

## CITY OF GARDEN CITY

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**File Number: VARFY2020 - 1**  
**Application Scope: Variance**  
**Location: 550 E. 52<sup>nd</sup> St.**  
**Applicant: Dennis Mansfield/52<sup>nd</sup> St. Condominiums HOA**  
**Report Date: 5/22/2020**



Staff Report  
Report prepared by Chris Samples

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## A. Report Summary

- Variance request to encroach a patio cover in the 15' rear setback required by Garden City Code 8-2B-3
- Potential issues concerning meeting the legal findings, encroachment into utility easements and potential violation of the Idaho Condominium Property Act

## **B. Project Information**

### **Proposed Scope of Work:**

<b>Request</b>	<b>Review Process</b>	<b>Notes</b>
Variance to allow encroachment of a patio in the rear setback	8-6B-9 Variance	None

### **Project Details:**

- 1) Proposed variance: Reduction of setback requirements in 8-2B-3 (Form Standards) to allow a patio cover to encroach in the rear setback of a condominium property
  - a) Reduction of setback from 15' to 0'
  - b) Patio cover proposed within the common area of the 52<sup>nd</sup> St. Condominiums

### **Site Conditions:**

- 1) Address: No address provided - Common area not typically assigned an address
- 2) Parcel Number: R2816890010
- 3) Property Size: N/A (Condominiums do not have a parcel size)
- 4) Zoning District: R-3 Medium Density Zoning District
- 5) Comprehensive Plan Land Use Map Designation: Mixed Use Residential
- 6) Legal Lot of Record: N/A
  - a) Condominiums are not lots as defined by Garden City Code
  - b) Condominium created lawfully in 2004 in accordance with Garden City Code in effect at the time
- 7) Floodplain Designation:
  - a) 2003 FIRM: AE
  - b) 2017 Draft FIRM: AE
- 8) Surrounding Uses:
  - a) Manufactured Home Park
  - b) Dwelling Unit, Single Family, Detached
  - c) Commercial Uses
- 9) Existing Use:
  - a) Condominium common area
- 10) Easements on site
  - a) Blanket utility easement on common area per 52<sup>nd</sup> Street Condominiums Plat
  - b) 5' Greenbelt easement per 52<sup>nd</sup> Street Condominiums Plat
- 11) Site Access: E. 52<sup>nd</sup> St.
- 12) Sidewalks: None installed

## C. Discussion

The applicant has requested a variance to construct a patio cover that may shield their home from the sun, as it has damaged their vinyl siding. The home is located in the 52<sup>nd</sup> St. Condominiums, a condominium development that divides the property into individual interests for each home and a common lot owned by all property owners as represented by the 52<sup>nd</sup> St. Condominiums Home Owners Association (The HOA). The ownership of the home is divided into the interior, owned by the applicant, and the exterior of the home and surrounding property, which is in the common lot. The HOA has authorized the applicant to apply for a variance to place the patio cover in the common area.

While shielding a home from the sun is a reasonable concern to address, there are potential issues with approving a variance at this location. The variance may not meet the required findings in 8-6B-9 (Variance) for undue hardship, for the variance being the result of the actions of the applicant/property owner, for other reasonable alternatives existing, and for the proposed solution potentially not being the minimum relief necessary. Other issues include the potential for an approved variance to violate the Idaho Condominium Property Act by restricting the rights of condominium owners' access to and use of the common area, on which the patio cover is proposed and encroachment into utility easements. Civil issues were raised by the City Engineer as potential issues, as it is unclear whether the patio cover in the common area would or would not violate the HOA's recorded regulations as noted on the plat document.

## D. Required Decisions; Required Findings; Decision Maker Actions; Appeals

**Required Decisions:** The following decision processes are required for the project:

Decision	Recommendation Authority	Decision Authority	Hearing Date
Variance	N/A	P&Z Commission	6/17/2020

### **Required Findings:**

To approve a variance, the Planning and Zoning Commission must find the application meets the following findings:

1. 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);
2. The need for the variance is not the result of actions of the applicant or property owner;
3. The variance will not unreasonably diminish either the health, safety, or welfare of the community neighborhood;
4. The variance is the only reasonable alternative to overcome the undue hardship; and
5. The variance is the minimum relief necessary to allow reasonable use of the subject property.

