

Item available for public inspection in the Clerk's office during regular business hours (Monday - Friday, 9 AM - 5 PM)

April 3, 2023

Regular Meeting

Item #7a. - PUBLIC

**HEARING: Appeal of the
Planning Commission's
Approval of an Accessory
Structure Over 20' in Height
(Regular Agenda)**

Community Development

Presentation from

Appellant

Mono County General Plan Does it have to be followed?

Use Permit 23-001/Sherer
Expanded Home Occupation Permit 23-001

Questions for Ms. Sugimura

- You recommended that the Planning Commission approve the Use Permit and now you are recommending that the BOS approve the use permit.
- If I want to build a 35-foot-high prefab steel building 12 feet from my property line, will you recommend that I be given a use permit?
- If I want a reduction to side setback of 75%, will you recommend that be approved?
- If a commercial property owner wants a 75% reduction in the number of parking spaces allowed, will you recommend that be approved?
- What is the difference between the items above and the Sherer's?
- Why are you recommending approval?

By statute, specific plans, zoning actions, development agreements, and tentative maps all must be consistent with the general plan. (Gov. Code, §§ 65454 (specific plans), 65680 (zoning), 65867.5 (development agreements), and 66473.5 (tentative maps); see also Leshar Communications, Inc. v. City of Walnut Creek (1990) 52 Cal.3d 531, 536 (zoning).) Case law has extended the consistency requirement to conditional use permits and public works projects. (Neighborhood Action Group v. County of Calaveras (1984) 156 Cal.App.3d 1176, 1183-1184 (use permits); Friends of "B" Street v. City of Hayward (1980) 106 Cal.App.3d 988, 998 (public works projects).) But see Elysian Heights Residents Association v. City of Los Angeles (1986) 182 Cal.App.3d 21, 29

Discussion – Accessory structure height

- The height of dwelling versus accessory structures is different in the General Plan because homes have bedrooms with windows, they are typically built to be more beautiful. If there was no difference between the two, the General Plan would not assign different height limitations to the different elements.

The California Court of Appeals determined "...we do not see any basis in law, fact, or fairness to allow the City or [homeowner] to keep the improperly issued permits in place so that they become the foundation for decisions that will thereafter have to be made." (124 Cal.App.4th 1344 at pp. 1355-1356; accord, Summit Media LLC v. City of Los Angeles (2012) 211 Cal.App.4th 921, 940-941 [writ of mandate lies to compel city to revoke permits issued in violation of local law; "permits issued in contravention of municipal ordinances are invalid" and "the city does not and did not have the discretion to issue permits that contravened existing municipal ordinances"].) In other words, even though the jurisdiction approved the building permit in error, the Appeals Court required the permit to be revoked.

Planning Staff made a recommendation to the Planning Commission to approve the use permit. Staff provided inaccurate information and omitted pertinent facts. The planning commission did not site any reasons for approving the structure. They seemed to reply heavily on four items that they were given false information about:

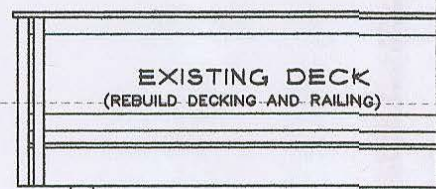
1. The structure is subordinate to the main home. This is not true. Planning staff and the applicant provided false information when they both had the facts in hand. The house is 24 feet tall and the elevation of the peak of the house is lower than the elevation of the garage peak.
2. There are other structures in Swall like this. This is not true, see the corrections on the applicants' photos. Planning Staff can in a few mouse clicks look this information up to verify it, but they did not.
3. The neighborhood is not in opposition. Planning Staff did not include any comments made prior to two weeks before the PC meeting and comment made directly to Sup. Duggan. See corrected map.
4. The Design Review approved the structure. This has nothing to do with height. They did not even know the height as they were not given any cross-section elevations.

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.

