

ARTICLE X: To see if the Town will vote to amend the General Bylaws by adding the following Category 48. Scenic Roads, or to take any other action relative thereto.

Category 48. Scenic Roads

Section 1. Purpose And Authority

This section is adopted for the purpose of carrying out the authority granted to the Town under MGL Chapter 40, section 15C (Scenic Roads Act) to protect designated scenic roads as well as under MGL c.40, §21 and Amended Article 2, §6 and Amended Article 89 of the Massachusetts State Constitution.

Additionally these regulations are intended to ensure that:

- A. Ways shall be recommended for designation as scenic roads under stated criteria; and
- B. Trees and stone walls along scenic roads shall not be altered except after notification of interested parties and a public hearing at which the Planning Board shall consider the proposed work based on the criteria set forth herein, and shall authorize such work to proceed if appropriate and upon reasonable conditions.
- C. Only those alterations to trees and stone walls along scenic roads in conjunction with repair, maintenance, reconstruction or paving work within the legal right-of-way, not on private property, are subject to this bylaw.
- D. The scenic characteristics of the Town will be preserved.

Section 2. Definitions

The following terms shall be construed as follows:

"Cutting or Removal of Trees" shall include destruction of one (1) or more tree trunks of diameter six (6) inches or more measured four (4) feet from the ground, or of more than one (1) tree trunk of diameter four (4) inches or more measured four (4) feet from the ground, or of more than six (6) limbs or roots of more than four (4) inches in diameter each where cut on a single tree.

"Repair, Maintenance, Reconstruction or Paving Work" shall mean any such work done within the legal right-of-way of a scenic roadway by any person or agency, public or private, including the work performed to construct or alter all or a portion of a private driveway or subdivision way within the right-of-way of a scenic roadway, but not including utility work that requires the trimming of trees.

"Road" shall mean a vehicular-traveled way designated as a scenic road plus its necessary appurtenances within the right-of-way, including bridge structures, drainage systems, retaining walls, monuments, traffic-control devices, and sidewalks, but not existing intersecting streets.

"Legal Right-of-Way" shall mean the designated area that lies between a private property line and parallel town accepted street, which will encompass the entire road frontage of the property and is maintained by the Town and freely accessible by the public.

"Tearing Down or Destruction of Stone Walls" shall include alteration or relocation or destruction of more than ten (10) linear feet of stone wall involving more than one (1) cubic foot of wall material above existing road grade per linear foot, but shall not be construed to include temporary removal and replacement at the same location with the same materials; temporary shall be defined as the period between removal and replacement not exceeding 6 months.

Section 3. Scenic Road Designation

Procedure

Any person or group of persons may request the Planning Board, Conservation Commission or Historical Commission to take the necessary steps to petition Town Meeting to designate a roadway as scenic under G.L. c.40, §15C or a group of citizens may petition town meeting under G.L. c.39, §10 to designate a roadway as scenic. If the citizen petition process is used under G.L. c.39, §10, the Planning Board shall hold a public hearing prior to Town Meeting, in accordance with the rules and regulations established by the Board, and make a recommendation to Town Meeting on the scenic road designation.

Considerations

The following criteria shall be considered in making a recommendation that a roadway be designated as a scenic roadway:

- (a) Historic significance of the roadway;
- (b) Scenic value of the roadway;
- (c) Historic signification or scenic value of affected trees and stone walls;
- (d) Exceptional qualities of trees in terms of age, spread, species, or specimen Size;
- (e) Bordering land uses, present and prospective, and how they impact the importance of retaining the existing trees and stone walls; and
- (f) Feasibility of accomplishing protection of the values of this by-law in light of road design and use.

Designated Roads

Prospect Street for its full length of 1.75 miles and legal right-of-way width of 50 feet.

Section 4. Permit Review Procedures

Filing

Any person or organization seeking to cut or remove a tree or tear down or destroy a stone wall in connection with repair, maintenance, reconstruction, or paving work, within the legal right-of-way of a scenic roadway, shall first shall submit a request to the Planning Board for its written consent and provide the information specified in the Board's rules and regulations, and the following:

- (a) The text of a legal notice that identifies the location of the proposed action to give sufficient notice of the location without the need to review materials outside of the application and that describes fully the proposed changes to trees and stone walls.

