



CALAVERAS COUNTY PLANNING DEPARTMENT
891 Mountain Ranch Road,
San Andreas, California 95249
(209) 754-6394

Planning Commission Staff Report

Hearing Date	September 24, 2023
Project Number/Name	2023-048 Appeal of Staff's decision to not provide zoning clearance to build two movable storage sheds on a vacant, undeveloped, 19.98-acre, RR-zoned parcel without first establishing the main residential use per Section 17.22.010 of the Calaveras County Municipal Code.
Supervisory District Number	District 2
Assessor's Parcel Number(s)	054-004-041
Planner	Gabriel Elliott, Director of Planning

Date: September 15, 2023

UPDATE:

Planning Commission Meeting of September 14, 2023

At the Planning Commission meeting of September 14, 2023, the Commission voted unanimously to deny Appeal 2023-048 and uphold Planning Staff's denial of two movable storage sheds. The Commission, however, allowed one storage shed on the property in conjunction with an agricultural use prior to the construction of the main residence. An amended resolution 2023-011 has been attached to the staff report.

PROJECT DESCRIPTION: Mary Helen Day and Tyrone Barber are appealing Planning Staff's decision to deny zoning clearance for a building permit application for two movable storage sheds on a vacant, undeveloped, 19.98-acre RR-zoned parcel without first establishing the main residential use required per Section 17.06.0080 of the Calaveras County Code (CCC). Per Section 17.98.020 of the CCC, a decision of any staff member may be appealed to the Planning Commission by following the appeal procedures in Section 17.98.070 of the CCC, and submitting a written request, accompanied by the appropriate fee within 15 calendar days from the date of the staff decision.

The application was denied on July 14, 2023, and the appeal was received by the Planning Department on July 21, 2023. The appeal letter, dated July 20, 2023, is attached as Exhibit 3.

APPELLANT/LANDOWNER: Mary Helen and Tyrone Barber

16331 Lawrence Rd.
Escalon, CA, 95320

PROJECT LOCATION: The property is a 19.98-acre parcel zoned Rural Residential (RR) with a Working Lands General Plan designation, is located at 3559 Stagecoach Road, Copperopolis, CA, and is a portion of Section 5, T01N, R12E, MDM.

