

ASHBURNHAM PLANNING BOARD

RULES AND REGULATIONS
OF THE
PERMIT GRANTING AUTHORITY
PURSUANT TO M.G.L. CHAPTER 40 SECTION 15C SCENIC ROADS



Adopted September 2004
Revised September 14, 2006

ASHBURNHAM PLANNING BOARD

John MacMillan, Chair
Robert MacLeod
Joseph Kalagher, Vice Chair
Bruce Whitney, Clerk
Thomas Ruble

1. INTRODUCTION

These Rules and Regulations are adopted by the Ashburnham Planning Board, hereinafter called the Board, as the Permit Granting Authority as provided for in M.G.L., c. 40, § 15C (Scenic Roads Law) for the purpose of establishing uniform rules and procedures for the regulation of certain types of work within the public right-of-way of scenic roads.

2. DEFINITIONS

In the absence of contrary meaning established through legislative or judicial action pursuant to M.G.L., c. 40, § 15C, the following terms shall be defined as follows:

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.

REPAIR, MAINTENANCE, RECONSTRUCTION, OR PAVING WORK

“Repair, maintenance, reconstruction, or paving work” shall mean any work done within the right-of-way by any person, organization, or municipal agency. This shall include 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 pursuant to M.G.L., c. 40, § 15C. Construction of new driveways or alteration of existing driveways is also included, in so far as the construction takes place within the right-of-way.

ROAD

“Road” shall mean a right-of-way of any way used and maintained as a public way including the vehicular traveled way in addition to 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 at issue so that a dispute arises as to its precise location, any trees or stone walls shall be presumed to be within the right-of-way until the contrary is shown.

SCENIC STONE

A native granite fieldstone undisturbed in character that varies in shape and size with express patina from weathering.

TREES

“Trees” shall include a tree whose trunk has a diameter of four (4) inches or more as measured one (1) foot above grade.

TEARING DOWN, REMOVAL OR DESTRUCTION OF STONE WALLS

“Tearing down, removal or destruction of stone walls” shall mean the removal of more than one (1) cubic foot of wall material per linear foot above existing grade, but shall not be construed to include temporary removal and replacement at the same location with the same materials.

3. SUBMISSION REQUIREMENTS

3.1 OFFICIAL APPLICATION FORM

Any person, organization, or municipal agency seeking a permit from the Planning Board pursuant to M.G.L., c.40, § 15C for the cutting or removal of trees or the tearing down or destruction of stone walls within a public right-of-way, or portions thereof, shall file an official Scenic Roads Application Form.

3.2 CERTIFIED ABUTTERS LIST

A certified list of names of all abutters, and owners of land directly opposite on any public or private street or way, and abutters to the abutters within three hundred feet of the property line of the petitioner as they appear on the most recent applicable tax list.

3.3 LOCATION OF WORK

A locus map of the location of the proposed work within the right-of-way of the scenic road. A Town of Ashburnham Assessor's Map is sufficient for this purpose.

3.4 STATEMENT OF WORK

A written statement which describes in reasonable detail the proposed work within the right-of-way of the scenic road, including all proposed changes to trees and/or stone walls as defined in these Rules and Regulations.

No stones or scenic stone are to be removed from work site.

Removed stone should be aesthetically incorporated in to the design of the opening created.

3.5 NUMBER OF COPIES

At the time of application, the Applicant shall provide Ten (10) copies of the official Scenic Roads Application Form and all plans, exhibits, analyses and any other information and/or attachments with the Planning Board. The Applicant shall also file one (1) full copy of the application with the Office of the Town Clerk.

3.6 ADDITIONAL INFORMATION

The Applicant may submit additional information that the Applicant feels is relevant to properly inform the Board about the proposed work within the right-of-way of the scenic road, which may include site plans, legal opinions, deeds, historical data, studies and reports. To a reasonable degree, the Board may also require additional information in addition to that specifically required by Massachusetts General Law or these Rules and Regulations.

