

## **Section 2. Branch Brook Aquifer Protection District (BB)**

### **A. Purpose**

The purpose of this district is to protect the quality and quantity of present and future groundwater resources which recharge Branch Brook and its tributaries by regulating activities and land use practices. The protection of these groundwater resources is critical to promoting the health, safety and general welfare of the residents of the municipality.

The purpose of Zones A and B is to restrict or control uses involving hazardous or leachable materials which, if introduced to the ground or groundwater, cannot be rendered harmless by dilution or by the attenuative capacity of the soil prior to reaching the water supply. In addition, the purpose of Zone A is to prohibit sources of viral and bacterial contamination which can contaminate the water supply.

### **B. Delineation of Aquifer Protection Area**

- (1) For the purposes of this Ordinance, the Branch Brook Aquifer Protection District shall be delineated on copies of the Assessor's maps, shall be entitled "Branch Brook Aquifer Protection District Map: Town of Kennebunk," and as are dated 10-16-86. This map shall be deemed an integral part of this Ordinance and shall be maintained on file at the Town office.
- (2) The Branch Brook Aquifer Protection District consists of aquifers and aquifer recharge areas comprised of the following elements:

**Zone A**, as delineated on the official aquifer protection district map, which shall control, consists of the area in which it would take a leachable material introduced into the groundwater 200 days or less to reach Branch Brook or one of its tributaries. The travel time boundary of this zone is based on the length of time viruses present in wastewater can survive in the soil.

**Zone B**, as delineated on the official aquifer protection district map, which shall control, consists of the recharge area for Branch Brook and its tributaries.

- (3) If any portion of a lot is located in Zone A or Zone B, all the land located in Zone A shall be governed by the regulation for Zone A, and all the land located in Zone B shall be governed by the regulations for Zone B.
- (4) Where the boundary between Zone A and Zone B crosses a single lot, land in Zone A may be used to fulfill the minimum net lot area requirement for a one-family detached dwelling, provided no land in Zone A is used in lot development.
- (5) The delineation of aquifers, aquifer recharge areas, and Zones A and B may be revised by amendment to the official aquifer protection district maps in accordance with procedures listed below and in Article 12 of this Ordinance.

Where the bounds of Zone A or Zone B as delineated are in doubt or dispute, the Planning Board shall hold a public hearing to receive evidence from the concerned party. Within 30 days of the hearing the Planning Board shall decide whether to recommend to the Selectmen that an amendment to the official aquifer protection map be placed on the next Town meeting warrant. If

an amendment to the official aquifer protection map is approved by vote of the Town's legislative body, the date of the revision and the signature of the Chairman of the Planning Board certifying the revision shall be noted on the map.

In determining where the bounds should be properly located, the burden of proof shall be upon the party challenging the present definition of the bounds or the Town's interpretation thereof. The evidence shall include a report from a geologist licensed in the State of Maine with proven experience in hydrogeology. The Town may hire a hydrogeologist to review all information submitted by the concerned party and may charge the concerned party for the cost of the consultant. Or, at the request of the owner, the Town may engage a licensed geologist to determine more accurately the location and extent of aquifers, aquifer recharge areas, and Zones A and B, and may charge the concerned party for the cost of the investigation.

- (6) In the case of any proposed amendment to this district, the Planning Board shall notify the Kennebunk, Kennebunkport, Wells Water District of any hearing to amend the provisions of the district at least seven (7) days prior to the date of the hearing.

**C. Permitted Uses**

The following uses are permitted in Zone A or Zone B of the Branch Brook Aquifer Protection District, as indicated:

	Zone A		Zone B
1.	<u>The following resource protection uses:</u>		
	1-1 Forest management	1-1	Forest management
	1-2 Harvesting of wild crops	1-2	Harvesting of wild crops
2.	<u>The following resource production uses:</u>		
	2-1 Agriculture, excluding animal husbandry	2-1	Agriculture, excluding animal husbandry
	2-2 Timber harvesting	2-2	Timber harvesting
3.	<u>The following residential uses:</u>		
	3-1 Single-family detached dwellings which are not part of a mobile home park, only in conformance with Paragraph F(2)(c)	3-1	Single-family detached dwellings which are not part of a mobile home park
	3-2 Accessory dwelling unit only in conformance with Paragraph F(2)(c)	3-2	Accessory dwelling unit
	3-3 Two-family dwelling (vacant land only) only in conformance with Paragraph F(2)(c)	3-3	Two-family dwelling (vacant land only)
	3-4 Two-family detached dwelling (vacant land only) only in conformance with Paragraph F(2)(c)	3-4	Two-family detached dwelling (vacant land only)

