

**TOWN OF WESTWOOD**  
COMMONWEALTH of MASSACHUSETTS

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**PLANNING BOARD**

**DECISION OF THE PLANNING BOARD**  
**Environmental Impact and Design Review for Earth Material Movement**  
**149 Birch Tree Drive**

**APPLICANT &:** Barbara Finigan Fitzgerald  
**PROPERTY** 16 Massachusetts Ave  
**OWNER** Falmouth, MA 02540

**PROPERTY LOCUS:** 149 Birch Tree Drive, Westwood, MA 02090  
Assessor's Map 09, Lot 143

**BACKGROUND AND PROJECT SUMMARY**

Applicant proposes importing approximately 800 cubic yards of earth material to regrade property after demolishing existing dwelling and constructing a new single family home. Site work will result in the height of fill to exceed five feet on the front north side of the lot at 149 Birch Tree Drive, Westwood, MA 02090 also known as Assessor's Map 09, Lot 143. Project proposes five leaching galleys and two trench drains installed for stormwater management purposes. This property is located in the Single Residence C (SRC) zoning district. The regrading work and import of fill greater than 200 cubic yards are subject to an Earth Material Movement (EMM) Environmental Impact and Design Review (EIDR), pursuant to Sections 7.1 and 7.3 of the Westwood Zoning Bylaw.

**STATEMENT OF FINDINGS**

**PROCEDURAL FINDINGS:**

After having reviewed all the plans and reports filed by the Applicant and its representatives and having considered the technical analysis, supplemental information provided during the course of the public hearing, correspondence and testimony from representatives from various boards and commissions and departments within the Town of Westwood and from all other interested parties, the Town of Westwood Planning Board makes the following procedural findings and project findings:

1. On September 23, 2021, an application was filed by Barbara Finigan Fitzgerald, pursuant to Section 7.1 [Earth Material Movement] and 7.3 (Environmental Impact Design and Review) of the Westwood Zoning Bylaw with the Westwood Planning Board and the Westwood Town Clerk (hereinafter "Application").
2. Pursuant to M.G.L. Chapter 40A, Section 9 and 11 and the applicable provisions of the Westwood Zoning Bylaw and the Rules and Regulations of the Westwood Planning Board (hereinafter "Rules and Regulations"), the Planning Board caused notice of the public hearing to be published in the *Transcript and Bulletin*, a newspaper of general circulation in Westwood, on October 7, 2021 and October 14, 2021. Notice of the public hearing was posted in the Westwood Town Hall commencing on September 28, 2021, and continuing through the opening of the public hearing on October 25, 2021. Said notice of the public hearing was mailed postage

prepaid to all Parties in Interest as defined in M.G.L. Chapter 40A, Section 11 on September 29, 2021.

3. The Planning Board provided copies of the Application to other Town of Westwood boards and commissions, departments and officials including, but not limited to, the Board of Health, Board of Selectmen, Building Commissioner, Conservation Commission, Department of Public Works, Fire Chief, Police Chief, Town Engineer, Historical Commission, and Pedestrian and Bicycle Safety Committee on September 27, 2021.
4. After notice and publication was provided pursuant to M.G.L. Chapter 40A, Section 9 and 11, the public hearing on the Application commenced on October 25, 2021 via Zoom Webinar and filmed live by Westwood Media Center on Westwood Media's YouTube Channel and Comcast Channel 12 and Verizon Channel 42. The hearing was held in accordance with Governor Baker's June 16, 2021 signing of Chapter 20 of the Acts of 2021 to extend certain COVID-19 measures adopted during the State of Emergency Executive Order from March 12, 2020 Order suspending certain provisions of the Open Meeting Law MGL c. 30A §18 to allow remote participation. The Planning Board met remotely via Zoom Webinar where public comments were offered by live time audio via Zoom and through the Question and Answer function. The opportunity for written comments to be submitted was also offered. The public hearing was opened and closed on October 25, 2021 by a roll call vote.
5. Westwood Planning Board Members David L. Atkins, Jr., Christopher A. Pfaff, Kathleen Wynne, Ellen Larkin Rollings, and Thomas P. McCusker deliberated on the Application at a duly authorized meeting on October 25, 2021.