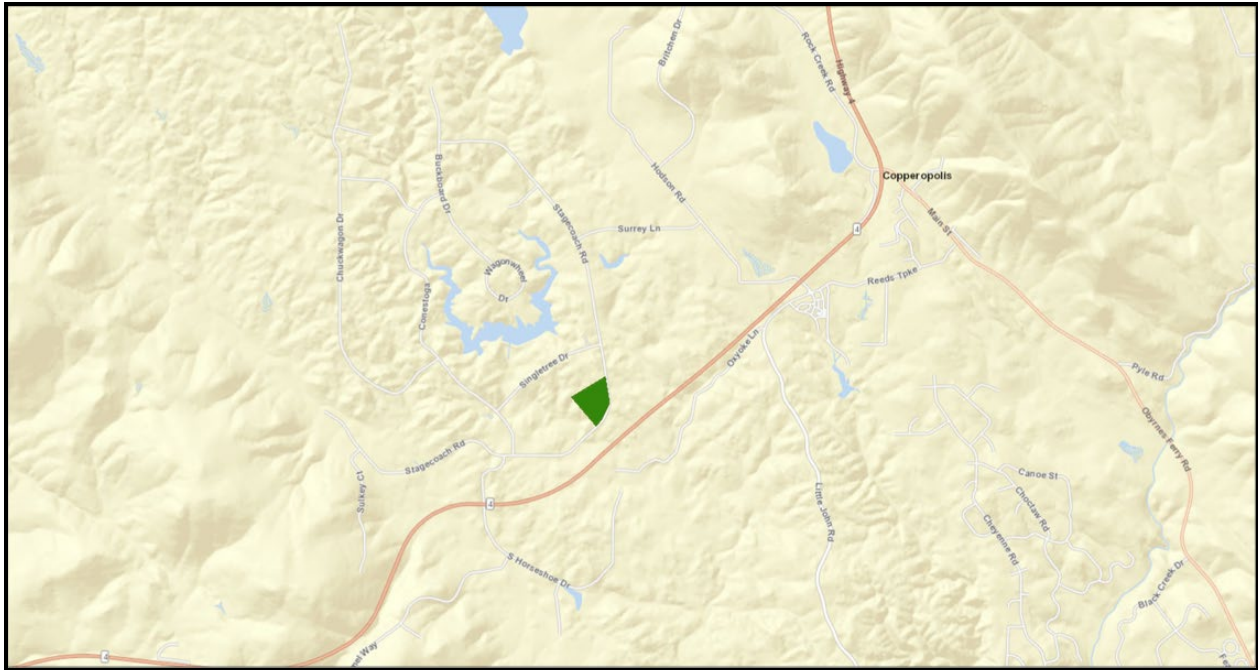


Figure 1: Location Map

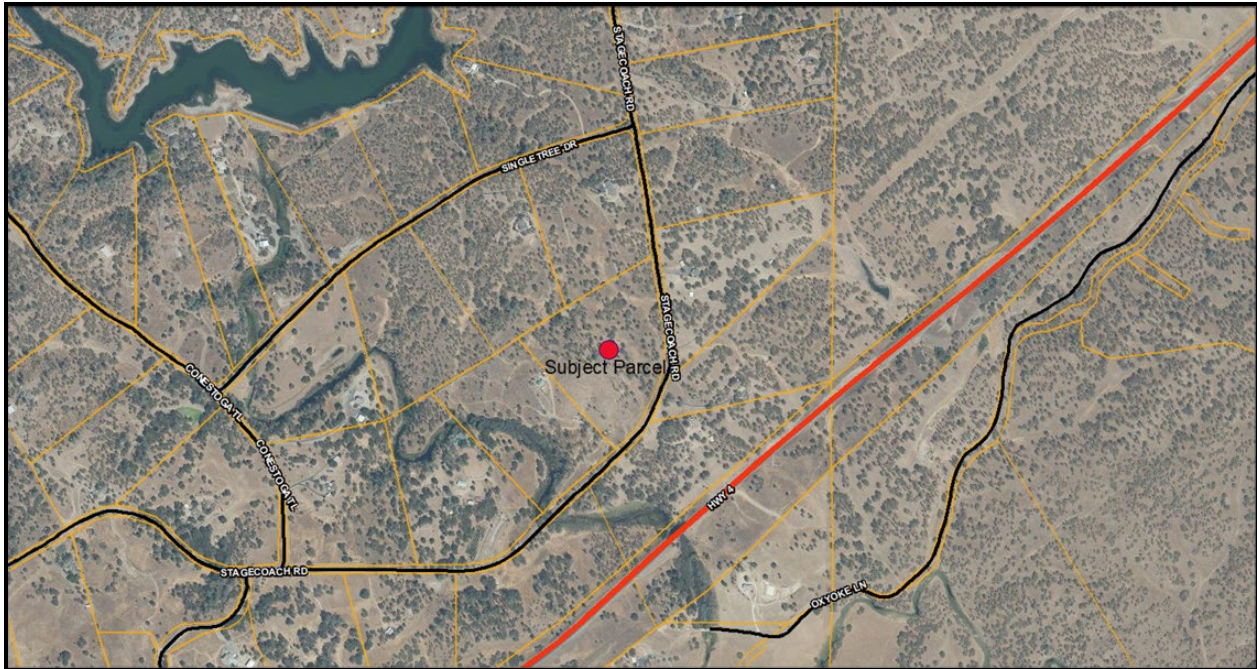


Figure 2: Aerial Map

BACKGROUND:

On July 11, 2023, Barber Construction submitted a building permit application for a 20’ x 40’ shed (800 square feet), a 20’ x 20’ structure (400 square feet storage unit), a 10’ x 16.5’ (165 square feet storage unit) and a 40’ x 29’ 11” (approximately 1,200 square-foot motorhome/deck), indicated in Figure 3:Submitted Plans. The elevations for the motorhome storage unit and deck and the storage units are identified in Figure 4: Elevations.

On July 14, 2023, the Planning Department denied zoning clearance for all structures applied for, and on August 14, 2023, Mr. Barber and Ms. Day submitted an appeal of the denial of only two of the four building permit applications, the ones for the 20’ x 40’ shed and the one for the 20’ x 20’ storage unit.

