

This is a Request for Appeal from a Decision of the Following Committee:

Architectural Standards

**COMMITTEE DECISION INFORMATION**

Date of Meeting

Oct 14, 2020

Result of Decision

Denial of our request for an exception to the 50% sheet siding rule.

**SUBJECT PROPERTY**

Unit

01

Lot

218

**APPELLANT INFORMATION**

Property Owner Name Requesting Appeal

James and Nancy Kelly

Mailing Address

Redacted

United States

Primary Contact Phone

Redacted

Home Phone

Redacted

**APPEAL HEARING**

Name of owner(s) or designee(s) to appear at the hearing:

James Kelly

Nancy Kelly

Attached is a written statement why I believe I have a basis for appeal. I understand that all decisions of the Appeal Board shall be final and binding.

Date

Nov 03, 2020

Draw your signature into the box below.



Upload Basis of Appeal Letter

[APPEAL TO THE BOARD - 2.docx](#)  
[LETTER TO THE ASC.docx](#)

Reason for Appeal/Additional Comments:

ATTACHED:

1. REQUEST FOR RECONSIDERATION BY THE BOARD

2. LETTER TO ASC REQUESTING AN EXCEPTION

Nothing contained in this communication should be construed in any way as a waiver of our rights to litigation, arbitration or mediation.

## REQUEST FOR RECONSIDERATION BY THE BOARD

Tahoe Donner Board of Directors,

As per California Civil Code Section 4765 (a) (5), we are requesting a hearing at an open meeting of the board. We are further requesting that the board reconsider and reverse the actions of the ASC regarding its denial of our request for an exception to the limitations of sheet siding as contained in Section III. H. 5) of the ASR.

Before I address our request for reconsideration, I would like to state some **facts that I believe are pertinent:**

- California Civil Code Section 4765 (a) (2), states; “A decision on a proposed change shall be made in good faith and may not be unreasonable, arbitrary, or capricious.”
- California Civil Code Section 4765 (a)(4), states; “If a proposed change is disapproved, the written decision shall include an explanation of why the proposed change is disapproved.”
- Section III. H. 5) EXCEPTIONS: Tahoe Donner’s Architectural Standards Rules, Procedures and Restrictions for Land Use (ASRs) states, in part; that “exceeding the above 50% maximum may be allowed on a case-by-case basis, on those sides not facing a street and if the sheet siding is properly coated or treated to minimize discoloration and deterioration.
- The history of our building permit application follows: After completing our application for a construction permit, we contacted Ms. Walker and asked if she would do a pre-submittal review of our paperwork. During her review, she indicated that the ASC would have problems with our use of “too much” sheet siding with batts on the left side and any sheet siding on the front of our house. Because the language in the ASR is not clear, I opted to edit the materials list, removing the term “sheet siding,” thus making passing the ASC review more likely.
- When we delivered our application to the ASO, I included a letter to the ASC, requesting an exception to use sheet siding. (For simplicity, I will refer to this as the 50% rule.) I was very clear to tell Ms. Walker that the letter was part of our application.
- In addition to requesting an exception to the use of sheet siding, we asked for clarification as to “what constituted the 100%, from which the 50% would be calculated.” To date, we have never received a written response to that question.
- Prior to the ASC meeting, I asked Ms. Walker for the revision date of the ASR as it applied to what I call the “50% rule.” She indicated that the revision was approved in 2009.
- In preparation for the meeting with the ASC, I made a records request to the Town of Truckee for the addresses of all permits issued for new construction in Tahoe Donner from 2016 to 2020. We used those addresses to view homes, approved by the ASC and built between 2016 to 2020, and collect data regarding the use of various types of siding.
- As a result of looking at homes approved by the ASC and built between 2016 and 2020, we found at least 10 houses where the use of sheet siding exceeded 50% on at least one side and two houses that had some sheet siding on the front.
- Based on our review of houses built between 2016 and 2020, it became clear that the ASC/ASO has repeatedly allowed deviations and/or exceptions from the written guidelines of the Tahoe Donner’s Architectural Standards Rules, Procedures and Restrictions for Land Use (ASR) as well as Tahoe Donner’s Covenants, Conditions and Restrictions (CC&Rs). These deviations and/or exceptions included sheet siding in excess of the 50% rule.
- During the ASC meeting we asked for alternatives to sheet siding. Debra Phelps offered steel siding as an acceptable choice.

- At the ASC meeting on October 14, 2020, I asked for a definition as to “what constituted the 100%, from which the 50% would be calculated.” Nick Sonder answered, “the elevation.”
- At no time did any of the members of the ASC indicate that they had calculated the percentage of the elevation that we were asking to cover with sheet siding, nor did they ask us for that information.
- Because the language of the ASO letter dated October 26, 2020, failed to use the word deny, or provide an explanation as to why our request was denied we contacted Ms. Walker, asking her what the intent of the ASC was. Ms. Walker assured us that the ASC did in fact deny our request.
- The homeowners most affected by our planned use of sheet siding never voiced an objection, either to the ASO or to my wife and me.

