

**From:** [Dennis Mansfield](#)  
**To:** [Christian Samples](#)  
**Cc:** [Mark Manning](#)  
**Subject:** Re: VARFY2020 - 1 - Initial Application Review  
**Date:** Monday, May 18, 2020 7:12:44 AM

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Good morning, Chris,

I spent some time RE-reading your email of last Thursday. I appreciate your attention to detail in this matter.

However, I think your concern may be unmerited and your evaluation may be in error on four levels:

1. Your point on interior vs exterior walls was understood in this application for a variance. The exterior walls are the property of the HOA. Our HOA flood insurance, city & state building codes along with common real estate practices show that the exterior walls are not the property of the homeowner. My application for variance does not suggest anything to the contrary.
2. Because of point number 1, the HOA Board and President have given approval for the construction of the patio cover. It's the HOA's prerogative to approve or disapprove any exterior changes, within clear code guidelines. There are existing and somewhat vague exceptions to code. Not all exterior changes are uniform (fences between properties, door colors, per-unit landscaping, exterior door-hangings, front porch additions, backyard concrete patio size(s) and therefore coverings to protect the structure from the sun all show slight deviations.) The alternative is to have the proposed "attached" patio cover structure be placed as an unanchored free standing, unattached exterior structure; this could become unsafe, due to occasional/seasonal winds.
3. The practicality of protective patio covering against the harsh rays of the sun (and additional inclement weather conditions) SHOULD have been caught by the city during the construction phase of the project, but were not. This request is merely righting the wrong of that oversight in 2006.
4. Access to the common areas is not denied nor infringed upon in any additional way by this request for a variance. All homeowners currently have access to the Greenbelt on the western side of the HOA's property/common area and they regularly use the common gate through our backyard. Having a patio cover, attached to the exterior western wall would not infringe on any access or use of the common area.

We are trying to mitigate the problem now. The proper use of the variance process is to do just that. No one is suggesting a setting aside of Idaho code, but rather I'm asking the city to apply the variance process for the common good through common sense.

Please proceed with the June 17th hearing and include this correspondence in that file.

Thanks for your consideration and professionalism throughout this process.

Best,

Dennis Mansfield

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On May 14, 2020, at 5:11 PM, Dennis Mansfield <me@dennismansfield.com>  
wrote:

Thank you, Chris.  
I will talk with Mark and we will review your email.  
I appreciate your detailed analysis of this.  
I'll get back to you shortly.

Dennis

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On May 14, 2020, at 5:08 PM, Christian Samples  
<csamples@gardencityidaho.org> wrote:

Hi Dennis, I am writing regarding variance application VARFY2020 – 1.  
After reviewing the application, I have concerns about whether your  
application would be approved.

Idaho Code 55-15 is the Idaho Condominium Property Act, which regulates condominiums: [LINK](#). Idaho Code 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.

Idaho Code 55-1509(b) gives ownership of common areas to all condominium owners within the association. Idaho Code 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.”*

Idaho Code 55-1524 requires structures, lots, and parcels to be treated in a like manner regardless of ownership. However, Idaho Code 55-1527 requires zoning laws to be applied to condominiums unless inconsistent with the Idaho Condominium Property Act. Approving the variance for the encroachment of the deck appears to violate Idaho Code 55-1509(c) and is inconsistent with the Idaho Condominium Property Act. The variance appears to violate the right of ingress, egress, and support of the common area protected by Idaho Code 55-1509 (c). Idaho Code 55-15 and Idaho Code 67-65 (Local Land Use Planning Act - [LINK](#)) does not appear to grant the City the ability to infringe upon the rights granted in Idaho Code 55-1509(c).

Based on the above, I do not believe the Planning and Zoning Commission would approve a variance for what you are proposing. You are free to bring this before the Planning and Zoning Commission as scheduled on June 17, 2020, you may request a continuance to the July 15, 2020 hearing to give you more time to explore this issue, or you may withdraw the application. If you have other alternatives you would like to discuss, please let me know.

Please let me know how you wish to proceed.

Thanks

<image001.jpg>

Chris Samples, AICP

Associate Planner

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To: [Remove](#) this sender from my allow list  
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