

# Article 41 – Submission #3 Final Version of By-Law

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June 6, 2016  
Article 41  
Town of Petersham

## **Petersham By-law Article XII: Petersham Historic District, Historic District Commission and Historical Commission By-law**

### **SECTION 1. PURPOSE**

The purpose of this By-law is to promote the educational, cultural, economic, and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings, places, and districts of historic and architectural significance in the Town of Petersham, through the maintenance of appropriate settings for such buildings, places, and districts as a tangible reminder of the historic tradition of the Town of Petersham.

### **SECTION 2. ESTABLISHMENT OF THE HISTORIC DISTRICT**

There is established in the Town of Petersham an Historic District according to the provisions of Chapter 211 of the Massachusetts Acts of 1966, and subject to amendment by Town Meeting vote as provided for in Chapter 211 and this By-law. The boundaries of the Historic District are shown on a map entitled “Petersham Historic District,” dated May 26, 2016, which is on file with the Town Clerk of the Town of Petersham and recorded in the Registry of Deeds. A copy of this map can be found at the end of this By-law.

The Historic District extends from a public way in the Historic District, as defined in this By-law, to the rear bounds of a lot or 200 feet, whichever is the less.

### **SECTION 3. DEFINITIONS**

As used in this By-law, the following words and terms shall have the following meanings:

Altered - includes rebuilt, reconstructed, restored, removed, and demolished;

Building - is a combination of materials having a roof and forming shelter for persons, animals, or property;

Commission - refers to The Historic District Commission established by Section 4;

Erected - includes built, constructed, reconstructed, restored, altered, enlarged, and moved;

Exterior Architectural Feature - means the architectural style and general arrangement of such portion of the exterior of a building or structure as is open to view from a public way in the Historic District, including the kind and texture of the building materials of such portion, and the type and style of windows, doors, and other fixtures appurtenant to such portion of the exterior;

Historic District - refers to the district established by Section 2 and any other district established pursuant to Section 11;

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Person - includes an individual, a partnership, a corporation, an unincorporated organization, association, or other entity;

A Public Way in the Historic District - North Main Street, South Main Street, Common Street, and North Street comprise the Public Ways in the Historic District;

Structure - a combination of materials assembled at a fixed location to give support or shelter or for other purposes, including a building, framework, swimming pool, shed, platform, tower, or similar object;

Capitalized terms not defined in this By-law shall have the meaning given in Chapter 40C of the Massachusetts General Laws.

### **SECTION 4. CREATION AND ORGANIZATION OF HISTORIC DISTRICT COMMISSION**

An Historic District Commission in the Town of Petersham is hereby established that shall consist of seven unpaid members, at least four of whom shall be residents and property owners of the Town, who shall be appointed by the Selectboard for terms of five years in the manner and for the terms of office as herein provided, and who shall serve until their successors are appointed and qualified:

- one member shall be a registered architect, or, in the event that none is available to serve, a person who has had architectural training and background;
- one member shall be appointed from two nominees of the Petersham Historical Society;
- one member shall be appointed from two nominees of the Planning Board of the Town of Petersham;
- one member shall be appointed from among the residents and property owners of the Historic District;
- one member shall be appointed who, in the opinion of the Selectboard, is qualified by reason of his experience in the building trades;
- two members will be chosen from Petersham residents at large.

If within thirty days after submission of a written request for nominees to an organization entitled to submit nominations for membership on the Commission, or search for an individual meeting the above qualifications, no such nominations have been made, or no such qualified individual can be found, the Selectboard may proceed to make the appointment to the Commission without nomination by such organization, or to an individual without such qualification.

As the term of office of each of the members shall expire, his successor shall be appointed in the same manner for a term of five years. All nominations for appointment of members of the Commission shall be submitted to the Selectboard by a letter that includes a statement of the

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qualifications of the nominees. A member of the Commission may be removed from office for cause by the Selectboard after a public hearing. A vacancy in the membership of the Commission shall be filled by appointment for the unexpired term in the manner specified for the original appointment to the term vacated. The Commission shall elect annually a Chairperson, a Vice-Chairperson, and a Clerk from its membership. In the case of absence of the Chairperson from any meeting the Vice-Chairperson shall preside, and in his absence the Commission shall elect a temporary Chairperson for such meeting.

