



# TOWN OF CONCORD

## Planning Board

141 Keyes Road, Concord, MA 01742

(978) 318-3290

### Rules and Regulations for the Administration of the Scenic Roads Bylaw

#### **Section 1 – General Provisions**

##### 1.1 Authority

These Rules and Regulations (“Regulations”) are adopted by the Planning Board pursuant to the authority of Massachusetts General Law (MGL) Chapter 40, Section 15C (the “Scenic Roads Act”) and the Concord Scenic Roads General Bylaw adopted by Town Meeting on May 1, 2022 and as may be amended by Town Meeting.

##### 1.2 Purpose

The purpose of these Regulations is to establish uniform procedures for conducting the duties of the Board as authorized by the Scenic Roads Act and to ensure that roads designated by Town Meeting as Scenic Roads will not be altered by any person, organization or agency, in any way that requires the cutting or removal of trees, or the removal, rebuilding or destruction of stone walls, or portions thereof, without adherence to applicable procedures and without the written consent of the Planning Board unless expressly exempt under the Scenic Roads Bylaw and these Regulations.

##### 1.3 Applicability

Any person, organization or agency, including but not limited to agencies of the Town of Concord and the Commonwealth of Massachusetts, proposing to cut or remove trees and/or the removal, rebuilding or destruction of stone walls, or portions thereof, within the public right-of-way, or on the boundary thereof, of any road designated as a Scenic Road by Town Meeting, in connection with repair, maintenance, reconstruction or paving work, whether or not governed by any other federal, state or local regulations, laws, permits, variances, approvals, or programs, shall comply with the provisions of these Regulations unless expressly exempt under the Scenic Roads Bylaw.

##### 1.4 Definitions

In the absence of contrary meaning established through legislative or judicial action pursuant to MGL Chapter 40, Section 15C, the following terms contained in that statute shall be defined as follows:

#### 1.4.1 Cutting or Removal of Trees

“Cutting or removal of trees” shall mean the removal of one or more trees, trimming of major branches or cutting of roots that in the opinion of the Tree Warden causes damage to a tree so as to compromise the health of a tree.

#### 1.4.2 Right-of-way Maintenance

“Right-of-way Maintenance” shall mean any work done within the road right-of-way by any person or agency, public or private, that involves the routine maintenance of vegetation, trees, and stone walls, including the pruning of trees performed according to generally accepted principles and methods for pruning as established by the Tree Warden, vegetation removal from stone walls, and management of invasive species.

#### 1.4.3 Public Road Right-of-way

“Public Road Right-of-way” shall mean the total land area acquired by the Town to be used and maintained as a public way. When the boundary of the public road right-of-way is in issue so that there is a question as to whether or not certain trees or stone walls or any portions thereof are within, on the boundary of, or outside the public road right-of-way, the trees or stone walls shall be presumed to be within or on the boundary of the way until the contrary is shown on a stamped surveyed plan.

#### 1.4.4 Roadway Repair, Maintenance, Reconstruction, or Paving Work

“Roadway Repair, maintenance, reconstruction, or paving work” shall mean any work done within a road by any person or agency, public or private. Within this definition is any work on any portion of a road which had not physically commenced at the time the road was designated as a Scenic Road. Construction of new driveways or alteration of existing ones is also included, in so far as it takes place within a road.

#### 1.4.5 Stone Wall

“Stone Wall” shall mean an object meeting five easily observed criteria: **composed** of stone, in any combination of natural materials; **granular**, meaning it consists of particles, rather than a single large slab; **elongated** with a length/width ratio of four or greater; **continuous** along the line of the wall, meaning no significant gaps; and meeting a minimum **height** requirement either by having stones rest on stones or by having single stones of at least a foot high abutting one another.

#### 1.4.6 Stone Wall Repair and Maintenance

“Stone Wall Repair and Maintenance” shall mean: routine work done on a stone wall within a road right-of-way by any person or agency, public or private which does not involve alteration of the form, materials, or appearance of the historic wall, such as removal of invasive and/or other vegetation obscuring or weakening walls; removal of accumulated dirt/gravel/debris piled over or against stone walls; and/or replacement of individual stones dislodged by fallen limbs or other accident into their original position or with stones of similar appearance.

#### 1.4.7 Removal, Rebuilding or Destruction of Stone Walls

“Removal, rebuilding or destruction of stone walls” shall mean any act to remove more than two linear feet of stone wall; to move stones except for the purposes of repair or maintenance; to sandblast, cover or paint stones; to bury stones; to rearrange stones; or any other act by which a stone wall or portion thereof is removed, broken down, relocated, or obscured with other materials.

#### 1.4.8 Tree

“Tree” shall mean a perennial woody plant whose trunk has a diameter of six (6) inches or more as measured four (4) feet above the ground.

