

CITY OF COLUMBIA

MEETING MINUTES, TUESDAY, FEBRUARY 13, 2018

BOARD OF ADJUSTMENT

I. CALL TO ORDER

MR. CARROZ: The February 13, 2018, Board of Adjustment meeting will come to order. Mr. Zenner, will you please call the roll.

MR. ZENNER: Mr. Carroz?

MR. CARROZ: Here.

MR. ZENNER: MR. Clithero?

MR. CLITHERO: Here.

MR. ZENNER: Ms. John?

MS. JOHN: Here.

MR. ZENNER: Ms. Hammen?

MS. HAMMEN: Here.

MR. ZENNER: Mr. Waters?

MR. WATERS: Here.

MR. ZENNER: We have a quorum, sir.

MR. CARROZ: Thank you.

II. APPROVAL OF AGENDA

MR. CARROZ: May I have a motion and a second for approval of the agenda?

MS. JOHN: So moved.

MS. HAMMEN: Second.

MR. CARROZ: We have a motion and a second. All those in favor say aye. (Unanimous voice vote for approval.) Seeing none, we have an approved agenda.

III. APPROVAL OF MINUTES

MR. CARROZ: The January 19, 2018, minutes were distributed to the members of the board. Are there any corrections or additions to the minutes?

MS. JOHN: Move to approve.

MR. CLITHERO: Second.

MR. CARROZ: I have a motion to approve and I have a second. All those in favor, say aye. All those opposed say nay. (Unanimous voice vote for approval.) Very good. We have approval of the minutes.

Will the court reporter please swear in the staff?

(Staff sworn.)

IV. PUBLIC HEARINGS

Case No. 1958

Appeal of Timothy R. Gerding, attorney, on behalf of 1013 Park Avenue, LLC, requesting that said board grant variances to the required front-yard setback allowable to accessory structure coverage and accessory structure location as to the permit and construction of an outdoor stage on property addressed as 1013 Park Avenue which are not permitted per Section 29-4.1(a), Table 4.1-3 and 29-3.3(ii)(1) of the Unified Development Code, the subject real estate being known as or located as 1013 Park Avenue.

MR. CARROZ: Has the property been properly advertised?

MR. ZENNER: Yes, it has, sir.

MR. CARROZ: And has the property been posted?

MR. ZENNER: Yes, it has.

MR. CARROZ: Have the parties of interest been notified?

MR. ZENNER: Yes, they have.

MR. CARROZ: Have there been any inquiries?

MR. ZENNER: Yes, there have, sir. Placed before you in front of your seats this evening was an e-mail from Susan Mays, the representative for the North Central Columbia Neighborhood Association. Basically, this letter is neither support nor opposition to the request. It is information indicating that the membership of the North Central Neighborhood Association had not had an opportunity to formally meet

prior to today's meeting to have a vote as to what their recommendation would be. However, according to Ms. Mays, they have had individuals within the North Central Neighborhood contact Mr. Gerding, our applicant here this evening, and they're hoping to work out whatever concerns may exist through separate correspondence and communications.

The summary of the letter, in essence, is they think it is prudent that the respective groups and individual property owners and tenants meet to discuss the impacts of the request before you. There were several other inquiries as it related to other businesses within the area, none of which resulted in any specific letters being sent to us that we would have communicated to you through either staff report or this evening. We do have a number of folks here in the audience that I don't believe are attached with the applicant that may have other comments that they would like to make.

In essence, the summary of the comments that were made through the correspondence received from other business owners were generally from the Talking Horse Theater, and they had to relate to the concerns as they're associated with the noise that may be being produced from the facility and how that was interacting with the plays that were being put on and the shows and performances within their theater itself. Those concerns were directed back to Mr. Gerding, and I believe they have been addressed. At this point, there was no additional information that was provided to me after providing the general facts in the case as it related to what we'll be discussing this evening.

MR. CARROZ: Thank you, sir. Will the attorney making application to the board please come forward and state your name and address and be sworn in.

PUBLIC HEARING OPENED

MR. TIM GERDING: Yes, sir. My name is Tim Gerding, attorney, at 501 Cherry Street, Columbia, Missouri.

(Witness sworn.)

MR. TIM GERDING: Good evening, ladies and gentlemen of the Board of Adjustment. Thank you for being here this evening and thank you for your time and your energies in reviewing our application for variances. It's greatly appreciated. As, of course, the record indicates, I represent 1013 Park Avenue, LLC, on this request for variances from strict enforcement of the 25-foot setback and, if applicable, be allowable what has been termed accessory structure, square foot coverage in ratio to the -- what's called the primary building on the property, and the accessory structure location as being closer than ten feet from -- from another structure. We're asking this evening for your support in granting these variances.

And with me here this evening is Matt Gerding, who happens to my brother, and he is the owner and manager of 1013 Park Avenue, LLC, and also Kevin Murphy from A Civil Group will be giving his thoughts and some testimony, as well. And, in fact, he'll be giving most of the meat of the presentation this evening. I would offer to admit into the record, if it's not already so, our application for the variance. As I indicated, over the course of our presentation, you will hear a number of main points and themes. I would like to sort of list out some of those at the outset upon which Mr. Murphy will then later elaborate. If the board has question, I'm happy, of course, to answer whatever questions the board might have, but I might suggest that it's also more likely the case that Mr. Murphy might have the more substantive answers to your questions.

The stage that we're here talking about this evening is a newly constructed, professional designed and built stage. The previous stage that was located on the property was a slightly smaller stage. It was not permitted, but it existed there for a number of years where outdoor live performances have been occurring in this park at Rose Park, and that stage was not professionally built or certified or anything of the sort. Our stage is, and so we think that that's a relevant point in regards to the issues that go to public safety and health that are applicable to our request for a variance. We will be suggesting and are suggesting to the board that the remedy that we're seeking here this evening is a minimum remedy. The only alternative that -- from the ordinance's standpoint that we could conceive of would be to seek a rezoning of the property which, in our understanding of the ordinances, would require to be successful for rezoning and then we would be theoretically in violation of other parts of the code, particularly those that might prohibit outdoor music performances. So we believe having received a temporary permit, which, by the

way, we -- I'm sure the board is aware we received a temporary permit and we've been operating the stage now since the summer -- operated throughout the summer and the fall with little to no issues, and -- and so, again, I think that this variance procedure -- this procedure was essentially suggested to go through, get a temporary permit, and then, at a later time, seek a variance.

My next point that I think will thematically serve to go through this evening's presentation is that I am -- have questions as to whether or not Section 29-3.3(2)(1) -- or that's double I -- I'm sorry -- two ii(1), Roman I, Roman ii, Roman iii, would actually -- actually apply -- if those restrictions would actually apply in this case. It is -- what we want to get across to the board this evening is that this property is really a single use. It's an indoor/outdoor entertainment use. It was purchased that way from the previous ownership. One use contemplates the other. The outdoor facility is not really an accessory or secondary to the primary building. They both are equally importantly part of the use of the property and so, we're -- and, of course, we're not here requesting a use variance. Much of the language that's contained in that particular ordinance relates to uses and I'll -- I'll get into that a little bit more in just a few minutes.

My next point just kind of dovetails from a previous point, which is that an outdoor stage or outdoor stages have been located in the same general area of the yard and patio for many, many years prior to the adoption of the Uniform Development Code, and when the property was under different ownership, which was Richard King Enterprises. Certainly when my client bought the property, and you'll hear from my client this evening, he did so with the knowledge that the outdoor stage was part of what he was buying -- it was buying, it being an LLC, with a specific plan in mind. And one of the main reasons for purchasing the property was for using the outdoor areas and to upgrade the stage, but to use the park in the same way it's always been used and was used by Mr. King, just perhaps on a slightly larger scale.

The other point, which is also to be discussed further this evening, relates to what is also noted in the staff report, which is that under the previous code, patios -- concrete patios were not considered structures, and so their square-foot area relationship and distances to other structures were not part of the code and we would not be here talking. And, of course, we are under the new code and we understand that, but believe that that's a factor that might be considered. What we're talking about in two of the three variance requests is basically the size of a patio.

We believe -- my next point is that we believe that the situation and configuration and size of the stage as it exists, where it exists currently in Rose Park actually promotes public health and safety, much less would cause any detriment to it. If the stage were to be relocated into what essentially would be kind of the middle of the park, which, if you try to picture -- and we're going to show the board some images of the park here shortly. It looks like maybe we have some that we're about ready to show. If you've seen it or if you see these photographs, you'll see that to situate this park 25 feet out into the park would, frankly, just kind of look pretty almost silly. But from a public health and safety standpoint, you can imagine patrons potentially working their way, potentially patrons that have consumed alcoholic beverages working their way around the backside of the stage where there's electrical wiring, where there's performers who have -- we have to be concerned about their safety and well-being, as well. And Mr. Gerding -- Matt Gerding will speak a little bit more to that, as well.

Very important -- my next point is very important to understanding the -- this property is understanding that the topography of the property as being very specific and unusual. Where the stage is located at the present time, it is -- it is back at the lowest level of the topography of the lot, and such that the -- the hill that goes up creates virtually almost like a natural amphitheater. And so its location there has very -- it's very specific -- has a very specific purpose, and the topography of this lot lends itself to this perfectly in very specific and exceptional way. Another main point that I would want to raise at the outset is that other neighboring properties also appear to be enjoying the use of that area and the 25-foot setback. For example, the very next door neighbor, the building which I refer to as the old Koonze Glass building, encroaches upon that 25-foot setback almost all of the way to the -- to the boundary. And so if one of the purposes as noted in the staff report for having such a setback is the provision or the ability to have future provisions for additional infrastructure, such as utilities or widening of road, that -- that's in the same setback. It's the same line as -- as is on our property, and so I'm not sure that without dealing with the Koonze Glass building, there would be actually any opportunity for any infrastructure in that 25 -- you

know, close up into that 25-foot -- the boundary line of my client's property.

Those are the main bullet points I wanted to hit at the outset. I did want to get a little bit deeper into the Section 29-3.3, and specifically that -- that section deals with what is described as use specific standards and provides that all uses for which the permitted use table in 29-3.2 shows use specific standards shall comply with the applicable standards in this section. And so I think what we have here is essentially a section that would be applicable if we were in here asking for a use permit, to ask that the property be used in a way that it's not already permitted to be used. Of course, reference to -- to the table in 29-3.2 shows that the uses that we currently put into our industrial general zoned property are already permissible and -- and so when you get into sub 1, 2, and 3, they sort of mirror the other cited issues in the -- in the staff report that relate to, you know, structural -- deviation for structural variances. But regardless of whether there's a stage that's combined with the patio is smaller than -- than Rose Music Hall building or whether it is within that 25-foot setback or not, the uses of the outdoor park is going to be live music and it's permissible that it be live music. So I -- I would argue that that specific section does not apply. We're not in here asking for a change in use, we're asking just for changes to the setback and -- and structural size and distance, strict requirements of the code.

I note that when they define in the definition section of the code accessory structure, it's defined as a structure that is incidental and subordinate to the principal structure or use on the property, and accessory use is defined as a use of land as incidental and subordinate to the primary use of land or structure on the property. And again I'll just make the point again, this outdoor music is just as essential to the use of this property as the indoor music venue inside Rose Music Hall. And so, again, I don't believe that section is applicable. I think we're dealing with essentially an issue of semantics as to whether something is primary or accessory or not.

Looking at the general criteria set forth in the -- in the ordinance for the granting of a variance, I'd like -- I'd like to get into that general criteria. But before I do so, I think it makes sense to cite from certain quotations that are in the staff report. In the staff report on Page 2, in the third paragraph, it says, "Granting the variance would create a setback inconsistent with surrounding development on similarly zoned property." And again I would just respond to that by again mentioning the fact that the very adjacent building, the old Koonze Glass building and other neighboring lots also do not have set -- 25-foot setbacks, and so I don't believe that statement is actually completely accurate. In the staff report, Page 2, the fourth paragraph, it states, "Given the site's sloping northeasterly topography" -- and that's the topography I'm talking about, this almost natural amphitheater -- "the placement of the current stage within the required setback 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 and was approximately ten feet into the required setback." All those things are true except that we maintain that the current location of the stage is not just the most convenient, but, by far, and perhaps the only practical and sensible location for the stage to be located. It -- where it's located also supports the highest and best use of the property and moving it would simply result in a diminished use of the park. Matt Gerding will also speak to a noise issue that could come about if the stage were moved further inward to the park, where there would be less of hill to -- to encapsulate the sound or to assist in encapsulating the sound.

