

Scenic Roads and Stonewall Preservation

Collected Materials

A Scenic Roads Bylaw or Ordinance can help protect trees and stonewalls from road construction projects that could damage or destroy them. When repair, maintenance, reconstruction, or paving work is proposed that would impact adjacent trees or stone walls, the planning board can hold a public hearing regarding the proposed changes. To be considered, the trees and stonewalls must all be within the public right of way of the roadway. The bylaw or ordinance does not protect trees or stone walls that are solely on private property. While a scenic roads bylaw or ordinance is limited, it is still a valuable preservation tool, requiring a thoughtful consideration of alternatives. Over 100 cities and towns in MA have a scenic roads bylaw or ordinance. The bylaw or ordinance typically lists those roads that have been designated. A scenic roads bylaw is a general bylaw requiring a majority affirmative vote of town meeting or city council to establish the scenic roads bylaw and to designate each road as a scenic road.

Recommendations to designate a scenic road come from the Planning Board, Conservation Commission or Historical Commission. Adoption of a scenic roads bylaw or ordinance must be consistent with MGL Chapter 40, Section 15C-The Scenic Roads Act. Protecting stonewalls through an ordinance or bylaw is not limited to a scenic roads bylaw or ordinance. Under Home Rule in Massachusetts, cities and towns could consider passage of an additional ordinance or bylaw that would provide additional protections for stonewalls.

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Updated: August 5, 2020

STONE WALLS BYLAW**Section 1: AUTHORITY**

This Bylaw is adopted pursuant to the Town's Home Rule authority under Section 8 of Article 89 of the Amendments to the Massachusetts Constitution and the Town's general powers under G.L. c. 40, §21(1).

Section 2: PURPOSE

The purpose of this Bylaw is to facilitate the preservation of stone walls and to protect the scenic quality and character of public ways in the Town by regulating the removal, tearing down, or destruction of stone walls and the construction of new stone walls within or on the boundary of Town Ways. Additionally, this Bylaw is intended to set forth the process for obtaining Planning Board (the Board) approval for such activities.

Section 3: DEFINITIONS

The following terms contained in this Bylaw shall mean and be construed as follows:

3.1 Town Way

Shall mean the entire right-of-way of any way in the Town of Boxborough which has been either laid out and accepted as a public way by statutory process, or has been used by the general public and maintained by the Town as a public way, but shall not include State highways. When the boundary of the Town Way is uncertain, so that a dispute arises as to whether or not certain stone walls or portions thereof are within or on the boundary of the way, the stone walls shall be presumed to be within or on the boundary of the way unless the contrary is shown by survey.

3.2 Stone Wall

Shall mean a man-made continuous grouping of stones forming a straight or curved line.

3.3 Removal, 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 act by which a stone wall or portion thereof is removed, broken down, relocated, or obscured with other materials.

3.4 Preservation

Shall mean the act or process of applying measures necessary to sustain the historic form, integrity and material of an existing stone wall.

3.5 Construction

Shall mean the act or process of creating, by means of new construction, a stone wall.

Section 4: APPLICABILITY

Preservation of existing stone walls shall be exempt from review and approval by the Board. Prior written approval of the Board in accordance with the provisions of this Bylaw shall be required for:

- 4.1. The removal, tearing down, or destruction of stone walls or portions thereof within or on the boundary of any Town Way.
- 4.2 The construction of a new stone wall within or on the boundary of any Town Way.

Temporary (less than one (1) month) openings, no greater than ten (10) feet in width in stone walls as defined above, are permitted upon written approval of the Town Planner which may be granted upon provision of a photograph of the portion of stone wall to be impacted, a written statement that the wall will be returned to its original state, and the posting of a \$1,000.00 bond with the Town. The bond so posted will be released upon inspection and approval by the Town Planner that the stone wall has been substantially returned to its initial state.

Section 5: PROCEDURES

5.1 Application

Any person, organization, municipal agency, utility or other entity intending to undertake any of the activities described in Section 4 of this Bylaw shall, prior to proceeding with such activity, file a written application for approval with the Board, providing details about the proposed activity and its location.

5.2 Public Meeting and Notice

Upon receiving an application under this Bylaw, the Board shall promptly schedule a public meeting with a notice of the meeting sent to abutters within 300 feet and posted in the Town Hall at least fourteen days prior to the meeting. The meeting notice shall specify the time, date, place and purpose of the meeting, and shall include a brief description of the action proposed and its location. Copies of the meeting notice shall also be sent to the Board of Selectmen, the Public Works Director/Tree Warden, and the Building Inspector.

Conformance with the requirements of this Bylaw will not relieve the Applicant from the necessity of complying with all other applicable Town and State laws including, but not limited to, the Boxborough Driveway Approach Bylaw, the Public Shade Tree law, G.L. c. 87, §1, et seq. and the Scenic Roads law, G.L. c. 40, §15C; provided, however, that the Board may consolidate its meeting under this Bylaw with any hearing required under the Scenic Roads law.

Section 6: COMPENSATORY ACTIONS

Since the purpose of this Bylaw is to protect the scenic quality and character of the Town Ways, the Board may require, as conditions of approval, measures to avoid or reduce visual impacts resulting from alteration of existing stone walls. Such measures may include, but are not limited to, requirements for the redesign or relocation of a proposed driveway entrance, the relocation or reconstruction of portions of stone walls which are proposed to be removed or torn down, or the repair or restoration of portions of stone walls which, although not proposed under the application

to be removed or torn down, have fallen into disrepair or have been previously torn down, removed or destroyed.

