

**TOWN OF WESTWOOD**  
COMMONWEALTH of MASSACHUSETTS

Trevor W. Laubenstein, Chairman  
David L. Atkins, Vice Chairman  
Steven H. Olanoff, Secretary  
Brian D. Gorman  
Michael L. McCusker



Abigail McCabe, Town Planner  
[amccabe@townofwestwood.com](mailto:amccabe@townofwestwood.com)  
(781) 251-2581

Janice Barba, Planning & Land Use Specialist  
[jbarba@townofwestwood.com](mailto:jbarba@townofwestwood.com)  
(781)-320-1366

**PLANNING BOARD**

**NOTICE OF DECISION**

In compliance with Chapter 40A of the General Laws of the Commonwealth of Massachusetts, you are hereby notified that the Westwood Planning Board has voted in favor to **grant** the application from Keith Fengler, as voted on June 13, 2017, and filed in the Office of the Town Clerk on May 11, 2017, requesting Planning Board Special Permit and/or Environmental Impact and Design Review (EIDR) pursuant to Section 7.1 [Earth Material Movement] and Section 7.3 [Environmental Impact and Design Review] of the Westwood Zoning Bylaw, to regrade the lot including 2,800 cubic yards of earth/rock excavation and 100 yards of fill to be imported for a net export of 2,700 cubic yards of earth material in the SRC (Single Residence C) residential district. The improvements are proposed for a house lot on Phillips Way known as Lot 3A, Westwood, MA 02090.

**LAND AFFECTED: Phillip's Way Lot 3A (Assessors' Map 40, Lot 189)**

The Planning Board hereby certifies that attached hereto is a true and complete copy of the Board's decision and that said decision and any plans referred to therein have been filed with the Planning Board.

Appeals, if any, shall be made pursuant to Section 17 of said M.G.L. Chapter 40A and shall be filed within twenty (20) days after the filing of a copy of the decision in the office of the Town Clerk.

**WESTWOOD PLANNING BOARD**

\_\_\_\_\_  
David L. Atkins, Jr., Vice Chairman

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Steven H. Olanoff, Vice Chairman  
Secretary

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Brian D. Gorman

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Michael L. McCusker

Dated: 13 June 2017

**DECISION OF THE PLANNING BOARD  
EARTH MATERIAL MOVEMENT**

**APPLICANT:** Keith Fengler  
19 High Rock Street  
Westwood, MA 02090

**PROPERTY OWNER:** Ariel and Keith Fengler  
19 High Rock Street  
Westwood, MA 02090

**PROPERTY LOCUS:** Lot 3A Phillips Way  
Assessor's Map 40, Lot 189

**BACKGROUND AND PROJECT SUMMARY**

The Applicant proposes to regrade the lot including 2,800 cubic yards of earth/rock excavation and 100 yards of fill to be imported for a net export of 2,700 cubic yards of earth material in the SRC (Single Residence C) residential district. The proposed earth material movement for import, export and regrading of greater than 200 cubic yards is subject to an Earth Material Movement approval from the Planning Board, pursuant to Section 7.1 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 May 11, 2017, an application was filed by or on behalf of Keith Fengler, pursuant to Section 7.1 [Earth Material Movement] 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 *Westwood Press*, a newspaper of general circulation in Westwood, on May 26, 2017 and June 2, 2017. Notice of the public hearing was posted in the Westwood Town Hall commencing on May 16, 2017, and continuing through the opening of the public hearing on June 13, 2017. 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 May 16, 2017.
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, Historical Commission, Pedestrian and Bicycle Safety Committee, Department of Public Works, Fire Chief, Police Chief and Town Engineer on May 16, 2017.

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 June 13, 2017, in the meeting room at the Carby Municipal Building at 50 Carby Street, Westwood, Massachusetts, 02090. The Planning Board closed the public hearing on June 13, 2017.
5. Westwood Planning Board Members Steven H. Olanoff, David L. Atkins, Michael L. McCusker, and Brian D. Gorman deliberated on the Application at a duly authorized meeting on June 13, 2017.

