BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

In the matter of the Application by
Nextel Communications of the Mid-Atlantic, Inc.
for a Variance

No. 16770

STATEMENT OF JUSTIFICATION

IN SUPPORT OF THE APPLICATION FOR A VARIANCE
TO PERMIT NEXTEL COMMUNICATIONS OF THE MID-ATLANTIC, INC.
TO INSTALL A ROOF-MOUNTED EQUIPMENT SHELTER AS PART OF A
WIRELESS TELECOMMUNICATIONS BASE STATION

In accordance with the requirements of the District of Columbia Municipal Regulations (DCMR, Title 11, Zoning) (hereinafter the "Zoning Regulations"), Nextel Communications of the Mid-Atlantic, Inc. hereby submits the following written statement of justification in support of the requested variance to allow expansion of an existing lawful nonconforming structure.

APPLICANT

Nextel Communications of the Mid-Atlantic, Inc. (sometimes referred to herein as "Nextel" or the "Applicant"), operates a wireless telecommunications system that is based on Enhanced Specialized Mobile Radio (ESMR) technology. ESMR systems are based on grid hexagons, or cells that cover specific geographic areas. The system employs a cellular telephone-like frequency reuse pattern by dividing the service area into multiple sites.

Each ESMR cell site contains a low-power transmitter, receiver and digital signaling equipment. A base station at each cell site connects by fiber optic cable or telephone line to a computer-controlled switching center. The switching center controls the automatic hand-off of calls from site to site as the subscriber travels across the service area. The switching center also connects mobile calls to the public switched telephone system in the case of telephone calls, or directly to another subscriber in the same service area, in the case of private network calls.

Each site uses an Enhanced Specialized Mobile Radio to provide two-way voice and data communications including mobile telephone service, dispatch service and paging service. All radios and switching equipment required for the operation of the base station described herein is contained within a prefabricated shelter designed to secure and protect the equipment. Nextel has

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leased space upon the roof of the subject property for the location of its equipment shelter and its wireless antenna. Although Applicant's antennas comply with the provisions of Section 201.5, DCMR, and, therefore, are permitted by right, a variance is required to accommodate Applicant's equipment shelter on the building's roof.

EXISTING USE

The subject property is the Capital Park Towers Apartment Building located in the District of Columbia at 301 G Street, S.W. The building includes 289 apartment units and its continued use as an apartment house will not be affected by this application.

INTENDED USE AND NATURE OF REQUEST

The Applicant requests a Variance to permit the location of an equipment shelter on the roof of the Capital Park Towers Apartment Building. The equipment shelter is a necessary component of a wireless base station that Nextel proposes to install on that building's roof. The base station will consist of the following:

(i) A total of twelve (12) panel antennas
(ii) One (1) rooftop antenna support structure referred to as a sled mount
(iii) An equipment shelter

Nextel proposes to install a prefabricated equipment shelter measuring 20 feet in length, 12 feet in width and 10 feet, 6 inches in height on the roof of the subject property. It will install two antenna arrays flush on the exterior walls of the equipment shelter building, one on the north-facing wall, and one on the south-facing wall. A third antenna array will be installed on a sled mount to be positioned near the west-facing perimeter of the building's roof deck. Each of the three antenna arrays will support four directional panel antennas. Nextel has secured a lease from the property owner to permit this use.

Each antenna panel measures 48 inches tall, 12 inches wide and 7 inches deep. As depicted on the enclosed roof plan, all antenna installations will meet the required 1:1 roof setback. The addition of the proposed equipment shelter will not exceed the permitted FAR. The location proposed for the shelter is one that the Applicant believes offers the best opportunity for a design that will harmonize with the main structure. It will be constructed in a material and color so as to make it appear as an integral part of the existing structure. There will be coaxial cable that will run from the equipment shelter to the antennas on the sled mount. The cable run will be enclosed within conduit laid along the surface of the roof. This cable run is depicted as the "cable bridge" on the roof plan.

The main roof of the subject building is 86 feet, 6 inches high. The building was constructed under the city's urban renewal plan, which permitted construction at that height. Subsequently rezoned to R-5-C, which limits the height of new structures to just 60 feet, the building became a legal nonconforming structure devoted to a conforming use. Under the restrictions set forth in Section 2001.1 of the Zoning Regulations, the placement of Nextel's equipment structure on the building's roof would be deemed an extension or enlargement of an

existing nonconforming aspect of the structure, *i.e.,* its height. Accordingly, Nextel seeks a variance from the strict application of Section 400.1 of the Zoning Regulations and its limitation of 60 feet on the height of structures in the R-5-C district. None of the antennas described herein will exceed a mounted height of twelve feet above the roof deck.

This particular location was selected in order to allow this base station to efficiently handle signal hand-offs from Applicant's neighboring antenna sites at the Navy Yard located at 700 7th Street, S.W. and at Eastern Market, located at 1229 G. Street, S.W. The proposed base station is needed for off-loading capacity at these two sites and for improving mobile coverage along a portion of South Capital Street.

Copies of specification sheets for the equipment and the antennas as well as architectural diagrams depicting the mounting sled, antennas and equipment shelter are provided here and made a part of this application.

JUSTIFICATION FOR VARIANCE

Assuring reliable, consistent access to wireless telecommunications, free of dead zones and dropped calls, is the goal of Nextel's network design. The proposed base station will greatly improve the Applicant's coverage in the city's southwest quadrant where the current high level of call traffic often hinders network access. Other base stations in or near this area of the city are overloaded at times and unable to accept all call traffic directed to them.

