow up to 25% of the required minimum lot size to be wetlands for unimproved lots which existed prior to March 10, 2004.

1700.00 2004: Provide for the granting of home business permits by special permit from the Planning Board and develop more specific standards for home business review in other sections of the ordinance accordingly.

2100.00 2004: Amend the Impact Fee ordinance to reference and describe the factors used to calculate the impact fee schedules, as well as to provide for the collection of off-site improvements, as distinct from impact fees, to address specific capital improvements necessitated by development.

2100.00 2005 AMEND Section 2100.00, *Impact Fees,* to replace the definition in section 2101.02, Off-site Improvement/Exaction, to match State statute; to clarify section 2105.01, *Ability to assess off-site improvements/exactions,* by replacing "shall" with "may" regarding the requirement of providing a study to the Planning Board identifying the proportionate share of costs; to clarify section 2106.02, *Assessment*, that impact fees are assessed at the time of subdivision or site plan approval, to maintains compliance with amended State statutes and recent case law; and to remove and reserve section 2106.03, *Security*.

1400.00 2005 AMEND Section 1400.00, *Growth Management Ordinance,* to adopt a comprehensive update replacing the existing text. This amendment simplifies many of the existing provisions and clarifies the number of building permits available to approved subdivisions in a calendar year. The overall intent of the existing ordinance is maintained.

1600.00 2005 AMEND Section 1600.00, *Sign Ordinance,* to adopt a comprehensive update replacing the existing text. This amendment updates the sign ordinance to preserve the aesthetic and rural character of the Town while maintaining highway safety and allowing reasonably positioned and sized signs to advertise local businesses attractions and events. The ordinance would allow a greater square footage of sign but prohibit electronic message boards, video display panels and moving, blinking and rotating signs.

501.00 2006 AMEND Section 501.00, Location; to add text to section "b" **to correct an error in the current textual description of the Industrial-Commercial District boundaries** that should include all of lot G-52-2 and the portion of all lots north of lot G-52-2 within 500 feet of NH Route 13 to the east, and the northern boundary of lot G-53-1. This correction is supported in Planning Board minutes regarding the original zoning amendment, is depicted on the current Zoning District map and has historically been in commercial use.

In addition; to combine and simplify the text in 501.00, a, and b, and place it into section "b"; to move and simplify a portion of the existing text from section "d" and place it into section "a." This begins an ongoing process of logically reorganizing and simplifying this portion of the ordinance.

501.00 (b) 2006 AMEND Sections 501.00, b; to include lot G-53-1 (Big Bear/B4 Function Hall) in its entirety (As recorded as of March 14, 2006) within the Industrial Commercial District, which converts the Residential-Agricultural portion of the parcels to Industrial-Commercial. This is the beginning of an ongoing program by the Planning Board to

eliminate "split-zoned" lots, wherever possible, within the Town, and is supported by the landowners.

501.00 (c) ***2006*** AMEND Sections 501.00, c; to include lot C-42 (former Tapply Lumber) in its entirety (As recorded as of March 14, 2006) within the Industrial Commercial District, which converts the Residential-Agricultural portion of the parcel to Industrial-Commercial; and to simplify the textual description in section "c". This is the beginning of an ongoing program by the Planning Board to eliminate "split-zoned" lots, wherever possible, within the Town, and is supported by the landowners.

603.03 ***2006*** AMEND Sections 603.03, Land Area, 603.05 a, and d, Back Lots, and 1505.04, Lot
603.05 (a,d) Size; to add "excluding wetlands" when determining minimum lot size for standard
1505.04 residential, back lots, and open space building lots.

603.04 ***2006*** AMEND Sections 603.04, Number of Dwelling Units; 603.05, b, and c, Back Lots;
603.05 (b,c) 1505.01, Density; 1505.04, Lot Size, to clarify one dwelling unit is permitted per building
1505.01 lot by; replacing the existing text in Sections 603.04 and 1505.04, "…permitted per
1505.04 minimum land area" with "…permitted per individual building lot, except as provided in Section 2000.00, Accessory Dwelling Units." Delete 603.05, b, which is repetitive. Delete "…for each dwelling unit," from 603.05, c. Delete "(1 unit per 80,000 square feet) in 1505.01."

2200.00 ***2006*** AMEND Section 2200.00, Housing for Older Persons (HOP); to clarify HOP developments as an overlay district and references applicable statutes in the 2201.00, Purpose and Intent; and 2202.01, Definitions; to add section 2204.00, Compliance, referencing applicable statutes and requiring annual reporting to the Town of proof of compliance with the ordinance; and add section 2205.00, Enforcement, Conflict and Severability; to specify enforcement and reference applicable sections of the zoning ordinance.

2400.00 ***2006*** AMEND Section 2400.00, Enforcement; to clarify the authority of the Board of Selectmen to designate a Code Enforcement Officer (CEO) to enforce Brookline Land Use Laws (Ordinance) as provided in state statutes; to provide for the Selectmen to adopt procedures for how the CEO will address land use violation complaints; to identify procedures for receiving notice of violations; and referencing the statute for appeals to the Board of Adjustments.

2600.00 ***2006*** AMEND Section 2600.00, Amendments; to simplify section 2601.00 to reference RSA Chapter 675, Enactment and Adoption Procedures.

2700.00 ***2006*** AMEND Section 2700.00, Fines and Penalty; to simplify and reference RSA 676:15-17.

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