

Appeal of the Planning Commission's Approval of Use Permit 23-001/Sherer

April 4, 2023

Mono County Board of Supervisors

Procedures

- Mono County General Plan Land Use Element Chapter 47 requires an appeal be submitted within 10 days of the decision.
- Planning Commission decision: February 16, 2023
- Appeal received: February 27, 2023 – deemed timely (the deadline fell on a weekend, and so the next business day is accepted).
- Per §47.030, the hearing must be agendized within 60 days of the date the appeal was filed.
- April 11 Board meeting canceled, scheduling conflicts with April 18, and therefore April 4 was the latest available date within 60 days.
- The appeal was noticed in accordance with Chapter 47, as well as published in The Sheet and on the County's website and via newsletter to subscribers.

Request to Postpone

- The appellant is requesting the hearing be postponed to May 2.
- The property owner is requesting the hearing proceed.
- If the Board chooses to postpone, it is recommended to:
 - Defer the staff presentation to May 2.
 - Open the public hearing and receive any testimony.
 - Make a motion to continue the public hearing to May 2 at 9:30 am.
- Staff is prepared to give a presentation today.

Appeal of the Planning Commission's Approval of Use Permit 23-001/Sherer

April 4, 2023

Mono County Board of Supervisors



Project Setting and Description

- 1273 Swall Meadows Road, Swall Meadows.
- 0.95 acres with an existing primary residence.
- Estate Residential (ER) designation.
- Within the sphere of the Wheeler Crest Design Review Committee.
- Use Permit 23-001 authorized an accessory structure to exceed 20', less than 35'.
- The Expanded Home Occupation to store and perform basic or minor repair to their heavy equipment was denied.

Background

- October 2021 code complaint: building materials onsite and storing heaving equipment
 - Field inspection – clarified business heavy equipment not permitted onsite
- Building permit issued November 2021, approved by Wheeler Crest Design Review Committee
- Snow load issue identified and resolved
- December 2022 code complaint: building height issue identified, use permit required
- Use Permit application was accepted at LDTAC January 18, 2023
- The application also included an Expanded Home Occupation permit, which the Planning Commission denied.

Heights greater than 20' may be approved per the General Plan:

- §04.110.A. All buildings and structures ... shall have a height no greater than 35 feet from grade measured from any point of the building. All heights shall be calculated from the natural grade or finished grade, whichever is more restrictive.
- §04.110.B. Accessory buildings in any residential designation shall be limited to a maximum height of 20 feet except as may be permitted by the Director.
 - 1. Accessory uses over 20 feet in height shall be architecturally compatible with and be subordinate to the primary residence. Additional design requirements, such as color, building material, landscaping, building articulating and location, may be required to minimize off-site visual impacts and respect neighborhood characteristics. Accessory Dwelling Units shall be subject to the same standards as the primary unit.
- Table 04.010, Accessory buildings: Maximum height of 20' ... except as may be permitted by use permit.

