

SCENIC ROAD REGULATIONS

Section 1 - Definitions.

In the absence of contrary meaning established through legislative or judicial action, the following terms contained in M.G.L. Chapter 40, Section 15C or used herein shall be defined as follows:

1.1 "Cutting or Removal of Trees".

"Cutting or Removal of Trees" shall mean the removal of one or more trees, trimming of major branches but not trimming or cutting of dead trees, dead branches, or cutting of roots.

1.2 "Repair, Maintenance, Reconstruction, or Paving Work".

"Repair, Maintenance, Reconstruction, or Paving Work" shall mean any work done within the right-of-way or Scenic Road Layout 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 or alteration of existing driveways is also included, insofar as it takes place within the right-of-way or Scenic Road Layout.

1.3 "Right of Way".

"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.

1.4 "Road".

"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.

1.5 "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.

1.6 "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.

1.7 "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.

1.8 "Trees".

"Trees" shall include a tree whose trunk has a diameter of four inches or more as measured four feet above the ground.

Section 2 - Purpose.

These regulations are intended to ensure that:

1. Roads will be recommended for designation as Scenic Roads under stated criteria; and
2. Trees and Stone Walls within Scenic Roads and Scenic Road Layouts will be protected and will not be altered except after a public hearing following notification of interested parties and after consideration of the work project by the Planning Board based on stated criteria set forth in Section 6 below.

Section 3 - Recommending Designation as a Scenic Road.

3.1 Public Hearing.

M.G.L. Chapter 40, Section 15C authorizes designation of a Road as a Scenic Road by the Town upon recommendation or request of the Planning Board, the Natural Resources Commission or the Historical Commission. Prior to making any recommendation or request to Town Meeting regarding designation of a particular Road as a Scenic Road, the Planning Board, Natural Resources Commission or Historical Commission, as the case may be, shall conduct a public hearing regarding such proposed designation. Notice at the public hearing shall be given by the body conducting the hearing pursuant to the requirements for notice set forth in Section 5.2 of these regulations.

3.2 Criteria for Designation.

In determining which Roads should be recommended for designation as Scenic Roads, the

Planning Board, Natural Resources Commission, or Historical Commission shall consider whether the Road contains or is characterized by any of the following:

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;
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:

3.3 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 after January 1, 2011, a Scenic Road Layout Plan shall be prepared by the Town 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 of Scenic Road.

Upon the designation at Town Meeting of any Road or Scenic Road Layout as a Scenic Road, the Planning Board shall promptly take the following steps to give the effective notice

of such designation:

1. Notify all municipal departments that may take action with respect to such roads;
2. Notify the State Department of Public Works;
3. Cause a notice or informal article to be published in a local newspaper stating that the Road, or Roads, have been designated as Scenic;
4. Indicate such designation on all maps currently in use by municipal departments;
and
5. Notify all utility companies or other such parties which may undertake work within or on the border of such a Road.

Section 5 - Procedures for Obtaining Permits.

5.1 Filing.

Any person, organization, public agency or utility company contemplating the cutting or removal of trees, the tearing down or destruction of stone walls or portions thereof within a Scenic Road right of way or Scenic Road Layout or any repair, maintenance, construction, reconstruction or paving of the Scenic Road right of way or Scenic Road Layout shall first obtain the written consent of the Planning Board by filing a request for such work with the Planning Board, including the following information:

1. A plan (3 copies) 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;
2. The text of the proposed legal notice identifying the location of the proposed action in terms enabling readers to locate it with reasonable clarity without need of additional plans or references, and describing in reasonable detail the proposed changes to trees and/or stone walls;
3. A statement of the purpose, or purposes, for the changes proposed;

4. A list of owners of properties located in whole or in part within one hundred (100) feet of the proposed action;
5. Except in the case of town agencies, a deposit sufficient to cover the cost of advertising and notification; and
6. Any further explanatory material as may be required by the Planning Board.

