

Fauxpoint Supporting Statement for Appeal to BOZA

I am a director of the Rosewood Condominium Council, of which its members are the undisputed legal landowners of the property located at 1505 Rosewood Avenue, Louisville, Kentucky 40204.

I wish to appeal the May 4th decision by Develop Louisville to issue building permits (#BL939681, #BL939695, #BL939707, and also #359225) to Gene Crawford of Highlands Restoration Group [HRG] for the construction of an additional 3-story, 3-unit building on the Rosewood site, and to appeal staff determinations indicating the approved development plan fully complies with all zoning regulations as set forth in the Land Development Code.

PROPERTY CONTEXT

In September 2004, HRG purchased the Rosewood property, then shortly thereafter obtained a building permit for a purported interior renovation of the principal structure, in which 6 apartment units were converted to 8 condo units. In May 2005, BOZA granted a variance that reduced the Private Yard Area [PYA] by 44% in order for HRG to expand the condo regime, upon an implicit condition the regime would consist of 11 units in total.

In July 2006, HRG established the Rosewood condo regime per the recorded condo plat, floor plans, and master deed (in which Crawford asserted a 10-year development right). In June 2007, HRG reconstructed an existing nonconforming carriage house without a building permit and incorporated a 9th unit into the condo regime.

In July 2013, Crawford relinquished all rights, powers, and control of the condo project and its property to the Rosewood Council. Although Crawford failed to obtain all necessary permits and final plan approval before he relinquished control of the condo project to the landowners, he now seeks to exercise those development rights via the submission of construction plans recently approved by Metro staff.

GROUND FOR APPEAL

On April 13, 2015, my husband, Daniel, and I submitted a memo with supporting documentation (Request for Formal Determinations in Writing on HRG's Development Plan) to staff of Develop Louisville, delineating the gross non-compliance of HRG's development plan, as well as multiple and unresolved building, zoning, and statutory violations for which Metro officials have yet to impose any corrective action.

On April 24th, we met with several Metro directors to discuss our grave concerns with the proposed plan. The county attorney's office advised staff to hold off on issuing building permits until certain matters were addressed; in particular, to verify accurate values for the existing and intended floor area. Metro staff also agreed to investigate a number of items and report back their findings at a continuation meeting. On May 3rd, we sent a follow-up letter to Develop Louisville staff, raising additional questions and reiterating the fundamentally unresolved issues to be addressed at the continuation meeting.

The following day on May 4th, while being fully aware of numerous statutory and procedural violations, Metro staff issued building permits based on a demonstrably non-compliant plan that also clearly exceeds the permitted FAR. Although Metro representatives have since indicated the permits are currently under "internal review," as of May 11th, the Metro website lists the permits' status as "issued" (while also being flagged per #14PR1732). For all intent and purposes, HRG can now claim to be in possession of valid building permits and begin construction within a matter of days.

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However, the magnitude of unresolved problems should have precluded Metro staff from approving these permits, including but not limited to:

1. Absence of a complete, internally consistent, and detailed development plan that would facilitate a proper review of this multi-phased condominium project under a *mandatory* Category 3 review (for non plan certain proposals that meet the size threshold per LDC §1.2-9) outlined in LDC §11.6.4, including a building design review (per TNFD Threshold Table 5.2.3).
2. Multiple code compliance issues, such as:
 - a. Exceeding the maximum Floor Area Ratio allowed in an R7 zoning district.
 - b. Non-compliance with the PYA variance granted by BOZA in 2005, including failure to meet the minimum PYA requirement and improper claim to areas that cannot qualify as private yard.
 - c. Non-compliance with an implicit condition attached to the variance (maximum of 11 dwelling units on the site per HRG's 2005 justification statement and sworn testimony).
 - d. Inaccurate impervious surface calculations on the EPSC Plan and a Landscape Plan that is non-compliant with LDC Chapter 10 pertaining to tree canopy and landscape requirements.
 - e. Exceeding the height of the principal structure, which is disallowed per the LDC §5.4.1.A infill standards.
3. Existence of multiple nonconforming structures that should prevent further development of this site.
4. Failure to enforce LDC §4.6.2.A. and §4.9.3(A-B) requirements for a karst survey and geological assessment report, in spite of documented evidence of a potential sinkhole within the development site.
5. Absence of valid applications submitted by the developer in order to obtain building permits (Metro staff have inexplicably re-purposed invalid applications from 2013 that have long expired).
6. Issuance of building permits to a developer known to have outstanding and uncured zoning and building code violations, including but not limited to: having performed construction activities without a permit (in particular, the reconstruction of Unit #9 without a permit, a fact inarguably proven by the absence of a Certificate of Occupancy for this structure).
7. Well-established pattern of this developer's misrepresentation of plan elements to secure plan approvals and significant modifications to those approved plans.
8. Withholding critical public records (most especially the architectural renderings depicting a low-quality and incompatible building design) despite a long-standing open records request for such documents (note that Metro staff refused to release construction plans until three days *after* the building permits were issued).

In light of the time-sensitive nature of this appeal, it was imperative to submit this application as quickly as possible. Please note that supplemental documentation will be submitted no later than one week before the scheduled BOZA hearing.

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