
**Board of Adjustment
February 13, 2018
Staff Report**

Application Summary –

A request by Timothy R. Gerding (attorney), on behalf of 1013 Park Avenue, LLC (owners), to grant variances to the required front yard setback, allowable accessory structure coverage, and accessory structure location which are not permitted per Sections 29-4.1(a), Table 4.1-3 and 29-3.3 (ii)(1), of the Unified Development Code so as to permit construction of an outdoor stage on property addressed as 1013 Park Avenue.

Site Characteristics

The subject property, 1013 Park Avenue, is currently improved with Rose Music Hall, an outdoor patio area, and outdoor performance stage. The existing 756 sq. ft. performance stage was permitted as a temporary structure in April 2017 and replaced a unpermitted 317 sq. ft stage in approximately the same location. At the time temporary permit issuance, the applicant acknowledged (see attached letter) the need to seek a variance regarding the stage's location. During the permit review process, issues relating to maximum accessory structure coverage and structure separation were also discussed.

The subject property is located on the northern fringe of downtown, outside the M-DT (Mixed-use Downtown) district and is surrounded by non-residential uses on all sides. The subject site and adjacent properties to the north, east and west are zoned IG (Industrial). To the south is M-DT (Mixed-use Downtown) zoned property subject to the Urban General street frontage development standards.

Relief Sought and Purpose

The applicant is seeking relief from multiple provisions of Unified Development Code as indicated above. If such requests are approved, the existing temporary use would be permitted to exist as a permanent structure, the combined area of accessory structures would be greater than the principal structure, there would be no front yard setback applicable to the property, and accessory structures would be permitted to be closer than 10-feet to each other.

According to the applicant, the proposed placement of the stage is critical in utilizing the property for the property's primary indoor/outdoor entertainment use. The applicant further states patios/paved areas were not considered structures and that prior regulations never regulated accessory structures in regards to area relationships or location to other structures and that enforcement of such regulations will continue to conflict with current and future sites throughout the city.

Variance Analysis –

Summary and Impacts –

The applicant is seeking variances from the following regulatory requirements of the Unified Development Code:

1. **Sections 29-4.1(a), Table 4.1-3 and 29-3.3 (ii)(1)(ii)** – A 25-foot variance to the required front yard setback of the IG zoning district and a variance to allow an accessory structure to encroach into a required yard area. If granted, no front yard setback would exist upon the property allowing any future site improvements (primary or accessory) to be built to the property line along Park Avenue.

Setback lines are intended to provide separation between structural improvements such as adjacent buildings, sidewalks, and streets. They are intended to assist in managing development intensity by establishing a building envelope in which improvements can be constructed. Setback areas can also serve as utility corridors. Elimination of required setbacks can impact the built environment by allowing more development intensity or compromising the ability to allow for efficient expansion of public infrastructure.

The request to eliminate the required 25-foot front yard setback would result in a temporarily permitted structure to be permanently placed within an area restricted from structural improvements. The IG district, formerly M-1 (Industrial), has had a required front yard setback of 25-feet since 1957. Granting the variance would create a setback inconsistent with surrounding development on similarly zoned property and provide an opportunity to increase site development intensity if redevelopment were to occur. The current Rose Music Hall and patio area comply with the required setback. The applicant's April 24, 2017 letter regarding the issuance of the temporary permit for the stage clearly acknowledge encroachment into the setback and methods of resolution should a future variance not be granted.

Given the site's sloping northeasterly topography, the placement of the current stage within the required setback area is the most convenient location so as to optimize the usage of the site as an outdoor concert venue. The previously unpermitted 317 square foot stage was generally in the same location (see highlighted site plan) and was approximately 10-feet into the required setback. From site evaluation there appears to be no unique site feature that justifies the need to adjust the setback as requested. It should be noted; however, that relocation of the existing stage onto a different portion of the site may be less optimal for adjacent property owners given the impacts that an outdoor concert venue can create.

