

DECISION OF THE ANDOVER PLANNING BOARD  
AS A SPECIAL PERMIT GRANTING AUTHORITY

ON THE APPLICATION OF  
ANGELO PETROSINO

**For a Special Permit for Earth Movement under Section 6.3 of the Zoning By-Law.**

Decision: SP11-03

YES (with conditions)

A public meeting of the Planning Board was held on February 28, 2012, in the Third floor conference Room of the Town Office Building. Present and voting in the affirmative on the matter were members Joan Duff, Vincent Chiozzi, Linn Anderson, John McDonnell and James Doherty, Jr.

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TOWN OF ANDOVER, MASS

Pursuant to public notice in the Andover Townsman, a newspaper of general circulation in the Town of Andover, published on July 21 and July 28, 2011, and notice sent by mail, postage prepaid, to all interested parties pursuant to the provisions of Massachusetts General Laws, Chapter 40A, a public hearing was convened on August 9, 2011 on the application by Angelo Petrosino for a Special Permit for Earth Movement associated with a Definitive Subdivision of a residential subdivision. The hearing was continued and finally closed on January 24, 2012, with the aforementioned members of the Board present with a certification pursuant to G.L. c. 39 Section 23D received.

Premises affected is property owned by Reliance Realty Trust, Angelo Petrosino Trustee located off Flash Road North Reading and shown on Assessors Map 104 Lot 3, comprising of 27.42-acres, hereinafter referred to as the "site", on which the subdivision plan entitled "Pine Forest Park" would take place.

In consideration of the Special Permit for Earth Movement, the applicant had submitted an earth quantities plan and an erosion and sedimentation control plan for review. In the analysis, as prepared by O'Neill Associates the earth movement proposed for the subdivision roadways area cut volume of approximately 7,554 cubic yards, a fill volume of approximately 6,777 cubic yards. No material is proposed to be removed from the site; the excess material will be stockpiled for use in grading the house lots. It has been the past practice of the Planning Board to regulate the hours and days of the earth movement activities. In this instance, the Planning Board has conditioned their approval by restricting hauling of earth material and heavy equipment to after the pick-up and drop off of school buses.

In considering a special permit for earth removal and regrading the Planning Board made the findings that Pine Forest Park subdivision, appropriately conditioned, complies with the requirements of Sections 6.3 and 9.4 of the Andover Zoning Bylaws; that the proposed use of this site for a residential development will not be unreasonably detrimental to the established or future character of the neighborhood and town; and that such use is in harmony with the general purpose and intent of the Zoning Bylaw.

In consideration of all of the foregoing, including the plans, documents, and testimony given during the public hearings, the Planning Board hereby conditionally approves and issues a Special Permit for Earth Movement to Angelo Petrosino, applicable to the property earlier described, and subject to the following conditions which are the same as those imposed on the aforementioned Definitive Subdivision Plan:

### Conditions of Approval:

#### General Conditions

1. For purposes of this approval the subdivision shall be defined as all features depicted on the plans described under condition number 2; the developer shall be defined as the applicant, Angelo Petrosino, and his assigns or successors in title to the development, and all contractors and subcontractors under control of or in service to the developer;
2. Except as otherwise provided for in these conditions the construction of the subdivision and all activities associated therewith shall be in conformance and compliance with the information, details, notations, grading and features shown on the following plans and drawings prepared by O'Neill Associates:
  - a. Sheet 1 of 14, Cover Sheet, dated 5/1/09 last revised 11/30/11, as prepared by O'Neill Associates;