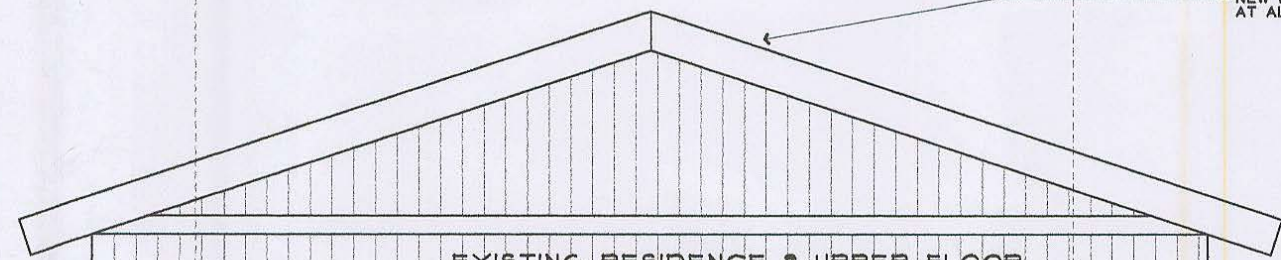
1. Accessory uses over 20 feet in height shall be architecturally compatible with and be subordinate to the primary residence. Additional design requirements, such as color, building material, landscaping, building articulating and location, may be required to minimize off-site visual impacts and respect neighborhood characteristics. Accessory Dwelling Units shall be subject to the same standards as the primary unit.

NEW METAL ROOFING
AT ALL EDGES. CL

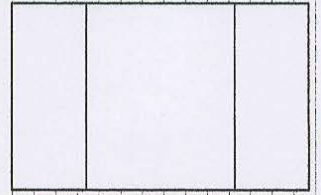
EXISTING WINDOW TO BE REPLACED WITH
NEW 7'x3' WINDOW. INSTALL WITH HEADER
TO MATCH EXISTING LIVING ROOM WINDOW
HEADER.



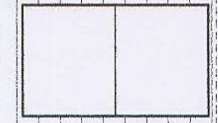
EXISTING DECK
(REBUILD DECKING AND RAILING)



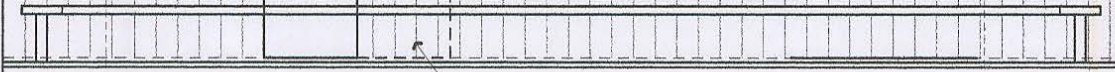
EXISTING RESIDENCE - UPPER FLOOR



EXISTING RESIDENCE - LOWER FLOOR



EXISTING DECK
(REBUILD DECKING NO RAILING REQD.)



EXISTING
COMPOSITE
PANEL

EXISTING DECK
STRUCTURE TO REMAIN.
NEW COMPOSITE DECK
AND RAILING TO BE INSTALLED.

EXISTING FRENCH DOOR TO BE REPLACED WITH NEW 2'-6"
EXTERIOR DOOR. FILL FRAMING AND SHEAR PANEL INSTALLED.

SOUTH ELEVATION

SCALE 1/4" = 1'-0"

TAILS



C

D

no other tall detached accessory

~~Similar Buildings in Swall Meadows~~
buildings exist

1097 Swall Meadows Rd



8 acrs, 150+ft from other private property,
matches house, built in 90s, builder says 22ft
under

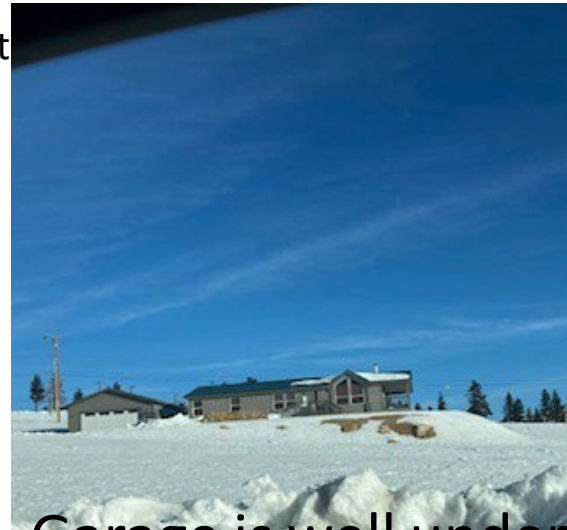


This is a residence and
so it's allowed height is higher, its
also only about 20 feet high