### **SECTION 5. REQUIRED CERTIFICATES AND PERMITS**

Except as provided in Section 6, any person who desires to erect, build, construct, reconstruct, restore, alter, move, demolish, remove, or change any building or structure within the Historic District shall file with the Commission an application for a Certificate of Non-applicability; or a Certificate of Appropriateness, together with such plans, elevations, specifications, material and other information as shall be deemed necessary by the Commission to enable it to make a determination with respect to the application.

1) No building or structure, except as provided in Section 6, shall be erected within the Historic District unless and until either a Certificate of Appropriateness or a Certificate of Non-applicability has been issued by the Commission.

2) No building or structure within the Historic District, except as provided in Section 6, shall be changed as to exterior features until either a Certificate of Appropriateness or a Certificate of Non-applicability has been issued by the Commission.

3) No building or structure within the Historic District, except as provided in Section 6, shall be demolished or removed unless and until an application for a Certificate of Appropriateness has been filed with the Commission, and such Certificate has been issued by the Commission.

4) No occupational, commercial or other sign or billboard, except as provided in Section 6, that is subject to view from a public way in the Historic District, shall be erected within the Historic District unless and until either a Certificate of Non-applicability or a Certificate of Appropriateness has been issued by the Commission.

5) Except in cases excluded by Section 6.

a) No building permit shall be issued by the Town of Petersham for any building or structure to be erected within the Historic District until a Certificate of Appropriateness or a Certificate of Non-applicability has been issued by the Commission.

b) No permit shall be issued by the Town of Petersham for the demolition or removal of any building or structure within the Historic District until a Certificate of Appropriateness has been issued by the Commission.

c) No building permit shall be issued by the Town of Petersham for a change in an architectural feature within the Historic District until a Certificate of Appropriateness has been issued by the Commission.

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## SECTION 6. EXCLUSIONS, LIMITATIONS, AND EXCEPTIONS

- 1) The powers and authority of the Historic District Commission shall be limited to exterior architectural features within the Historic District that are visible from a public way within the Historic District as defined in Section 3.
- 2) The Historic District Commission shall have no authority over the following:
  - a) The color of paint on all exterior surfaces;
  - b) The materials used on roofs;
  - c) Walls, fences, terraces, storm doors and storm windows, lighting fixtures, antennae;
  - d) Temporary structures or signs for use in connection with any official celebration or parade, or any charitable drive in the Town; provided, that any such structure or sign shall be removed within seven days following the termination of the celebration, parade or charitable drive for which such structure or sign shall have been erected or displayed; and any other temporary structure or signs which the Commission shall determine from time to time may be excluded from the provisions of Section 5 without substantial derogation from the intent and purposes of this By-law;
  - e) Real estate signs of not more than six square feet in area advertising the sale or rental of the premises on which they are erected or displayed and which are not illuminated provided not more than two such signs are displayed in connection with each such premises;
  - f) Occupational signs in connection with a residence of not more than one square foot in area, provided only one such sign is displayed in connection with each residence, and one sign in connection with each non-residential use that is not more than twelve square feet in area, consists of letters painted on wood without symbol or trademark and if illuminated is illuminated only indirectly;
  - g) The reconstruction, substantially similar in exterior design, of a building or structure damaged or destroyed by fire, storm or other disaster, provided such reconstruction is begun within one year thereafter and carried forward with due diligence.
- 3) Nothing in this By-law shall be construed to prevent the ordinary maintenance, repair, or replacement of any exterior architectural feature of any building or structure within the Historic District; nor shall anything in this By-law be construed to prevent landscaping changes; nor shall anything in this act be construed to prevent the erection, construction, reconstruction, restoration, alteration, or demolition of any such feature which a duly authorized public officer shall certify is required by the public safety because of an unsafe or dangerous condition; nor shall anything in this By-law be construed to prevent any construction, reconstruction, alteration, or demolition under a permit issued prior to the effective date of said Chapter 211 of the Acts of 1966.
- 4) The Commission may determine from time to time that certain categories of architectural features, structures, or signs may be erected or installed without review by the Commission provided there is no substantial derogation from the intended purposes of this By-law; and while any such determination by the Commission is in effect, any such categories so enumerated by

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the Commission may be erected or installed without the filing of an application for, or the issuance of, a Certificate of Appropriateness.