**Basis for our reconsideration by the board of directors:**

The issue before you is our request for an exception to the 50% limit to sheet siding on the left side of our house and an exception to the no sheet siding rule for a small portion of the front section of our house.

From our observation it is clear that the ASC/ASO has approved and/or allowed sheet siding in excess of 50% on the sides of houses built after the ASR was revised in 2009.

We base our request for reconsideration on our review of houses built in Tahoe Donner between 2016 and 2020, where the exceptions to the 50% rule seems to have been approved. The alternative to approval is failure of the ASO to properly inspect houses prior to completing the permit process. In either case the Association has allowed numerous exceptions to the 50% rule.

Using Nick Sonder’s definition of 100%, we have now determined, that as proposed, the left side of our house will have less than 58% sheet siding and the left front of the house will have less than 20%, well under 100 square feet.

I believe that members of the ASC acted contrary to California Civil Code Section 4765 (a) (2), in their denial of our request for an exception to the 50% rule. Their denial was not made in good faith nor was it reasonable. I recognize that this is an opinion, but it is based on the tone and tenor of the of the members of the ASC, at the October 14, 2020 meeting, which made it clear that their intention was to disapprove our request for an exception, regardless of what information we presented.

In addition, I believe the ASC’s denial was arbitrary. This was evidenced by:

- The fact that only Mr. Whitten had read our written request for an exception.
- I had to explain to the other two members of the ARC what we were asking for and why.
- The ASC’s lack of knowledge as to how many houses were built with the ASC’s approval (between 2016 and 2020) with more than 50% sheet siding on one or both sides of the house.
- The ASC’s unwillingness to consider past practices regarding houses built with more than 50% sheet siding.
- The fact that they had no idea what percentage of the 100% we planned to cover with sheet siding.
- Inconsistent application of the 50% rule.

One would think that knowing that information would be critical when rendering a reasoned decision about our proposed use of sheet siding.

One last thought. There can be no doubt that the authors of the current version of the ASR envisioned granting exceptions to the 50% rule or they would not have included the option. Therefore, I would ask, if not in our case, When? Has the ASC ever approved an exception to the 50% rule?

Please feel free to contact either of us if you have any questions.

Jim and Nancy Kelly  
Phone Redacted

Jim and Nancy Kelly  
Address Redacted

September 4, 2020

Rod Whitten, Chair  
Nick Sonder, Member  
Debra Phelps, Member  
David Hipkins, Alternate  
Mitch Clarin, Alternate  
Bill Staehlin, Alternate  
Jason Wooley, Alternate

Committee Members:

Last week my wife and I had an opportunity to meet with Sheryl Walker at the window of the Architectural Standards Office. She took about an hour to go through our drawings and associated information in order to help us navigate the process and insure that we would have all the paperwork necessary to be successful in our application to build a new house. Ms. Walker did a great job of explaining both the process and the pitfalls.

Even though I have built three homes for my family in the past, including one in 1989, in Tahoe Donner, we found the current rules and procedures to be daunting. I am not a contractor; instead, I am a homeowner builder.

Needless to say, the CC&Rs, rules and handouts are very hard to reconcile, especially when we compare them to what we see in the way of new construction.

Having said all of that, it became very clear that we have two problems with our design.

First of all, we have chosen a painted Douglas Fir plywood board and batt design for the left side of the house. Ms. Walker opined that there was too much sheet siding on that side of the house based on a 50% rule. I have to be honest; I do not understand how to apply it. Is it based on everything on a specific elevation or only a specific wall? The language in the rule says, "other individual sides of the building". Will you clarify this?

My interpretation of the rule is that we have not exceeded the 50% ratio. If it is determined that we have, I can resolve the problem by using real wood and some fancy mill work to achieve the same look after it is painted. I would like to avoid this and instead of using "real wood", I am requesting an exception for the ASC to approve our plans using painted rough sawn Douglas Fir plywood with batts on the left side of the house.

The second issue is our choice of a painted rough sawn Douglas Fir plywood board and batt design for about half of the front of the house, 14 feet out of 31. Again, I can resolve the problem by using real wood and some fancy mill work, but would prefer not to go through this, since as I stated earlier, I believe the visual outcome will be the same but at a greatly increased cost.

Regarding rough sawn Douglas Fir plywood with batts not being allowed on the front of our house, I cannot find a prohibition against just board and batts. I can only assume the issue is not the design, but the materials, especially since the fading of stained plywood is mentioned in the rules. Our board and bat will be well painted. Therefore, I am requesting a second exception that the ASC approve our plans to use painted, rough sawn Douglas Fir plywood with batts on the front of the house.