2. **Section 29-3.3 (ii)(1)(i)** - A variance to permit the aggregate square footage of all accessory structures on the lot to exceed the square footage of the primary use of the lot. If granted, the total square footage of the site occupied by accessory structures (i.e. patio and stage) will be greater than the square footage of the lot occupied by the primary structure (i.e. Rose Music Hall).

Multiple structures can be located upon IG zoned property; however, when such structures are complimentary to each other one is considered the primary structure/use and the others are accessory structures/uses. In this case, the current site has a primary structure/use, the Rose Music Hall, and two accessory structures/uses, the outdoor patio and the stage.

The Unified Development Code and prior zoning codes have required that accessory structures/uses be subordinate in area and scale to that of the primary structure/use of the property. As part of the adopted Unified Development Code, new language was created to clarify how accessory structure/use subordination was to be determined. Additionally, the Unified Development Code redefined what constituted a structure to include decks and patios.

The provisions from which the applicant is seeking relief were intended to ensure that a site's primary use would be readily apparent and distinct from its accessory uses in order to assist in the orderly application of regulatory standards such as setbacks and parking requirements. Without such a distinction, a structure/use typically considered to compliment the primary use of the property could be constructed to be greater in size or area than the property's intended use.

In this case specifically, the primary structure/use of the property is the Rose Music Hall. The outdoor patio and stage support the activities conducted within the music hall itself. The music hall is the location where the majority of the business activity is transacted throughout the year on the site. The site's usage as an outdoor entertainment venue has existed for a period of time; however, historically the outdoor patio area and stage have been smaller than the music hall and were never previously viewed collectively as part of defining what the site's primary use was to be based upon.

If this variance is granted, the site's primary use may be considered to have been converted to an outdoor venue verses an indoor one since the area devoted to outdoor uses is greater than that of indoor uses. Such conversion would impact application of other regulatory provisions specifically those dealing with parking. It should be noted that the Unified Development Code now defines patios as a structure which is different from prior code versions. This change requires that the area allocated to the patio be calculated as part of the total square feet devoted to accessory site uses. If the former zoning regulations were in effect this requirement would not exist and this variance would not be necessary since the stage would still be considered subordinate in area and scale to the music hall. Furthermore, given the current regulatory provisions, if either the patio area or stage were reduced in size so as to be smaller than the square footage of the music hall this variance would no longer be necessary.

3. **Section 29-3.3 (ii)(1)(iii)** - A variance to permit an accessory structure to be closer than 10-feet to another structure. If granted, the stage would be permitted to overlap the southeast corner of the existing paved patio area which is now considered a structure.

Structure separation is generally required to ensure public health, safety, and general welfare is maintained on a site. Prior to the adoption of the Unified Development Code the location of a structure such as the stage would have been allowed to be within 10-feet of an outdoor patio. However, now that a patio is considered a structure the minimum separation between structures must be maintained. Compliance with the setback standard could be achieved by modification of the paved surface of the patio area.

Compliance with Variance Criteria -

Staff has reviewed the “General Criteria” for the approval of a variance as articulated in Section 29-6.4(d)(3)(i) of the UDC. In relation to these criteria, staff finds that:

1. The subject property is located within an area of the City that is undergoing redevelopment, but fails to have topographic, shape, size, or other factors that make achieving compliance with the UDC regulatory standards more difficult than adjacent property. The location of the stage was acknowledged at the time of permitting as being subject to relocation to ensure compliance. Staff does not find that site features have created a hardship that diligent site planning cannot overcome to ensure UDC compliance.
2. Approval of any requested variance would not result in permitting the construction of a building not otherwise allowed in the IG district or modify a standard contained with the definition of “Outdoor Recreation or Entertainment”.
3. Approval of any requested variances would not result in permitting development inconsistent with the Comprehensive Plan. The subject site is located within a “City Center” and the proposed use is consistent with that designation.
4. Several opportunities exist to reduce the scope of the variances requested to the minimum needed to relieve the difficulty or hardship. Such opportunities have been discussed above and will be offered in the following “Recommended Action” section.
5. Given the context in which the subject property is located, approval of the Variance #1 may harm the public health, safety, or welfare and may be injurious to other properties or improvements within the area for the reasons discussed above. Granting the Variances # 2 and #3 would have limited impact upon the public health, safety or welfare or be injurious to other properties or improvements within the area.