The staff report statement continues, "From the site elevation" -- I'm sorry. "From the site evaluation, there appears to be no unique site feature that justifies the need to adjust the setback as requested." I would ask the board to note that this statement comes on the heels of the report's acknowledgment right before it that the lot has a sloping northeasterly topography; i.e., amphitheater-type layout, as I call it, and Mr. Murphy will discuss other unique aspects of this -- of the lot during his presentation. And so under the general criteria of 29-6.4(a) that the variance -- I'm sure the board is very familiar with these and I appreciate your patience of me going through them -- that under (a), a variance is required to address practical difficulties or unnecessary hardships related to the shape, size, terrain, location, or other factors of the applicant's site. Those difficulties or hardships are not generally applicable to property in the area, and the difficulties or hardships were not created by the actions of the applicant. Here again, we're talking about the terrain, the topography of the property. There is no other property in that area that has that topography and -- nor would be suitable to have an outdoor concert venue. The

shape of this -- of the -- of our lot is three times as wide as it is deep, and Mr. Murphy is going to talk to that more fully. And clearly the situation was not one that was caused by my client. It's an issue of practicality. There simply is no other practical or sensible location, and so it would be a practical difficulty or unnecessary hardship. You know, it's -- it may not be, you know, a dire hardship, but it's certainly unnecessary that it would be moved. There would be no benefit that would -- that would come of that.

The staff report acknowledges that under (b) and (c) of 29-6.4, that our request satisfies those criteria and then with respect to (d) that the variances will least change in the requirements of this chapter necessary to relieve the difficulty or hardship. It's our position that relief from this setback requirement is not just the least, but really the only deviation that could be granted in order to allow the property to be put to its highest and best use for the public as an outdoor music venue and recreation area. Moving the stage 25 feet in would only indeed amend the use of the park. Rezoning would be a much larger change from the requirements and would require subsequent use variance procedures that would seem inefficient. So again this, in our view, is very clearly a request for the least change from the requirements in order to relieve the difficulty or hardship. And then under sub (e), that the variance will not harm the public's health, safety, or welfare, or be injurious as a property or improvements in the area where the property is located. But the staff report on Page 4, numeral 5, says, "Given the context in which the subject property is located, approval of variance number one 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."

And then when I go back and I look back in above in their report, I don't find any discussion in there about what public health, safety, or welfare concerns there would be that could result from a change in the set -- a variance related to the setback, so I'm not sure which concerns the staff report is intending to address there, but -- but it's, I think, very clear and will become more clear as Mr. Murphy gives his presentation, moving the stage to the middle of the park -- so the variance can cause new public health, safety, or welfare, or cause injuries to other property. Not only would it not cause those things, moving it would cause those things. Moving the stage, again, into the middle of the park raises concerns, like I indicated before, regarding patrons moving back and behind the stage where -- where it might be harder to secure them, where there's, you know, electrical equipment, band safety, musician safety. And we believe that moving the -- moving the stage to the center of the park would actually be more likely to cause injury to neighboring properties. And as Matt Gerding will discuss, after Mr. Murphy, the noise from the band would not be buried as deep in the topographical slope so as leaving noise more susceptible to escaping from the property.

And then if I could just briefly address both the second and third variance requests that the accessory -- what's being called an accessory structure not be within ten feet of another structure, and that the aggregate square footage of accessory structures not exceed the square footage of the primary structure. In the report on Page 3, paragraph 4, it states as follows, "The provisions from which applicant is seeking relief were intended to ensure that the site's primary use would be readily apparent and esteemed from its accessory uses." This, again, I don't believe what we're seeking here constitutes a request for a use variance. The use in the park would remain the same; live music, recreation, and entertainment, which is permitted under the zoning. And it raises the question of, you know, who decides what is the primary use or primary structure on a piece of property. Is it the property owner, in the way that he intends to use it -- or she? Is it the City? Is it the neighbors? Who decides what's primary and not, and I'm not sure and, in fact, believe that it should not be the case that Rose Music Hall be automatically deemed to be the primary structure on this property. It may be the oldest structure on the property, but not -- not necessarily the primary structure. Page 3, paragraph 6, of the staff report says, "If the variance is granted, the site's primary use may be considered to have been converted to an outdoor venue versus an indoor one." Again, just because of the size, they're taking the size of the patio -- the concrete patio, lopping that on top of the size of the outdoor stage, and saying, well, that square footage is greater than the -- than the square footage of Rose Music Hall, and so you converted this property now to a different use. It is now an outdoor venue versus an indoor venue. I'm not sure that anywhere in the code, you can actually find distinctions between indoor or outdoor recreation or music -- music performances, so I don't believe that that's a useful or helpful distinction in this matter. Of course, the only difference being one is under a roof and one is not under a roof. So we're asking for a structural

dimensional variance regarding square footage. We don't believe we're here asking for any sort of use variance.

And then back into the staff report, Page 4, paragraph 1, it says, "Structure separation is generally required to ensure public health, safety, and general welfare." And so, the third violation is, did in fact that a small portion of the outside concrete patio overlaps underneath the southeast -- I'm sorry. The southeast corner of the patio goes slightly underneath the stage. And I, for the life of me, am not able to think of any sort of public health, safety, or welfare issue that would -- that could arise from that fact. And we're asking for relief from -- so the relief there is relief we're requesting from the minimum ten feet from another structure requirements, but then also from the aggregate square foot comparison. So both of those issues, both of those variance requests, both of those ordinance requirements, if strictly applied, basically would say we need to make our patio smaller. And I'm just -- I'm just kind of at a loss as to try to articulate why -- why reducing the size of a patio would promote public health, safety, or welfare. And again this is a function of the new Uniform Code, now, for the first time, treating patios as structures under the -- under the law of the City. But I'll spare the -- I'm going to spare the board my general criteria analysis as it relates to the variance requests number two and three, and turn things over to Mr. Murphy for more of the meat of the discussion.

But before I do that, I would like to say just finally, as indicated in the report in reference to Mr. Simon's letter of Simon & Associates, we were, of course, aware at the time that the temporary permit was issued that we would need to be back before this board if we were going to seek a variance. But I'm going to let Matt Gerding speak to this more fully. I would point out that my client does take issue with the statement in Mr. Simon's letter that it was discussed with the owner that likely the stage will require relocation or removal at the end of the 180-day period. My client spent over \$80,000 on this stage, which he would not have done if anyone had had a discussion with him that it was likely going to occur that he was going to have to relocate it or remove it. In sum, we're asking the board to look at the practical realities of Rose Park and use a common-sense approach to what we are asking here this evening, and respectfully asking on behalf of my client to the board that the variances be granted. And at that, I would just introduce Mr. Murphy. Thank you for your time.

MR. MURPHY: Good evening, Chairman, and board members. Kevin Murphy of A Civil Group, offices at 3401 Broadway Business Park Court.

(Witness sworn.)

MR. MURPHY: First off, we've got some exhibits here to hand out. I think I've got seven all together, one for -- if wouldn't mind passing those down. And I'd like to start off with just a brief history, as I know it, of this property and use of this property. Having moved to Columbia in mid-'70s, for as long as I can remember, this property has been a bar, a tavern, restaurant, providing live entertainment. Beginning in the '70s and into the '80s, it was called SOB's Tavern. I'll let you wonder what the SOB's was about. But I only remember being there once or twice when I was young. I don't believe that was a place my parents thought I ought to be, but I think my father drug me down there to see actually a coworker of his playing some music in the establishment. In the '80s and '90s, it was what was called Park Place. It was owned by Ken Norman, and it was known for its live blues acts and included music indoors and outdoors on the patio area. In the mid-'90s, it switched to San Maria's, originally owned by a friend of mine, Sam D'Augustino, and also known for its live blues acts, as well as other genres of music, again with music both indoors and outdoors on the patio.

In the late '90s, early 2000s, by now the popular music venue was MoJo's, and soon purchased by Richard King, owner of The Blue Note. It now has even more outside entertainment for Columbia's enjoyment. By the mid-2000s, Mr. King decided to clean up the east half of the property, which had several large -- I don't know if anyone can recall -- this had several ditches running through it, and at one time or another, a remnant of some old Wabash Railroad right-of-way. He cleaned that up and he dedicated it to, as a memorial to his friend, Forrest Rose. And it's since this time in 2008, there has been a stage in that park in some form or another, again for this past ten years, and then although technically it may not have been a permitted structure, it was considered a structure at the time.

In 2014, Matt Gerding, a Columbia native, and his partner -- business partner, Scott Leslie, purchased The Blue Note and MoJo's from Mr. King. Prior to this, they had been and still do run another

hugely successful entertainment venue in Madison, Wisconsin, known as Majestic Theater. They have since renamed this particular entertainment hotspot that we're speaking about tonight Rose Music Hall from the MoJo's -- original MoJo's name, and again in honor of Mr. Rose. And it's since brought in even bigger name, national performers, and they are wishing to utilize this outdoor venue for these, as well as hosting fundraising events for local groups -- charity groups and movie nights in the summer for families of all ages. They've recently partnered with Frank Productions, which is a third-generation family-owned promotion and production company that specializes in live entertainment nationwide.

I'll try to be -- follow in sequence again with Staff's report here. I'm starting with site characteristics. In the spring of 2017, the owners, along with their architect and myself, had several discussions with City staff regarding issues involved with placing this stage. It culminated in a meeting with several members of various City departments and divisions to discuss possible remedies. It was determined in that meeting and after that meeting that although the property is located in -- and staff agrees -- the City center as identified in the City's comprehensive plan, it could not be rezoned to the most fitting zoning district of C-2, which is -- which is a former downtown zoning district, which is still an existing zoning district. It could not be rezoned to that because within the new UDC regulations, that zoning district shall not be expanded upon. So where it is is where it is. There's no new creating that zoning district, although we feel that this zoning district would allow us to do most everything that we would like to do and are able to do now with this property. However, we did discuss -- and if you look at the first two exhibits there, the colored ones marked Exhibit 1 and Exhibit 2, they indicate -- Exhibit 1 being the zoning in the area prior to the UDC, and Exhibit 2 being the current UDC zoning. I would like you to note there is existing C-2 zoning immediately to the north of Park Avenue, as well as spotted throughout the outskirts of the downtown MDT -- current MDT zoning. We -- we looked at other zoning districts, including the MDT, the downtown zoning, MN, which is mixed neighborhood, MBP, which is mixed business park, MC, mixed commercial, and even PD, planned development, but these all have uses -- the allowed uses, the building standards and setback standards and other general and regulatory standards that apply to each of these different districts precluded them from allowing us to do what we currently and are able to do now. There would still need to be variances requested from those.

Now, although a PD district is -- is supposed to allow flexibility in design, they -- we've been told they're generally discouraged from use due to their difficulty in administering them, that the UDC was a way to standardize zoning districts so you would not have to have individual zoned properties with individual regulations on each property, to get away from land districts, basically. It is also a requirement and then provide City amenities and benefits in return for this flexibility, which are not practical in this instance. Basically, it'd be something like giving up the park to the City or something of that nature, but -- so it was determined that during this meeting, that another avenue for remedy to these issues would be to pursue this particular variance request process. As I've just noted, rezoning this property to a different zoning district would still require these variances and possibly more, and the outdoor entertainment use would potentially require -- not be allowed or require a conditional-use permit in addition to those variances for all but the MC and IG zoning districts. Again, we feel that this -- these requests for use the least amount of variation necessary for Rose Music Hall to enjoy the allowed uses of the property to the fullest extent.

