Public Hearing - Planning Board

December 4, 2002, 7:00 PM
Judge Welsh Room at Provincetown Town Hall

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

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

Anne Howard called the meeting to order at 7:05 PM and introduced the Planning Board members present.

Meeting Agenda

Case #2001-017 Request for Administrative Amendment
Jonathan Sinaiko for Administrative Amendment for Site Plan Review to increase size of building from 16' x 28' to 18' x32', an increase of 2' x 4' for property located at 292 Bradford Street, Provincetown.

Anne Howard started to describe what the site was and what the owner was doing. Mr. Sinaiko was on his way to the meeting. When he arrived and explained his situation, he wanted to know if he had to hold to the 18' x 32' or could he go to 18' x 30' if need be.

It was moved to approve the plan with the condition of not exceeding the 18' x 32' size.

Motion by: Barnett Adler **Seconded by:** Howard Burchman **Vote:** 5-0-0

It was then moved not to require a new Site Plan Review.

Motion by: Barnett Adler **Seconded by:** Howard Burchman **Vote:** 5-0-0

Case #2002-012 Special Permit (Continued from September 4, 2002, October 2, 2002, October 16, 2002, November 6, 2002, and November 20, 2002)
Application by Nextel Communications of the Mid-Atlantic, Inc. d/b/a Nextel Communications ("Nextel"), seeks a **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 Bylaw including: *Section 7070, subsections L. & M.3 (Location, Class/Type 4)*, five hundred foot (500') horizontal setback requirement; *Section 7110*, Monitoring and Evaluation of Compliance; *Section 7130*, Indemnification, Insurance and Fees; and *Section 7140*, Term of Special Permit.

Katharine Doyle gave Anne Howard copies of the Monitoring Protocol and OET Bulletin 65 and recommended that these two documents be adopted as the Monitoring Protocol.

She also handed out a copy of a new finding in a case from the U.S. District Court for Massachusetts that was *Nextel v. Town of Wayland*. The Zoning Board of the Town of Wayland denied Nextel variances. Judge Keaton overturned the decision of the Town and ordered variances be granted as a denial violated the Telecommunications Act. In this case, a denial of relief to Nextel may result in violation of the Telecommunications Act in light of Judge Keaton's decision. She stated that the Planning Board might want to reconsider their previous findings.

Chris Snow, a member of the public, stated that he felt that the Wayland case does not have authority for the Planning Board because the case was against the Zoning Board of Wayland not the Planning Board of Wayland.

Katharine Doyle explained the results of this case and how it would have an affect on Provincetown if the Planning

Board denies Nextel the waivers they requested.

It was moved to reconsider not to grant relief to Nextel in light of *Nextel v. Town of Wayland*.

Motion by: Howard Burchman **Seconded by:** Barnett Adler **Vote:** 3-2-0
(Ellen Battaglini and Len Bowen voted against)

The attached Revised Draft document, supplied by Katharine Doyle, gives the voting by the Planning Board on the Findings plus other pertinent information.

It was moved to adopt the two documents pertaining to Monitoring Protocol suggested by OET Bulletin 65.

Motion by: Barnett Adler **Seconded by:** Howard Burchman **Vote:** 5-0-0

The following votes were taken in light of the items in the draft supplied by Katharine Doyle:

The sections listed are sections of the Zoning By-laws.

It was moved that granting a waiver from Section 7070(L) would have affect the granting of wireless services.

Motion by: Howard Burchman **Seconded by:** Barnett Adler **Vote:** 3-2-0
(Ellen Battaglini and Len Bowen voted against)

It was moved that the Planning Board from the failure of granting a waiver from Section 7070(M) would affect wireless services.

Motion by: Howard Burchman **Seconded by:** Barnett Adler **Vote:** 3-2-0
(Ellen Battaglini and Len Bowen voted against)

It was moved that the Board grant that a waiver from Section 7110 would not have an affect on wireless services.

Motion by: Howard Burchman **Seconded by:** Barnett Adler **Vote:** 5-0-0

It was moved that the Board find failure to grant a waiver from Section 7130 would not have an affect on wireless services.

Motion by: Howard Burchman **Seconded by:** Barnett Adler **Vote:** 5-0-0

It was moved that the Board find failure to grant a waiver from Section 7140 would not have an affect on wireless services.

Motion by: Howard Burchman **Seconded by:** Barnett Adler **Vote:** 5-0-0

It was moved to grant waivers from Sections 7070(M) and 7070(L)(3) of the Provincetown By-laws and deny waivers from Sections 7110, 7130 and 7140.

Motion by: Howard Burchman **Seconded by:** Barnett Adler **Vote:** 3-2-0

This vote failed because of the lack of a super majority.

It was decided to vote on each Section separately.

It was moved to grand a waiver from Section 7070(L).

Motion by: Barnett Adler **Seconded by:** Howard Burchman **Vote:** 3-2-0
(Ellen Battaglini and Len Bowen voted against)

It was moved to grant a waiver from Section 7070(M)(3).

Motion by: Barnett Adler **Seconded by:** Howard Burchman **Vote:** 3-2-0
(Ellen Battaglini and Len Bowen voted against)

It was moved to deny a grant of a waiver to Section 7110.

Motion by: Barnett Adler **Seconded by:** Howard Burchman **Vote:** 5-0-0

It was moved to deny a grant of a waiver to Section 7130.

Motion by: Barnett Adler **Seconded by:** Howard Burchman **Vote:** 5-0-0

It was moved to deny a grant of a waiver to Section 7140.

Motion by: Barnett Adler **Seconded by:** Howard Burchman **Vote:** 5-0-0

It was moved to grant that application comply with or get relief from Sections 7070(L) and 7070(M)(3).

Motion by: Howard Burchman **Seconded by:** Barnett Adler **Vote:** 5-0-0

Because of the nature of this case, and the need for further discussion and thought, which would be required by the Planning Board, it was decided to continue at a meeting which will be held on December 10th, 2002 at 7:00 PM.

The meeting was adjourned at 9:10 PM.

Respectfully Submitted
Joel Glasser

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