

Why a Scenic Road Bylaw?

The purpose of the Scenic Road Bylaw is help the town maintain and enhance its rural, small-town character by ensuring that work done to trees and stone walls on the public right-of-way of scenic roads is done in a way that helps preserve the scenic, historic and aesthetic characteristics of the public right-of-way. Establishing a Scenic Road Bylaw is one of the action items in the Town's Master Plan.

What is the public right-of-way and where does my property begin?

The public right-of-way includes the paved and unpaved portions of the town's right-of-way. The public right-of-way may extend 5-15 feet beyond the edge of the pavement. This is town land and it is subject to the town's control. For example, the Board of Selectmen hold a public hearing and permit the work when National Grid wants to move or put in a new pole in the public right-of-way. The Tree Warden is responsible for taking or approving any actions on the shrubs and trees in the public right-of-way. The land beyond the public right-of-way is private.

How does the Scenic Road Bylaw work?

The Scenic Road Bylaw determines how the town administers the state's Scenic Road law (MGL Chapter 40, Section 15C). Here are the relevant sections of the law:

- Upon recommendation or request of the Planning Board, Conservation Commission or Historical Commission, the town can designate any road, other than a numbered route or state highway, as a scenic road.
- After a road has been designated as a scenic road any repair, maintenance, reconstruction or paving work done on the scenic road shall not involve or include the cutting or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, except with the prior written consent of the planning board, after a public hearing.
- The public hearing must be advertised twice in a paper of general circulation, the last publication to occur at least seven days prior to the hearing.
- If a public hearing must be held under both the Scenic Road law and the Public Shade Tree law, then the hearings will be consolidated.
- The town can make a bylaw establishing fines not to exceed \$300 for violations.

The proposed Scenic Road Bylaw establishes the process and criteria for designating roads as scenic roads, what work on trees and stone walls will require hearings, the process for conducting hearings, the criteria for approving proposed work, and how the bylaw will be enforced.

How do roads get designated as scenic roads?

- Planning Board, Conservation Commission or Historical Commission can recommend roads for designation as scenic to Town Meeting.
- A public hearing on the recommended scenic roads must be held before Town Meeting.
- Town Meeting will vote on the proposed scenic roads after the bylaw is based and the public hearing on the proposed scenic roads is held.

What criteria are used to determine if a road should be designated a scenic road?

- Overall scenic beauty (and view from the roadside)
- Contributions of trees to scenic beauty
- Contributions of stone walls to scenic beauty
- Prevalence of historic stone walls along the right-of-way
- Age and historic significance of road, trees and stone walls

What kind of work requires a permit from the Planning Board?

Any work on the public right-of-way of a scenic road that involves:

- Cutting or removing a healthy living tree that has a diameter of 4" or more at 4.5' from the ground

- Cutting or removing a healthy living branch that has a diameter of 3” or more 12” from where it joins the tree
- Any permanent destruction or tearing down of a stone wall, which is defined as any assemblage of stone that has one cubic foot of stone or more per linear foot and that is more than 5’ long. You must notify the Planning Board that the wall is being restored and complete the work within 90 days.

For the purposes of the bylaw, and this is true for trees subject to the Public Shade Tree law, if there is any question about whether a tree or stone wall is on the public right-of-way, it is considered to be in the public right-of-way until the contrary is shown.

Work on private property does not require a permit.

How do I know if a tree or stone wall is in the public right-of-way?

You can check with the Highway Department.

What kind of work does not require a permit from the Planning Board?

No permit is required to:

- Cut or remove trees or branches that the Tree Warden certifies in writing as diseased, dying or dead
- Renovate a stone wall so long as it is renovated using the same type of materials, it is in the same location, and it has the same general character as the original wall
- Conduct emergency work. If a stone wall is destroyed during an emergency, it must be repaired as soon as practicable.

How do you obtain a permit?

- Applicant submits description of proposed work to the Planning Board
- Planning Board schedules a public hearing
- Applicant pays to advertise the hearing in the newspaper
- Applicant notifies the abutters (properties within 300 feet of the corners of the affected property)
- Planning Board and, if required, Tree Warden holds the hearing
- Planning Board approves work as submitted, approves work with conditions, or does not approve the work

Applications are typically submitted for new driveways and new subdivision streets. Road widening projects and tree cutting by public utilities are not exempt from the bylaw.

What criteria are used by the Planning Board to evaluate proposed work?

The Planning Board’s decision must be based on the criteria in the bylaw, which are:

- Preservation of natural resources
- Environmental values
- Historical values
- Scenic and aesthetic characteristics
- Public safety
- Compensatory actions proposed, such as replacement of trees or walls
- Existence or absence of reasonable alternatives (including a no-build alternative)
- Consistency with articulated town policies
- Other sound planning considerations

Generally, if an applicant proposes work that minimizes the impact of it on the trees and stone walls in the public right-of-way to the extent reasonably practicable and/or proposes reasonable compensatory actions, the work will be approved as submitted.

How will the Scenic Road Bylaw be enforced?

The Planning Board will enforce the Scenic Road Bylaw. Anyone who violates the bylaw is subject to a fine not to exceed the maximum allowed by law and is responsible for restoring any damage. Removal of each tree and each linear foot of stone wall are considered separate violations.

Both the Scenic Road Bylaw and the Public Shade Tree Law control work on trees in the public right-of-way. These are key elements of the Public Shade Tree Law:

- All trees within the public way are defined as public shade trees. If there is any question about whether a tree is in the public way, it is considered in the public way until the contrary is shown.
- The Tree Warden is responsible for the care, control, protection and maintenance of all public shade trees, except those within a state highway, and enforces all the provisions of the law for the preservation of public shade trees
- No other person may plant, trim, cut or remove a public shade tree without the permission of the Tree Warden
- No person, including the Tree Warden, may cut, trim or remove any tree greater than one and one-half inches in diameter without a public hearing
- Public notice of such a hearing must be posted at least seven days prior to the hearing on the trees in question, in two or more public places in town, and in a newspaper of general circulation for the town, in each of two successive weeks
- The Tree Warden shall not cut or remove a public shade tree if, at or before the public hearing, objection is made by one or more persons, unless such cutting or removal is approved by the Board of Selectmen
- Any person injured in his property by the trimming, cutting, removal or retention of any public shade tree may recover the damage, if any, from the town under Chapter 79
- Nothing contained in Chapter 87 shall prevent the trimming, cutting or removal of any tree that endangers persons travelling on a highway, or the removal of any tree, if so ordered by the proper officers, for the purpose of widening the highway
- Tree Warden also has care and control of all shrubs and growths in the town.

(Source: Urban and Community Forest Program Fact Sheet)