

NEXTEL COMMUNICATIONS
HUDSON ROAD TRUST
36 Hudson Road
01-17, 01-18, 01-19

MINUTES OF THE PUBLIC HEARING CONTINUATION
SUDBURY BOARD OF APPEALS
WEDNESDAY, SEPTEMBER 5, 2001

The Board consisted of:

Patrick J. Delaney III, Acting Chairman
Lauren S. O'Brien, Acting Clerk
Thomas W.H. Phelps
Melinda M. Berman, Alternate
Jonathan G. Gossels, Alternate

Mr. Delaney reconvened the public hearing for Nextel Communications Case Numbers 02-17, 02-18, 02-19. At the end of the previous session on July 10, 2001, the Board was discussing the meaning of the coverage maps and the asked for additional information, specifically a coverage map that would provide the result of an antenna located at the Village Green, which would be permitted under the Bylaw but at a lower height, and a monopole located at the highway garage off Old Lancaster Road. In addition, the signal level from the facility on Route 117 was also requested.

Also, during the previous hearing, it was brought up that the town was a customer of Nextel and some employees have phones. Mr. Delaney said he conducted a "semi scientific" test using one of the phones and would report on the results later this evening.

John Keene, Nextel Communications began with an overlay map depicting coverage from a 100-foot monopole at the highway garage site. He said that site does provide some coverage to the gap Nextel is trying to fill but does not reach parts of Route 27 or a section slightly northeast of the town center. He said Nextel would consider that site as an alternative to another site being proposed in the southern part of Route 20; however, it would not be able to fulfill the need of the site proposed for this application.

Mr. Delaney asked for the location of the other site. Mr. Keene said it would either be Feeley Park or the Water District property across the street.

In response to questions from Mr. Phelps, Mr. Keene explained that the blue on the map represents the existing and proposed coverage for a proposed site at Feeley Park. The purple color is the overlap from the highway property. He said some overlap is okay as it allows for handoff.

The next map depicted coverage from the Village Green site. Mr. Keene said this site provides some coverage to the coverage gap in the very center of town but does not stretch out

coming north on Route 27, north on Concord Road, east on Route 27, or south on Concord Road. He pointed out an uncovered area which he said was virtually all the way around the town center.

Mr. Keene then displayed a map of the coverage area for the proposed site which he said will fill the coverage gap very well.

Cameron Syme, RF Engineer responded to a question from Mr. Gossells regarding a threshold of the level of intensity. He noted essentially it is a design criteria to provide a level of service which should allow a customer to be able to make a call over a particular area.

In response to further questions from the Board as to the coverage colors shown, Mr. Syme explained that blue represents the desired level of coverage whereas white represents less than optimal coverage.

Mr. Delaney said he conducted a test by borrowing a Nextel phone from the town. He put the phone in his car and drove around initiating phone calls at a variety of locations which included Feeley Park, Concord Road and Old Lancaster Road, the highway garage, Concord Road and Hudson Road, Hudson Road and Route 27 at approximately Ti-Sales, Haskell Field, Route 27 and Willis Hill, Route 27 all the way to Parker Street in Maynard, and the L-S High School.

Mr. Delaney said that on the day he tested, all of those locations worked well. He was able to turn the phone on and off, access the network and initiate calls. Calls that were in process did not drop except for the area around Parker Street in Maynard. In that area he sometimes could initiate a call and sometimes he could not.

Although Mr. Delaney said his was not a controlled test, there is what lay people would consider coverage. He said the Nextel phone he used had a meter on it and most of the time it was registering strong signals. He said he even collapsed the antenna on the phone and was still able to use the phone.

By way of comparison Mr. Delaney referred to the previous AT&T Willis Hill hearings where there were similar discussions on coverage gaps. In the AT&T case there was a coverage gap where phone calls could not be initiated and those in progress dropped. He said Nextel's situation is not as severe as that AT&T coverage gap.

Mr. Delaney added that he conducted the test because at the previous hearing session an abutter had stated that people with Nextel phones stopped on his property to use their phones. In addition, information was also provided by Selectmen Lawrence O'Brien. It appears from looking at Nextel's charts that nothing works at all and as it turns out, it is not that severe.

