

ZONING  
BY-LAWS  
of the  
TOWN OF  
PETERSHAM  
MASSACHUSETTS

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### **SECTION 1. PURPOSE**

The purpose of this By-law is to promote the health, safety and general welfare of the inhabitants of Petersham; to lessen the danger from fire; to maintain the beauty of the Town; to secure the proper growth of the Town by encouraging the most appropriate use of land and buildings; and to stabilize the value of property; all as authorized by Chapter 40A of the General Laws (the Zoning Act), as from time to time amended, and other applicable provisions of law.

It should be noted that the use of land otherwise permitted by this Zoning By-law may be further regulated in particular cases by the requirements of the Board of Health, the Inland Wetland Protection Act and other applicable legislation, by-laws, or regulations.

## **SECTION 2. BASIC REQUIREMENTS**

Any building or structure hereafter constructed, reconstructed, altered, enlarged or moved, and any use of buildings, structures, or land in the Town of Petersham shall conform to the provisions of this Zoning By-law. Where applicable a building permit must be obtained from the Building Inspector. Construction or operations under a building permit or special permit shall conform to any subsequent amendment of this Zoning By-law unless the use or construction is commenced within six months after the issuance of the permit, and, in cases involving construction, unless such construction is continued through to completion as continuously and expeditiously as is reasonable.

## **SECTION 2B. MUNICIPAL EXEMPTION**

Existing buildings or structures owned by the Town of Petersham and to be used for municipal purposes shall be exempt from all the provisions of the Zoning By-law. This exemption will expire July 1, 2008.

Accepted STM 5/7/2007

Approved AG 7/19/2007

## **SECTION 3. ESTABLISHMENT OF DISTRICTS**

The entire Town of Petersham is hereby designated as a Residential – Agricultural District.

## **SECTION 4. DIMENSIONAL REQUIREMENTS**

No land shall hereafter be used or occupied, no lot changed in size or shape and no building or structure erected, altered, moved, or used unless it complies with the following dimensional requirements or is expressly excepted in this or other sections. A lot having an area or frontage of lesser amount than required in this By-law, but at least 5,000 square feet in area and with at least 50 feet frontage on a public way, shall be considered as meeting the requirements of this section provided it was shown on a plan or described as a separate lot in a deed, which plan or deed was duly recorded or registered prior to the adoption or amendment of this By-law, and provided such lot did not, at such time, adjoin other land of the same owner available for use in connection with such lot or parcel, or where such land is otherwise exempt under the provision of Chapter 40A as from time to time amended.

### TABLE OF DIMENSIONAL REQUIREMENTS

	Minimum Lot Area	Minimum Lot Frontage on a Street	Minimum Front	Yard Rear (b)(c)	Depth Side (b)(c)	Maximum height (d)	Maximum Building
Residential Use	1.5 acres	150 ft	40 ft	40 ft	20 ft	2.5 stories or 35 ft	20%
Business Use	1.5 acres	150 ft	50 ft	50 ft	50 ft or 35 ft	2.5 stories	20%
Rear Lots	1.5 acres plus access strip	40 ft on street 150 ft width of lot at front of house	40 ft	40 ft	20 ft	2.5 stories or 35 ft	20%

- a. An additional one-half acre is required for each dwelling unit in excess of two.
- b. Detached building and structures accessory to a residential use may be located up to within 10 feet of rear and side lot lines.
- c. For corner lots the front yard minimum shall apply to all buildings on each street.
- d. Height limitations shall not apply to chimney, antennae, towers, ventilators, tanks, silos, or similar structures not used for human occupancy.
- e. Within the bounds of any lot existing as of January 1, 2016 one rear lot may be created. In addition to the basic minimum lot area a rear lot shall have an access strip at least 40 feet wide from a public way to the rear lot, which access strip shall be in the same ownership as the rear lot; the width of the lot where the building or structure is to be located shall equal or exceed the number of feet otherwise required for street frontage measured on a line roughly parallel to the street; and the front, rear, and side yards on the rear lot with respect to such building or structure shall equal or exceed those required in this By-law.

Accepted ATM 6/1/2015

Approved AG 10/5/2015

### SECTION 5. USE REGULATIONS

- A. Permitted Uses: The following uses are permitted by right:
  - a. One-family dwelling.
  - b. Two-family dwelling, or conversion of an existing one-family dwelling into a two-family dwelling provided that parking requirements are met.

- c. Farm, orchard, greenhouse, horticultural nursery, truck garden, woodlot or breeding or training of domestic or farm animals but not including a kennel; may include the sale of agricultural or horticultural products at a roadside stand or otherwise, provided a substantial portion of such products has been raised on the premises.
  - d. Government, educational or religious use, provided it is carried on by a duly constituted governmental agency or by a non-profit entity.
  - e. Uses by a resident occupant customarily incidental or accessory to a residential use, provided that no exterior alterations be made which will change the residential appearance of the dwelling, that there be no exterior display of merchandise or exterior indication of the non-residential activity other than a permitted sign, that no more than one-third of the combined floor area of a dwelling and its accessory buildings be used for purposes of business or trade, and that all storage of materials, supplies, or equipment be indoors. Such uses may include, without limitation, a bakery, a barber or beauty shop, dressmaking, laundering, repair shop for small articles or appliances, a professional office or studio, or use of property in connection with his trade by a resident carpenter, contractor, electrician, painter, plumber, or other artisan.
  - f. Renting rooms to lodgers, boarders, or tourists provided that no separate cooking facilities are maintained for the lodger boarders or tourists and no more than four (4) rooms are rented. Such accommodations shall be limited to a total of six (6) persons in addition to the resident family.
  - g. Removal of soil, loam, sand, or gravel subject to ARTICLE XVI, Section 5E of the By-laws to the extent authorized thereunder.
  - h. An accessory building or structure on the same lot as the building or use to which it is accessory, provided that it is customarily incidental to a permitted principal use.
- B. Uses Which May Be Allowed: The following uses may be allowed by special permit from the Board of Appeals, after a public hearing and subject to such conditions and safeguards as the Board may impose in each case, all subject to the requirements and further provisions set forth in Section 11.
- a. Offices of a doctor, dentist, lawyer, architect or similar professional.
  - b. Accessory use in connection with scientific research or scientific development, or related production.
  - c. Telephone exchange or other communications facility, natural gas or electric power facility, bus station or other public utility or public carrier use.
  - d. Golf course or golf driving range, riding stable, outdoor tennis court, outdoor skating rink, outdoor swimming pool, ski area, cemetery, summer camp for

children or adults, but in each case only where users are admitted on payment of a fee, or annual dues.

- e. Sanatorium, nursing home, retirement home, convalescent home or hospital.
- f. Kennel, veterinary hospital.
- g. Private school, nursery school or kindergarten, trade or professional school.
- h. Private club not conducted for profit.
- i. Conversion of an existing dwelling into a maximum of four (4) dwelling units, provided that all lot size, setback and parking requirements are met.
- j. Construction of multi-family dwelling containing not more than six (6) dwelling units or apartments, provided that all lot size, setback and parking requirements are met.
- k. Antique or gift shop, restaurant or similar retail activity operated principally by those resident on the premises provided that no exterior alterations be made which will change the residential appearance of the building.
- l. Use of land, ponds and streams for hunting, fishing or similar outdoor recreational activities on a commercial basis, provided each such area is fifty (50) or more acres in size.
- m. Sawmill operations.
- n. Retail store, shoe repair, beauty shop or similar consumer service within a building no more than 2,500 square feet in area.
- o. Bank or business office within a building no more than 2,500 square feet in area.
- p. Restaurant within a building no more than 2,500 square feet in area, but not including a bar or night club.
- q. Motor vehicles, motor homes, and camping trailer sales and service.

Accepted STM 2/6/1989

Approved AG 4/10/1989

- r. Newspaper or job printer.
- s. Light manufacturing or processing activity within a building no more than 5,000 square feet in area. The Board of Appeals has the right to require additional lot size and setbacks.

- t. Research laboratory within a building no more than 5,000 square feet in area.
- u. Accessory use customarily incidental to a permitted principal use.
- v. A Conference Center to be utilized and occupied as a unit for business use and to be located in a structure containing at least 60,000 square feet of floor space (measured by American Institute of Architecture Standards) and existing as of June 1, 1988. The Conference Center may included residential and lodging facilities for staff and participants. Such use shall not include a restaurant or bar open to the public or a night club of any sort and shall not allow the landing of helicopters on the property. The applicant at his or her expense shall submit a comprehensive environmental impact study by a licensed environmental consultant as part of the application.

Accepted STM 6/27/1988

Approved AG 9/21/1988

Vote 176 yes – 55 no

- w. Inn and/or health education center including the operation of a restaurant/bar with a full liquor license, in a building pre-existing the passage of this By-law.

