

ZONING BOARD OF APPEALS - TOWN OF PETERSHAM  
RULES AND REGULATIONS  
ADOPTED PURSUANT TO MGL C. 40A, S 12

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Adopted on Nov. 20, 1991

Chip Benson  
Ann Mayes  
Mary Anne Walker  
Kay Berry  
Don Eaton

ZONING BOARD OF APPEALS - TOWN OF PETERSHAM  
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These rules establish the procedures for the operation of the Petersham Zoning Board of Appeals. These rules are not a complete statement of all pertinent laws and rules governing zoning appeals. In cases of inconsistency between these rules and the Petersham Zoning By-laws, the Bylaw shall govern. In cases of inconsistency between these rules, the Petersham By-laws and the State law, the State law shall govern.

ARTICLE I  
ORGANIZATION

Section 1. Members and Officers

The Zoning Board of Appeals (herein referred to as the Board) shall consist of three (3) regular members and two (2) associate members appointed by the Board of Selectmen. Regular members shall elect annually a chairman from it's own number and a clerk. Vacancies for unexpired terms shall be filled by appointment by the Board of Selectmen. The Board may, subject to appropriation, employ experts, clerical and/or other assistants.

Section 2. Chairman: Powers and Duties

The Chairman shall vote and be recorded on all matters coming before the Board. Subject to these rules s/he shall decide all points of order, unless overruled by a majority of the Board in session at that time. S/he shall appoint such committees as may be found necessary or desirable. In addition to the powers granted by the General Laws of the Commonwealth of Massachusetts and the Zoning By-Laws of the Town of Petersham and subject to these rules and further instruction of the Board, the Chairman shall transact the official business of the Board, supervise the work of the Clerk, request necessary help, direct the general work of the Board, and exercise general supervisory power. S/he shall at each meeting report the official transactions that have not otherwise come to the attention of the Board.

Section 3. Acting Chairman: Powers and Duties

In the event the Chairman is absent, disabled, or otherwise unable to perform his/her duties, the Board may, by majority vote, elect a regular member to serve as acting Chairman.

Section 4. Clerk: Powers and Duties

The Clerk shall supervise all of the clerical work of the Board including all correspondence, send and/or file all notices required by law, prepare rules and orders of the Board, receive and scrutinize all applications for compliance

Section 4. Clerk: Powers and Duties  
(continued)

with the rules of the Board, keep dockets and minutes of the Board's proceedings, compile all required records, maintain all necessary files and indices and record the roll at all Board meetings. If the Clerk is absent, the Chairman shall appoint an acting Clerk.

Section 5. Associate Members

Associate members shall be appointed by the Board of Selectmen. The ZBA Chairman shall designate an Associate Member to sit on the Board in case of the absence, inability to act, or conflict of interest on the part of any Board member. In the event of any vacancy on the Board, the Chairman shall designate an associate member to sit on the Board until said vacancy is filled by the Board of Selectmen.

Section 6. Removal of Board Members

Any member may be removed for cause by the Board of Selectmen upon written charges and after a public hearing conducted by the Board of Selectmen.

Section 7. Quorum and Voting Requirements

A quorum shall consist of having all three (3) regular members of the Board or designated alternates being present and able to vote on matters. A vote to decide to grant requested relief requires a unanimous vote. All votes other than votes to decide to grant requested relief require a simple majority vote of the Board.

Section 8. Regular Meetings

Regular meetings are scheduled once per month. Meeting days and times are posted on both the Town Bulletin Board in the Town Offices and in the Post Office. If a regular meeting day falls on a holiday or any day of a national, state, or municipal election, caucus or primary or is in conflict with a session of Town Meeting, the meeting may be held on an alternate date. Regular meetings shall be open to the public pursuant to MGL C.39, S23A - S23C. Except in an emergency, a notice of each Board meeting shall be filed with the Town Clerk, and a notice or copy thereof shall be publicly posted in the office of the Town Clerk or on the Town Bulletin Board in the Town Office at least 48 hours, including Saturdays, but not Sundays and legal holidays, prior to such meetings.

