

REGULATIONS FOR THE DESIGNATION OF SCENIC ROADS AND ALTERATIONS OF TREES AND STONE WALLS THEREON

SECTION 1 STATUARY PROVISION

These regulations have been duly adopted by the Sterling Planning Board to implement the provisions of the “Scenic Roads Act”, M.G.L. Chapter 40 Section 15C.

SECTION 2 PURPOSE

The Scenic Road Act governs the cutting and removal of trees and stone walls during repair, maintenance, reconstruction or paving of roads by any agency, for the purpose of providing protection to the environmental, aesthetic and historical values of the town’s roads. The Sterling Planning Board has adopted these regulations with the following objectives:

- A. To maintain the natural beauty that exists along scenic roads in Sterling,
- B. To enhance the rural character of the Town and encourage compatibility with existing roadside features,
- C. To encourage more environmentally sensitive development along the scenic roads in the Town, and
- D. To develop a growth of shade trees along Sterling’s scenic roads to reduce the growth of underbrush and reduce the cost of roadside maintenance.

SECTION 3 DESIGNATION OF SCENIC ROADS

The Planning Board, the Board of Selectmen, the Conservation Commission, the Historical Commission, or by petition by citizens of the Town may propose “scenic road” status for any road in Sterling other than a numbered route or a state or federal highway. The Planning Board shall hold a public hearing on the petition, notifying the Selectmen, the Tree Warden, the DPW Superintendent, the Conservation Commission, and the Historical Commission and advertising twice in a newspaper of general circulation; the first advertisement at least fourteen (14) days prior to the date of public hearing.

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

**Adopted March 31, 2004
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SECTION 3 DESIGNATION OF SCENIC ROADS CONTINUED

A majority vote at Town Meeting is required for designation. Such designations 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.

SECTION 4 CRITERIA FOR DESIGNATION AS SCENIC ROAD (any or all of the following shall be considered)

- A. Overall scenic beauty and vistas,
- B. Small rural integrity,
- C. Contribution of trees to scenic beauty,
- D. Contribution of stone walls to scenic beauty,
- E. Age and historic significance of roads, trees, and stone walls,
- F. Proximity to built features such as historic structures, historic landscapes, cemeteries, and bridges, and
- G. Road features such as historic layout, surface, carriage width, use restrictions and bridges.

SECTION 5 DEFINITIONS

“Cutting and removal of trees” shall mean the removal of one or more trees, trimming of major branches 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” shall mean any work done within the right-of-way 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 right-of-way. Construction or alteration of water, sewer, electric, telephone, cable TV, or other activity within the right-of-way is also included.

“Road” shall mean the entire right-of-way of a vehicular traveled right-of-way including any necessary appurtenances including bridges structures, drainage systems, retaining walls, traffic control devices, sidewalks, but not intersecting streets or driveways. The right-of-way includes the area on and within boundaries of the public way. If the boundaries are not officially known, any affected tree or stone wall shall be presumed to be within the public right-of-way until shown to be otherwise.

“Stone Walls” shall be construed to include assemblages of stone involving at least one (1) cubic foot of wall material per linear foot totaling not less than ten (10) feet in length.

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SECTION 5 DEFINITIONS CONTINUED

“Tearing down or destruction of stone walls” shall mean the destruction of stone walls along a public way. Temporary removal and replacement of stone walls at the original location with the same materials is permitted with Planning Board approval if the Town DPW is notified before the work begins so that it can confirm that the wall is properly replaced.

“Trees” shall include a living tree whose trunk has a diameter of two (2) inches, 4 ½ feet from the ground.

SECTION 6 ACTIONS EXEMPT FROM PUBLIC HEARINGS AND APPROVAL

6.1 For Tree Removal

The procedures of this By-law shall not apply when the Tree Warden acts in an emergency in accordance with M.G.L. Chapter 87 to remove dead or damaged trees or limbs, which may cause an obstruction to public travel or a dangerous situation with respect to utility lines.

6.2 For Stone Wall Removal

A public hearing and approval by the Planning Board are not required when in the opinion of the DPW Superintendent the following action is warranted:

The removal of no more than 18 feet of a stonewall for a driveway, or six (6) feet for a walkway.

SECTION 7 DESIGN STANDARDS

7.1 Where stone walls exist, the maximum amount of stone wall to be removed is 18 feet for a driveway and six (6) feet for a walkway.

- A. Removed stone shall be used to repair other sections of the wall along the road,
- B. Stone wall sections to be removed for a driveway shall not exceed the driveway width by more than three (3) feet on each side for a total not to exceed 18 feet, and

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SECTION 7 DESIGN STANDARDS CONTINUED

- C. No wall shall be cut without construction of an appropriate terminus. Appropriate end points are required and consist of a stone wall with tapered ends turning back onto the lot along the drive, stone piers, granite post, or wooden post (with or without at gate).