For many, wireless telecommunication has evolved beyond mere convenience to become a necessary tool of modern commerce and a highly desired personal safety link. The proposed base station will improve the quality of wireless service and benefit all who have made mobile communication a part of their modern everyday life.

Building rooftops and other tall existing structures are preferred base station locations by both the wireless communications industry and local governments who struggle to accommodate the need for antenna sites while remaining sensitive to the need to minimize the visual intrusion that sometimes accompanies the placement of these facilities. In this case, the site selected by Nextel is particularly well suited to the proposed use. At 86 feet, the roof of the subject building is higher than that of many surrounding properties and certainly higher than any new structure that would be erected in the R-5-C district. Due to its height, facilities such as antennas and related equipment structures that might be located on the roof and back from the roof's edge are not readily visible from the ground. Because the existing penthouse and other existing roof structures are of greater height than the 10-½ foot equipment shelter proposed by Nextel, the shelter will not be a prominent or solitary feature on the building's roof.

D.C. Code Section 5-424 (g)(3)(1988) empowers the BZA to grant a variance from the "strict application" of the zoning laws on a showing that "by reason of exceptional narrowness, shallowness, or shape . . . or other extraordinary and exceptional situation or condition of a specific piece of property, the strict application of any [zoning] regulation . . . would result in peculiar or exceptional practical difficulties to or exceptional or undue hardship upon the owner of the property," provided that the variance can be granted "without substantial detriment to the

public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the zoning regulations and map . . . ." In this case, the R-5-C district's 60-foot height limit works a unique and undue hardship on the property owner and the Applicant while failing to achieve a concomitant benefit to the general welfare.

It is widely acknowledged that access to reliable wireless telecommunications service is in the public interest. Because each cell site in a carrier's network must be strategically placed if it is to function efficiently with its neighboring or "hand-off" cells, each location is carefully selected to cover just enough, but not too much, area. That is why certain locations "work" as potential cell sites and others do not. When searching for a site on which to locate a base station, service providers do not have unlimited flexibility.

In this case, Nextel has located a property in just right location to serve as a platform for a base station needed to fill a gap in its coverage. As it happens, a variance is needed to make the rooftop of this property usable for Nextel's purposes. When a wireless provider has inadequate facilities and requires a variance to make a specific property available in order to improve its service, the BZA may consider the needs of the Applicant and the fact that the property occupies a unique space suited to serving the Applicant's needs, as coming within the ambit of "other extraordinary and exceptional situation or condition of a particular piece of property."

Further, a hardship derives from the fact that the strict application of the R-5-C district's structure height limit will deprive the property owner of a beneficial use of its property due solely to a cause beyond its control, specifically the post construction re-zoning of its property by the local government. The resulting reduction in permitted structure height from that permitted when the property was developed to what is currently allowed for new construction in the R-5-C district deprives the building owner of an economic opportunity now enjoyed by many property owners but certainly not contemplated when the property was re-zoned. What was once a relatively worthless asset, a building's rooftop, has become highly marketable to wireless service providers in need of a "platform" on which to place a link in their network. Here, it is the very nature of the property's nonconforming aspect – its height – that makes it a desirable location for Nextel's base station. Nextel has determined that there are no alternative existing structures in the vicinity that will allow it to meet its coverage objective as well as will this property. Absent the re-zoning which made its building nonconforming as to height, the owners of Capital Park Towers could have allowed Nextel to place its equipment shelter on its roof with only an administrative review and a building permit.

The relief requested here may be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Indeed, the requested variance will make it possible to use an existing structure to locate a necessary link in Nextel's wireless network in the least visually obtrusive manner. Moreover, few would argue, in these times, that improved quality and access to wireless communications is not in the public interest.

The proposed installation will add neither height nor mass to the existing structure. The 240 square foot equipment shelter, at just 10-½ feet in height, will be smaller and lower than the building's mechanical equipment penthouse and even its two stairwell penthouses. Thus the

profile of the building will not be altered. It is important to recognize that the requested variance will not allow a higher roof on the building; it will only make it possible to place a modestly sized structure on the existing roof deck. Nextel's equipment shelter will blend in with the existing structures on the roof – its roofline will actually be lower than those of the building's penthouses – and it will appear as an integral part of the building. It will not have an adverse impact on light and air available to neighboring properties, nor will it interfere with views from such properties. Its visual impact, if any, on neighboring properties and on the area in general, will be minimal.

NEIGHBORHOOD DESCRIPTION

The properties bordering the Capital Park Towers are a mix of apartments and row-houses, with some retail uses. Some buildings in the vicinity host antenna installations similar to that proposed by Nextel. Therefore, a wireless base station on the roof of the subject property will not be out of character with the community.

CONCLUSION

Nextel Communications of the Mid-Atlantic, Inc. seeks a height variance to allow for the installation of an equipment shelter on the roof of a legal nonconforming structure in the R-5-C district as described herein. This variance will be in harmony with the general purpose and intent of the Zoning Regulations and will not tend to adversely affect the use of neighboring property or the integrity of the zone plan. It will correct an undue hardship to the property owner who is otherwise foreclosed from a beneficial use of its building's rooftop which Applicant doubts was intended when the property was re-zoned and restricted by the lower height limit now applicable to the building. Therefore, the Applicant respectfully requests the granting of this variance.

Respectfully submitted,

Nextel Communications of the Mid-Atlantic, Inc.

By: _____
Terence S. Cooke
Cole, Raywid & Braverman, LLP

Date: 07-09-01