### **Decision Options:**

The Commission may take one of the following actions:

1. Approve the application as presented;
2. Approve the application with conditions;
3. Deny the application.
4. Request the applicant return with revised materials for additional review;

### **Appeal of Decision:**

Pursuant to 8-6A-9 (Appeals), there is a 15-calendar day appeal period to appeal the decision to the City Council. This period starts from the date of signature on the decision and not the hearing date.

## E. Agency Comments

The following agency comments were provided:

Agency	Comment Date	Summary
Garden City Engineer	5/16/2020	<ul style="list-style-type: none"> <li>• Potential issue due to encroachment into utility easements</li> <li>• Potential civil issue due to unknown terms of common area agreement. Civil issues will not be discussed in this report</li> </ul>

## F. Public Comment

The following public comments were provided: None

## G. Code/Policy Checklist

Sections with compliance issues noted will be analyzed in detail in section E: Code/Policy Analysis of this report. Sections without any compliance issues noted will not be further detailed in this report.

<b>Garden City Title 8 Code Sections</b>			
Code Section	Review Authority	Compliance Issues	Staff Comment
Title 8, Chapter 2: Base Zoning District Regulations			
8-2B Base Zoning District Provisions	Planning and Zoning Commission	No compliance issues noted; provided for informational purposes only	8-2B-3: <ul style="list-style-type: none"> <li>• Rear setback required in R-3 zone is 15';</li> </ul>
Title 8, Chapter 6, Article B: Specific Provisions			
8-6B-9 Variance	Planning and Zoning Commission	Compliance issues noted	8-6B-9E: <ul style="list-style-type: none"> <li>• The proposed variance does not appear to meet the findings of this section.</li> <li>• Granting the proposed variance may be in violation of Idaho Code 55-15 (Idaho Condominium Property Act) due to potential infringement of property rights</li> </ul>

Title 8, Chapter 7: References			
8-7A Definitions	Planning and Zoning Commission	N/A	Defined terms referenced: <ul style="list-style-type: none"> <li>• Common Area</li> <li>• Condominium</li> <li>• Structure</li> </ul>

Garden City Plans/Policies		
Plan/Policy	Compliance Issues	Staff Comments
<a href="#">Garden City Comprehensive Plan</a>	N/A	Comprehensive Plan compliance not required for a variance per 8-6B-9
<a href="#">Garden City Sidewalk Policy</a>	N/A	Sidewalks not triggered by variance
<a href="#">Garden City Street Light Policy</a>	N/A	Street lights not triggered by variance

## H. Code/Policy Analysis

Garden City Title 8 Code Section	
City Code	Analysis
<b><u>8-6B Administration – Specific Provisions</u></b>	
8-6B-9 Variance	<p>The variance request appears to not meet the required findings of this section. The variance may not meet findings 1, 2, 4 and 5.</p> <p><b>Finding 1:</b> Finding 1 requires a finding of undue hardship due to “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”. The application notes that the “extreme sun on the westside of the property” is causing an undue hardship. The application notes that the sun is hot enough to damage the vinyl siding of the residential structure.</p> <p>Despite the impacts the applicant notes, the common area of the 52<sup>nd</sup> St. Condominiums does not appear to have a unique size, shape, topography, or location</p>

relative to other properties within the development or adjacent to the development.

**Finding 2:**

Finding 2 requires a finding that the need for the variance is not the result of actions of the applicant or property owner. The application notes that neither the applicant nor the property owner were involved in the creation of the development, making the need for the variance not one created by either party. However, this is not the intent of this finding. As noted in finding 1, the limit of a variance is to a finding of undue hardship related to the size, shape, topography, or location of a property. The limits placed on a property by Garden City Code, in and of themselves, are not an undue hardship. By virtue of purchasing a property, the property owner accepts these limitations. Absent a finding of undue hardship, the variance becomes the result of the actions of the applicant or property owner, as the intent is to exceed the setback requirements of Garden City Code 8-2B-3.

**Finding 4:**

Finding 4 requires a finding that the variance “is the only reasonable alternative to overcome the undue hardship”. The applicant notes that a lack of large trees and structures makes the variance the only reasonable alternative to overcome the undue hardship.