- b. Sheet 2 of 14, Key Plan, dated 5/1/09 last revised 11/30/11, as prepared by O'Neill Associates;
  - c. Sheet 3 of 14, Subdivision Plan, dated 5/1/09 last revised 11/30/11, as prepared by O'Neill Associates;
  - d. Sheet 4 of 14, Subdivision Plan, dated 5/1/09 last revised 11/30/11, as prepared by O'Neill Associates;
  - e. Sheet 5 of 14, Grading Plan, dated 5/1/09 last revised 11/30/11, as prepared by O'Neill Associates;
  - f. Sheet 6 of 14, Grading Plan, dated 5/1/09 last revised 11/30/11, as prepared by O'Neill Associates;
  - g. Sheet 7 of 14, Candida Way Roadway/Utility Plan & Profile, dated 5/1/09 last revised 11/30/11, as prepared by O'Neill Associates;
  - h. Sheet 8 of 14, Sorrento Circle Roadway/Utility Plan & Profile, dated 5/1/09 last revised 11/30/11, as prepared by O'Neill Associates;
  - i. Sheet 9 of 14, Detail Sheet, dated 5/1/09 last revised 11/30/11, as prepared by O'Neill Associates;
  - j. Sheet 10 of 14, Detail Sheet, dated 5/1/09 last revised 11/30/11, as prepared by O'Neill Associates;
  - k. Sheet 11 of 14, Erosion & Sediment Control Plan, dated 5/1/09 last revised 11/30/11, as prepared by O'Neill Associates;
  - l. Sheet 12 of 14, Roadway Grading Plan, dated 5/1/09 last revised 11/30/11, as prepared by O'Neill Associates;
  - m. Sheet 13 of 14, Roadway Grading Plan, dated 5/1/09 last revised 11/30/11, as prepared by O'Neill Associates;
  - n. Sheet 14 of 14, Flash Road Plan & Profile, dated 11/1/11 as prepared by O'Neill Associates;
3. Original mylar prints of the above mentioned plans must be submitted for endorsement to the Planning Division within 30-days following the statutory 20-day appeal period.
  4. Sheets 3 & 4 of the plan and an instrument containing these conditions, shall be recorded at the North Essex Registry of Deeds pursuant to the requirements of the Subdivision Rules and Regulations of the Andover Planning Board;

5. Prior to the recording of the definitive plan, the applicant shall provide to the Planning Department a digital file containing the plan if produced using computer aided drafting and design (CADD) software. The file format shall be in AutoCAD DWG (or ASCII DXF) version 2004 or earlier and Adobe PDF, delivered on CD-ROM or DVD-R media. AutoCAD file delivery shall be in full model view and individual sheet views. The digital file shall include property boundaries, dimensions, easements, rights-of-way, edge of pavement, edge of sidewalk, edge of water bodies, wetland boundaries, topographic contours, spot elevations, parking areas, road centerline and associated text. Said digital data shall be delivered in the Massachusetts Coordinate System, North American Datum 1983 and North American Vertical Datum 1988, in U.S. Survey Feet. A review of the digital file shall be made by the Department of Public Works prior to the recording of the definitive plan.
6. This subdivision approval is limited to eleven (11) building lots as shown on the plan referenced above; no further subdivision of lots shall be allowed.
7. The owner and applicant shall, pursuant to statute, have twenty (20) days following the approval action of the Andover Planning Board to file an appeal of said action, and in the absence of an appeal shall be deemed to have accepted said action and these conditions;
8. Within five (5) days of the transfer of ownership of this subdivision, in whole or in part, the developer shall notify the Andover Planning Department of the name and address of the new owner(s). The developer shall provide the new owner(s) with a copy of these conditions;
9. No permits for building may be issued by the Inspector of Buildings for any lot within this subdivision unless and until the provisions of Section V.E. of the Rules and Regulations of the Board have been satisfied. Once a building permit has been issued for any particular lot this condition will be deemed to have been complied with and considered released for that lot;
10. Any blasting operations shall require proper permits, and may not be undertaken on any weekend or holiday;
11. All grading and earth disturbance within the subdivision shall be governed by Sections VI.F.6., and VI.F.7. of the Rules and Regulations of the Board, as well as the Special Permit for Earth Movement SP11-03;
12. Import or export of earth materials from within the subdivision is prohibited except as may be provided for under special permit issued under Planning Board Decision SP11-03, or as otherwise allowed under the applicable provisions of the Zoning Bylaw;
13. Yard sprinklers or other privately owned underground devices shall not be installed within the roadway or utility easements, nor shall private recreational features be allowed within the roadway;

