

Town of Norwell Scenic Road General Bylaw

Section 1. Authority and Purpose:

- a. Authority – This article is adopted under authority of MGL c. 40, §15C (Scenic Roads) and MGL c. 40, §21.
- b. Purpose – The purpose of this article is to provide a clearly defined public process and procedure for the implementation of the Scenic Road Act. The provisions of this act should ensure that:
 1. The semi-rural, natural, historic and scenic character of the Town's roads (as defined herein) is maintained.
 2. The need to preserve the character of scenic roads is balanced by the Town's need to efficiently maintain roads, acknowledging that roads serve a transportation function for pedestrians and bicyclists, as well as motorized vehicles.
 3. That Town roads will be recommended for designation as scenic roads in accordance with the criteria set forth in this article.
 4. That trees (as defined herein) and stone walls within the right-of-way of all designated scenic roads will not be altered without the required Planning Board public hearing, nor without following the other procedures set forth in this article.

Section 2. Definitions:

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

Abutter – All property owners, including those across the street, abutting the property where work requiring a scenic road hearing is required.

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. This definition does not apply to clearing nuisance growth, routine or emergency tree maintenance that removes only permanently diseased or damaged limbs, trunks, roots and dead whole trees or thinning crowded trees as determined by the Tree Warden.

Posting – 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. 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.

Repair, Maintenance, Reconstruction or Paving Work – Shall mean any work

done within a road (as defined herein) by any person or agency, public or private. Construction of new driveways or widening of existing ones is included, insofar as it takes place within the road. Roadside clearing of trees to provide for vehicular clearance or for improvements to the line-of-sight shall also be included in this definition. The definition of repair, maintenance, reconstruction or paving work shall not apply to the construction or alteration of water, sewer, electric, telephone, cable television or other utilities within the road unless such construction or alteration requires the tearing down or destruction of stone walls or the cutting or removal of trees.

Road – The entire legal right-of-way of a vehicular traveled right-of-way in Norwell, 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 and the air space above. The applicant shall be responsible for determining the limits and width of the right-of-way by utilizing layout plans available. 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 by the proponent of the work to be otherwise.

Scenic Road – A road so designated in accordance with MGL. c. 40, §15C

Stone Wall – A man-made grouping of stones forming a straight or curved line.

Street Residents – The full list of all of the residents with an address on the subject street or streets, as found in the Norwell Board of Registrars most current edition of the “Resident List of the Town of Norwell”.

Tearing Down or Destruction of Stone Walls – The destruction, removal, covering, or painting of any stone wall, or segment thereof, within or partially within the right-of-way. Temporary removal and replacement of a stone wall at the same location, within a six-month period, with the same materials is permitted without Planning Board approval, but only if the Norwell Highway Department 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 permissible and outside the scope of this bylaw.

Tree – A living tree in its naturally standing position within or partially within the right-of-way, 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 Norwell Tree Warden or his designated deputy.

Section 3. Criteria for Designation as a Scenic Road:

- a. In determining which roads or portions of roads should be recommended to Town Meeting for designation as scenic roads, the Planning Board shall consider the following criteria:
 - 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, along the street such as historic buildings, historic monuments, historic burial grounds and historic structures.
 - 6. Features of the road, such as surface, pavement width, use restrictions and bridges.
- b. Roads that have previously been designated as scenic roads may be reevaluated using the foregoing criteria.

Section 4. Procedure for Designating Scenic Roads:

- a. The Planning Board, the Conservation Commission or the Historical Commission, or a petition of 10 registered voters of the Town, may propose scenic road designation by the timely submission of an article for the Annual Town Meeting Warrant for any road or portion thereof other than a numbered route or state highway.
 - 1. Following the close of the Warrant, the Planning Board shall hold a public hearing 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.
 - 2. The Planning Board shall provide a copy of the public hearing notice to all Street Residents, the Board of Selectmen, the Building Inspector, the Conservation Commission, the Historical Commission and the Tree Warden / Highway Department before the public hearing commences. The Planning Board shall also ask the Town Administrator to announce the public hearing during the on-air segment of the Selectmen's meeting.
 - 3. The Planning Board shall ensure that any recommendation for scenic road designation is accompanied by a written description of the characteristics of the road that require the protection afforded by these regulations.
- b. The Planning Board shall make its recommendation to Town Meeting on the merits of designation of the road as a scenic road. Following scenic road 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 all utility companies or other such parties that may work on such road.
 - 3. Notify the Massachusetts Highway Department.
 - 4. Indicate such designation on the next revision of the zoning map.