### **Section 2 –Scenic Road Alterations, Improvements and/or Removal of Stone Wall or Trees Procedures**

#### 2.1 Application

Unless exempt pursuant to Section 2.5, any person, organization, state, or municipal agency seeking the written consent of the Planning Board regarding the cutting or removal of trees and/or the tearing down or destruction of stone walls, or portions thereof, within the right-of-way, or on the boundary thereof, in connection with the repair, maintenance, reconstruction or paving work on a Scenic Road, shall file a request with the Planning Board and the Town Clerk together with the following:

- 2.1.1 One (1) original Scenic Roads Alteration Application stamped by the Town Clerk.
- 2.1.2 A Site Plan to scale showing the property boundary and clearly identifying any stone wall(s) and trees with their Diameter Breadth Height (DBH) located in the public road right-of-way or on the boundary thereof, the proposed work that requires the removal, destruction or other non-exempt work on a stone wall(s) or tree(s), and any proposed mitigation/restoration of the stone wall(s) or replanting. The plan shall be prepared and stamped by a registered land surveyor.
- 2.1.3 Scenic Roads Bylaw application fee as set forth in the Planning Board Fee Schedule. The fee for a Town project is waived.
- 2.1.4 Current photos of the site.
- 2.1.5 Copy of Assessor’s Office Certified List of Abutters Form.
- 2.1.6 Newspapers Legal Notice Form.
- 2.1.7 Any further explanatory material useful to adequately inform the Planning Board of the proposed changes, restoration and/or replanting.

The Applicant shall submit all the application material in an electronic pdf format as individual files either on a thumb drive or by email to [planningdivision@concordma.gov](mailto:planningdivision@concordma.gov)

The Planning Board shall have the right to request additional information of the Applicant in connection with the proposed alteration.

## 2.2 Public Hearing

### 2.2.1 Notice

- (a) As required by statute, the Board shall give notice of a public hearing before the Planning Board by advertising twice in consecutive weeks in a newspaper of general circulation in the area, the last publication to be not less than seven (7) days before the hearing. This notice shall contain a statement as to the time, date, place, and purpose of the hearing with a reasonable description of the action proposed by the Applicant. Copies of the notice shall also be sent to the Historical Commission, Public Works Commission, the Tree Warden and abutters to abutters within 300 feet of the proposed project location. The Applicant shall assume the cost for the publication.
- (b) In the event that the Planning Board holds a joint hearing with the Tree Warden acting under MGL c. 87, the advertisement noting such joint meeting shall be made by the Tree Warden.

### 2.2.2 Timing of Hearing

- (a) The Planning Board shall hold a public hearing within forty-five (45) days after submission of a Scenic Roads Alteration Application unless a longer time is agreed to by the Applicant.
- (b) If the Applicant fails to pay for the cost of the legal notice so that the public hearing is not advertised properly, the application shall be deemed incomplete and no action by the Planning Board shall take place.

## 2.3 Considerations of Decision

The Planning Board's decision on any application for proposed action affecting Scenic Roads shall be based on consideration of the following criteria:

### 2.3.1 Public safety;

If the removal of trees and/or stone walls is required for safety purposes, the Applicant shall provide information supporting this criterion.

### 2.3.2 Historical character and values;

In evaluating an application, the Planning Board shall take into consideration the impact of the proposed project in the context of the historic character and relevance of the stone wall to the existing built features such as historic buildings, structures and sites, historic monuments, historic burial grounds, agricultural buildings, fields, and traditional fencing (e.g., split rail).

### 2.3.3 Scenic and aesthetic characteristics;

In evaluating an application, the Planning Board shall take into consideration the impact of the proposed project in the context of the existing canopy trees, agricultural fields, stone walls, historic homes and/or monuments, historic vistas, and other vegetation which contributes to scenic and aesthetic characteristics of the scenic road.

2.3.4 Compensatory actions proposed, such as replacement of trees or stone walls;

The Applicant shall provide detailed information on any compensatory actions proposed for the removal of trees and/or stone walls. As an example, this can include a plan showing replacement tree plantings with a list of size and species and/or, if removal of a stone wall is proposed, a plan showing the location where an existing portion of the stone wall will be repaired or restored.

2.3.5 Existence or absence of reasonable alternatives (including a no-build alternative);

The Applicant shall provide a narrative on the alternatives explored that would not require the removal of trees and/or stone wall and reasons why the alternatives were not selected.

2.3.6 Consistency with articulated Town policies; and

The Applicant can cite other Town policies in support of the proposed project. The Planning Board shall take consistency with other Town policies into consideration in the evaluation of an application.

2.3.7 Other sound planning considerations.

The Applicant can provide any other information or documentation that may assist the Planning Board in evaluating an application.