Accessory Structure Height



French Country Villa® - Verona

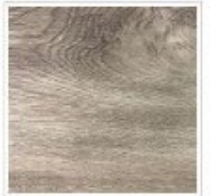
Steel Wood Grain **10**



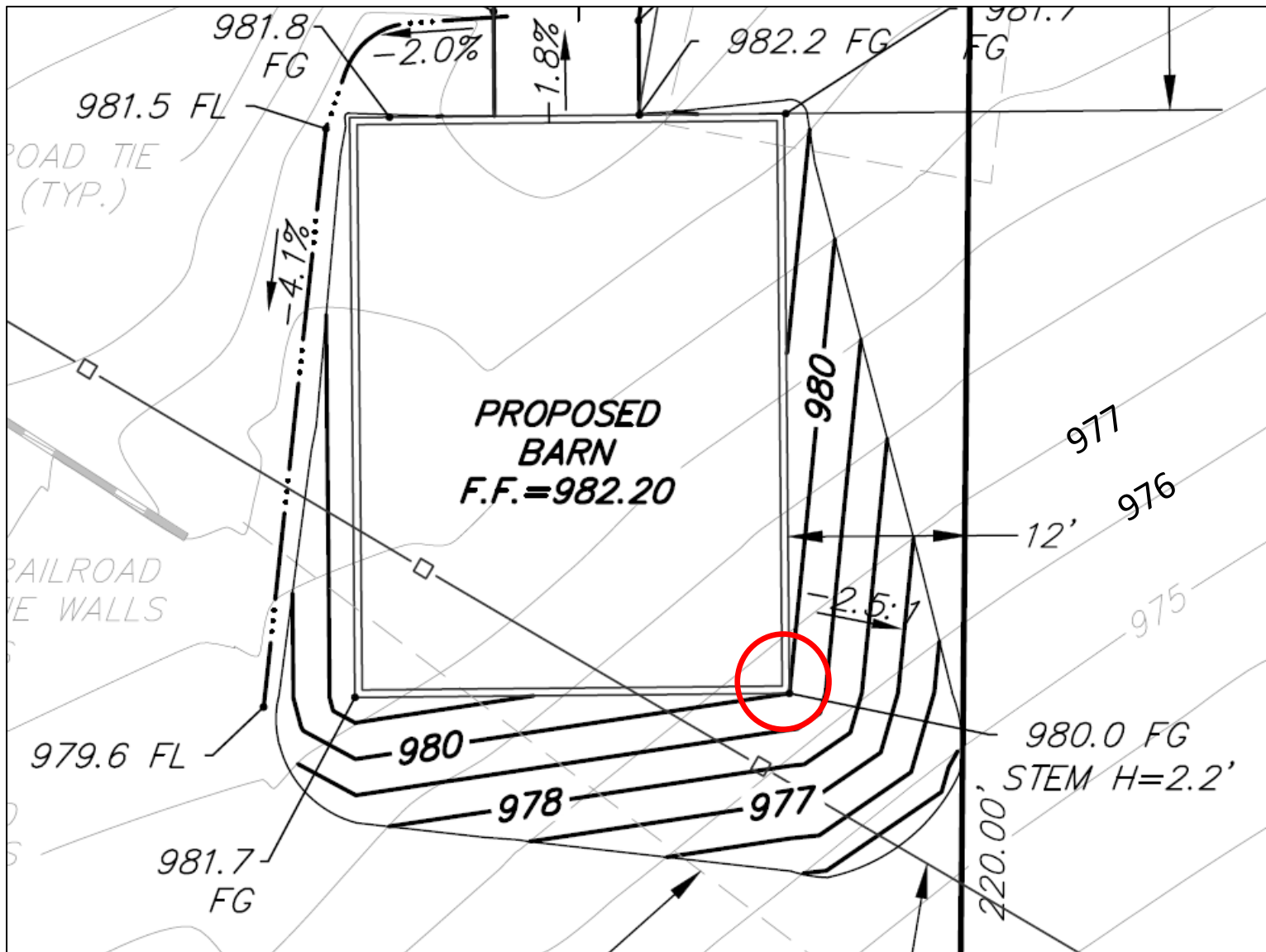
ASH



WALNUT



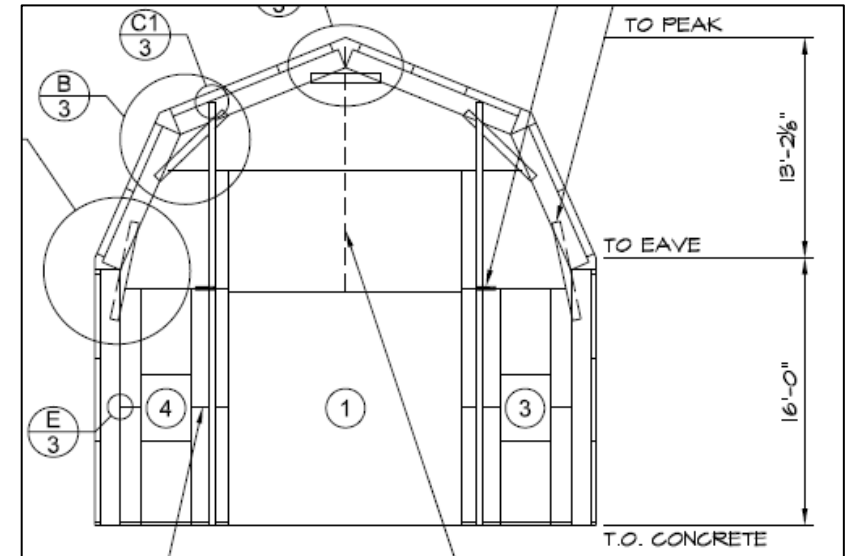