### **SECTION 7. MEETINGS, HEARINGS, TIME FOR MAKING DETERMINATIONS**

Meetings of the Commission shall be held at the call of the Chairperson and shall be called at the request of three members of the Commission and in such other manner as the Commission shall determine in its rules. Four members of the Commission shall constitute a quorum.

The Commission shall determine, promptly, and within fourteen days after the filing of an application for a Certificate of Appropriateness, whether the application involves any features that are subject to approval by the Commission. If the Commission determines that the application involves such features, the Commission shall hold a public hearing on the application unless the hearing is waived as herein provided. The Commission shall also hold a public hearing on all other applications required to be filed with it under this By-law, or under any other by-law enacted by the Town.

The Commission shall fix a reasonable time for the hearing on any application and shall give public notice thereof at least fourteen days before said hearing by posting notice of time, place, and purpose of the hearing in two public places in the Town; and by mailing postage prepaid, a copy of said notice to the applicant, to the owners of all property deemed by the Commission to be materially affected thereby as they appear on the most recent real estate tax list of the Board of Assessors, to the Planning Board of the Town, and to such other persons as the Commission shall deem entitled to notice.

As soon as convenient after such public hearing but in any event within forty-five days after the filing of the application, or within such further time as the applicant may allow in writing, the Commission shall make a determination on the application. If the Commission shall fail to make a determination within said forty-five days, or within such further time allowed by the applicant, the Commission shall be deemed to have approved the application, and the Commission shall thereupon issue a Certificate of Appropriateness.

### **SECTION 8. POWERS, FUNCTIONS AND DUTIES OF COMMISSION**

The Commission shall have the following powers, functions and duties:

- 1) The Commission shall have the duty of implementing this By-law by receiving and reviewing applications in connection with construction, demolition, and alteration of architectural features of any building or structure within the Historic District and of issuing Certificates of Non-applicability and Certificates of Appropriateness;
- 2) The Commission shall not consider interior arrangements or building features not subject to public view;
- 3) The Commission shall not make any recommendation or requirement except for the purpose of preventing developments obviously incongruous to the historic aspects and the architectural integrity of the Historic District. In deciding on appropriateness the Commission shall consider, among other things, the historic value and significance of the site, building, or structure; the general design, arrangement, texture, and material of the features involved; and the relation of

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such factors to similar factors of sites, buildings, and structures in the immediate surroundings. The Commission shall also consider the applicable zoning and other by-laws of the Town;

4) If a proposal is determined to be inappropriate, the Commission shall determine whether, owing to conditions especially affecting the Historic District generally, failure to approve an application will involve a substantial hardship, financial or otherwise, to the applicant and whether such application could be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of this By-law. If the Commission determines that the features, demolition or removal involved will be appropriate or, although inappropriate, owing to conditions as aforesaid, failure to approve an application will involve substantial hardship to the applicant and approval thereof could be made without substantial detriment or derogation as aforesaid, the Commission shall approve the application; but if the Commission does not so determine, the application shall be disapproved;

5) In approving an application the Commission may impose conditions that, if the Certificate of Appropriateness is acted upon, shall be binding upon the applicant, the owner of the property, and his successors in title. Prior to approving an application subject to conditions the Commission may notify the applicant of its proposed action and permit the applicant to express his opinion thereon;

6) In the case of a determination by the Commission that an application for a Certificate of Appropriateness does not involve any exterior architectural feature, or is excluded by Section 6, the Commission shall cause a Certificate of Non-applicability, dated and signed by its Chairperson or Vice-Chairperson, to be issued forthwith to the applicant;

7) In the case of an approval by the Commission of an application for a Certificate of Appropriateness or in the event an application is deemed approved through failure to make a determination within the time specified in Section 7, the Commission shall issue a Certificate of Appropriateness, dated and signed by its Chairperson or Vice-Chairperson, to the applicant;

8) In the case of disapproval of an application for a Certificate of Appropriateness, the Commission shall issue a notice of its determination, dated and signed by its Chairperson or Vice-Chairperson, to the applicant, setting forth therein the reasons for its determination. The Commission may make recommendations to the applicant with respect to the appropriateness of design, arrangement, texture, material, and similar factors. Prior to the issuance of any disapproval the Commission may notify the applicant of its proposed action accompanied by recommendations of changes in the applicant's proposal that, if made, would make the application acceptable to the Commission. If within ten days of the receipt of such notice the applicant files a written modification of his application in conformity with the recommended changes of the Commission, the Commission shall issue a Certificate of Appropriateness, dated and signed by its Chairperson or Vice-Chairperson;