## 2.4 Decision

2.4.1 The Planning Board shall file a decision with the Town Clerk on the request within twenty-one (21) days of the close of the public hearing. If the Planning Board fails to mail or deliver to the Applicant a written copy of its decision within this time period, the requested approval shall be deemed granted.

2.4.2 In rendering its decision, the Planning Board shall consider the application based on compliance with the Scenic Road Act and the Considerations of Decision in Section 2.3 above.

2.4.3 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 existing trees and stone walls. Such bonding shall be specified in the Board's decision. The Applicant shall provide a bond estimate for the cost of the required work from a qualified professional, such as a stone mason for repair and/or restoration of stone walls or a landscape professional for tree protection and/or replacement, for review and approval by CPW Engineering and/or the Tree Warden. This bond shall be included in the overall performance bond required for the right-of-way permit issued by CPW Engineering. A bond shall not be required for Town projects.

2.4.4 The Planning Board may require repair and restoration of a stone wall to be consistent with the historical character.

2.4.5 Copies of the Decision shall be sent to the Tree Warden, the Public Works Engineering Division, the Building Inspections Division, the Historical Commission, and those persons who have requested a copy of the decision.

- 2.4.6 Following the issuance of a Scenic Roads Alteration Permit and prior to the commencement of any work within the public right-of-way, the Applicant shall obtain a permit required by the “Private Digging of Roads” Bylaw and issued by CPW Engineering Division in accordance with the guidelines established by the Public Works Commission.
- 2.4.7 Following the issuance of a Scenic Roads Alteration Permit and prior to the removal of any Public Shade Tree, the Applicant shall obtain written approval from the Tree Warden acting under M.G.L. Ch. 87.

## 2.5 Exemptions

- 2.5.1 The following items shall be exempt from the Scenic Roads Bylaw and do not require the filing of a Scenic Roads Bylaw Alteration Application:
  - (a) Cutting or removal of trees and tree stumps by the Town in connection with right-of-way maintenance, or to mitigate, eliminate or avoid hazardous conditions as determined by the Tree Warden.
  - (b) Installation of pavement markings or signage in the public road right-of-way.
  - (c) Repair or maintenance of a stone wall per Section 1.4.6.
  - (d) Concord Public Works – emergency work related to utilities, flooding, erosion, and other critical conditions including emergency work on retaining walls.
  - (e) Temporary removal and replacement of a stone wall in the same location with the same materials within thirty (30) days provided that the Town Planner is notified 14 days before the work begins so that the stone wall can be documented sufficiently that the Town Planner or designee may confirm that the wall is properly replaced. No stones shall be disposed of or used for purposes other than to restore the stone wall.

## Section 3 – Public Shade Trees

### 3.1 Coordination with the Public Shade Tree Law

Whenever a public hearing must be held under the provisions of these Regulations and also under M.G.L. Ch. 87, Sec. 3, the Planning Board hearing shall be held in conjunction with that held by the Tree Warden acting under M.G.L. Ch. 87. The consent of the Planning Board to a proposed action shall not be regarded as implying consent by or abrogating the authority of the Tree Warden under that statute, or vice versa. The Planning Board decision shall contain a condition that no alteration shall be made until all applicable provisions of the Public Shade Tree law, M.G.L. Ch. 87, Sec. 5, have been complied with.

### 3.2 Emergency Conditions

Nothing in these Regulations shall be construed as abrogating the authority of Town officials or authorized agencies in an emergency to remove trees or tree limbs that endanger the public or obstruct the public way.

## Section 4 – Enforcement

### 4.1 Application & Restoration Requirement

Failure to file with the Planning Board for permission to cut or remove or in the opinion of the Tree Warden damage a tree so as to compromise the health of a tree or for the removal or destruction of a stone wall(s), or portion thereof, within the layout of the scenic road will require an immediate filing as detailed above and shall at the discretion of the Planning Board be subject to one or both of the following:

- (a) Replacement of trees cut 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 1-foot above ground level, or at the top of the stump if shorter than 1 foot. Replacement trees must be of a native species similar to those which may have been cut or removed or alternative species as approved by the Tree Warden. Cost to replace and replant shall be the responsibility of the property owner or their designee.
- (b) For stone walls, replacement and/or restoration in accordance with Section 2.4.4.

### 4.2 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 under Section 2.4.3 and 2.4.4. Any decision not exercised within 2 years of issue shall be void and require a new filing.

### 4.3 Enforcement Penalty

Anyone who fails to comply with the provisions of M.G.L. c. 40, § 15C and the Town's Scenic Roads Bylaw shall be subject to a fine not to exceed \$300 per violation, as specified in Appendix A of the Regulations for the Enforcement of Town Bylaws adopted pursuant to M.G.L. c. 40 § 21D and the Bylaw for Non-Criminal Disposition of Violations.