Following staff report's next section, the relief sought and purpose. We're here, as stated, seeking relief from the provisions of the UDC related to setback -- setback encroachment totaling 559 square feet, an aggregate area related to accessory structure uses and primary structures or uses, and a structure separation related issue. We hope that you will agree with us these variances are critical to the property's allowed use as an indoor and outdoor entertainment venue. And not only are there conditions that are peculiar to this property that create hardships, some of the UDC regulations we are requesting a variance from are in conflict or in error in their interpretation. The submarian (phonetic) impact as regards to the variance from the 25-foot yard setback, I've also handed you an exhibit marked Exhibit No. 3. The first thing you might notice on this exhibit is the unique shape of the lot. The lot totals three -- there are 30,492 square feet, however, it is roughly three times as wide as it is deep. This is an odd-shaped lot in itself creates difficulties in using a property of this size as a 25-foot setback on a 100-foot deep lot is already using one-quarter of your lot area. If you think of a more standard lot configuration, I think you would agree that you would envision a more square- or rectangle-shape lot with the frontage being the

narrow part of the lot and the depth going to the rear.

As a matter of fact, up until now, the new UDC regulation -- until now, when the new UDC regulations came into effect, in instances where lots sat on a corner of two streets, the prime devolution of the lot was the side with the least dimension. I can also tell you in my 25-plus years of dealing with subdivisions and the creation of lots, I have yet to run into a lot quite as disproportionately dimensioned as this. The second thing you may notice on this exhibit is the gray highlighted area on Park Avenue. This indicates the irregular lots and right-of-way configuration in this area. Again, the unique conditions of this property that reduces the useable front-yard area. This condition was created over many years through the original platting of the area in the 1800s with the original town of Columbia on the south side of Park Avenue, and Harveston's Addition on the north side of the Park Avenue, back when Park Avenue was known as Centralia Road and ran to Centralia and down Paris Road, and when Tenth Street was known as Christian College Avenue. Adding to that was some recent reconstruction and slight relocation of Park Avenue in the early '90s where they reconfigured the street to more properly tie in Orr Street and just align more to 90-degree angles to the other existing streets.

If you'll now briefly look at the aerial photo marked as Exhibit 4, it's an aerial photo of Park Avenue from Rogers Street to Tenth Street and beyond. You'll notice that even though it's small, Park Avenue consists of a 32-foot wide street in a 44-foot right-of-way until it hits Orr Street, where the right-of-way gets basically all wonkie. As I discussed, that's where the road was realigned and whatnot in the '90s. Now, if you go back to Exhibit 3, you'll notice two building lines. One is the current 25-foot setback line due -- due to the unusual lot and right-of-way configuration that I just spoke of, and the other is a normal 25-foot setback based on the right-of-way configuration located where the street actually is. If the -- if the lot line was where it is standard up and down the block, we would be much closer meeting staff's recommendation of a variance to a 15-foot setback -- a potential variance to a 15-foot setback. Unfortunately, this is not how the property has been configured over the last 150 years or so prior to our applicant's purchase of it.

I would also note that as far as staff's position regarding the need for a setback of a building or structure -- from a -- building or structure from adjacent sidewalks and streets so as to minimize the density or potential impact on future expansion of public infrastructure and utilities, I would like to point out that this property has been replatted twice, once in 1999 and again in 2001 to clean up some of the old Wabash Railroad right-of-way in the area, which had been previously vacated. On both of those occasions, City staff and as well as utility companies reviewed these requests and did not ask for or require additional right-of-way or utility easements. Item number two, again, this property is identified in the City -- by the City's comprehensive plan as being in the City center. This area includes the downtown, the University of Missouri, Stephens College, and Columbia College. And neither of the aforementioned educational institutions, nor the vast majority of properties in the downtown district from Park Avenue to Elm Street, from College to Providence Road, are required to have building setbacks from the right-of-way as is required here, nor are they required to have additional utility easements in general.

MS. HAMMEN: Would you repeat that?

MR. MURPHY: Certainly. Again, this -- this property, in the comprehensive plan, is considered within the City center. Also included in that are the -- the three universities, colleges, as well as all of downtown from, you know, the streets that I mentioned, you know, the bulk of downtown. The bulk of the downtown zoning does not require setbacks from the streets or sidewalks. You're able to build up to that right-of-way line. The colleges and the universities are allowed to do so as well, as long as they identify that in their master plans and such. So -- building -- and item number three. The building immediately to the west of this property -- again, the old Koonze Glass building, as well another building a bit to the east are also zoned IG or industrial and they sit within the 25-foot yard setback with Koonze Glass, I think, sitting on both the property line on Park Avenue and on Tenth Street. And the final point on the site, which has relevance to the next variance request is that technically, by the new UDC regulations, all paved areas, including parking lots and sidewalks and retaining walls, are considered structures and, therefore, most all developed properties in town are now not in compliance and any new properties, if this was to be judged in that manner, would not be in compliance.

On my next point, Zach has indicated that they consider this for entertainment use, the stages and

accessory use. As we contended earlier, that this outdoor entertainment is part and parcel with the indoor entertainment use as during four to five months that this is in regular operation, it has become an integral part of their business model due to the number of customers that it can draw. And we think it's safe to say that both the indoor and outdoor could be considered -- both be considered a primary use. The staff has also stated that the current placement of the stage within the setback is the most convenient location as to optimize the use of the site for our use as an outdoor entertainment venue. While I cannot say this is not true in part, we also feel that the unique topography of the property is noted with the ground sloping nine to ten feet from the location of the stage to the corner of the lot. It's the most logical and safe place to place the stage. It's logical in the sense that trying to minimize the effects of the noise leaving the site, we have the benefit of the hillside that it's directed at. Again, think of it as an amphitheater or a stadium. What we are trying to do here is reduce the impact of the outdoor events to the benefit of our neighbors. It is also safer, as noted, to our customers and clients as they effectively are cut off from walking around the stage or equipment, performers are getting ready, cables and such are -- which would not be the case if it was pushed out, basically, in the middle of the park area. Again, you do not see that on Exhibit 3 that I referenced earlier. And, yes, you'll notice that by pushing the stage forward, it would effectively reduce the viewing area of the stage by almost 21 percent, as well as the more other important safety issues I just mentioned.

I've been talking here again, so I'll try to keep my comments on the next two variances a bit shorter. The variance to permit the aggregate area of accessory structures and uses to exceed the primary ones. Again, we consider these to be part and parcel of uses and I could give you examples of similar uses and structures that regularly occur without this incidental interpretation. But, again, without further definition within the UDC, we don't know what conditions constitute the primary or accessory. Is it the physical area that one uses over the other, the amount of business or revenue that one generates over the other, or is it the ones that operate more frequently than one or the other. Some of those examples, I guess, I use a greenhouse or plant nursery on a farmer's land, a daycare and a church on the same property, a car lot and a repair shop on the same property, a funeral home and cemetery on the same property, which -- which one is -- who decides what and how is it decided in every case?

Again, getting to the adoption of the UDC regulations, the paved patio areas were never considered structures. And, again, today, not only are patios considered accessory structures, as our parking lots, sidewalks, retaining walls, and basically anything that is constructed and requires location on the ground or is attached to something that is considered a structure, again, this affects nearly every single developed property in town and to be developed property in town. And -- and I think it's something that needs to be addressed, as being addressed now, but needs to be addressed further in some type of a code revision or something else, or we will continue to have these -- these types of variance requests, or should have these variance requests.

As far as to the staff's comments, if we were to continue -- to use this outdoor use as a primary use, we would have sufficient parking for that, and I can give you figures on that. I could go through those with you. We are allowed to use the bus station as a reduction in -- in parking. We're allowed to use, I think, some reduction in metered parking and other parking lots -- public parking lots and structures as downtown as reduction in our parking requirements. And that goes for any type of venue in the downtown area, not just this property.

The variance permit an accessory structure to be closer than ten foot to another structure. All I would like to really say is that this is based on a fire hazard reduction and structure evacuation-type issue per the fire code. This is where firewall protection is not generally required when structures are placed more than five feet from a property line. And it is by code considered a safe enough distance for what I think is a one or a two-hour fire protection rating. And also that there must generally be a five-foot evacuation route outside of a structure. I think we can all agree that there is not much chance that this stage is going to catch the concrete patio on fire or would hinder somebody getting away from one or the other if the concrete patio was on fire. Another example where this would continue -- should continue to come up, I would say, was if you had a walkout type house where your downstairs walkout came out. Many people have a patio underneath some small ten-by-ten, twenty-by-twenty, some quite large, but yet that above that you have your upstairs deck that is generally sitting on that or above it or, you know, again,

within ten feet of it. That would affect all new construction of that nature and, again, it's something, I think, is in the code. It's being enforced because it's in the code. Whether the interpretation needs to be better defined or the code needs to be redefined to deal with that is something that just we're having to deal with tonight with these variance requests.

Again, per the general criteria for approval of a variance in the UDC, we offer that proper -- excuse me -- the property is located in the City center, and immediately adjacent to the downtown MTD zoning that does not require front-yard setbacks. We offer that similar IGs on the properties in the area enjoy less than the minimum front-yard setbacks currently. We offer that the shape and size of the lot and the size and locations of drainage and sewer easements on the lot are a hardship not found on similar IG-zoned properties in the area, and are conditions that were not created by our applicant. One item I didn't point out on that Exhibit 3 is on the west side of the property is a -- I believe it's a 16 or 20-foot wide sewer easement that encumbers the west side of the property and there are 16-foot easements criss-crossing the east side of the property throughout the park area that we have to maneuver this structure and any future structures around, which thereby encumbers this property. We've offered, in fact, diligent site planning in consideration of our neighbors and customers and clients as a deciding factor for the location of this stage.

Item B of the general criteria, again, is not disputed by staff and we do not dispute it. Item C is not disputed by staff and we do not dispute it. Item D, the opportunities to reduce the scope of these variances are minimal and have no bearing on the effects of granting the variances as requested. This variance process is the least amount of variance referring these unique conditions other than rezoning which would create similar variance requests. And then E, public health, safety, and welfare to other properties or improvements are protected sufficiently given the context that similarly zoned properties in the area, as well as many other properties located in the same City center have similar setbacks than what we are requesting here. And that the injuries to other properties are minimized by the requested placement of the stage to maximize noise reduction facilities to the -- or capabilities of the topography of the property.

My summary response to staff's recommended action, as far as the 25-foot yard setback, again, we feel that we have shown that the properties with similar zoning and nonsimilar zoning in this area enjoy up to a zero-foot front-yard setback, yet do not have similar site constraints of the lot size, lot shape, and crossing of easements which impede the full use of this property. We also feel that moving the stage forward from its current location would be likely to be more injurious to our neighbors and customers. The variance to permit the aggregate area and accessory structures, we feel that size, shape, topography, and encumbrances that take this prime location for it, and also we feel that, again, the new definition or the interpretation of this definition of what constitutes an accessory structure is in error and unjustly affects our request. As it is conditioned, it is not technically allowed anywhere, but it's occurring on many properties throughout the City. We do not feel that sawing off and removing a 600-square-foot portion of our patio to meet this requirement is an equitable solution to a problem that needs to be corrected citywide by other means. And, finally, the permit for accessory structure to be closer to another structure, the same topography, size, and shape as used that requires the stage to be where it is fall into place here and in the same problems that this language is causing on existing properties and future properties within the City is -- is also at issue. Again, we have issues -- continue to have issues with the primary use and accessory use and, in summary, feel that these minor variations represent an actual betterment to the public health, safety, and welfare for our neighbors, in general, and for the citizens that frequent this venue. If you have any questions, I would happy to answer them.

MR. CLITHERO: I'm guessing that that stage is about 800 square feet; is that correct?

MR. MURPHY: It should state --

MR. CALDERA: And, Mr. Murphy, real quick, just to interject. We want to make sure that we're speaking directly in the microphone because we actually didn't hear that question over here.

MR. CLITHERO: Okay. How many square feet is it?

MR. MURPHY: I do not have that sheet with me. It should have been in the documents that you were submitted. It would have been similar looking to my Exhibit 3 --

MR. CARROZ: Seven hundred and fifty-six.

MR. MURPHY: Very good.

MR. CLITHERO: Seven hundred fifty-six, right?

MR. MURPHY: Correct.

MR. CLITHERO: Okay. Which means then that 3,940, we're talking 3,200 square feet of what is indicated in the letter from the City is patio, but it's really patio and parking lot and --

MR. MURPHY: No, I did not -- the parking lot was not included in that calculation. The calculations you were provided was for the building proper, the patio area as exists --

MR. CLITHERO: Okay. Okay.

MR. MURPHY: -- and then the existing stage size and the old stage size and the new stage size.

MR. CLITHERO: Okay. Got you. All right. That makes sense.