Section 5. Design Standards for Scenic Roads:

- a. Only one driveway cut per lot onto any designated scenic road shall be allowed and its width shall be limited to 18 feet.
- b. The use of a common driveway is encouraged for multiple-lot projects, but not required.
- c. Stone wall sections to be removed for a driveway shall not exceed the driveway width by more than 2 feet on each side edge of the driveway.
- d. Removed stone for driveway breaches shall be used to repair other sections of the wall along the road at the sole expense of the applicant.
- e. Stone walls that are breached should be provided with appropriate termini. Appropriate termini shall consist of, but not be limited to, stone piers, granite posts, or tapered ends to the stone wall that turn back onto the driveway.
- f. The Planning Board retains the right to waive any or all of the §5 Design Standards if it deems doing so is consistent with the intent of MGL c. 40, §15C Scenic Roads and it enhances the considerations enumerated in §7.

Section 6. Filing for Work Affecting Trees or Stone Walls; Emergencies:

- a. Filing. Any person, organization or agency seeking the consent of the Planning Board under MGL c. 40, § 15C (Scenic Roads) regarding repair, maintenance, reconstruction or paving work, including new driveways, that may involve the cutting or removal of trees or the tearing down or destruction of stone walls, or portions thereof, within or partially within the right-of-way of a designated scenic road, shall provide notice to all abutters and file a request with the Planning Board, submitting the following information:
 1. The text of the notice of the public hearing, 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 plans or references and describing in reasonable detail the proposed changes to trees and stone walls.
 2. A statement of the purpose(s) for the proposed action.
 3. 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. When the Planning Board determines the proposed work to not be extensive, it may permit one copy of an identical set of existing conditions photographs to be marked up to demonstrate the proposed work. All pictures shall be signed and dated by the applicant.
 4. If the less formalized §6.3 requirements are not adequate in the opinion of the Planning Board, seven sets of plans, drawings or other further explanatory reference material showing the proposed work with specific design details shall be required. A description of the proposed changes to either trees or stonewalls should be included on these plans.
 5. Except in the case of town agencies, a fee sufficient to reimburse

- the cost of advertising and shall be provided before the public hearing commences.
6. A list of abutters to the property requiring the scenic road hearing and proof of notice given.
 7. Adequate posting per §2 of this bylaw, at least one calendar week before the public hearing.
 8. An explanation of any proposed compensatory actions that may be useful to the Planning Board before the start of the public hearing.
- 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 fourteen 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, the Tree Warden / Highway Department, the Conservation Commission and the Historical Commission before the public hearing commences.
 - c. Public hearing & Decision. The Planning Board shall hold a public hearing within thirty days of receipt of a properly filed request and shall file a decision with the Town Clerk fifteen days after the hearing, unless the applicant agrees to an extension. The Planning Board shall also send a copy of its decision to the applicant, the Board of Selectmen, Building Inspector, the Conservation Commission, the Historical Commission and the Tree Warden / Highway Department.
 - d. 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.
 - e. 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.
 - f. Emergency repair. This article 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 must be notified by the Tree Warden within the calendar week after any action, where if the threat had not existed, would be a violation of this ordinance. Under no circumstances are stone walls to be torn down or destroyed on a scenic road under the auspices of emergency repair.