4. SITE VISIT

In some cases, the Planning Board may request a site visit to the site in which the work is proposed. The date and time for such visit shall be satisfactory to both the Planning Board and Applicant. The Planning Board may request that any work subject to these Rules and Regulations be clearly flagged or otherwise delineated prior to the scheduled site visit.

5. APPLICATION FEE

All Planning Board fees are non refundable filing fees to cover the cost of processing applications. All expenses for advertising, publication of notices, engineering, professional planning review, legal review, plans, inspection of construction, recording and filing of documents required by the Planning Board or its agent shall be the responsibility of the applicant. Administrative Fees are not part of the regulations and their content may be revised from time to time by administrative action of the Board, without a public hearing. The Board, at its discretion, may waive certain fees. The Fee Schedule is available in the Land Use Office.

6. REFERRAL TO OTHER BOARDS AND DEPARTMENTS

The Planning Board may transmit copies of the application, together with such information as the Board deems appropriate, to the Tree Warden, Highway Department, Police Department, Fire Department, Conservation Commission, Historical Commission and Board of Selectmen for their review and recommendation within twenty-one (21) days of the filing of the application. The Board may also transmit copies of the application to other Boards and Departments as it deems appropriate. Copies of such reviews and recommendations shall be sent to the Planning Board, provided however that failure of any such Board or Department to make recommendations prior to/or at the public hearing shall be deemed a lack of opposition. These Rules and Regulations do not preclude compliance with any other local, state or federal laws.

Scenic road applications may require engineering review. Engineer to be specified by the Planning Board and fees to be borne by the applicant.

7. PUBLIC HEARINGS

7.1 HEARING

A public hearing shall be held within Thirty (30) days after the date of filing of an Application for Work within a Scenic Road with the Planning Board and Office of the Town Clerk. Notice of the public hearing, which shall include the size, type and location of the tree(s) and/or stone wall to be cut or removed shall be given by publication in a newspaper of general circulation in the Town of Ashburnham once in each of two successive weeks, the last publication of said notice to occur at least seven (7) days before the day of such hearing. Notice shall also be sent by mail, postage prepaid, to the applicant and abutters as described in § 3.2 of these Rules and Regulations. In all cases, notice of such public hearing shall be given by the Board. The required time limits for a public hearing may be extended by written agreement between the Applicant and Board, which shall be filed in the Office of the Town Clerk. The applicant shall be responsible for all expenses for hearing notice and abutter notifications

7.2 RULES OF PROCEDURE FOR PUBLIC HEARINGS

An Applicant may appear in his own behalf or may be represented by an authorized agent or attorney. In the absence of an appearance on behalf of an Applicant, without cause, the Board may make a decision on the basis of available information otherwise received. The Board Chairman shall preside at all public hearings and meetings. The Vice Chair of the Board shall preside as Acting Chairman and perform the duties of the Chairman in his absence. The Applicant or his duly authorized representative shall present evidence, testimony or other information in support of the application. After the Applicant's presentation, the Board may question the Applicant regarding the evidence, testimony or other information presented. Any persons in attendance will then be given the opportunity to speak or provide testimony. No person shall speak until recognized by the Chairman and has provided his name and address for the record. All written communication shall be submitted into the record if delivered at the public hearing or postmarked or delivered to the Board prior to the close of the public hearing. No further evidence, testimony or information shall be presented or entered into the record after the close of the public hearing.

7.3 PUBLIC SHADE TREE LAW CONSOLIDATED PUBLIC HEARING

M.G.L., c.87, § 1 defines all trees within a public way or on the boundaries thereof as public shade trees. When a public hearing must be held pursuant to the provisions of M.G.L., c.40, § 15C and M.G.L., c.87 § 3 (Public Shade Tree Law) prior to the cutting or removal of a tree, such hearings shall be consolidated into a single public hearing before the Tree Warden and Planning Board. Notice of the public hearing, which shall include the size, type and location of the tree(s) to be cut or removed shall be given by publication in a newspaper of general circulation in the Town of Ashburnham once in

