

Public Hearing
Planning Board
October 2, 2002, 6:45 PM
Judge Welsh Room at Provincetown Town Hall

Members Present: Anne Howard (Chair), Ellen Battaglini, Barnett Adler, Len Bowen and Howard Burchman

Also Attending: Katharine Doyle, Town Counsel from Kopelman and Paige.

Anne Howard called the meeting to order 6:45 PM and introduced the Planning Board members present.

Old Business

Approval Not Required Pre-Application Meeting (Case #2002-014)

William N. Rogers, P.E., P.L.S., on behalf of Shari S. DeMiskey, Map/Parcel 12-4-111, to create three lots from one parcel of land for the property located at 21 Priscilla Alden Road, Provincetown.

A site visit to 21 Priscilla Alden Road was made at 5:00 PM. All members of the Planning Board attended. There were no questions to the applicant by the Board members. It was moved to endorse the plan as presented.

Motion by: Ellen Battaglini **Seconded by:** Howard Burchman **Vote:** 5-0-0

It was moved to approve the minutes of September 18th.

Motion by: Barnett Adler **Seconded by:** Len Bowen **Vote:** 5-0-0

The meeting commencing at 6:45 PM was adjourned and Anne Howard, who then introduced the Planning Board members in attendance, opened the Public Meeting of 7:00 PM.

New Business

Case #2002-013 Site Plan Review by Eric E. Dray under Article 4, Section 4100 of the Zoning By-law, Dwelling Units and Commercial Accommodations. The applicant seeks Site Plan Review approval to change configuration of Building B from two dwelling units and eight motel rooms to three dwelling units at the property located at 596 Commercial Street (Res 2 Zone).

A request was made by Anne Howard to Eric Dray to postpone this hearing until October 16th. Eric Dray agreed to the request and it will be postponed until October 16th.

Old Business

Case #2002-005 Site Plan Review Amendment

Application by Nextel Communications of the Mid-Atlantic, Inc. [d/b/a Nextel Communications (“Nextel”)] seeks Site Plan Review approval for an amendment to a previously approved Site Plan in accordance with Article 2, Section 2320, High Elevation Protection District A and Article 4, Section 4160, *et seq.*

Anne Howard disclosed that she has a financial interest and is an abutter, excused herself from the hearing. Barnett Adler, Vice Chair sat in her stead.

Len Bowen, Board member, is also an abutter and excused himself from hearing this case. Both also excused themselves from hearing Case #2002-012. Len Bowen could not sit as the Rule of Necessity could not be invoked until he appears before the Board of Selectmen. There would be no quorum to hear Case #2002-012.

Howard Burchman asked the Nextel representatives if they could appear on October 16th to continue the hearing on the Special Permit (Case #2002-012). A motion was made to continue on that date.

Motion by: Howard Burchman

Seconded by: Ellen Battaglini

Vote: 3-0-0

Katharine Boyle spoke and stated that the State Ethics Committee was against Anne Howard and Len Bowen not attending the Site Plan Amendment hearing. She also described the Telecommunications Act of 1996 (Federal Statute) stating that the Planning Board could not consider health effects of the proposed facility.

Barnett Adler introduced the Nextel representatives and opened the Public Hearing:

Steve Grill, Counsel for Nextel

John Lawless, Nextel Representative

Peter LeBrecht, Senior Construction Manager for Nextel of New England

Mr. Grill stated that Nextel is dismayed with Provincetown and the way this situation is being handled. Nextel is disturbed not to be able to go ahead with the Special Permit case. He asked that expert reports be made part of the record. Mr. Grill stated that the Planning Board had invoked the Rule of Necessity with respect to the Nextel application at its meeting of September 18, 2002. Mr. Burchman disagreed, stating for the record that the Planning Board had not invoked the Rule of Necessity at that time.

Mr. Christopher Snow, an attorney, requested an open public hearing on October 9th and Mr. Grill wanted to proceed with Amended Site Plan Review. Mr. Lawless and Mr. LeBrecht explained the differences between the old and new Site Plans detailing the placement of the air conditioning units and stated that no new Site Plan is warranted. Mr. Lawless explained, using blueprints, the differences between the prior Site Plan and the new one is mainly the placement of the air conditioning units.

Barnett Adler opened the meeting to questions from the Board members. Howard Burchman brought up the point regarding the height of the air conditioning units. Mr. Adler then opened the meeting to comments from the public and asked for any pro comments.