Business at such meetings shall include site and other plan examinations and all other matters in the province of the Board including applications for special permits, variances and appeals from the decision of the Building Inspector. Public hearings on applications and appeals before the Board may be held prior to or following the regular meeting, as designated by the Chairman. Regular meetings, while open to the public, are not public hearings. The Board will seek information or testimony as it deems necessary. Unsolicited

Section 8. Regular Meetings  
(continued)

comments from the public may, at the discretion of the Chairman, be ruled out of order.

Site plans which come to the Board may be sent to the Planning Board for an advisory opinion or Town Counsel as necessary.

Section 9. Special Meetings

Special meetings may be called by the Chairman, or at the request of a quorum of the Board. Written notice thereof shall be given to each member and associate member at least forty-eight (48) hours before the time set, except that an announcement of a special meeting at any meeting attended by all members shall be sufficient notice of such meetings. Notices shall be posted publicly as required by Section 8 above.

Section 10. Viewings

The Board may decide to conduct a site visit of the property which is the subject of a permit or variance application or appeal matter. Applicants should be prepared to meet with the Board at the site before the public hearing date or at any later date to be determined by the Board.

Section 11. Public Hearing Schedule and Procedure

- a. Before the hearing maps, photographs, or other visual displays should be set up.
- b. People planning to speak should sign-in or indicate their intention to address the hearing to the Board Chairman.
- c. The Chairman will call the hearing to order, announce the purpose and describe the rules of procedure for the hearing. The notice of publication or posting for the hearing will be read including date, where posted, where published and the procedures used to notify all interested parties will be stated and entered into the record.
- d. If testimony is to be given under oath, speakers so designated will be administered the oath by the Chairman.
- e. Comments or arguments shall be made in the following order:
  - i. Applicant(s) and/or proponent(s).
  - ii. Questions from the Board.
  - iii. Questions from the Public.
  - iv. Opponent(s).
  - v. Questions from the Board.
  - vi. Questions from the Public.

Section 11. Public Hearing Schedule and Procedure  
(continued)

- vii. Concluding statement/rebuttal by applicants or proponents.
  - viii. Concluding statement/rebuttal by opponents.
- f. The Chairman, in consultation with the Board, may choose to call one or more 10 minute recesses during the meeting.
  - g. Questions from the public will be addressed through the Chairman and questioners will be asked to identify themselves, state their questions and specify to whom it is addressed.
  - h. If the Board determines that the public hearing needs to be continued to another time and/or date they shall vote by majority to do so. At the conclusion of a public hearing that is to be continued, the Chairman shall state the intention of the Board to continue the public hearing to a specific time, date, and place.
  - i. Following the conclusion of testimony, if the hearing has been held separate from a Board meeting, the Chairman will formally adjourn the public hearing. If the hearing is part of the agenda at an otherwise scheduled Board meeting, the Chairman will formally close the public hearing portion of the agenda.
  - j. The Board may either continue in open meeting to discuss the application/matter of concern or the Board may choose to take the matter under advisement to a subsequent date and act thereon.
  - k. The required time limits for the holding of a public hearing and rendering of a decision may be extended by written agreement between the Board and the applicant(s). A copy of the agreement shall be filed with the Town Clerk.
  - l. An applicant may appear in his or her behalf, or be represented by an agent or attorney. In the absence of any appearance without due cause on behalf of an applicant, the Board shall decide on the matter using the information it has otherwise received, or it may vote pursuant to Article III, Section 2, that it is withdrawn without prejudice.

ARTICLE II  
APPLICATIONS TO THE BOARD

Section 1. Application Form

Every application for action by the Board, including appeals from decisions of the Building Inspector and applications for special permits, variances, and comprehensive permits shall be made on the official form of the Board and shall be furnished by the Town Secretary. Any communication purporting to be an application shall be treated as merely advisory and no application shall be deemed to have been filed, until such time as it is made on the official application form, all required documents are attached to the application, the fee is paid, and the application and documents are filed with the Town Clerk.

Section 2. Abutter's List

Each application shall be accompanied by a list of all names and addresses of abutters within three hundred (300) feet of the subject property, and landowners directly opposite on any public or private street, as well as abutting towns. Names and addresses shall be in label format and shall be listed as they appear on the most recent applicable tax list certified by the Board of Assessors.