Accepted ATM 5/1/1989

Approved AG 11/9/1989

Vote 195 yes – 13 no

C. Prohibited Uses: The following uses are expressly prohibited:

- a. The operation, on a single lot of more than one of the principal uses described under B above except where the Board of Appeals finds such use to be complementary to each other.
- b. Any business or occupation which may be detrimental or offensive to the neighborhood or to the community by reasons such as odor, fumes, vapor, smoke, sewage, dust, refuse, noise, flashing lights, vibration or danger from fire or explosion or excessive vehicular or truck traffic.
- c. Drive-in motion picture theatre.
- d. Race track of any type or kind.
- e. Commercial radio, television, microwave, or other transmitting or receiving towers.
- f. No land within any use district in the Town of Petersham may be used for the collection, treatment, storage, burial, incineration, or disposal of radioactive waste, including but not limited to wastes classified as low-level radioactive waste.

## SECTION 6. SIGNS

This section regulates all exterior signs and all interior signs placed for exterior observance. Signs must be constructed of good material, firmly supported, maintained in good condition, and removed when the purpose for which they were erected no longer exists. Two identical flat signs back-to-back are to be considered one sign with the area of one face. No sign may be erected or relocated without a permit issued by the Building Inspector except as noted below.

Accepted 6/22/1981

1. For residential uses or uses permitted as of right, one identification sign is permitted for each family residing on the premises or for each permitted accessory use. Each such sign shall not exceed two and one-half square feet in area. For institutional uses one or more signs with an aggregate area of not more than twenty square feet are permitted.
2. For commercial uses authorized by the Board of Appeals by special permit under section 5B not more than two signs are permitted for each such use, the total area of such signs shall not exceed twenty square feet on non-scenic roads and six square feet on scenic roads.
3. No sign shall project above the roof line or wall coping of the building upon which it is located.
4. Signs, if illuminated, shall be lighted continuously and indirectly, shall not contain moving parts, and the lighting shall be shielded at its source from nearby properties and abutting streets. Self-illuminating signs and beacons, including but not limited to, exposed gas tube, exposed fluorescent, exposed incandescent, are not permitted, and rotating or flashing lights are not permitted.
5. No free-standing sign or advertising device shall extend more than ten feet above ground level, or be more than twenty square feet in area, and no such device shall project into or over any public way.
6. Advertising billboards and off-premises signs are not permitted except as follows by permit of the Board of Selectmen as provided in MGL Chapter 85, Section 8 and in accordance with the intent of this By-law.
  - a. A maximum of two directional signs limited to activities in the Town of Petersham are allowed and shall total not more than two square feet in area.
  - b. Temporary signs related to public, charitable, political or religious events are allowed and shall not be displayed for more than four weeks.



7. Any non-conforming signs legally erected prior to the adoption of this By-law, or any amendment thereof, may continue to be maintained. Such a non-conforming sign shall not be enlarged, redesigned or altered except in conformity with these By-laws.
8. "For Sale", "For Rent", or other signs indicating the private nature of property up to a limit of four square feet in area and not illuminated are allowed by right. "For Sale" or "Construction Under Way" signs shall be removed within one week after the property is sold, rented, or construction is completed.

#### **SECTION 7. PARKING REQUIREMENTS**

1. It is the intention of this By-law that all structures and land uses be provided with sufficient off-street parking spaces on the premises to meet their needs. No permit shall hereafter be issued for the erection of a new structure, the enlargement of an existing structure or the change or development of a use of land or structure, unless the plans show the location and size of the off-street parking required by this By-law and the means of access to such space from a street.
2. Off-street parking facilities shall be provided as follows, each space measuring 10' wide by 20' long:
  - a. Two parking spaces per dwelling unit.
  - b. One parking space for each two beds in a dormitory or similar facility without separate dwelling units.
  - c. For business and commercial use an area equal to twice the floor area of the business or commercial structure.
3. For parking areas of six cars or more, the following shall apply:
  - a. Their use shall not require backing onto a public way.
  - b. Such lots shall be separated by twenty feet from any abutting residential use and screened by opaque fencing or densely planted shrubs.
4. No off-street parking area shall be maintained within ten feet of a street line.

#### **SECTION 8. SPECIAL REQUIREMENTS**

1. Evidence of Wetlands: Whenever a land plan based on a survey or a work that did not cover wetlands is presented to the Planning Board, the plan shall bear on its face the following statement:

Warning: Wetlands or their bordering areas may be present. Under State law developments that disturb such lands are regulated by the Conservation Commission.

The appearance or non-appearance of wetlands on any plan and the endorsement by the Planning Board thereon will not relieve the lot owner from compliance with applicable laws.

2. Animals: Raising or harboring animals for profit shall be limited as follows:
  - a. Swine, poultry or animals raised for pelts shall not be kept within 150 feet of any property line or 400 feet of any residence not on the premises.
  - b. Stables or kennels shall not be located within 100 feet of any property line or 200 feet of any residence not on the premises.

## **SECTION 9. NON-CONFORMING USES**

1. This By-law shall not apply to existing buildings or structures, nor to the existing use of any building or structure or of land, to the extent to which it is legally used at the effective date of this By-law or any prior by-law, but it shall apply to any change of use thereof and to any reconstruction, extension or structural damage of existing buildings or structures, and to any use of buildings or structures or of land in a substantially different manner or to a use for the same purpose to a substantially greater extent. As the Town now has a single residential-agricultural district, business uses which have been allowed under prior By-laws are considered non-confirming uses except as they may be allowed as of right under part A of Section 5.
2. A non-conforming structure or use shall not be increased nor expanded in extent of use or size of structure, nor shall any major exterior alterations to a non-conforming structure be made, and an existing non-conforming use shall not be changed to any other non-conforming use except by special permit in each case from the Board of Appeals, upon a finding by the Board that such change, extension or alteration shall be not substantially more detrimental than the existing non-conforming use to the neighborhood.
3. A non-conforming use which has been discontinued for two years or more shall not be re-established except by special permit from the Board of Appeals.
4. A non-conforming use which has been changed to a more restricted or conforming use shall not, subsequently, be altered in such a way as to increase the degree of non-conformity.
5. A non-conforming structure or use which has been damaged or destroyed by fire or other accidental cause may be repaired or rebuilt and used as before, provided the repaired or reconstructed structure will be substantially equal in size, appearance and character to the original structure and the type and extent of non-conforming use, if any,

is substantially the same, and further provided such repair or reconstruction is begun within one year of the date of the damage and completed within two years of the date of the damage.

## **SECTION 10. ENFORCEMENT AND ADMINISTRATION**

1. The Building Inspector shall be charged with the enforcement of the Zoning By-law and shall withhold a permit for the construction, alteration or moving of any building or structure if the building or structure as constructed, altered or moved would be in violation of any Zoning By-law; and no permit or license shall be granted for a new use of a building, structure or land which use would be in violation of any Zoning By-law.
2. If the Building Inspector charged with enforcement of this Zoning By-law is requested in writing to enforce the By-law against any person allegedly in violation of the same and the Building Inspector declines to act, he shall notify, in writing, the party requesting such enforcement of any action or refusal to act, and the reasons therefor, within fourteen days of receipt of such request.
3. Where a special permit by the Board of Appeals is required under this By-law, the Building Inspector shall not issue a permit except in accordance with the written decision of the Board of Appeals.
4. Application for a permit for a building or other structure shall be accompanied by a Disposal Works Construction Permit issued by the Board of Health and a plan showing the dimensions of the lot, and the proposed location of the structure. All plans submitted shall be reviewed by the Planning Board prior to the issuance of a permit by the Building Inspector. Each such plan shall remain as part of the Town records.

## **SECTION 11. BOARD OF APPEALS**

There is hereby established a Board of Appeals which shall consist of three members and two associate members, all registered voters in the Town, who shall be appointed by the Selectmen, as provided in Chapter 40A, and which shall be the special permit granting authority under this By-law and shall act on all matters within its jurisdiction as provided in Chapter 40A.

The first appointments shall be for one, two and three-year terms respectively, and thereafter one appointment for a three-year term shall be made on or before July 1 in each year. Associate members shall be appointed for two-year terms, the first appointments being for one and two years respectively. An associate member shall be designated by the chairman of the Board of Appeals to sit in the event of vacancy or in the place of any member who may be absent or disqualified by a personal interest, but not otherwise. The Board shall elect a Chairman and a clerk annually from its membership. A member appointed to fill a vacancy shall serve for the remainder of the unexpired term. A member may only be removed for cause by the appointing authority upon written charges and after a public hearing.