WEATHERED
GREY

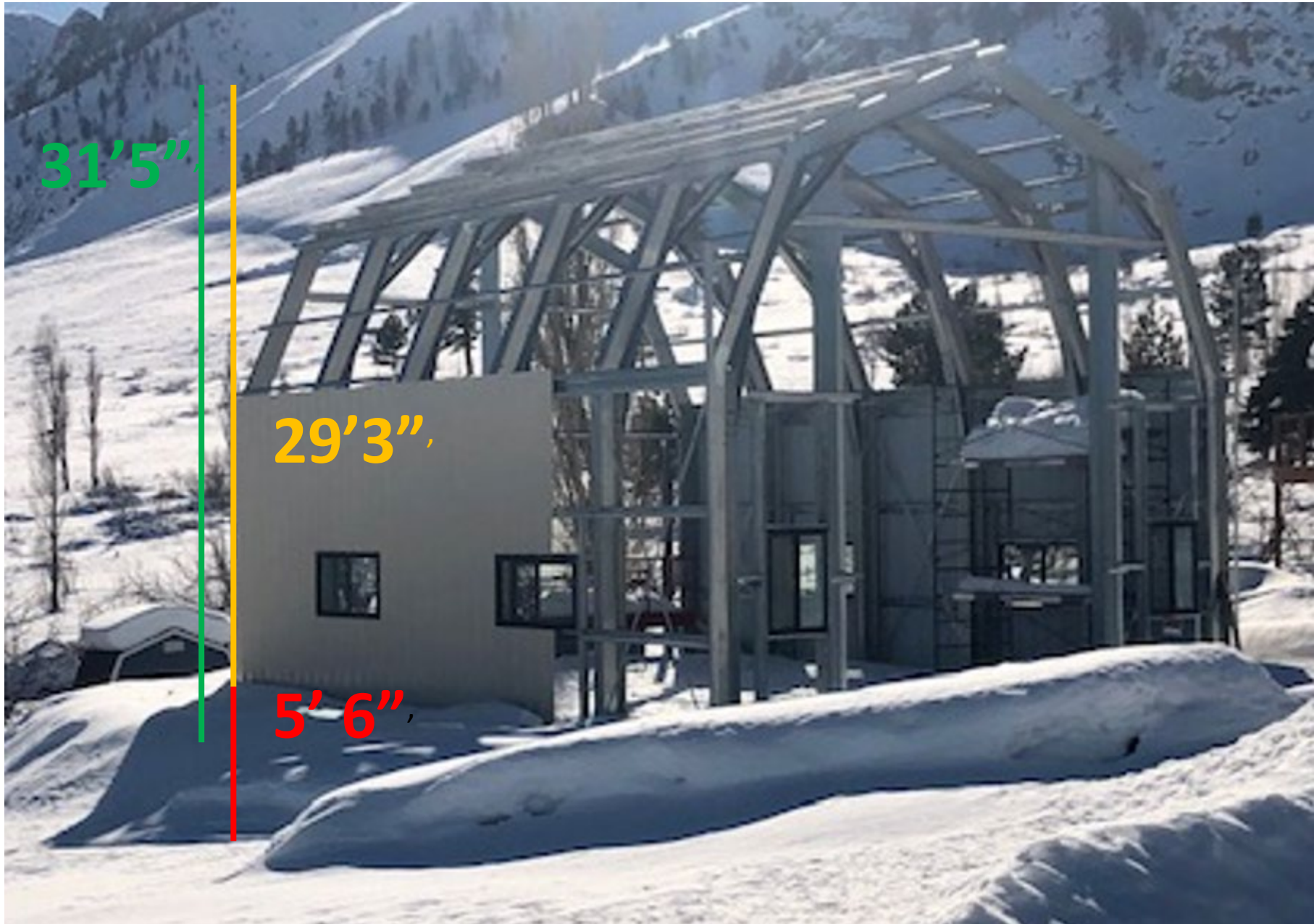


Garage height: 29'3"
 Finished grade: 980'
 Finished foundation: 982.2'

Original grade: 976.5'
 Original grade to finished foundation: 5'6"
Total structure height: 34'9"