14. Except as herein waived, the subdivision shall be constructed in accordance with and subject to all applicable provisions of the Rules and Regulations of the Board. The approval and these conditions shall be enforced under the provisions of Section V.H. of the Rules and Regulations of the Board;
15. Prior to the recording of the definitive plan at the Registry of Deeds the developer shall provide the Planning Department with a municipal lien certificate indicating that all taxes, assessments and charges have been paid in full as required by MGL, Chapter 60, Section 23;
16. The streets Candida Way and Sorrento Circle as approved, are intended to remain as private ways in perpetuity, with lot owners responsible for maintenance costs and street improvements. Any change to this condition will require approval by the Planning Board and will result in whatever design and construction changes are necessary to bring the private ways into full compliance with the then current roadway construction standards contained in the Subdivision Regulations, with lot owners responsible for the costs of such changes.

#### **Prior to Construction**

17. Prior to any construction activity of any kind within the subdivision the developer shall apply to the Massachusetts Department of Transportation in conjunction with the Town of North Reading for the construction of an emergency access to be controlled by an electronic gate. This emergency access will be located on a strip of land off of Rahnden Terrace owned by North Reading at the site where the Town of North Reading has applied for a Hazard Mitigation grant; or in another location determined by MA Highway. The application shall include a letter of support from the Town of Andover's Fire Department and shall stipulate that the emergency access shall be the Town of Andover's primary emergency access to the subdivision. Should the applicant receive approval for the emergency access from MA DOT, construction of such access must be completed prior to the start of construction of the subdivision. Should the applicant receive a denial for the construction of an emergency access off of Rahnden Terrace (condition #17) the applicant shall obtain a properly executed agreement from North Reading stating that the North Reading Fire Department and Police Department will be first responders to all emergencies in the subdivision.
18. Prior to any construction activity of any kind within the subdivision or emergency access the developer shall submit for review and approval to the Planning Department a proposed construction sequence schedule, said schedule to be used as a guide to activities within the development including construction of roadways, utilities, drainage systems, stabilization, and stockpiling. This schedule once established shall not be deviated from, but may for good and demonstrated reason, be modified by agreement between the developer and the Planning Department;
19. Construction traffic associated with this subdivision shall be regulated by the Inspector of Buildings. Prior to commencing hauling operations, a hauling route shall have been

reviewed and approved by the Inspector of Buildings and forwarded to the North Reading Planning Department. Any deviation from the approved route and/or scheduling once established shall require proper notification and approval from the Inspector of Buildings. Construction traffic shall be defined as large trucks hauling earth moving equipment, dump trucks, trucks hauling building materials, cement trucks, and contractors' vehicles larger than panel trucks.

20. Hauling of earth materials and heavy equipment during morning pick up and drop off of school buses is not allowed. It shall be the developer's responsibility to communicate with the proper school departments to determine precise hours of pick up and drop off, and to inform all contractors, subcontractors, vendors, and workmen of this restriction, which shall be enforced under the provisions of Section V.H. of the Board's Rules and Regulations;
21. Prior to any construction activity of any kind within the subdivision the developer shall submit for review and approval to the Planning Department a detailed schedule of the anticipated earth operations;
22. Prior to introduction of construction equipment onto the site a meeting shall be conducted between the developer, the developer's contractors, and the Andover and North Reading Planning Departments, as well as the Conservation Department, and Department of Public Works for the purpose of reviewing these conditions and the construction sequence schedule;
23. Prior to any construction activities, the documents establishing the Homeowners' Association must be reviewed by Town Counsel, approved by the Planning Board and recorded at the Essex North Registry of Deed. The account referred to in section 23g shall have been established and funded in a manner prescribed by the town. The Homeowners' Association documentation shall provide for:
  - a. The maintenance, inspections and upkeep of the stormwater facilities on site;
  - b. The maintenance, monitoring and upkeep of the cistern and system of pipes and hydrants; (see condition 44)
  - c. Review and approval of the company contracted to monitor and maintain the cistern; (see condition 44)
  - d. The maintenance, inspections and upkeep of the private way including but not limited to snowplowing and salting of the roadway;
  - e. Removal of trash and recyclables;
  - f. Shall reference compliance with the latest Operation and Maintenance Plan;
  - g. The establishment of an initial operating account in an amount recommended by the Town Engineer and approved by the Planning Board and secured in a manner and form approved by the Board. Following establishment, the developer shall provide the Planning Department with written proof that said account has been established running to the benefit of the Homeowners' Association. The account, once established, shall be kept for the purpose of maintenance, repair and/or restoration of said items (a-d above). A minimum balance in an amount