1. Appeals: An appeal to the Board of Appeals may be taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from the Building Inspector or other administrative officer pursuant to the provision of Chapter 40A, by the Planning Board, by the Regional Planning Agency in whose area the Town is situated or by any person, including an officer or board of the Town, or of an abutting city or town, aggrieved by an order or decision of the Building Inspector, or other administrative officials, in violation of any provisions of Chapter 40A or of the Zoning By-law.
2. Special Permits: The Board of Appeals may grant a special permit for a special exception as provided in this By-law, when it shall have found that the use involved will not cause or give rise to noise, odor, dust, refuse, exterior lighting, traffic or other considerations which would be offensive or detrimental to the present or future character of the neighborhood or the community and if the Board finds that the proposed use will not derogate from the intent and the purpose of this By-law. Each such permit shall be subject to such appropriate conditions or safeguards as it may deem necessary or advisable. Such conditions or safeguards may include, without limitations:
  - a. Requirement of front, side or rear yards greater than the minimum required by this By-law.
  - b. Requirement of screening of parking areas or other parts of the premises from adjoining premises or from the street, by walls, fences, planting, or other devices, as specified by the Board of Appeals.
  - b. Modification of the exterior features or appearance of the structure or structures or signs.
  - d. Limitation of size, number of occupants, method of operation, hours or days of operation, lighting, signs or extent of facilities.
  - e. Regulation of number, design, and location of access drives or other traffic features.
  - f. Requirement of off-street parking or other special features beyond the minimum required by this or other applicable by-laws.
  - g. Requirement of a lot greater in size than the minimum.

A special permit shall only be issued following a public hearing held within sixty-five days after filing an application with the Town Clerk who shall forthwith transmit the application to the Board of Appeals. Any such application for a special permit shall be referred to the Board of Health, the Planning Board, the Conservation Commission, and the Selectmen who shall have an opportunity, within thirty-five days of such reference, to report its recommendations in writing to the Board of Appeals.

A special permit shall lapse after two years from the grant thereof, including such time required to pursue or await the determination of an appeal referred to in Chapter 40A, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause. In the case of a special permit for a use, such permit shall lapse if at any time such use is discontinued for a period of two years.

3. Variances: A variance from the specific requirements of this By-law may be authorized by the Board of Appeals with respect to particular land or structures. Such variance shall be granted only in cases where the Board finds all of the following:

- a. A literal enforcement of the provision of this By-law would involve a substantial hardship, financial or otherwise, to the petitioner or appellant.
- b. The hardship is owing to circumstances relating to the soil conditions, 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.
- c. Desirable relief may be granted without either:
  - (1) Substantial detriment to the public good; or
  - (2) Nullifying or substantially derogating from the intent or purpose of this By-law.

The Board of Appeals may impose conditions, safeguards, and limitations both of time and of use, including the continued existence of any particular structure, but excluding any condition based upon continued ownership of the land. 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.

A variance shall be granted only after a public hearing for which notice has been given by publication and posting as provided in Chapter 40A. Any such appeal or petition for a variance shall be referred to the Planning Board, which shall have the opportunity, within fifteen days of such reference, to report its recommendations in writing to the Board of Appeals. If the rights authorized by a variance are not exercised within one year of its granting, they shall lapse and may be reestablished only after a new appeal and hearing as above provided.

## SECTION 12. DEFINITIONS

In this By-law certain terms shall have the following meanings:

**ACCESSORY BUILDING:** A building subordinate to and located on the same lot as the principal building, the use of which is customarily incidental to that of the principal building.

**BUILDING:** Any structure permanently located on the land, including a trailer or mobile home, used for the support, shelter or enclosure of persons, animals, equipment or materials.

**BUILDING COVERAGE:** The percentage which the total ground area of all buildings and structures on the lot bears to the area of the lot.

**CLUB:** A non-profit association of persons operated for recreational, social or similar purposes, whose facilities are used primarily by its members.

**CONFERENCE CENTER:** A facility for formal consultation, discussion and/or education of business employees and associates and may provide for attendees and staff adequate housing, eating and recreational facilities contained within the same building.

Accepted: STM 6/27/1988

Approved AG 9/21/1988

Voted 176 yes – 55 no

**DWELLING:** A building or structure used in whole or in part for human habitation.

**DWELLING UNIT:** A room or group of rooms with its own sanitary and kitchen facilities forming a habitable unit for one family, used or intended to be used for living, sleeping, cooking, and eating.

**DWELLING, TWO-FAMILY:** a building designed for or converted for occupancy by two families, each family occupying a single dwelling unit.

**DWELLING, MULTI-FAMILY:** A building designed for or converted for occupancy by three or more families living in separate dwelling units.

**FAMILY:** One or more persons occupying a dwelling unit and living as a single housekeeping unit. If composed of persons unrelated by blood, marriage, or adoption, such a group residing cooperatively in one dwelling unit shall not contain more than six such unrelated persons.

**FARM:** A lot devoted primarily to agriculture or horticultural use, including accessory buildings and structures, vehicles, animals and equipment.

**KENNEL:** Any premises on which four or more dogs or cats four months old or older are kept for sale or for boarding.

**LOT:** A single continuous area of land in one ownership, bounded by other lots or by streets, defined by measurements and/or boundaries in a recorded deed or on a recorded plan.

**NON-CONFORMING USE:** A use of a building or land, existing and lawful at the time of the adoption or subsequent amendment of this By-law, which does not conform to the regulations of the Zoning By-law.

**NON-CONFORMING STRUCTURE:** Any structure which does not conform to the set-back, dimensional or other requirements of the By-law, or which is located on a lot which does not

comply with the frontage or lot size requirements, existing and lawful at the time of the adoption or subsequent amendment of this By-law.

**REAR LOT:** A lot located in the rear of land fronting on a street.

**SIGN:** Any permanent or temporary structure, device, letter, word, display, pennant, insignia or trade flag which is used as or is in the nature of an announcement, direction or advertisement and which is visible from any street or from abutting property.

**STREET:** The entire right of way, including sidewalks, of any public way, or a private way shown on an approved plan of a subdivision, used or intended for use by automobile traffic to which owners of abutting land have a right of access. If no right of way boundary has been established, it shall be deemed to extend 25 feet on each side of the center of the traveled way and parallel thereto.

**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, sign, tower or similar object.

**TRAILER OR MOBILE HOME:** A vehicle or structure used or intended to be used for human occupancy and so designed that it is or may be mounted on wheels or a chassis or rigid supports and may be conveyed or drawn on the highway by a motor vehicle, but not including camping or tent trailers, camper units and motor homes which are intended for short-term seasonal occupancy only. This term does not include prefabricated homes.

**USES:** The purpose for which a building or land is arranged or intended for which a building or tract of land is or may be used, occupied or maintained.

**WETLANDS:** Any brook, stream, river, pond or lake; and any bank, flat, marsh, meadow or swamp subject to periodic flooding.

**YARD:** An open unoccupied space extending across the full width of a lot and lying between the property line and the nearest part of a building, open and unobstructed from ground to sky.

### **SECTION 13. PENALTY FOR VIOLATION**

Any person, firm or corporation who violates or refuses to comply with any applicable provision of this By-law, upon conviction, be fined a sum not to exceed Twenty Dollars (\$20) for each day of such violation.

### **SECTION 14. AMENDMENT**

This By-law may be amended from time to time at an annual or special town meeting as provided in Chapter 40A.

### **SECTION 15. SEPARABILITY**

The invalidity of any section or provision of this By-law shall not invalidate any other section or provision thereof.

Article XVI was accepted by Town Meeting on June 26, 1978, to replace the 1927 By-law Article VIII, Sections 1 through 12 and Article XV in whole. Amendments to Article XVI Sections 5 and 6 were accepted by Town Meeting on June 22, 1981.

## **SECTION 16. TELECOMMUNICATION AND CELLULAR TOWERS**

**1. PURPOSE:** The purpose of this by-law is to establish general guidelines for the siting of wireless telecommunication towers and facilities. The goals of this by-law are to: minimize the adverse visual impacts of towers; to avoid damage to adjacent properties; to lessen impact on surrounding properties; to lessen impact on traffic; to encourage the location of towers on municipal land; to minimize the number of towers throughout the community; to require the co-location of new and existing tower sites; to encourage users of towers and facilities to locate them, to the extent possible, in areas where the adverse impact on the community is minimal; to encourage users of towers and facilities to configure them in a way that minimizes the adverse visual impact of towers and facilities; and to make available all wireless telecommunication tower locations to local municipal agencies.

**2. PERMITTING:** No telecommunication or cellular tower may be erected without first obtaining a Special Permit from the Zoning Board of Appeals (ZBA). Permits shall only be granted in accordance with the procedure for notice hearings, decisions and appeals set forth in Petersham Zoning By-laws and MGL Chapter 40A, Sections 9 and 11. Any permit granted hereunder shall lapse within two (2) years if substantial use has not commenced except for good cause proven to the ZBA. The provisions of this section of the Zoning By-law pertaining to Telecommunication and Cellular Towers shall be in addition to the provisions in the Zoning By-laws and MGL Chapter 40A. Towers shall be allowed in all zoning districts pursuant to this by-law.