MS. HAMMEN: I have a question about the -- the street right-of-way, and the -- you have the normal 25-foot building line and the existing. Would you talk about that street wide right-of-way again and --

MR. MURPHY: Typically, if you could think of two sets of parallel lines, the outer parallel lines would be the right-of-way line, which would also be the adjacent property's front property line or side property -- whatever the case may be, and the second set of parallel lines inside of that would be the improvements. So what we have here is a 32-foot wide on the inside, a 32-foot-wide street and a 44-foot right-of-way. So that 32-foot, if you subtract the street out of that right-of-way, you have eight feet left over -- or I'm sorry.

MR. TIM GERDING: Twelve.

MR. MURPHY: Yeah. Let me do the math here, Mr. Engineer. So that leaves six foot outside of the street on either side for additional right-of-way for improvements, such as sidewalks and utilities and things of that nature, and they typically run parallel to each other. So in this instance you can see that the sidewalk is veering very far away from, you know, up to over 11 feet away from in this particular location from the property line.

MS. HAMMEN: Is that the gray area that --

MR. MURPHY: Yes. Yes, ma'am.

MS. HAMMEN: So that's plus six --

MR. MURPHY: And that gray area -- if this was a standard right-of-way configuration, that gray area would be part of this property or the street would match into that area, either which way and, technically, we would have 11 more feet of front yard in that area.

MS. HAMMEN: Did you think about asking the City to do -- to -- what do they call --

MS. JOHN: Vacate.

MS. HAMMEN: -- vacate that area?

MR. MURPHY: To vacate the right-of-way?

MS. HAMMEN: Uh-huh. Wouldn't that undo your whole problem?

MR. MURPHY: No. The stage would still be in the setback. It would be -- one of staff's recommendations to deal with this setback issue in particular was to consider -- for you folks to consider possibly a 15-foot yard setback, which is not as much as the 25, but less than this, but this still would not achieve that in particular.

MS. HAMMEN: It would do all but --

MR. MURPHY: But it -- it would -- it would reduce that to some way -- to some degree. In this particular area where the stage is, I would say that it's less than 11 feet. What I did was pick the greatest amount of differentiation in that area.

MR. CARROZ: Regardless of where the line is, you can't make up a fictitious normal building line. The property line is the property line, and that's the right-of-way.

MR. MURPHY: Understood. What I -- what I'm saying is, in a standard situation -- in the majority of standards situations, that is how this would be configured.

MS. JOHN: This -- this is probably a leftover from when the railroad overpass was there and when they had to reconfigure the roads.

MR. MURPHY: Actually, I think it predates all of that.

MS. JOHN: All of that. Yeah.

MR. MURPHY: It's -- again, it's back to the founding of the original town of Columbia and shortly thereafter the expansion of that a bit and -- you know.

MR. CARROZ: It really goes to when Park Avenue was reconstructed.

MR. MURPHY: Potentially. I would -- I would have assumed that -- that the City could have vacated that right-of-way at that time. But there are other -- again, the

greater issues, I think, is having a lot that's three times your depth and to try to utilize that with other easements and such.

MR. CARROZ: Do you have any further comments, Ms. Hammen?

MS. HAMMEN: No.

MR. CARROZ: Anybody else?

MR. WATERS: Just for the sake of argument, if, you know, it came to the point where you were looking for a compromise, and staff is suggesting 15 feet, and you've already got, you know, ten -- nine, ten feet, if you consider that, you know, kind of no man's land instead of, you know, unvacated, you know, easement --

MR. MURPHY: Sure. Right of way.

MR. WATERS: And then you had another, you know, three, four feet to make up, would that be a huge hardship to resite the structure even that much?

MR. MURPHY: Moving it three feet or moving it twenty-five feet is honestly just as costly and cumbersome as anything else. I mean, it would -- again, I don't see what -- we don't see what benefit that -- that gives to anyone. In this particular instance, there is additional right-of-way here that the staff has considered. On the opposite side of the street, which used to be zoned industrial, as well, until the UDC was done, and somehow it was incorporated into downtown, it could be redeveloped right to the property line, as well. So to -- to say that we have to preserve room for that where the City has just allowed the property across the street to -- to ignore that doesn't seem to make sense.

MR. WATERS: I'm not saying it would be of benefit to anyone. I'm asking if it would be a hardship to you.

MR. MURPHY: Yeah.

MR. WATERS: And I might point out that not only does the MDT zoning not require a setback, it requires the building to be built to the sidewalk.

MR. MURPHY: Right. And there's --

MR. WATERS: So it requires a zero setback.

MR. MURPHY: Yeah. Again, on the south side of the road, directly across the street from here, is a building that was placed when this was IG and is right on that right-of-way line, as well as, again, the Koonze Glass.

MR. WATERS: Thank you.

MR. MURPHY: Thank you.

MR. MATT GERDING: Hi, there. My name is Matt Gerding, co-owner of The Blue Note and Rose Music Hall and Rose Apartments.

(Witness sworn.)

MR. MATT GERDING: I want to thank everyone here for their time and consideration of this variance request today. As all of you know, as both Mr. Murphy and Mr. Gerding have pointed out, our business and this property are both very unique in nature. I think one of the things that might be, just to give everyone here a sense of the scope of what we're looking at, is to just take a quick glance at some pictures. If you could put the screen up. (Tape is played for group.) See where the crowd is located. That's the stage there.

MR. CARROZ: I think you hit that arrow at the bottom and scroll down.

MR. MATT GERDING: Okay.

MR. CARROZ: Yeah.

MR. MATT GERDING: So that kind of gives you a feel for -- for what we're looking at here. When we actually -- when we purchased what was MoJo's at the time and this park, one of the things that was appealing to us was this scope of the business that Richard was offering there, which was both indoors, inside of MoJo's, and outdoors in the park. It had a long history of folks being at happy hour events, outdoor live music, a number of different things out there. Richard had contemplated for years building something that was a permanent structure like you -- like you see here, getting every -- jumping through the hoops to make that investment to do that, but, you know, it was something that appealed to us in terms of the business -- business operation here. As an operator of this unique business, there's a variety of considerations that -- that we go through before we make an investment like this. One of this is how can we make this stage appealing and safe to both artists and fans. It's critically important for what we do, both inside The Blue Note, and in this park, and inside Rose Music Hall, that we create a safe structure for artists to perform on that's of the appropriate size as to attract the caliber of artists to Columbia to perform here and that, you know, the size and scope of the stage was -- you know, was --

was considered as part of that as how can we build something that's going to create the appeal for its artists to draw it down to greatest impact in the City and our community and our neighborhood.

One of the considerations there was also, in terms of the placement, was the security which Mr. Murphy and Mr. Gerding have spoken to already. The back of the stage is a -- can be a dangerous zone. There's cables, there's electrical wire, there's gear, there's huge boxes. Securing the back stage of -- of a stage like this is critically important artists' safety and for fan safety. The location of where it exists right now takes advantage of that. It's a small area that we have to secure behind it. When there's, you know, 500, 800 people in the park, it's something that's really important that you don't want people tramping over, going through the back of the stage, and potentially injuring themselves. Its location now is -- is perfect operationally and functionally for, you know, the movies that we host, for the community events, for all the concerts. We've host fundraisers, we do weddings. There's a variety of purposes in this location allows us to take full advantage of the space that we have there and -- and increase the offerings for the community and the City for what it is that we -- that we do there.

Mr. Gerding and Mr. Murphy did point out the sound consideration here. One of the things that I do want to note, that the -- the size of the stage is not what makes the sound. The sound, obviously, comes from the speakers which are the same speakers that we bought from Richard that were there when the stage was tiny. We just built a structure that would house the artists there and took those same speakers and placed them where -- where we have them. I will say, based on my 20 years of experience in the music business, that -- that noise travels. And if you do not bury it into the ground and if you do not point the speakers toward something that's going to absorb that sound, it will fly every which direction. And if you place the stage in the middle of that park or even three feet into that park, you then put the sound above -- above the surface line. And when you put those speakers above the surface line, there is nothing to break up that sound, and that sound travels far and wide. And so moving the stage will have a much greater impact in terms of -- of complaints from residential, from businesses.

I did want to pass out this document. There are seven of them. There's two pages per handout here for all of you businesses in our neighborhood. I think there's roughly 20 or so that signed this in support of keeping the stage where it's located, based partially on the noise situation, but also related to just the enormous impact that this stage and this park and this venue has throughout the summer. It creates a great deal of comedy. It brings people to the neighborhood. It creates a quality of life in this community and this neighborhood that ends up gentrifying our entire neighborhood. And you'll see -- you'll see these signatures here and those are the reasons why that they're signed by everyone.

MR. TIM GERDING: And I have a proposed -- I have a portion of it marked as an exhibit number.

MR. CALDERA: Mr. Gerding?

MR. MATT GERDING: It was noted earlier that Mr. Ed Hanson had expressed some concern from Talking Horse Productions in regards to this noise issue, and we had a meeting with my brother today and I've had a couple of conversations with him about this, and I think we have a good plan to address his -- his concerns as it relates to this. I think he's understanding of the situation in terms of where the stage is located and not moving it to a different location that might point it in a different direction or elevated above the ground level, could it increase the amount of noise travel that goes over to his -- to his theater. That's all I have. I really want to thank you guys for your consideration here and, obviously, you know, this process in terms of operating a business, you know, it doesn't necessarily get down to, well, the nitty-gritty factual elements that you guys need to consider. But I will say that the stage in its current location is -- is the best suited place for it for a variety of reasons, and I think, given the unique nature of the business and the unique nature of this park, that moving it any which direction, whether it's three feet or eight feet or fifteen feet, is only going to impact our neighborhood negatively. It's going to impact the safety and security of this park and this area negatively. And I think that those are important considerations to make. Thanks again for your time. I appreciate it. Do you have any questions for me?

MR. CARROZ: Any questions?

MR. MATT GERDING: Great.

MR. CARROZ: Anyone else wishing to speak in favor of the application?

MR. CLARK: Oh, excuse me. In favor, no.

MR. TIM GERDING: If I might --

MR. CARROZ: Do we have any precedent here?

MR. CALDERA: Mr. Gerding, are you approaching to admit some of this —

MR. TIM GERDING: I'm just offering to admit the exhibits, is all I'm doing.

MR. CARROZ: Yes. Please do so.

MR. TIM GERDING: Okay.

MR. CARROZ: You're still sworn in.

MR. TIM GERDING: I'm just moving for, please, to admit into the record, the exhibits that have been presented by Mr. Murphy and Mr. Gerding.

MR. CALDERA: So let the record reflect that you are seeking to admit Exhibit 1, Exhibit 2, Exhibit 3, offered by Mr. Murphy, as well as —

MS. JOHN: And four.

MR. CALDERA: Exhibit 4. Excuse me. As well as the signature pages offered by Mr. Gerding; is that correct?

MR. TIM GERDING: Yes. Yes, please.

MR. CARROZ: So admitted.

MR. TIM GERDING: Thank you.

MR. CARROZ: Anyone else wishing to speak in favor? Anyone wishing to speak in opposition of the application?

MR. CLARK: My name is John Clark; I live at 403 North Ninth Street. I am not speaking as a representative -- oh, excuse me.

(Witness sworn.)

MR. CLARK: I am not speaking as a representative of the North Central Columbia Neighborhood Association, whose board I serve on, and you have received a letter from the president of our group saying it would be nice for everybody to get together and talk. Of course, that could not be done here tonight. That would require tabling or something else so that a range of interests could meet and maybe work something out. I'm also not speaking here as an alternate member of this board. And just to make sure. So under that terms, am I compromising anything of the board, of you, or of me by personally speaking?

MR. CALDERA: Mr. Clark, if you can direct all questions to the board.

MR. CLARK: Excuse me?

MR. CALDERA: If you can direct all questions for the record to the board.

MR. CLARK: Well, can you answer that?

MR. CALDERA: Did you hear the question?

MR. CARROZ: I did not hear the question. I sorry.

MR. CLARK: I just want to make sure that speaking as a person individually, it is not a problem for my -- and compromise the board in any way by speaking here because I'm an alternate. I'm not on the board tonight, but are there any problems with that?

MR. CALDERA: No. I don't believe there would be any problems with that.

MR. CLARK: Okay.