Section 7: ENFORCEMENT

No removal, tearing down, or destruction of stone walls within or on the boundary of a Town Way shall occur without prior written approval from the Board, excepting only temporary openings as outlined in Section 4. In the event of unauthorized removal, tearing down or destruction of such stone walls, the Building Inspector may enforce this Bylaw by criminal prosecution, or by non-criminal disposition in accordance with G. L. c. 40, §21D. A violation of this Bylaw shall be subject to a fine of one hundred dollars (\$100.00) per offense, with each day that such violation continues constituting a separate offense.

Adopted by Annual Town Meeting:	May 11, 2010
Approved by Attorney General:	August 19, 2010
Amended by Annual Town Meeting:	May 12, 2016
Approved by Attorney General:	June 28, 2016

Chapter 245
SCENIC ROADS

§ 245-1. Statutory provisions of Scenic Road Act (MGL c. 40, § 15C).

" 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.

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 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 7 days prior to such hearing.

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."

§ 245-2. Purpose.

The Dover Planning Board has adopted this chapter with the following objectives:

- A. To maintain the natural beauty that currently exists along scenic roads in Dover.
- B. To enhance the rural character of the Town and encourage compatibility with existing roadside features.

**§ 245-3. Streets subject to provisions of the Scenic Road Act.
[Amended ATM 5-7-2002 by Art. 25]**

Scenic roads by name and date of scenic road designation:

- Bridge Street, 1991
- Buttercup Lane, 1989
- Centre Street, 1991
- Church Street, 1991
- Claybrook Road, 1975
- Cross Street, 1975
- Dedham Street, 1991, 2002
- Dover Road, 1991

Farm Street, 1976
Glen Street, 1991
Hartford Street, 1991
Haven Street, 1989
Main Street, 1991
Mill Street, 1975
Old Meadow Road, 1991
Pegan Lane, 1975
Pine Street, 1975
Pleasant Street, 1991
Powissett Street, 1975
Smith Street, 1991
Springdale Avenue, 1991
Strawberry Hill Street, 1975
Taylor Lane, 1976
Walpole Street, 1991
Wight Street, 1991
Willow Street, 1975
Wilsondale Street, 1975

§ 245-4. Procedure to designate road as scenic road.

- A. The Planning Board, the Board of Selectmen, the Conservation Commission, the Historical Commission or by petition of citizens of the Town (consistent with petition requirements to place an Article on the Warrant) may propose scenic road status for any road in Dover other than a numbered route or state highway as a scenic road. The Planning Board shall hold a public hearing on the petition, notifying the Selectmen, the Tree Warden, the Consulting Engineer, the Superintendent of Streets, the Conservation Commission and the Historical Commission, and advertising twice in a newspaper of general circulation, the first advertisement at least 14 days prior to the date of the public hearing.
- B. The Planning Board shall make a recommendation to the Town Meeting on the merits of designation of the proposed road as a scenic street.
- C. A majority vote of Town Meeting is required for designation. 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 as a scenic road shall conform to this chapter.

§ 245-5. Definitions.

The absence of contrary meaning established through legislation or judicial action pursuant to MGL c. 40, § 15C, these terms contained in that statute shall be construed as follows:

CUTTING OR REMOVAL OF TREES — Shall not be construed to include routine or emergency tree maintenance which removes only permanently diseased or damaged limbs, trunks or roots or whole trees as determined by the Tree Warden, or sound limbs, trunks or roots of a tree with a diameter 1 1/2 inches or larger 1 foot above ground level that hinders a public way as determined by the Tree Warden.

REPAIR, MAINTENANCE, RECONSTRUCTION OR PAVING-WORK — Any work done within the right-of-way by any person or agency, public or private. Construction of new driveways or alterations of existing ones is also included to the extent that such work takes place within the right-of-way.

ROAD — The entire right-of-way including, but not limited to, a vehicular traveled way, plus its necessary appurtenances with the right-of-way, including bridge structures, drainage systems, retaining walls, traffic control devices, pedestrian facilities and the air space above them, but not intersecting streets or driveways. When the boundary of the right-of-way is in issue so that a dispute arises as to whether or not certain trees or stone walls are within the right-of-way, the boundary shall be determined in accordance with MGL c. 86.

STONE WALLS — Shall not be construed to include assemblages of stone involving less than 1 cubic foot of wall material per linear foot nor totaling less than 5 feet in length.

TEARING DOWN OR DESTRUCTION OF STONE WALLS — Shall not be construed to include temporary removal and replacement within 30 days at the same location with the same materials.

TREES — Any woody plants having a trunk diameter with a diameter of 1 1/2 inches or larger, 1 foot above the ground.

§ 245-6. Construction and applicability of regulations.

The Planning Board authority and jurisdiction shall be consistent with MGL c. 40, § 15C. This chapter shall be controlling and may be amended from time to time.

§ 245-7. Design standards.

- A. The driveway standards shall be consistent with the Town of Dover Regulations for Residential Driveways and Curbscuts.¹
- B. Where stone walls exist, the maximum amount of stone wall to be removed shall be the width of the driveway at the location of the stone wall, plus 1 foot.