**3. APPLICATION:** An application for a Special permit under this by-law shall be filed with the Zoning Board of Appeals, utilizing the forms and procedures described.

- A. The site plan shall be prepared by a professional engineer and shall include the following minimum requirements:
- (a) Tower location, including guy wires, if any, and tower height.
  - (b) Topography.
  - (c) The applicant or any co-applicant must be a provider of telecommunication services, which will be using this tower.
  - (d) Access and parking.
  - (e) Lighting.
  - (f) Areas to be cleared of vegetation and trees.
  - (g) Site boundaries.
  - (h) Abutters.
  - (i) Eight (8) view lines in a one (1) mile radius from the site, shown beginning at True North and continuing clock-wise at forty-five (45) degree intervals.



- B. A locus map will be prepared and shall show all streets, bodies of water, landscape features, historic sites, habitats for endangered species within two hundred (200') feet, and all buildings within five hundred (500') feet.
- C. Reports prepared by one or more professional engineers, or other professionals whose qualifications are first accepted by the Zoning Board of Appeals, which shall:
- (a) Describe the tower and the technical, economic and other reasons for the tower design, and the need for the tower at the proposed location.
  - (b) State with particularity: (i) which sites were contemplated for placement for the tower, (ii) why the proposed site/height was selected and (iii) why other sites/heights are not suitable and/or feasible; all supported by propagation models.
  - (c) Demonstrate that the tower shall comply with all applicable standards of the Federal and State Law.
  - (d) Describe the capacity of the tower including the number and type of transmitter receivers that it can accommodate and the basis for the calculation of capacity.
  - (e) Demonstrate how the proposed tower and site comply with the Town of Petersham's Zoning By-laws.
  - (f) Create a propagation model (at the proposed situs/height) based on coverage area, topography, population, obstructions and expected site traffic for the Town of Petersham and all surrounding towns impacted by the proposed tower.
  - (g) Create a topographical map designating "search rings" for the range and dynamic of the existing cellular network (not merely Applicant's) for the Town of Petersham and all surrounding towns, pending and Applicant's future desired sites inclusive.
  - (h) State by propagation model why each cell tower site offered by the Town of Petersham is not suitable. (A copy of all available Town sites may be obtained from the Town Clerk.)
- D. A copy of the requests made by the applicant to the Federal Aviation Administration (FAA), Federal Communications Commission (FCC), Massachusetts Aeronautics Commission and the Massachusetts Department of Public Health that would provide a written statement that the proposed tower complies with applicable regulations administered by the agency or that the tower is exempt from those regulations and a copy of the response from each agency.
- E. Identify each person whom the Applicant expects to call as a witness, state the subject matter on which the witness is expected to testify, and state the substance of the facts and opinions to which the witness is expected to testify and a summary of the grounds for each opinion. For the purpose of this paragraph, the term 'witness' shall include all persons and writings submitted.
- F. The Board shall charge the Applicant for all reasonable fees necessary to render an informed decision, including but not limited to: consulting fees, stenographic fees, production and reproduction fees. The Applicant will be notified of the same (including the approximate costs involved) not later than one week prior to any Public Hearing. All funds will be held in escrow and duly accounted for.

**4. ON SITE DEMONSTRATION:** The Town's populace shall be provided meaningful opportunity to assess impact of the proposed tower as follows:

A. The Applicant shall conduct an initial (3) three-day balloon test, at times and dates specified by the Zoning Board of Appeals. The balloon shall (i) have a diameter of at least ten (10) feet, (ii) be brightly colored orange and (iii) be guy-wired from the North, East, South, and West so as to maintain a persistent vertical (the Applicant also may employ the use of a crane in lieu of guy wiring.) The balloon shall be flown at the height of the proposed tower, measured from the ground to the base of the balloon. The Applicant shall cause notice to be published in a local newspaper designated by the Board at least one week in advance of the days selected.

B. The Applicant shall then conduct a (1) one-day balloon test at a date and time specified by the Zoning Board of Appeals. At that time, the Applicant shall photograph the balloon from eight (8) selected Town locations. The Applicant shall then superimpose a tower directly beneath the photographed balloon and avail the result to the Town populace. The balloon test shall conform to the size, color, guy wiring, height and notice requirements stated herein at Subsection 4A.

C. The Applicant shall then conduct a final, (3) three-day balloon test, at times and dates specified by the Zoning Board of Appeals. The balloon test shall conform to the size, color, guy wiring, height, and notice requirements stated herein at Subsection 4A.

D. Any unapproved deviations from the above (see Subsections 4A, 4B, and 4C herein) will not be considered compliant and will not be counted towards fulfillment of this by-law.

**5. APPROVAL:** A Special Permit shall be granted by the Zoning Board of Appeals in accordance with MGL, and the provisions of this By-law relative to special permits. Any modification of the herein permitted facilities shall be subject to a new Special Permit application, following the same procedure as for an original grant of a special permit.

**6. LOCATION AND SITE REQUIREMENTS:** In considering an application for a special permit for a Telecommunications and Cellular Tower, the Zoning Board of Appeals shall consider the following factors:

- (a) All wireless communication towers and accessory buildings may be sited in church steeples whenever feasible.
- (b) New towers shall be considered only upon a finding by the Zoning Board of Appeals that existing or approved towers cannot accommodate the wireless communication equipment planned for the proposed tower.
- (c) To the extent feasible all service providers shall co-locate on a single tower. Towers and accessory buildings shall be designed to structurally accommodate the maximum number of users.
- (d) The setback from property lines shall be a minimum of a distance at least equal to the height of the tower.
- (e) Setback from designated wetlands, water bodies and areas with a slope in excess of five (5%) percent shall be at least one hundred (100') feet.
- (f) Distance from all existing buildings shall be at least five hundred (500') feet.

- (g) Fencing shall be provided to control access to the base of the tower. Such fencing shall be compatible with the scenic character of the Town and shall not be of barbed wire or razor wire.
- (h) Access shall be provided to a Telecommunications and Cellular Tower by a roadway which is sufficient to provide emergency access. Any access roadway shall have minimal impact on the natural landscape.
- (i) The tower and its appurtenant structures and roadway shall be constructed so that erosion and location on unstable soils and steep slopes are minimized to the maximum extent feasible.
- (j) The Applicant shall demonstrate that the location of the tower is necessary and that the size and height is the minimum necessary for the purpose. In no event shall any tower exceed ninety (90) feet in height.
- (k) There shall be no signs, except for identification signs, no trespassing signs, and a required sign giving a phone number where the owner can be reached on a twenty-four (24) hour basis. All signs shall conform to the sign requirements of Petersham Zoning By-laws, and shall be subject to conditions of the Special Permit.
- (l) Accessory buildings shall be limited to one (1) structure per provider per tower, but shall not exceed ten (10) structures per tower. If more than one (1) provider, the accessory buildings shall be connected by a common wall. Each structure shall not exceed four hundred (400) square feet in size and ten (10') feet in height, and shall be of the same design and color.
- (m) All utilities, including electrical, cable, wire, and other connections to the tower, shall be installed underground, unless such installation is not feasible.
- (n) The tower shall minimize adverse visual effect on the environment and the people of Petersham. The Zoning Board of Appeals shall impose reasonable conditions to ensure this result, including, but not limited to: stealth technology, microcell technology, painting, lighting standards and screening as provided for in subsection 7 of this By-law.
- (o) Clearing shall be performed in a manner that will maximize preservation of natural environment and conservation of natural resources, which will minimize disturbing of landscape or silting of streams as follows:
  - (1) The time and method of clearing should take into account soil stability, the protection of natural vegetation, the protection of adjacent resources, such as the protection of natural habitat for wildlife, and appropriate measures for the prevention of silt deposition in water courses.
  - (2) The use of "brush blades" instead of dirt blades on bulldozers is recommended in clearing operations where such use will preserve the cover crop of grass, low growing brush or other vegetation.
  - (3) Areas should be cleared only when necessary to the operation, maintenance, and construction of the tower.

**7. DEVELOPMENT REQUIREMENTS:** Visual impacts of the tower shall be minimized.

- (a) The Applicant shall demonstrate that the proposed tower is no higher than necessary to transmitters and receivers.
- (b) All towers shall be monopole in type.

- (c) Silver paint or a galvanized finish shall be used on the tower above the tree line to blend with the landscape. Green paint to blend with the landscape shall be used to the tree line.
- (d) Night lighting of towers shall be prohibited unless required by the Federal Aviation Administration. Lighting shall be limited to that needed for emergencies and/or as required by the FAA.
- (e) Siting shall be such that the view of the tower from other areas of Town shall be as minimal as possible.
- (f) Shared use of towers is to be encouraged. When technically not practical, towers shall be separated on the site so that, if the support structure of one falls, it will not strike another.
- (g) The tower shall be designed to accommodate the maximum number of uses technologically practical.
- (h) There shall be a minimum of one (1) parking space for each tower, to be used in connection with the maintenance of the tower and the site, and not to be used for the permanent storage of vehicles.