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| 4. | <u>The following recreation and marine uses:</u>   |     |  |
|    | 4-1 Outdoor recreation involving minimal structural development or regrading of the land, such as fishing, hunting, hiking, and cross-country skiing | 4-1 | Outdoor recreation involving minimal structural development or regrading of the land, such as fishing, hunting, hiking, and cross-country skiing |
| 5. | <u>The following utility uses:</u>   |     |  |
|    | 5-1 Essential services   | 5-1 | Essential services   |
| 6. | <u>The following accessory uses:</u>   |     |  |
|    | 6-1 Accessory uses   | 6-1 | Renting of rooms; furnishing board, not to exceed four rented bedrooms   |
|    |  | 6-2 | Accessory uses   |
|    |  | 6-3 | Required subdivision improvements per Section 2.F.(2).(e)  |

**D. Special Exceptions**

The following uses may be permitted in Zone A or Zone B of the Branch Brook Aquifer Protection District, as indicated, only upon approval as special exceptions in accordance with Article 7 of this Ordinance, and only upon submission of the materials required in Subsection G of this Section.:

- |    | Zone A   |     | Zone B  |
|----|--|-----|---|
| 1. | <u>The following resource production uses:</u> |     |   |
|    |  | 1-1 | Animal husbandry  |
|    |  | 1-2 | Horticulture  |
| 2. | <u>The following institutional uses:</u>       |     |   |
|    |  | 2-1 | Municipal uses  |
|    |  | 2-2 | Nonresidential facilities for educational, scientific, and nature interpretation purposes |
|    |  | 2-3 | Day Care Centers  |
| 3. | <u>The following utility uses</u>              |     |   |
|    | 3-1 Public utilities                           | 3-1 | Public utilities  |
| 4. | <u>The following accessory uses:</u>           |     |   |
|    | 4-1 Home Occupations                           | 4-1 | Occupations   |

5. The following commercial uses:

- 5-1 Business and professional offices
- 5-2 Business services
- 5-3 Commercial schools
- 5-4 Rental of equipment
- 5-5 Veterinary clinics
- 5-6 Uses accessory to these uses

Any special exception use allowed under this subsection 5 shall be limited to the area delineated on the Town's Zoning Map as the Branch Brook-Zone B-BPA. Structures located in this area shall be served by public sewer

6. The following industrial uses:

- 6-1 Warehouses
- 6-2 Wholesale sales
- 6-3 Boat building
- 6-4 Manufacturing
- 6-5 Research and development
- 6-6 Testing facilities
- 6-7 Tradesmen shops, excluding vehicle repair
- 6-8 Uses accessory to these uses

Any special exception use allowed under this subsection 6 shall be limited to the area delineated on the Town's Zoning Map as the Branch Brook-Zone B-BPA. Structures located in this area shall be served by public sewer

**E. Prohibited Uses**

1. Except as allowed under Article 5, Section 6, of this Ordinance, uses not allowed as permitted uses or special exceptions are prohibited within this district.
2. Lots with two existing units, either a two-family or single family with an accessory dwelling unit, are not permitted to add an additional dwelling unit as of June 14, 2023

**F. Standards**

(1) Space and bulk standards

Minimum net lot area	3 acres
Minimum net lot area per dwelling unit	3 acres, provided that accessory dwelling units shall not require an increase in the minimum net lot area.
Minimum lot width	200 feet
Minimum setbacks	
Front yard	35 feet
Side yards (each)	35 feet
Rear yard	50 feet
Shoreland area	See Article 8, Section 16
Maximum height	35 feet
Maximum lot coverage	15 percent
Maximum impervious area of lot	25 percent
Maximum area stripped of existing vegetation	45 percent

(2) **Performance standards**

(a) Branch Brook Aquifer

Uses within the Branch Brook Aquifer Protection District shall conform to the performance standards set forth in Article 10, Section 4, of this Ordinance. These performance standards address clearing and timber harvesting, agriculture, animal husbandry, stormwater runoff, pollution levels, petroleum storage, subsurface waste disposal, home occupations, sand and gravel extraction, junkyards, and automobile graveyards, off-road vehicles, solid waste disposal, and use of pesticides. Any lawful use or structure which is made nonconforming by the enactment of the provisions of this district may be continued but must meet all applicable performance standards by December 16, 1988.

(b) Shoreland Overlay District

All uses within the shoreland area, as defined in this Ordinance, shall comply with the provisions of Article 8, Section 13, and of Article 10, Section 3, of this Ordinance. Where the performance standards for the Branch Brook Aquifer and for the shoreland area differ, the stricter shall apply.