Section 3. Plan of Land to Accompany Documents (See Samples)

Each application and petition to the Board shall be accompanied by three (3) copies of the following described plan. Plans must be submitted with the application. Failure to comply with the requirement may result in a dismissal of an application as incomplete.

A. Size of plan: 8 1/2" x 11" or 11" x 17" drawn to scale.  
Preferred scale: 1" = 40'

B. Features to be indicated on plan (Site orientation)

- 1) North point
- 2) Names of streets
- 3) Wetlands (if applicable)
- 4) Names of owners of properties within a minimum of 300 feet shown on the most recent tax list
- 5) Location of buildings on surrounding properties

C. Legend & graphic aids

- 1) Existing features to be shown in black
- 2) Setback, side, and rear yard dimensions shall be indicated by dashed line
- 3) Graphic scale
- 4) Date of plan
- 5) Title of plan
- 6) Names of applicant(s), owner of record (if different), and designer or surveyor
- 7) Location of wells and septic systems

#### Section 4. Fees

All applications for action by the Board shall be accompanied by cash or certified check, payable to the Town of Petersham, in the amount of fifty (50.00) dollars. The applicant shall also be responsible for the cost of advertising and notice of the public hearing.

#### Section 5. Filing

All applications shall be filed with the Town Clerk. A copy certified as to date of filing with the Town Clerk shall be filed forthwith with the Board. The date of the receipt as indicated by the Town Clerk shall be considered to be the date on which the application has been filed with the Board. It shall be the responsibility of the applicant to furnish all supporting documentation with the application.

#### Section 6. Special Permits

##### Section 6.1 Application Plans and Specifications

See Article II Section 1-5.

##### Section 6.2 Notice

In all cases where a public hearing is required notice shall be given by:

1. Publication in a newspaper of general circulation in the town in each of two (2) successive weeks.
2. The first publication in the newspaper will not be less than fourteen (14) days before the day of the hearing.
3. The notice shall be posted on the town bulletin board and in the post office for a period of not less than fourteen (14) days before the day of such hearing.
4. Notice shall be sent to all parties in interest by mail, postage prepaid.
5. "Parties in Interest" shall mean:
  - a. The Petitioner
  - b. The Respondent (if any)
  - b. The Abutters
  - c. The Owners of land directly opposite on any public or private way or street.
  - d. The Abutters to the abutters within three hundred (300') of the property line of the petitioner.  
(for both c & d names are as of the most recent applicable Tax Assessor's List)

Section 6.2      Notice  
(continued)

- e. The Board of Selectmen
  - f. Board of Health
  - g. Building Inspector
  - h. Conservation Commission
  - i. The Planning Board of the town.
  - j. The Planning Board of every abutting town  
(if the property in question abuts the town line).
6. Publications and notices required by these procedures shall contain:
- a. The name of the Petitioner
  - b. A description of the area or premises
  - c. The street addresses, or if not applicable, other adequate identification of the location.
  - d. The date of the hearing.
  - e. The time of the hearing.
  - f. The place of the hearing.
  - g. The subject matter of the hearing.
  - h. The nature of the action or relief requested.
7. No such hearing shall be held on any day on which state or municipal elections, caucuses, or primaries are held in the Town.

Section 6.3      Public Hearings

1. Upon receipt of the application, the Board of Appeals must hold a public hearing within sixty-five (65) days of the application being filed.
2. It should be noted on the application, immediately upon filing, the date this application has been filed and sixty-five (65) days from the date should be calendared so that a hearing is definitely scheduled within that time.
3. Required time limits for a public hearing and action may be extended by written agreement between the Petitioner and the Board. This agreement must be filed with the Town Clerk.
4. Notice of the hearing should be mailed to all interested parties, published in the paper and posted pursuant to Section 6.2.
5. The hearing must be held where the Petitioner, those speaking in support of the application and those speaking against the application may be heard.