1. Editor's Note: See Ch. 196, Residential Driveways and Curb Cuts.

- (1) Removed stone shall be used to repair other sections of the wall along the road.
 - (2) No wall shall be cut without construction of an appropriate terminus. Appropriate end points are shown in the attached diagram² and consist of a stone wall with tapered ends turning back onto the lot along the drive, stone piers, granite posts or wooden posts (with or without a gate).
- C. No tree with a trunk exceeding 8 inches in diameter four feet above the ground level shall be cut for a driveway unless the curb cut cannot be safely located otherwise; clusters of trees located within 6 feet of each other with individual trunks of 6 inches in diameter 4 feet above ground level shall not be cut for a driveway unless the curb cut cannot be safely located otherwise.
- D. For each tree exceeding 4 inches in diameter 4 feet above ground level removed, a tree in a species and location suitable to the Planning Board shall be planted.
- E. Figures 1 and 2 at the end of this section illustrate driveway layout requirements relative to stone walls.³

§ 245-8. Procedures.

- A. Submission of request.
- (1) Any person or organization seeking consent of the Planning Board under MGL c. 40, § 15C, (the Scenic Road Act) regarding the cutting or removal of trees or the tearing down or destruction of stone walls, or portions thereof, in connection with the repair, maintenance, reconstruction or paving work on scenic roads, shall submit a written request to the Planning Board by filing such request⁴ with the Town Clerk, with a copy to the Planning Board, together with the following:
 - (a) A plan showing the location and the nature of the proposed action and a description of the proposed changes to trees and stone walls. Two copies of the plan showing the proposed changes are required.
 - (b) A statement of the purpose(s) for the changes.
 - (c) A certified list of abutters located within 500 feet of the proposed action. The list is to be obtained from the Assessors Office and should reflect their most current records.

2. Editor's Note: Said drawing is included at the end of this chapter.

3. Editor's Note: Figures 1 and 2 are included at the end of this chapter.

4. Editor's Note: The Scenic Road Application is on file in the office of the Planning Board and may be obtained during regular business hours.

- (d) Except in the case of Town agencies, a filing fee of \$250 shall be paid.
 - (e) Photograph(s) of the existing site showing the area to be affected by work on the scenic road in question. All photographs must be signed and dated by the applicant.
 - (f) Any further explanatory material useful to adequately inform the Planning Board prior to the public hearing.
- (2) Notice of submittal shall be filed with the Town Clerk and a copy of the submittal transmitted to the Tree Warden after it is accepted and signed for by the Planning Board or its staff.
- B. Tree Warden. Whenever feasible, Planning Board hearings shall be held in conjunction with those held by the Tree Warden acting under MGL c. 87. Consent to an action by the Planning Board shall not be construed as inferring consent by the Tree Warden or the reverse, nor shall execution of this chapter in any way lessen the Tree Warden's duties as allowed, under MGL c. 87.
- C. Notice.
- (1) 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, the last publication at least 7 days prior to the public hearing. This notice shall contain a statement as to the time, date, place and purpose of the hearing, with a description of the action proposed by the applicant. Copies of this notice shall be sent to the applicant, the Selectmen, the Tree Warden, the Consulting Engineer, the Conservation Commission, the Historical Commission and the owners of property located within 500 feet of the proposed action.
 - (2) In the event that the Planning Board holds a joint hearing with the Tree Warden acting under MGL c. 87, the advertisement shall be made jointly by the Planning Board and the Tree Warden.
- D. Timing. The Planning Board shall hold a public hearing within 45 days from the date on which notice of submittal is received by the Town Clerk.
- E. Decision.
- (1) The Planning Board shall make a decision within 60 days from the date on which notice of submittal is received by the Town Clerk unless a longer time is agreed to by the applicant.
 - (2) In rendering its decision, the Planning Board shall consider the application based on compliance with the Scenic Road Act and the following considerations.

- (3) The Planning Board may require sufficient bond to be posted to cover the costs of required work within the road right-of-way and to protect existing vegetation and stone walls. Such bonding shall be specified in the Board's decision.
- (4) The decision of the Planning Board shall be filed within 14 days of the close of the public hearing with the Town Clerk; copies of which shall be sent to the applicant, the Selectmen, the Tree Warden, the Consulting Engineer, the Building Inspector, the Conservation Commission, the Historical Commission and those persons who have requested a copy of the decision.

§ 245-9. Considerations.

In acting in regard to a scenic road, the Planning Board shall consider the following:

- A. Preservation of natural resources;
- B. Environmental and historical values;
- C. Scenic and aesthetic characteristics;
- D. Public safety;
- E. Traffic volume and congestion;
- F. Relationship of the road design to the standards of Chapter 248, Subdivision of Land.
- G. Compensatory actions proposed, such as replacement of trees or walls;
- H. Financial and other consequences of design revision to avoid or reduce damage to trees or stone walls;
- I. Evidence contributed by abutters, Town agencies and other interested parties; and
- J. Other sound planning principles.

§ 245-10. Enforcement.

- A. Filing requirement. Failure to file with the Planning Board for permission to cut or remove trees or for destruction of any portion of a stone wall within the layout of the scenic road will require an immediate filing as detailed above and shall be subject to restoration of the features. This restoration shall consist of replacing the stone wall as necessary and replacing the trees cut on a square-inch per square-inch basis at locations specified by the Planning Board. A square-inch per square-inch replacement means that the combined area of the replacement trees measured 1 foot above ground level must equal the total area of the original tree trunk as measured at the stump.