ANALYSIS:

As part of the permitting process, the Planning Department reviewed the building permit application submitted by Barber Construction on July 14, 2023, and determined that pursuant to Section 17.06.0080(B) of the CCC, the 400 square-foot structure and the 800 square-foot structure cannot be permitted until the main residential structure has been constructed. Both structures are considered accessory structures/uses to the main structure.

An accessory structure is defined in Section 17.06.0080(B) of the CCC as a usual and customary building normally associated with permitted or conditional use. Although per CCC Section 17.22.020(A)(2), incidental and accessory structures are permitted uses in

the RR zone, Section 17.06.008(A) of the CCC defines an accessory use as a land use that is associated with an existing permitted or conditional use within a zoning district.

Chapter 17.06.0080(A) of the CCC states that “An accessory use shall not be permitted until the permitted or conditional use is established.” Also, pursuant to Section 17.22.010, **the RR zone is intended to provide lands for personal ranches in which residential use is the primary land use.** Section 17.22.010 of the CCC goes on to say that the RR zone is established to permit small-scale farming primarily for personal use and not as the primary use of the property. While these sections do not automatically preclude a non-residential use from being established in RR, they do suggest that small-scale ranching in particular, while a permitted use, cannot be established as a *primary* use. Making sure that a primary use has been established before allowing accessory uses or structures on the property is one way of ensuring that incompatible uses are not impermissibly established in the RR zone. The Planning Department has therefore long interpreted the combined zoning ordinances cited in this staff report as prohibiting the construction of accessory structures prior to the construction of the primary use.

More recently, the Planning Department developed a policy of interpreting these ordinances more flexibly, allowing applicants who had made substantial progress towards the completion of their primary structure to allow one (1) accessory structure to be built to help facilitate that construction (e.g., secure tool and materials storage). Applicants in this situation must demonstrate that a main structure has been permitted but not constructed, or is permitted and under construction, and/or that other verifiable substantial efforts have been made to construct a primary structure. This applicant, however, wants to put *two* accessory structures on the parcel—one for tools and equipment and one to support cattle ranching--*without* having yet obtained a building permit for the primary residence.

The stated intention of using one of the structures as a hay barn to support an agricultural operation also means that this structure is not just an “accessory structure” but an “agricultural accessory structure”, defined separately in County Code under 17.06.0125 and a conditional use in the RR zone. This definition says, ***“Agricultural accessory structure’ means a structure for uses in agricultural operations such as sheltering animals, for agricultural equipment, hay, feed, etc. Examples of these structures include barns or storage buildings, noncommercial greenhouses, coops, corrals, and pens. May also include the storage of petroleum products for an on-site agricultural use allowed by the applicable zone. Does not include fencing, which requires no county approval when in compliance with Section 17.16.050 of this title (fences, walls, and screening).”*** The structure intended for use to support their cattle operation cannot therefore be built at all via a ministerial building permit; it needs an administrative use permit.

Therefore, based on the definitions in Section 17.06.008(A&B) of the CCC, 17.06.0125 of the CCC, and the limitations of the RR zoning district identified in Section 17.22.010 of the CCC, Planning staff denied the request for zoning clearance for building permits to establish the two accessory structures on the subject RR-zoned property. There is no evidence of a building permit application being filed for the main residence nor plans

submitted for the installation of septic system(s) for the main residential structure in the immediate future.

