

Chapter 97, Article III: EARTH REMOVAL AND PLACEMENT OF FILL

§ 97-4. Statutory Authority

This Bylaw is adopted under the authority contained in Massachusetts General Laws, Chapter 40, Section 21, Paragraph 17.

§ 97-5 Purpose

The purpose of this Bylaw and associated regulations is to regulate earth removal operations and land filling operations for the protection of human health, public safety, welfare, and the Town's natural resources in the Town of Westminster. Further, the provisions of this Bylaw are intended to protect abutting property owners from drainage problems that could potentially be created by poorly managed earth removal and/or filling operations.

§ 97-6. Definitions

ABUTTERS: The owners of property within 300 feet of the perimeter of the subject property.

APPLICANT: The owner of land from which earth will be removed or fill to be placed, or the person of lawful standing in the stead of such owner. Any person, company, or agent, standing instead of the actual property owner must have the owner's written permission to do so.

BOARD: The Planning Board of the Town of Westminster, who shall act as the Permit Granting Authority (PGA).

EARTH: This term shall include soil, loam, sand, gravel, clay, peat, rock, or other earth material in solid form.

EARTH REMOVAL OPERATION: Any commercial mining, stripping, quarrying, filling, digging or blasting of earth originating from the Town of Westminster and its transportation into or out of the Town of Westminster.

EROSION: The process by which the ground surface is worn by forces such as wind, running water, ice, abrasion, gravity, transportation or by artificial means.

FILLING OF LAND: The import and use of earth materials on any parcel of land within the Town of Westminster.

GRAVEL: Loose fragments of rock or coarse aggregate resulting from natural disintegration and abrasion of rock or processing of weakly bound conglomerate.

LOAM OR TOPSOIL: A soil consisting of a friable mixture of varying proportions of clay, sand, silt, and organic matter.

PGA: The Permit Granting Authority, which will be the Planning Board for the purposes of this Bylaw.

PROCESSING: The sorting or separation of earth materials into distinct categories based on particle size or type usually through the use of a screening process, not including stone crushing.

PROPOSED FILL MATERIAL: Any geologic, man-made, recycled or processed material including in its entirety or as a proportion containing clay, rock, sand, gravel, peat and sediment. Material meeting the Federal and/or State definition of solid or hazardous waste or as toxic, infectious, radioactive, corrosive, or reactive material is specifically excluded.

SILT: Loose sedimentary material with rock particles usually less than 1/16 mm or less in diameter based on the Wentworth scale of measurement.

SITE: A distinct portion of one to three contiguous lots, under the same or different ownerships, on which an earth removal and/or fill operation is conducted, or is proposed to be conducted, under the Permit.

SLOPE: An area that is more or less steep, as measured by the vertical rise over the horizontal distance, expressed as a percentage or ratio. For example, a rise of one foot over three horizontal feet is a slope of 33%, and is expressed as a ratio of 3:1 slope.

STONE CRUSHING: The mechanical operation which creates smaller sized stones or stone products from larger sized stones, boulders or particles typically using a crushing plant or similar machinery.

§ 97-7. Applicability

- A. All earth removal and earth filling operations in the Town shall provide the following information, in writing, to the Building Inspector within six months of the effective date of this Bylaw:
 - 1. The map and parcel number of the subject property;
 - 2. An estimate of the amount of material left to be removed (if earth removal);
 - 3. An estimate of the amount of fill material remaining to be placed (if fill);
 - 4. An estimate of the anticipated annual volume of activity;
 - 5. A description of completed and planned reclamation of the property;
 - 6. The date the operation began; and
 - 7. The anticipated date of completion or cessation of the operations.

- B. Except as provided in Sections 97-8 or 97-14, a Permit shall be required for any of the following activities:
 - 1. Earth removal that involves 2,000 cubic yards or more of material per calendar year (January through December).

2. The filling of land that involves 2,000 cubic yards or more of material per calendar year (January through December), provided that it involves either:
 - i. The disturbance of two or more acres of land, or
 - ii. The filling of land in excess of eighteen inches in depth above the existing grade.
- C. An earth removal or filling operation that does not exceed any of the above thresholds shall not require a Permit, but is subject to the following requirements (unless otherwise agreed to, in writing, by the abutting property owner):
1. The operation shall not encroach closer than ten feet to a property line, and
 2. No greater than a 1:1 slope shall exist between the operation and the ten-foot buffer.