Section 7. Considerations When Acting On Applications:

In acting on filings concerning designated scenic roads, the Planning Board shall

take into consideration the following:

- a. That abutters were notified.
- b. Contribution of trees to scenic beauty.
- c. Contribution of stone walls to scenic beauty.
- d. Age and historic significance of roads, trees and stone walls.
- e. Features of the road, such as surface, pavement width and bridges.
- f. Public safety.
- g. Compensatory actions proposed, such as tree and stone wall replacement. The Board may approve any plan where the compensatory action is deemed to be of greater value, as defined by §7, than the proposed alteration.
- 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. Recreational uses of the road.
- l. Other planning information, including how what is proposed relates to the Master Plan.

Section 8. Enforcement and Violations:

- a. Failure to file with the Planning Board for permission to cut or remove trees or for the tearing down or destruction of any portion of a stonewall within any designated scenic road will require an immediate after-the-fact filing and the applicant shall be required to restore features altered by the work. Unless waived, the applicable restoration shall consist of restoring the stone wall to existing conditions and/or replacing the trees cut with nursery quality trees that are acceptable to the Planning Board - in consultation with the Tree Warden. For every three inches of tree cut, measured across its stump, a nursery quality replacement tree with a two inch caliper, measured four feet from the ground, shall be planted by the applicant.
- 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, unless an extension is granted before the two-year expiration.
- c. The location of any tree replacement shall be at the direction of the Tree Warden.
- d. The Planning Board and the Tree Warden shall have the authority to enforce the provisions of this section, as applicable.
- e. Any violation of this bylaw, whether for the tearing down or destruction of stone walls or the cutting or removal of trees, shall result in a fine levied against the offending property owner. The first violation shall result in a fine of \$100, the second violation shall result in a fine of \$200, and the third violation shall result in a fine of \$300. Each day, or portion thereof, that a violation of this bylaw continues shall be deemed a separate offense.

- f. In addition to the foregoing remedies, the Town of Norwell 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.
- g. In addition and as an alternative method of enforcement, the Town of Norwell may in its discretion enforce the provisions of this bylaw in the manner provided in MGL c. 40, §21D.
- h. If, in an aspect, any provision of this bylaw, in whole or part, shall prove to be invalid for any reason, such invalidity shall only affect the part of such provision found invalid. In all other aspects, all provisions of this bylaw will remain in full force.

Section 9. Scenic Roads in Norwell

The following roads are designated as scenic roads under MGL c. 40, §15C and this bylaw:

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| a. Bowker Street | Annual Town Meeting – 3/1976 |
| b. Norwell Avenue | Annual Town Meeting – 3/1976 |
| c. Jacobs Lane | Annual Town Meeting – 3/1980 |
| d. Stetson Road | Annual Town Meeting – 3/1980 |
| e. Stetson Shrine Lane | Annual Town Meeting – 3/1980 |
| f. Tiffany Road | Annual Town Meeting – 3/1980 |
| g. Central Street | Annual Town Meeting – 5/2005 |
| h. First Parish Road | Annual Town Meeting – 5/2005 |
| i. High Street | Annual Town Meeting – 5/2005 |
| j. Old Oaken Bucket Road | Annual Town Meeting – 5/2005 |
| k. Prospect Street | Annual Town Meeting – 5/2005 |
| l. River Street | Annual Town Meeting – 5/2005 |
| m. Circuit Street | Annual Town Meeting – 5/2006 |
| n. Green Street | Annual Town Meeting – 5/2006 |
| o. Lincoln Street | Annual Town Meeting – 5/2006 |
| p. Pine Street | Annual Town Meeting – 5/2006 |
| q. Pleasant Street | Annual Town Meeting – 5/2006 |
| r. Mount Blue Street | Annual Town Meeting – 5/2006 |
| s. Wildcat Lane | Annual Town Meeting – 5/2006 |
| t. Winter Street | Annual Town Meeting – 5/2006 |

Section 10. Power to Adopt Rules and Regulations:

The Planning Board, in its discretion, shall have the authority to adopt rules and regulations consistent with this Bylaw.