Barnett Adler asked the public if there was anyone who would like to speak or ask a question for the Site Plan Amendment. No one spoke. He then asked for any against.

Elizabeth Patrick, an abutter, asked about any noise emanating from the air conditioning units. Mr. Grill explained that the units to be used are the same as those most people use for central air conditioning in their homes.

Peter Manso feels that the level of sound is being "glossed" over by Nextel. Mr. Grill replied giving the specifications of the air conditioning units regarding sound levels. Mr. Manso mentioned Provincetown laws regarding decibel levels. John Thomas, an attorney, stated that sound (noise) laws are not enforceable in some cases.

Elizabeth Patrick asked if the air conditioning units are required for residential or larger. Mr. LeBrecht stated that the units are basic residential models.

Patrick Patrick wanted to see (and would like it made public) the original (previous) Site Plan. He referred to the retaining walls, the 10'x20' room and questioned the previous plan. Peter Manso asked if the air conditioning units were in the original plan and wanted to know if, in reality, this is an amendment or a new Site Plan.

Warren Alexander, Building Commissioner, will seek any information needed by the Board if required.

Christopher Snow thought that Nextel's air conditioning units will violate the decibel laws. He asked if this was a prior approved plan stating that no dimensions were given in the plan and that Nextel could change those given verbally at this meeting. He also thought that the plans were not certified.

Peter Manso wanted to know if Nextel is asking for a change of is this a new plan.

Anna Avellar felt that this plan is a huge change, not just an amendment. Warren Alexander obtained a copy of the

original Site Plan and showed it to the Board. The plans were reviewed by the applicant.

Katharine Boyle felt that Nextel and the public had a right to see original plans before the Board votes on the Site Plan Amendment. Christopher Snow, representing the Patricks, wanted Nextel to provide a better set of plans. Elizabeth Patrick still felt that the original plans are not the same as the amended plans and that the changes are drastic.

Sam McNichol, a local contractor, stated that he felt Nextel should put everything in writing just as other applicants have to do.

Susan Mitchell, an abutter, does not feel that the outside air conditioners should be allowed.

Howard Burchman asked Nextel for clarified dimensions of the retaining wall and other items in the Site Plan.

Barnett Adler closed the public meeting.

Howard Burchman moved to accept the Site Plan Amendment and does not find that changes proposed are of any major magnitude. Specifically, the construction of a 3'x6' concrete pad, two 6"x6" pressure treated wood retaining wall, cooling/condenser units with retaining wall not to exceed 5' in height and 12 linear feet does not warrant a new Site Plan review. Katharine Boyle and Barnett Adler requested Nextel to place dimensions on the plan.

Motion by: Howard Burchman

Seconded by: Ellen Battaglini

Vote: 3-0-0

Case #2002-012 Special Permit

Application by Nextel Communications of the Mid-Atlantic, Inc. [d/b/a Nextel Communications ("Nextel")] seeks Special Permit from the Town of Provincetown Planning Board with Waiver requests under Article 5, Section 5300 *et seq.*, and Article 7 *et seq.* of the Town of Provincetown Zoning By-Law concerning construction of a Wireless Telecommunication Facility with six (6) panel antennas to be camouflaged inside a cupola together with an underground ten foot by twenty foot (10' x 20') equipment room all as proposed to be constructed on land owned by Richard P. Wrigley located at 232-236R Bradford Street, Provincetown, MA. Additionally, Nextel requests Waivers from the Planning Board for provisions of the following sections of Article 7 of the Provincetown Zoning By-Law including: Section 7070, subsections L and M.3 (Location, Class/Type 4), five hundred foot (500's) horizontal setback requirement; Section 7110, Monitoring and Evaluation of Compliance; Section 7130, Indemnification, Insurance and Fees; and Section 7140, Term of Special Permit.

This Case could not be heard at this time as described in the opening of the meeting. It was moved to continue the Special Permit case until October 16th. Howard Burchman asked the representatives from Nextel if they would be able to appear on that date and they responded in the affirmative.

Motion by: Howard Burchman

Seconded by: Ellen Battaglini

Vote: 3-0-0

The next Planning Board meeting will be on October 16th.

A motion was made to adjourn the meeting at 8:55 PM.

Motion by: Howard Burchman

Seconded by: Ellen Battaglini

Vote: 3-0-0

Respectfully Submitted
Joel Glasser

Approved by: _____ on _____
Anne Howard, Chair

Approved by: _____ on _____
Barnett Adler, Vice Chair