§ 97-8. Exemptions from Permit Requirements

The following earth removal or fill operations are exempted from the requirement to obtain a Permit under this Bylaw, provided that (i) the earth removal and/or fill operation is limited to no more than three contiguous lots and does not exceed a total area of six acres, and (ii) the operation is not conducted, maintained, and/or left in a condition so as to alter the natural drainage flow beyond the property; or to cause dust, silt, soil, or other materials to be deposited on adjacent properties; or to otherwise cause nuisances, hazards, or other objectionable conditions detrimental to health, safety, or property values in adjacent areas. The PGA shall, upon petition by an abutter or by any Town Official or Town Board, review an operation that would be exempt from the Permit requirement pursuant to this Section 97-8, and may determine that, because of the nature and scope of the earth removal or fill operation, a Permit is nonetheless required.

- A: Earth removal or the placement of fill associated with the installation of septic systems, which shall be governed by the Commonwealth of Massachusetts Environmental Code (Title 5, 310 CMR 15.00).
- B: Earth removal or the placement of fill associated with the installation of foundations for new buildings and/or building additions, which shall be governed by MGL Chapter 143 and the Commonwealth of Massachusetts Building Code (780 CMR).
- C: Earth removal or the placement of fill proposed for land falling within the Town's Floodplain Protection District, which shall be governed by Sections 205-9 and 205-46 of the Westminster Zoning Bylaw and require a Special Permit from the Zoning Board of Appeals

- D: Earth removal or the placement of fill proposed for land falling within the Town's Wetland Protection District and associated buffer zones, which shall be governed by the Wetland chapter within the Town's General Bylaws (Chapter 202) which is administered by the Conservation Commission, and the Massachusetts Wetlands Protection Act.
- E: Earth removal or the placement of fill that involves less than 2,000 cubic yards on a single lot.
- F: Earth removal or the placement of fill, where the operation occurs entirely within an individual parcel and where a town-accepted public way is not used for the transportation of the material.
- G: Earth removal or the placement of fill within the right-of-way for a new subdivision road that has been approved by the Planning Board or Zoning Board where there is already a bond in place with the Town to ensure performance.

§ 97-9. Permit Criteria for Earth Removal & Fill Operations

Permits for earth removal and/or fill operations shall be granted by the PGA only upon its written determination that the proposed use shall not cause substantial detriment to the neighborhood, or the Town, taking into account the characteristics of the site and the proposal in relation to the site and surrounding environment. In addition to any specific factors that may be set forth elsewhere in this Bylaw and its associated regulations adopted pursuant to § 97-11, such determination shall include consideration of each of the following:

- A: Social, economic, or community needs which are served by the proposal;
- B: Traffic flow and safety, including loading and unloading;
- C: Neighborhood character;
- D: Impacts on the natural environment; and
- E: Potential fiscal impact, including impact on Town services, tax base and property values.

The PGA's determination for each of the five criteria shall be set forth in the Permit Decision as Findings of Fact.

§ 97-10. General Limitations

No Permit shall be issued for the removal of earth or the placement of fill in any location if such an operation:

- A: Will endanger the public safety, public health or constitute a nuisance.
- B: Will produce noise, dust, or other noxious effects observable at the lot lines of the property in amounts objectionable or detrimental to the normal use of adjacent properties.

- C: Will result in the transportation of materials in such manner as to cause traffic congestion, dust, spillage, noise, or other nuisances or hazards, particularly on residential streets.
- D: Will result in the transportation over ways which will be unduly injured thereby.
- E: Will result in a change of topography and cover which will be disadvantageous to the most appropriate final use of the land or to the use of lands adjacent to the site.
- F: Will cause irreparable harm to or loss of important wildlife, wildlife habitat or rare plant species indigenous to the area.
- G: Will result in stormwater damaging abutting properties.

Applicants are encouraged to submit a written statement regarding how each of the previous items will be addressed and/or mitigated.

§ 97-11. Regulations

The PGA may adopt and periodically amend rules and regulations for the implementation of this Bylaw, by majority vote. Such rules and regulations may set forth performance standards for earth removal and fill operations, impose filing and consultant fees, define additional terms not inconsistent with the Bylaw, and establish administrative procedures. Failure by the PGA to adopt such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw.

