

Article 6

proposed changes in red

CHAPTER XVI - Scenic Roads

Section 1. *Purpose.* The Scenic Roads Act, MGL Chapter 40, Section 15C, allows town meeting to designate scenic roads.

The effect of designation as a scenic road is that planning board approval is required before trees can be removed, or stone walls can be torn down or destroyed, if this is done in connection with repair, maintenance, reconstruction or paving a scenic road.

Scenic Road designation does not require planning board approval for trimming or other cutting of trees, or destruction of stone walls, unless related to roadway work. It also does not require planning board approval for roadway work that does not affect trees or stone walls.

These regulations are intended to ensure that:

1. ways will be recommended for designation as scenic roads according to stated criteria; and
2. trees and stone walls in the rights-of way of scenic roads will not be destroyed without proper procedures.

Section 2. *Definitions.* The following terms used in the Scenic Roads Act, MGL Chapter 40, Section 15C, shall be defined as follows for purposes of applying that statute in the Town of Mendon.

- 2.1 *Cutting or Removal of Trees.* "Cutting or Removal of trees" shall mean the removal of one or more trees, cutting of major branches or cutting of roots.
- 2.2. *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 the right-of-way or Scenic Road Layout, if such Scenic Road Layout exists, which was not physically commenced at the time the road was designated as a Scenic Road.**

Construction of new driveways, bicycle paths, or roadside paths, or alteration of existing ones, is also included, insofar as the work takes place within the right-of-way or **Scenic Road Layout**. Construction or alteration of water, sewer, electric, telephone, cable T.V. or other utilities within the right-of-way is also included.
- 2.3 "Right of Way" shall mean land for which roads are located, the width and length is established by deed, statute, through subdivision control, or by other legally acceptable means; a right of way normally includes the driving surface (paved area), roadside shoulders, public utilities, sidewalks, traffic signs, and lights.
- 2.4. "Road" shall mean the entire right-of-way including but not limited to a vehicular traveled way plus necessary appurtenances within the right-of-way such as bridge structures, drainage systems, retaining walls, traffic control devices, and pedestrian facilities. When the boundary of the right-of-way is in issue so that a question arises as to whether or not certain trees or stone walls or portions thereof are within the way, the trees or stone walls shall be presumed within the way until the contrary is shown.
- 2.5 "Scenic Road". "Scenic Road" shall mean a road, or portion thereof, so designated in accordance with M.G.L. Chapter 40, Section 15C and these regulations.
- 2.6 "Scenic Road Layout". "Scenic Road Layout" shall mean a land area shown on a surveyed plan which includes a right of way and private land adjoining the right of way which is subject to the provisions of these regulations adopted under the authority of M.G.L. Chapter 40, Section 15C.

- 2.7 “Stone Wall”. “Stone Wall” shall mean an assembled grouping of stones comprising at least one (1) cubic foot of stone per linear foot and totaling five (5) or more feet in length.
- 2.8 *Tearing Down or Destruction of Stone Walls.* “Tearing down or destruction of stone walls” shall mean the removal of more than two (2) linear feet of stone wall involving more than one cubic foot of wall material per linear foot above existing grade. Temporary removal and replacement at the same location with the same materials is permitted without planning board approval if the Town department of Public Works is notified before the work begins so that it can confirm that the wall is properly replaced. Repair of a stone wall, not involving tearing down or destruction of the wall, is not covered by this by-law.
- 2.9 *Trees.* “Trees” shall mean a tree whose trunk has a diameter of four inches or more as measured one foot above the ground.

Section 3. *Criteria for Designation as 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, consider the following criteria:

1. *Bordering trees and other natural features of exceptional quality, in terms of type, age, specimen size or spread, density of stand, or related flora; Contribution of stone walls to scenic beauty;*
2. *Bordering trees which themselves constitute, or are a significant part of, natural or man-made features of aesthetic value, including by the way of illustration trees having spring flowering or high fall color potential; trees which are part of vistas paralleling roadways or which create a frame of reference for more distant views;*
3. *Trees whose presence contributes substantially to the rural or woodland character of a roadway, particularly in comparison to more developed or urbanized adjacent areas; and*
4. *Bordering stone walls;*
5. *Overall scenic beauty;*
6. *Age and historic significance of road, trees and stone walls.*

Section 3.1 *Scenic Road Layout Plan Option.*

In addition to designating the right of way of a Road as a Scenic Road, the Planning Board may consider a Scenic Road Layout Option which extends the authority of the Scenic Road provisions to portions of abutting private property in addition to the right of way of a Road. Prior to the approval of a Scenic Road Layout, a Scenic Road Layout Plan shall be prepared by an engineer. The Scenic Road Layout Plan would extend the Scenic Road right of way onto private abutting property. The Scenic Road Layout Plan shall be drawn to scale of 1" = 40' or to a scale approved by the Planning Board and shall include:

