

**Public Hearing
Planning Board**
October 16, 2002, 7:00 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 and Mark LaTour, Assistant Town Manager.

Anne Howard called the meeting to order at 7:00 PM and introduced the Planning Board members present.

Meeting Agenda

Case #2002-016 Approval Not Required

Coastal Engineering Co., Inc. on behalf of Cesco's Realty Trust; Map/Parcel 15-1-028; Lot 2 to become and remain a part of Lot 3 subject to an easement for the repair and maintenance of the existing septic system of Lot 1 for the property located at **211 Bradford Street.**

Mark Joy of Coastal Engineering Co., Inc. explained the case. He said that the property lacked sufficient frontage so the owner wants to add 26 feet. There is also a correction to the plan designating Lot 3 on the formal application. He will have the plans redrawn by November 6th.

A site visit was scheduled for November 6th at 4:00 PM.

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 **586 Commercial Street (Res 2 Zone).**

Eric Dray explained changes to the building to create the three dwelling units. Anne Howard asked for any public comments either pro or con. No one spoke and closed the public portion. This case will continue to the meeting of November 6th. A site visit was planned for November 6th at 4:30 PM.

A motion was made to continue this case until November 6th.

Motion by: Howard Burchman

Seconded by: Barnett Adler

Vote: 4-0-0

Case #2002-015 William Rogers II, P.E., P.L.S. on behalf of The Young's Court Realty Trust, Vincent J. Cottone, Trustee under Article 2, Section 2320 of the Zoning By-law, High Elevation District. The applicant seeks Site Plan Review approval to install a full foundation under an existing building and perform site work at the property located at **4-14 Young's Court, a.k.a. 171 Bradford St. (Res 3 Zone).**

Gary Lock represented Young's Court Realty Trust. Mark Taylor, unit owner, represented Realty Trust. They stated that the foundation was already done and they seek the approval for what was done.

Anne Howard asked for a landscape plan and if any members of the public were against or for the plan. No public members responded.

It was suggested that a plan for screening should be submitted in writing. It was moved for a site visit and conditional approval with the condition that a letter from the owners stating that \$1,000 would be put in escrow to fulfill the requirements of landscaping.

Motion by: Howard Burchman

Seconded by: Barnett Adler

Vote: 4-0-0

A site visit was set up for November 15th (Tuesday) at 4:30 PM. Attending will be Anne Howard, Ellen Battaglini, and

Barnett Adler.

Case #2002-012 Special Permit

(Public hearing continued from September 4, 2002 and October 2, 2002.)

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.

Anne Howard turned the meeting over to Barnett Adler, Vice Chair. The Rule of Necessity was invoked by Anne Howard and Len Bowen and both felt that they could be objective in this case and decide on the application without bias.

Barnett Adler turned the meeting back over to Anne Howard, Chair.

The following representatives from Nextel appeared before the Board with other specialists from different areas of telecommunication who are employed by Nextel so that items in Nextel’s request could be clarified if need be.

Steve Grill, Counsel for Nextel
John Lawless, Nextel Representative
Peter LeBrecht, Senior Construction Manager for Nextel of New England

Howard Burchman asked the Nextel representatives if the letter with the information requested at the last meeting was submitted.

Mr. Grill made an introductory talk and explained why the site in the cupola was selected stating that it would be in keeping the esthetics of Provincetown and Cape Cod. He believes that Nextel has met the spirit and goals of the Zoning By-laws and handed out a report from the Cape Cod Commission.

Mr. Lawless spoke about Nextel’s business in New England and that there is a gap in telecommunications in Provincetown. The site would be a camouflaged facility. He described the site using blueprints (plans). He then discussed the exhibits attached to the application and explained why other sites could not be used.

Blanaid Kinch, Nextel Radio Frequency expert discussed the coverage and why a repeater system could not be used.

William Irwin, Harvard University Physicist, started to explain Nextel’s submission of material to the Massachusetts Department of Public Health. Anne Howard interrupted stating that the Planning Board could not hear anything which applies to health issues.

Deborah Haskell did impact studies on values of real estate in various locations on the Cape and found that a telecommunication antenna did not have any major impact on property values.

Anne Howard asked the Board members if anyone had need to pick out and go through each of the exhibits submitted by Nextel as Mr. Lawless was doing. Mr. Lawless requested to complete, briefly, the explanation of exhibits.

Steve Grill discussed the Insurance and Indemnification Agreement By-laws and term of the Special Permit. Howard Burchman asked if the Planning Board could waive Section 7140, Term of Special Permit.

Mr. Grill feels that the Term of Special Permit violates the Telecommunication Act of 1996 (Federal) and should not be invoked for a structure and installation. He then asked if there were any questions from the Board.

Ellen Battaglini asked the Town Counsel (Katherine Boyle) if the Planning Board can waive the Term of Special Permit By-law. Ms. Boyle stated that the Board cannot grant waivers from bylaws. Ms. Battaglini brought up a letter from Alix Ritchie, an abutter.

Barnett Adler asked Ms. Boyle regarding monitoring protocols and asked if Board follows monitoring protocols of the FCC.

There was a general discussion of waivers which Nextel asked for. Katharine Boyle said that the Board can grand a Special Permit without granting waivers. The Board can act on the Special Permit for use then act on each other section for waivers.

Anne Howard opened the meeting to the general public for any comments or questions. No one spoke in favor of the Special Permit. Anne Howard reminded the public that any issues of health cannot be used.

Patrick Patrick, an abutter, handed out letters to the Board members. He was against industrial/commercial places used in a residential neighborhood. He read his letter and asked why other telecommunication company towers located in Truro work in Provincetown and suggested other sites in town.

Christopher Snow, an attorney who represents the immediate abutters, stated that the Planning Board cannot grant relief from Zoning By-laws and to reconsider that the Planning Board can grant the Special Permit for Use while denying waivers.

Celine Gondolpho asked if the study done by Mark Hutchins, who was employed by the Town, covered the pier and other sites. She mentioned other locations for the antenna. She also questioned insurance as pertaining to health suits. She stated that she was in favor of telecommunication but felt that placement of antennas is highly important. Elizabeth Patrick, an abutter, said she had been approached by Nextel to put an tower in a warehouse on Route 6. She and her husband turned Nextel down. Nextel then approached the landowner and got approval for an antenna in the cupola of his house. She also said the landowner gets variances from the Town.

S. Patrick asked why antennas would work in a cupola and not on Mt. Gilboa.

Diane Prudeaux-Brune, an abutter, stated she was against the place ment of the antennas in the cupola.

There were no other questions or comments from the public sector. Mr. Grill then responded to some points brought up by the public.

Anne Howard closed the portion of the public meeting and opened it up to questions from the Board.

The Planning Board is required to respond in writing and has 90 days from October 2nd (the opening of the hearing) to respond.

A motion was made to continue until November 6th.

Motion by: Ellen Battaglini

Seconded by: Barnett Adler

Vote: 5-0-0

The next Planning Board meeting will be on November 6, 2002.

A motion was made to adjourn the meeting at 11:15 PM.

Motion by: Howard Burchman

Seconded by: Ellen Battaglini

Vote: 5-0-0

Respectfully Submitted
Joel Glasser

Approved by: _____ on _____
Anne Howard, Chair (Date)