Recommendation Action –

Staff recommends the following actions relating to the requested variances:

Variance #1 - Sections 29-4.1(a), Table 4.1-3 and 29-3.3 (ii)(1)(ii) - (Front yard setback & accessory structure encroachment into setback)

Denial of requested 25-foot variance and allowance of the stage to encroach into the required setback. A 0-foot front yard setback is inconsistent with adjoining development on similar IG zoned property and no known site characteristic limits compliance. **Alternatively if the Board finds**, given site conditions and the surrounding land use context that a reduction is appropriate, a variance of 15-feet could be approved. Such variance would result in the stage being located 10-feet forward of the required setback in a location generally consistent with the original unpermitted stage.

Variance #2 - Section 29-3.3 (ii)(1)(i) – (Aggregate square footage of accessory vs primary structure/use)

Denial of the variance allowing the area allocated to accessory structures to exceed that devoted to the primary structure. Reduction of the area allocated to the patio, stage, or a combination of the two would result in compliance with the existing regulations.

Variance #3 - Section 29-3.3 (ii)(1)(iii) - (Structure separation)

Denial of request to permit structures (i.e. the patio and stage) to be closer than 10-feet to each other.

Modification of the paved area of the patio or relocation of the stage to another portion of the site would result in compliance with the regulations. **Alternatively if the Board finds**, that no public health, safety, or welfare is compromised by the allowing the two structures to within 10-feet approval could be approved.



