



STAFF REPORT

DATE: January 27, 2025

TITLE:

Unit 5 Lot 181 – 14281 Herringbone Way: Appeal of the Architectural Standards Committee Decision

RECOMMENDATION:

By Motion:

RECOMMENDATION:

By motion, the Board of Directors finds that:

- 1) The Association recognizes the need to permit and promote up-to-date fire-resistant home construction material standards for both new construction and improvement projects to existing homes.
- 2) Tahoe Donner C&Rs, which cannot be modified without a member vote, are based on out-of-date construction material standards from the late 1980s and early 90s.
- 3) Within the legal parameters established by the C&Rs, the Association may develop standards and procedures to permit and promote up-to-date fire-resistant home construction materials.
- 4) At the ASC’s November 20, 2024 meeting, the committee took the following action:
 - a) The committee agreed to approve the project as a whole, including an exception to the siding rule to allow more than 50% sheet siding on the sides and back given that it is a Hardie Board product, but to deny the proposed siding on the street side (aside from the east elevation side with the garage) and require a resubmittal to staff for one member review, along with an approved site inspection, before permit issuance. The committee also requires a revision to the lights on the west elevation which can be submitted after permit issuance but before the final inspection. (3:0 - Whitten, Clarin, Phelps)
- 5) The ASC’s November 20, 2024 decision is affirmed with the following modifications:
 - a) The ASC’s denial of “the proposed siding on the street side” is suspended, and
 - b) Staff and the ASC and/or its Chair are directed to find a timely, mutually agreeable variance for this project that balances existing standards, aesthetic harmony, fire resistance, and construction quality, and
 - c) Using this project and variance as a case study, staff and the ASC shall develop recommended changes to the Association's standards and procedures to more effectively permit and promote the use of up-to-date fire-resistant home construction materials in future projects and
 - d) Staff and the ASC shall report to the Board of Directors on implementing these updated standards and procedures.



BACKGROUND:

Under Tahoe Donner C&Rs, Article V section 12, and Resolution 97-5, the Board of Directors is the appeal board for member appeals on decisions rendered by the Architectural Standards and Covenants Committees. An owner may appeal decisions of the committee(s) if they believe “that the committee has erred in the process of reaching its decision, has not adhered to the existing rules regarding the said decision, or that there were extenuating circumstances that were not considered by the committee.” (TDA Resolution 97-5 section IV)

At the November 20, 2024 Architectural Standards Committee (ASC) meeting, the committee reviewed a proposed new house/garage project located at Unit 5, Lot 181. The committee conditionally approved the project but denied the exception request for sheet siding on the street-facing side of the structure. See Exhibit A.

The owners of Unit 5, Lot 181, are appealing the ASC’s denial of the exception and request that the appeal board approve sheet siding on the street-facing side of the structure. See Exhibit B.

DISCUSSION:

Committee Authority

The First Restated Covenants and Restrictions (C&Rs) delegate the ASC's authority. The committee aims to maintain architectural consistency, quality, and harmony within the Tahoe Donner. Before any property owner can alter their lot or an existing structure, they must submit their plans and specifications to the ASC for review and approval (C&Rs, Article V, Section 1(a)) and the Architectural Standards Rules, Procedures and Restrictions for Land Use (AS Rules).

Basis for Approval of Improvements

Below is an excerpt from the C&Rs Article V, Section 6, on the committee’s basis for approval of improvements.

When a proposed work of Improvement is submitted to the Environmental Control Committee for review, the Committee shall grant the requested approval only if the Committee, in its sole discretion, finds that all of the following provisions have been satisfied:

(a) The Owner’s plans and specifications: (i) conform to this Declaration and to the (AS Rules) in effect at the time such plans are submitted to the Committee; (ii) will result in the construction of an Improvement that is in harmony with the external design of other structures and/or landscaping within the Properties; and (iii) will not interfere with the reasonable enjoyment of any other Lot Owner of his or her property, including, without limitation, the other Owner’s rights to scenic and solar access free of unreasonable obstructions; and

(b) The proposed Improvement(s), if approved, will otherwise be consistent with the architectural and aesthetic standards prevailing within the Properties and with the overall plan and scheme of development of the Properties and the purposes of this Declaration.



While it is recognized that the Committee's determination to approve or disapprove an Improvement will, of necessity, be subjective to some degree, the members of the Committee shall act reasonably and in good faith. Factors commonly considered by the Committee in reviewing proposed Improvements include the quality of workmanship and materials proposed for the Improvement project, the harmony of the proposed Improvement's exterior design, finish materials and color with that of other existing structures, and the proposed location of the Improvement in relation to existing topography, finished grade elevations, roads, Common Areas and other structures.

ASC Submittal Proceedings

At the November 20, 2024 ASC meeting, the ASC reviewed a submittal for a new 2,961 SF House/Garage located at Unit 5, Lot 181. The proposed project included 100% sheet siding on all sides of the house in the form of Hardie Panel Board and Batt. The project applicant requested that the committee grant an exception to AS Rule H.5: "No type of plywood or sheet siding is allowed on any street sides(s)...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..."

Exception Request

The ASC is authorized to consider approving or denying exceptions to the AS siding rules on a case-by-case basis. Per AS rule H.5: "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."