(c) Dwellings

Any single lot of record existing legally as of December 16, 1986, and lying totally within Zone A may have residential units per Section C.3. Zone A (above)

and a wastewater disposal system that meets the subsurface wastewater requirements located on it and provided this use conforms with all other applicable laws and regulations. The applicant must produce proof from the Registry of Deeds that the lot existed prior to December 16, 1986.

- (d) Open Space Subdivisions  
Open space subdivisions are prohibited within the Branch Brook Aquifer Protection District.
- (e) Subdivisions  
For subdivisions located within this district, the Planning Board shall apply the purpose, terms and criteria of this Article 8, Section 2 and of Article 10, Section 4 in its review. Recreation and other improvements which are required by the Planning Board as part of the subdivision plan approval process, shall be reviewed according to these same terms and criteria; however, any use of fertilizer or sanitary facilities shall additionally require approval of the Kennebunk, Kennebunkport, Wells Water District.
- (f) Other Performance Standards  
Uses within the Branch Brook Aquifer Protection District shall, additionally, conform to the following performance standards:
  - i. Private outdoor lighting Article 10, Section 6
  - ii. Signs Article 10, Section 7
  - iii. Off-street parking Article 10, Section 9
  - iv. Accessory dwelling unit Article 10, Section 15
  - v. Water and wastewater Article 10, Section 8

**G. Special Submission Requirements**

Any person proposing a one-family home in Zone B shall submit the following materials to the Code Enforcement Officer with his building permit application; any person applying for a special exception in Zone B shall submit the following materials to the Planning Board as part of his special permit application. Any person proposing to continue the nonconforming use of "limited" or "restricted" use of herbicides shall submit the following materials to the Hazardous Materials Control Board as part of his application for a permit to do so. The Code Enforcement Officer, Planning Board, or Hazardous Materials Control Board, as provided by this Ordinance, shall review these materials and approve the application only if the proposal meets all standards for the Branch Brook Aquifer Protection District, including those contained in this Article 8, Section 2 and in Article 10, Section 4.

- (1) A site plan to a scale no smaller than 1 inch equals 100 feet showing:
  - (a) Aquifer Protection District boundaries if they cross the parcel;
  - (b) Boundaries of the site and abutting streets;
  - (c) Outlines of all buildings;
  - (d) Layout and location of access drives, parking areas, and vehicular maneuvering areas;

- (e) Location of all storage tanks;
  - (f) Location of buffers, landscaping, and existing vegetation which will be retained;
  - (g) Location and description of storage areas and types of materials to be stored;
  - (h) Location of subsurface waste disposal systems, sewage lift stations, force mains, and grease traps; and
  - (i) Location of nearby wells or surface water bodies which are part of a public or private drinking water supply.
- (2) A description of the manner in which the applicant shall meet all applicable Performance Standards.
- (3) Where applicable:
- (a) A complete list of all chemicals, fertilizers, herbicides, pesticides, fuels, and other potentially toxic or hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use, and a description of measures to provide for control of leaks or spills.
  - (b) For a permit to continue grandfathered use of pesticides and herbicides, a complete list of products proposed for application to the land, quantities to be applied, schedule of application, and a detailed description of the application program.
  - (c) For animal husbandry operations, a Conservation Plan, reviewed by the York County Soil and Water Conservation District.
  - (d) For single-family homes with wastewater disposal systems, a completed site evaluation form (HHE-200).
- (4) In addition, when necessary to ensure compliance with the approved standards, the reviewing agency may require:
- (a) A site plan showing groundwater contours of the seasonal high water table.
  - (b) A hydrogeological study of the proposed use or activity's impact on groundwater.
  - (c) Water quality data from on-site monitoring wells.
  - (d) Any other information needed to prove that the use will not adversely affect water quality.

**H. Water Quality Monitoring Wells**

The Planning Board, acting on its own or upon referral from the Code Enforcement Officer, may require installation and regular sampling of water quality monitoring wells for any existing or

proposed use for which there is evidence of its being a significant actual or potential source of pollutants.

- (1) The number, location, and depth of monitoring wells shall be determined by a hydrogeologist chosen or approved by the Town and shall be installed and sampled in accordance with "Guidelines for Monitoring Well Installation and Sampling" (Tolman, Maine Geologic Survey, 1983). Monitoring wells shall be installed on the property, at the expense of the owner or occupant, within 500 feet of actual or potential pollution sources.
- (2) The Planning Board shall determine, in consultation with the Kennebunk, Kennebunkport, Wells Water District and/or a hydrogeologist, how often monitoring wells shall be sampled. Water quality sample results from monitoring wells shall be submitted to the Planning Board and the Kennebunk, Kennebunkport, Wells Water District with evidence showing that contaminant concentrations meet the performance standard for pollution levels.