John Keene, Nextel Communications, said what he had described was not necessarily no coverage, but not adequate or reliable coverage. He said in given conditions one may be able to make calls in those locations. He said Nextel is here to provide a service to their customers for profit and these facilities cost a lot of money to build. He said he would not be proposing to build a facility unless it was needed.

Mr. Delaney felt the question to be whether a facility was necessary at the proposed location. He asked what facility he would have been using while on the phone at Feeley Park and the center of town. Mr. Keene would guess he would be using the Framingham facility.

Further discussion followed on the coverage maps, specifically with regard to the level of coverage perceived by Nextel, and explanation of the factors involved from a site which dictate the range of coverage from a particular site.

With regard to comparisons to other sites, Mr. Keene said the proposed site would be comparable to AT&T's facility on North Road or the site at Feeley Park which is a flagpole-type design. The diameter should be similar to those other facilities. There will be no lights. With regard to color, Nextel would propose the standard steel gray; however, there is flexibility for color choice.

Discussion followed on the Willis Hill status and the Water District's reluctance to issue an RFP for any additional sites. It was also pointed out that that location predated the Wireless Communications Bylaw and is not currently included as a list of approved sites.

Mr. Keene said Willis Hill was originally Nextel's first choice for a facility because it was thought to be a location which would gain the town's approval. When the Water District was unwilling to issue an RFP, alternative sites were looked at, with the proposed site having been chosen.

Robert Abrams, 24 Hudson Road, abutter, referred to Mr. Delaney's phone test and his own observations, as an abutter, that phone coverage does exist in the center of town which could indicate the proposed pole may be unnecessary. Mr. Abrams said his concern and objection was that the proposed pole will be seen from his house.

Mr. Keene said the photo simulations show the facility will be virtually invisible except directly in front of the parcel looking down the access way. He could not speak to the visibility from Mr. Abrams' backyard.

Other than questions for clarification, there was no further input. The public hearing was closed.

After deliberation the following motions were placed and seconded:

MOTION #1: (CASE 01-17)

“To grant Nextel Communications of the Mid Atlantic, Inc., applicant, Hudson Road Trust No. 1, owner of property, a Special Permit under the provisions of Section 4350 of the Zoning Bylaws, to install, operate and maintain a 100-foot monopole wireless communications facility, including associated equipment, property located at 36 Hudson Road, Business District #7 and Residential Zone A-1.”

VOTED: In favor: 0 Opposed: 5 (unanimous) PETITION DENIED

REASONS:

The Board found that the application did not meet all of the conditions prescribed for a Special Permit by the local Bylaw and the Zoning Enabling Act, Chapter 40A.

The Board finds that the proposed use would nullify and substantially derogate from the intent and purpose of the Bylaw in that the main thrust of the Bylaw is to control the location, size and setback of wireless communication structures. The application is at odds with the basic requirements of the Bylaw to maintain a 500-foot setback between wireless communications facilities and residentially zoned property and also the requirement to maintain a 1000-foot setback to a school building, per the words of the application. In addition, the Bylaw seeks to minimize the impact of wireless communication facilities through the use of low profile structures ancillary to existing commercial buildings.

The applicant's proposal hinges on the claim of inability to supply adequate wireless telecommunication services without relief from local zoning due to the perceived presence of a coverage gap in the center of the Town. The Board received testimony from the public to the effect that the perceived coverage gap alluded to by the applicant was not apparent during actual use of the Nextel network in the geographical locations specified. As a result, the Board conducted informal testing of the perceived coverage and found no instance or location within its jurisdiction where normal cellular service on the Nextel network did not already exist. The Board recognizes that under different circumstances the coverage may in fact be less than desired by the applicant but is not persuaded that the degree of coverage desired is a necessity to serve the public good and the requirements of the federal telecommunications act.

The applicant states that relief from local zoning is required to enable use of the rear portion of the property which is zoned for residential use. The Board observes that this land has already been the subject of zoning relief to enable extended commercial use and that the right of reasonable use has been protected.

The applicant states that no alternative to the proposed structure exists. The Board requested a variety of wireless telecommunication coverage data describing the effect of utilizing the provision of the zoning bylaw which permits certain antennae structures in all commercial

districts, focusing particularly on the property in question as well as an adjacent business district. Using the applicant's own data, the Board concludes that these locations offer substantial added coverage to an area which is already greatly served, all with little or no zoning relief. The Board concludes that the requested structure would therefore be an unnecessary deviation from local ordinance.