MR. CALDERA: So long as you're speaking in an individual capacity.

MR. CLARK: All right. I had two or three things. I must admit what I can't find in any of the materials and maybe it will be coming later rather than sooner is apparently there were changes made in the UDC from the way some things were done before, and some things were essentially the same. But apparently this notion about the absence or nonabsence of primary versus secondary use for structures, the inclusion of patios and certain other things as structures, I would very much hope that you will ask of the appropriate people kind of what the rationale was. I followed the UDC process intensely through, and I don't have it memorized, so I certainly don't have for discussions. But I think that would be useful tonight, and maybe that will come up at a later part. But most -- most of my point really has to do -- and if my understanding of all this wrong, if somebody will correct me. Most of the applicant's rationales here were asking for a variance rather than a code change. They did impact the code and they raised the very question I did that some things aren't resolved. But to some extent, this means the sum of the variances amount to a spot code change and should not be denied proper for that reason. But most important, basically, the sum of the variances for this particular property basically push it in the direction of being -- without being C-2, being C-2 property, the fact while not in law. Now, I spent 25 years fighting against anything being C-2 moving north of Park Avenue and protecting my neighborhood and so forth, and will continue to do so. So I don't want something like that to happen.

What I guess I get to is, with all the references to the problems around town caused by some of these possible things, which I'm certain the Planning and Zoning Commission is going to take up, I think actually this request for variances should be directed to the City Council, not to the Board of Adjustment. And if there were a way to raise that and suggest that that be done, because so much of the argument -- and I must admit I have no reason to doubt that there are not all kinds of problem to be caused by the items and issues that have been raised all over town. That does not sound to me like it's a Board of Adjustment issue. The scope of it is beyond this. So I would encourage you to ask legal counsel, ask staff to opine on that particular thing. This is this one thing. Of course, it'll be used as precedent someplace else; that's bad enough. But the issues that were raised are significant enough, I would not propose that the applicant has to go and write a new code and make a proposal. That is why I would suggest that it be sent -- sent to the Council. I did happen to note, if I understood this, and actually, in my mind, a big point is that when the temporary permit was granted, apparently the applicant was told that it was very likely this could not stay where it is.

And one last thing about safety, and that makes great sense to me, I live right over here on North Ninth Street. I've been around all the closings of the streets with this, and, of course that means where the building is -- the stage is now, somehow we're at the back of that where -- which might be a safety hazard for musicians and technicians and the public is right near the sidewalk, so I assume that is somehow or another taken care of. Now I wonder as long as that will be taken care of there, if it gets down to moving this elsewhere, actually that would seem to be that that could be handled so the safety issue would be taken care of. My main concern is I think is -- this is the kind of variance issue that has so many implications it should be taken and directed to the Council, not to the Board of Adjustment. I don't know whether that's within your power, the City Attorney's power, or Mr. Zenner's power, but that would be what I think should be done. And that could get a resolution for this issue from the appropriate body, not tonight, but relatively quickly. Thank you very much.

MR. CARROZ: Thank you.

MR. NORGARD: My name is Peter Norgard; I live at 1602 Hinkson Avenue.

(Witness sworn.)

MR. NORGARD: I've listened to this variance application and it sounds well-reasoned and well-founded. However, and this is not to diminish the merits of the application or the considerable investment that the owner has made, but as I understand it as John Q. Public, having read the attachments to the application that were presented as part of the agenda items, the property owner or his agents should have reasonably known the variance would probably be required. And so construction of a structure that potentially they knew would need variance application and acceptance sort of, in my mind, is putting the cart before the horse. And I'm just concerned as a member of the public that this type of variance permit where you ask for forgiveness instead of asking for permission and putting things out of order is going to become a standard operating procedure. I know in our neighborhood in Benton-Stephens, we have battled some problems where development is going in where the developer recently knew that he was not correctly doing things and his remedy was to come into you to seek a variance. And I'm not saying I know what the right answer is here, and I'm not asking for one way or the other, but I would ask you to consider that, at least according to what I've read and my limited knowledge, it appears that somebody should have said, whoa, hey, a variance is going to be required. And that's all I have.

MR. CARROZ: Thank you. Any further questions? Comments of staff?

MR. ZENNER: A lot of information presented to you this evening, and a number of questions, I think, that you may all have as it relates to statements and points that have been made within the staff report itself. We are not here, obviously, this evening to consider an appeal to any revision of our regulations or staff's interpretation of the code. These are distinct variance requests. I'll steal some thunder from Mr. Caldera. Your decision this evening does not set precedent for anything in the future. This is a specific evaluation related to this personal and particular. I think it has been stated here this evening that this particular application is being presented to seek the approval of a 756 square foot stage to replace a nonpermitted 317 square foot stage that was built under a temporary use permit. That temporary use permit was issued with applicant full understanding that they needed additional approvals to have this particular structure stay in this particular location. There was significant structural design discussion as the permit record, which has not been incorporated into your packet, as it related to what efforts were being made in order to ensure that this stage, should a variance not be considered

appropriate by this body, allow for it to be removed. So construction of the stage does incorporate methods by which, if it does have to be removed, it can be.

Obviously, the applicant has posed issues this evening that are apparently more geared towards monetary inconvenience than compliance with the code's requirements. As pointed out in the staff report, IG zoning district, formerly M-1, has had a front setback requirement since the early 1950s. The Koonze Glass building, which seems to be being referred to as the poster child for why a variance of a front setback should be granted on this property, is what we would consider in our business a legal nonconformity. Yes, it does sit within the front 25-foot setback of both Park and Tenth. However, it has sat there for quite some time. If we look at the Rose Music Hall itself, that building is compliant with the platted property line and the required 25-foot front-yard setback. Accessory structures in both the prior Chapter 29 zoning code and our current zoning code have never been allowed to sit forward of the principal structure, so the nonpermitted 317 square foot stage was illegal to begin with and could have been required to be removed when Mr. King owned this property. However, it was chose not to be, and I can't speak to why our enforcement staff at that point did not take action. However, you have a structure that is almost double the size of that here that was permitted by a temporary permit, 180 days, fully aware that this board action had to occur. The Code has changed and the applicant began this process as the process of the code's adoption was just nearing completion prior to proceeding forward, so they were fully aware that our code was going to include provisions that talked about accessory structures and their square footage against the primary structure.

And this is probably -- you're all scratching your heads maybe trying to figure out what is the logic that our City staff has used in order to determine what is the principal and what is an accessory structure. There are particular zone classifications within the City of Columbia that you can have multiple land uses. You can have multiple uses on a piece of property. They occur within our RMF zoning district, which is multifamily residential. They occur within all of our commercial zoning districts, our industrial zoning district, and our office zoning district. I think a couple of examples that were brought up this evening an automobile dealership with auto repair as an accessory or an associated business practice to them. Our MC zoning districts allows you can have those two what would be considered primary uses. However, generally in zoning we have to determine what is the principal activity on that property. What is that site possibly deriving its highest amount of revenue from and what was it originally established for. What was the purpose of that site.

So you first when discussing a parcel that may be able to have multiple principal uses have to figure out what is the site -- what was the site's original intent and why was it being used for what is today. In this particular instance, as our staff report points out, the principal use of this site has been the Rose Music Hall. It was not the stage. The stage was added at a later date, 2008, apparently, and then it was expanded upon in 2017. The Rose Music Hall has stood the test of time and, as Mr. Murphy pointed out, as initially a bar and then moving its way through. It has been the principal use. So that is -- it is the principal use. It has been historically for this property an outside entertainment function or feature which is an allowed use within the IG zoning district. It's the primary use of the property. It's not what it's used 12 months out of the year. The building functions as the principal area where drinks are sold and where other activity is conducted, not the stage, not the patio, not the outdoor park area. Therefore, that is how we have arrived at what is the principal structure on the property.

The definitions of accessory use and accessory structure make relationships to and, semantically speaking, as Mr. Gerding may have pointed out, yes, it may be semantics, but we often have to be literal in our interpretation of what is written within the code, and we have to look at how do you splice particularly many challenging issues. And we do make reference to use or structure within our definitions and, therefore, we again -- we rely on that as our guidance. We are not being appealed as to our interpretation of what our definitions are. We are being asked to grant a variance, and that is a variance from the requirements of the code, not our decision as to how we apply it.

So with that being said, we do have new standards, and the staff report points that out. We did adopt standards that talk about patio areas and other decks and things of that nature, parking lots. Yes, there are many parcels within the City of Columbia that are nonconforming. They are legal

nonconformities because they all existed prior to the adoption of the Unified Development Code. But when an individual comes in to attempt to get a building permit, they are no longer to expand their business practices. They are no longer considered -- they're considered a legal nonconformity, but as soon as you expand your legal nonconformity, we have provisions within the nonconforming section of our code, which specifically state that you have to be compliant with the current code standards. We allow anybody to freely operate their property that's nonconforming today, so the whole idea of somebody building a home or wanting to put an addition onto their house, provided it does not trigger one of the provisions that require compliance, they can do that. A business owner can potentially add particular elements to their property if they are legally nonconforming, provided that addition may be conforming in all other aspects.

We will run into particular unique situations to this, and I will not tell you that this is not unique. This one of the first ones that the board has received after almost a year of having the code adopted, and there may need to be modification to this particular standard. I can admit freely to you that our staff with impending development has discussed this particular provision and why we have it there and the challenges that it creates. I think Mr. Murphy is correct that the Planning and Zoning Commission will likely be taking that up as we evaluate other concerns that our staff has expressed in the first year of the code. But that's not the issue at hand at this point.

The issue at hand is that this particular structure as an accessory is especially sits forward of the principle. And that's the first issue that we have to resolve. Is it appropriate that an accessory structure should sit forward of the principal. In this particular instance, I think the record is fairly clear as it's been laid out by the applicant that moving the structure elsewhere into the property would have detrimental impact. Staff does not disagree with that statement, though we do disagree with the fact that the requested variance is essential. I believe that it can be and it -- which will limit the amount of the variance that's being requested. The stage could be set back where the original 317 square foot stage was with the exact same speakers that they're using today and not have an impact to the effectiveness of the use of the site. Security issues and the other elements that have been brought up can be managed by the property owner through either some type of supplemental fencing that blocks the rear access to the stage area during performances or through the placement of other security personnel on the backside to ensure that their patrons are not going through an area that they should not be within.

We do have an irregular road right-of-way here, and I can't explain that to you. That all occurred before my time. However, we are sitting on top of the road right-of-way right now, and that does present problem should we, the City, ever want to do something. We reserve the right to do it. It is our road right-of-way. It was provided to the City for the purposes of allowing for expansion. It was allowed. It can be utilized by utility companies if they need to do expansion within this particular area. Albeit, I will contend that the placement of these drain issues on this property do make it a little bit more challenging to relocate a building at a different location, but relocation to a different portion of the site, the entire stage, which would correct probably all of the variances, I think, as we heard this evening, does create a much more significant issue as it relates to downtown, as it relates to noise, as it relates to other effects that that may create. And we are, as a staff, suggesting that that be what happens.

I think we are suggesting that we limit the impact of the development, and limiting that impact is something that, irrespective of what the financial impact of that may be, really is not a consideration as it relates to a variance. Financial inconvenience is not something that factors into the criteria. It is the practicality of being able to do that. This staff report points out that there are options available as it relates to this application by granting the variances that have been requested by the applicant are not entirely necessary. Yes, there is a cost, but there is also a way of being able to mitigate the impacts that have been created by the placement or the request to legitimize a temporary structure on this property. We do desire to have business successful, but we also have to balance that success with compliance that we would apply to any other property. Part of our application and part of our review is to ensure that the playing field is balanced or at least as closely balanced as possibly can be when situations of this nature come up. And to do so, that's why we have provided alternatives from the staff's perspective as to what can be done to accomplish the least amount of a variance possible to still accommodate the applicant. Yes, that may create some challenges associated with their business operation, but given the fact that

they had a 317 square foot stage that was not permitted, they went into a permitting process that they knew that they had to get a variance for. It was issued as a temporary permit. It's not guaranteed that that temporary permit be converted without compliance with our code standards.