1. *Name of street, street lines, north arrow, date, date of acceptance (in case of accepted streets), legend;*
2. *Names of all abutters as they appear on the most recent tax list;*
3. *Location, name and width of any intersecting streets and the date of acceptance (in the case of accepted streets); and*
4. *Location of all trees (as defined in Section 1) and stone walls within the Scenic Road Layout.*

Section 4. *Notification of Designation as 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. *Notify the Commissioners of Worcester County;*
4. *Indicate such designation on maps currently in use by municipal departments, as appropriate; and*
5. *Notify all utility companies or other parties which may be working in or around such road.*

Section 5. Procedures

Section 5.1. *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 plan showing proposed work and the extent of alterations or removal of trees or stone walls. The plan shall be drawn at a scale of 1" = 40' or to a scale approved by the Planning Board, and shall show the name of the street or streets, the portion of the right-of-way or Scenic Road Layout effected, north arrow, names of abutters within one hundred (100) feet of the proposed work and suitable space to record the action of the Planning Board and signatures of the five members of the Board. In instances where relatively minor alterations are proposed, as an alternative to the submission of the above referenced plan, the Planning Board may accept photographs along with prints of the right-of-way or Scenic Road Layout with the proposed minor alterations clearly indicated thereon;
4. A statement of the feasible alternatives to the proposed action, together with an indication of the advantages and disadvantages of each alternative;
5. A list of the assessed owners of properties located in whole or in part within 200 feet of the proposed action;
6. Except in the case of town agencies, a deposit sufficient to cover the cost of advertising and notification; and
7. Any further explanatory material useful to adequately inform the Planning Board.

Section 5.2. *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 the Selectmen, the Conservation Commission, the Historical Commission, the municipal engineer, the tree warden, the state department of public works, and the assessed owners of property within 200 feet of the proposed action.

Section 5.3. *Timing of Notice.* The first publication of the notice shall be as soon as feasible after the Planning Board receives the request from the applicant, 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.

Section 5.4. *Timing of the Hearing.* The Planning Board shall hold a public hearing within 30 days after the Planning Board meeting at which a properly filed request is received. The date and time of the public hearing shall be set outside of normal weekday work hours (8:00 a.m. to 5:00 p.m., Monday – Friday) so as to encourage maximum citizen participation.

Section 5.5. *Timing of Decision.* The Planning Board shall make a decision on the request within 21 days after 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.

Section 5.6. *Public Shade Tree Act.* Whenever both the Scenic Road Act and the Public Shade Tree Act (MGL Ch. 87) apply, notice shall be given and the Planning board hearing shall be held in conjunction with the hearing held by the tree warden acting under the Public Shade Tree Act. The consent of the Planning Board to a proposed action shall not be regarded as implying consent by the tree warden, or vice versa. The Planning Board decision shall contain a condition that no work may be done until all applicable provisions of MGL Ch. 87 have been complied with.

Section 5.7. *Approval of Curb Cuts by 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.

Section 5.8. *Emergency Work.* In the event that the Selectman determine that emergency conditions require that work otherwise requiring planning Board approval must proceed before such approval can be obtained the Selectmen may authorize the work to proceed before Planning Board approval is obtained to the extent which the Selectmen deem necessary to protect public health and safety.

Section 6. *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. The degree to which the proposed action would adversely affect the scenic and aesthetic values upon which the road designation was originally based;
2. The necessity for the proposed action in terms of public safety, welfare or convenience;
3. Compensatory actions proposed, such as replacement of trees or walls;
4. Availability of reasonable alternatives to the proposed action which could reduce or eliminate anticipated damage to trees or stone walls(including a no-build alternative);
5. Whether the proposed action would compromise or harm other environmental or historical values; and
6. Preservation of natural resources;
7. Environmental values;
8. Consistency with articulated town policies; and
9. Other sound planning considerations.

Section 7. *General.* The Planning Board may adopt more detailed regulations for carrying out provisions hereunder.

Section 8 *Enforcement*

The Planning Board is responsible for the enforcement of these rules and regulations. Whoever violates any provision of these regulations shall be liable to a fine of not more than one hundred (\$100) dollars for each citation for any violation.

Public ways designated as Scenic Roads in the Town of Mendon:

- Asylum Street.
- Bates Street (from Bellingham Street to the Bellingham town line).
- Blackstone Street (from Lovell St. to the Blackstone town line).
- Elm Street
- Gaskill Street terminating at George Street and Providence Street.
- George Street terminating at the Hopedale town line and Providence Street
- Hopedale Street (*added at 5/3/19 ATM*)
- Inman Hill Road.
- Main Street from Hastings St. to George St.
- Maple Street
- Miscoe Road terminating at North Avenue to the end of the public right of way.
- North Avenue beginning and including the road adjacent to the power transmission lines (USGS Blackstone, MA, RI quadrant) and terminating at the Upton town line.
- Park Street
- Pleasant Street
- Quissett Road terminating at Providence Street to the end of the public right of way.
- Southwick Street.
- Thayer Street terminating at Bates Street to the end of the public right of way.
- Thornton Street.
- Trask Road terminating at Hopedale Street to the end of the public right of way.