



Board of Adjustment Staff Report

Meeting Date: October 5, 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

Prepared by: Trevor Lloyd, Senior Planner
Washoe County Community Services Department
Planning and Building Division

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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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Exhibits Contents

Appeal Application/Letter dated May 18, 2017 and appeal materialsExhibit A
Continuance Request Letter.....Exhibit B

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

Washoe County Appeal of Decision to Board of Adjustment

Your entire application is a public record. If you have a concern about releasing personal information please contact Planning and Development staff at 775.328.3600.

Appeal of Decision by (Check one)	
<p>Note: Appeals to the Washoe County Board of Adjustment are governed by WCC Section 110.910.15(i) and WCC Section 110.912.10(j).</p>	
<input type="checkbox"/> Administrative Hearing Officer	<input type="checkbox"/> County Building Official
<input checked="" type="checkbox"/> Director, Planning and Development Division	<p style="text-align: center;">Fire Code Official</p> <input type="checkbox"/> North Lake Tahoe Fire Protection District <input type="checkbox"/> Truckee Meadows Fire Protection District
Appeal Date Information	
<p>Note: This appeal must be delivered in writing to the offices of the Planning and Development Division or the Washoe County Building Official within 10 (ten) calendar days from the date that the decision being appealed is communicated in writing to the appellant.</p>	
<p>Note: The appeal must be accompanied by the appropriate appeal fee (see attached Master Fee Schedule).</p>	
Date of this appeal: <u>18 MAY 2017</u>	
Date of action by County: <u>Building permit is on "hold"</u>	
Date of decision for which appeal is being filed: _____	
Project Location: <u>4765 GILES WAY WASHOE VALLEY NV</u>	
Appellant Information	
Name: <u>RICHARD STONE</u>	Phone: <u>(775) 849-7935</u>
Address: <u>4765 GILES WAY</u>	Fax: _____
	Email: <u>KD6BR@ATT.net</u>
City: <u>Washoe Valley</u> State: <u>NV</u> Zip: <u>89704</u>	Cell: _____
Specific action by the County being appealed: <u>New interpretation of Working in 110.324.20(A) making the maximum height of all antenna structures 45 feet. Planning Department holding up permit pending outcome of BOA decision</u>	
Describe why the decision should or should not have been made: <u>This is a change in interpretation of code that in the past allowed for retractable towers to extend beyond 45 feet as long as they could retract to less than 45' when not in use. The code has not changed only the interpretation by staff</u>	

Cite the specific outcome you are requesting with this appeal: Granting of Permit to proceed with installation of Private Communication Antenna Structure As proposed in Building Permit Application WBLD17-101171

Describe your basis as an aggrieved party. The basis must include the nature and location of your property interest and the manner in which the property interest will be affected by the appealed decision.
owner of property @ 4765 Giles Way current decision prevents effective use of amateur Radio Station for which I have a federal license to build & operate


Did you speak at the public hearing when this item was considered?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <u>NA</u>
Did you submit written comments prior to the action on the item being appealed?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <u>NA</u>

Appellant Affidavit

STATE OF NEVADA)
)
 COUNTY OF WASHOE)

I, RICHARD STONE being duly sworn, depose, and say that I am an appellant
 (print name)

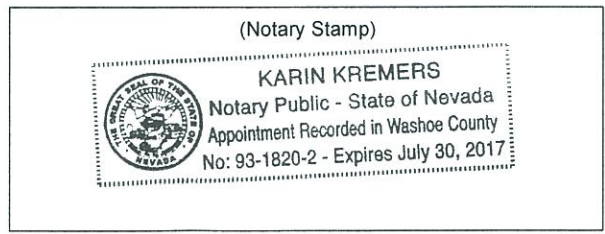
seeking the relief specified in this petition and that the foregoing statements and answers herein contained and the information herewith submitted are in all respects complete, true and correct to the best of my knowledge and belief. I understand that no assurance or guarantee can be given by staff of the Planning and Development Division.

Signed 
 Address 4765 Giles Way
Washoe Valley, NV 89729
 Phone: (775) 849-1735

Subscribed and sworn to before me this
18 day of May, 2018.