9) The Commission shall keep a permanent record of its resolutions, transactions, and determinations, and may make such rules and regulations consistent with this By-law and prescribe such forms as it shall deem desirable and necessary;

10) The Commission shall file with the Town Clerk and Town Building Inspector a notice of all determinations made by it, and approvals of application through failure of the Commission to make a determination within the time allowed under Section 7;

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11) The Commission may, subject to appropriation, employ technical assistants or consultants and incur other expenses necessary to the carrying on of its work and may accept money gifts and expend the same for such purposes. The Commission may accept gifts of easements or other interests in real property that the Commission may determine will protect the Historic District or otherwise carry out the purpose of this By-law;

12) The Commission shall have, in addition to the powers, authority and duties granted to it by this By-law, such powers, authority and duties as may be delegated to it from time to time by vote of a Town Meeting.

### **SECTION 9. APPEALS**

Any person aggrieved by a determination of the Commission, whether or not previously a party to the proceeding, or any officer or board of the Town may, within twenty days after the filing of a notice of such determination with the Town Clerk, appeal to the Worcester County Superior Court.

### **SECTION 10. ENFORCEMENT**

Any person who violates any of the provisions of this By-law shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than two hundred dollars. The Worcester County Superior Court, upon the petition of the Selectboard, shall have jurisdiction to enforce the provisions of this By-law and any by-law enacted hereunder and the determinations, rulings and regulations issued pursuant thereto and may restrain by injunction violations thereof and issue such other orders for relief of violations as may be required.

### **SECTION 11. CHANGES IN HISTORIC DISTRICT**

The district established by Section 2 may be enlarged or reduced and new districts may be created by a two thirds vote of any regular or special Town Meeting, the warrant for which shall contain an article or articles for the purpose. Prior to any such action the Planning Board of the Town shall hold a public hearing thereon and shall report its recommendations to the Town Meeting. The Planning Board shall give due notice of such hearing at least fourteen days prior thereto by posting in the Town and by mailing, postage prepaid, a copy of said notice to the owners of all properties to be included in or removed from an historic district.

### **SECTION 12. HISTORICAL COMMISSION**

An Historical Commission in the Town of Petersham is hereby established under the provisions of the Massachusetts General Laws, Chapter 40, Section 8D, for the purposes and with the rights and duties provided by law. The Historical Commission is concerned with the preservation, protection, and development of the historical and archeological assets of the town. The Historical Commission shall conduct researches for places of historic or archeological value, shall cooperate with the State Archeologist in conducting such researches or other surveys, and shall seek to coordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print, and distribute books, maps, charts, plans, and pamphlets that it deems necessary for its work. For the purpose of protecting and preserving such places, it may make such recommendations as it deems necessary to the Selectboard and,

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subject to their approval, to the Massachusetts Historical Commission, that any such place be certified as an historical or archeological landmark. It shall report to the state archeologist the existence of any archeological, paleontological, or historical site or object discovered in accordance with Massachusetts General Laws Chapter 9, Section 27C, and shall apply for permits necessary pursuant to said Section 27 C. Any information received by the Historical Commission with respect to the location of sites and specimens, as defined in said Chapter 9, Section 26B, shall not be a public record.

The Historical Commission may:

hold hearings;

enter into contracts with individuals, organizations and institutions for services furthering the objectives of the Historical Commission's program;

enter into contracts with local or regional associations for cooperative endeavors furthering the Historical Commission's program;

accept gifts, contributions and bequests of funds from individuals, foundations and from federal, state, or other governmental bodies for the purpose of furthering the Historical Commission's program;

make and sign any agreements and may do and perform any and all acts that may be necessary or desirable to carry out the purposes of this By-law.

The Historical Commission shall keep accurate records of its meetings and actions and shall file an annual report, which shall be printed in the annual Town report.

The Historical Commission shall consist of seven members, those members being the same as those appointed to the Historic District Commission. Four members of the Historical Commission shall constitute a quorum.

A True Copy Attest

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Diana L. Cooley, Town Clerk