recommended by the Town Engineer shall be maintained in the account at all times.

- h. The terms and method of assessments; the method of drawing on such funds; a restriction against any alteration of the facilities in a-d above; an indemnification of the Town from any responsibility or liability for maintenance and operation of those facilities; and shall further provide that the Town will be reimbursed for any expenses incurred in the event the Town is required to perform any work in or on any of the facilities;
- i. In the event that any of the facilities (a-d above), or any other part of the infrastructure associated with the subdivision, are damaged to such an extent that they no longer perform their intended function, and such damage is not repaired by the Homeowners' Association within 90 days of such damage, the Town shall have the right to make such repairs and lien the property owners or use any other remedy available under the law to effect the same;
- j. The Town shall be provided with an easement to maintain and repair said facilities if necessary but all financial responsibility for any such repairs, inspections and maintenance shall be solely on the Homeowners' Association and all lot owners by virtue of their interest in said association;
- k. A provision that the bylaw and declaration cannot be amended or dissolved in any manner without approval of a majority of the Andover Planning Board;
- l. A statement in the bylaw and declaration which will make the homeowners aware that in the event of flooding, or when North Reading schools are closed, busing of children to Andover schools may not be provided.
- m. The Town of Andover shall be named as an additional insured in an amount of no less than one million dollars each occurrence for bodily injury and property damage with two million dollar annual aggregate.

24. Once paved, the roadways Candida Way and Sorrento Circle and the emergency access shall be kept clear and passable at all times. No equipment shall be parked in such a manner as to render the roadway impassable, and no refuse containers, trailers, or construction materials of any kind shall be placed or stored upon the street nor within the cul-de-sac island;

### **Throughout Construction**

25. Construction equipment or materials shall not be parked, stored, or placed in any area directly adjacent to or upgradient of any drainage channel or wetland area, nor in any cul-de-sac. Repairs and maintenance to equipment shall be conducted in areas where no spills or leakage of fuels or other fluids could pose a pollution hazard;
26. Earth disturbed by construction activities associated with the roadway or easements, such as tree cutting, stump grubbing, cutting, filling, and regrading, shall be appropriately stabilized by methods determined by the Planning Department within sixty (60) days of such disturbance unless otherwise approved by the Planning Department;