Karin Kremers
 Notary Public in and for said county and state

My commission expires: 7-30-17



Division Director, Planning and Development

Thank you, Mojra, for sending some time Thursday to meet with me. I know you are busy and didn't have a lot of time available Unfortunately in the time available we we didn't have a chance to get much beyond "my opinion is this and our opinion is that". Most of the options forward presented were either very expensive or time consuming or both. I would still like to try and resolve this at our current level and move forward if possible. I'll try to explain my perspective and maybe we can find some common ground to negotiate a solution.

Your comment about a six story structure makes me think I should explain the beauty of a retractable antenna tower. The antenna only has to be up when in use and can be retracted down when not in use. It would only need to be operated at the maximum height when needed and could be operated at a lower height when conditions (signal propagation) allows. This means that the antenna would only occasionally need to be operated at the fully extended height. Lowering the antenna when not in use is a win/win for both the amateur radio station and the County.

To help the planning department understand why 45 feet is not enough I left a paper with Trevor giving the basic technical reasons certain antenna heights are necessary. Federal and Nevada State law requires local jurisdictions to make accommodation for amateur antennas and use the minimum necessary regulation possible. I believe that the wording of 110.324.20 (a) was expressly written that way to encourage a retractable antenna as a solution for this. It is my intention to only have the antenna extended when in use and extended to the maximum height only when necessary.

I would also mention that there are Utility poles all over the valley that are also the same height or more than my maximum tower height Most people don't complain about them. In fact after a while they don't even see them anymore.

You mentioned the need to protect neighborhoods and neighbors rights. I'm not a contractor who is building a structure and then collecting my money and leaving. I live here in Washoe valley, I'm part of the neighborhood and my rights need protection as well. Rural areas commonly can have cattle, horses, chickens, Parked RV's, trailers, boats, antennas, junk vehicles and unkept yards. We have all of these things in my neighborhood. People who object to living around these things have the option of living in a place where there are CC&R's and HOA's that protect them from such things.

My long held dream for retirement included building and operating a decent amateur radio station so when looking for my retirement home I specifically choose to live in an unincorporated rural area. I rejected several nice homes because of local HOA's and CC&R's preventing outdoor antennas. I did due diligence in looking up county building codes and talking to other local amateur radio operators about antennas in this area. One of whom had just been through the process, with Washoe county, of obtaining the necessary the permits and putting up an antenna of the same type as I'm planning.

Last May I went to the county planning and development office and talked with engineers and planners to find out what I needed to submit for a private communications antenna permit. We went through the codes together talked about the design requirements, the need for engineering calculations being stamped by a Nevada certified engineer, site plans, easments set backs and antenna heights. I was told at the time that a retractable tower that extended beyond 45 feet would meet the code as long as it could be retracted below that when not in use. I submitted my permit application according to everything I was told and expected the permit to sail right through the process. I was shocked when Trevor called to say there was an issue with my permit application. I was very surprised to find that it wasn't a simple misunderstanding. I found that the code has not been changed only the way it is being interpreted.

Since this is a serious impact on my retirement I'm willing to go the extra mile to try and resolve this. I would be happy to come down again to the county offices and discuss with the planning department the counties concerns and see if we can find a reasonable compromise to resolve this before escalating it up to higher levels. In the mean time I respectfully request that you allow me to proceed with the foundation for a tower while we resolve the final height question.

Please let me know your decision as soon as you can.

Thank You

Richard Stone

The Washoe County Board of Adjustment

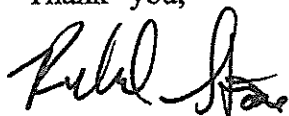
In re: Appeal of Administrative Decision for Building Permit Number WBLD17-101171

To the Board:

Under Section 110.808.40, a public hearing on my appeal must be held at the next available meeting of the Board of Adjustment, but shall not exceed 50 days.

I waive my right to the presently scheduled appeal hearing, set for August 3, 2017, and, under Article 4, Section 4.01, request that the hearing on this matter be continued to the next regularly scheduled hearing, which I believe will be October 5.

Thank you,

A handwritten signature in black ink, appearing to read "Richard Stone". The signature is written in a cursive style with a large initial "R".

Richard Stone