

ARTICLE 9: AMEND SCENIC ROADS BYLAW CHAPTER 90

§ 90-1 Purpose and designation.

In order to preserve the qualities and character of the Town ways, the roads, streets and ways set forth in § 90-3 below are designated as scenic roads under the provisions of Massachusetts General Laws Chapter 40, Section 15C.

- A. The Town of Harvard adopts the provisions of Massachusetts General Laws Chapter 40, Section 15C, as amended, which provides, in part, that any repair, maintenance, reconstruction or paving work done with respect to any road, as defined in § 90-2 of this chapter, designated as a scenic road in § 90-3 of this chapter, shall not involve or include the cutting or removal of trees, or the tearing down, destruction, or alteration of stone walls or portions of stone walls within the right-of-way of a designated scenic road, except with prior written consent of the Planning Board after a public hearing.
- B. A scenic road consent is not required for the temporary removal and replacement of a stone wall at the same location with the same materials, but only if the Harvard Department of Public Works shall be notified before the work begins so that it can confirm that the wall is properly replaced.
- C. The Planning Board shall consider, among other things, the public safety, scenic views, preservation of historic and regional characteristics, and preservation and enhancement of natural and aesthetic qualities of the environment.
- D. After public notice and public hearing, the Planning Board may promulgate rules to accomplish the purposes of this bylaw, effective when voted and filed with the Town Clerk. Failure by the Planning Board to promulgate such rules or a legal declaration of their invalidity by a court of law shall not operate to suspend or invalidate the effect of this bylaw.

§ 90-2 Definitions.

The following definitions shall apply in the interpretation of this bylaw.

CUTTING OR REMOVAL OF TREES

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 a tree. However, such cutting or removal 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 the repair, maintenance, reconstruction or paving work for a road.

ENFORCING OFFICIALS

The following Town officials are deemed to be Enforcing Officials for the purposes of this Article and Bylaw: The Planning Board, Select Board, Chief of Police or any police officer of the Town, Tree Warden, and Building Commissioner.

REPAIR, MAINTENANCE OR RECONSTRUCTION

Any such work done within the right-of-way by any person or agency, public or private, including, but

not necessarily limited to, any work on any portion of any right-of-way which was not physically commenced at the time the road was designated as a scenic road; and the construction of any new driveway or private way or the alteration of any existing driveway or private way in so far as such alteration takes place within the right-of-way when such work involves the cutting down of trees or the destruction of stone walls.

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.

ROAD

The entire right-of-way of a way used for vehicular travel and appurtenant structures and facilities including, but not limited to bridge structures, drainage systems, retaining walls, traffic control devices, sidewalks, pedestrian facilities, and the air space above them, but not intersecting streets or driveways.

TEARING DOWN OR DESTRUCTION OF STONE WALLS

The defacement, removal, physical covering (other than naturally occurring plant covering) or rearrangement of a stone wall as defined herein. Temporary removal and replacement at the same location with the same materials is permitted without Planning Board consent, but only if the Harvard Department of Public Works is notified before the work begins so that it can confirm that the wall is properly replaced.

TEMPORARY REMOVAL OF STONE WALLS

The temporary removal and replacement at the same location with the same materials completed within two years.

TREE

For the purposes of this Scenic Road Bylaw only, a living tree whose trunk has a diameter of ~~4.5~~ 4 inches or more as measured one foot from the ground. All trees so defined within the right-of-way of a designated scenic road or on the boundaries thereof shall be subject to this bylaw. If, for whatever reason, it is uncertain as to whether a tree is within the right-of-way of a designated scenic road, it shall be presumed to be subject to the provisions of this bylaw and the provisions of Massachusetts General Laws Chapter 40, Section 15C until the contrary is shown. 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.

§ 90-3 Designated scenic roads.

Armstrong Road

Bemis Road (Craggs Road)

Blanchard Road

Bolton Road

Brown Road

Cameron Road

Cleaves Hill Road

Cross Road

Cruft Lane
East Bare Hill Road
Eldridge Road
Elm Street
Fairbanks Street
Finn Road
Green Hill Road
Harvard Depot Road
Lancaster County Road
Littleton County Road
Littleton Road
Madigan Lane
Mill Road
Murray Lane
Oak Hill Road
Old Boston Road
Old Littleton Road
Old Mill Road
Old Post Road (Lovers Lane)
Old Schoolhouse Road
Old Shirley Road
Pattee Road
Pinnacle Road
Pond Road
Poor Farm Road
Prospect Hill Road
St. John Road
Scott Road
Shaker Road
Sherry Road
Slough Road
South Shaker Road
Still River Depot Road
Stow Road
Tahanto Trail
Under Pin Hill Road
Warren Avenue
West Bare Hill Road
Westcott Road
Whitney Lane
Whitney Road
Woodchuck Hill Road

§ 90-4. Design Standards.