The proposed variance may not be the only reasonable alternative due to other reasonable alternatives available, encroachment into the utility easement, and granting the variance may violate Idaho Code 50-15 (The Idaho Condominium Property Act).

1. Other reasonable alternatives available

The term “reasonable” is not defined in Garden City Code. 8-1A-4 requires the latest Merriam-Webster Dictionary definition:

*Reasonable: Not extreme or excessive; moderate or fair; inexpensive*

The intent of finding 4 is to only allow a variance once all other reasonable alternatives have been ruled out. Other reasonable alternatives could include:

- a. Landscaping: 8-2B-3 does not restrict landscaping in the rear setback. A landscaping solution, such as tall shrubs, class II or class III trees that have a wide canopy, or a combination thereof may be a reasonable alternative. Plantings with a faster growth rate could be a reasonable solution.
- b. Siding material: Changing the structure's siding material to one that is resistant to sun induced warping may be a reasonable alternative. However, reasonable in this instance could be subjective depending on the cost of this solution.
- c. Non-permanent structures: Garden City Code 8-7A defines structure as "Anything constructed or erected, the use of which requires location on the ground or attachment to something having a fixed location on the ground. The term "structure" includes buildings, storage tanks, manufactured and mobile homes, walls and fences." Solutions that are not considered structures would be allowed within the setbacks required by 8-2B-3. This solution could also act as a temporary measure while landscaping grew to maturity.

2. Utility easement encroachment

According to the 52<sup>nd</sup> Street Condominiums Plat and the Garden City Engineer's comments dated 5/16/2020, the common area contains a blanket utility and drainage easement across its entirety. The permission of each utility to encroach or the vacation of the easement would satisfy the utility component. However, a drainage plan would be needed to demonstrate that any encroachment would meet applicable federal law and Garden City Code or vacation of the easement.

3. Granting the variance may violate Idaho Code 50-15 (The Idaho Condominium Property Act).

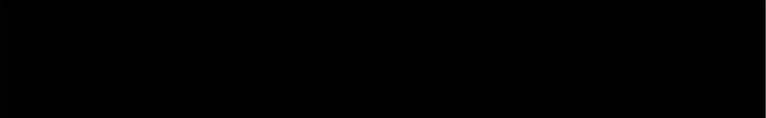
Idaho Code 55-15 is the Idaho Condominium Property Act, which regulates condominiums. Idaho Code 55-1509(a) defines the physical boundaries of

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 patio cover 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. This enables the applicant to have the property treated consistently with other properties, to evaluated for setbacks and to apply for a variance. 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. Granting 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) does not appear to grant the City the ability to infringe upon the rights granted in Idaho Code 55-1509(c). Violating the property rights of condominium owners may not be a reasonable alternative.

The applicant has provided a detailed rebuttal to this concern and is included as an additional exhibit.

	<p><b>Finding 5:</b>  Finding 5 requires a finding that the variance is the “minimum relief necessary to allow reasonable use of the subject property”. As noted above in the analysis of finding 4, there are other methods of relief that allow reasonable use of the property. The patio cover proposed by the applicant is their desired solution but does not appear to be the minimum relief necessary.</p>
<p><b><u>8-7A References</u></b></p>	
<p>8-7A-1 Definitions</p>	<p>The following relevant defined terms were referenced in this report:</p> <p>Common Area: Land, complementary structures and/or improvements designed and intended for the common use or enjoyment of the residents of the development. The area can include, but is not limited to: turf areas, playgrounds, patios, courtyards, barbecue and picnic areas, water areas, and community gardens.</p> <p>Condominium: An estate consisting of an undivided interest in common in real property, in an interest or interests in real property, or in any combination thereof; together with a separate interest in real property, in an interest or interests in real property or in any combination thereof, as defined under Idaho Code sections <a href="#">55-101B</a> and <a href="#">55-1503</a>.</p> <p>Structure: Anything constructed or erected, the use of which requires location on the ground or attachment to something having a fixed location on the ground. The term "structure" includes buildings, storage tanks, manufactured and mobile homes, walls and fences.</p>