#### **8. CONDITIONS OF USE:**

- (a) Any tower or facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The owner of such tower and facility shall remove the same within ninety (90) days of receipt of notice from the Zoning Board of Appeals notifying the owner of such abandonment.
- (b) In the event the owner does not remove the tower, the Town may proceed to remove the tower in accordance with the provisions of Section 9(c) of this By-law.

#### **9. PERFORMANCE GUARANTEES:**

- (a) Insurance in a reasonable amount determined and approved by the Zoning Board of Appeals, after consultation at the expense of the Applicant with one (1) or more insurance companies shall be in force to cover damage from use and operation of the structure. Annual proof of said insurance shall be filed with the Town Clerk.
- (b) Upon completion of the construction of the tower, the applicant shall provide a cash bond payable to the Town Treasurer, in an amount approved by the Zoning Board of Appeals, to cover the cost of the removal of the tower should the tower be abandoned as provided for above in Section 8 (b) of this By-law.
- (c) An additional cash bond in a reasonable amount determined and approved by the Zoning Board of Appeals shall be in force to cover removal of the tower when discontinued or not used.
- (d) The Special Permit holder shall file annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission and the Federal Aviation Administration with the Building Inspector.
- (e) Failure to post an approved bond and/or provide proof of insurance shall be grounds to revoke the Special Permit.

#### **10. EXEMPTIONS:** Exempted under this by-law, are private, non-commercial Amateur Radio Operator (HAM) radio or CB towers used in accordance with the terms of any amateur radio

service license issued by the Federal Communications Commission (FCC). These towers are still subject to the following conditions:

- (a) Require a Building Permit if over seventy (70') feet above ground level.
- (b) The setback of the tower from any property bounds must be no less than the actual height of the tower rather than the height above the ground.
- (c) The tower must be removed upon loss or termination of said FCC license.

#### **11. WAIVERS:**

- (a) The Zoning Board of Appeals may waive strict compliance to sections of this By-law only if it finds such waiver absolutely necessary and that failure to grant the same will unreasonably discriminate among providers of functionally equivalent services or prohibit or have the effect of prohibiting the provision of personal wireless services in the Town of Petersham.
- (b) All requests for waivers shall be made in writing on a separate sheet (or sheets) of paper and be attached to the Special Permit application and be presented at the time of the initial application.
- (c) Requests for waivers shall indicate the section number and reason/grounds therefore supporting absolute necessity. The Applicant shall submit all supporting data at the time of filing the application.
- (d) The Zoning Board of Appeals shall grant requests for waivers only upon a unanimous vote in accordance with the Zoning Board Rules and Regulations. For each waiver granted, the Board shall in writing: (i) state the reason(s) for the waiver and (ii) state the grounds therefore.

**12. INVALIDATION:** If any portion of this by-law is declared to be invalid, the remainder shall continue to be in full force and effect.

Accepted 6/19/2000

Approved AG 12/1/2000

Amended 6/3/2002

Approved AG 8/30/2002

#### **SECTION 17. EARTH REMOVAL/SAND AND GRAVEL EXTRACTION**

**1. PURPOSE:** The purpose of this Section is to protect the environment and the health, safety, and welfare of the public by controlling those activities involving the removal or mining of earth, sand, and gravel. The requirements set forth in this Article are necessary to prevent and minimize adverse impacts and risks during operations, and to ensure proper restoration of affected sites upon completion.

## 2. APPLICABILITY

- A. A special permit is required from the Zoning Board of Appeals for the following uses and activities, including both new and existing facilities: (i) mining, quarrying, and the commercial extraction of rock, sand, gravel, loam, earth, clay, and similar materials, and (ii) storage, stockpiling, distribution, and sale of rock, sand, gravel, earth, clay and other similar materials.
- B. The following uses and activities are exempt from this permit requirement: (i) excavation in conjunction with utility installation, which is to be backfilled; (ii) excavation in conjunction with road construction within approved residential subdivisions; and (iii) excavation which by nature is of limited duration and area, such as for the installation of septic tanks, swimming pools, the construction of a house, etc.
- C. A special permit issued by the Zoning Board of Appeals pursuant to this Section shall remain in effect for two (2) years. Said permit may be renewed for an additional two (2) year period after review of the permit application and the compliance history of the applicant. The Zoning Board of Appeals may ask the applicant for additional information as needed. Any application for repermitting shall include site plans showing excavation and extraction activities to date, new areas where such activities will take place, and site restoration plans.

## 3. PERMIT APPLICATION

Before a landowner or operator may extract earth, sand, or gravel or other materials from his/her property, a special permit must be applied for and obtained from the Zoning Board of Appeals. Owners of a similar existing facility must apply for a special permit pursuant to this Section within six (6) months of the effective date of this By-law. The application for this permit must include eight (8) copies of both a site plan and an informational report, to provide the Zoning Board of Appeals with a sufficient basis for reaching a determination on the permit application.

- A. The site plan, drawn at the scale of 1" = 40', submitted as part of the permit application must show the following information, and be supported by sufficient explanatory narrative where necessary:
  - 1. The extent of the area to be excavated on the site and how it will be phased pursuant to the *Operational Requirements* of Section 4, subsection I, herein.
  - 2. Contours shown at no greater than two-foot intervals.
  - 3. Access and egress to roads outside the site, for both employee and material transport.
  - 4. Location, identification, and dimensions of all property lines, two hundred (200) feet in all directions therefrom, and public and private easements.
  - 5. Location of all structures on the property.
  - 6. Location and description of the floodplain, surface water bodies, groundwater resources, wetlands, and other environmentally sensitive resources.

7. Direction of groundwater flow, rate of groundwater flow and maximum high groundwater elevation.
  8. Significant natural features such as large trees, vegetative groupings and rock outcroppings.
  9. Complete adjacent land use information including the names of the record owners of all abutting properties, a description of all land uses, identification of water resources on adjacent properties, and information regarding private wells on adjacent properties, if applicable.
  10. Existing elevations of the property to be excavated and the estimated excavation depth.
  11. Existing and proposed excavation areas shown by operational phases, sequence, thickness of overburden, and estimated seasonal high and low water table elevations.
  12. Typical cross sections showing information requested in subsection 11- immediately above and maximum slopes and restoration cover thickness.
  13. Processing, equipment, and storage areas.
  14. Proposed fencing, gates, parking, and signs.
  15. Areas to be used for the storage of topsoil and other overburdened material including volume calculations and method of stabilization.
  16. Locations of test borings and monitoring wells.
  17. Location of roads to be used for transportation of extracted materials.
  18. Erosion controls.
  19. Location of any proposed burial areas for boulders, etc.
  20. Detailed estimate of restoration costs including inflation to date of anticipated work.
- B. The informational report to be submitted as part of the permit application shall provide a description of the following aspects of the facility operations:
1. The approximate date of operational commencement and the anticipated duration of the operation.
  2. Proposed daily operational times.
  3. Estimated type and volume of the excavation.

4. The nature of the material to be extracted
5. Methods to be utilized for extracting and processing the material.
6. The equipment to be used on site and number of vehicle trips per day during hauling.
7. Measures to be utilized for mitigating potential noise, dust, soil erosion, air pollution, and water pollution emanating from the site.
8. Methods to be utilized for dewatering or discharge in impounding areas.
9. Method to be used for disposal of toxic substances or wastes, if present or generated on the site.
10. A definitive restoration plan outlining measures to be used to restore the site once material extraction operations have ceased. While this description does not represent the comprehensive restoration plan which is required to be submitted to the Zoning Board of Appeals for review prior to operational shut-down in accordance with Section 6, herein entitled *Site Restoration*, it must be consistent with the standards set forth therein. The submission of this plan shall become the basis for posting of the performance bond pursuant to Section 7, herein, entitled *Security/Performance Bond*.
11. A detailed cost estimate of the restoration plan described in subsection 10 - immediately above.
12. Statement indicating whether the applicant has submitted applications for or secured any other required local, state, or federal permits.
13. Analysis of the impact of the proposed operation upon property values in the immediate neighborhood and upon the economy of the Town as a whole.

The site plan and the informational report shall bear the stamp and signature of an appropriate professional engineer registered in the Commonwealth of Massachusetts

A filing fee of one thousand (\$1,000) dollars shall be paid to the Town with the submission of the permit application. The Zoning Board of Appeals may require the payment of a reasonable fee for the review of the application.

The Zoning Board of Appeals shall determine within thirty (30) days whether to deem the application complete. If the application is found to be incomplete, the applicant shall be required to submit the necessary information.