Section 6.3        Public Hearings  
(continued)

6. Notes or a tape recording of the hearing should be taken to make sure that a detailed record of the proceedings is preserved. A copy is to be filed within fourteen (14) days of the hearing with the Town Clerk.
7. After the Public Hearing, the Board shall, in accordance with Article XV S11 of the Petersham By-Laws, refer the request to the Board of Health, the Planning Board, the Conservation Commission, and the Selectmen who shall have the opportunity, within thirty-five (35) days of such reference, to report their respective recommendations in writing to the Board.
8. Notes or a tape recording of the discussion that occurs in anticipation of the Board voting to grant or deny should be taken to make sure that a detailed record of the proceedings is preserved. These notes should additionally indicate the vote of each member upon each question and set forth the Board's decision and reasons. Copies of all are to be filed within fourteen (14) days with the Town Clerk.
9. The Board shall, within ninety (90) days following a public hearing for which notice has been given by publication and posting, give notice of approval or denial of the special permit to the applicant.
10. Failure by the Board to take final action within ninety (90) days following the public hearing, shall be deemed to be a grant of the permit applied for. The Petitioner who seeks approval because the Board failed to act, shall notify the Town Clerk in writing within fourteen (14) days from the expiration of the ninety (90) days, of such approval and that notice was sent by the Petitioner to all parties in interest. This notice will specify that appeals shall be taken within twenty (20) days pursuant to General Laws, Chapter 40A, Section 17.

Section 6.4        Voting Requirements

Special permits issued by the Board shall require a unanimous vote of a three (3) member Board.

Section 6.5        Decisions

A copy of the Notice of Decision shall be mailed forthwith to the applicant, parties in interest as listed in the Notice and Publication requirement above, and to every person present at the hearing who requested that notice be sent to him or her and stated the address to which such notice was to

Section 6.5        Decisions  
(continued)

be sent. A copy of the notice shall additionally be filed within fourteen (14) days with the Town Clerk. This notice shall specify that appeals, if any, shall be made pursuant to General Law, Chapter 40A, Section 17 and shall be filed with the appropriate Court of Law within twenty (20) days. Decisions become final after the twenty (20) day appeal period has expired.

Section 6.6        Expiration

A special permit granted, shall lapse at the end of two (2) years from the granting if substantial use thereof is not sooner commenced, except for good cause shown.

Section 7.    Variances

Section 7.1        Application Plans and Specifications

See Article II sections 1-5.

Section 7.2        Notice

See Section 6.2.

Section 7.3        Public Hearings

1. Upon receipt of the application, the Board must hold a public hearing within sixty-five (65) days of the application being filed.
2. It should be noted on the application, immediately upon filing, the date this application has been filed and sixty-five (65) days from the date should be calendared so that a hearing is definitely scheduled within that time.
3. Required time limits for a public hearing and action may be extended by written agreement between the Petitioner and the Board. This agreement must be filed with the Town Clerk.
4. Notice of the hearing should be mailed to all interested parties, published in the paper and posted pursuant to Section 6.2.
5. The hearing must be held where the Petitioner, those speaking in support of the application and those speaking against the application may be heard.

Section 7.3      Public Hearings  
(continued)

6. Notes or a tape recording of the hearing should be taken to make sure that a detailed record of the proceedings is preserved. A copy is to be filed within fourteen (14) days with the Town Clerk.
7. After the Public Hearing, the Board shall, in accordance with Article XV S11 of the Petersham By-Laws, refer the request to the Planning Board, who shall have the opportunity, within fifteen (15) days of such reference, to report their recommendations in writing to the Board.
8. Notes or a tape recording of the discussion that occurs in anticipation of the Board voting to grant or deny should be taken to make sure that a detailed record of the proceedings is preserved. These notes should additionally indicate the vote of each member upon each question and set forth the Board's decision and reasons. Copies of all are to be filed within fourteen (14) days with the Town Clerk.
9. The Board shall, within one hundred (100) days following the filing of the application or petition for a variance, give notice of approval or denial of the special permit to the applicant.
10. Failure by the Board to take final action within one hundred (100) days following the petition for relief, shall be deemed to be a grant of the variance applied for. The Petitioner who seeks approval because the special permit granting authority failed to act, shall notify the Town Clerk in writing within fourteen (14) days from the expiration of the one hundred (100) days, of such approval and that notice was sent by the Petitioner to all parties in interest. This notice will specify that appeals shall be taken within twenty (20) days pursuant to General Laws, Chapter 40A, Section 17.

