

## Ordinance # 11 Encroachments on the Rights of Way

### Background

Right of way is the right to pass over or through real property owned by someone else, usually based upon an easement (Legal Information institute). On April 17, 1967, the Trustees of Arden transferred ownership and responsibility for maintenance of the rights-of-way along the roads and paths in the Arden to The Village of Arden. The Deed of Transfer defined the width of the right-of-way for each road and path in Arden. These widths are shown in Section 7 of Ordinance #11.

The present text for Ordinance 11 was approved on January 25, 2010. The revised ordinance replaced the ordinance adopted in September 1992 which itself replaced the version adopted in January 1981. The present ordinance has a revised purpose which is solely to promote safety in the village. The purpose of preserving the beauty of the village was dropped with the revision in 2009. In 2009 the responsibility for enforcing rights-of-way was changed from the joint responsibility of the Civic and Safety Committee to the Safety Committee only. Section 5 of Ordinance #11 having to do with appeals was added to the ordinance with the 2009 version. Section 7, defining the physical rights-of-way was added in 1992 and is unchanged in the current version except for the change in the committee responsible for the enforcement of the ordinance (Safety Committee substitutes for Civic Committee) and the replacement of the words, “approved leasehold survey” with “property line survey, prepared by a licensed surveyor” in the last line of text. The last line of Ordinance #11 as read at the Town Meeting in June 2009 is as follows: “The following widths of rights-of-way, which were recorded in the Deed of Transfer between the Trustees of Arden and the Village of Arden on April 17, 1967 shall be used by the Safety Committee for all rights-of-way determinations, unless evidence is presented to the contrary in the form of a property line survey, prepared by a licensed surveyor.” The version of Ordinance #11 provided to the GTF, which is the same as the Ordinance #11 posted in the Village of Arden Web Page reads differently and is as follows: “The following widths of rights-of-way, which were recorded in the Deed of Transfer between the Trustees of Arden and the Village of Arden on April 17, 1967 shall be used by the Safety Committee for all rights-of-way determinations, unless evidence is presented to the contrary in the form of a leasehold survey.”

**Recommendation:** Restore the wording of Ordinance #11, Section 7 to that read at the Town Meeting when it was approved.

### Issues:

#### Maintenance of the rights-of-way

Section 1 of Ordinance #11 states that “the criteria for maintaining the rights-of-way are that they be kept clear enough to allow pedestrians to step off the road surface to make way for vehicular traffic, to allow daytime parking with two wheels off the road surface...and to allow for safe visibility of pedestrians and vehicles. In addition, Section 2 states that “rights of way shall be kept clear of plantings and overgrowth that do not meet the guidelines set forth in

Section 1. The widths of the rights-of-way as written in the deed of transfer and as found in Section 7 appear in many cases to be greater than required for the safety criteria set forth in Section 1.

The rights-of-way as defined by the Deed of Transfer contain many plantings (including trees) and structures (such as fences) that have been in place for many years and that do not present safety issues. Ordinance #11 contains no guidelines for maintaining those parts of the rights-of-way that are not covered by the guidelines in Section 1, including all rights-of-way along paths that do not experience vehicular traffic. However, the Virtual Welcome Packet found in the pull-down menu, *Quick Links*, in the Arden Village Web Page outlines four rules that often present issues regarding Ordinances. The first has to do with the right-of-way.

***Right-of-way.*** *The “shoulder,” or “right-of-way,” is the land between the road and your leasehold. Even though it is Village land, the resident must maintain it. You may not plant shrubs or erect fences on it, or place rocks to keep people from parking on it. Please trim your shrubs for safety of pedestrians and drivers. You can help the Village avoid expensive maintenance by taking care of the public right-of-way and removing leaves that can clog the storm sewers.*

The *Quick Links* pull-down menu also has a link for the “Red Book.” In the Interactive Village Handbook under Policies – Tree Removal in Village Land, the following text is found:

*“It is the responsibility of the Civic Committee, and not the leaseholder, to remove trees on Village land (the right-of-way next to the street, for example).”*

The deed of transfer in effect made the rights-of-way Common land. The Civic Committee is charged with the maintenance (including tree removal trimming of vegetation, etc.) of these Commons.

***Recommendation:***

- 1. Codify the responsibility of leaseholders for the maintenance of all rights-of-way adjacent to the leasehold, including those along paths and those that extend beyond the area defined by the guidelines in Section 1 of the ordinance. A definition of “maintenance” should be included. Maintenance would include removal of debris, including fallen branches, along roads and trimming of plantings along paths to allow pedestrian passage.*
- 2. Include an exception to this responsibility, giving responsibility for tree maintenance to the Civic Committee.*

Encroachments on the Rights-of-way

As noted above the rights-of-way contain many plantings (including trees) and structures (such as fences) that have been in place for many years and that do not present safety issues. Section 2 states that it is the “responsibility of each leaseholder to refrain from introducing anything that will interfere with rights-of-way adjacent to their leasehold.” The ordinance does not address the issues of replacement of currently existing plantings and structures that encroach on the rights-of-way. Currently, the trustees require that encroachments on the rights-of way be reviewed at the time of lease transfer and that Civic, Safety, Community Planning and Forest Committees be consulted before a lease transfer is signed by the Trustees. At the time of the last revision of Ordinance #11, the Civic Committee had begun to issue “revocable licenses” which document leaseholds that have allowable encroachments (those that do not present a safety issue) on rights-of-way or other village common land. The revocable license states that the leaseholder is required to maintain the area of encroachment. Revocable licenses can be passed on to the next leaseholder at leasehold transfer. There are only three leaseholds in the Village with revocable licenses. This “policy” was never approved by Town Assembly and new revocable licenses have not been issued for many years.

There are some issues involving changes in the widths and direction of roads that have occurred since 1967. Some of these changes have affected leaseholds in relation to the roads and defined right-of-way in an inconsistent manner. Sometimes a change in the path of a road causes the right of way as defined in Ordinance #11 to include sections of leaseholds that were not originally in the right-of-way. These sections may contain structures and plantings that were in place before the change in the road. Requiring these structures to be removed is viewed by some as unfair. In addition, in some cases, the village has placed structures in the right-of-way (for example, asphalt curbs on Hillside Road north of Millers Rd).

Section 5 gives the leaseholder or tenant the right to appeal enforcement actions by the Safety Committee in the case of encroachments that pose a safety issue. There is no appeal process for enforcement of encroachments in the rights-of-way that do not pose safety issues.

### **Recommendations**

- 1. Include a mechanism (revocable license or other) for recognizing and making decisions about encroachments on the right-of-way that are not safety issues.*
- 2. Add wording that prohibits the replacement of standing planting and structures that encroach on the rights-of-way.*
- 3. Add wording to codify the current practice of the trustees which requires that encroachments on the rights-of way be reviewed at the time of lease transfer and that Civic, Safety, Community Planning and Forest Committees be consulted before a lease transfer is signed by the Trustees.*
- 4. Include details of the right to appeal decisions and actions related to encroachments that are not safety issues.*