

## Division Opinion

**Inquiry:** 2008-03  
**Subject:** Using platted common space for fire separation distance.  
**Code Reference:** MN Rules 1309.0302 and Table 1309.302.1 and IRC 202-definition of fire separation distance  
**Approved by:** Thomas Anderson, State Building Official  
**Issue Date:** June 6, 2008

**Question:** Detached (IRC-1) single family dwellings are proposed to be constructed approximately 15-feet apart. The property lines for each lot are located at the building lines of each dwelling unit. Each individual building lot will be surrounded by a large common area that is to be controlled by a homeowners' association. The developer is proposing to add a provision to the homeowners' association covenants that prohibits any structures from being built in the common areas between the dwellings. The covenants will be recorded against each property and would include a requirement that the City must approve any changes to the "no build" provision.

Can the common area that is controlled by a homeowners' association be used to establish the fire separation distance in lieu of measuring to the lot line when determining wall and opening protection required by the International Residential Code and MN Rule Chapter 1309?

**Code states:** MN Rule 1309.0302 and Table 1309.302.1 regulates the construction, projections, openings and penetrations of exterior walls for dwellings and accessory buildings based on fire separation distance. Fire separation distance is defined as: The distance measured from the building face to one of the following:

- 1- The closest interior lot line;
- 2- The centerline of a street, alley or public way; or
- 3- An imaginary line between two buildings on the same lot.

The distance shall be measured at a right angle from the face of the wall.

**Answer:** Based on the definition of fire separation distance, this would not comply. However, open area such as an outlot or common space, could under specific controls, be used as a basis for an "alternate" to establish the fire separation distance when regulating construction, projections, openings and penetrations of exterior walls.

**Commentary:**

The fire separation distance concept is the means the IRC and IBC use to determine when exterior wall protection is necessary. The intent of the code is to provide protection at the exterior wall(s) when minimum required fire separation is not provided. It has been common practice for building officials to allow common space that extends around individual lots to be used when determining the fire separation distance. The intent of the code is met when no structures can be built within the common space. The concern of fire spreading from one building to another has been addressed. In order to accept common space to determine fire separation distances, the building official would have to accept an alternate to the code per MSBC 1300.0100 subpart 13. Such an alternate would need to include legal documents such as title restrictions, association agreements or other acceptable to the building official, that guarantee no structures will be built in the open space.