

## SCENIC ROADS

### 3.70 PURPOSE

To protect the scenic quality and character of certain roads within the Town of Sturbridge by establishing regulations that control physical alterations within public rights of way.

### 3.71 DEFINITIONS

In the absence of contrary meanings established through legislative or judicial action, pursuant to MGL Ch. 40, § 15C, the following terms contained in this bylaw shall be defined as follows:

- Cutting or Removing Trees – Shall mean the removal of one or more trees.
- Repair, Maintenance, Reconstruction or Paving Work – Shall mean any work done within the right-of-way by any person or agency, public or private. Within this definition is included any work on any portion of the right-of-way 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 included, insofar as it takes place within the right-of-way.
- Roads – Shall mean a right-of-way of any way used and maintained as a public way including the vehicular traveled way plus necessary appurtenances within the right-of-way such as bridge structures, drainage systems, retaining walls, traffic control devices and sidewalks, but not intersecting streets or driveways. When the boundary of the right-of-way is an issue so that a dispute arises as to whether or not certain trees or stone walls or portions thereof are within or without of the way, the trees and stone walls shall be presumed to be within the way until the contrary is shown.
- Tearing Down or Destruction of Stone Walls – Shall mean the destruction of more than fifteen (15) linear feet of stone wall involving more than one cubic foot of wall material per linear foot above the existing grade, but shall not be construed to include temporary removal and replacement at the same location with the same material.
- Trees – Shall include any living tree whose trunk has a diameter of four inches or more as measured one (1) foot above the ground.

### 3.72 DESIGNATION OF SCENIC ROADS

The Planning Board, Conservation Commission and Historical Commission may petition the Board of Selectmen for additions or deletions to the list of scenic roads for consideration at Town Meeting. Any petition for “scenic road” designation must be accompanied by a written description of the characteristics of the road as a justification for the protection afforded by this bylaw.

### 3.73 CONTROL

Within the public right-of-way of designated scenic roads, the following activities shall require written approval of the Planning Board in accordance with the provisions of this bylaw:

- (A) The tearing down, painting or destruction of stone walls.
- (B) The cutting or removal of trees the scope of which is outside the responsibility of the Tree Warden as defined in Massachusetts General Laws or the Town of Sturbridge General Bylaws.
- (C) Repair, maintenance, reconstruction or paving work, including the construction of new driveways or alteration of existing driveways, insofar as they affect stone walls or trees within the public right-of-way, as defined above.

In cases where a threat to public safety does not allow sufficient time to obtain approvals from the Planning Board, the Planning Board must be notified within five (5) business days of any action which, had the threat not existed, would be a violation of this bylaw.

### 3.74 HEARINGS

The Planning Board shall, as required by statute, give notice of its public hearings 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 and its location proposed by the applicant. Copies of this notice shall also be sent to the Town Clerk, Conservation Commission, the Historical Commission, the Tree Warden, the Director of Public Works and the owners of property within one-hundred (100) feet of the proposed action.

The Planning Board shall hold a public hearing within thirty (30) days of receipt of an application and shall approve, conditionally approve or deny an application within sixty (60) days of receipt. In making its decision, the Planning Board shall consider the following criteria and shall not grant approval if the proposed action will be in violation of one or more of the following:

- (A) Preservation of historic values
- (B) Preservation of scenic and aesthetic quality of the area
- (C) Protection of natural resource and environmental systems
- (D) Public Safety
- (E) Compatibility with the surrounding neighborhood

### COMPENSATORY ACTIONS

In making its decision, the Planning Board may grant an approval that otherwise would be denied if the overall effect of the proposed alteration, including compensatory action, such as the planting of new trees or the reconstruction of stone walls, is to maintain or improve the scenic quality or historical character of the road.

### 3.75 PUBLIC SHADE TREE ACT

Whenever feasible, notice shall be given and Planning Board hearings shall be held in conjunction with those held by the Tree Warden acting under MGL Ch. 87. The consent

of the Planning Board to a proposed action shall not be regarded as inferring consent by the Tree Warden or vice versa. The Planning Board decision shall contain a condition that no work may be undertaken until all applicable provisions of the Public Shade Tree Law, MGL Ch. 87 and the Town's General Bylaws, Chapter Six, Section 6.80 through 6.89, Removal of Non-Hazardous Shade Trees, have been complied with.

### 3.76 ENFORCEMENT

The Building Inspector, Tree Warden or other designated by the Town Administrator may issue a citation for violation of these regulations. A failure to respond to properly issued citations, or the issuance of three (3) or more citations in a twelve (12) month period or failure to take responsible compensatory action shall be construed as a violation of this bylaw, to be enforced via non-criminal disposition, subject to a fine of not more than one-hundred dollars (\$100.00). Each day that such a violation continues shall constitute a separate offense.

### 3.77 ADDITIONAL REGULATIONS

The Planning Board may adopt additional regulations for carrying out provisions of this bylaw.