7.2 Approval by the Tree Warden and Planning Board is required for the removal of any and all trees.

SECTION 8 PROCEDURES

8.1 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, or portions thereof on a scenic road shall file a request with the Planning Board together with the following:

- A. The text of the legal notice 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,
- B. A statement of the purpose, or purposes, for the proposed action,
- C. Plans, drawings, or other explanatory reference materials, including photos, showing the specific design or engineering details,
- D. Except in the case of Town Boards and Commissions or not-for-profit conservation organizations, a filing fee of \$50.00 plus the cost of the legal advertisements shall be paid,

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SECTION 8 PROCEDURES CONTINUED

8.1 Filing Continued

- E. The trees proposed to be removed shall be marked by the applicant and verified by the Tree Warden, edges of the drives or right-of-way shall be staked, showing edge of paved or traveled way, and if appropriate, edge of road right-of-way intersecting the existing scenic road, and
- F. Any further explanatory material useful to adequately inform the Planning Board.

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

8.2 Notice

The Planning Board and Tree Warden 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 fourteen (14) days prior to the hearing and the last seven (7) days prior to the hearing. Copies of the notice shall be sent to the Selectmen, Conservation Commission, Historical Commission, Tree Warden, and DPW.

The Planning Board and Tree Warden may also require a sign to be posted on the property at least fourteen (14) days prior to the public hearing. This sign shall not exceed three (3) square feet in size and be posted in the location clearly visible to the public with the date, time and location of the public hearing, and the notation "For further information, please call the Sterling Planning Board at (978) 422-3029".

In the event that the Planning Board holds a joint hearing with the Tree Warden acting under Chapter 87, M.G.L., the notice shall be made jointly by the Planning Board and the Tree Warden.

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SECTION 8 PROCEDURES CONTINUED

8.3 Tree Warden

Whenever feasible, Planning Board hearings shall be held in conjunction with those held by the Tree Warden acting under Chapter 87, M.G.L. 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 as allowed under Chapter 87, M.G.L.

The Tree Warden shall mark the trees shown on the plan as proposed to be removed and make recommendations to the Planning Board in this regard.

8.4 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.

8.5 Reporting of Decision

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 vegetation and stone walls. Such bonding shall be specified in the Board's decision. The Board may also require restoration of stone walls and replanting of trees.

The decision of the Planning Board shall be made within 45 days of receipt of a properly filed request. Said decision shall be filed within fourteen (14) days of the decision with the Town Clerk; copies of which shall be sent to the Applicant, Selectmen, Tree Warden, DPW Superintendent, Conservation Commission, Historical Commission, and those persons who have requested a copy of the decision. If a bond is required, copies shall be sent to the Town Treasurer and Building Inspector.

8.6 Utilities

The procedures of this By-law shall not apply to maintenance and operation of utility lines as may be approved by the Tree Warden.

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SECTION 8 PROCEDURES CONTINUED

8.7 Considerations

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

- A. Preservation of natural and cultural resources,
- B. Environmental and historical values,
- C. Preservation of scenic and aesthetic characteristics,
- D. Public safety,
- E. Traffic volume and congestion,
- F. Relationship of the road design to the standards of the Planning Board's Subdivision Rules and Regulations,
- G. Compensatory actions proposed, such as revision to avoid or reduce damage to trees or stone 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 Boards and Commissions, and other interested parties, and
- J. Other sound planning principles.

8.8 Enforcement

A. Filing Requirement

Failure to file with the Planning Board and Tree Warden for permission to cut or remove trees or for destruction of any portion of a stone wall within the lay-out of the Scenic Road will require an immediate filing as detailed above and shall be subject to restoration of the features.

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 two (2) years of issue shall be void and require new filing.

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SECTION 8 PROCEDURES CONTINUED

8.8 Enforcement Continued

C. Determination of Applicability

In historic ways or other ways where the right-of-way width is considered 'variable', the width of the right-of-way shall be determined by the DPW Superintendent, based on the statutory provisions of M.G.L. Chapter 87, Section 1.

“Chapter 87, Section 1 – Public Shade Trees Defined. All trees within a public way or on the boundaries thereof including trees planted in accordance with the provisions of Section 7 shall be public shade trees; and when it appears in any proceeding in which the ownership of or rights in a tree are material to the issue, that, from length of time or otherwise, the boundaries of the highways cannot be made certain by records or monuments, and that for that reason it is doubtful whether the tree is within the highway, it shall be taken to be within the highway and to be public property until the contrary is shown.”

D. Fines

Any fines permitted by M.G.L. Chapter 40, Section 15C or other statutes such as Chapter 87 Sections 1 through 13 or Chapter 242, Section 7 may be assessed for violations of these regulations.

E. Enforcement

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

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