

From: [Jenah Thornborrow](#)
To: [Christian Samples](#)
Subject: RE: VARFY2020 - 1 - Issues with condominiums and variances
Date: Thursday, May 14, 2020 4:24:00 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)

Thank you Chris. I appreciate you looking into this.

From: Christian Samples <csamples@GARDENCITYIDAHO.ORG>
Sent: Thursday, May 14, 2020 4:12 PM
To: Jenah Thornborrow <jthorn@GARDENCITYIDAHO.ORG>
Subject: VARFY2020 - 1 - Issues with condominiums and variances

I did some research on VARFY2020 – 1, the variance request for an attached porch to be located in a common area of a condominium association. It is located in the 52nd Street Condominiums.

The short answer: There appears to be some significant liability issues the City could be contending with if the request was approved. The City may expose itself to lawsuits from other condominium owners for violating their condominium property rights.

The long answer:

IC 55-15 is the Idaho Condominium Act, which regulates condominiums.

IC 55-1509(a) defines the physical boundaries of a condominium unit as *“interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the unit includes both the portions of the building so described and the airspace so encompassed. The following are not part of the unit: bearing walls, columns, floors, roofs, foundations, elevator equipment and shafts, central heating, central refrigeration and central air-conditioning equipment, reservoirs, tanks, pumps and other central services, pipes, ducts, flues, chutes, conduits, wires and other utility installations, wherever located, except the outlets thereof when located within the unit.”* The exterior walls are not included, which is what the proposed deck would attach to. The exterior walls are in the common area.

IC 55-1509(b) gives ownership of common areas to all condominium owners within the association.

IC 55-1509(c) gives condominium owners *“A nonexclusive right of ingress, egress and support through the common areas is appurtenant to each unit and the common areas are subject to such rights.”*

While IC 55-1524 requires structures, lots, and parcels to be treated in a like manner regardless of ownership, IC 55-1527 requires zoning laws to be applied to condominiums unless inconsistent with the Idaho Condominium Act. Approving the variance for the encroachment of the deck directly violates IC 55-1509(c) and is inconsistent with the Idaho Condominium Act for the following reasons:

1. The deck violates the right of ingress, egress, and support of the common area in violation of IC 55-1509 (c). IC 55-15 or LLUPA does not appear to grant the City the ability to infringe upon the rights granted in IC 55-1509(c).

2. As noted by 55-1509(a), the owner of 550 E. 52nd Street is limited in ownership to the interior of the unit. They do not have the legal right to ask for a variance as they do not own the exterior of the unit. The 52nd Street HOA, the owner of the common area, has the right to ask for it.

I will let the applicant know the above and will let you know what he decides to do.

Thanks,



Chris Samples, AICP

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