

**WEST TISBURY ZONING BOARD OF APPEALS
MINUTES SEPTEMBER 19, 2007 TOWN HALL 6 PM**

PRESENT: Eric Whitman (Chair), Tucker Hubbell, Nancy Cole, Larry Schubert and Tony Higgins arriving at 6:45

ABSENT: Toni Cohen and Bob Schwier

ALSO PRESENT for All or Part of the Meeting: Thomas White, Atty Howard Miller, Bill Black, John Black, Maryann Meade, Warren Meade, Porter Thompson, Nicole Cabot, Joseph Caruso, Brian Nelson, Gino Mazzaferro, Matt Stackpole, Pete Vincent, Richard Anderson

HEARINGS

6:00 PM Continuation from September 5 of an application filed by Nextel Communications Inc. to amend a Special Permit granted in September, 2003: 1) Install 3 additional panel antennae within the existing flagpole; 2) Install one additional radio equipment cabinet within the existing equipment building; and Install one GPS antenna to the roof of the equipment shed. Location is on property owned by David M and Francis Flanders; Map 22, Lot 7, 66 Old Courthouse Road; RU District. Sections 8.8-2, modification of a special permit as a special permit #2 and 9.2-2. *Correspondence and photographs: 1) Abutter Nicole Cabot; 2) Atty Howard Miller; 3) Survey for ZBA from David Maxson of Broadcast Signal Lab dated September 5, 2007. All correspondence on file and available to be read in ZBA office.*

Nicole Cabot's letter was read and the photographs looked at. She described the pole as "hideous" and out of keeping with their rural neighborhood and listed a number of safety and other concerns on the site and listed conditions set by the ZBA that were not followed through on. Thomas White, agent for the application and project director for SBA Network Services Inc. a company that installs Wireless communication Facilities, thanked the ZBA for the continuance. He explained the installation as described above, explaining that the GPS antennas were required by the FCC since 9/11. He explained the Special Permit was originally granted to AT&T with co-locators and co-applicants Nextel and Omnipoint. AT&T is now Cingular. Omnipoint is now T-Mobile and did not locate on the WCF within the two years of the Special Permit's granting and did not sign a lease to be located on the facility. Cingular owned the pole at the initial stages, but the owner of the property, David Flanders, now owns the pole; the carriers are his tenants. The site is an existing and operating wireless communication facility.

He said that Atty Howard Miller (representing abutters Bill Black and Warren and Maryanne Mead) gave him a ride to the boat on Sept 5 at which time he told him of the abutters' concerns. He in turn took these concerns to now owner of the facility, David Flanders. A missing (or never put in according to abutters) manhole cover will be put on and dirt on that immediate site will be replaced and cleaned up. Also, yes, there is absolutely no lock on the stockade fence surrounding the facility. Dave Flanders called Cingular and that will be immediately rectified. He said it's possible the lock was taken, left unclasped; that happens all the time. Warren Meade commented that there was never a lock there. Nancy said, use a different lock system that won't get stolen. Thomas said the original permit specified a wooden stockade fence, so the usual higher chain link fence was not put around the facility. If someone wants to get in, they will. They will put in the missing gate on the road. Nancy said the original conditions were not adhered to. Plus the questions arising from Dave Maxson's report need to be addressed.

Thomas explained that, yes, as David Maxson's report explains, Sprint and Nextel are under one company, but they are separate carriers with two different technologies and operate on different frequencies and yes it is Sprint's equipment they'd like to add. He submitted existing and

proposed coverage maps, as Dave Maxson pointed out were absent from Nextel's application, showing that Sprint did not have coverage at the facility or in the area. Addressing David's recommendation that the ZBA find out if the 2 carriers could share one of the 3 spots on the pole rather than Sprint occupying the remaining spot, leaving one slot still available, Thomas said that because the facilities are enclosed in the pole they cannot combine efforts on one slot. You can't combine in a closed space; you need a full platform. Sprint needs the center spot at 45'. Nancy asked that with new antennae in the pole, will it look the same? Thomas's reply, very little difference. Eric commented that it was being done to blend in as well as possible.