During the public hearing, a nearby property owner testified that the presence of the structure would constitute a visual nuisance. The Board reviewed the proposed height and location during a simulated crane test and observed that the bulk of concealment in the area resulted from deciduous trees which would have only seasonal effect. The Board agrees that the proposed structure would constitute a visual nuisance as an imposed background to certain residential locations during much of the year.

With regard to the remaining requirements of the Telecommunications Act of 1996, the Board finds that the Town does not unreasonably discriminate among providers of functionally equivalent services in that it has approved petitions from at least six providers and that the Town does not prohibit or have the effect of prohibiting personal wireless services in that it has approved many facilities for PCS providers.

The Board recognizes the importance of flexibility in interpretation of the requirements of the Wireless Telecommunication Bylaw and emphasizes that relief, where necessary, should be in substantial agreement with the intent of the Bylaw. The Board feels that this special permit application, along with the accompanying application for use variance and the third application for a variance, constitutes an overall request for an extreme departure of the underlying intent of the Bylaw that wireless facilities be combined in preselected locations and be established so as to have minimal impact on adjoining properties and the Town as a whole.

MOTION #2: (CASE 01-18)

“To grant Nextel Communications of the Mid Atlantic, Inc., applicant, Hudson Road Trust No. 1, owner of property, a Use Variance from the provisions of Section 4351 of the zoning Bylaws, to allow a monopole facility on a parcel not within the Wireless Services Overlay District, property located at 36 Hudson Road, Business District #7 and Residential Zone A-1.”

VOTED: In favor: 0 Opposed: 5 (unanimous) PETITION DENIED

REASONS:

The Board found that the application did not meet all of the conditions prescribed for a use variance by the local Bylaw and the Zoning Enabling Act, Chapter 40A.

The applicant's proposal hinges on the claim of inability to supply adequate wireless telecommunication services without relief from local zoning due to the perceived presence of a

coverage gap in the center of the Town. The Board received testimony from the public to the effect that the perceived coverage gap alluded to by the applicant was not apparent during actual use of the Nextel network in the geographical locations specified. As a result, the Board conducted informal testing of the perceived coverage and found no instance or location within its jurisdiction where normal cellular service on the Nextel network did not already exist. The Board recognizes that under different circumstances the coverage may in fact be less than desired by the applicant but is not persuaded that the degree of coverage desired is a necessity to serve the public good and the requirements of the federal telecommunications act.

The applicant states that relief from local zoning is required to enable use of the rear portion of the property which is zoned for residential use. The Board observes that this land has already been the subject of zoning relief to enable extended commercial use and that the right of reasonable use has been protected.

The applicant states that no alternative to the proposed structure exists. The Board requested a variety of wireless telecommunication coverage data describing the effect of utilizing the provision of the zoning bylaw which permits certain antennae structures in all commercial districts, focusing particularly on the property in question as well as an adjacent business district. Using the applicant's own data, the Board concludes that these locations offer substantial added coverage to an area which is already greatly served, all with little or no zoning relief. The Board concludes that the requested structure would therefore be an unnecessary deviation from local ordinance.

During the public hearing, a nearby property owner testified that the presence of the structure would constitute a visual nuisance. The Board reviewed the proposed height and location during a simulated crane test and observed that the bulk of concealment in the area resulted from deciduous trees which would have only seasonal effect. The Board agrees that the proposed structure would constitute a visual nuisance as an imposed background to certain residential locations during much of the year.

With regard to the remaining requirements of the Telecommunications Act of 1996, the Board finds that the Town does not unreasonably discriminate among providers of functionally equivalent services in that it has approved petitions from at least six providers and that the Town does not prohibit or have the effect of prohibiting personal wireless services in that it has approved many facilities for PCS providers.

The Board finds that the applicant's assertions that the setback provisions of the Bylaw are intended to address potential health hazard, and are therefore in conflict with the Telecommunications Act of 1996 are not born out by the text of the Bylaw.