27. No building lot shall remain in an open condition longer than sixty (60) days. "Open" shall be defined as that period of time between initial preparation of the lot for building (clearing of trees, stripping of topsoil), and the time that the foundation has been installed, backfilled, and the rough grading has been established and stabilized by use of temporary seeding, mulching, or netting. This restriction shall remain in force until the lot has been properly stabilized and shall survive changes in ownership of the lot;
28. Stockpiles of earth materials shall not be permitted in any area, which necessitates removal of trees for such purpose, nor within fifty (50') feet of any wetland boundary, drainage channel, or watercourse. Stockpiles shall be prohibited in areas which have not been approved by the Planning Department;
29. Long term (more than sixty days) stockpiles of earth materials shall be shaped and secured by butted haybales around the perimeter, and shall be promptly stabilized by temporary seeding or netting;
30. Burial or burning of vegetation, stumps, or construction debris is strictly prohibited anywhere within the subdivision. Such materials shall be removed and properly disposed of off the site;
31. All construction activities within the subdivision shall be confined to the hours between 7:00 a.m., and 6:00 p.m., Monday through Friday, unless otherwise approved by the Planning Board. Once fully framed, interior construction related activities are allowed on Saturdays between 8:00 a.m. and 6:00 p.m. unless otherwise restricted or prohibited by the Inspector of Buildings in response to complaints. Construction activities include the transport of equipment, materials and supplies to and from the subdivision;
32. As field conditions warrant, berms of type and design and/or side under drains as specified by the Department of Public Works shall be installed in locations determined by the written decision of the Director of Public Works;
33. Construction activities on individual lots shall be conducted in a workmanlike manner at all times. Blowing dust or debris shall be controlled by the developer of lots through stabilization, wetting down, and proper storage and disposal methods;

#### **Prior to Clearance Certificates**

34. Immediately following the installation of the cistern and system of pipes and hydrants or water lines the developer shall prepare a plan pursuant to Sections VII.W.3., and VII.W.4. of the Subdivision Rules and Regulations showing the location of all service connections to the building lots. No Clearance Certificate for any lot shall be issued until said plan has been submitted to the Department of Public Works;



35. Prior to the issuance of clearance certificates the Board of Health shall approve the individual lot plans showing the well, septic system and house placement, a copy of which shall be transmitted to the Planning Division;
36. Prior to the issuance of clearance certificates, the applicant shall submit to the Planning Department digital files of as-built plans of the features listed above, including utilities and approximate building location, following the format described in # 4 above;
37. Prior to issuance of any Clearance Certificates for the site, the developer shall have established a segregated account, which shall be used to secure proper stabilization and removal of all erosion controls prior to completion of the subdivision. Said account shall be established in an amount recommend by the Town Engineer and approved by the Planning Board and secured in a manner and form approved by the Board. This account once established shall be used as a mechanism to assure all unnecessary erosion controls are promptly removed upon receipt of Certificate of Compliance from the Conservation Commission. The Planning Department, in a cooperative effort with the Conservation Commission, will coordinate times and dates in which the erosion controls can be removed. Upon removal of all erosion controls as depicted on sheet 11 of the approved plan, the segregated account may be released in full;
38. Prior to the issuance of a Clearance Certificate for any lot, the limit of disturbance shown on sheet 11 of said plan shall have been clearly marked on the ground on the subject lot, and said marking shall consist of siltation fencing, surveyor's flagging, ribboned stakes at appropriate intervals, and/or a combination of such devices as determined suitable by the Planning Department, and following the installation of such markings no earth disturbance or removal of vegetation of any kind shall be permitted within the protected areas. This condition may not be released until an occupancy permit has been issued at which time this condition will be deemed satisfied;
39. Prior to the issuance of a Clearance Certificate for any lot, all utilities, including all off-site improvements shall have been fully constructed and approved by the appropriate Town's Department of Public Works. Immediately following the installation of said utilities, the developer shall prepare as-built plans pursuant to Section VII.W. of the Rules and Regulations Governing the Subdivision of Land in Andover;
40. Prior to release of any Clearance Certificates for building purposes, a sign depicting "No Left Turn" at the end of Candida Way; a "Local Traffic Only" at the entrance of Roach Circle from Lakeside Boulevard, "Candida Way" and "Sorrento Circle" shall have been erected at a location determined by the Department of Public Works;
41. Prior to the conveyance of individual lots and clearance certificates for any lot the grading as shown on Sheets 12 and 13 of the approved plans must be in place;
42. Prior to the conveyance of individual lots within the subdivision the developer shall provide the Planning Department with a surveyor's certification that temporary lot corners have been established on the ground for the lot to be conveyed. Once

established, maintenance of these temporary corners shall be the responsibility of the lot owner. Upon completion of the street, and prior to the final release of any performance guarantee held, the developer shall provide the Planning Department with a surveyor's certification that all bounds and corners have been set in accordance with Section VII.U. of the Rules and Regulations of the Board;