Finished grade: 980'
 Finished foundation: 982.2"
Total structure height: 31' 5"









1. All applicable provisions of the Mono County General Plan are complied with, and the site of the proposed use is adequate in size and shape to accommodate the use and to accommodate all yards, walls and fences, parking, loading, landscaping and other required features because:
2. The site for the proposed use related to streets and highways is adequate in width and type to carry the quantity and kind of traffic generated by the proposed use because:
3. The proposed use will not be detrimental to the public welfare or injurious to property or improvements in the area on which the property is located because:
4. The proposed use is consistent with the map and text of the Mono County General Plan because:

Use Permit Findings, Accessory structure height

Basis for Appeal

- **Gross abuse of general plan and Planning Commission authority:**
No favors are being granted. The General Plan provides the Planning Commission with the authority to approve accessory structures taller than 20' (§04.110.B. and Table 04.010) and less than 35' (§.04.110.A).
- **No evidence or reasons to allow almost double height:**
Percentage of height increase not relevant; the General Plan allows up to 35'.
- **Lot has no physical hardship:**
Physical hardship not required to approve increased height.
- **No proposed and permissible use requiring a structure with increased height:**
A garage is an accessory structure that is incidental to the main residential use, and therefore permissible under the land use designation.

Basis for Appeal

- **No other similar buildings or height in area:**
Whether other buildings of a similar height exist in the area is not one of the criteria for evaluating the project.
- **It hurts neighbors:**
Damage is not specified; private views are not necessarily protected. All other development standards are met.
- **Height and location should be verified by surveyor:**
Not typically required; staff verified height in the field. The County typically relies on the engineer's stamp on the plan set.

- Planning Commission approved the permit in compliance with regulations.
- Other structures of that height exist in the neighborhood.
- Structure does not inhibit views of the commentors or impact any protected views on the “upper” side.
- Neighbors on the upper side are in support of the project.
- Design is compatible with General Plan policies and approved by the Design Review Committee.
- The subject property is well maintained.
- The property owners have cooperated with the County.

Public Comments – In Favor

Response to New Public Comments In Opposition

- **The structure does not conform with Swall Meadows CC&Rs.**

The County does not enforce CC&Rs, which are the authority of a homeowner's association.

- **The County approved a building permit at another location over objections of the Wheeler Crest Design Review Committee (WCDRC).**

This referenced project is not relevant to the appeal. However, to explain, the County was pre-empted by state law and could not require changes to that project.

- **A garage of this size does not belong in the community.**

The County may determine whether the size is appropriate through the use permit process.

- **The WCDRC did not review the height.**

Correct, height is not part of the WCDRC's evaluation. It is the responsibility of the Planning Division in the review of General Plan conformance.

Response to New Public Comments In Opposition

- **A major deviation from current building types should only be made after appropriate local debate. The County should include “all of us” in the review process.**

The project was noticed according to adopted standards. All members of the public can sign up for newsletters to receive public hearing notices and agendas. Everyone is invited to participate in meetings, which are held in-person and via webinar.

- **Commercial business is not allowed in Swall Meadows; the structure is intended for the property owner’s industrial equipment.**

General commercial uses are prohibited by the General Plan, but certain types of businesses may be allowed as a home occupation or with an Expanded Home Occupation permit. The Expanded Home Occupation permit for this project was denied by the Planning Commission and any future maintenance of business equipment in the garage would be a violation.

Response to New Public Comments In Opposition

- **The remedy is for the county to reimburse the property owners for their costs and mandate the structure should be taken down.**

The County has an option to deny the use permit and require the garage be taken down. The Planning Commission considered that option.

- **The garage is not subordinate to the primary residence.**

Based on the building permit records reviewed for this appeal, the house is approximately 2,500 square feet (sf) and the garage is 1,200 sf. The garage is considered subordinate to the house, even if shapes and heights of the structures may vary.

Summary

- Analysis indicates the garage is permissible per General Plan §04.110.B. and Table 04.010.
- Public comments from all the perspectives were heard and considered. “Getting what you want” is different from being heard.
- The Planning Commission made the use permit findings and voted 5-0 to approve the increased height per their authority.
- The Expanded Home Occupation permit was denied. Working on equipment associated with their business would be a violation.