#### 4. OPERATIONAL REQUIREMENTS

- A. The area of excavation shall be set back in accordance with the *Buffers and Setbacks* requirements of Section 5, herein. This buffer zone shall be vegetated, maintaining naturally existing vegetation to the maximum extent possible, to screen the site from visual, noise, and dust impacts on neighboring uses. Noise control berms may be appropriate to reduce potential impacts on adjacent properties and landowners. Where no natural vegetation exists, plantings or a fence shall be installed.
- B. Erosion control measures shall be employed throughout the development and operational phases of the extraction project. These may include the use of quick growing vegetation, mulching, screening, stabilization, siltation fences, or other means as deemed necessary by the Zoning Board of Appeals. The maximum unvegetated areas shall be five (5) acres. For safety reasons during excavation, the slope shall be no greater than two (2) feet horizontal to one (1) foot vertical, (2:1).
- C. Site restoration shall commence immediately upon the cessation of extraction operations and shall be completed successfully within one (1) year, in accordance with the restoration plan required and described in Section 6, herein entitled *Site Restoration*. As sections of the extraction operation are completed, temporary site restoration shall proceed to minimize erosion until the comprehensive restoration plan is implemented.
- D. Equipment storage shall be in conformance with the buffers and setback requirements of Section 5, shall be for on-site use only, and solely for the duration of the permitted earth removal operations.
- E. There shall be at least a four (4) foot separation between the lowest elevation of excavated material and the maximum high groundwater elevation.
- F. All work shall be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 noon on Saturdays. No work shall take place on Sundays and legal holidays. The Zoning Board of Appeals may modify these hours on a case by case basis.
- G. All roads accessing and within the site shall be treated only with water to minimize dust conditions.
- H. In the permit areas, ledge shall not be left exposed above the approved grade, and all cleared trees, stumps and brush shall be removed
- I. Earth removal operations shall be limited to five (5) acres at any given time. Additional acreage may not be disturbed until site restoration has commenced on previously excavated areas. Said phasing of the operations shall be part of the Zoning Board of Appeals approval.
- J. Stockpiled material shall not be greater than thirty-five (35) feet in height at any time.

## 5. BUFFERS AND SETBACKS

The following buffer areas are to be left in their natural state during the life of the permit: (i) Three hundred (300) feet from any street line, (ii) Two hundred (200) feet from any other boundary line, and (iii) Six hundred (600) feet from any occupied dwelling.

## 6. SITE RESTORATION

- A. A comprehensive restoration plan shall be submitted for Zoning Board of Appeals review no later than nine (9) months prior to the anticipated date of cessation of extraction activities. The purpose of this plan is to show in detail how the site will be restored once all the materials have been extracted. The Zoning Board of Appeals shall certify that the plan requirements are met.
- B. The restoration plan shall include a complete landscape plan indicating the existing natural features and proposed final topography, plant list, phasing of the restoration, and final use for the site. The plan to be submitted shall demonstrate compliance with the following standards:
1. A minimum depth of four (4) feet shall be maintained between the lowest elevation from which material is extracted to the maximum high groundwater elevation.
  2. Existing topsoil shall be redistributed on-site to provide adequate growing conditions for revegetation of the site. Where needed, additional soil shall be brought in of an equal to or better quality than that of the previously existing topsoil and shall be free from refuse or toxic contaminants. Final soil depths and types shall be appropriate for the expected reuse of the site, but at a minimum shall be six (6) inches, unless it is demonstrated that less than six (6) inches existed prior to excavation.
  3. The final grading of the site shall be appropriate for the expected reuse of the site.
  4. All final-site drainage shall be designed, sloped, revegetated, or shall employ other measures so that erosion and siltation of water courses and ponds are avoided.
  5. The site shall be revegetated to control dust, erosion, and to restore natural features to the site. The soil shall be stabilized by planting, seeding, or sodding so as to create a complete ground cover. The landowner or facility operator shall maintain the vegetation for at least two (2) full growing seasons after its initial planting.
  6. No sharp declines, pits, depressions, or debris accumulation shall remain after the restoration. All banks shall be restored so that no slope is greater than three (3) feet horizontal to one (1) foot vertical, (3:1).
  7. Stormwater drainage from the site shall not be altered so as to adversely affect public roads or neighboring uses. Natural drainage patterns shall be restored to the maximum extent possible. No increase in drainage rate and volume leaving the site shall be permitted.

8. All stumps, boulders, and other debris resulting from the extraction operations or its related activities shall be disposed of by approved methods.
9. The site shall be graded so that no stagnant water or water pockets will be allowed to develop.
10. All structures and equipment shall be entirely removed from the pit within two months after completion of the extraction operations.

#### **7. SECURITY/PERFORMANCE BOND**

A performance bond, letter of credit or other form of surety shall be posted in an amount to be determined by the Zoning Board of Appeals upon approval of the special permit to ensure proper operation of the facility and that the restoration requirements are adequately met. After evidence of nonconformance or nonperformance of the applicant, the Zoning Board of Appeals can determine that the bond be defaulted and measures taken to accomplish necessary work in fulfillment of the intent of the regulations. Upon satisfactory completion of the restoration plan and compliance with the regulations in Sections 3, 5, and 6 herein, the Zoning Board of Appeals shall issue a written certification that the above requirements have been met. The performance bond, letter of credit or other surety shall be released to the landowner upon receipt of the written certification from the Zoning Board of Appeals.

#### **8. DURATION OF PERMITS**

All permits for new and existing earth removal operations shall be effective for two (2) years. Permits shall be renewed in accordance with this Section.

9. Petersham municipal purposes will be exempt.  
Accepted ATM 6/3/2002  
Approved AG 8/30/2002

### **SECTION 18. SOLAR ELECTRIC INSTALLATIONS**

#### **1. Purpose**

The purpose of this bylaw is to facilitate the creation of new large-scale solar electric installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on environmental, scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

#### **a. Applicability**

Building-mounted solar electric installations are not subject to the requirements of this section but do require a building permit.

This section applies to any large-scale ground-mounted solar electric installation (greater than 10 kW (kilowatts)) in the Town of Petersham. In the Solar Electric Overlay District such facilities are allowed As-of-Right. Outside of the Solar Electric Overlay District, such facilities are allowed by special permit.

This section also applies to physical modifications of large-scale solar electric installations that materially alter the type, configuration, or size of a previously approved installation.

Smaller scale (10 kW or less) ground-mounted solar electric installations need only comply with subsection F.3.

## 2. Definitions

**As-of-Right:** As-of-Right Siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval, provided that it complies with the requirements of this section.

**Building Inspector:** The person charged with the enforcement of the Zoning Bylaw.

**Building Permit:** A construction permit issued by the Building Inspector.

**Solar Electric Overlay District:** The Solar Electric Overlay District as designated by the Town of Petersham, is shown on a map titled "Petersham Solar Electric Overlay District", which map is hereby made a part of this Zoning By-law and is on the file in the Office of the Petersham Town Clerk.

**Large-Scale Solar Electric Installation:** A solar electric generation system that has a rated nameplate capacity greater than 10 kW.

**Rated Nameplate Capacity:** The maximum rated output of electric power production of a solar electric generation system in Alternating Current (AC) or Direct Current (DC).

## 3. General Requirements for all ground-mounted Solar Electric Installations

### a. Compliance with Laws, Bylaws and Regulations

The construction and operation of installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of the installation shall be constructed in accordance with the State Building Code.

### b. Building Permit and Building Inspection

No installation shall be constructed, installed or modified without first obtaining a building permit.

**c. Dimensional Requirements**

- (1) Setbacks to all installation structures and equipment shall be at least 50 feet from property lines.
- (2) The height of any solar electric installation structure shall not exceed 20 feet.
- (3) Installations larger than 25kW shall not be closer than 300 feet from a public way.

**4. Site Plan Review**

Installations larger than 10kW shall be subject to Site Plan Review by the Zoning Board of Appeals prior to construction or modification, as provided in this section. Failure of the Zoning Board of Appeals to act within 180 days from the time of the initial application shall be deemed to constitute approval of the application.

**a. General**

All plans and maps submitted in connection with Site Plan Review shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts. An application for site plan review shall be accompanied by a fee of \$150.

**b. Required Documents**

- (1) A site plan showing:
  - i. Property lines and physical features, including roads and topography, for the project site;
  - ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, fencing and screening vegetation or structures;
  - iii. Locations of wetlands and Priority Habitat Areas as defined under the Natural Heritage & Endangered Species Program (NHESP) of the Massachusetts Division of Fisheries and Wildlife.
  - iv. Locations of Priority Heritage landscapes under the NHESP and local or National Historic Districts;
  - v. A list of any hazardous materials proposed to be located on the site in excess of household quantities and a plan to prevent their release to the environment as appropriate;
  - vi. Blueprints or drawings of the installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts, showing the proposed layout of the system;
  - vii. One or three line electrical diagram detailing the solar electric installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
  - viii. Documentation of the major system components to be used, including the electric generating components, transmission systems, mounting system, and inverter;
  - ix. Name, address, and contact information for proposed system installer;
  - x. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;

- xi. The name, contact information and signature of any agents representing the project proponent.
- (2) Photographs showing views of the site from any point in the Town of Petersham where the installation would be visible. The proposed installation and the amount of land clearing required shall be superimposed on these photographs.
- (3) Documentation of actual or prospective access and control of the project site; and
- (4) Description of financial surety that satisfies Section F.11.c.

