

CHAPTER XXXII SCENIC ROADS

32.1 Authority and Purpose

Authority. This bylaw is adopted under authority of MGL c. 40, § 15C, and MGL c. 40, § 21.

Purpose. The purpose of a Scenic Road Bylaw is to help the Town maintain and enhance its rural, small town character by ensuring that work done to trees and stone walls on the public right-of-way of scenic roads is done in a way that helps preserve the scenic, historic and aesthetic characteristics of the public right-of-way.

Whereas the Town of Hubbardston has designated scenic roads (see addendum) pursuant to MGL Chapter 40, Section 15C, the additional purpose of this bylaw is to define, clarify and regulate Hubbardston Scenic Roads.

32.2 Applicability

This bylaw applies to all roads in Hubbardston previously identified by Town Meeting as “Scenic” and all future roads to be so identified.

32.3 Definitions

32.3.1 Abutter: Shall mean all property owners, including those across the street, abutting the property where work requiring a scenic road hearing is required.

32.3.2 Cutting or Removal of Trees: Shall mean the removal of one or more trees, trimming of major branches, (as defined herein), cutting of roots, or any other work that would otherwise compromise a tree’s health, such as soil and/or root compaction, water deprivation, or other conditions resulting from proposed work along a scenic road sufficient in the opinion of the Planning Board or the Tree Warden to cause eventual destruction of a tree. This definition does not apply to routine or emergency tree maintenance that removes only permanently diseased or damaged limbs, trunks, roots and dead whole trees. Nor does this definition apply to trimming work, including cutting of major branches, by the Town’s Department of Public Works Department, provided that the Planning Board has reviewed the proposed work and determined it to be in accordance with good practices. However, the removal of whole, live trees by the DPW is included in this definition.

32.3.3 Major Branch: Shall mean 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.

32.3.4 Posting: Shall mean the marking of a tree or stone wall along a road for the purpose of a scenic road hearing. For trees, such marking as described in MGL c. 87, § 3 (Shade Tree Act). For stone walls, a ribbon or other appropriate flagging material shall be temporarily affixed at the limit of work on both ends of the stone wall.

32.3.5 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 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, bicycle paths, sidewalks or roadside paths, or alteration of existing ones is included, insofar as it takes place within the right-of-way. Roadside clearing of trees to provide for vehicular clearance or for improvements to the line-of-sight shall also be included in this definition. Construction or alteration of water, sewer, drainage, electric, telephone, cable TV, or other utilities within the right-of-way is also included to the degree that they impact trees and stone walls, except as exempted in Subsection 22.1.2 above.

32.3.6 Right of Way: The area on and within the boundaries of the public way. If the boundaries are unknown, any affected trees or stone walls shall be presumed to be within the public right-of-way until shown to be otherwise.

32.3.7 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 the way, the trees and stone walls shall be presumed to be within the way until the contrary is shown. Trees and stone walls existing on or partially within the boundary of the right-of-way shall be considered to be within the right-of-way.

32.3.8 Tearing Down or Destruction of Stone Walls: Shall mean the destruction removal, covering or painting of more than 10 total 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 Highway Department is notified before the work begins so that it can confirm that the wall is properly replaced. Repair of a stone wall that does not involving tearing down or destroying the wall is not covered by this bylaw.

32.3.9 Shade Trees: Under MGL c. 87, Public Shade Trees are defined as all trees within a public way or on the boundaries thereof including trees planted in accordance with the provisions of section 7; 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 highway 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.

32.3.10 Trees: Shall include any living tree whose trunk has a diameter of four inches or more as measured four feet above the ground. Nothing in this definition shall be construed to permit a person, other than the Tree Warden or his deputy, to trim, cut down, or remove a public shade tree more than 1 1/2 inches in diameter one foot from the ground.

32.3.11 Warden: Shall mean the Town of Hubbardston Tree Warden or designated deputy.

32.4 Criteria for designation as scenic road

In determining which roads or portions of roads should be recommended to Town Meeting for designation as scenic roads, the following criteria should 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; and
- (6) Road features such as historic layout, surface, carriage width, use restrictions, and non-historic bridges.