§ 97-12. Permit Procedures

- A: Any person wishing to obtain a Permit to remove from or place earth material on a property in the Town, or to use any public way within the Town for transporting such material, shall file a completed application for a Permit together with any required supporting data and maps with the PGA and the filing fee, as established in the regulations of the PGA.
- B: Any Permit issued is non-transferable and shall automatically expire upon completion of the earth removal or fill project for which it was issued or at such time as may be specified in said Permit. In no case shall a Permit be issued initially for a period longer than three years. A Permit may be renewed for up to two years or lesser time as determined by the PGA after evidence is presented that all conditions of the expiring Permit have been complied with and the work has been performed in good faith. There is no limit on the number of Permit renewals an Applicant can apply for. A public hearing may be required by the PGA, at its discretion, for renewal of Permits.

§ 97-13. Public Hearing

Once a complete Permit application is filed with the PGA, the PGA shall set a date for a public hearing and so notify the applicant. Notice of the hearing shall be published by the PGA, at the applicant's expense, in a newspaper of general circulation in each of two successive weeks, the

first publication being not less than 14 days before the day of said hearing. Notice of the hearing shall be given to all owners of real estate abutting upon the land specified in the Permit Application or lying within 300 feet of the subject parcel, all as appearing on the most recent tax list. The PGA will arrange for the publication and transmission of the notice of the hearing to the abutters and the costs will be billed to the applicant. Final approval for the Permit shall not be made until all hearing fees have been paid in full

§ 97-14. Continuance of Existing Operations

- A. An existing operation that had been issued a permit by the Board of Selectmen under the earth removal bylaw (Sections 97-4 through 97-11) or the earth filling bylaw (Section 81-6) that were in effect prior to the effective date of this Bylaw may continue to operate according to the terms of such permit, which shall hereafter be enforceable by the PGA pursuant to this Bylaw.
- B. An existing earth removal and/or fill operation that was not required to obtain a permit under the prior earth removal bylaw, but which exceeds the thresholds specified in § 97-7(B) of this Bylaw, may continue to operate without being required to apply for or obtain a Permit for a period of three years from the effective date of this Bylaw, provided that the owner or operator of said operation submits to the Building Inspector the information required in §97-7(A) within six months of the effective date of this Bylaw.
- C: The right of an existing operation to operate pursuant to § 97-14(A) under a permit previously issued by the Board of Selectmen, or to operate without a Permit pursuant to § 97-14(B), shall expire if the operation is discontinued. An operation shall be deemed to have been discontinued if no earth removal or fill activity occurs at the site for a period of twelve (12) consecutive months.

§ 97-15. Violations and Enforcement

- A. The PGA or its authorized agent shall enforce this Bylaw, its regulations, and the requirements and conditions of Permits issued thereunder, and may pursue civil and criminal remedies for violations of the same.
- B. The Building Inspector is authorized to conduct inspections on behalf of the PGA. To the extent permitted by law, or if authorized by the owner, operator, or other person in control of the site, the Building Inspector or other agent of the PGA may enter on the site to conduct inspections.
- C. The Building Inspector or other authorized agent of the PGA may issue such orders as are deemed necessary to stop violations and ensure compliance with this Bylaw, its regulations, and Permits, including an order to cease and desist operations. Such orders may be issued by certified mail, return receipt requested, or by delivery, to the property owner, Permit holder, or person responsible for operations at the site.

- D. The PGA may seek injunctive relief to restrain violations or to compel abatement or remediation of violations.
- E. Any person who violates any provision of this Bylaw, or regulations, Permits, and orders issued thereunder may be punished by a fine of not more than \$300 per offense. Each day that such violation occurs or continues shall constitute a separate offense.

As an alternative to a criminal fine, the Town may utilize the non-criminal disposition procedures of M.G.L. c. 40, §21D, in which case the Building Inspector shall be the enforcing person. The penalty for the first offense shall be \$100. The penalty for the second offense shall be \$200. The penalty for the third and subsequent offense shall be \$300.

- G: If the violator holds a Permit issued under this Bylaw, the PGA may revoke the Permit after a public hearing, at which point all operations shall cease until such time as the necessary measures are taken to assure compliance with this Bylaw and a new Permit is issued.

§ 97-16. Severability

The provisions of this Bylaw are severable, and the invalidity of any section, subdivision, paragraph, or other part of this Bylaw shall not affect the validity or effectiveness of the remainder of the Bylaw.