

**Town of Billerica**  
**SCENIC ROADWAY RULES & REGULATIONS**

Pursuant to MGL Chapter 40 Section 15C Scenic Roads

*[Adopted March 19, 2012]*

**1. AUTHORITY**

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

**2. PURPOSE**

The purpose of these Rules & Regulations is to ensure that roads designated as Scenic Roads will not be altered without following proper procedures and without adherence to proper consideration.

**3. DEFINITIONS**

In the absence of contrary meaning established through legislative or judicial action pursuant to Massachusetts General Law Chapter 40, Section 15C, the following terms shall be defined as follows:

3.1 CUTTING OR REMOVAL OF TREES - shall mean the removal of one or more trees and/or the removal of tree limbs having a diameter greater than four inches.

3.2 REPAIR, MAINTENANCE, RECONSTRUCTION, OR PAVING WORK - shall mean any work done within the right-of-way of a road by any person, or public or private agency. This definition includes the construction of new driveways or alteration of existing driveways that takes place within the right-of-way.

3.3 ROAD - shall mean 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. When the boundary of the road is in question, the trees and stone walls shall be presumed to be within the way until the contrary is shown.

3.4 TEARING DOWN OR DESTRUCTION OF STONE WALLS - shall mean the destruction of more than 15 linear feet of stone wall involving more than one cubic foot of wall material per linear foot above existing grade. Tearing down or destruction of stone walls shall not be construed to include temporary removal and replacement of walls at the same location with the same materials. Reconstructed portions of stone walls shall match the existing wall.

3.5 TREES - shall include any living tree whose trunk has a diameter of four inches or more as measured one foot above the ground level.

## **4. SUBMISSION REQUIREMENTS**

### **4.1 OFFICIAL APPLICATION FORM**

Any person, organization, or municipal agency seeking a permit from the Planning Board pursuant to these regulations 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 a Scenic Road Application Form.

### **4.2 CERTIFIED ABUTTERS LIST**

A list of owners of properties, as certified by the Assessors, located in whole or in part within one hundred (100) feet of proposed action.

### **4.3 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 Billerica Assessor's Map may be sufficient for this purpose.

### **4.4 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 the Scenic Road bylaw. No stones are to be removed from worksite. Stones shall be incorporated into the design of the opening created.

### **4.5 PHOTOGRAPHS**

Color photographs clearing illustrating the proposed tree cutting/removal or tearing down and/or destruction of stone walls.

### **4.6 NUMBER OF COPIES**

At the time of application, the applicant shall provide nine (9) copies of the Scenic Roads application form, plans, exhibits, analyses and any other information and/or attachments to the Planning Board office. The Applicant shall also file one (1) full copy of the application with the Office of the Town Clerk.

### **4.7 ADDITIONAL INFORMATION**

The applicant may submit additional information that they feel are relevant to properly inform the Planning 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 specifically required by Massachusetts General Law or these Rules & Regulations.

## **5. SITE VISIT / POSTING OF TREES**

In some cases, the Planning Board may request a site visit to the location where 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 & Regulations be clearly flagged or otherwise delineated prior to the scheduled site visit. All trees proposed to be cut shall be posted indicating that the tree is proposed for removal and that a public hearing is scheduled for a specified date, time, and place. This posting shall be done prior to the first publication of the legal notice.

## **6. APPLICATION FEE**

Application fee of \$100.00 shall be required. 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. For cause the Board, at its discretion may waive certain fees.

## **7. REFERRAL TO OTHER BOARDS AND DEPARTMENTS**

The Planning Board shall transmit copies of the application form, 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 fourteen (14) days of the filing of the application. The Planning 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 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 & 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.

## **8. PUBLIC HEARINGS**

### **8.1 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 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 herein. 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.

## 8.2 RULES OF PROCEDURE FOR PUBLIC HEARINGS

An applicant may appear in his/her 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 applicant or duly authorized representative shall present evidence, testimony and 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 shall then be given the opportunity to speak or provide testimony.

## 8.3 PUBLIC SHADE TREE LAW CONSOLIDATED PUBLIC HEARING

Massachusetts General Law Chapter 87 Section 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.

## 9. DECISION

### 9.1 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.

### 9.2 VOTE

The affirmative vote of a minimum of four (4) members of the seven (7) member Planning Board shall be required to issue a permit authorizing work within the right-of-way of a scenic road. The decision shall state clearly the specific findings for the action and may include conditions consistent with the considerations noted herein.

### 9.3 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.

#### 9.4 NOTIFICATION OF DECISION

A notice of the decision shall be forwarded to the applicant and to persons present at the public hearing requesting such notice.

#### 9.5 PROVISION OF SECURITY

The Planning 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 & Regulations.

### **10. ADMINISTRATION**

#### 10.1 WAIVER OF FULL COMPLIANCE

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

#### 10.2 ADOPTION AND AMENDMENT

These Rules & Regulations may be adopted and from time to time amended by majority vote of the Planning Board. Prior to the initial adoption of these Rules & 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 once in each of two successive weeks, the first publication being not less than fourteen (14) days before the day of such hearing.

#### 10.3 SEVERABILITY

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

#### 10.4 EFFECTIVE DATE

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

### **11. SCENIC ROADS**

The following lists of roads have been designated Scenic Roads within the Town of Billerica pursuant to MGL. CH. 40 Sec. 15C:

11.1 Concord Road, (October 21, 1974)

11.2 Dudley Road, (Annual Town Meeting March 5, 1977)