#### **PROJECT FINDINGS:**

1. The subject property consists of approximately 15,080 SF located at 149 Birch Tree Drive and is shown as Map 09, Lot 143 on the Westwood Board of Assessors' Map (hereinafter "Project Site" or "Property").
2. Presently, the site consists of an existing single family home.
3. The Project Site is located within the Single Residence C (SRC) zoning district. Construction of a single family home is permitted by-right in Single Residence C (SRC) zone, and the Earth Material Movement review due to the re-grading and import of earth material greater than 200 cubic yards is subject to an Earth Material Movement (EMM) EIDR, pursuant to Section 7.1 and Section 7.3 of the Westwood Zoning Bylaw.
4. Proposal includes bringing in approximately 800 cubic yards of fil from Boro Sand and Gravel to regrade the property. To the right of the proposed garage on the north front side of the house the grades will be higher than the surrounding grades and a retaining wall is proposed at this location. Stormwater from the new houses is captured through roof drains and water will be collected from the driveway and go into leaching galley chambers and two trench drains are proposed in front of the house. Erosion controls are prosed with staked wattles on the perimeter of the property.

#### **WAIVERS:**

The Planning Board considered requests for the specific waivers listed below, and determined that such waivers will result in a substantially improved project; that such project will otherwise meet the performance and design standards set forth in this Section; and that such waivers will pose no

substantial detriment to any adjacent property or proximate neighborhood, and will not nullify or substantially derogate from the intent or purpose of the Westwood Zoning Bylaw. The following waivers from standard EIDR application submittal requirements of Section 7.3.7 are hereby granted by the Planning Board upon a determination that they are not relevant for an earth material movement application for two single-family residences:

1. Waiver of the strict requirements under Section 7.3.7.2 of the Westwood Zoning Bylaw for an exterior lighting plan.
2. Waiver of the strict requirements under Section 7.3.7.3 of the Westwood Zoning Bylaw for a traffic study.
3. Waiver of the strict requirements under Section 7.3.7.7 for a presentation model.

#### **DECISION:**

On October 25, 2021 the Planning Board evaluated the Application in relation to the above Findings, and as the approving authority, on a roll call vote of five (5) in favor and none (0) opposed, the Board voted to **grant** Earth Material Movement (EMM) Environmental Impact and Design Review (EIDR) Approval pursuant to Sections 7.1 & 7.3 of the Westwood Zoning Bylaw for the Project as described above and in the application therefor filed in the office of the Town Clerk and Planning Board on September 8, 2021, subject to the Conditions stated herein, all of which are an integral part hereof:

#### **CONDITIONS OF APPROVAL:**

1. Applicant shall update the plan entitled "Stormwater Soil Erosion Protection Plan, 149 Birch Tree Drive, Westwood, MA" in response to BETA's memo dated October 21, 2021 and submit to the Town Planner, BETA Group, and Conservation Agent for review and approval:
  - o Include a staked silt fence with staked 12-inch silt sock for soil erosion protection;
  - o Provide construction entrance;
  - o Provide construction detail for infiltration galleys showing bottom of stone, bottom of galley, pipe inverts, top of chamber, and top of stone; and
  - o Provide construction detail for retaining wall and must be approved by a professional engineer.
2. Applicant shall perform two test pits where L1 and L2 are proposed to confirm soil conditions and the depth of the ground water prior to construction with the Conservation Agent or other designated representative from the Town present.
3. Applicant shall submit certification from fill supplier or testing certification that the imported fill does not contain any hazardous materials. Certification shall be submitted to the Town Planner prior to bringing fill on site and prior to issuance of a building permit.
4. The existing pavement on Birch Tree Drive shall be protected from damage from loading and unloading of material and/or equipment related to the proposed construction.

