

Planning Board Public Hearing  
Monday, June 21, 2010  
Grace Gouveia Building, Room 6  
26 Alden Street, Provincetown, MA 02657

Planning Board Members Present: Marianne Clements, Dorothy Palanza, Peter Page and John Golden.

Excused Absent: Howard Burchman.

Staff Present: Maxine Notaro, Permit Coordinator.

Dorothy Palanza called the meeting to order at 6:00 p.m.

**Request for Approval Not Required Plan**

Application by John McElwee of Felco, Inc. on behalf of 170 Commercial Street LLC to create two lots from one lot at the property located at 170 Commercial Street, Provincetown MA.

John McElwee said the two lots have proper frontage and the appropriate lot size for zoning purposes. No new ways are being created; both lots have access and frontage on town ways.

Motion: To endorse case 2010-18 with ANR plan dated 5/19/10 as submitted.

Moved: John Golden. Seconded: Peter Page. Voted: 3-0-1 (Marianne Clements).

**Request for Amendment to Approval Not Required Plan**

Application by William N. Rogers, II, P.E. & P.L.S. for minor line modification to lots 42, 43, 44 and 45 at the property located at 55-61 Harry Kemp Way, Provincetown MA. Each lot will have its own septic system.

William Rogers said there was a slight line change from the original ANR approval so each lot can now contain its own septic system. He said he would still need to come back before the Board with another plan that shows the easements as recorded. The driveway stays the same; nothing else changes.

Motion: To accept the amended ANR plan dated June 16, 2010 for Case 2010-16.

Moved: Dorothy Palanza. Seconded: Peter Page. Voted: 4-0-0.

**Case #FY10-15 Site Plan Amendment**

Application by William N. Rogers, II, P.E. & P.L.S. on behalf of Miller Hill Realty Group, Olga Opsahl under Article 2, Section 2320 of the Zoning Bylaws for High Elevation Protection District A. The applicant seeks approval for a minor modification to a previously approved Site Plan. Each lot will now have individual septic systems as opposed to a shared septic system at the property located at 55-61 Harry Kemp Way, Provincetown, MA (Res3/ResB Zone).

William Rogers said the 10' buffer will still be maintained. The lighting does not change. Most of the numbers changed by 1% such as lot coverage and green space. Drainage did not change. The septic system design for Building E will remain the same.

One abutter, Daniel Kaizer had no problems with the requested changes.

Motion: To approve Case FY10-15 as amended.

Moved: Dorothy Palanza. Seconded: John Golden. Voted: 4-0-0.

Public Hearing

**Case #2010-17 Site Plan Review**

Application by **Anne K. Malone, Esq. of Prince, Lobel, Glovsky & Tye LLP on behalf of Nextel Communications of the Mid-Atlantic, Inc. and its affiliate Sprint Spectrum, L.P.** under Article 7, Wireless Telecommunication Towers and Facilities of the Zoning Bylaws. The applicant seeks to modify their Special Permit (Case No. 2002-12 dated August 25, 2003) regarding the requirement for the Radio frequency ("RF") Emissions monitoring at the property located at 232-236R Bradford Street, Provincetown, MA (Res3 Zone).

Anne Grant, Attorney for Sprint/Nextel said at present the property is required to have semi-annual RF emissions testing. Based on the history of the site and documentation from David Maxson of Broadcast Signal Labs (the testing company) the tests are not longer required because the site meets the RF Emissions Standards. If major changes were made to the site then the testing would be required.

Josephine DelDeo, an abutter within the 300 foot radius of the cell tower said she has lived at her property for 60 years. The town refused the cell tower because it was within 500' of residences. Article 7 of the Zoning Bylaws has specific conditions and we went through town meeting to protect the town.

On August 5, 2002 they applied and on August 15, 2002 it was moved to Federal Court as a ploy to get it out of the town's hands. The Federal Communications Acts of 1996 had very good emissions standards. The Emissions Standards needs to be monitored on a regular basis. The town should not give that up. The town needs to protect the neighbors. She said she has been exposed to these emissions for 7 years now and health problems with only continue to come forward. With the board allowing the request to go forward leaves the abutters feeling unprotected.

Gee Patrick, abutter said she agrees with everything the previous abutter mentioned. She also agrees the town should not give up the ability to give up what is required by the bylaw. She had two grandchildren that live in the immediate area and she is concerned.

Peter Page said he is aware of some of the history and it appears to him that the applicants are trying to get around having to pay the semi-annual testing fees. The applicants would need to do more convincing as to why they feel this could be eliminated from their special permit. The Planning Board owes it to the towns' people to protect them.

Anne Grant said the license to operate is based on the FCC's requirements and bylaw requirements. Tests are done before installation and after installation and every year for five years in other towns. Based on what is currently operating there, nothing is going to change. Based on the history of the site and other sites, the testing company that was selected by the town has said the monitoring of the site is no longer necessary.

Josephine DelDeo said it is the process that protects the abutters and the towns' people. The continued testing is that assurance. The town has to have control of the process.

Anne Grant said the reports of the testing of the tower will justify what Broadcast Signal Labs is saying. She will find out what the FCC testing requirements are and report back to the board members her findings.

Peter Page asked what the reason for eliminating the testing was.

Anne Grant said it was based on David Maxson's recommendation.

David Gardner said the Planning Board will need a comfort level for a period of time to determine no change.

The board members also discussed whether it was within the Planning Board's authority to change the special permit without having a town vote. They requested an opinion from Town Counsel on this.

Motion: To continue case 2010-17 to the July 17, 2010 meeting.

Moved: Dorothy Palanza.

Seconded: Peter Page.

Voted: 4-0-0.

Minutes of May 17, 2010

Motion: To approve as presented.

Moved: Dorothy Palanza.

Seconded: John Golden.

Voted: 3-0-1 (Marianne Clements).

Discussion on scheduling public hearings on bylaw revisions

David Gardner presented a Bylaw Amendment Calendar to the board members. The AdHoc Working Group has been meeting on a regular basis with the hopes of having bylaw changes for the fall town meeting in October. This means the Planning Board must start the process now. He is looking to start the public hearing process as soon as possible.

The Formula Business petitioned article did pass at the spring town meeting; however, it was not properly placed in the working bylaws.

The Planning Board will have a work session on proposed bylaws on July 19, 2010 in anticipation for an August 16, 2010 meeting at the earliest. To be discussed: 1. Formula Regulated Business; 2. Definitions and; 3. 2550 Bylaw.

Peter Page, referring to the 2550 bylaw, said the area that connects must have interior functional space.

David Gardner said it must meet the definition of building as common space between units.

T-Mobile Testing

The balloon testing for T-Mobile at the Wastewater Treatment Plant is tentatively scheduled for the last week in July.

Adjournment

Motion to adjourn at 7:30 p.m.

Respectfully submitted,

Maxine Notaro

Permit Coordinator/Recording Secretary