We respectfully submit our staff report to you with the recommended alternatives as to how this application can be decided. We stand behind our facts and our opinions associated with it. There obviously is disagreement upon those facts and those opinions, but that's the nature of our job and that of the applicant's. I'm happy to answer any questions that you may have as it relates to maybe other code requirements that were brought up this evening and I will try to provide any answers that I possibly can.

MR. CARROZ: Anyone have any questions of Mr. Zenner?

MR. CLITHERO: I don't have a question, but I was -- make a comment that they built the stage on a temporary basis knowing that sometime in the future they would have to request a variance and that's what they're here tonight doing, isn't it? I think that's what they're here doing.

MS. HAMMEN: So, Mr. Zenner, my first question is, can you tell us why this permit for a temporary structure was given knowing that it was not a legal structure at the time a permit was given?

MR. ZENNER: After -- as I understand it, as I was not part of that permitting process. As I understand it, after significant discussion of the impacts associated with this, the ability for the director to grant the temporary permit, knowing that it was 180 days only, and the design of this structure being such that it could be relocated, depending on the outcome of variance procedure, and the fact that the applicants had already arrived at a concert schedule for the 2017 season at the time that they had brought the application forward, the director felt a temporary permit was appropriate and that the action that you have before you this evening was inevitable. It was the only way that it would be allowed. At this point, obviously, that permit was issued in April of last year. We are now coming up on 12 months. Theoretically, if we wanted to have executed the 180 days, the stage should have been removed sometime in the early fall of 2017. It was not. And we're where we're at right now with the variance application coming in at the beginning of 2018.

MS. HAMMEN: And why wasn't it? If that's what it says, that it will be removed after 180 days? I mean, it gives people, like, well, the City doesn't mean what it says?

MR. ZENNER: I would suggest, Ms. Hammen, to you that is -- that is again a call as it relates to the activity level, complaints, anything else that was being generated as the stage was being operated under its temporary permit. Given the winter season is not a concert season in this locale, there probably was not a pressing desire or need to forcibly request that it be removed in accordance to the permit. Again, the applicant's actions associated with presenting the application, I think, also go a long way in saying they are following through to ensure that they are doing what the original temporary use permit required and that was to apply for the variance. So we were looking at overall intent most likely. Again, I don't deal with the permitting side of our operation. That is really our building or site development staff, and then the enforcement component of issuing temporary permits as well. So this is not an uncommon situation, unfortunately, within the City. This is just how we deal with these types of uses as it relates to temporary permits.

MS. HAMMEN: So Mr. Gerding to the urban general street frontage requirements. How does that apply to this or would it?

MR. ZENNER: With the adoption of the Unified Development Code, at least that I want to go back 39 months, we -- we had to -- there was a defined line of where our urban general or where our MDT zoning district was going to end. Our good consultants that we worked with felt that you normally would take a defined physical feature; i.e., a roadway, an alley, or something along those lines, and you would use that as your break point between a area that would be inside our new MTD zoning district, which was what was the former C-2, and areas lying outside of it. This particular corner of the MDT actually went through some revisions towards the tail end of the UDC's adoption process. The triangular area that is directly across the street from this, if I am not incorrect, is part of the power company's property that was being reclaimed. We were going through reclamation on that at that point, and it was desired to bring that property into the MDT to allow it to become part of potentially the urban fabric.

The setbacks in the MDT standards, so we have multiple street frontage types within the MDT. And I know Mr. Waters is familiar with this because he participated in many of these discussions as we got towards the end. We have, historically, never had a setback requirement within our downtown. Our C-2 zoning district has always had a zero setback. It's intended to be utilized for the purposes of urban --

dense urban development. In any other major city, their -- your buildings generally are not set back off of your property line from the sidewalk. That is the urban form and fabric. When our MDT zoning district was designed, we identified four different street-type frontages that we wanted. Each of those street-type frontages has particular unique aspects associated with them, generally dealing with design and then dealing with how the ground floor is actually able to be utilized. In each of those zoning districts, with the exception of the urban general west, and then portions along the east side of Providence Road, there is a mandated required building line. That required building line per the MDT is within two feet of the property line. That's to allow for articulation in buildings based on the architectural standards that the new MDT has within it.

So development to the south of this particular property is subject to those design standards and it's subject to those zoning requirements that you're building basically to the property line, in essence, not inconsistent with any of the other C-2. Now, granted, as Mr. Murphy pointed out, the properties that were directly to the south of this prior to the adoption of the MDT were zoned M-1. They would have been consistent with this type of development. They would have been required to have maintained a 25-foot front-yard setback had they been left out. The decision, however, that was made as a part of the vetting process of the downtown zoning classification, its boundaries, sought to bring in the southern side of the park into the downtown area, as I said, to allow for more unified urban style development. And we chose, given the nature of or I should say the uncertain nature of what the developed pattern to the north of Park Avenue would have been to not include that. We were asked multiple times through multiple public hearings to extend the urban general street frontage up Tenth Street, possibly all the way up to Rogers in order to accompany or to incorporate Boone County Lumber. There was too much uncertainty associated with Boone County Lumber's potential plans for redevelopment. It was questionable if urban style development should be brought up Tenth Street, and that went through the vetting process of the urban -- of the Unified Development Code, and specifically the MDT zoning district, and it was determined through the public process that no, we weren't going there, not at this point.

There is a process to amend the MDT regulating plan, that that is shown in Mr. Murphy's Exhibit 2. You can go through a formal rezoning request and ask that that property be brought into the MDT like any other rezoning. And if that were what the applicant would want, we would -- we would process that request and we'd have the Planning Commission and City Council weigh in on it and figure out what would go on. So there are options by which to potentially have the same zoning standards applied to the property across the street. You have legal nonconforming structures again, and there are provisions again within the MDT that would address that, so anything brought in, the theater itself, and any -- the theater itself would be considered exempt, so you wouldn't have architectural requirements associated with it. But any other structure that would be added, and I think Mr. Murphy alluded to this, may require some other modifications. And the stage definitely at this point would be considered a structure and, therefore, there would be some considerations given to how the MDT's requirements would apply to that particular structure itself.

Again, I don't think our -- our code, at least for downtown development, what is inside the MDT, ever contemplated an outdoor concert venue to be built in downtown. We were looking at structural improvements. The majority of the improvements that would be governed by the MDT are structures, buildings, places of business, residence, or other activity, not necessarily an outdoor venue. So we have Peace Park, we have Flatbranch, we have these other areas that exist that help with the urban greening in downtown, for lack of a better term. This is a commercial business and I would imagine that we would have to be before the board again with some variances from the MDT standards if this were brought in to the MDT. So -- and zoning, this to a planned district, I think Mr. Murphy is correct. Our general position is to prefer not to have planned zoning districts. The MDT zone specifically precludes one's ability to ask for planned district inside the MDT, though a planned district on this particular property would allow any use within the land-use table to be applied to this property. It would allow for Council and the Planning Commission to grant imbedded waivers to zoning requirements and other standards should an application for a planned district be presented. Myself and my staff may provide advice as to our displeasure of a planned district because of its administrative issues, but that is an opinion and that is a position that we, as a staff, may present. That is not the final decision. It is always left to the applicant to proceed forward with an application if they would like to, if they're unsuccessful in another route of getting their relief, so

that still does exist as an option, as well.

MS. HAMMEN: In the staff report, it talked about parking requirements would change if the variance is granted.

MR. ZENNER: And I think Mr. Murphy is correct. They would change. We go from an outdoor -- or an indoor venue which has got square footage requirements generally associated to it to an outdoor venue which is more based upon land area associated with the activity. However, as Mr. Murphy pointed out, there are options and opportunities within the code that the site -- the on-site parking itself may not be an issue given that you do have metered parking on the adjacent streets. We may have structure parking within a particular distance. But that was not part of what the evaluation or the request was. They're not seeking -- and we are not intending that they were seeking to change the land-use designation or seeking to convert from one to the other. The purpose of making the statement within the code or in the report is to merely point out that the principal use of this property has been the Rose Theater. And if the board were to choose to consider that, you know, the outdoor space became the principal use, you then potentially could be inverting what has been the historic use for this property to something that is not necessarily a 12-month out of the year operation, and that has other impacts.

MS. HAMMEN: Would you address the vacating and right-of-way issue?

MR. ZENNER: I will tell you that we have vacated or we have swapped right-of-way to the west of this property with Koonze Glass. I cannot tell you without a detailed evaluation that involves our Public Works Department and our utilities if this particular excess right-of-way will be considered valuable enough that we do or we don't want to vacate it. If the sidewalk is located towards the back of the right-of-way, which is where it typically is located, one foot off of the right-of-way line between it and the property, to vacate the road right-of-way and then have a sidewalk -- a public sidewalk that's currently inside of our road right-of-way and put it on private property requiring that a sidewalk easement be granted to us as a part of that, again, potentially the unique nature of what's here and what I'm seeing here on the plan is that the sidewalk is forward. It's at the edge of the pavement as it exists today. Given that and depending on what is behind the sidewalk, which I do not know because I haven't done that evaluation, it is possible that the additional land area could be vacated. We were dealing with to the west these --

MR. CARROZ: Mr. Zenner?

MR. ZENNER: Yes, sir.

MR. CARROZ: Do you think we could get back to what we were talking about here?

MR. ZENNER: That was one of Ms. Hammen's questions. And it was vacating that right-of-way or at least swapping the right-of-way to the west basically was to allow for the City to acquire the sidewalk that was actually -- the sidewalk was inverted to another road right-of-way, it was previously, so there was some unique history associated with the western exchange. Here again, without knowing what the details of that additional right-of-way were intended for, or what may be within it, I can't really speak to that.

MS. JOHN: I have one question, Mr. Zenner. Can you explain to me why a plain concrete slab, i.e., patio, is considered a structure?

MR. ZENNER: Again, this is something that has crept into the code as a -- as something that is designed or was intended, I believe, to address the issue of impervious -- impervious area coverage, an environmental issue, partially, I believe. Another is, obviously, to differentiate between what does become principal and accessory use to a particular property. If you were to design a structure that was ostensibly supposed to be a home, but then decided to put a pool in and have, you know, three times the pool patio area around it, and then starts to have large parties, is it still a home or is it somewhere where you have now created a recreational center that you could then have your neighbors and everybody in your neighborhood to come over to. There's -- there's that aspect associated with it. There were other criteria that our consultant, when they were developing the code, these standards potentially were a bleed-over from other regulations that effectively worked elsewhere.

We did 39 months worth of code work, a 400 and some odd page code. I can't remember every detail, like Mr. Clark, as to why we adopted every standard. But I can tell you that the issue that's been raised here this evening with patios and decks and parking lots being considered a structure, and having an impact as it relates to urban and accessory, it is an issue that we have discussed internally and I believe we will be taking action to address. I just don't know when and I don't know in what manner.

MS. JOHN: Okay. That's what I wanted to know. Thank you.

MR. WATERS: Mr. Zenner, are you aware of any threats of public health, safety, or welfare that the temporary stage has posed since it's been there?

MR. ZENNER: I am not, sir. I am not aware of any complaints that have been submitted. Nobody from our complaint side building staff in the process of issuing the denial for this and then processing -- having the case processed to our side of the shop indicated that there were any -- any safety violations associated with it. I think, as you probably all have driven past this, it sits actually behind the perimeter fence, which is at the back of the public sidewalk. So the stage is entirely internal to Mr. Gerding's property, to the Rose Theater and the park. So the ability for the public to get direct access to the back of the stage from the public side of it is already -- is restricted. So I would say that -- that, to some extent, addresses part of a possible public safety issue there. Welfare related matters are somewhat nebulous, so, you know, you'll have people that -- that noise travels, as Mr. Gerding said, and you're going to end up you're operating an outdoor concert thing. There are particular periods in time where you're most likely going to have noise, and you're going to have noise complaints, but we do not have any formal complaints that have been filed through the nuisance side of our zoning, and noise complaints generally go through the police department. So we are unaware of any complaints associated with the operation itself.

MR. WATERS: And in staff's opinion, what's the most imminent threat that might be posed by enlarging the stage?