each of two successive weeks, the last publication of said notice to occur at least seven (7) days before the day of the public hearing. Notice shall also be sent by mail, postage prepaid, to the Abutters as described in § 3.2 of these Rules and Regulations. In all cases, notice of such consolidated public hearing shall be given by the Tree Warden or deputy. The required time limits for a public hearing may be extended by written agreement between the Applicant, Tree Warden and Board, which shall be filed in the Office of the Town Clerk. The consent of the Planning Board to a proposed action pursuant to M.G.L., c.40, § 15C shall not be regarded as to infer consent by the Tree Warden, and the consent of the Tree Warden pursuant to M.G.L., c.87, § 3 (Public Shade Tree Law) is not to be regarded as to infer consent by the Planning Board. The decision of the Planning Board pursuant to M.G.L., c.40, § 15C (Scenic Roads Law) shall contain a condition that no work should be done until the applicant has complied with all applicable provisions of M.G.L., c.87 (Public Shade Tree Law).

8. DECISION

8.1 CONSIDERATIONS

- a. The decision of the Planning Board on any application for proposed action affecting scenic roads shall be based on consideration of the following:
 1. preservation of natural resources;
 2. environmental values;
 3. historical values;
 4. scenic and aesthetic characteristics;
 5. public safety;
 6. compensatory actions proposed, such as replacement of trees or stone walls;
 7. other sound planning considerations.
- b. A sign with the following wording "Scenic Road Permit # _____" shall be posted at the driveway entrance prior to construction. Sign size to be no less than 18" x 18" with contrasting background.

8.2 VOTE

The affirmative vote of a minimum of three (3) members of the five (5) member Board shall be required to issue a permit authorizing work within the right-of-way of a scenic road. The record shall show the vote of each member or indicate if absent or failing to vote. The decision shall state clearly the specific findings for the action.

8.3 DECISION

The decision of the Board shall be made and filed with the Office of the Town Clerk within thirty (30) days following the close of the public hearing. The required time limits for a public hearing may be extended by written agreement between the Applicant and Board, which shall be filed in the Office of the Town Clerk.

8.4 NOTIFICATION OF DECISION

A notice of the decision shall be mailed, postage prepaid, to the Applicant and to persons present at the public hearing requesting such notice.

8.5 PROVISION OF SECURITY

The Board may require that a performance guarantee be posted with the Town in such form and amount as is required by the Board to secure the satisfactory completion of all or any part of the work authorized by a permit issued by the Board pursuant to these Rules and Regulations. The form of the performance guarantee shall be generally as required in the Town of Ashburnham Subdivision Rules and Regulations, § 4.3.19, Performance Guarantee.

9. ADMINISTRATION

9.1 WAIVER OF FULL COMPLIANCE

Full compliance with these Rules and Regulations may be waived by the Board provided such waivers are deemed to serve the public interest.

9.2 ADOPTION AND AMENDMENT

These Rules and Regulations may be adopted and from time to time amended by majority vote of the Board. Prior to the initial adoption of these Rules and Regulations and any subsequent revisions or amendments, the Board shall hold a public hearing. Notice of the public hearing shall be given by publication in a newspaper of general circulation in the Town of Ashburnham once in each of two successive weeks, the first publication being not less than fourteen days before the day of such hearing.

9.3 SEVERABILITY

If any section, paragraph, sentence, clause or provisions of these Rules and Regulations shall be adjudged not valid, the adjudication shall apply to the material so adjudged and the remainder of these Rules And Regulations shall be deemed to remain valid and effective.

9.4 EFFECTIVE DATE

These Rules and Regulations become effective when voted on affirmatively by a majority of the Board and filed with the Office of the Town Clerk.

10. SCENIC ROADS (Voted May 11, 1974)

Bush Hill Road
Cashman Hill Road
Corey Hill Road
Cushing Street
East Rindge Road
Hastings Road
Lashua Road
Packard Hill Road
River Styx Road
Russell Hill Road
Wilker Road
Willard Road
Young Road