

## Chapter 88

### SCENIC ROADS

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[HISTORY: Adopted by the Annual Town Meeting of the Town of Pelham 5-4-2002, Art. 26. Amendments noted where applicable.]

#### GENERAL REFERENCES

Driveways — See Ch. 23.

Zoning — See Ch. 125.

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#### § 88-1. Definitions.

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

**ALTERATION, TEARING DOWN OR DESTRUCTION OF STONE WALLS** — The destruction of more than 12 linear feet of stone wall involving more than one 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.

**CUTTING OR REMOVAL OF TREES** — The removal of one or more trees or substantial trimming of major branches or cutting of roots.

**REPAIR, MAINTENANCE, RECONSTRUCTION, OR PAVING WORK** — Any work done within the right-of-way by any person or agency, public or private. Within this definition is any work on any portion of the right-of-way that is not designed and approved at the time the road is designated as a scenic road. Construction of new driveways or alteration of existing ones is specifically excluded because the Town's Driveway Bylaw<sup>1</sup> covers such work.

**ROAD** — A right-of-way as certified by the Pelham DPW Superintendent or a written statement of a

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<sup>1</sup>1. Editor's Note: See Ch. 23, Driveways.

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registered surveyor as to the boundaries of any way used and maintained as a public way. The term "road" includes 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, but not intersecting streets or driveways. When the boundary of the right-of-way is at issue so that a dispute arises as to whether or not certain trees or stone walls or portions thereof are within or without the way, the trees or stone walls shall be presumed to be within the way until the contrary is shown.

**STONE WALL** — A congruent structure of stone constructed to enclose, divide, or define an area, and located at least partially within the boundaries of the road. Temporary disturbance of a stone wall for installation of underground utilities is not regulated, but failure to restore such wall to its original condition within six months will be subject to enforcement action under this bylaw.

**TREES** — Shall include a tree whose trunk has a diameter of eight inches or an approximate circumference of 25 inches or more as measured 4 1/2 feet above ground.

### **§ 88-2. Purpose.**

The purpose of this chapter is to maintain the rural, natural, historic and scenic character of the Town of Pelham's roadways. These regulations are intended to ensure that:

- A. Ways designated as scenic will not be altered without following proper procedures and without adherence to proper considerations and criteria stated in this chapter; and
- B. Trees and stone walls within the rights-of-way or layouts of all Town ways will not be altered without the public hearing required by, nor without following the other procedures set forth in, this chapter.

### **§ 88-3. Designated roads.**

All roads within the Town of Pelham, excluding Route 202 (Daniel Shays Highway) and Route 9, which as state highways are not eligible for such designation, are designated as scenic roads. For work outside the existing traveled way, i.e., within the right-of-way, the proponent shall provide a written statement from the Highway Department or the work of a registered surveyor as to the location of said right-of-way.

### **§ 88-4. Procedures and filing.**

- A. **Filing.** Any person, organization, state or municipal agency seeking the consent of the Planning Board under M.G.L. c. 40, § 15C regarding road repair, maintenance, reconstruction, or paving work that may involve the cutting or removal of trees or the tearing down of stone walls, or portions thereof, shall file a request with the Planning Board and submit the following information:
  - (1) The text of a legal notice identifying the location of the proposed action in terms enabling readers to locate it with reasonable specificity on the ground without the need for additional plats or references, and describing in reasonable detail the proposed changes to trees and stone walls;
  - (2) A description and statement of the purpose, or purposes, for the proposed action;
  - (3) In the case of proposed road widening, a plan of the proposed activity, including compensatory actions;
  - (4) A list of owners of properties located in whole or in part within 100 feet of the proposed

action;

(5) Except in the case of Town agencies, a deposit sufficient to cover the cost of advertising and notification; and,

(6) Any further explanatory material useful to adequately inform the Planning Board.

B. Procedures.

(1) Notice. The Planning Board shall 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 14 days prior to the hearing and the last at least seven days prior to 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 be sent to the Select Board members, Conservation Commission, Historical Commission, Tree Warden, Highway Department and property owners within 100 feet of the proposed action. **[Amended 6-27-2020 ATM by Art. 17]**

(2) Timing of hearing. The Planning Board shall hold a public hearing within 30 days of receipt (by hand to the Town Clerk or by certified mail) of a properly filed request. The date and time of the public hearing shall be set outside of normal weekday work hours (8:00 a.m. to 5:00 p.m., Monday through Friday) so as to encourage maximum citizen participation.

(3) Timing of decision. Within 30 days of receipt of a properly filed request, the Planning Board shall, unless a longer time is agreed to by the applicant, submit a written determination of consent or denial to the applicant and send a copy thereof to the Select Board and the Town Clerk. **[Amended 6-27-2020 ATM by Art. 17]**

(4) Exceptions. Routine maintenance of utilities, established practices of vegetation mowing, and trees designated for removal or trimming by the Tree Warden may continue in rights-of-way without public hearing and notice required under this chapter. Nothing in this chapter shall prevent any work being performed as the result of emergency conditions that threaten the lives and/or safety of the public.

**§ 88-5. Considerations.**

The Planning Board's decision on any application for proposed action affecting scenic roads shall be based upon consideration of the following:

- A. Preservation of natural resources, including shade canopy, habitat and other environmental values;
- B. Preservation and/or enhancement of historic and scenic views and features along the roadway;
- C. Public safety, including road width, design speed, and traffic calming measures to assist maintenance of appropriate speed limits;
- D. Compensatory actions proposed, such as replacement of trees or walls;
- E. Local residential traffic patterns and overall traffic volume, speed and congestion;
- F. Functional importance and urgency of repair, maintenance, reconstruction, or paving;
- G. Additional evidence contributed by abutters, Town agencies, and other interested parties;

- H. Existence or absence of reasonable alternatives;
- I. Size, species, age, and condition of the tree or trees;
- J. Relationship of road design to state and local environmental and engineering standards;
- K. Financial aspects of alternatives to avoid or reduce damage to stone walls or trees; and,
- L. Other sound planning considerations.

**§ 88-6. Enforcement; violations and penalties.**

- A. The Planning Board and the Tree Warden, where appropriate, shall have the authority to enforce the provisions of this chapter.
- B. 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 layout of any scenic road will require an immediate filing as detailed above and the applicant shall be required to restore the features. This restoration shall consist of replacing the stone wall as necessary and replacing the trees cut on a square-inch per square-inch basis (combined area of the replacement trees measured one foot above ground level to equal total area of the original tree trunk as measured at the stump) at locations specified by the Planning Board in consultation with the Tree Warden and the Director of Public Works.
- C. 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, including, but not limited to the enforcement of the restoration measures as stated above. Any decision not carried out within two years of issue shall be void and shall require a new filing.
- D. Any violation of the chapter, M.G.L. c. 40, § 15C, or a Planning Board decision issued thereunder, shall be punishable by a fine not to exceed \$300 per violation.