(b) A list of the owners of land located in whole or in part within three hundred (300) feet of the affected section of the scenic roadway work.

(c) Except in the case of Town agencies, a deposit sufficient for the cost of advertising the notification.

(d) A plan and explanatory material describing the proposed action, restoration, any compensatory efforts proposed, and proposed performance security.

Notice

The Board shall hold a public hearing and notice of said hearing shall be given by twice advertising the time, date, place and purpose of the hearing in a newspaper of general circulation in the area, with the last publication to occur at least seven (7) days prior to the hearing, the cost of which shall be borne by the applicant. The Planning Board may send copies of that notice to the Board of Selectmen, Conservation Commission, Historical Commission, Tree Warden, and DPW Director and the applicant shall send copies of said notice to the owners of the property identified in (b) above.

In the event that a hearing is required under both G.L. c.40, §15 and G.L.c.87, §3, a joint hearing shall be noticed and held as provided for my statute.

Project Considerations

In acting on scenic road proposals, the following criteria shall be taken into consideration:

- (a)** Preservation of natural resources;
- (b)** Environmental and historical values;
- (c)** Scenic and aesthetic characteristics;
- (d)** Public safety;
- (e)** Traffic volume and congestion;
- (f)** Conformance of any proposed roadway design with the design standards of the Board's Subdivision Rules Regulations and of Mass Highway;
- (g)** Compensatory actions proposed, such as replacement trees or walls;
- (h)** Functional urgency of the repair, maintenance, cutting; removal; reconstruction, or paving;
- (i)** Financial and other consequences of design revision to avoid or reduce damage to trees or stone walls;
- (j)** Evidence provided by abutters, Town agencies, and other interested parties;
- (k)** Availability of reasonable and less damaging alternatives to the proposed action; and
- (l)** Any regulations promulgated under this by-law.

Timing

The Planning Board shall hold a public hearing within forty-five (45) days from the date on which request is received and shall make a decision within forty-five (45) days of opening the public hearing, unless the Board and the applicant agree to extend the deadline.

Relationship To Other Agencies And Authorities

Consent to an action by the Planning Board shall not be construed as inferring consent by the Tree Warden under MGL Chapter 87, or vice versa, or of the Department of Public Works in acting on curb cuts.

Emergency Work

The Superintendent of Public Works may determine that emergency conditions require work which otherwise would require Planning Board approval may proceed to the extent necessary to protect public health, property, and safety prior to such approval and shall notify the Planning Board in writing of having done so and provide the reasons for the action taken.

Section 5. Compensatory Actions

The following may be considered adequate compensatory action by the Board, unless conditions are found by the Board to require otherwise:

(a) Trees destroyed shall be replaced with nursery grade trees on the following basis (trees measured at diameter breast height):

Per Tree Removed	Required Replacement
Up to 12" diameter	1 tree of 4" diameter
12" to 24" diameter	3 trees of 4" diameter
Over 24" diameter	4 trees of 4" diameter

Replacement trees shall be planted under the supervision of the Tree Warden and shall be planted as soon as construction activity and the season permit.

(b) Stone walls shall be replaced in kind, connecting with undisturbed walls wherever possible.

Section 6. Enforcement

Non-criminal disposition

The Planning Board shall be responsible for the enforcement of this category. Whoever violates any provision of this category or any conditions of any permit granted pursuant hereto shall be liable for each violation and shall be required to restore any damage as specified in Section 5 above. Removal of each individual tree or each linear foot of stone wall shall be considered a separate violation. Each day on which a violation exists may be deemed to be a separate offense.

In addition to the procedures for enforcement, as described above, the provisions of this category may also be enforced by non-criminal disposition pursuant to the provisions of M.G.L. Chapter 40, section 21D, which has been adopted by the Town in Category 39 Enforcement of the General By-laws. The enforcement agent shall be the Town Planner, the Tree Warden, or a police officer, acting under the direction of the Planning Board. The penalty for any violation of this category shall be \$300.