Larry asked, if all spots are taken up, can another carrier demand a new pole under FCC? Thomas replied, yes, as Dave Maxson pointed out. This is the last slot. If Sprint isn't granted it, another carrier will come along, for instance T-Mobile is "ripe for the picking". The ZBA could easily be sued by Sprint if it denied their request to be on open slot on an existing carrier and then granted a permit to the next carrier that came along. Eric said that one more bulge on the pole will not be a life or death issue, but the applicants and owner must bring it up to compliance. Thomas said they'd do everything possible to bring in to compliance. He pointed out that Nextel did not build the tower, that Dave Flanders owns it, and they weren't technically responsible, but they will see that the work is done.

Attorney Howard Miller submitted a letter and photos, listing what was not in compliance with the original permit and asking for certain conditions to be included if the permit is granted. He wrote that his clients were not opposing the petition, but wanted the facility to be in compliance. He said, it's been four years after the fact, make sure they have fulfilled all the old conditions and new ones before they are given an occupancy permit by the Building and Zoning Inspector. He said there should be a phone number on the facility that is a dedicated line to get an immediate response. When there was a new, loud sound coming from the facility, neighbor Maryanne Mead had to go up to the site to read the emergency phone number. It took her many calls to get through to someone and even then there was not an immediate response. That particular noise has seemed to stop for now, but it had been going off and on at three minute intervals and was loud enough to disturb the neighbors, especially at night. If the gate with a sign had been built on the road as mandated, she would not have had to go up to the site. Plus the facility Site Number on the sign on the stockade fence is illegible. He said there is no excuse, it's pure negligence.

Mr. Miller turned to the subject of trees. There are 17 large oaks surrounding the site that appear to have been decimated by caterpillars and are unhealthy. The original findings state that the tower will not create a visual impact as it's surrounded by trees. The site's trees should be monitored, nourished or replaced. The abutters also voiced their worries about radiation effects, claiming that due to an umbrella effect, the effects would be greater on abutting properties than at the site. They asked that semi-yearly testing on neighboring properties be conducted by an independent consultant.

Thomas White said he wasn't sure about a dedicated line as these are huge companies. He suggested putting Dave Flanders' office number on the site. Neither the abutters or the ZBA felt this alone was the best solution. Thomas said, if the power is out, the wires messed with, the companies know at once. Maryanne talked of her frustration at not being able to talk to someone who was not just a phone answerer in a very large company. Also, that when you get right up to the fence to read the number, it also says to not get any closer than 7 feet from the antennae. Thomas said he was out there a week and a half ago and today. The air conditioners kicked in, the noise was "not bad". As for the 7' warning, that is from the antennae which are up in the tower

and therefore you are far more than 7' away. He briefly technically explained why one would be safe at any rate, but that unofficial people shouldn't be on the site. There is no umbrella effect.

The Board briefly discussed the issue of trees. The area is heavily wooded and otherwise undeveloped. If caterpillars infested the whole area, the Board didn't see how they could order that, say, 300 trees were needed. Howard Miller said, hire an arborist. Warren Meade said his house was located at the same level as the WCF. He sprayed last year, spending \$600 on 6 acres, which worked. He said, David Flanders never sprays, and in all the history of hearings for this facility, he has never attended a single meeting.

At this point, Tucker said, let's condition that this facility come up to scratch and write to the Building and Zoning Inspector that no permit or certificate of occupancy be granted until they have met all the previous conditions. He added that he felt the Town of West Tisbury had dropped the ball in this matter. Thomas said, there's not a lot to do to bring the facility into compliance, a lock, a gate, sign, phone no., manhole cover...they're willing to comply. Larry added, pre- and post-testing (which is part of the bylaw). Eric agreed with the others, adding that the old shed is a bit of an eyesore. He said he had no problem with the application, as it's what was granted to a third carrier in the first case, as long as the whole thing is the way it's supposed to be. He agreed a letter should be sent to Ernie with the decision, asking for all the old conditions to be met before any permitting, and the new conditions to be put into place. The conditions to be put in the written decision were iterated. The ZBA voted four to one to grant the Special Permit with the understanding that all old and new terms be met. The Board agreed to amend and approve a written decision at their next scheduled meeting on October 3.

6:45 PM An application by Joseph Caruso for a Special Permit to expand an existing 15' by 28' one-car garage with overhead storage space to a two-car 30' by 28' garage with overhead storage. Sect. 11.2-2 of Zoning Bylaws (over 676 sq ft on an under 3 acre lot); Map 30 Lot 2.70; 67 Pond Rd; RU Dist; 2.8 acres. *No Correspondence*. The Board reviewed Mr. Caruso's photos and plans and noted the approval from his development's architectural review board. Citing that the expansion was not detrimental to the neighborhood, ZBA granted the Special Permit.