5.2 Notice.

The Planning Board shall, as required by statute, give notice of a public hearing regarding the proposed action by advertising twice in a newspaper of general circulation in the Town. This notice shall contain a statement as to the date, time, place and purpose of the hearing with a reasonable description of the action proposed by the applicant. Copies of this notice shall also be delivered or mailed first class postage pre-paid to the Offices of the Board of Selectmen, the Natural Resources Commission, the Historical Commission and the Board of Public Works, and the owners of property within one hundred (100) feet of the proposed action.

5.3 Timing of Notice and Hearing.

The first publication of the notice shall be made as soon as feasible after the Planning Board receives the request from the applicant, and shall in all cases be made at least fourteen (14) days before the hearing. The last publication shall occur, as required by statute, at least seven days prior to the hearing. The Planning Board shall hold a public hearing within thirty (30) days of the date upon which a properly filed request is received.

5.4 Timing of Decision.

Within twenty-one (21) days after the public hearing the Planning Board shall render a written decision on the request.

5.5 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 within the Scenic Road or Scenic Road Layout.

5.6 Tree Warden

Whenever a public hearing concerning the proposed action is also required to be held by the Natural Resources Commission acting as 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 given by the Natural Resources Commission as Tree Warden in accordance with the provisions of M.G.L. Chapter 87. The consent of the Planning Board to a proposed action shall not be regarded as inferring consent by the Natural Resources Commission, or vice versa. The Planning Board decision shall include a condition that no work should be done until all applicable provisions of the Public Shade Tree Law, M.G.L. Chapter 87, have been complied with.

Section 6 - Criteria for Work Projects.

The Planning Board's decision on any application for proposed action affecting Scenic Roads or Scenic Road Layouts shall be based on consideration of the following criteria:

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;
5. Whether the proposed action would compromise or harm other environmental or historical values; and
6. Consistency of the proposed action with previously adopted Town plans and policies.

Section 7 - 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.

CHAPTER 40 15C

DESIGNATION OF SCENIC ROADS; MAINTENANCE, etc.

(Changes indicated below show the changes that have occurred since 1989 and are not suggested changes by staff.)

Upon recommendation or request of the planning board, conservation commission or historical commission of any city or town, such city or town may designate any road in said city or town, other than a numbered route or state highway as a scenic road; provided, however, that a numbered route may be designated by a city or town as a scenic road if its entire length is contained within the boundaries of said city or town, and no part of said route is owned or maintained by the commonwealth.

After a road has been designated as a scenic road any repair, maintenance, reconstruction, or paving work done with respect thereto 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, or if there is no planning board, the selectmen of a town, or the city council of a city, after a public hearing duly advertised twice in a newspaper of general circulation in the area, as to time, date, place and purpose, the last publication to occur at least seven days prior to such hearing; provided, however, that when a public hearing must be held under the provisions of this section and under section three of chapter eighty-seven prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the tree warden and the planning board, or if there is no planning board, the selectmen of a town, or the city council of a city, and notice of such consolidated public hearing shall be given by the tree warden or his deputy as provided in said section three of chapter eighty-seven. Any city or town making said scenic road designation may make an ordinance or by-law establishing that a violation of this paragraph shall be punished by a fine not to exceed three hundred dollars.

Designation of a road as a scenic road shall not affect the eligibility of a city or town to receive construction or reconstruction aid for such road pursuant to the provisions of chapter ninety.

LIST OF SCENIC ROADS WITH LENGTH AND DATE OF ESTABLISHMENT

Pond Road (1974)	6,202 feet	1.17 miles
Waterway/Brookway (1978)	640 feet	0.12 miles
Squirrel Road (1985)	1,400 feet	0.27 miles
Cartwright Road (1989)	2,075 feet	0.39 miles
Cheney Drive (1991)	493 feet	0.09 miles
Benvenue Street (1991)	4,250 feet	0.81 miles