MR. ZENNER: Well, the stage is already enlarged, so the threat -- I mean, there is no imminent threat. I think the issue is, is the code has a set of regulations that are applied across the board to everyone. They need to be adequately and equally applied in all situations, and I think the -- the granting of a variance, to the extent that it has been granted, is where the hazard lies. There are options by which to accommodate the stage, albeit, yes, it would be costly to have to relocate it, but it would reduce the level of the variance. Instead of granting what I would refer to as a free pass to build it and then come ask for the forgiveness, as I think it was raised this evening, is what the danger is. What example do we set to others then that want to do this same activity? They'll get a permit -- temporary permit, and then come back in because you've -- you can argue that it's inconvenient for me to have to remove it.

I'm here to defend our City code. I'm here to defend what we have as the -- the bedrock principles of how we treat everybody else that comes in and they want to do it legally, and they come through and get a variance. They get a variance before they build it. This is a different situation. Circumstances were that they decided to go ahead and book a concert season, come in and plead their case that we've already booked a concert season and we need to have this stage here. Our director and our building and site development said, well, we see an opportunity that we can grant you at least relief temporarily. I think, unfortunately, for me and my perspective as a regulator, we go down a very dangerous and slippery slope if we continue to condone this type of activity instead of doing what other individuals would have done, and that would have been seek permission before you ask for forgiveness. And if you were unable to get it at that point, you have to comply.

We have standards for a reason and they are to ensure that there is consistency and there is consistency in the application of our regulations and that we don't have a hodgepodge of potential structures and features that are not consistent with the general zoning district in which these types of buildings should be located. I will grant you that directly across the street, we have everything up to the front property line. It has just been that way for quite some time. It was allowed that way for quite some time. This property, unfortunately, was not included in that zoning district, and has not been, historically. It has always retained the 25-foot front setback.

MR. CARROZ: Mr. Zenner, I just want to make sure I understand. The minimum front-yard setback in IG is 25 feet?

MR. ZENNER: That's correct.

MR. CARROZ: If we were to grant this, that would be for the entire length of the property, full width. If something were to happen to the property, they could go in and build up to that line, whatever the case may be?

MR. ZENNER: Without any specific supplemental caveat or requirement --

MR. CARROZ: Hypothetically, if the building burned down.

MR. ZENNER: Well, no. Without any supplemental requirement that it only applies to the stage in question, yes, you are correct. So if we redevelop the site, the variance runs with that property, that variance would apply then to any future and subsequent development. So if we grant a 15-foot front-yard setback instead of 25 -- in the IG zoning district, you would be at 15, because that's the unique variance

applied to this property.

MR. CARROZ: Which then circumvents the zoning standards?

MR. ZENNER: Correct. But I would —

MR. CLITHERO: It depends. It's typically for a structure. In this case, this structure to encroach into the setback. We don't change setbacks. We never change setbacks.

MR. CARROZ: No. But the request is not specific.

MS. JOHN: But we can make it specific.

MR. CLITHERO: We could make it specific.

MR. CARROZ: I just have a problem with word smithing the application.

MR. CLITHERO: We do it every —

MS. JOHN: We do it all the time.

MR. CARROZ: I think it's a slippery slope that we're on. In doing so, I think the application should come in more diligently prepared to be more precise instead of asking for broad strokes.

MR. CLITHERO: Well, I think that we're not applying broad strokes. If we construct the variance the way it should be, it will be a narrow stroke and it will be —

MR. CARROZ: I'm going to disagree with that statement.

MR. CLITHERO: Okay.

MS. HAMMEN: What about if we table it and they can pursue the vacation, see if that is an option or how good an option, move the stage forward those three or four or five feet, and do without needing the variance?

MR. CARROZ: I think they would then have to reapply.

MS. HAMMEN: If we table it?

MR. CALDERA: Mr. Chair, before we actually go too far down that road, I believe, in our rules and in our process, Mr. Gerding is given an opportunity to basically rebut what Mr. Zenner says. And so I would encourage the board to, basically, let the evidence flush itself out before we engage in this discussion and make a decision.

MR. CARROZ: Okay. So is everyone finished with questions with Mr. Zenner?

MR. HAMMEN: Yes.

MR. CARROZ: Would any of you like to come back up and —

MR. TIM GERDING: Well, if I may, please. If I could, Board, actually, my client would like to respond to the statements given by the City, and then -- and just very briefly, so -- and then Mr. Murphy also to Mr. Carroz' -- if I'm pronouncing your name right -- to your concerns regarding the -- the language of -- that's actually in our variance petition and that issue.

MR. CARROZ: Okay.

MR. MATT GERDING: I just wanted to respond to a couple -- a couple of things Mr. Zenner said. First off, in regards to the conversation about the -- the primary use of the facility and the business, I don't -- I don't quite understand how the City would be in that position to evaluate what the primary use of the facility is. This is that park and it being live music overall throughout the course of the year is an integral part of our operation, both inside and outside, and it is part of our primary use. And I can show you our financials which will stack up and show you that this is -- this is part of the overall scope of the business, and it's part of our primary use, and it has been from the -- from the month that we purchase it.

Secondly, I just wanted to provide a little bit of -- of facts for you here. I don't know specific dates, but we worked with Simon & Associates to create architectural plans for this stage in 2015 and it was submitted to the City, I believe, in late 2015 or early 2016 for approval. We, for a variety of reasons, mostly financial, decided to press pause on that -- on that process. It was submitted, but we decided not go forward with building the stage at that time for that -- for that spring and summer season. At the end of 2016, we decided to pick that process back up, and we worked with Simon & Associates at that point, as well. It had been a two-month process. I think we were waiting for eight to ten weeks to get a response from the City about approvals. We were leaning on Simon & Associates during this time to provide us with -- with all the info in terms of the codes and considerations that we needed. And I believe it was March of 2017, and we still hadn't received a response, and I called the City to -- to get some information about what was going on. At that point, I was notified that in 2016, when we originally submitted the plans, that it had been told to Simon & Associates that they had been told it was required that we would submit a site survey which would detail the setbacks and all of that. They wanted the City to look at that and determine the setback ordinance and how it related to the project that we were trying to get off the ground.

We were a little bit frustrated that they had been notified of this a year prior, but I was not made aware of it at that point. We contacted A Civil Group to work on the site plans to -- to do the full survey and submit that to the City and add that to our application at that time. We, at that time, were in the midst of -- of our booking season for the spring and summer, and we -- we confirmed some outdoor shows in the park. And the feedback that we had gotten from the City during that time with our conversations was that there was a couple of different paths that we could pursue here, one of which was doing exactly what we're doing right now or to try to get the area rezoned. The path of least -- of least conflict for us, as it was described to us, was to pursue this what we're doing right now. The general sense that we had gotten from conversations and meetings that we had with the City was that, yes, it's possible that this would get denied. But in consideration of a variety of things that were part of the conversations, such as impact of noise, safety, just being logical and sensible as far as where this stage should -- should exist, you know, there was a hope that reason would prevail and that -- and that this process would go smoothly for us and that we could continue doing what it is -- what it is that we do and what it is that we're trying to accomplish in our neighborhood. And so we moved forward, we took a little bit of a gamble, we booked several shows, we had an awesome summer, we had no safety issues, we had incredible national artists coming through, and we had no complaints of noise.

So I think in consideration of all of the effects of this project, I think that it needs to be noted that we went through an entire season with -- with no issues, with no safety issues. During that temporary period that we were granted, everything went off with -- with flying colors and there was -- and there was no feedback negatively from the City or otherwise. If -- if the process needs to be that we need to get this rezoned, it might be worth considering potentially us applying for another temporary permit, which will just kick the can down the road. We can do that, as well. We're ultimately trying to do what -- what we think is in the best interest of safety and in our neighborhood and in this community, and I understand that there are specifics and particulars that need to be considered here, but my hope is that some basic sensibility and logic will prevail here. So, thank you.

MR. MURPHY: Thank you, Board, for allowing us a chance to speak again here. And as far as Ms. Hammen's comments, her last comments, with vacating the right-of-way and -- and moving this forward to therefore create a 15-foot yard setback, we would still need to come back at that point and get a variance from you folks, again just another step to -- to allowing that to happen, because we would still technically be within that 25-foot setback. I think Matt is very correct in saying that, you know, at least since I got on board with this, we had major discussions with staff on this, and it wasn't something that we haphazardly did and then to come, you know, wantonly disregarded, and then to come back for and ask for forgiveness. We knew this was a path that was going to be taken and was a viable path and agreed to as a viable path by staff, as well as rezoning. Again, as has been stated, we feel that this is the least amount of -- of variance required versus getting variances and this with the rezoning along the same lines. I think we would -- we would be happy to offer just allowing the stage and the only encumbrance into this variance as to the only encumbrance that could happen is the portion of the existing stage that lies within that 25-foot building line, so that would be the roughly 559 square feet that's shown on Exhibit 3. So that no more area could be -- no more building, no more stage could be built into that 25-foot building line.

And as far as the other two variances, if you feel that those need to be limited, as well, we would -- I think we would be willing to offer -- you know, let Tim Gerding, our counsel, finally submit to this that the aggregate square footage of the accessory structures would not increase any more than what it is now, and that -- and just, basically to -- to allow the -- the wooden structure to have wooden pylons through the concrete patio as far as the first -- you know, having that separation between the wooden structure and the concrete patio. If you have any certain questions or you can let Tim formally submit that wording if need be.

MR. CARROZ: I'm not sure I caught all that, but --

MR. MURPHY: Or I'd be happy to just sit here, if you want to walk through it or --

MR. CARROZ: I think some of the members of the board might want to discuss that. Is that probably good?

MR. CLITHERO: Sure.

MR. CARROZ: Okay. So I think we have on the table something -- how to limit -- how to limit the impact of a front-yard setback.

MR. ZENNER: Mr. Chairman?

MR. CARROZ: Yes.

MR. ZENNER: Mr. Caldera?

MR. CALDERA: Jose.

MR. ZENNER: Time out. Do we need to close the public hearing before the board begins its deliberations?

MR. CALDERA: Yes. Yes.

MR. ZENNER: I believe we may have one more speaker in line.

MR. TIM GERDING: May I have one more --

MR. CARROZ: If you would come up.

MR. TIM GERDING: If I may, just briefly. I believe that a statement on the record as is this one by the applicant limiting the scope of the application to a structure of a stage as it presently exists or substantially so, and to the patio as it exists or substantially so would operate legally to make that a reformed or amended application to the extent that that addresses your concern. I also believe that the application, if it's of concern in the way that it's written and its breadth, can be amended by interlineation, which would mean by simply writing into the side the proposed restriction that it be limited to these particular structures. And I also believe that the -- that the board and the board's counsel may be able to speak to this, but I believe the board has the authority to grant variances in full or grant variances in part. And so I think that the board has the authority to grant these variance requests in part to make sure that there's not some possibility in the future that someone is going to come and build a big building right on the property line. Thank you.

PUBLIC HEARING CLOSED

MR. CARROZ: Comments of legal?

MR. CALDERA: All right. There's a ton of information tonight, so I will try to keep my comments organized and on point. So first let me try to get some housekeeping things out of the way here. There are some exhibits that need to be introduced into evidence. First would be the staff report, which Mr. Zenner has previously provided. For the sake of keeping a good record, I'm actually going to move to admit this e-mail that the Board and I believe Mr. Gerding was previously provided by Ms. Susan Mays. Have you seen this, Mr. Gerding? It's one that Mr. Zenner referred to earlier.

MR. TIM GERDING: I've seen it.

MR. CALDERA: You've seen it. Okay.

MR. TIM GERDING: No objection.

MR. CALDERA: All right. So the City seeks to admit this as City Exhibit 3.

MR. CARROZ: So admitted.

MR. CALDERA: Thank you. All right. Lastly, the ordinances -- certified copies of the ordinances. The City would seek to admit City Ordinance 29-4.1, 29-6.1, 29-6.4, and 29-3.3 as City's Exhibit 4, I believe is where I am.

MR. CARROZ: Sounds good. So admitted.

MR. CALDERA: Okay. Along those lines, Mr. Chair -- I apologize. I actually forgot to get a certified copy of 29-3.3, so if the board will grant me -- keep the record open for about 24 hours so that I can supplement the record.

MR. TIM GERDING: I told them I have no objection.

MR. CARROZ: Okay. So long as the applicant has no objections. Does anyone on the Board have any objections? Seeing none, you may -- you are allowed 24 hours.

