

BEFORE THE PLANNING AND ZONING COMMISSION
GARDEN CITY, ADA COUNTY, IDAHO

THIS IS NOT A PREDETERMINED DECISION. ALL EVIDENCE WILL BE CONSIDERED. A DIFFERENT DECISION MAY RESULT IN AN UPDATE OF THE FINDINGS OF FACT, CONCLUSIONS OF LAW, OR CONDITIONS.

In the Matter of:)	VARFY2020 - 1
)	
Variance)	FINDINGS OF FACT,
52 nd St. Condominiums)	CONCLUSIONS OF LAW;
Garden City, Ada County, Idaho)	AND DECISION
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THIS MATTER, came before the Garden City Planning And Zoning Commission for consideration on June 17, 2020. The Planning and Zoning Commission reviewed the application and materials submitted. Based on the evidence presented, pursuant to Garden City Code Table 8-6A-1, the Planning and Zoning Commission makes the following Findings of Fact, Conclusions of Law and Decision:

FINDINGS OF FACT

1. The applicant is Dennis Mansfield.
2. The property owner of record is 52nd St. Condominiums Home Owners Association.
3. The location of the project is the common area for the 52nd St. Condominiums; Ada County Parcel Number R2816890010.
4. The property is the common area of a condominium development.
5. The application is a variance to allow a patio cover to encroach into the 15' rear setback in the R-3 Medium Density Residential zoning district required by Garden City Code 8-2B-3. The encroachment is for a 0' lot line setback. The scope of the variance is limited to the common area of the 52nd St. Condominiums and attached to the structure located in the common area identified as 550 E. 52nd St., Garden City, ID 83714.
6. The subject property is 0 acres. Condominium developments do not have acreage measurements.
7. The project is located in the R-3 Medium Density Residential zoning district.
8. The project is located in the Mixed Use Residential of the Garden City Comprehensive Plan Land Use Designation.
9. The project is located in the floodplain according to the 2003 FIRM.
10. The project is located in the floodplain according to the 2017 FIS.
11. The existing use on the site is the common area for a condominium development.

12. The following standards apply to this proposal:
- a. Garden City Code 8-6B-9: Variance
 - b. Garden City Code 8-6A: Administration – General Provisions
13. Required materials per Garden City Code Table 8-6A-2 Required Application Information was provided:

Variance			
Provided			
Yes	No	NA	
X			Compliance Statement
X			Neighborhood Map
X			Site Plan
		X	Verification that address is an Ada County Approved Address

14. Additional application materials submitted include:
- a. Site Plan with proposed patio;
 - b. Aerial;
 - c. Permissions from 52nd Street Condominium Association
 - d. Applicant response to staff's email;
 - e. Neighborhood meeting information;
 - f. Application; and
 - g. Warranty Deed.

15. The following noticing was completed in accordance with GCC 8-6A-7:

Noticing Requirement	Required Date	Completion Date
Neighborhood Meeting	April 26, 2020	April 22, 2020
Application Received		April 27, 2020
Radius Notice	June 2, 2020	May 13, 2020
Legal Notice	June 2, 2020	May 14, 2020
Property Posting Sign	June 7, 2020	June 6, 2020
Affidavit of Property Posting and Photos	June 10, 2020	Not Received

1. On June 17, 2020, a public hearing before the Planning and Zoning Commission was held:
- a. This section will be completed after the hearing

16. The record contains:
- b. Application Documents
 - c. Noticing Documents
 - d. Agency Comments
 - e. Staff report
 - f. 6/17/2020 Planning and Zoning Commission Hearing Minutes
 - g. 6/17/2020 Planning and Zoning Commission Hearing Audio
 - h. Planning and Zoning Commission Signed Findings of Fact, Conclusions of Law and Decision

2. In order to approve a variance application, the Planning and Zoning Commission shall make the following findings:

The draft findings are written both in approval and in denial. The Planning and Zoning Commission will select the corresponding conclusions and explanations during their decision. Potential explanations have been provided			
GCC 8-6B-9 VARIANCE: REQUIRED FINDINGS			
Conclusion			Standard
Compliant	Not Compliant	Not Applicable to this Application	
X		X	<p>Finding: The subject property is deprived, by provision of this title, of rights and privileges enjoyed legally by other properties in the vicinity and under the applicable zoning district because of the unique size, shape, topography or location of the subject property (a finding of undue hardship);</p> <p>Explanation:</p> <p>In Approval: The subject property is deprived, by provision of this title, of rights and privileges enjoyed legally by other properties in the vicinity and under the applicable zoning district because of the uniqueness of the property.</p> <p>In Denial: The subject property is not deprived by the provision of this title of rights and privileges enjoyed legally by other properties in the vicinity and under the applicable zoning district because of the unique size, shape, topography or location of the subject property. The property is not unique in size, shape, topography or location and does not have an undue hardship. Other condominiums even within the same site do not have the rights requested.</p>
X		X	<p>Finding: The need for the variance is not the result of actions of the applicant or property owner;</p> <p>Explanation:</p> <p>In Approval: The need for the variance is not the result of the actions of the applicant.</p> <p>In Denial:</p>