Section 7.4      Voting Requirements

Variations issued by a three (3) member Board shall require a unanimous vote.

Section 7.5      Decisions

A copy of the Notice of Decision shall be mailed forthwith to the applicant, parties in interest as listed in the Notice and Publication requirement above, and to every person present at the hearing who requested that notice be sent to him or her and stated the address to which such notice was to be sent. A copy of the notice shall additionally be filed

Section 7.5        Decisions  
(continued)

within fourteen (14) days with the Town Clerk. This notice shall specify that appeals, if any, shall be made pursuant to General Law, Chapter 40A, Section 17 and shall be filed with the appropriate Court of Law within twenty (20) days. Decisions become final after the twenty (20) day appeal period has expired.

Section 7.6        Expiration (Variance Lapse)

If the rights authorized by the variance are not exercised within one (1) year of the date the variance is granted, such rights shall lapse; however, the Board in its discretion and upon written application by the grantee of such rights, may extend the time to exercise such rights for a period not to exceed six (6) months; provided further, that the application for such extension is filed with the Board prior to the expiration of said one (1) year period.

If the Board does not grant such extension within thirty (30) days of the date of application thereof, and upon expiration of the original one (1) year period, such rights may be reestablished only after notice and a new hearing held pursuant to the provisions of this memo.

Section 7.7        Requirements for granting a Variance

A variance to the zoning by-laws may be granted where the Board finds all of the following:

1. A literal enforcement of the provisions of the by-laws would involve substantial hardship, financial or otherwise, to the petitioner. Such hardship shall not be self-imposed.
2. Owing to the circumstances relating to the soil condition, shape or topography of such land or structures and especially affecting such land or structures but not affecting, generally, the zoning district in which it is located.
3. Desirable relief may be granted without either:
  - a) substantial detriment to the public good.
  - b) nullifying or substantially derogating from the intent or purpose of this by-law.

The Board may impose conditions, safeguards, and limitations both of time and of use, including the continued existence of any particular structure, but excluding any conditions, safeguards, and limitations based upon the continued ownership of the land or structure to which the variance pertains, by the

Section 7.7 Requirements for granting a Variance  
(continued)

Petitioner, or any owner. In addition to considering the character and use of nearby buildings and land the Board, in determining its finding, shall take into account present and probable future traffic conditions.

Section 8. Appeals

Section 8.1 Application Plans and Specifications

See Article II section 1-5.

Section 8.2 Notice

See Section 6.2.

Section 8.3 Public Hearings

1. Upon receipt of the application, the Zoning Board of Appeals must hold a public hearing within sixty-five (65) days of the application being filed.
2. It should be noted on the application, immediately upon filing, the date this application has been filed and sixty-five (65) days from the date should be calendared so that a hearing is definitely scheduled within that time.
3. Notice of the hearing should be mailed to all interested parties, published in the paper and posted pursuant to Section 6.2.
4. The hearing must be held where the Petitioner, those speaking in support of the application and those speaking against the application may be heard.
5. Notes or a tape recording of the hearing should be taken to make sure that a detailed record of the proceedings is preserved. A copy of all is to be filed within fourteen (14) days with the Town Clerk.
6. Notes or a tape recording of the discussion that occurs in anticipation of the Board voting to grant or deny should be taken to make sure that a detailed record of the proceedings is preserved. These notes should additionally indicate the vote of each member upon each question and set forth the Board's decision and reasons. Copies of all are to be filed within fourteen (14) days with the Town Clerk.

7. The Board shall, within one hundred (100) days following a public hearing for which notice has been given by publication and posting, give notice of approval or denial of the petition to reverse any order or decision of any administrative official.

#### Section 8.4 Voting Requirements

A unanimous vote of a three (3) member Board shall be necessary to reverse any order or decision of any administrative official.

#### Section 8.5 Decisions

A copy of the Notice of Decision shall be mailed forthwith to the applicant, parties in interest as listed in the Notice and Publication requirement above, and to every person present at the hearing who requested that notice be sent to him or her and stated the address to which such notice was to. A copy of the notice shall additionally be filed within fourteen (14) days with the Town Clerk.