- B. Compliance. Failure to comply with the duly issued decision of the Planning Board shall be subject to restoration as detailed above and other remedial measures the Planning Board deems necessary, including, but not limited to, the enforcement of the bonding and restoration as detailed above. Any decision not exercised within 2 years of issue shall be void and require a new filing.
- C. The Planning Board and the Tree Warden shall have the authority to enforce the provisions of this chapter.

Lincoln with respect to any offense; the Building Inspector and his designee, the Conservation Commission and its designees, the Board of Health and its designees, and any such other official as the Board of Selectmen may from time to time designate, each with respect to violations of By-laws and rules and regulations within their respective jurisdictions. If more than one official has jurisdiction in a given case, any official may be an enforcing person with respect thereto.

ARTICLE XVII Scenic Roads

Section 1. Purpose

- A. The Scenic Roads Act. MGL Chapter 40, Section 15C, allows town meeting to designate scenic roads.
- B. The effect of designation as a scenic road is that planning board approval is required before trees can be cut or removed, or stone walls can be torn down or destroyed, if this is done in connection with repair, maintenance, reconstruction or paving of a scenic road.
- C. 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 which does not affect trees or stone walls.
- D. 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 following 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 Lincoln.

Section 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.

Section 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. Construction of new driveways, bicycle paths or roadside paths, or alteration of existing ones, is also included, in so far as the work takes place within the right-of-way. Construction or alteration of water, sewer, electric, telephone, cable t.v. or other utilities within the right-of-way is also included.

Section 2.3. "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 to 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.

Section 2.4. "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.

Section 2.5. "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:

- A. overall scenic beauty;
- B. contribution of trees to scenic beauty;
- C. contribution of stone walls to scenic beauty; and
- D. age and historic significance of road, trees and stone walls.

Section 4. Notification of Designation as Scenic Road

Upon the 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:

- A. notify all municipal departments that may take any action with respect to such road;
- B. notify the State Department of Public Works;
- C. notify the Commissioners of Middlesex County;
- D. indicate such designation on maps currently in use by municipal departments, as appropriate; and
- E. 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:

- A. 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;
- B. a statement of the purpose, or purposes, for the proposed action;
- C. a statement of the feasible alternatives to the proposed action, together with an indication of the advantages and disadvantages of each alternative;
- D. a list of the assessed owners of properties located in whole or in part within 200 feet of the proposed action;
- E. except in the case of town agencies, a deposit sufficient to cover the cost of advertising and notification; and
- F. 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 to 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 two-hundred (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 fourteen (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 Hearing

The planning board shall hold a public hearing within thirty (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. - 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 twenty-one (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 (M.G.L. 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 M.G.L. Ch. 87 have been complied with.

Section 5.7. Historic District Commission

Whenever feasible, notice shall be given and planning board hearings shall be held in conjunction with those held by the Historic District Commission with respect to repair, maintenance, reconstruction or paving work proposed to be done in the Historic district. The consent of the planning board to a proposed action shall not be regarded as implying consent by the Historic District Commission, or vice versa.

Section 5.8. 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 5.9. Emergency Work

In the event that the Selectmen 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:

- A. preservation of natural resources;
- B. environmental values;
- C. historical values;
- D. scenic and aesthetic characteristics;
- E. public safety;
- F. compensatory actions proposed, such as replacement of trees or walls;
- G. existence or absence of reasonable alternatives (including a no-build alternative);
- H. consistency with articulated town policies; and
- I. other sound planning considerations.

Section 7. General

The planning board may adopt more detailed regulations for carrying out provisions hereunder.

ARTICLE XVIII Wetlands Protection

Section 1. Purpose

A. The purpose of this By-law is to maintain the quality of surface water, the quality and level of the ground water table and water recharge areas for existing or potential water supplies, to protect the public health and safety, to protect the community against the costs that may be incurred when development occurs in or adjacent to wetland resource areas; and to provide for the reasonable protection and conservation of certain irreplaceable natural features, resources and amenities for the benefit and welfare of the present and future inhabitants of the Town of Lincoln.

B. Accordingly, this By-law protects the wetlands, related water resources, the adjoining land areas, and important wildlife habitat areas in the Town of Lincoln by controlling activities deemed by the Conservation Commission (the "Commission") likely to have a significant effect, immediate or cumulative, upon resource area values including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water quality, prevention, avoidance and control of water pollution, fisheries, wildlife habitat and habitat for rare species including rare plant and animal species, agriculture, aquaculture, and recreation values deemed important to the community (collectively, the "resource area values protected by this By-law").

C. This By-law utilizes the Home Rule authority of the Town of Lincoln to protect the resource areas subject to regulation under the Wetlands Protection Act MGL, Ch. 131, §40 (the "Act") to a greater degree; to protect additional resource areas recognized by the Town as significant, beyond those subject to regulation under the Act; to protect all resource areas for their additional values beyond those recognized under the Act, and to impose in local regulations and permits additional standards and procedures stricter than those of the Act and its implementing regulations (310 CMR 10.00) (the "Regulations"), subject, however, to the rights and benefits accorded to agricultural uses and agricultural structures of all kinds pursuant to the laws of the Commonwealth.