DISCUSSIONS

7:00 PM Discussion with Brian Nelson of Nelson Mechanical Design (based in Vineyard Haven) re a proposal for a wind turbine by the Nelson family on State Road (Littlefield property) and wind turbines in general.

Brian Nelson came to talk with the ZBA to explore the permitting and mechanisms within the Town for installing a 340' (with the blade up) high wind turbine on the Ann Nelson family property comprising of approx 45 acres divided into 7 parcels. (Post meeting: FAA regs would not permit a tower of this height with its proximity to the airport) The Zoning Bylaws have a section that says... wind turbines may be permitted provided that for every one foot by which such structure exceeds the height limit (30'), the minimum setback requirements are increased by one foot. Even though the Nelsons as a whole own the property, there are bounds for each parcel and as is, the tower couldn't make the setback requirements. Property lines would have to be changed or a variance sought. Four smaller ones could go on the properties as they are configured now. The Zoning and Building Inspector had told him that due to wind turbines not being listed as a use in the Use Table, he would send any application to the ZBA as required in the Bylaws.

However the large facility, rather than the smaller turbines of approx 70' to 100', would be far more powerful and productive. They are exploring how this turbine could become a corporation,

that is, owned by the Nelsons, community shareholders and NStar. Tony said such an arrangement would have to benefit the community. Larry pointed out it sounded like a business and how would it be allowed in the RU district, unless it actually was a public utility, or Town owned, not private, or perhaps a non-profit. After further discussion, the ZBA told Brian that a joint meeting with the Planning Board would be the best course of action to explore the permitting of a turbine of this size, and to try to do a Town model.

Gino Mazzaferra: questions regarding changes in plans for special permit granted in June to Clark. The changes were found to be minor and not increase the structure or use.

Preliminary talk with representatives of Martha's Vineyard Historical Society, Mathew Stackpole, Rick Anderson and Peter Vincent re historical museum complex being established in West Tisbury on State Road, Map 25 Lot3.2, 1 Jane's Fair Way; 9.7 acres: Due to outgrowing their quarters in Edgartown and the fact that the buildings there are not climate controlled, the Society are looking forward to this opportunity. They have a concept of a master plan and are fund raising. Rosalie and David McCullough are involved with their capital campaign; David had been concerned that the initial plans did not fit the Island and neighborhood. They formed an ad hoc committee comprising of, among others, Nat Benjamin, Allen Whiting, Clarissa Allen, and Trip Barnes, and are pleased with the modifications.

They will need to apply to the MV Commission due to the approx 30,000 sq ft of the structures. There will be one access road, not another one parallel with Jane's Fair Way. They would be open year round and have many programs for children, as they do now. They are next to Polly Hill Arboretum and the Agricultural Society, and hope to have a "cultural corridor" to connect with Polly Hill. Due to the design and need to display their fresnel lens and to have circular galleries around it, the plans call for a height of 62', including the cupola. Not counting the cupola, the height would be 54'. Height limits in the RU district are 30', except for wind turbines, cell towers, barns. Will they need a variance from the ZBA? The ZBA said they'd need to explore this. The Society is a non-profit and educational institution, so it does have a different standing than other projects and may have exemptions under Ch 40A, subject to some regulation. The Board thanked the gentlemen for coming with this preliminary talk.

BUSINESS

The minutes of September 5 were approved as written.

Nancy Dole and a possible new lessee for office space, veterinarian Connie Breese using the space as a professional office, not an animal hospital or clinic: The Board said it fit the professional office use if the extent of on-site treatments is limited to the occasional rabies shot, for example, but not the treatment of wounded animal. Connie Breese, Nancy had said, does most of her vet work on site of where the animal is. The ZBA said Connie Breese should talk with the Board of Health Agent, John Powers.

Regarding a question from **Randy Simon** about a teardown/ rebuild in Roadside District, the ZBA couldn't comment until they heard what the current height is.

Q's from Julie and Doug Hoehn re proposed Farrelly tennis court which is advertised at 41' from bound but has been found to be 31' at nearest point? Eric Whitman advised that this will be brought up at the hearing.

The meeting was adjourned at 9:30.

Respectfully submitted, Julie Keefe, Bd. Admin.