MR. CALDERA: My apologies. All right. So we've heard a lot of information today, a lot of arguments from both sides that have kind of just veered in all sorts of directions. Mr. Zenner mentioned this earlier and I think it's very important that the board recognize that the issues before the board tonight are variance request, okay? They are not appeals. There's been discussion about the City's interpretation and application of certain ordinances. That is not what was submitted to the Board. What was submitted was a request -- a variance request from the applicable ordinances, okay? Now, if the Board wants to grant Mr. Gerding the opportunity to withdraw this variance request and submit an appeals request, absolutely up to your discretion. But given that, the variance requests come with specific criteria that the Board must apply. And say it every time, there are five criteria that you guys must consider when determining whether to grant the variance request. I'm happy to read those out loud if the board would like. I do believe that they've been reiterated by Mr. Gerding and Mr. Zenner's report.

MR. CARROZ: Does anyone wish to hear those again? I think we're good.

MR. CALDERA: Okay. So final thoughts, Mr. Gerding mentioned in his final remarks there, he's

correct. The Board can limit the -- the scope of the variance request that has been submitted to you. You can apply conditions tonight. As you guys know, historically, I try to avoid going too far on our conditions because it becomes untenable and very difficult for people to track all the complicating, conflict conditions. So, generally speaking, yes, Mr. Gerding is correct. We can grant a variance limited in scope that applies certain conditions, but I would not say that that is unlimited. With that said, I believe that's everything. Hopefully, I didn't forget a comment.

MS. HAMMEN: May I say something?

MR. CARROZ: Sure.

MS. HAMMEN: The Board may also move to table a variance giving time and the applicant comes back without any additional costs or expense in advertising and so on; is that correct?

MR. CALDERA: Mr. Zenner, I don't believe there's any additional costs in the advertising or anything -- request?

MR. ZENNER: No.

MR. CALDERA: So, that's correct.

MR. CARROZ: Are you making a motion?

MS. HAMMEN: I might as well, and see where it -- it goes. So I'd -- I'd like to make a motion to table Case -- this is 1958, until the applicant has a chance to investigate the -- and set the vacation of the right-of way and move the stage the additional four to five feet so that there is no need then for a variance.

MR. CARROZ: Just to clarify, there will be a need.

MS. HAMMEN: Well, if they move it forward four or five feet, if there's a vacation granted and they move it forward, that additional --

MR. CLITHERO: How does that satisfy the --

MS. HAMMEN: It satisfies the first variance.

MR. CARROZ: I have a motion and we need a second. There's no second. The motion does not proceed. Proceeding forward. Okay. So, Mr. Zenner, I think we're going to approach this as -- I think we'll approach this in four -- four versions and four votes. Is that -- this -- I think that's where we're heading with this.

MR. CALDERA: That's probably the cleanest way to do it. It's three.

MR. CARROZ: Three. Sorry. Two and three are going to be combined, correct?

MS. JOHN: Look at the staff report.

MR. CALDERA: I believe that's the cleanest way to go, Mr. Chair, unless you believe that if you combine them all into one motion, that would gain enough support. But, generally speaking, it's best to do them separate.

MR. CARROZ: Okay. Can we use this fine exhibit that was submitted with the application as a guideline for all things considered in variance number one? That would be the blueprint of which they will abide by forever and ever. It's -- I believe it's the last page. Mr. Murphy, are you that comfortable with this?

MR. MURPHY: Let me bring it up here. Put it on the table here rather than your hand.

MR. CARROZ: This was --

MS. JOHN: No. It's this -- this --

MR. CARROZ: It's this one here. Here is the one that was submitted with the application.

MS. JOHN: Yeah. It's the end of the staff report.

MS. HAMMEN: Oh. It's the staff report.

MS. JOHN: It's the end of the staff report.

MR. CARROZ: Okay.

MR. CALDERA: So it was submitted with the staff report. Okay. I see what you're saying. Yes. That -- yes. These are mine. That's correct. That's what -- that's what they're referring to. That's something you put down -- let the record reflect that the applicant is comfortable with the Board --

MR. CARROZ: Can you come up and -- can you come up and state that, that simply for the record.

MR. CALDERA: I think that he -- it's stated in the record that he's comfortable with it.

MR. TIM GERDING: Well, whatever the chairman --

MR. CARROZ: Is the rest -- is the rest of the Board good with that picture?

MS. JOHN: Yes.

MR. ZENNER: We're looking at the same picture, correct?

MR. CARROZ: Yes.

MR. CALDERA: Okay. It is an attachment to the City's -- just to clarify for the record, it is an attachment to the City's report. It will be part of the -- part of the record.

MR. CARROZ: Do we need to do -- do we need to mark on here exhibit something else and pull it out that it would be separate?

MR. CALDERA: So I apologize. I'm not quite sure exactly how you intend to use this. Are you just going to --

MR. CARROZ: I want this -- I want this to be the governing so-called picture of what shall be.

MS. JOHN: What -- what he wants to frame it.

MR. CLITHERO: How do you know that picture represents what -- where that building is right now?

MR. CALDERA: That's why I would caution against --

MR. CARROZ: Sure.

MR. CALDERA: You can use this as a reference point. I would encourage you guys to use it as a reference point. That's fine. But your motion should deal with the specific setbacks and, you know, like we do historically when we grant setbacks, a variance for setback whatever, five feet, zero -- draft your motion that way and -- as opposed to just attaching it to the --

MR. CARROZ: Sure. So it needs to be framed as such --

MR. CLITHERO: I make a motion we approve the request for the variance for the existing stage to encroach into the 25-foot front --

THE COURT REPORTER: I can't hear him.

MR. CALDERA: Speak into the microphone.

MR. CLITHERO: I'm just confirming that front setback -- I already said that -- oh. Twenty-five feet -- into the front 25-foot setback by 25 feet, and that -- I don't think I understand -- I said that stage.

MS. JOHN: You did say the existing -- the stage as it is currently constructed?

MR. CLITHERO: Right.

MS. JOHN: Okay. Okay. Second

MR. CLITHERO: Can somebody read that back?

THE COURT REPORTER: I didn't hear most of it, what you said, so --

MR. CALDERA: Okay. We'll restate the motion then, for the record.

MR. CARROZ: Can you restate it?

MR. CALDERA: Yeah. If we can, restate it, so that way it's clear in the record what the motion is.

MR. ZENNER: Well, if -- do you want me to read it back?

MR. CALDERA: Well, do you have it?

MR. ZENNER: I don't, but I know it. The motion that is on the floor by Mr. Clithero is to grant the requested -- to grant a variance of 25 feet to allow the existing stage to encroach into the front setback and to be an accessory -- it should be, and this would be what I would add -- an accessory structure to be within the required front setback as well.

MS. JOHN: Second.

MR. ZENNER: Ostensibly, what you're requesting, what you're -- what the motion is, is you're granting a 25-foot -- you're granting a 25-foot variance to the required setback for the stage only.

MR. CLITHERO: For the existing stage only. That's correct.

MR. ZENNER: And that is a, as I think you've discussed with Mr. Gerding, as well as Mr. Caldera, an accessory -- that is a variance in part to what the applicant requested. The applicant's request was for a zero front-yard setback --

MR. CLITHERO: Correct.

MR. ZENNER: -- along the entire property. You are asking to narrow that to just a 25-foot variance applying to the stage -- the existing stage --

MR. CLITHERO: That's correct.

MR. ZENNER: -- on the property.

MR. CLITHERO: That's correct.

MR. CARROZ: Yeah. Okay. So is that then -- you think you've got it all out there?

MR. ZENNER: Yeah. That's -- that's the motion, the motion that Mr. Clithero meant to make was to grant a 25-foot front-yard setback variance to allow the existing stage to remain in its current location.

MS. JOHN: Second.

MR. CALDERA: And that Mr. Clithero has acknowledged is what he intended to make, for the record.

MS. JOHN: And I seconded.

MR. CARROZ: And the motion has a second. Mr. Zenner, would you please call the roll.

MR. ZENNER: Mr. Carroz?

MR. CARROZ: Yes.

MR. ZENNER: Mr. Clithero?

MR. CLITHERO: Yes.

MR. ZENNER: Ms. John?

MS. JOHN: Yes.

MR. ZENNER: Ms. Hammen?

MS. HAMMEN: No.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

MR. ZENNER: Variance number one approved as amended.

MR. CALDERA: So as I read this request, the applicant seeks 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, so it's a variance of 29-3.3(2)(1)(1); is that right?

MR. CLITHERO: And what we would want to say as to that so they don't pave the whole park is to make it say that, whatever we think. Thirty -- whatever we think -- 39-something.

MR. CARROZ: Okay.

MR. ZENNER: Okay. So you're looking at the total of the two, Mr. Clithero; is that what you're asking for?

MR. CLITHERO: Yeah.

MR. ZENNER: Okay. Total square footage cannot exceed -- total accessory square footage to not exceed 3,910 square feet.

MR. CLITHERO: Right.

MS. JOHN: Correct.

MR. CARROZ: Motion to allow the allocated area to an accessory structure to --

MS. JOHN: Go ahead.

MR. CARROZ: Yeah. A motion to grant a variance to allow the accessory structures to --

MR. CLITHERO: Exceed the principal structure.

MR. CARROZ: -- exceed the principal structure up to a maximum of 3,900 square feet.

MS. JOHN: 3,910 square feet.

MR. CARROZ: Excuse me. 3,910. I think that's what we're after.

MR. CLITHERO: I second that.

MR. CARROZ: Mr. Zenner, does that sound like it should, I think?

MR. ZENNER: Yes. It sounds as though -- it should sound that way, so you're --

MR. CALDERA: And just so -- just so I understand, the motion is a variance -- a grant of variance to permit the aggregate square footage up to a maximum of -- what was the number?

MR. CLITHERO: 3,910 square feet.

MR. CALDERA: -- 3,910 square feet of all accessory structures.

MS. JOHN: As they currently exist.

MR. CALDERA: Okay.

MR. CARROZ: Okay. I have a motion. I have a second. Mr. Zenner, will you please call the roll?

MR. ZENNER: Yes, sir. Mr. Carroz?

MR. CARROZ: Yes.

MR. ZENNER: Mr. Clithero?

MR. CLITHERO: Yes.

MR. ZENNER: Ms. John?

MS. JOHN: Yes.

MR. ZENNER: Ms. Hammen?

MS. HAMMEN: No.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

MR. ZENNER: Variance number two passes as amended.

MR. CALDERA: And then the last one is a variance from Section 29-3.3(2)(1)(3), variance to permit accessory structure to be closer than ten feet to another structure.

MS. JOHN: In this case, I see no reason why that should be a problem since one of the two accessory structures is a patio. And the reason for the ten-foot separation is fire danger, and a patio doesn't really provide a fire hazard. So I would make a motion that we see no public health, safety, or welfare problems with having the patio and the stage closer than ten feet to each other, so we grant a variance for that.

MR. CLITHERO: Second that.

MR. CARROZ: The motion —

THE COURT REPORTER: Who seconded the motion?

MR. CALDERA: Who seconded the motion?

MR. CARROZ: Mr. Clithero. Mr. Zenner, would you call the roll, sir?

MR. ZENNER: Mr. Carroz?

MR. CARROZ: Yes.

MR. ZENNER: Mr. Clithero?

MR. CLITHERO: Yes.

MR. ZENNER: Ms. John?

MS. JOHN: Yes.

MR. ZENNER: Ms. Hammen?

MS. HAMMEN: Yes.

MR. ZENNER: Mr. Waters?

MR. WATERS: Yes.

MR. ZENNER: The motion passes.

MR. CARROZ: Okay.

V. COMMENTS OF PUBLIC

MR. CARROZ: Anyone wishing to speak at this time from the public?

MR. TIM GERDING: Thank you. Thank you, each of you for your time this evening.

MR. MATT GERDING: Thank you very much.

VI. COMMENTS OF STAFF

There were no comments from staff.

VII. COMMENTS OF BOARD

MR. CARROZ: Are there any other items the board wishes to discuss tonight? Okay.

VIII. NEXT MEETING

IX. ADJOURNMENT

MR. CARROZ: Motion to adjourn?

MR. CLITHERO: So moved.

MS. JOHN: Second.

MR. CARROZ: All those in favor say aye. All opposed say nay. (Unanimous voice vote for approval.)

(Meeting adjourned at 9:40 p.m.)