32.5 Procedure for designating scenic roads

The Planning Board, the Board of Selectmen, the Conservation Commission, the Historical Commission, or a petition of 10 citizens of the Town may propose "scenic road" designation of any Hubbardston road other than a state highway. The Planning Board shall then hold a Public Hearing notifying the Board of Selectmen, the Tree Warden, the Department of Public Works, the Conservation Commission, and the Historical Commission, all property owners with land bordering the right-of-way and the public by

advertising on the Town website and twice in a newspaper of general circulation in the area, the last publication to occur at least seven days prior to the date of the hearing. The Planning Board shall make a recommendation to Town Meeting on the merits of designation of the proposed road as a scenic way. No road shall be designated a scenic road by Town Meeting unless such designation is favorably recommended by the Planning Board, the Conservation Commission or the Historical Commission. A majority vote of Town Meeting is required for designation.

Following designation by Town Meeting, the Planning Board shall:

- A) Notify all municipal departments that may take action with respect to such roads;
- B) Notify the Massachusetts Highway Department;
- C) Indicate such designation on all maps currently in use by municipal departments;
- D) Notify all utility companies or other such parties, which may be working on the border of such road.
- E) The roads already designated as scenic roads under the Scenic Roads Act of 1973 (MGL c. 40, § 15C) shall retain their status as scenic for the purpose of this Scenic Road bylaw. These roads are listed on addendum.

32.5.1 Procedures for altering, repairing, modifying a scenic road

32.5.1.1 Filing. Any person, organization or agency seeking the consent of the Planning Board under MGL c. 40, § 15C, regarding road repair, maintenance, reconstruction, or paving work that may involve the cutting or removal of trees or the tearing down of stone walls, or portions thereof, shall file an application with the Planning Board and submit the following information:

- a) A completed scenic road application, including two copies of a plan showing proposed work and the extent of alterations or removal of trees or stone walls, so that readers may 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, and a statement of purpose, or purposes, for the proposed action. The plan shall show the name of the street or streets, the extent of the Scenic Road right-of-way, names of abutters within 100 feet of the proposed work, a title block and suitable space to record the action of the Planning Board. A plan drawn to scale is preferred, but not required.
- (b) One copy of the completed application and one copy of the plan shall also be submitted to the Town Clerk.
- c) Any further explanatory material useful to adequately inform the Planning Board, including clearly identifiable digital or printed photographs of the proposed work area and its existing conditions.
- d) A certified list of abutters within 100 feet of the subject property.

32.5.1.2 Notice. The Planning Board shall, as required by statute, give notice of the public hearing to discuss the alterations that the applicant wants to have done. Notice will be posted on the official Town website and twice in a newspaper of general circulation in the area, with the last publication occurring at least seven days prior to the hearing.

- a) The Applicant shall be responsible for the cost of advertising and noticing the abutters of the public hearing.
- b) The notice will contain the time, date, place and purpose of the hearing.
- c) Copies of the notice shall be sent to the Board of Selectmen, the Tree Warden, the Department of Public Works, the Conservation Commission and the Historical Commission before the public hearing commences.
- d) Timing of the hearing. The Planning Board shall hold a public hearing within 30 days of receipt of a properly filed request and shall take action on the request within 45 days of the hearing being held.
- e) Decision. The Planning Board shall provide its written decision to the applicant, with copy filed with the Town Clerk, within seven days of taking action on the application. If a consolidated meeting has been held involving the Tree Warden, then the Tree Warden shall issue a separate written decision related to

the public shade trees. The Planning Board and, or the Tree Warden shall also provide copy of the decision to the applicant, the Conservation Commission, the Historical Commission, the Tree Warden, and Department of Public Works.