Section 2. Jurisdiction; Presumption

A. Except as permitted by the Commission pursuant to this By-law or as otherwise allowed in this By-law no person shall commence to remove fill dredge build upon degrade discharge into or

SHERBORN PLANNING BOARD

RULES AND REGULATIONS GOVERNING THE ADMINISTRATION OF THE SCENIC ROAD ACT

(MGL CH. 40, SEC. 15C)

Adopted April 22, 1991

Revised April 14, 1994

1. STATUTORY PROVISIONS OF THE SCENIC ROAD ACT - M.G.L. CHAPTER 40, SECTION 15 C

"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.

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 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.

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."

2. PURPOSE

The Sherborn Planning Board has adopted these regulations with the following objectives:

- a. To maintain the natural beauty that currently exists along scenic roads in Sherborn.
- b. To maintain and enhance the rural character of the Town and encourage compatibility with existing roadside features.
- c. To implement more fully the provisions of the Scenic Road Act, with acknowledgement that the roads serve a transportation function for pedestrians, equestrians and non-motorized as well as motorized vehicles.

3. SHERBORN STREETS SUBJECT TO THE PROVISIONS OF THE SCENIC ROAD ACT

Designated as scenic roads at the Annual Town Meeting held on March 11, 1974:

Apple Street	Ash Lane	Brush Hill Road	Cross Street
Curve Street	Farm Road	Forest Street	Goulding Street East
Goulding Street West*	Green Lane	Greenwood Street	Hollis Street
Hunting Lane	Lake Street	Maple Street	Mill Street
Nason Hill Road	Perry Street	Pleasant Street	Prospect Street
Rockwood Street	Snow Street	South Street	Western Avenue
Whitney Street	Woodland Street		

*Designated at Town Meeting held on April 24, 2001.

4. PROCEDURE TO DESIGNATE ROADS AS A SCENIC ROAD

The Planning Board, the Board of Selectmen, the Conservation Commission, the Historical Commission, or by petition of citizens of the Town (consistent with petition requirements to place an article on the warrant) may propose "scenic road" status for any road in Sherborn other than a numbered route or state highway as a scenic road. The Planning Board shall hold a Public Hearing on the petition, notifying the Selectmen, the Tree Warden, the Superintendent of Highways, the Conservation Commission, and the Historical Commission, and advertising twice in a newspaper of general circulation, the first advertisement at least fourteen days prior to the date of the public hearing.

The Planning Board shall make a recommendation to the Town Meeting on the merits of designation of the proposed road as a scenic road.

A majority vote of Town Meeting is required for designation. 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 as a scenic road shall conform to these regulations.

5. DEFINITIONS

In the absence of contrary meaning established through legislation or judicial action pursuant to MGL Chapter 40, Sec. 15C, these terms contained in that statute shall be construed as follows:

"Road" shall mean a vehicular traveled way plus its necessary appurtenances within the right-of-way including bridge structures, drainage systems, retaining walls, traffic control devices, pedestrian facilities, and the air space above them, but not intersecting streets or driveways.

"Cutting or removal of trees" shall not be construed to include clearing of nuisance growth, routine or emergency tree maintenance which removes only permanently diseased or damaged limbs, trunks or roots and dead whole trees, or thinning out of overcrowded trees as determined by the Tree Warden, but shall include such cutting or removal done in contemplation of, or following, repair, maintenance, reconstruction or paving work for a road.

"Repair, Maintenance, Reconstruction, or Paving-work" shall mean any such work done within the right-of-way by any person or agency, public or private. Construction of new driveways or alterations of existing ones is also included to the extent such work takes place within the right-of-way. Except as

allowed in the preceding paragraph, roadside cutting for clearance for vehicles or for improvement of line-of-sight shall also be included within this definition.

"Trees" shall mean any trees (not bushes) having a trunk diameter of one and one half inches or larger at one foot above the ground. All trees within the right-of-way of a scenic road or on the boundaries thereof shall be subject to these regulations; if for whatever reason, it is uncertain whether the tree is within the right-of-way of the scenic road, it shall be taken to be within the coverage of these rules and regulations until the contrary is shown.

"Stone walls" shall not be construed to include assemblages of stone involving less than one cubic foot of wall material per linear foot nor totaling less than five feet in length. All stone walls within the entire right-of-way of a scenic road or on the boundaries thereof shall be subject to these regulations; if for whatever reason, it is uncertain whether the stone wall is within such right-of-way of the scenic road, it shall be taken to be within the coverage of these rules and regulations until the contrary is shown.

"Tearing down or destruction of stone walls" shall not be construed to include temporary removal and replacement within a reasonable period of time, not to exceed six months, at the same location with the same materials according to the original character.

6. CONSTRUCTION AND APPLICABILITY OF THE RULES AND REGULATIONS CONTAINED HEREIN

The Planning Board authority and jurisdiction shall be consistent with MGL Ch. 40, Sec. 15C. These rules and regulations shall be controlling and may be amended from time to time.

7. DESIGN STANDARDS FOR DRIVEWAYS

7.1 Curb Cuts

The driveway standards shall be consistent with the regulation for curb cuts contained in the Planning Board Subdivision Regulation Section 4.3.6.

7.2 Stone Wall Removal Limitations

Where stone walls exist, the maximum amount of stone wall to be removed shall be the width of the driveway or new road at the location of the stone wall plus three feet on each side.