43. The drainage areas, inlets, outlets and all associated piping shown on the plans shall be fully constructed, stabilized and operational prior to pavement of the streets and development of any house lot;

### Specific Conditions


44. Prior to the start of construction and approval of the Homeowners' Association, the applicant, with support from the Andover Planning Department and Fire Department, shall formally request that the Town of North Reading and the Town of Andover enter into an inter-municipal agreement which would provide water service for both fire suppression and domestic consumption to the subdivision from North Reading through an extension of North Reading's municipal water system. Said agreement shall be prepared by the applicant, reviewed by Andover's Town Counsel and presented for approval to the Board of Selectmen of Andover and the Board of Selectmen of North Reading
45. If the inter-municipal agreement described in condition 44 above is approved, a water line plan shall be reviewed and approved by the Andover Department of Public Works and Planning Department prior to start of construction.
46. If the inter-municipal agreement described in condition 44 above is approved, the conditions in the Homeowners' Association which describe the cistern maintenance and monitoring shall be eliminated.
47. Should the inter-municipal agreement described in condition 44 above not be approved, the requirements stated in condition 44 shall be deemed satisfied and construction of the cistern and private wells shall take place as proposed;
48. As stated in the conditional approval issued by the Board of Health dated August 16, 2011, a deed restriction shall be placed in the deeds to each of the 11 lots limiting the dwellings to no more than 4 bedrooms, 9 rooms total as allowed in 310 CMR 15.000 and the permitting sequence as outlined in the conditional approval shall be followed.
49. A deed restriction shall be placed at the time of conveyance or prior to clearance certificates, whichever comes first, of individual lots requiring the installation individual dwelling sprinkler systems in accordance with NFPA 13D and Sheet 10 of the approved plans. Modification of the sprinkler system design can be made with approval of the Fire Department.
50. A copy of these conditions shall be attached as an exhibit to the Homeowners' Association document recorded at the Registry of Deeds. A further disclosure of the

existence of these conditions shall be referenced in the deeds for the eleven lots in the subdivision in a form acceptable to Town Counsel.

Following the statutory twenty-day appeal period, and in the absence of any appeal, the plan and an instrument containing the foregoing restrictions will be filed at the Registry of Deeds. The applicant is responsible for the costs associated with the Registry filings.

On February 28, 2012, at a regularly scheduled public meeting, the Andover Planning Board voted (5-0) to issue the foregoing Special Permit for Earth Movement.

Date: 3-1-12

  
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Joan Duff, Chairman

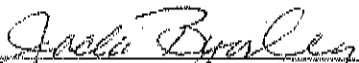
Essex, ss

COMMONWEALTH OF MASSACHUSETTS

Date: 3-1-12

On this 1<sup>st</sup> day of March, 2012, by Joan Duff, the authorized agent of the Andover Planning Board, proved to me through satisfactory evidence, to be the person whose name is signed on the preceding or attached document, and who swore or affirmed to me that the documents are truthful and accurate to the best of her knowledge and belief and who acknowledged to me that she signed it voluntarily for its stated purpose and acknowledged the foregoing to be the free act and deed of the Andover Planning Board.

Before me,

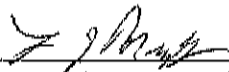
  
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Jacki Byerley, Notary Public  
My commission Expires: July 4, 2014

JACKI A. BYERLEY  
NOTARY PUBLIC  
My commission expires July 4, 2014

CERTIFICATION

I, Lawrence Murphy, Town Clerk of the Town of Andover, Massachusetts, do hereby certify that twenty (20) days have elapsed since this decision of the Andover Planning Board was filed in my office on March 1, 2012 and no appeal against said decision has been filed or if an appeal was taken, that a final decree has been entered by the court sustaining the approval of the plan.

Date: March 12, 2013

  
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Lawrence Murphy, Town Clerk