A thought about the front of the house. There is no question that the elevation labeled "FRONT" faces the street; however, the right side of the house will be far more visible than the "FRONT". That is because of the large open space along the house's right side where there is a hiking trail. From our plans, you can see that we have designed the right side of the house to be the most appealing. We actually consider this to be the front. In addition, because of the grade change from the street to the house, the trees we are intending to keep, the location of the garage to be built at a later date, and the length of the driveway, we believe the house will be far less visible from the street directly in front than through the open space.

Thank you for your consideration,

Jim and Nancy Kelly  
Owners of 12420 Bernese Lane  
Phone Redacted

## ASO Rules

5) EXTERIOR SIDING OR SHEATHING AND TRIM: It is critical that the design of the exterior siding, trim and finish system be congruent on all sides of the structure and that the design coordinates the material and detailing of all sides with the design of the front elevation (street side(s)). All types of natural wood solid sawn siding are allowed alone, as well as with stucco, stone and split faced or textured concrete masonry units. Alternative exterior materials will be considered on a case-by-case basis. Samples and specifications must be submitted for ASC evaluation. The ASC may impose restrictions as to the grade, design and area where certain materials may be used.

No type of plywood or sheet siding is allowed on any street side(s) or on any golf course side(s) where visible from the golf course. This includes the use of such siding with battens. On all other individual sides of the building, a maximum of 50% of the siding area may be plywood or sheet siding only to the extent that it is in harmony with the street/golf course view side(s) of the building, and it is appropriately coated or treated to minimize discoloration and deterioration.

EXCEPTIONS: Plywood or sheet siding exceeding the above 50% maximum may be allowed as an exception, on a case-by-case basis, on those sides not facing a street or the golf course only if: a) the design is in harmony with the street/golf course view side(s); and b) the plywood or sheet siding is properly coated or treated to minimize discoloration and deterioration. Where the proposed project involves an addition to, or remodeling of, an existing structure, a determination must be made as to the extent of the new work. While the objective with a new project is a general reduction in the use of plywood siding, a less substantial addition/remodel should be allowed to maintain some congruity with the remainder of the structure. Where the amount of exterior surface (exterior walls) represented in the addition/remodel is 50% or more of the original exterior surface areas of the building, the revised siding rules should be applied. Where the new area (either addition or remodel) is less than this 50% threshold, the new rules need not be imposed.

## COVENANTS, CONDITIONS AND RESTRICTIONS

### Section 2. Minimum Construction Standards - Residential Lots.

(g) Siding Materials. The exterior walls of any Residence, garage or other structure shall be finished with natural wood. Rock or stucco may be used in combination with wood. **Metal, Masonite or other manufactured siding shall not be permitted.** No siding composed in whole or part of artificial or "fake stones, stucco stones or manufactured used brick shall be permitted unless an exception is granted by the Environmental Control Committee.

## CIVIL CODE - ARTICLE 2. Modification of Separate Interest

### 4765.

(a) This section applies if the governing documents require association approval before a member may make a physical change to the member's separate interest or to the common area. In reviewing and approving or disapproving a proposed change, the association shall satisfy the following requirements:

(1) The association shall provide a fair, reasonable, and expeditious procedure for making its decision. The procedure shall be included in the association's governing documents. The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for response to an application or a request for reconsideration by the board.

(2) A decision on a proposed change shall be made in **good faith** and may not be unreasonable, **arbitrary**, or capricious.

(3) Notwithstanding a contrary provision of the governing documents, a decision on a proposed change may not violate any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), or a building code or other applicable law governing land use or public safety.

(4) A decision on a proposed change shall be in writing. If a proposed change is disapproved, the written decision shall include both **an explanation of why the proposed change is disapproved** and a description of the procedure for reconsideration of the decision by the board.

(5) If a proposed change is disapproved, the applicant is entitled to reconsideration by the board, at an open meeting of the board. This paragraph does not require reconsideration of a decision that is made by the board or a body that has the same membership as the board, at a meeting that satisfies the requirements of Article 2 (commencing with Section 4900) of Chapter 6. Reconsideration by the board does not constitute dispute resolution within the meaning of Section 5905.

(b) Nothing in this section authorizes a physical change to the common area in a manner that is inconsistent with an association's governing documents, unless the change is required by law.

(c) An association shall annually provide its members with notice of any requirements for association approval of physical changes to property. The notice shall describe the types of changes that require association approval and shall include a copy of the procedure used to review and approve or disapprove a proposed change.

*(Added by Stats. 2012, Ch. 180, Sec. 2. (AB 805) Effective January 1, 2013. Operative January 1, 2014, by Sec. 3 of Ch. 180.)*