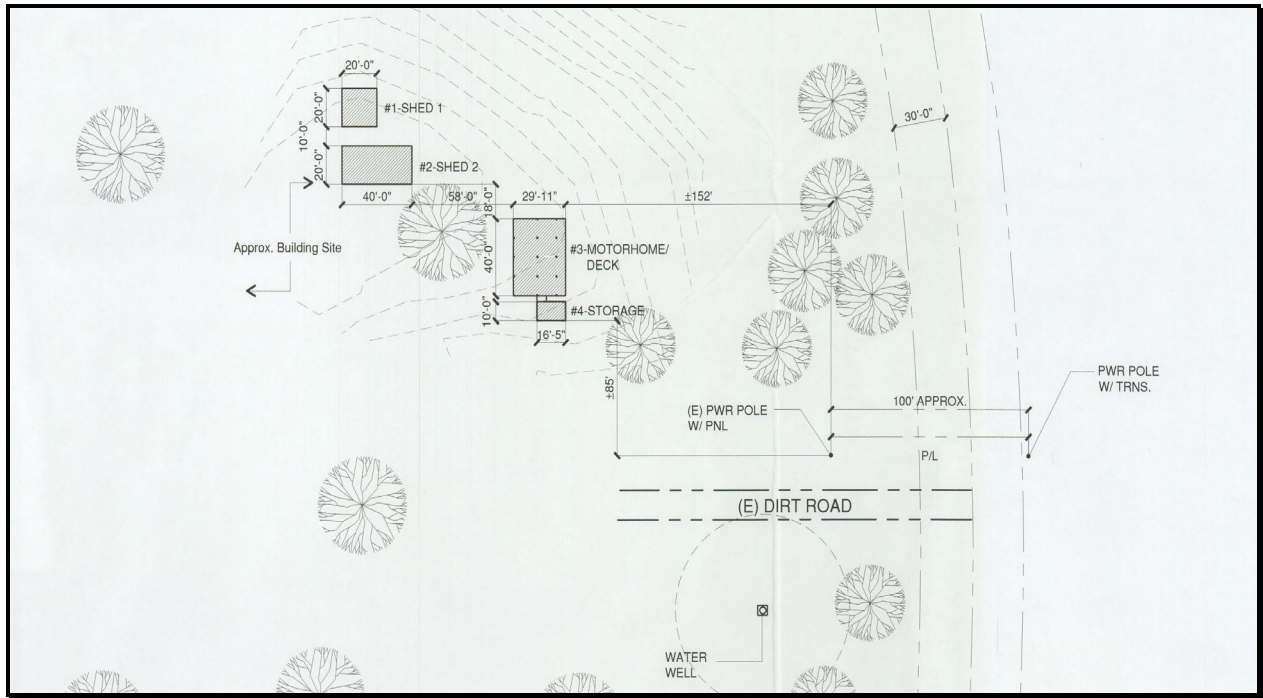


Figure 3: Submitted Plans

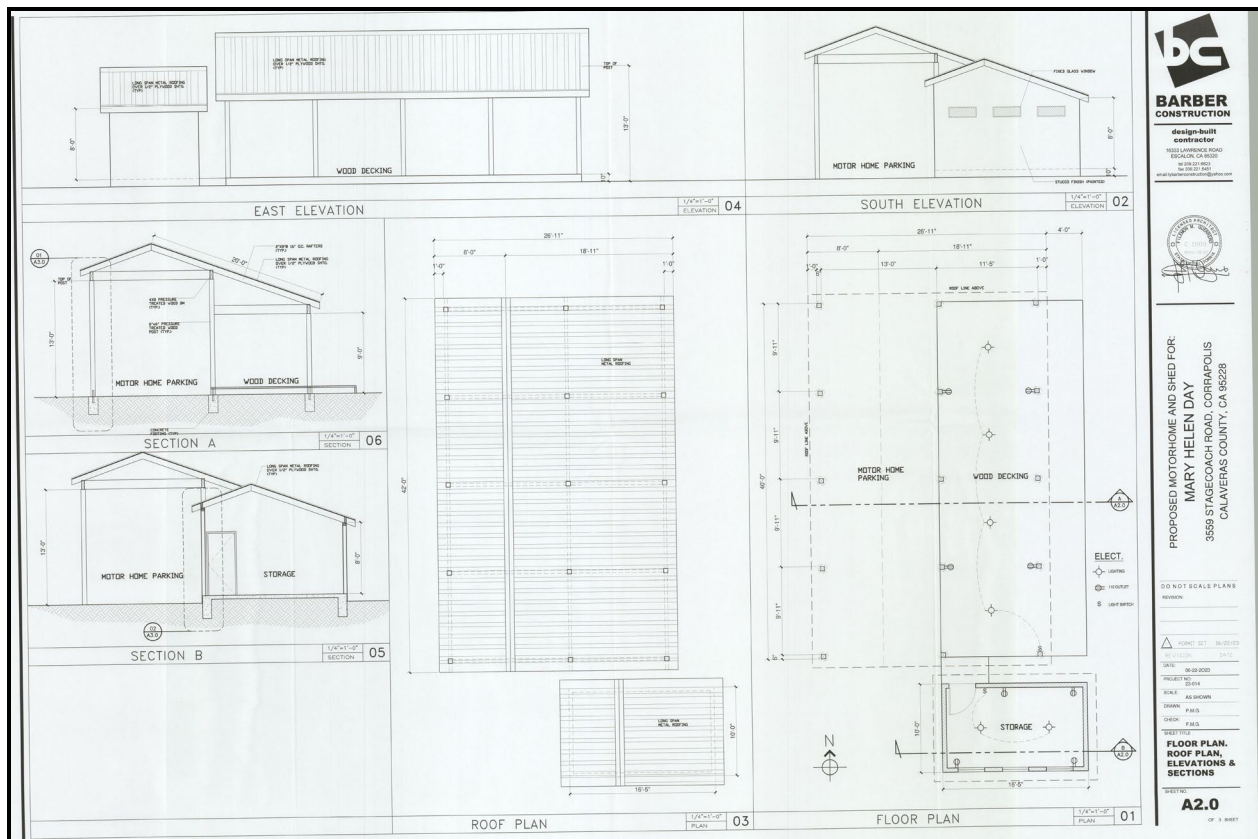


Figure 4: Elevations

Appeal

On August 20, 2023, Mary Helen Day and Tyrone Barber filed an appeal of Planning staff's decision pursuant to CCC Chapter 17.98.020 which states that a decision of any Planning Staff may be appealed to the Planning Commission by following the appeal procedures in Section 17.98.070, and submitting a written request, accompanied by the appropriate fee, within 15 calendar days from the date of the staff decision. The Planning Department received the appeal application within the required 15 calendar days of the decision and with the appropriate filing fee.

In their appeal letter, Mr. Barber indicated that he and his wife recently purchased the property as their retirement home and that it would take his architect some time to draw up plans for the main residence with the accompanying engineering calculations. While they await the completion of drawings for their new home and subsequent plan submittal, the Barbers would like to move a 400 square-foot shed and an 800 square-foot shed onto the property. The smaller shed (400 square feet) would allow them to move hay for his long horn cows and keep them from getting wet during unpredictable rainy weather, and the bigger shed (800 square feet) would allow them to move construction equipment and materials on the site and shield them from outside elements. The letter did not address the other structures identified in the submitted plans, which are the motorhome shed and storage unit.