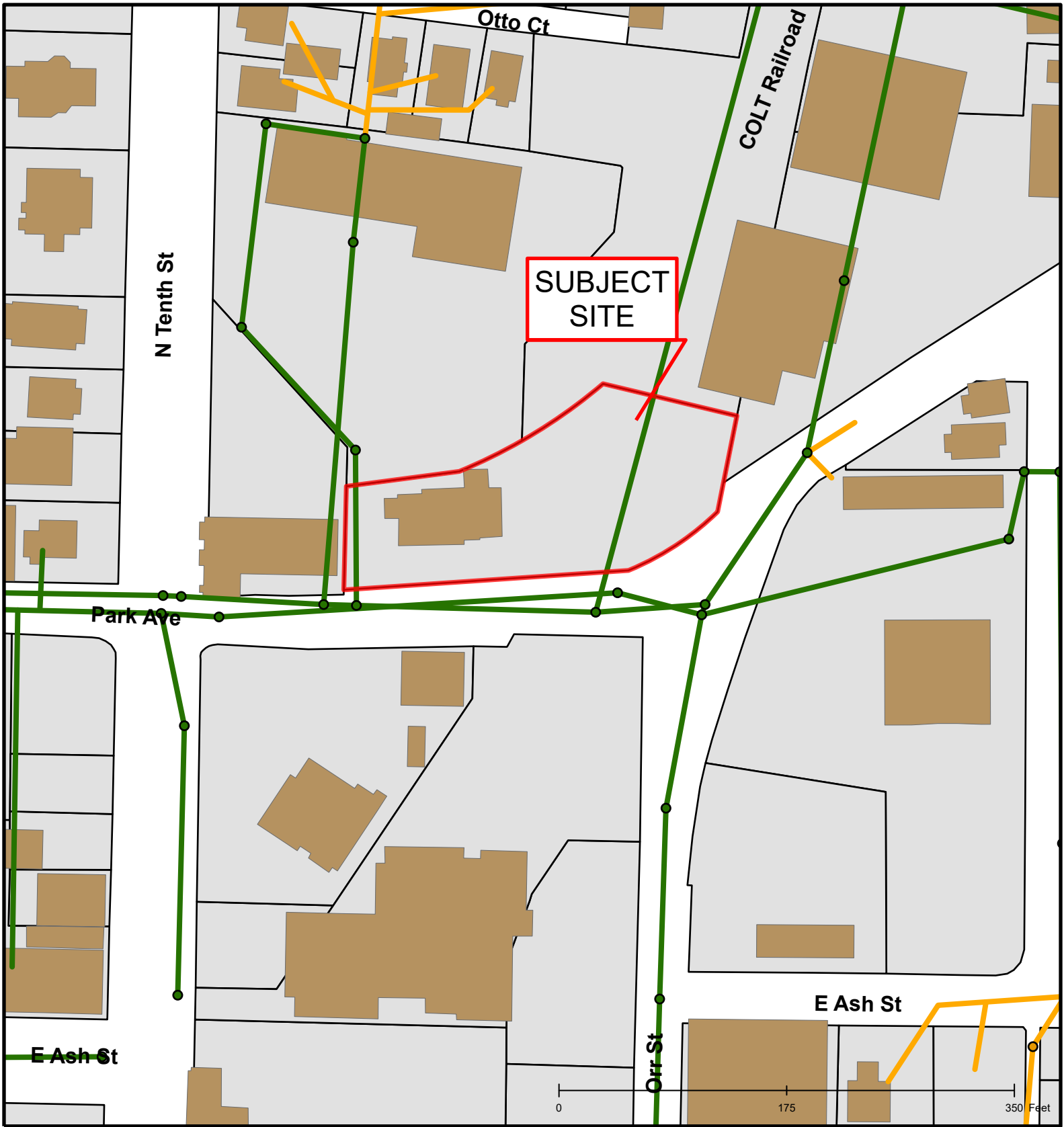
BOA Case # 1958

Variance - Rose Music Hall



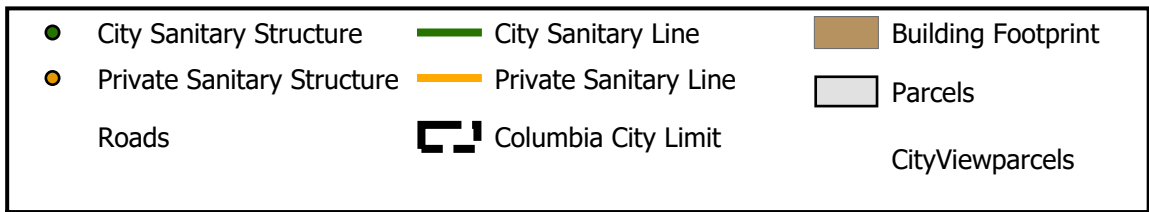
Roads	Columbia City Limit
City Zoning	CityViewparcels
Parcels	





BOA Case # 1958

Variance - Rose Music Hall



Created by The City of Columbia - Community Development Department

Parcel Data Source: Boone County Assessor

2015 Imagery: Boone County Assessor's Office

Hillshade Data: Boone County GIS Office

SIMON ASSOCIATES, INC.
■■■■■■■■■■ ARCHITECTURE ■■■■■■■■■■

April 24, 2017

Ms. Nadine Resler, Plan Reviewer

Community Development Department

Columbia, Mo. 65215

RE: Rose Music Hall

Temporary Structure Permit Application

Nadine,

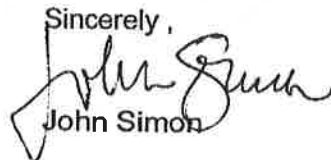
Please allow this correspondence to serve as notification of our understanding that the proposed temporary stage will be required to be removed within 180 days of occupancy. Grove Construction is the contractor for the project and they have indicated that the cost of installing concrete piers, removing and backfilling the pier holes will be less than the cost of helical anchors. Our drawings have provided an option for the use of helical anchors and our detailing of the concrete piers have included loops to facilitate their removal. It is my understanding that the proposal provided by Grove Construction to the Owner identifies the cost of removal and backfill of the piers.

The intent of the Owner is to solicit a variance from the Board of Adjustment for the front yard setback. We have discussed with the Owner that it is likely that the stage will require relocation or removal at the end of the 180 days and that additional submittals for the final location of the structure may be necessary to the Community Development Department for final permit applications.

Please let me know if you need any additional information or if I can be of assistance.

Thank you for facilitating this request.

Sincerely,


John Simon