The Zoning Board of Appeals may waive documentary requirements as it deems appropriate.

#### **5. Site Control**

The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar electric installation.

#### **6. Operation & Maintenance Plan**

The project proponent shall submit a plan for the operation and maintenance of the installation, which shall include measures for maintaining safe access to the installation, storm water, screening vegetation and other vegetation controls, as well as general procedures for operational maintenance.

#### **7. Utility Notification**

No installation shall be constructed until evidence has been given to the Zoning Board of Appeals that the utility company that operates the electrical grid where the installation is to be located has been informed of the installation owner or operator's intent to construct. Off-grid systems shall be exempt from this requirement.

#### **8. Design and Performance Standards**

##### **a. Lighting**

Lighting shall be minimal and comply with local, state and federal law and shall be shielded so as to minimize spillover into abutting properties. Lighting shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

##### **b. Signage**

A sign consistent with the Town's Bylaws shall be required to identify the owner and provide a 24-hour emergency contact phone number and may include identification of the manufacturer or operator of the installation.

##### **c. Utility Connections**

Wherever possible all utility connections from the solar electric installation shall be underground, depending on appropriate soil conditions, topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

**d. Roads**

Access roads shall be constructed so as to minimize grading, removal of stone walls or trees and minimize impacts to environmental or historic resources.

**e. Noise**

Sound or noise levels may not exceed a decibel level of 50 dBA, as measured at the boundary of the property.

**9. Safety and Environmental Standards****a. Emergency Services**

The installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the Fire Chief and the Town's Emergency Management Director. Upon request, the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar electric installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

**b. Land Clearing, Soil Erosion and Habitat Impacts**

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the installation or otherwise prescribed by applicable laws, regulations, and bylaws.

**10. Monitoring, Maintenance and Reporting****a. General Maintenance**

The solar electric installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the Fire Chief and the Town's Emergency Management Director. The owner or operator shall be responsible for the cost of maintaining the solar electric installation and any access road(s).

**b. Modifications**

All material modifications to a solar electric installation made after issuance of the required building permit shall require approval by the Zoning Board of Appeals.

**c. Annual Reporting**

The owner or operator of the installation shall submit an Annual Report which certifies compliance with the requirements of this Bylaw and their approved site plan including control and maintenance of vegetation, noise standards, and adequacy of road access. The annual report shall also provide information on the maintenance completed during the course of the year and the amount of electricity generated by the facility. The report shall be submitted to the Selectboard, Zoning Board of Appeals, Fire Chief, Emergency Management Director, Building Inspector, Board of Health and Conservation

Commission (if a Wetlands Permit was issued) no later than 45 days after the end of the calendar year.

## **11. Abandonment or Decommissioning**

### **a. Removal Requirements**

Any installation which has reached the end of its useful life or has been abandoned consistent with Section F.11.b. of this bylaw shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Zoning Board of Appeals by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- (1) Physical removal of all solar electric installations, structures, equipment, security barriers and transmission lines from the site.
- (2) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (3) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Zoning Board of Appeals may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

### **b. Abandonment**

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar electric installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Zoning Board of Appeals. If the owner or operator fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the Town may enter the property and physically remove the installation.

### **c. Financial Surety**

Proponents of solar electric projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the Town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Zoning Board of Appeals, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent and the Town. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

Accepted ATM 6/4/2012

Approved AG 9/23/2012



## SECTION 19. SUBDIVISIONS

### A. Rules and Regulations

Technical requirements for subdivisions are covered in a separate document, "Rules and Regulations Governing the Subdivision of Land" which is available in the Town Office Building.

### B. Definitions

MGL: Massachusetts General Laws

ANR: For the purposes of this Section 5b, the standard process of lot division along existing roadways under Section IV of the Petersham Subdivision Regulations and in accordance with MGL Chapter 41, Sections 81L and P and Section 4 of the Zoning By-laws.

### C. Purpose and Applicability

1. Purpose: The primary purpose of this section is to implement measures that will further the goals stated in the Petersham Master Plan:
  - Preserve the Town's historic rural landscape and existing pattern of low density housing.
  - Control the nature of new subdivision development that can occur in the Town.
  - Direct development away from environmentally sensitive areas.
  - Require new development to be designed in a manner that is environmentally and aesthetically compatible with its surroundings.
  - Foster small-scale agricultural and forestry production by retaining suitable lands for these purposes.
2. Applicability: This Article applies only to subdivisions of land that create new roads as defined in MGL Ch. 41, § 81L, and not to individual ANR lots created through the standard process with frontage on public ways.
  - (a) Deviations: The Planning Board may allow a subdivision development that deviates from one or more of the requirements herein by special permit. Such deviations may be approved if the applicant can demonstrate that the proposed plan provides adequate protection of environmental resources and meets the goals of this section as well or better than otherwise without such deviations.
  - (b) The subdivision approval and any requested special permit approvals provided for in this Section 4B shall be considered concurrently to the extent practicable.

#### D. Conservation Analysis and Findings

1. Prior to filing an application, an applicant is encouraged to meet with the Planning Board to discuss the conservation resources on the site.
2. A conservation analysis as described in the "Petersham Rules and Regulations Governing the Subdivision of Land" is required from the applicant preferably for informal review as noted above before the application is filed.
3. The Planning Board in consultation with the Conservation Commission shall study the conservation analysis, may conduct field visits, and shall formally determine in "conservation findings" which land should be preserved and where development may be located.
4. The proposed design shall conform or be modified by the applicant to conform with the conservation findings

#### E. Minimum Preserved Open Space

The Plan shall show that at least 80% of the total acreage of the project will be preserved by a Conservation Restriction or other means acceptable to the Planning Board, the configuration of which shall be based upon the conservation findings. Conserved land is not required to be contiguous.

#### F. Allowable Lots

1. The maximum number of lots permitted is calculated by a formula based upon the net acreage of the project. This calculation involves two steps, calculating the net acreage and then dividing it by the density divisor.
2. Net Acreage Calculation
  - (a) To determine net acreage, subtract from the gross acreage of the project the total acreage of:
    - (i) one-half of land with slopes of 15% -25% and all land with slopes greater than 25%.
    - (ii) land subject to easements or restrictions prohibiting development;
    - (iii) land which is inaccessible due to steep terrain, wetland or other barrier
    - (iv) all Watershed Protection Act land subject to the restrictions of 350 CMR 11.04(3)(a);
    - (v) all FEMA 100-year floodplains; and
    - (vi) all freshwater wetlands as defined in Section 40 of Chapter 131 of the General Laws, as delineated by an accredited wetlands specialist approved by the Petersham Conservation Commission.
  - (b) Applicants shall use the Field Data Form found in Appendix G of the Massachusetts DEP Handbook "Delineating Bordering Vegetated

Wetlands Under the Massachusetts Wetlands Protection Act” (1995). The complete form shall be submitted including all methods of determination, i.e., vegetation, soil, and any other indicators, as provided for on the form. If detailed vegetative assessments are not required by the Handbook for a particular site, the reasons must be noted on the Field Data Form. At the Planning Board’s discretion, any of the information described above may be taken from current geographic information systems data available from the Massachusetts Department of Environmental Protection, Mass GIS, and other credible sources including delineations registered by the use of global positioning systems.

### 3. Lot Calculation

- (a) To determine the maximum number of allowable lots on the site, divide the net acreage by a density divisor of 7.5. Fractional units may be rounded up if the open space requirement of section E, above, is met.
- (b) The following additional lots may be granted in the subdivision by special permit from the Planning Board. If necessary, the area of these lots may be subtracted from the open space required by E above.
  - (i) The lot count determined in 3(a) may be increased through a density bonus designed to advance important housing goals of the Petersham master plan. If the applicant permanently restricts ownership and occupancy of any dwelling units as affordable housing, and makes them eligible for inclusion in the Town’s “Subsidized Housing Inventory” for the purposes of Chapter 40B of the General Laws, and makes a binding commitment to construct such affordable residences: for each such affordable unit the number of permitted lots in 3(a) may be increased by one up to an additional three.
  - (ii) The lot count determined in 3(a) may also be increased by conserving land adjacent to the subdivision and fronting onto an existing roadway that would otherwise constitute buildable ANR lot(s). If at least the minimum area and frontage for such ANR lots is added to the preserved open space in accordance with Section I, below, a corresponding number of lots may be added to the lot count in 3(a).

