



Board of Adjustment Staff Report

Meeting Date: August 3, 2017

Subject: Appeal of Administrative Decision for Building Permit Number WBLD17-101171

Appellant: Richard Stone

Agenda Item Number: 9A

Project Summary: Appeal of the administrative decision by the Director of the Planning and Building Division to reject a building permit for Richard Stone

Recommendation: Denial

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Description

Appeal Case Number WBLD17-101171 (Richard Stone) – For possible action, hearing, and discussion on an appeal of the Planning and Building Division Director's decision to deny a building permit application for a retractable private communication antenna taller than 45-feet tall. The antenna was proposed to be retractable, and was less than 45 feet tall in its retracted mode, but the antenna could be raised up to 72-feet tall when fully extended.

- **Owner/Appellant:** Richard Stone
- **Location:** 4765 Giles Way
- **Assessor's Parcel Number:** 050-530-30
- **Parcel Size:** ±1.55 acres
- **Master Plan Category:** Suburban Residential (SR)
- **Regulatory Zone:** Low Density Suburban (LDS)
- **Area Plan:** South Valleys
- **Citizen Advisory Board:** South Truckee Meadows/Washoe Valley
- **Development Code:** Authorized in Article 912, Establishment of Commissions, Boards and Hearing Examiners

- **Commission District:** 2 – Commissioner (Lucey)
- **Section/Township/Range:** Section 31, T17N, R20E, MDM, Washoe County, NV

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Appeal Application/Letter dated May 18, 2017 and appeal materialsExhibit A

Background

On May 2, 2017, Mr. Richard Stone submitted plans to the Washoe County Building and Safety Division (the Division merged into the current Planning and Building Division on July 1, 2017) for a retractable private communication antenna on a 1.55 acre residential property at 4765 Giles Way. The plans were denied by the Planning and Development Division staff because the antenna/tower, when extended to its full height of 72-feet, exceeds the maximum allowable height of 45 feet for a private communication antenna. The code allows private antennas to exceed 45 feet with the approval of an administrative permit.

Washoe County Code (WCC) Section 110.3234.20 limits the height for private communication facilities. The height limitation for main structures in the Low Density Suburban (LDS) regulatory zone district is 35 feet and the 10 foot bonus is allowed for private antennas. Therefore, the allowable height for a private communication antenna on Mr. Stone's property is 45 feet. WCC Section 110.324.30 allows additional height with the granting of an administrative permit. Staff interprets this section of code to read that any time a private communication antenna exceeds 45 feet tall in the LDS regulatory zone, the owner or applicant is required to obtain approval of an administrative permit prior to the issuance of a building permit, regardless of whether the antenna is retractable or not.

Mr. Stone also contends that federal and state law requires the county to allow his tower in this case. In state law, NRS 278.02085 imposes limitations on the ability to regulate amateur radio communications towers. In essence, it says, the county cannot "preclude" amateur service communications, and that the county's regulations must comply with 47 C.F.R. 97.156 and a 1985 FCC interpretation (FCC 85-506, PRB-1). A pdf copy of the FCC ruling can be found at the following address: <http://www.arrl.org/files/file/prb-1.pdf>. The National Association for Amateur Radio webpage includes a summary which says that its interpretation of the FCC's memo is that local authorities may still "zone for height, safety, and aesthetics concerns." The association's webpage can be found at: <http://www.arrl.org/prb-1>.

As to regulations of a station antenna structure that are based on health, safety or aesthetic considerations, they must "reasonably accommodate amateur service communications" and "constitute the minimum level of regulation practicable to carry out the legitimate purpose of the governing body." However, the FCC ruling in question specifically avoids imposing a black-and-white rule about antenna height, leaving that to the discretion of the local authorities. But the FCC did point out that height restrictions do directly affect amateur communications and indicated that any height restrictions must be based on a legitimate government interest.

Section 110.324.20 Private Communication Antennas: General. Private communication antennas, including antenna support structures, are allowed as accessory uses in all regulatory zones pursuant to the provisions of this article.

(a) **Height.** The retractable height of a private communication antenna is limited to the height limitation of a main structure allowed in the regulatory zone in which the antenna is erected with a bonus of up to ten (10) feet.

Section 110.324.30 Private Communication Antennas: Additional Height. A private communication antenna support structure may exceed the height restrictions within this article if an administrative permit is obtained pursuant to Article 808, Administrative Permits, and in accordance with the provisions of this section.

The appellant, Richard Stone, has filed an appeal of staff's decision. Mr. Stone contends that the code allows private communication antennas to be taller than 45 feet tall when the antenna

retracts to a height below 45 feet tall. Mr. Stone also contends that the code has not been interpreted consistently and that other retractable towers have been permitted taller than 45 feet tall. It is Mr. Stone's position that an administrative permit should not be required because Washoe County has changed its interpretation of code and has allowed for retractable towers to extend beyond 45 feet tall when they retract below 45 feet in height. It is possible that Washoe County may have approved retractable antennas that extend beyond 45 feet tall without an administrative permit in the past; however, staff was unable to find any such recent permits. The complete appeal is attached as Exhibit A to this staff report.

Pursuant to WCC Section 110.912.10(j)(iv), the Board of Adjustment hears any appeal of a decision of the Director of the Planning and Building Division made in the course of administration of any zoning regulation or any regulation relating to the location or soundness of structures if the decision cannot be appealed to an administrative hearing officer. The appellant is exercising his right to appeal the decision of the Director to deny his building permit based on the administration of a zoning regulation.

Recommendation

After a thorough analysis and review, the Appeal for Building Permit Number WBLD17-101171 is being recommended for denial. Staff offers the following motion for the Board's consideration.

Motion

I move that, after giving reasoned consideration to the information contained in the staff report and information received during the public hearing, the Washoe County Board of Adjustment deny Appeal of Building Permit Number WBLD17-101171 for Richard Stone and affirm the decision by the Director of the Planning and Building Division to reject a building permit for a private retractable antenna taller than 45 feet tall at 4765 Giles Way.

Appeal Process

Board of Adjustment action will be effective 10 calendar days after the written decision is filed with the Secretary to the Board of Adjustment and mailed to the original applicant, unless the action is appealed to the Washoe County Board of County Commissioners, in which case the outcome of the appeal shall be determined by the Washoe County Board of County Commissioners. Any appeal must be filed in writing with the Planning and Building Division within 10 calendar days after the written decision is filed with the Secretary to the Board of Adjustment and mailed to the original applicant.

Appellant: Richard Stone
 4765 Giles Way
 Washoe Valley, NV 89704