

Minutes of the Hearing Officer meeting held on Wednesday, October 9, 2019 at 12:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Mr. Finlinson, Hearing Officer  
Jared Hall, Community & Economic Development Supervisor  
Susan Nixon, Associate Planner  
Briant Farnsworth, Deputy City Attorney  
Applicant

Mr. Finlinson opened the meeting and welcomed those present. He reviewed the public meeting rules and procedures.

### CONFLICT OF INTEREST

Mr. Finlinson stated that he has no conflicts of interest for this agenda.

### CASE #1566 – APPELATE HOMEOWNERS ASSOCIATION- APPEAL OF ADMINISTRATIVE DECISION REGARDING REQUIREMENT FOR A VARIANCE APPLICATION – 770 West Applegate Drive – Project #19-129

Loyal Hulme and Ryan Wallace were present to represent the application. Jared Hall reviewed the request for an appeal of a determination made by the Murray City Planning Division for the Applegate Homeowners Association's (HOA) request to relocate an existing cellular monopole on their property to another specific location on their property. The original request, if not denied, would have required not only a Hearing Officer approval for the Expansion of a Nonconforming Use, but a variance as well. Mr. Hall explained that there is an existing cell tower on the Applegate property at 770 West Applegate Drive, that is in the way of potential redevelopment of this property. The area that the HOA has chosen to relocate the cell tower to is closer than 165' to the nearest residential structure, which does not comply with Land Use Code 17.80.120(B)(3) that requires that any cellular monopole be located no closer than 165' feet to a residential structure. At the time the cellular monopole was constructed the property was zoned R-1-8 and it was an allowed use. Now the property is zoned as R-M-15 and monopoles are prohibited. The Applegate HOA's request would require an Expansion of a Nonconforming Use to allow the monopole to be moved anywhere on the property as long as it does not conflict with any other zoning ordinances. The issue of a variance arises because the location they choose is not in compliance with Land Use Code 17.80.120(B)(3), which puts the monopole closer than 165' feet to a residential structure. The appellants in the case made a few arguments which we responded to and are included in Staff's report and are part of the written record. In short, Staff's determination was that they would need to get approval for an Expansion of a Nonconforming Use because the pole is now nonconforming, having been previously approved and no longer allowed and we would allow expansion but only up to what is allowed by the zoning code. From that determination the applicants contested our decision and appealed our determination. Based on review and analysis of the record presented, staff recommends denial of the appeal.

Loyal Hulme, representing the Applegate HOA, stated that the original monopole was built on the corner of 5300 South and Murray Blvd. in about 2000. Then, in 2001 a new monopole was relocated a short distance to the east of the current monopole. In summary we had an original pole that was functioning, a new pole that was created to the east, both of which are nonconforming under the current code. What is being asked is to move the monopole back to a prior existing pole that was already in place which, has no impact on neighbors or anyone else, and will be used for the exact same purpose. It would simply be moving from one pole back to another and won't be noticeable. One benefit for the neighbors is that once the monopole can be moved, the pole it is currently located on will be eradicated. Mr. Hulme stated he believes that Murray City standard 17.52.40(B) is a more applicable ordinance and should be applied to this situation because it would allow the movement of a nonconforming use to another area of the same lot, while continuing the nonconforming status. It is believed that that request meets both requirements which stated it has to be moved to the same lot and moving the monopole will be in harmony with one or more of the purposes of the title because there will be no impact, visibility or change in structure. It is believed that the proposed change does not place any unreasonable burden upon the lands located in the vicinity. The alternate suggested ordinance should apply instead, and approval be granted. Mr. Finlinson asked Mr. Hulme if he believes the change in zoning has any impact the argument. Mr. Hulme replied no, because the statute and definition of monopole that existed both pre and post change, both poles were approved under a Conditional Use Permit by the City. When the zoning change went into place, both poles became nonconforming and they functioned the same. He stated the poles have the same equipment on both, and it is a matter of just flipping the switch.

Mr. Hall addressed the rebuttal by Mr. Hulme and stated that he appreciated all the information and explained that he believes the issue is all about nonconforming status because, the current site enjoys nonconforming status and the previous site does not. Even in nonconforming uses the standard of review should not amount to substitute regulations or zoning ordinances. It is simply a standard of review to say if it meets these two standards then it is allowed to relocate or expand. The nonconforming standard does not grant an allowance to further violate a rule. Both poles are not allowed to be located in either place under current zoning. The monopole in use as a cell tower enjoys nonconforming status and is given a standard that saves it from extinction, it does not grant it the right to move it to another nonconforming location or approval for a change that further violates the ordinance.

Mr. Finlinson thanked Mr. Hall and Mr. Hulme for their input and stated he would take it under advisement.

CASE #1567 – APPLGATE HOMEOWNERS ASSOCIATION – Expansion of Nonconforming Use of Cell Tower – 770 West Applegate Drive – Project #19-131 and CASE #1568 – APPLGATE HOMEOWNERS ASSOCIATION – Variance from the requirement of a 165-foot setback of cell tower from a residential structure – 770 West Applegate Drive – Project #19-132

Loyal Hulme and Ryan Wallace were present to represent this application. Jared Hall reviewed the location and dual requests for the Expansion of a Nonconforming Use to allow the relocation of a cellular monopole from its present location on their property to its former location, and the request for a variance in connection to the relocation of a cellular monopole from its present location on their property to its former location, also on their property addressed 770 West Applegate Drive. The property is in the R-M-15 zone but was recently changed from R-1-8 which created the nonconformity of the monopoles. Mr. Hall stated that Staff agrees with the applicant's written narrative for the two tests of hardship that identifies several ways in which the request is in harmony with purposes of this title such as; encouraging and facilitating orderly growth, fostering additional residential development, contributing to the availability of a variety of housing options, supporting potential re-investment into existing housing stock, improving and stabilizing established residential areas. Staff also agrees that the proposed change does not impose any unreasonable burden upon the lands located in the vicinity of the nonconforming use or structure since the site was previously used as a cell tower. Staff recommends approval of the Expansion of Nonconforming Structure with conditions as listed in Staff the report.