- a. Unless otherwise waived, removed stone shall be used to repair other sections of the wall along the road.
- b. No wall shall be cut without construction of an appropriate terminus. Appropriate end points are shown in the Appendix, Figures 1 & 2, and consist of stone piers, granite posts, stone walls with tapered ends turning back onto the lot along the drive, or wooden posts with or without a gate.

7.3 Tree Removal Limitations

No tree with a trunk exceeding 8" in diameter four and one half feet above ground level shall be cut for a driveway or new road unless the curb cut cannot be safely located otherwise. Unless

otherwise waived, whenever trees are removed, trees in a species and location suitable to the Planning Board and the Tree Warden shall be planted.

8. PROCEDURES

8.1 Filing Instructions

Any person or organization seeking consent of the Planning Board under MGL Ch. 40, Sec. 15C (the Scenic Road Act) regarding the cutting or removal of trees or the tearing down or destruction of stone walls, or portions thereof, in connection with the Repair, Maintenance, Reconstruction or Paving-work (as defined in Section 5) on Scenic Roads, shall submit a request to the Planning Board together with the following:

- a. A plan showing the location and the nature of the proposed action and a description of the proposed changes to trees and stone walls;
- b. A statement of the purpose(s) for the change;
- c. A list of owners of property located in whole or in part within 500 feet of the proposed action;
- d. Except in the case of town agencies, a filing fee of \$25.00 shall be paid; and
- e. Any further explanatory material useful to adequately inform the Planning Board prior to the public hearing.

Notice of submittal shall be filed with the Town Clerk and a copy of the submittal transmitted to the Tree Warden after it is accepted and signed for by the Planning Board or its staff.

8.2 Tree Warden

Planning Board hearings shall be held in conjunction with those held by the Tree Warden acting under MGL Ch. 87. Consent to an action by the Planning Board shall not be construed as inferring consent by the Tree Warden or the reverse, nor shall execution of these rules and regulations in any way lessen the Tree Warden's duties under MGL Ch. 87.

8.3 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, the last publication at least seven days prior to the public hearing.

This notice shall contain a statement as to the time, date, place, and purpose of the hearing with a description of the action proposed by the applicant. Copies of this notice shall be sent to the applicant, the Selectmen, the Tree Warden, the Superintendent of Highways, the Conservation Commission, the Historical Commission, and the owners of property located within 500 feet of the proposed action.

In the event that the Planning Board holds a joint hearing with the Tree Warden acting under MGL Ch. 87, the advertisement shall be made by the Tree Warden.

8.4 Timing

The Planning Board shall hold a Public Hearing as soon as practical but in no event later than forty five days from the date on which notice of submittal is received by the Town Clerk unless a longer time is agreed to by the applicant.

8.5 Decision

- a. The Planning Board shall make a decision as soon as practical but in no event later than 15 days from the hearing unless a longer time is agreed to by the applicant.
- b. In rendering its decision, the Planning Board shall consider the application based on compliance with the "Scenic Road Act" and the considerations listed in Section 9.
- c. The Planning Board may require sufficient bond to be posted to cover the costs of required work within the road right-of-way and to protect existing vegetation and stone walls. Such bonding shall be specified in the Board's decision.
- d. The decision of the Planning Board shall be filed within fifteen days of the close of the Public Hearing with the Town Clerk unless a longer time is agreed to by the applicant; copies of which shall be sent to the applicant, the Selectmen, the Tree Warden, the Superintendent of Highways, the Conservation Commission, the Historical Commission, and those persons who have requested a copy of the decision.
- e. The approval by the Planning Board under these regulations of a proposed action shall be valid for two years, after which it shall be void.

9. CONSIDERATIONS

In acting in regard to a Scenic Road request, the Planning Board shall consider the following:

- a. Scenic and aesthetic characteristics;
- b. Public safety;
- c. Accident history within 500 feet of tree(s) and stone walls at issue;
- d. Location and setback of telephone poles in relation to the pavement, trees and stone walls (in no case shall a tree be removed for safety purposes which is as far as or further from the center of the paved right-of-way than a utility pole within 500 feet thereof);
- e. Traffic volume, congestion and posted speed limit;
- f. Preservation of natural resources;
- g. Environmental and historical values;
- h. Recreational uses of road, taking into account the nature and extent;

- i. Relationship of the road design to the standards of the Planning Board's Subdivision Rules and Regulations but recognizing that a variance from standard should be allowed when a road has been designated scenic by the Townspeople;
- j. Compensatory actions proposed, such as replacement of trees or walls;
- k. Financial and other consequences of design revision to avoid or reduce damage to trees or stone walls;
- l. Evidence contributed by abutters, town agencies, and other interested parties; and
- m. Other sound planning principles.

10. ENFORCEMENT

10.1 Remedy for Failure to File

Failure to file with the Planning Board for permission to cut or remove trees or for destruction of any portion of a stone wall within the layout of the scenic road will require an immediate filing as detailed above and shall be subject to restoration of the features. Unless waived, this restoration shall consist of replacing the stone wall on a square-foot per square-foot basis as necessary and replacing the trees cut on a diameter-inch per diameter-inch basis at locations specified by the Planning Board and the Tree Warden. A diameter-inch per diameter-inch replacement means that the combined diameter of the replacement trees measured one foot above ground level for trees up to 8" in diameter and four and one half feet above ground level for trees in excess of 8" diameter must equal the total diameter of the original tree trunks.