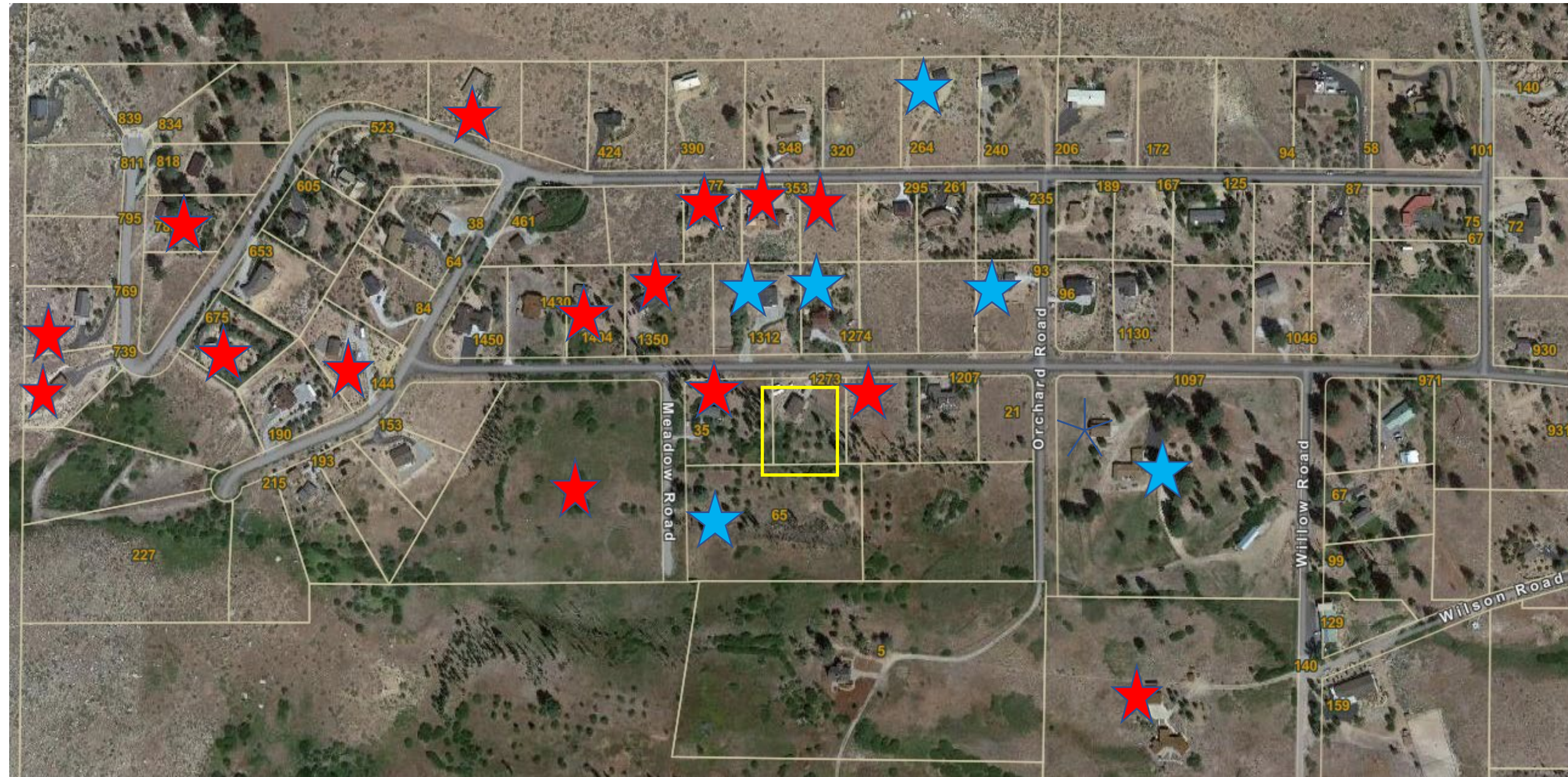
857 Swall Meadows Rd

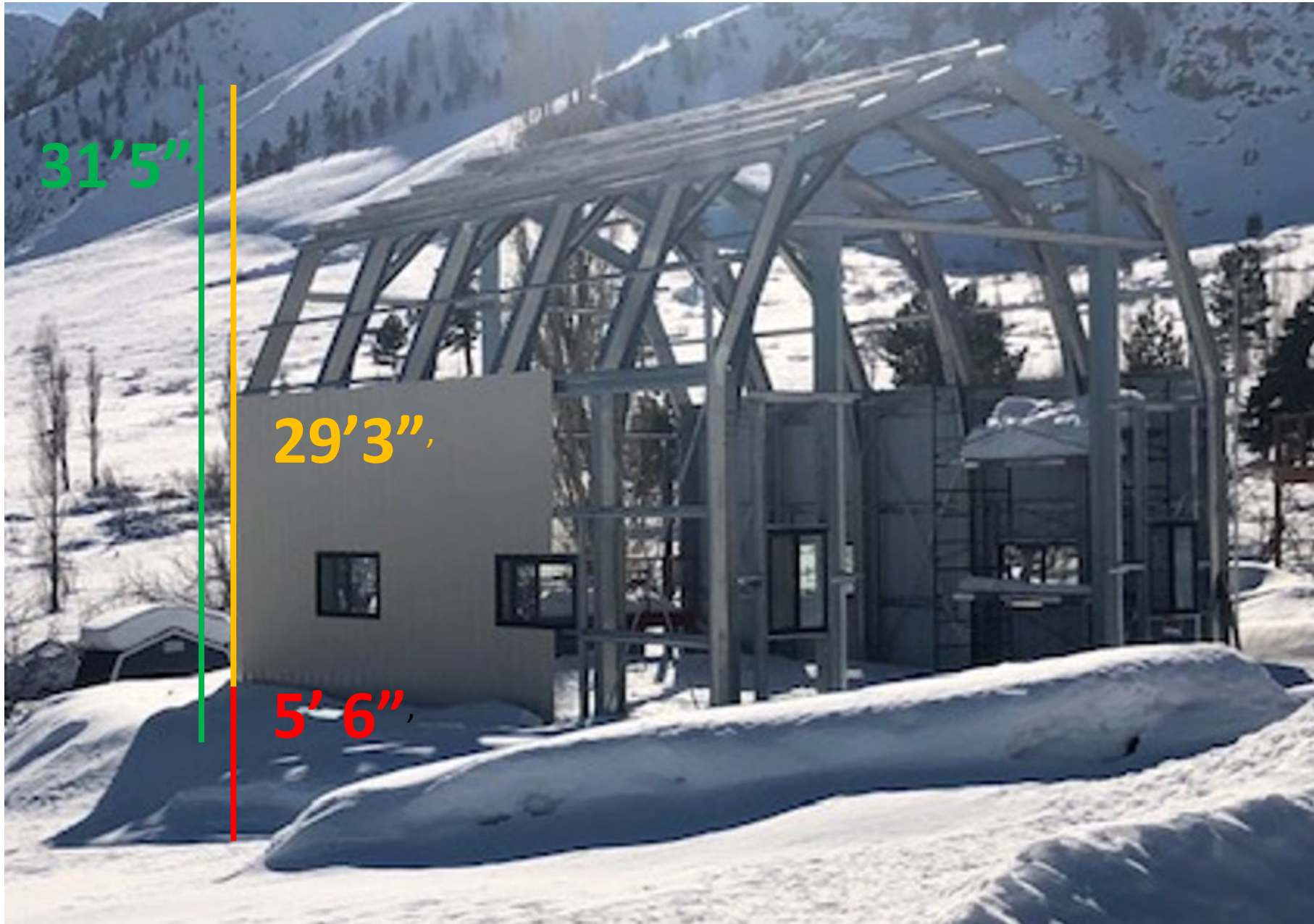


20 foot garage, 26 feet at peak



Garage is well under the
20 feet allowed by the
MCGP







The aesthetics of this building have nothing to do with the height.