Mr. Hall addressed the variance application and explained that the request meets the tests for 1,3,4 and 5 but does not meet the test for 2. This test would give an allowance if there are special circumstances attached to the property that does not generally apply to other properties in the district. Staff finds that the property was previously zoned R-1-8 which allowed the monopoles to be installed with Conditional Use Permit approval. In 2018 the Applegate HOA petitioned successfully to rezone the property to R-M-15. The newly applied zone does not allow monopoles and therefore this application to relocate the monopole does not meet current ordinance standards. Mr. Hall explained that the applicant asserts that the R-1-8 Zone was inappropriate when it was applied to the Applegate Condominiums and that as a result that zoning should be considered to have caused the existing circumstance by allowing for the original relocation of the monopole. The issue Staff finds with this argument is that the variance needed is specific to the separation requirement from residential structures in 17.80.120(B)(3), which applies equally to those properties the applicant references as "zoned R-1-8" in this district. The requirement was introduced after the monopole was allowed and relocated, and it would be applied to any new applications for monopoles in the R-1-8 Zone. The special circumstance is not attached to the property, and it does generally apply to other properties in this district. Staff finds that there are not special circumstances attached to the property that do not generally apply to other properties in the district. Any other monopoles coming into this area would be required to meet this standard, there are other monopoles or structures becoming nonconforming to a standard and the subject monopole does not present a peculiar circumstance. Staff recommends denial of the

requested variance to allow the relocation of the existing monopole.

Mr. Finlinson clarified that Staff recommends approval for the expansion of the Nonconforming structure which would allow them to expand the pole and remain where it is or relocate it as long as it meets the 165 ft. setback. Mr. Hall stated that is correct, and if they move it, they would need to receive a variance and meet all the standards of the ordinance.

Mr. Hulme pointed out that Staff asserts the monopole could be physically relocated, but practically, it can't. Because of the way the ordinance reads and because it has not met the variance standard, it cannot be relocated. If the ruling for the variance is denied, then we can't build the development that is anticipated there. Mr. Finlinson asked if they believe the hardship that applies to the property is that there is not another place on the property to move the monopole that would meet the 165 ft. setback. Mr. Hulme replied yes, and that they have conducted five different studies which tried to relocate the monopole on the property and they are all problematic to the setbacks. Both poles are existing and legal nonconforming currently. The request is to move back to the existing nonconforming pole from an existing non nonconforming pole and these are all reasons why they believe the variance should be approved.

Ryan Wallace stated that the definition of a monopole is a pole holding an antenna. There are two such poles that currently exist on the property. Even though the use will be moved we will not move the structure and the ordinance does not state that the Use can't be moved, it says the structure can't be moved. He stated they would not need a variance from the ordinance that says a monopole can't exist closer than 165 ft. from any structure because that condition already exists. The City claims that when the monopole stops being used as a cellular relay tower than it ceased being a monopole, but the ordinance does not read that way or speak about the Use that is applied to it.

Mr. Hulme encouraged Mr. Finlinson to find that the existing ordinance under the appeal should overturn the decision of Staff that a variance is needed. If it is not overturned, then it should be noted that this application has met the five requirements of the variance code. It should be chosen to approve the application through either the appeal process or with the variance.

Mr. Finlinson opened the meeting for public comment.

Ronald Dunn, 5320 Majestic Village Circle, stated he has been impacted by the monopole since it has been moved from its previous location to its current location. Mr. Dunn states that the pole has not been maintained by the Applegate Leadership and they have never bothered to fix it. Additional concerns are the monopoles impact the neighbors, mismanagement of funds by the Applegate HOA, the pole is unsightly, and the neighbors were not properly informed when the monopole was moved the first time. Mr. Dunn stated that he wished the variances and appeal is denied.

Kristine Dunn, 5320 Majestic Village Circle, wondered why a 165 ft. separation is needed and that she assumed it is a safety thing. It is believed that by relocating the monopole near the proposed new residential development it would endanger the health of the new residents. Ms. Dunn's additional concerns were that the pole is unsightly. She stated that the decision of the Commission is to side with who ever has the most money, and the rules are not being followed.

Lisa Hoffman, 5207 Gravenstein Park, stated she represents the elected representatives of the Applegate HOA Board and they would like to express their unanimous support for the relocation of the Cell Tower. Relocating the cell tower is in the best interest of the community because it makes financial revenue and the proposed location is a better. The HOA is in support of moving the cell tower to the new location.

Mary Ann McFadden, 5329 Ben Davis, stated she believes that the variance to move the pole should be allowed.

The public comment portion was closed.

Mr. Finlinson stated he will forward his written decision to the Community Development Office at 4646 South 500 West, by noon on Wednesday, October 16, 2019.

There was no other business.

The meeting was adjourned at 1:26 p.m.

  
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Jared Hall, Community & Economic  
Development Supervisor