

I. PURPOSE

The purpose of this bylaw is to maintain the rural, natural, historical and scenic character of the town's roadways. This bylaw ensures that: (1) Town ways will be recommended for designation as scenic roads in accordance with the criteria stated in this bylaw; and (2) Trees and Stone Walls within the right-of-way or layout of all designated scenic town roads will not be altered without the public hearing required by, or without following, the procedures set forth in this bylaw.

II. AUTHORITY

This bylaw is adopted under authority of Chapter 40, Section 15C and Article II and Article LXXXIX, Section 6, of Articles of Amendment of the Constitution of the Commonwealth of Massachusetts.

III. DEFINITIONS

In the absence of contrary meaning established through legislative or judicial action pursuant to Massachusetts General Law Chapter 40 Section 15C, the following terms contained in that statute, or used herein, shall be defined as follows:

Abutter. Abutter shall mean assessed owners of properties, including those across the street, within 300 feet of each corner along the right-of-way of the property where work requiring a scenic road hearing is required.

Cutting or Removal of Trees. Cutting or removal of trees shall mean the removal of one (1) or more trees, trimming of major branches or cutting of roots. But not the trimming or cutting of

Trees that the Tree Warden has certified in writing are diseased, dying or dead, or the trimming or cutting of diseased, dying or dead branches.

Major Branch. Major branch shall mean a living branch that is fully attached to a tree and that has a diameter of three (3) inches or more, twelve (12) inches from the point at which said branch connects to the tree.

Repair, Maintenance, Reconstruction or Paving Work. Repair, maintenance, reconstruction or paving work shall mean any work done within the right-of-way of a scenic road by any person or agency, public or private. Included within this definition is any work on a portion of a scenic road layout that was not physically commenced at the time the road was designated as a scenic road. Construction of new driveways or alteration of existing ones is also included, insofar as it takes place in the right-of-way. Construction or alteration of water, sewer, electric, telephone, cable television, or other utilities within the right-of-way is also included.

Road. Road shall mean the right-of-way of any way used and maintained as a public way, not just the paved surface. When the boundary of a scenic road is in issue so that a dispute arises as whether or not certain Trees or Stone Walls or portions thereof are within the scenic road, the Trees or Stone Walls shall be presumed to be within the way until the contrary is shown. Trees and Stone Walls located on the boundary line of a scenic road shall be covered by this by-law.

Stone Wall. Stone wall shall mean an assemblage of stone involving at least one (1) cubic foot of wall material per linear foot totaling not less than five (5) feet in length.

Tearing Down or Destruction of Stone Walls. Tearing down or destruction of stone walls shall mean any act to remove stones; to move stones except for the purposes of repair or maintenance; to cover over stones with non-stone materials or paint; to bury stones; or any other acts by which a stone wall or portion thereof is removed, broken down, relocated or obscured with other materials. Temporary removal of stone walls, to be followed by replacement of the disturbed portion of the wall within a reasonable period of time, not to

exceed ninety (90) days, at the same location, with the same materials and according to the original character, is permitted without Planning Board approval, but only if the Planning Board is notified before the work begins, so that it can confirm that the wall is properly replaced.

Tree. Tree shall mean a tree whose trunk has a diameter of four (4) inches or more as measured four and one half (4½) feet above the ground.

IV. RECOMMENDING DESIGNATION AS A SCENIC ROAD

A. Procedures for Designating Scenic Roads

Upon recommendation or request of the Planning Board, Conservation Commission, or Historical Commission, any road shall, upon vote of a majority of the voters present and voting at any annual or special Town Meeting, become a scenic road subject to the provisions hereof. Such designation shall be effective as of the date of Town Meeting action. Any work on any portion of the right-of-way of a scenic road, which was not physically commenced at the time the road was designated by Town Meeting as a scenic road, shall conform to this bylaw.

B. Public Hearing

Prior to making any recommendation or request to Town Meeting regarding designation of a particular road as a scenic road, the Planning Board, Conservation Commission or Historical Commission, as the case may be, shall conduct a public hearing regarding such proposed designation. Notice of the public hearing shall be given by the body conducting the hearing pursuant to the requirements for notice set forth in Section V.B.1 of this bylaw.

C. Criteria for Designation of a Scenic Road

The Planning Board, Conservation Commission, or Historical Commission shall, in determining which roads or portions of roads should be recommended for designation as scenic roads, shall consider the following criteria:

1. Overall scenic beauty (and view from the roadside);
2. Contributions of trees to scenic beauty;
3. Contribution of walls to scenic beauty;
4. Age and historic significance of road, trees and stone walls.

D. Scenic Road Layout Plan

Subsequent to the designation of any road as a scenic road, the proponent(s) shall prepare a scenic road layout plan that shall show the location of all stone walls and shall endeavor to include with such plan all trees within the scenic road layout. For the purposes of this section, tree shall mean a tree whose trunk has a diameter of twelve (12) inches or more as measured four and one-half feet (4½) feet above the ground.