French Country Villa® - Verona



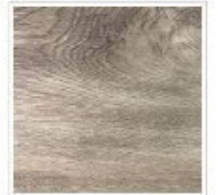
Steel Wood Grain 10



ASH



WALNUT



WEATHERED
GREY



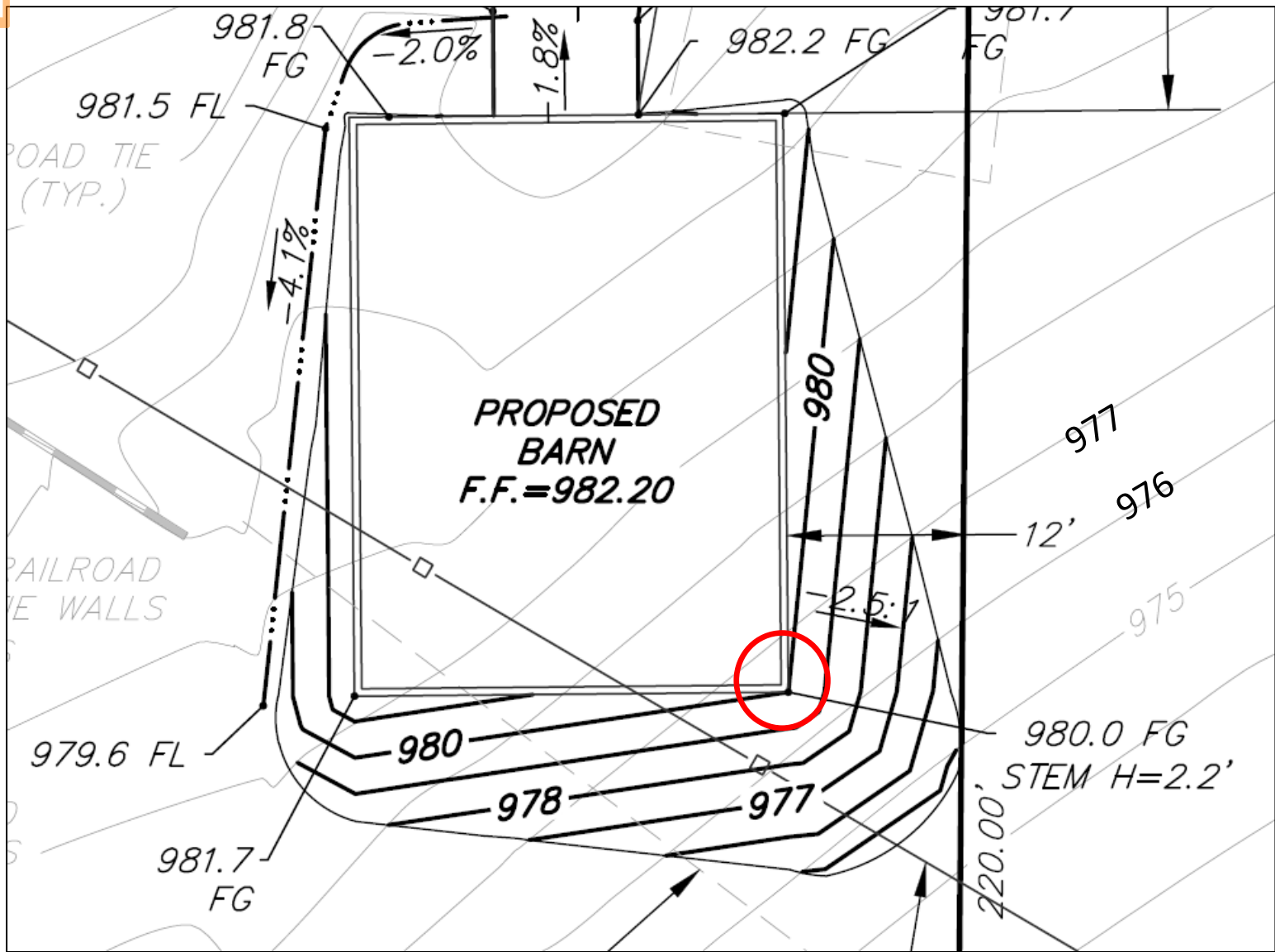




The counties E and O insurance will cover the losses occurred by the Sherer's to rebuild their garage at an allowed height. It will not pay the neighbors, or the neighborhood as a whole, for the negative impacts that a 35-foot-high prefabricated metal building will have on their views and setting.