The Board recognizes the importance of flexibility in interpretation of the requirements of the wireless telecommunication Bylaw and emphasizes that relief, where necessary, should be in substantial agreement with the intent of the Bylaw. The Board feels that this use variance application, along with the accompanying application for special permit and the third application for a variance, constitutes an overall request for an extreme departure of the underlying intent of the Bylaw that wireless facilities be combined in preselected locations and be established so as to have minimal impact on adjoining properties and the Town as a whole.

MOTION #3: (CASE 01-19)

“To grant Nextel Communications of the Mid Atlantic, Inc., applicant, Hudson Road Trust No. 1, owner of property, a Variance from the provisions of Section 4353 of the Zoning Bylaws, for a setback deficiency of 55 feet \pm from the westerly property line, 48 feet \pm from the easterly property line and 41 feet \pm from the northerly property line, and a Variance from Section 4363 to locate a radiating component of the facility within 500 feet of a residential lot line, and to the extent necessary, to locate the facility within 1000 feet of a school building, property located at 36 Hudson Road, Business District #7 and Residential Zone A-1.”

VOTED: In favor: 0 Opposed: 5 (unanimous) PETITION DENIED

REASONS:

The Board found that the application did not meet all of the conditions prescribed for a variance by the local Bylaw.

The Board finds that the proposed use would nullify and substantially derogate from the intent and purpose of the Bylaw in that the main thrust of the Bylaw is to control the location, size and setback of wireless communication structures. The application is at odds with the basic requirements of the Bylaw to maintain a 500-foot setback between wireless communications facilities and residentially zoned property and also the requirement to maintain a 1000-foot setback to a school building, per the words of the application.

The Board further finds that the applicant's implication that the setback provisions of the Bylaw are intended to address potential health hazard, and are therefore in conflict with the Telecommunications Act of 1996 are not born out by the text of the Bylaw.

The applicant's proposal hinges on the claim of inability to supply adequate wireless telecommunication services without relief from local zoning due to the perceived presence of a coverage gap in the center of the Town. The Board received testimony from the public to the

effect that the perceived coverage gap alluded to by the applicant was not apparent during actual use of the Nextel network in the geographical locations specified. As a result, the Board conducted informal testing of the perceived coverage and found no instance or location within its jurisdiction where normal cellular service on the Nextel network did not already exist. The

Board recognizes that under different circumstances the coverage may in fact be less than desired by the applicant but is not persuaded that the degree of coverage desired is a necessity to serve the public good and the requirements of the federal telecommunications act.

The applicant states that relief from local zoning is required to enable use of the rear portion of the property which is zoned for residential use. The Board observes that this land has already been the subject of zoning relief to enable extended commercial use and that the right of reasonable use has been protected.

The applicant states that no alternative to the proposed structure exists. The Board requested a variety of wireless telecommunication coverage data describing the effect of utilizing the provision of the zoning bylaw which permits certain antennae structures in all commercial districts, focusing particularly on the property in question as well as an adjacent business district. Using the applicant's own data, the Board concludes that these locations offer substantial added coverage to an area which is already greatly served, all with little or no zoning relief. The Board concludes that the requested structure would therefore be an unnecessary deviation from local ordinance.

During the public hearing, a nearby property owner testified that the presence of the structure would constitute a visual nuisance. The Board reviewed the proposed height and location during a simulated crane test and observed that the bulk of concealment in the area resulted from deciduous trees which would have only seasonal effect. The Board agrees that the proposed structure would constitute a visual nuisance as an imposed background to certain residential locations during much of the year.

With regard to the remaining requirements of the Telecommunications Act of 1996, the Board finds that the Town does not unreasonably discriminate among providers of functionally equivalent services in that it has approved petitions from at least six providers and that the Town does not prohibit or have the effect of prohibiting personal wireless services in that it has approved many facilities for PCS providers.

The Board recognizes the importance of flexibility in interpretation of the requirements of the wireless telecommunication Bylaw and emphasizes that relief, where necessary, should be in substantial agreement with the intent of the Bylaw. The Board feels that this variance application, along with the accompanying application for special permit and the third application for a use variance constitute an overall request for an extreme departure of the underlying intent

of the Bylaw that wireless facilities be combined in preselected locations and be established so as to have minimal impact on adjoining properties and the Town as a whole.

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