10.2 Compliance

Failure to comply with the duly issued decision of the Planning Board shall be subject to restoration as detailed above and other remedial measures the Planning Board deems necessary, including, but not limited to the enforcement of the bonding and restoration as detailed above.

10.3 Authority

The Planning Board and the Tree Warden shall have the authority to enforce the provisions of these Regulations.

PLANNING BOARD



19 WASHINGTON STREET
SHERBORN, MASSACHUSETTS 01770

APPLICATION FOR SCENIC ROAD ACT HEARING

INSTRUCTIONS

File an original and 2 copies of this form with the Town Planner, along with the following:

1. A plan showing the location and the nature of the proposed action and a description of the proposed changes to trees and/or stone walls (3 copies);
2. A statement of the purpose(s) for the change (See Below);
3. A certified abutters list (from Assessor's Office) of property owners located in whole or in part within 500 feet of the proposed action.
4. A filing fee of \$25.00. Applicant shall also pay advertising costs.
5. Any further explanatory material useful to adequately inform the Planning Board (3 copies)

The Town Planner shall forward copies of the application and supplementary materials to the Tree Warden (for applications affecting trees) and Town Clerk.

Location of Property Assessor's Map No(s) _____ Parcel No(s) _____

Street Address _____

TO THE SHERBORN PLANNING BOARD:

The undersigned submits herewith an original and two copies of this Form and the supplementary information specified above as application for a permit under the Scenic Roads Act (MGL Chapter 40, Section 15C). This application affects:

Trees _____ Stone Walls _____

Purpose (Attach additional sheets, if needed) _____

Applicant's Name (Print) _____

Date _____

Address _____

Signature _____

ARTICLE IV
Scenic Roads
[Adopted 5-4-1995 ATM by Art. 32 (Art. 34 of the 1973
Bylaws)]

§ 158-5. Authority and purpose.

- A. Authority. This article is adopted under authority of MGL c. 40, § 15C (Scenic Roads) and MGL c. 40, § 21 and Article 11 and Article LXXXIX, Section 6 of Articles of Amendment of the Constitution of the Commonwealth of Massachusetts.
- B. Purpose. The purpose of this article is to maintain the rural, natural, historic and scenic character of the town's roads (as defined herein). The article ensures that:
- (1) Town roads will be recommended for designation as scenic roads in accordance with the criteria stated in this article; and
 - (2) Trees (as defined herein) and stone walls within the rights-of-way of all designated scenic roads will not be altered without the public hearing required by, nor without following the other procedures set forth in, this article.

§ 158-6. Definitions.

For terms not qualified or defined in MGL c. 40, § 15C (Scenic Roads), the following meanings shall apply for the purposes of this article:

BRANCH — A living branch that is fully attached to a tree (as defined herein) and that has a diameter of three inches or more 12 inches from the point at which said branch connects to the tree.

CUTTING OR REMOVAL OF TREES — The removal of one or more trees, trimming of branches (both as defined herein) or cutting of roots sufficient in the Tree Warden's written opinion to cause eventual destruction of the tree.

REPAIR, MAINTENANCE, RECONSTRUCTION OR PAVING WORK — Any work done within a road (as defined herein) by any person or agency, public or private. Construction of new driveways or alteration of existing ones is included, insofar as it takes place within the road. Construction or alteration of water, sewer, electric, telephone, cable television or other utilities within the road is also included.

ROAD — The entire legal right-of-way of a vehicular traveled right-of-way in Wayland, including any necessary appurtenances, and including bridge structures, drainage systems, retaining walls, traffic

control devices and sidewalks. The right-of-way includes the area on and within the boundaries of the right-of-way. If the boundaries are not officially known, any affected tree or stone wall shall be presumed to be within the right-of-way until shown to be otherwise.

TEARING DOWN OR DESTRUCTION OF STONE WALLS — The destruction of more than ten 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, but only if the Board 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 article. **[Amended 4-10-2008 ATM by Art. 5]**

TREE — A living tree in its naturally standing position, the trunk of which has a diameter of four inches or more four feet above the ground. Nothing in this definition shall be construed to permit a person, other than the Tree Warden, to trim, cut down or remove a public shade tree.

TREE WARDEN — The Town of Wayland Tree Warden or its designated deputy.

§ 158-7. Criteria for designation.

- A. In determining which roads or portions of roads should be recommended to Town meeting for designation as scenic roads, the following criteria shall be considered:
- (1) Overall scenic beauty.
 - (2) Contribution of trees to scenic beauty.
 - (3) Contribution of stone walls to scenic beauty.
 - (4) Age and historic significance of roads, trees and stone walls.
 - (5) Built features, such as historic buildings, historic monuments, historic burial grounds, historic structures, farm buildings and fencing.
 - (6) Features of the road, such as historic right-of-way, surface, carriage width, use restrictions and nonhistoric bridges.
- B. Roads that have previously been designated as scenic roads may be reevaluated using the foregoing criteria.