### G. Types of Residential Development

The allowable residential dwelling units may be developed as single-family, or any other housing type allowed by Section 4 in the Zoning By-laws.

## H. Dimensional and Design Requirements

1. Minimum lot size and frontage shall conform with the requirements of Section 4 in the Zoning By-laws.
2. Lots shall be located and arranged in a manner that protects: views from roads and other publicly accessible points; farmland; wildlife habitat; and other sensitive environmental resources. Consideration shall be given to access of dwelling units to potentially arable land or land suitable for forestry. The Planning Board shall take into consideration the conservation findings in approving the arrangement of lots.

## I. Permanent Open Space

1. All land required to be set aside as open space shall be so noted on any approved plans and shall be protected by a permanent Conservation Restriction, herein defined as a permanent restriction in the title to land of the type described in G.L. Chapter 184, Sections 31–33, to be held by the Town of Petersham Conservation Commission, the Commonwealth of Massachusetts, or a non-profit conservation organization qualified to hold Conservation Restrictions under Chapter 184, Section 31 of the General laws and also qualified to hold tax-deductible conservation easements under Section 170(h) of the Internal Revenue Code. As used in this zoning bylaw “Conservation Restriction” also includes an Agricultural Preservation Restriction, a Watershed Preservation Restriction, or a Preservation Restriction. The restriction shall specify the permitted uses of the restricted land which may otherwise constitute development.

### 2. Ownership of Open Space Land

(a) The fee interest in the protected open space land, at the applicant’s discretion, may be held in private ownership or held in common ownership by a homeowner's association (HOA). In the case of private ownership, ownership interests in such land shall be undivided unless the Planning Board grants a special permit allowing for the division of ownership, which may include apportioned ownership amongst some or all of the residential lots.

(b) If the land is owned in common by an HOA, such HOA shall be established in accordance with the following:

(i) The HOA must be created before final approval of the development, and must comply with all applicable provisions of state law.

(ii) Membership must be mandatory for each lot owner, who must be required by recorded covenants and restrictions to pay fees to the HOA for taxes, insurance, and maintenance of common open space, private roads, and other common facilities.

- (iii) The HOA must be responsible for liability insurance, property taxes, the maintenance of recreational and other facilities, private roads, and any shared driveways used by all members.
- (iv) Property owners must pay their pro rata share of the costs in (b) (ii) and (iii), above, and the assessment levied by the HOA must be able to become a lien on the individual property in the event of non-payment.
- (v) The HOA must be able to adjust the assessment to meet changed needs.
- (vi) The applicant shall make a conditional offer of dedication to the Town, binding upon the HOA, for all open space to be conveyed to the HOA. Such offer may be accepted by the Town, at the discretion of the Select Board, upon the failure of the HOA to take title to the open space from the applicant or other current owner, upon dissolution of the association at any future time, or upon failure of the HOA to fulfill its maintenance obligations hereunder or to pay its real property taxes.
- (vii) Ownership shall be structured in such a manner that real property taxing authorities may satisfy property tax claims against the open space lands by proceeding against individual owners in the HOA and the lots and dwelling units they each own.
- (viii) Town Counsel shall find that the HOA documents presented satisfy the conditions in (b)(i-vii), above, and such other conditions as the Planning Board shall deem necessary.

### 3. Maintenance Standards

- (a) Maintenance and plowing of private roads shall be the responsibility of the property owners.
- (b) If the holder of the Conservation Restriction finds any provisions of the restriction to be violated, it may, upon 30 days written notice to the owner, enter the premises for necessary maintenance, and the actual costs of such maintenance by the Town shall be assessed ratably against the landowner or, in the case of an HOA, the owners of properties within the development, and shall, if unpaid, become a property tax lien on such property or properties.

Accepted ATM 6/1/2015  
Approved AG 10/5/20105

## SECTION 20. TOWNWIDE RATE OF DEVELOPMENT

- 1.1.1 Purpose.** The purposes of this by-law, "Townwide Rate of Development," are to (a) promote orderly residential growth in the Town of Petersham, consistent with the rate of growth over the last 10 years (expressed herein as building permits issued for new dwelling units); (b) phase growth so that it will not unduly strain the community's ability to plan for and provide basic public facilities and services; (c) provide the Town and its boards and agencies the information and reasonable time necessary to preserve and

enhance existing community character, safety, health, and the value of property; and (d) ensure the greatest degree of fairness and equal opportunity to all in the distribution of available building permits.

**1.1.2 General.** Beginning on the date of the adoption of this By-law, building permits (hereafter, “permits”) for no more than six (6) new dwelling units shall be issued in each of the six full calendar years following said adoption, those years being 2015, 2016, 2017, 2018, 2019, and 2020. See Section 1.1.3(8) below regarding the remainder of calendar year 2014. More than six (6) permits may be issued in one year if paragraphs 1.1.3(5) or 1.1.3(6) below apply.

Accepted ATM 6/2/2014  
Approved AG 9/4/2014

**1.1.3 Procedures.** Any permits shall be issued in accordance with the following procedures:

1. Any natural person, partnership, corporation, realty trust or legal entity may apply for no more than one permit in any given 30 day period. For the purposes of this section, subsequent applications in the same 30 day period by any natural person, partnership, corporation, realty trust or legal entity which in any way may be construed as having a common ownership, interest or control with previous applications in the same 30 day period are prohibited, and shall be returned to the applicant.
2. Permits shall be issued on or before Friday of each week by the Building Inspector (following approval by the Building Inspector). The Building Inspector shall act on each permit in order of submission. Any permit application that is incomplete or inaccurate shall be returned to the applicant and shall require a new submission.
3. From the first Friday in January through the sixth (6th) Friday of the year, either no (0) permit if there are no eligible applications awaiting issuance, or one (1) permit if there is one or more eligible applications awaiting building permit issuance, shall be issued in any given week. If all six (6) permits have not been issued by the sixth (6th) Friday of the year, the remaining permits shall be issued for eligible applications at the rate of one or more per week until all six (6) permits are issued for that year. In circumstances where paragraphs 1.1.3 (5) and 1.1.3 (6) below apply, there may be more than six (6) permits available for issuance.
4. The Building Inspector shall mark each application with the time and the date of submission, and shall act on each application in a timely manner. He/she shall issue approved permits in accordance with the schedule in paragraph 1.1.3 (3) above. If the Building Inspector has more permits eligible for issuance in any given week than he/she is authorized to issue, the Building Inspector shall retain said permits to be issued in the order in which the applications were submitted.
5. If any permit is deemed abandoned or invalid in the same calendar year in which it was issued, then it shall be returned and counted as an additional permit available for

issuance during that same calendar year. A permit which is deemed abandoned or invalid in a calendar year different from the year in which it was issued shall be returned and counted as an additional permit to be issued during the calendar year in which it is deemed abandoned or invalid only if 1) there were more eligible applications for permits than the number of permits that were issued in the year when the said permit was issued, and 2) if there are any intervening years between the calendar year of issuance and calendar year in which said permit is deemed abandoned or invalid, there were also more eligible applications for permits than the number of permits that were issued during all of those intervening years.

6. Permits not issued in any calendar year shall be available for issuance in the subsequent year only.
7. By the first Friday of January during any calendar year in which this by-law is in effect, the Building Inspector shall determine whether or not each eligible application for which a permit has not been issued during the previous calendar year shall be retained. Upon being informed in writing by the applicant before said first Friday in January that the applicant desires the application to remain in effect, the Building Inspector shall continue to treat said application as an eligible application in accordance with this by-law. All eligible applications for which a permit has not been issued, and for which the applicant has not informed the Building Inspector in writing by the said first Friday in January of the applicant's desire for the application to remain in effect shall not be retained, and the application shall be returned to the applicant.
8. The maximum number of permits to be issued for the year 2014 shall be six (6). All provisions of this by-law shall apply to said issuance.

Accepted ATM 6/2/2014

Approved AG 9/4/2014

**1.1.4 Exemptions.** The provisions of this by-law shall not apply to, nor limit in any way, the granting of building or occupancy permits required for enlargement, restoration, rehabilitation, or reconstruction of dwellings existing on lots as of the date of passage of this by-law.

Accepted ATM 6/3/2002

Approved AG 8/30/2002

Amended STM 10/21/2002

Approved AG 2/19/2003

**1.1.5 Severability.** If any provision of this by-law is held invalid by a court of competent jurisdiction, the remainder of the by-law shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this by-law shall not affect the validity of the remainder of the Petersham Zoning By-law.

**1.1.6 Time Limitation and Extension.** This section shall expire on January 1, 2021; provided, however, that this section may be extended without lapse of its provisions and limitations by vote of the Town Meeting prior to January 1, 2021.

Accepted ATM 6/3/2002

Approved AG 8/30/2002

Amended Section 2. ATM 6/2/2008

Approved AG 12/16/2008

Accepted ATM 6/2/2014

Approved AG 9/4/2014