#### **PROJECT FINDINGS:**

1. The subject property consists of approximately 40,244 S.F. located at Lot 3A on Phillips Way and is shown as Map 40, Lot 189 on the Westwood Board of Assessors' Map (hereinafter "Project Site" or "Property").
2. Presently, the project site is an undeveloped lot approved for a single-family house lot as part of the Phillips Estates Definitive Subdivision last modified by the Planning Board on July 15, 2008.
3. The Applicant proposes to regrade the lot by excavating 2,800 cubic yards of earth and rock and 100 cubic yards of import for a net export of 2,700 cubic yards of excess material to be removed from the property. A retaining wall and subsurface infiltration chambers are proposed along with the grading work associated with the construction of a two-story single-family residence and garage.
4. The Project Site is located within the single-family residence (SRC) zoning district. The proposed single-family dwelling use is permitted by-right in the SRC zone, and the Earth Material Movement greater than 200 cubic yards is subject to an Earth Material Movement (EMM) approval from the Planning Board, pursuant to Section 7.1 of the Westwood Zoning Bylaw. On May 2, 2017, Annual Town Meeting amended Zoning Bylaw Section 7.1 to change the type of application with the Planning Board from a Special Permit to an Environmental Impact and Design Review (EIDR), pursuant to Sections 7.1 of the Zoning Bylaw. The Zoning Bylaw was amended by Town Meeting on May 2, 2017 and is awaiting final approval from the Attorney General's office. Therefore, the Planning Board is considering this Application as a Special Permit and an EIDR pending final review by the Attorney General.
5. The Project, as modified by the Conditions of this Decision, will not be detrimental to the Town or to the general character or visual appearance of the surrounding properties, and will be consistent with all applicable standards set forth in Section 7.1 of the Westwood Zoning Bylaw.

#### **DECISION:**

The Planning Board evaluated the Application in relation to the above Findings, and as the approving authority, by a vote of four (4) in favor and none (0) opposed, hereby **grants** Special Permit and EIDR **Approval** pursuant to Sections 7.1 and 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 on May 11, 2017, subject to the Conditions stated herein, all of which are an integral part hereof:

### **CONDITIONS OF APPROVAL:**

1. Except as modified by the Conditions and Findings hereof, the Project shall comply with the Project Plans in all respects and the Applicant shall pursue completion of the Project with reasonable diligence and continuity.
2. Any plan revisions as a result of the Conservation Commission's review shall be submitted to the Town Planner for the Planning Board's file. Any substantial or major plan changes may need to return to the Planning Board as a modification request.
3. The existing pavement on Phillips Way shall be protected from damage from loading and unloading of material and/or equipment related to the proposed construction.
4. The catch basins on Phillips Way shall be protected and a silt sac installed as shown on the approved plan last revised June 13, 2017.
5. The crushed stone entrance shall be replaced when the stone becomes clogged with dirt or is no longer effective in preventing excess tracking of material onto the public way.
6. The Applicant shall notify the Town Department of Public Works during installation and backfill of infiltration chambers that are proposed to ensure compliance with the design.
7. The project engineer shall certify that the infiltration system was installed per the proposed design shown on the submitted and approved plan.
8. 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.
9. All trucks carrying earth material to or from Lot 3A Phillips Way shall be required to access Phillips Way via Margery Lane from Trailside Drive through Bubbling Brook Road and North Streets in Walpole.
10. 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. 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 make application to the Planning Board for amendment of this Decision, and the Planning Board shall consider such application in accordance with the requirements of M.G.L. Chapter 40A § 9 and all applicable Planning Board rules and regulations.
11. The 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. Such repairs shall be performed to Town of Westwood standards.
12. A copy of this Decision and the Project Plans shall be kept on the Project Site at all times during construction.

13. Written approval from PJMJ LLC granting permission for the grading work shown on the submitted plans shall be submitted to the office of the Planning Board prior to release and issuance of this approval.

### APPLICATION AND PLANS

The Planning Board evaluated the Application filed by or on behalf of the Applicants in the Planning Office and the Office of the Town Clerk on May 11, 2017. All of the following plans and material are hereby incorporated by reference and made part of this Decision.

1. Application and earth work prepared by Merrikin Engineering, LLP prepared for Keith Fengler dated May 9, 2017, received by the Town Clerk and Planning Department on May 11, 2017.
2. Plan entitled "Lot 3A Phillips Way Plan of Land in Westwood, MA", prepared by Merrikin Engineering, LLP of Millis, MA, dated May 8, 2017, revised June 13, 2017 (2 Sheets).
3. Memorandum from Philip F. Paradis, Jr. PE to Todd Korchin, DPW Director, Subject: Lot 3A Phillips Way Earth Material Moving Permit, dated June 9, 2017.

### RECORD OF VOTE

The following members of the Planning Board voted on June 13, 2017 to grant Special Permit and EIDR Approval for the abovementioned Project: Brian D. Gorman, Steven H. Olanoff, David L. Atkins, Jr., and Michael L. McCusker.

The following members of the Planning Board voted in opposition to the Special Permit for the abovementioned Project: None.



Abigail McCabe  
Town Planner  
June 22, 2017

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TOWN CLERK  
TOWN OF WESTWOOD