f) Tree replacement. If the cutting or removal of whole trees is approved by the Planning Board or Tree Warden, the Planning Board, at its discretion, may require the applicant to replace the trees cut with nursery quality trees, which are of Zone 6 hardiness at a minimum, that are native to the region, and that are acceptable to the Planning Board, in consultation with the Tree Warden. For trees that are 18 inches or more in caliper, measured four feet from the ground, the Planning Board may require the removed tree to be replaced with two trees of at least a two-and-one-half-inch caliper, measured four feet from the ground. The location of the replacement trees shall be at the direction of the Tree Warden, in consultation with the Planning Board.

g) Public shade trees. When required by MGL c. 87 (Shade Trees), notice shall be given and the Planning Board hearing required by MGL c. 40, § 15C (Scenic Roads) shall be held in conjunction with those held by the Tree Warden, with the Tree Warden responsible for the consolidated notice 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 any applicable provisions of MGL c. 87 (Shade Trees) have been complied with.

h) Statute of limitations. The approval of the Planning Board or Tree Warden under these regulations for any proposed work shall be valid for two years from the date the decision is filed with the Town Clerk. After two years from this date, the decision is void unless an extension is granted before the expiration.

i) Emergency repair. The requirements of this bylaw shall not apply when the Tree Warden acts in an emergency in accordance with law. In cases where a tree or branch poses a threat to public safety and there is not sufficient time to obtain prior approval from the Planning Board, the Planning Board shall be notified by the Tree Warden within the calendar week after any action which would have been a violation of this bylaw if the threat had not existed. Under no circumstances are stone walls to be torn down or destroyed on a scenic road under the auspices of emergency repair.

32.5.3 Considerations

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

- A. Contribution of trees and/or stonewalls to scenic beauty;
- B. Age and historic significance of roads, trees and stone walls;
- C. Features of the road, such as surface, pavement width and bridges;
- D. Public safety;
- E. Local residential traffic patterns and overall traffic volume and congestion;
- F. Compensatory actions proposed, such as tree and stone wall replacement;
- G. Functional importance and urgency of repair, maintenance, reconstruction or paving;
- H. Additional evidence contributed by abutters, Town agencies and other interested parties;
- I. Recreational uses of the road;
- J. Preservation of natural resources and historic resources;
- K. Scenic and aesthetic characteristics;
- L. Environmental values;
- M. Other planning information;
- N. Existence or absence of reasonable alternatives.
- O. Applicants reasons and considerations

32.6 Enforcement; violations and penalties

32.6.1 This bylaw shall be administered by the Planning Board and enforced by the Planning Board, Building Inspector, Tree Warden, Department of Public Works Director or others designated by the Town Administrator. Enforcing officials may issue a citation for the violation of this bylaw and shall take

appropriate action in the name of the Town of Hubbardston to prevent, correct, restrain or abate such violations.

32.6.2 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 any scenic road will require an immediate cessation of work and an immediate filing as detailed above and the applicant shall be required to restore the features if required by the Planning Board. Unless waived, the required restoration shall consist of restoring the stone wall to its previously existing condition and/or replacing the trees cut with nursery quality trees that are acceptable to the Planning Board. For every three inches of tree cut, measured across the stump, a nursery quality replacement tree with a two-and-one-half-inch caliper, measured four feet from the ground, shall be planted by the applicant. Failure to comply with a duly issued decision of the Planning Board shall subject the applicant to restoration as detailed above and other remedial measures that the Planning Board deems necessary.

32.6.3 Any violation of this bylaw, MGL c. 40, § 15C, or a Planning Board decision issued under this bylaw or MGL c. 40, § 15C, shall be punishable by a fine not to exceed \$300 per violation, any such violation may also be enforced through the non-criminal disposition in accordance with this bylaw. Each day, or portion thereof, that a violation of this bylaw continues without a Planning Board approved decision to take restorative action shall be deemed a separate offense.

32.6.4 In addition to the foregoing remedies, the Town of Hubbardston, acting by and through its Planning Board, and with the approval of the Board of Selectmen, shall have all other legal and equitable remedies which may exist, including without limitation the right to seek injunctive relief. In addition, the Town of Hubbardston may in its discretion enforce the provisions of this bylaw in the manner provided in MGL c. 40, § 21D.

32.6.5 In all other aspects, all provisions of this bylaw shall remain in full force.