Based on a review of the entire design, the ASC agreed that 100% sheet siding on the sides and back of the house, with a more fire-resistant product, would not compromise the aesthetics on this site. However, the committee advised that under ASC Rule III.H(5), sheet siding is not allowed on the street side of the house, and the committee has consistently enforced that rule for aesthetics.

The Committee then reviewed the rest of the project against the design standards and conditionally approved the project as follows:

Action 3:0 (Whitten, Clarin, Phelps) The committee agreed to approve the project as a whole, including an exception to the siding rule to allow more than 50% sheet siding on the sides and back given that it is a Hardie Board product, but to deny the proposed siding on the street side (aside from the east elevation side with the garage) and require a resubmittal to staff for one member review, along with an approved site inspection, before permit issuance. The committee also requires a revision to the lights on the west elevation which can be submitted after permit issuance but before the final inspection.



ANALYSIS AND RECOMMENDATION:

This project's submittal and review were conducted in accordance with the following established procedures in the governing documents:

- The applicant was provided with reasonable notice of the time, place, and agenda for the meeting
- The owner and their designated agents were permitted to appear at the meeting and be heard
- All improvement plans were reviewed in detail by the committee to assist in making their decision
- A majority vote by the committee members in attendance constituted the decision
- A written record was kept and maintained of all actions during the meeting
- A decision letter, including information on the appeal process, was provided to the owner/applicant within 10 days of the ASC meeting

However, changes in material quality (Hardie Board) and aesthetic presentation, along with the increasing need for greater fire resiliency in home construction, require deviations from past practices and standards.

The committee is entitled to allow reasonable exceptions from specific regulations. There is an exception process exterior siding or sheeting only

exceeding the above 50% maximum...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. (AS Rule Section III.H.5)

The committee is also entitled to allow reasonable variances "in any procedures specified in...Article V and the (AS Rules), the minimum construction standards specified in Article IV or in any land use restrictions specified in Article VIII in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardship to Owner-applicants."

This project applied for an exception to the siding standards. Therefore, the committee evaluated the application under those specific criteria. The ASC deliberated and acted reasonably and in good faith at the submittal meeting in denying the exception for sheet siding on the street-facing side of the structure. Per the written standards, the ASC allowed an exception for the sides and back of the house while following the standards for the street-facing side.



Staff believes this project can be reviewed under the variance process, which the committee could consider and approve. However, since one of the criteria to approve a variance is to include a neighbor notification “to any Owner of a Separate Interest located within 500 feet of the Separate Interest affected by the variance,” this matter should be returned to the Committee to comply with Article V, Section 8. Had the project completed a variance process for the submittal, the board could have considered approving a variance as a decision alternative.

Staff recommends the Board of Directors find that

- 1) The Association recognizes the need to permit and promote up-to-date fire-resistant home construction material standards for both new construction and improvement projects to existing homes.
- 2) Tahoe Donner C&Rs, which cannot be modified without a member vote, are based on out-of-date construction material standards from the late 1980s and early 90s.
- 3) Within the legal parameters established by the C&Rs the Association may develop standards and procedures to permit and promote up-to-date fire-resistant home construction materials.
- 4) At the ASC’s November 20, 2024 meeting, the committee took the following action:
 - a) The committee agreed to approve the project as a whole, including an exception to the siding rule to allow more than 50% sheet siding on the sides and back given that it is a Hardie Board product, but to deny the proposed siding on the street side (aside from the east elevation side with the garage) and require a resubmittal to staff for one member review, along with an approved site inspection, before permit issuance. The committee also requires a revision to the lights on the west elevation which can be submitted after permit issuance but before the final inspection. (3:0 - Whitten, Clarin, Phelps)
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 - d) Staff and the ASC shall report to the Board of Directors on implementing these updated standards and procedures.



ALTERNATIVE(S):

Pursuant to Tahoe Donner Association Resolution 97-5 Procedures for Member Appeals From Covenants And Architectural Standards Committee Decisions, the Board has several alternatives:

1. The Board may reverse or modify the decision of the committee;
2. The Board may choose to approve the appeal.
3. The Board may make findings related to the facts or the applicability of the rules and return the matter to the Architectural Standards Committee for further consideration and/or
4. The Board may recommend other specific action(s) by the General Manager relative to individual case(s) or Tahoe Donner policies. Such recommendations may include an appropriate review by legal counsel.

OUTREACH:

The following member outreach or notification was provided:

- The property owner received the committee decision letter containing the action statement within 10 business days, as required. See Exhibit D
- The appeal request was received on December 11, 2024, and acknowledgment of receipt was sent to the owner that same day.
- The property owner was sent a Notice of Appeal Hearing on December 27, 2024.

FISCAL IMPACT:

N/A

ATTACHMENTS:

Exhibit A: Excerpt from ASC meeting minutes

Exhibit B: Request for appeal

Exhibit C: Project location

Exhibit D: Decision letter

Exhibit E: Submitted plans

Prepared By: Lisa Purchard, Community Standards Manager

Reviewed By: Jason Hajduk-Dorworth, Director of Administrative Services

Reviewed By: Rod Whitten, Architectural Standards Committee Chair

Reviewed By: Annie Rosenfeld, General Manager

Board Meeting Date: January 27, 2025