5. Project related construction and earth material movement shall comply with the Town's General Bylaws Chapter 292, for Noise and Construction between 7:00 a.m. and 7:00 p.m. Monday through Saturday and 12:00 p.m. to 7:00 p.m. on Sundays.
6. All construction trucks carrying earth or construction material to or from 149 Birch Tree Drive shall take the most direct route to 149 Birch Tree Drive by turning right on Birch Tree Drive from Barlow Lane.
7. If the Project, or any Condition imposed in this Decision, requires permit, license, or other approval from any other board, committee, or agency of the Town of Westwood or other regulatory agency of the Commonwealth or the federal government, the Applicant shall make an appropriate application for the same such as with the Zoning Board of Appeals. If any condition of such permit, license, or other approval from any other board, committee, or agency is inconsistent with this Decision, the Applicant shall submit a written request to the Planning Board for amendment of this Decision and receive approval prior to implementation. If the Building Commissioner deems the requested modification is minor in nature, an Administrative EIDR approval may be permitted, if the request is more substantial Applicant may need to return to the Planning Board.
8. Applicant shall promptly repair any damage which Applicant causes to sidewalks, street pavement, signs or other fixtures or features within the public right of way, after obtaining permission from the Town Department of Public Works. Such repairs shall be performed to Town of Westwood standards.
9. A copy of this Decision and the Project Plans shall be kept on the Project Site at all times during construction.
10. This EIDR Approval shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within two (2) years following the grant thereof. The Planning Board may extend such approval, for good cause, upon the written request of the Applicant. In the case of the EIDR Approval, the term "substantial use thereof or construction thereunder" shall mean the commencement and substantial progress of the approved activity.

### **APPLICATION AND PLANS**

The Planning Board evaluated the Application filed by or on behalf of the Applicants in the Planning Office on July 16, 2021 and the Office of the Town Clerk on August 2, 2021. All of the following plans and material are hereby incorporated by reference and made part of this Decision.

1. Project Plans entitled "Fitzgerald Residence 149 Birch Tree Drive", prepared by Moran and Associates dated March 11, 2021, consisting of 8 pages.
2. Floor plans entitled "Fitzgerald Residence 149 Birch Tree Drive", prepared by Moran and Associates dated March 11, 2021, last revised March 12, 2021 consisting of 3 pages.
3. Site Plans entitled "House Location Plan 149 Birch Tree Drive Westwood, MA" prepared by Paul Lindholm, P.E. and dated May 20, 2021.

4. Stormwater Plans entitled "Stormwater Soil Erosion Protection Plan 149 Birch Tree Drive Westwood, MA" prepared by Paul Lindholm, P.E. and dated September 8, 2021, revised October 25, 2021.
5. Application, Waiver requests and Existing conditions photos submitted by Mollie Moran for the Westwood Planning Board, dated September 27, 2021.
6. Project Overview and Fill origins submitted by Mollie Moran for the Westwood Planning Board, dated September 23, 2021.
7. Memorandum from Daniel Hammerburg and Philip Paradis of BETA Group, to Todd Korchin, DPW Director, Subject: 149 Birch Tree Drive EMM EIDR, dated October 20, 2021.
8. Retaining wall detail SK-1 and corner reinforcing detail sheet Sk-2 prepared by Branagan Engineering, Inc. dated October 25, 2021.

### **RECORD OF VOTE**

The following members of the Planning Board voted on October 25, 2021 on a roll call vote to grant EIDR-EMM Approval for the abovementioned Project: David L. Atkins Jr., Christopher A. Pfaff, Kathleen Wynne, Ellen Larkin Rollings, and Thomas P. McCusker.

The following members of the Planning Board voted in opposition to the EMM-EIDR for the abovementioned Project: None.



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Abigail McCabe, Town Planner

October 26, 2021