While it is true that agricultural operations are also a permitted use in RR zone, CCC Section 17.22.010 says that small-scale farming cannot be a *primary* use, and the appellants themselves are saying that they intend the primary use of the property to be residential. They have been clear that they fully intend to build a home on the property because the property is their retirement property. The appeal letter stated that they had already paid ½ (one half) of the permit fees for the proposed structures including a \$500.00 encroachment permit.

While Planning Staff recognizes the Barbers' position and can empathize, the current code does not allow staff the flexibility to allow the structures as proposed. While not at issue in this appeal, it also appears from the submitted plans that the motorhome may be intended as a temporary residence while residential plans are being drawn and are going through the review and approval process. Per Section 17.22.040(B), the temporary use of a mobile home in conformance with CCC Section 17.04.130, is permitted in the RR zoning designation.

The Planning Department would like the appellants to be aware that Section 17.04.130(A) of the CCC allows for *the temporary use of a single-wide mobile home, recreation vehicle or travel trailer with a current, valid registration and license as a residence while building a permanent residence*.

ENVIRONMENTAL REVIEW: This project is categorically exempt from the CEQA pursuant to CEQA guidelines section 15268, which exempts ministerial projects from the CEQA. A Notice of Exemption will be filed if Planning Staff's decision is upheld. The staff decision being appealed is a ministerial denial of zoning clearance by the Planning Department as part of a ministerial building permit application.

RECOMMENDATION: Staff recommends the Planning Commission adopt resolution 2023-011, denying 2023-048 Appeal and upholding the Planning Staff's denial of two movable storage sheds on a vacant, undeveloped, 19.98-acre RR-zoned property.