E. Notification of Designation as a Scenic Road

Upon designation by Town Meeting of any road or portion as a scenic road, the Planning Board shall take the following steps within 30 days of such designation:

1. Notify all municipal departments that may take action with respect to such road;
2. Notify the State Department of Public Works;
3. Indicate such designation on maps currently in use by municipal departments, as appropriate, and
4. Notify all utility companies or other parties that may be working in or around such road.

V. PROCEDURES FOR OBTAINING PERMITS

A. Filing

Any person, organization, state or municipal agency seeking the written consent of the Planning Board, regarding the cutting or removal of trees or the tearing down or destruction of stone walls within the right-of-way of a scenic road shall file a request with the planning Board, together with the following:

1. The text of a legal notice identifying the location of the proposed action in terms enabling readers to locate it with reasonable specificity on the ground without need for additional plats or references, and describing in reasonable detail the proposed changes to trees and stone walls;
2. A statement of the purpose, or purposes, for the proposed action;
3. A statement of feasible alternatives to the proposed action, together with an indication of the advantages and disadvantages of each alternative;
4. A list of the Abutters of the property and, at the time of the scheduled public hearing, the return receipts related to the notice provided to the Abutters as described in the Notice section below;
5. Except in case of town agencies, a deposit sufficient to cover the cost of advertising and notification; and
6. Any further explanatory material useful to adequately inform the Planning Board

B. Notice

1. General Notice. The Planning Board shall, as required by statute, give notice of its public hearing by advertising twice in a newspaper of general circulation in the area. This notice shall contain a statement as to the time, date, place and purpose of the hearing with a reasonable description of the action proposed by the applicant. Copies of this notice shall also be sent to the Town Manager, the Conservation Commission, the Historical Commission, the Tree Warden, and the Department of Public Works.

2. Notices to Abutters. The applicant must furnish notice of the proposed project to all Abutters. The applicant will be responsible for sending this notice via United States Postal Service Certified Mail return receipt requested at his/her expense. All return receipts shall be submitted to the Planning Board at the opening of the scheduled public hearing.

C. Timing of Notice

The first publication of the notice shall be as soon as practicable, and shall in all cases be at least 14 days before the hearing. The last publication shall occur, as required by statute, at least seven days prior to the hearing.

D. Timing of Decision

The Planning Board shall make a decision on the request within twenty-eight (28) days after the close of the public hearing. If the Planning Board fails to mail or deliver to the applicant a copy of its decision within this time period the requested approval shall be deemed granted.

E. Performance Guarantee

Before endorsement of its approval on a plan, the Planning Board may require that the proposed work to be done, be secured by a bond sufficient in form and amount in the opinion of the Planning Board to ensure satisfactory performance of the proposed work.

F. Public Shade Tree Act

Whenever a public hearing concerning the proposed work is also required to be held by the Tree Warden pursuant to M.G.L. Chapter 87 (The Public Shade Tree Law), the Planning Board and Tree Warden hearings shall be consolidated and notice thereof shall be given by the Tree Warden in accordance with the provisions of M.G.L. Chapter 87. The authorization of the Planning Board to such proposed work shall not be regarded as implying the authorization of

the Tree Warden or vice versa. The Planning Board decision shall include a condition that no work shall be done until all applicable provisions of the Public Shade Tree Law, M.G.L. Chapter 87, have been complied with.

G. Approval of Curb Cuts by the Selectmen

The consent of the Planning Board to work involving a proposed curb cut shall not be regarded as implying consent by the Selectmen to such curb cut, or vice versa.

H. Emergency Work

The procedures of this article shall not be required when the Tree Warden or his deputy act in an emergency in accordance with M.G.L. Chapter 87 to remove fallen trees or limbs which cause an obstruction to public travel or a dangerous situation with respect to utility lines.

I. Approval Period

The approval of the Planning Board or Tree Warden under this bylaw for any proposed work shall be valid for two years from the date the decision is filed with the Town Clerk. After two years from this date, the decision is void unless an extension is granted before the expiration.

J. Considerations

The Planning Board's decision on any application for proposed action involving the cutting or removal of trees or the tearing down or destruction of stone walls within the right-of-way of a scenic road shall be based on consideration of the following:

1. Preservation of natural resources;
2. Environmental values;
3. Historical values;
4. Scenic and aesthetic characteristics;

5. Public safety;
6. Compensatory actions proposed, such as replacement of Trees or Walls;
7. Existence or absence of reasonable alternatives (including a no-build alternative);
8. Consistency with articulated town policies and
9. Other sound planning considerations.

VI. ENFORCEMENT

The Planning Board is responsible for the enforcement of this bylaw. Whoever violates any provision of this bylaw or any conditions of any permit granted pursuant hereto shall be liable for a fine of not more than the maximum permitted by law for each citation for any violation and shall be required to restore any damage. Removal of each individual tree shall be considered a separate violation. Removal of each linear foot of stone wall shall be considered a separate violation.

VII. GENERAL

The Planning Board may adopt more detailed regulations for carrying out provisions hereunder.

VII. SEVERABILITY

If any section or portion of this bylaw is ruled invalid by a court of competent jurisdiction, such ruling will not affect the validity of the remainder of the bylaw.