### Section 9. Comprehensive Permits

#### Section 9.1 Application Plans and Specifications

See Article II section 1-5.

#### Section 9.2 Notice

See Section 6.2.

#### Section 9.3 Public Hearings

1. Upon receipt of the application, the Board must hold a public hearing within thirty (30) days of the application being filed.
2. It should be noted on the application, immediately upon filing, the date this application has been filed and thirty (30) days from the date should be calendared so that a hearing is definitely scheduled within that time.
3. Notice of the hearing should be mailed to all interested parties, published in the paper and posted in a conspicuous place in the Town Hall pursuant to Section 6.2.

Section 9.3      Public Hearings  
(continued)

4. The hearing must be held where the Petitioner, those speaking in support of the application and those speaking against the application may be heard.
5. Notes or a tape recording of the hearing should be taken to make sure that a detailed record of the proceedings is preserved. A copy of all is to be filed within fourteen (14) days with the Town Clerk.
6. Notes or a tape recording of the discussion that occurs in anticipation of the Board voting to grant or deny should be taken to make sure that a detailed record of the proceedings is preserved. These notes should additionally indicate the vote of each member upon each question and set forth the Board's decision and reasons. Copies of all are to be filed within fourteen (14) days with the Town Clerk.
6. The Board shall, within forty (40) days following the termination of the public hearing for which notice has been given by publication and posting, give notice of approval or denial of the comprehensive permit to the applicant.

Section 9.4      Voting Requirements

Comprehensive Permits issued by the Board shall require a unanimous vote of a three (3) member Board.

Section 9.5      Decisions

Decisions shall be rendered within forty (40) days after the termination of the public hearing, pursuant to MGL C.40B S21. A copy of the Notice of Decision shall be mailed forthwith to the applicant, parties in interest as listed in the Notice and Publication requirement above, and to every person present at the hearing who requested that notice be sent to him or her and stated the address to which such notice was to. A copy of the notice shall additionally be filed within fourteen (14) days with the Town Clerk.

ARTICLE III  
DISPOSITION BY THE BOARD

Section 1. Reapplication/Withdrawal

No appeal or application which has been unfavorably and finally acted upon by the Board shall be acted favorably upon within two (2) years after the date of final unfavorable action unless the following three (3) conditions are met.

- 1) The Board finds by unanimous vote, specific and material changes in the conditions upon which the previous unfavorable action was based, and describes such changes in the record of its proceedings.
- 2) All but one of the members of the Planning Board consents thereto.
- 3) Notice is given to parties in interest of the time and place of the proceedings when the question of such consent will be considered.

Any application for a variance or for a special permit which has been transmitted to the Board may be withdrawn without prejudice by the applicant prior to the publication of the notice of a public hearing thereon. After publication of the notice of a public hearing, withdrawal of the application without prejudice can only occur with the unanimous approval of the Board.

Section 2. Reconsideration

Once a decision has been voted upon and the meeting adjourned, minor amendments to the decision may be allowed by unanimous vote at a regularly scheduled meeting of the Board and major amendments may be allowed by unanimous vote only after a special public hearing is held.

ARTICLE IV  
POLICIES AND ADVICE

Section 1. Opinions and advice

Any advice, opinion, or information given by any Board member or any other official or employee of the Town shall not be binding on the Board.

Section 2. Waiver

The Board shall have the authority to alter or waive the requirements in Article II, Section 3 as it deems necessary or appropriate in particular cases.

Section 3. Amendments

These rules may be amended by unanimous vote of the members of the Board, provided that such amendment shall be presented in writing at a regular meeting and action taken thereon at a subsequent regular meeting.

ARTICLE V  
ADOPTION

The foregoing rules and regulations are hereby adopted this \_\_\_\_ day of \_\_\_\_ by the Zoning Board of Appeals; all former rules of this Board are hereby repealed.

Arthur Benson 2/3/92  
Chairman

Ann Mayes 2/3/92  
Clerk

Harry [unclear] 2/3/92  
Member

[unclear] 2/3/92  
Associate Member

Katherine P. Berry 2/3/92  
Associate Member