Planning Staff made a mistake but so did the applicant. They did not truthfully tell the county what the structure was for when asked. They bought the structure before they had a building permit.

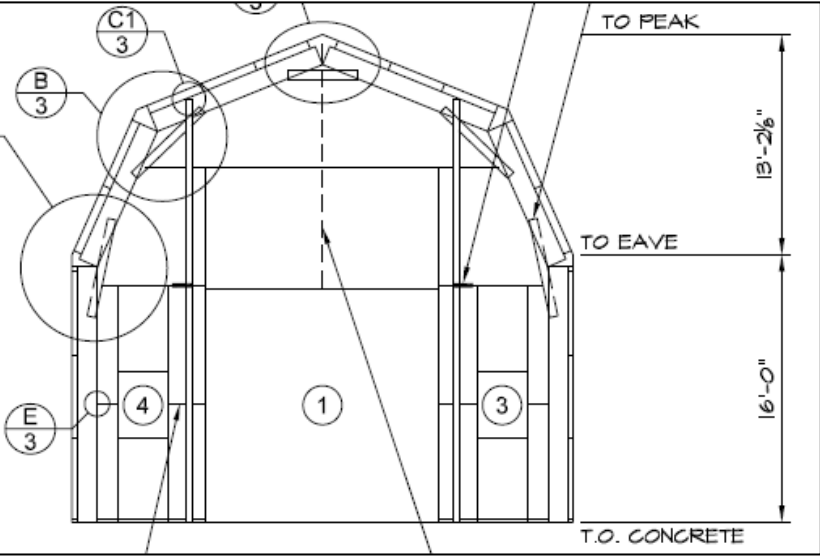
This building was designed to work on the applicant's heavy equipment. They have a commercial heavy equipment business, large bulldozers for fire lines. The home occupation permit for this was denied. There are no allowed uses that the applicants have proposed to justify the need for a 30-foot garage. The lot has no physical hardships. There was no effort to build the property into the slope to lower the height, instead a building pad was made, making it even higher off the grade. Even the tallest RVs can fit in a 20-foot-high garage.



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"



Mitigation Measures:

1. Require that the applicant have the surveyor come back out to confirm that the toe of the earth wall is not on the neighbor's property and that the elevation of the pad is as stated on the drawing, 982.2 feet. This is standard in other counties and it was recommended by Placer county planning staff and counsel, in fact it is required in Placer. If the structure is indeed at the right height and location, the applicant should not mind doing this. I'll pay if I have to. There are currently no pins or permanent surveying markers on this property line. If the elevation of the slab is higher than 982.2 feet the use permit is to be revoked. If the dirt encroaches on the neighbor, it is to be removed and the use permit is to be revoked.
2. Require the applicant to remove all encroachments on the neighbor's land and to have the property line surveyed (same as number 1).
3. Require the applicant to plant trees along the western property edge and to plant the dirt wall to break up mass of the building.
4. Require the applicant to block dirt driveways built onto the neighbor's property with boulders placed on their property as the neighbor directs.

Financial hardship for either the applicant or the county for the mistakes made should not be taken into account in your decision-making process. The loss of land value and quiet peace and enjoyment of the rest of the people in the neighborhood far outweighs the losses of the applicant and the county. We should not suffer any losses by mistakes made by the local government that we pay to protect us and uphold our general plan. If this permits are approved, you may as well shred the general plan as none of it is being followed. For these reasons, please opposes the application. The structure clearly does not comport with the General Plan and residential zoning requirements. The County should not approve the Application and the building should be dismantled and moved to an appropriately zoned parcel of land.

Ask yourself before voting:

1. How would I vote if there was no structure already started and if the planning staff did not harm the applicant by approving the structure higher than allowed?
2. Is it ok to reward one person at the expense of others?
3. Why do they need a 30 foot tall single story garage with a 22 foot roll up door in a residential neighborhood?
4. Should the General Plan be applied equally to all people to provide cohesion in the community and to protect property values?
5. Would I want a 35-foot-high prefabricated metal building that is very much industrial in nature built 12 feet from my property line on a lot uphill from mine?
6. What valid reasons do I have to support my decision?
7. How will my decision impact others both now and in the future? What precedence do I want to set?