ATTACHMENTS:

1. Amended Resolution 2023-011

**COUNTY OF CALAVERAS, STATE OF CALIFORNIA
PLANNING COMMISSION**

RESOLUTION NO. 2023-011

>>A RESOLUTION GRANTING APPEAL 2023-048 WITH RESPECT TO ZONING CLEARANCE FOR CONSTRUCTION OF A SHED SUPPORTING THE AGRICULTURAL USE AND UPHOLDING PLANNING STAFF'S DENIAL OF ZONING CLEARANCE FOR A SHED SUPPORTING RESIDENTIAL USE ON A VACANT, UNDEVELOPED, 19.98-ACRE, RR-ZONED PROPERTY AT 3559 STAGECOACH ROAD, COPPEROPOLIS

WHEREAS, On July 11, 2023, Barber Construction submitted a building permit application for a 20' x 40' shed (800 square feet), a 20' x 20' structure (400 square feet storage unit), a 10' x 16.5' (165 square feet storage unit) and a 40' x 29' 11" (approximately 1,200 square-foot motorhome/deck); and

WHEREAS, one of the sheds was planned to be used for feed and equipment to support a permitted agricultural use on the property, and one of the sheds was planned to be used to support the construction of a residence on the property; and

WHEREAS, the accessory structures are proposed on real property in the unincorporated portions of the County of Calaveras, more particularly described as APN: 054-004-041 and located at 3559 Stagecoach Road, a portion of Section 5, T01N, R12E, MDM; and

WHEREAS, on July 14, 2023, Planning Staff determined that the construction of the movable storage sheds as proposed would not be consistent with the Calaveras County Zoning Code; and denied zoning clearance for the temporary structures pursuant to Calaveras County Code (CCC) Section 17.06.0080(B); and

WHEREAS, on July 20, 2023, Appeal 2023-048 was filed by Mary Helen and Tyrone Barber pursuant to Calaveras County Code Section 17.98.020 challenging Planning Staff's determination; and

WHEREAS, during a noticed public hearing on August 23, 2023, the Planning Commission considered all of the information presented to it, including a staff report, information presented by the project proponent, and information presented at the meeting; therefore

BE IT RESOLVED that the Planning Commission denies Appeal 2023-048 and upholds Planning Staff's denial of two movable storage sheds.

1. The construction of the movable storage shed to support the construction of the primary residence intended on the site is inconsistent with the Calaveras County

Zoning Code, because this use has not been established until a building permit on the property has been issued.

EVIDENCE: The applicants intend to use their RR-zoned property primarily as a residence, with cattle ranching as an additional use. They have not yet received a building permit to begin construction of their residence but are seeking a building permits for a mobile sheds to keep tools and equipment to support the construction of the residence. CCC 17.06.008(A) defines an “accessory use” as “a land use that is associated with an existing permitted or conditional use within a zoning district.” It also says, “An accessory use shall not be permitted until the permitted or conditional use is established.” The County has long interpreted a residential use as being “established” once a building permit has been issued for the residential structure. Until this happens, the residential use is not “established” and no accessory structure to support that use can be built.

2. The construction of the movable storage shed to support a permitted agricultural use on the property is consistent with Calaveras County Zoning Code.

EVIDENCE: Agricultural accessory structures are defined differently than accessory structures in the Zoning Code, and only agricultural accessory structures supporting a “processing or manufacturing” use require an administrative use permit. The cattle ranching operation proposed on this parcel is a small grazing operation with no processing or manufacturing uses proposed on site. The County has long interpreted the Zoning Code to allow the construction of agricultural accessory structures for similar operations prior to the use being established on the site. Additionally, nothing in the Zoning Code prohibits more than one “primary use” being proposed for a parcel so long as all primary uses are permitted in the parcel’s zone. In this case, the applicant has proposed two primary uses for the parcel, one being single family residential and the other being a small cattle operation, both of which are uses permitted by right in the RR zone. Because one of the sheds was proposed to support the agricultural operation, this shed can be treated as an agricultural accessory structure supporting an agricultural “primary use” and, unlike the structure proposed to support the separate residential “primary use”, does not need to wait until a building permit for the residence to be issued.

Approved by the Planning Commission of the County of Calaveras, at a regular meeting of the Planning Commission held on September 28, 2023, on a motion by Commissioner _____ and seconded by Commissioner _____.

AYES:

NOES:

ABSTAIN:

ABSENT:

Chair, Planning Commission

ATTEST:

Gabriel Elliott,
Director of Planning

The project files are available for public review in the Planning Department, County of Calaveras, Government Center, 891 Mountain Ranch Road, San Andreas, CA. 95249, between the hours of 8:00 a.m. and 4:00 p.m.

Aerial Map