A scenic road application shall conform to the following design standards:

A. Driveways

- (1) Driveway standards shall be consistent with the Code of the Town of Harvard, Chapter 125-31 Driveways.
- (2) Driveways shall be located in a manner that minimizes the required cut and fill, so as to preserve the existing topography to the greatest extent possible.
- (3) No tree with a trunk diameter exceeding four (4) inches or more, as measured one foot from the ground, shall be cut for a driveway unless said driveway cannot be safely located otherwise.

B. Stone walls

- (1) Removed portions of a stone wall for any purpose shall be used to repair other sections of the wall along the right -of-way.
- (2) No stone wall shall be cut without construction of an appropriate terminus. Appropriate end points consist of: stone wall with tapered ends turning back onto the lot along the driveway, but shall remain in the right-of-way: stone piers: or granite posts.
- (3) Reconstructed portions of stone walls shall use materials that match the existing wall.

C. Tree Replacement

- (1) For each tree to be removed that exceeds four (4) inches in diameter measured from one foot above ground level, a native, nursery-quality tree(s) shall be planted, or an equivalent payment into the town-wide Tree Replacement Fund shall be made. Species type and location, with the advice of the Tree Warden, shall be suitable to the Planning Board,
- (2) The cost of the tree(s), amended soil, if applicable, and the labor for planting the tree(s) is to be paid by the applicant.
- (3) Payment covering the cost of said tree(s), soil amending, if applicable, and planting labor shall be made to the Tree Reserve Fund for the period of two years. If the tree(s) survive two years, the funds shall be returned to the applicant.
- (4) This section shall include projects undertaken by the Town of Harvard

D. The Planning Board may waive the design standards, as set forth under this Section 90-4, if it finds that sight lines create a public safety risk.

§ 90-5 Applications and fees.

- A. Written application shall be filed with the Planning Board to perform activities affecting areas protected by this bylaw. The application shall include such information and plans as are deemed necessary by the Planning Board to describe proposed activities and their effects on the areas. No activities shall commence without receiving and complying with written consent issued pursuant to this bylaw.
- B. At the time of an application, the applicant shall pay a filing fee as specified on the Scenic Road Consent Application.
- C. The Planning Board may waive the filing fee and costs and expenses for an application filed by a government agency, the Town, or a nongovernmental organization working the interest of the Town.

§ 90-6 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 the right-of-way of the Scenic Road shall require an immediate filing as detailed above and shall be subject to restoration of the features. The restoration shall consist of replacing the stone wall as necessary and replacing the trees on a square-inch per square-inch basis at locations specified by the Tree Warden. 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. 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, enforcement of the funding and restoration detailed above.
- C. The Enforcing Official shall have the authority to enforce this bylaw, its regulations and permits issued thereunder by violation notices, noncriminal disposition under MGL Chapter 40, Section 21D, and civil and criminal court actions.
- D. As an alternative to criminal prosecution in a specific case, Enforcing Officials may issue citations under the noncriminal disposition procedure set forth in MGL Chapter 40 Section 21D.
- E. Enforcing officials may issue a citation for the violation of this bylaw and shall take appropriate action in the name of the Town of Harvard to prevent, correct, restrain or abate such violations. Violators shall be subject to a fine of \$300 as set forth under the Scenic Road Act, MGL Ch.40, Section 15C. Each day that a violation continues shall constitute a separate offense, until an application is made to the Planning Board. In addition, the Planning Board and Building Inspector may withhold or revoke any current or pending permit on the property associated with said violation.
- F. Criminal Complaint. Whoever violates any provision of these bylaws may be penalized by indictment or on complaint brought in the district court. Except as otherwise provided by law and as the district court may see fit to impose, the maximum penalty for each violation, or offense, brought in this manner, shall

be \$300.

§ 90-7 Invalidity.

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit, approval or decision, which previously has been issued.

§ 90-8 Appeals.

A decision of the Planning Board shall be reviewable in the Superior Court in accordance with Massachusetts General Laws Chapter 249, Section 4.