			<p>The need for the variance is due to the existing setbacks placed on the property by Garden City Code 8-2B-3 and the actions of the applicant by proposing to encroach into the setback. The nature of owning a condominium is that the ownership extends to air space and the structure, but not the underlining and adjacent property.</p>
X		X	<p>Finding: The variance will not unreasonably diminish either the health, safety or welfare of the community neighborhood</p> <p>Explanation: In Approval: There is undue hardship to this property as it is deprived, by provision of this title, of rights and privileges enjoyed legally by other properties in the vicinity and under the applicable zoning district because of the unique size, shape, topography or location of the subject property</p> <p>In Denial: It is a general rule applied to all properties in Garden City that improvements must be made within the subject property.</p> <p>The variance is proposed within the 52nd St. Condominiums Common Area utility and drainage easement, as depicted on the 52nd St. Condominium Plat. There is no documentation in the record demonstrating the variance would or would not affect the site drainage.</p> <p>The variance would violate Idaho Code 55-12 (The Idaho Condominium Property Act). 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." The variance would violate the ability of condominium owners to exercise this right.</p>
X		X	<p>Finding: The variance is the only reasonable alternative to overcome the undue hardship</p>

			<p>Explanation:</p> <p>In Approval: There is no other reasonable alternative to overcome this undue hardship.</p> <p>In Denial: The variance is not the only reasonable alternative to overcome the undue hardship. Other methods of relief include landscape screening, the replacement of siding on the structure, and non-permanent, non-structural screening methods.</p> <p>Approving the variance may open the City to legal liability by enabling current or future condominium owners to sue the City.</p>
X		X	<p>Finding: The variance is the minimum relief necessary to allow reasonable use of the subject property</p> <p>Explanation:</p> <p>In Approval: The variance is the minimum relief necessary to allow reasonable use of the subject property.</p> <p>In Denial: The variance is not the minimum relief necessary to allow reasonable use of the subject property. Other methods of relief include landscape screening, the replacement of siding on the structure, and non-permanent, or non-structural screening methods.</p> <p>There are no actions the applicant could have taken to obtain approval.</p>

18. The record was reviewed by the Planning and Zoning Commission to render the decision.

CONCLUSIONS OF LAW

The Planning and Zoning Commission reviewed the application with regard to Garden City Code Title 8, and based on the conditions required herein, concludes the application **meets/does not meet** the standards of approval under **GCC 8-6B-9 Variance**.

DECISION

WHEREFORE, based upon the foregoing Findings of Fact and Conclusions of Law contained herein, the Planning and Zoning Commission hereby **APPROVES/ DENIES** of the application subject to the following conditions:

IN APPROVAL

General Requirements

1. This approval is only approval of the variance. All other applicable permits must be obtained and completed prior to a certificate of compliance or occupancy.
2. This variance shall not be transferable from one parcel of land to another. Unless otherwise stated in the conditions attached to the variance, the variance shall be granted to the applicant and successors in interest to the premises for which it was approved.
3. The approval is specific to the application provided and reviewed. Final approval is based on substantial conformance. Any changes to the plans and specifications upon which this approval is based, other than those required by the above conditions, will require submittal of an application for modification and approval of that application prior to commencing any change.
4. Final approval is subject to the approval of other reviewing agencies and City Departments. Any more restrictive standards adopted and made applicable by any Transportation Authority, Fire Authority or other Federal, State or Local regulatory agencies shall prevail.
5. All improvements and operations shall comply with applicable local, state and federal requirements and procedures whether specifically addressed in the analysis of this application or not. This shall include but not be limited to 8-4A General Provisions of Design and Development Regulations.
6. Unobstructed easements, including but not limited to, drainage, water, and sewer easements shall be provided as required by the City Public Works or Planning Official.
7. Retain and protect existing trees, vegetation, and native soils and integrate these features into the overall landscape plan as required by or exempted from Garden City Code 8-4I and as shown in the approved landscape plans.
8. Property maintenance standards shall be maintained as required by Garden City Code.
9. Materials submitted after the decision shall not be considered part of the record for this decision. If additional materials or information is submitted after the decision the application may be remanded to the decision-making body during which time the decision shall be stayed provided that there is no immediate threat to life or safety.
10. No change in terms and conditions of this approval shall be valid unless in writing and signed by the applicant or his or her authorized representative and an authorized representative of the reviewing agency. The burden shall be upon the applicant to obtain the written confirmation of any change and not upon Garden City.
11. Any violation of the conditions of this application is a criminal offence.
12. This approval shall become null and void if a building permit or certificate of occupancy has not been issued within one year of the approval. An extension may be granted by the Commission upon findings that the application and or the applicable City regulations have not changed. Such extension shall be applied for sixty (60) days prior to the expiration date for the original approval; only one extension of not more than three hundred sixty five (365) days shall be granted.
13. Should there be a change in use, there is a clear intent to cease the use, or the use is discontinued for more than one year without written documentation submitted to the City, legal noticing, and property posting indicating intent to continue the use, this approval shall become void.

14. There is a 15 day right to appeal to City Council. An appeal shall be made on the form provided by the City and filed with the City Clerk within 15 days after the action of the decision.
15. Final decisions are subject to judicial review pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code.
16. Pursuant to Idaho Code, a request for reconsideration must be submitted within 14 days of the final decision and prior to judicial review. The written request must identify specific deficiencies in the decision for which reconsideration is sought.
17. A takings analysis pursuant to Idaho Code may be requested on final decisions.
18. If any term or provision of this decision, to any extent, is held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

Chairman, Planning and Zoning Commission

Date

STANDARD CONDITIONS FOR DENIAL DECISION

1. There is a 15 day right to appeal to City Council. An appeal shall be made on the form provided by the City and filed with the City Clerk within ten (10) days after the action of the decision.
2. Final decisions are subject to judicial review pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code.
3. Any applicant or affected person seeking judicial review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought. Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision shall not be deemed final for purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) day time frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.
4. Pursuant to The Local Land Use Planning Act, Chapter 65 Title 67 Idaho Code, a takings analysis may be requested on final decisions.
5. If any term or provision of this decision, to any extent, is held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

Vice Chairman, Planning and Zoning Commission

Date