§ 158-8. Procedure for designation. [Amended 4-10-2008 ATM by Art. 5]

The Planning Board, the Conservation Commission or the Historical Commission, or a petition of 10 citizens of the town, may propose scenic road designation for any road other than a numbered route or state highway. The Planning Board then shall hold a public hearing, notifying the Board of Selectmen, the Tree Warden, the Board of Public Works, the Conservation Commission, the Historical Commission and the public by advertising twice in a newspaper of general circulation, the first advertisement to appear at least 14 days prior to the date of the public hearing.

- A. The Planning Board shall make a recommendation to Town meeting on the merits of designation of the road as a scenic road.
- B. Following designation by Town meeting, the Planning Board shall:
 - (1) Notify all municipal departments that may take any action with respect to such road.
 - (2) Notify the Massachusetts Highway Department.
 - (3) Notify the Commissioners of Middlesex County.
 - (4) Indicate such designation on all maps currently in use by municipal departments.
 - (5) Notify all utility companies or other such parties that may work on such road.

§ 158-9. Work affecting trees or stone walls; emergencies.

- A. Filing. Any person or organization or agency seeking the consent of the Planning Board under MGL c. 40, § 15C (Scenic Roads) regarding repair, maintenance, reconstruction or paving work that may involve the cutting or removal of trees or the tearing down or destruction of stone walls, or portions thereof, on a designated scenic road shall file a request with the Planning Board and submit the following information:
 - (1) The text of the notice of the public hearing, specifying the time, date, place and purpose of said hearing and identifying the location of the proposed action in terms enabling the readers to locate it with reasonable specificity on the ground without the 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) Plans, drawings or other explanatory reference material showing the specific design or engineering details.
 - (4) Except in the case of Town agencies, a fee sufficient for the cost of advertising and notification.
 - (5) Any further explanatory material useful to adequately inform the Planning Board.
- B. Notice. The Planning Board shall, as required by statute, give notice of its public hearing by twice advertising in a newspaper of general circulation in the area, with the first publication of the notice to be at least 14 days prior to the hearing and the last at least seven days prior to the hearing. Copies of the notice shall be sent to the Board of Selectmen, Conservation Commission, Historical Commission, Town Surveyor, Tree Warden and Board of Public Works. **[Amended 4-10-2008 ATM by Art. 5]**
- C. Timing of the hearing. The Planning Board shall hold a public hearing within 30 days of receipt of a properly filed request and shall make a decision within 45 days of that receipt, unless a longer time is agreed to by the applicant.
- D. Reporting of decision. The Planning Board shall, within 45 days of receipt of a properly filed request, submit a written determination of consent or denial to the applicant and send a copy thereof to the Board of Selectmen, the Tree Warden and the Town Clerk.
- E. Public shade trees. When required by MGL c. 87 (Shade Trees), notice shall be given and Planning Board hearings required by MGL c. 40, § 15C (Scenic Roads) shall be held in conjunction with those held by the Tree Warden acting under MGL c. 87 (Shade Trees). Consent to an action by the Planning Board shall not be construed as consent by the Tree Warden or vice versa. A Planning Board decision shall contain a condition that no work shall take place until all applicable provisions of MGL c. 87 (Shade Trees) have been complied with.
- F. Emergency repair. This article shall not apply when the Tree Warden acts in an emergency in accordance with law.

§ 158-10. Considerations when acting on applications.

In acting on applications concerning designated scenic roads, the Planning Board shall take into consideration the following:

- A. Preservation of natural resources.
- B. Preservation of historic resources.
- C. Scenic and aesthetic characteristics.
- D. Environmental values.
- E. Public safety.
- F. Local residential traffic patterns and overall traffic volume and congestion.
- G. Compensatory actions proposed, such as tree and wall replacement.
- H. Functional importance and urgency of repair, maintenance, reconstruction or paving.
- I. Additional evidence contributed by abutters, Town agencies and other interested parties.
- J. Existence or absence of reasonable alternatives.
- K. Other planning information.

§ 158-11. Driveways.

- A. At a minimum, driveways shall be consistent with Wayland regulations for residential driveways and curb cuts and shall comply with this article.
- B. Only one driveway cut per lot onto any designated scenic road shall be allowed. A new driveway onto a designated scenic road shall not exceed 12 feet in width.
- C. Stone wall sections to be removed for a driveway shall not exceed the driveway width by more than two feet.
- D. No tree with a trunk exceeding eight inches in diameter four feet above the ground or cluster of trees within six feet of one another with trunks six inches in diameter four feet above the ground shall be removed for a driveway unless the curb cut cannot be safely located elsewhere.

§ 158-12. Enforcement; violations and penalties.

- A. Failure to file with the Planning Board for permission to cut or remove trees or for destruction of any portion of a stone wall within any designated scenic road will require an immediate filing

as detailed above, and the applicant shall be required to restore features. This restoration shall consist of replacing the stone wall as necessary and replacing the trees cut on a square-inch-per-square-inch basis (combined area of the replacement trees measured one foot above ground level to equal total area of the original tree trunk as measured at the stump) at locations specified by the Planning Board.

- B. Failure to comply with a duly issued decision of the Planning Board shall be subject to restoration as detailed above and other remedial measures that the Planning Board deems necessary. Any decision not carried out within two years of issue shall be void and shall require a new filing. The Planning Board and the Tree Warden shall have the authority to enforce the provisions of this article.
- C. Any violation of this article, MGL c. 40, § 15C (Scenic Roads) or a Planning Board decision issued under this article or MGL c. 40, § 15C shall be punishable by a fine not to exceed \$300.