

FROM : Daniel & Elizabeth Fauxpoint  
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TO: Dr. Jim Mims  
Director of Codes & Regulations  
Louisville Metro Government  
444 South Fifth Street  
Louisville, KY 40202

CC: Doug Hamilton, Chief of Public Services  
Emily Liu, Director of Planning & Design Services  
Dave Marchal, Assistant Director of Codes & Regulations

Friday, January 31<sup>st</sup> 2014

Dear Dr. Mims,

This letter is with regards to 3 building permits (#359225, #359231, #359232) issued by your department on 01/10/2014 to Highland Restoration Group LLC (from here on, HRG) related to the construction of a new building on the lot located at 1505 Rosewood Ave.

We are the current owners of Unit 7, located in the existing original building at that same address (renovated between 2005 and 2007 by HRG) and we are writing to you to express grave concerns caused by the issuance of these permits: they appear to be in clear violation of both the 2006 Land Development Code for Louisville and Jefferson County, and one of the related variances approved in 2005, at the beginning of HRG's original development project, by the Board Of Zoning Adjustment.

We have reviewed and analyzed the 2006 Land Development Code to the best of our non-specialized abilities, and we believe that the plans submitted by HRG to support their application for the 2014 building permits fail to meet critical requirements as summarized in the table<sup>1</sup> below (Note that this list is not meant to be exhaustive, and might be augmented as we increase our understanding of the applicable codes and regulations).

ID	Summary
✓ 1	Requirement set forth by the Private Yard Area variance granted by BOZA in 2005 is not met <i>not deck?</i>
✓ 2	Tree Canopy Preservation Plan is required and missing <i>check</i>
✓ 3	Other Tree Preservation Issues <i>general</i>
✓ 4	Landscaping Plan is required and missing <i>see or 2</i>
✓ 5	Other Landscaping Issues <i>x</i>
6	Orientation of entrance of new principal structure <i>OK to land corner</i>
✓ 7	Front setback of new principal structure in infill context <i>which plan 2005/2012</i>
✓ 8	Height of garage door top in relation to street grade <i>miscellaneous to provide shots</i>
9	Height of retaining walls in front of new principal structure

We also want to emphasize the fact that the application and review process for the two variances and one waiver granted in 2005 (Docket #B-74-05 and #B-74-05W) was characterized by several irregularities and issues (also described in the accompanying Supporting Documentation) which cast significant doubts over the validity and judiciousness of the BOZA approval decision.

<sup>1</sup> Each entry in this table is further documented in the Supporting Documentation accompanying this letter, in a section with the same number as the entry ID.

Unless we misinterpreted the 2006 LDC requirements, we believe that this long list of extremely serious problems provides sufficient grounds for-us to request, per the authority granted to you by section 105.6 of the 2007 Kentucky Building Code<sup>2</sup>, that your department take the following immediate actions:

- 1 - revocation, or at least suspension of 3 building permits issued on 1/10/2014
- 2 - revocation or at least suspension of the waiver approved on 5/16/2005 to allow the new structure/garage to have access from Rosewood Avenue
- 3 - issuance of a notice to Highlands Restoration Group LLC to:
  - 3.1 - inform them of the revocation or suspension of the 2014 building permits and the 2005 waiver
  - 3.2 - inform them of the choice available to them to either re-apply for a Private Yard Area variance (that will need to be examined in a public hearing meeting), or to adjust their building application plans to meet the variance requirements
  - 3.3 - inform them of the need to re-apply for a street access waiver, that will need to be examined in a public hearing meeting  
OR  
inform them of the necessity to schedule a new public hearing meeting for a new review of that waiver application, based on a fully updated 2014 development plan
  - 3.4 - inform them that a Tree Canopy Preservation Plan, as well as a separate Landscaping Plan are required and must be submitted to PDS before any building permit can be re-instated or issued
  - 3.5 - inform them of the need to satisfactorily address all identified 2006 LDC non-compliances of the proposed new building design.

We trust that, as you personally urged your staff to do in your FY13-FY19 Codes and Regulations Strategic Plan<sup>3</sup>, your department will embrace this opportunity to "Provide excellent customer services by professionally and efficiently administering codes and regulations that define our core services and programs, through timely and efficient review processes, professional support of boards and commissions, and responsive inspections and enforcement".

We thank you in advance for the personal attention you will give to this urgent matter. If you believe our requests cannot be granted based on the evidence provided, we ask for a meeting during the week of Feb 3<sup>rd</sup>, at your earliest convenience to discuss these matters in person.

Very Cordially,  
Dan & Elizabeth Fauxpoint



Elizabeth Fauxpoint

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<sup>2</sup> The three 2014 building permits state the new building shall comply with 2007 KBC. Section 105.6 "Suspension or revocation" of that code states:

The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or regulation or any of the provisions of this code

<sup>3</sup> <http://www.louisvilleky.gov/NR/rdonlyres/C5FD5DA2-4DFC-4770-9CBE-429F869667C5/0/CodesRegsFY13FY19StrategicPlanVersion10.pdf>

## Supporting Documentation – Supplement to Letter to Dr. Jim Mims

This document is organized in 4 parts:

**Part I – Case Background (p.1):** retraces the history around the development of 1505 Rosewood Ave. since Highland Restoration Group LLC (HRG) purchased it in 2004.

**Part II – Discussion of Code Compliance Issues (p.4):** provides detailed explanations for each one of the issues inventoried in the letter addressed to Jim Mims on 01/31/2014.

**Part III – 2005 Variances & Waiver Application and BOZA Approval (p.14):** focuses on important context information conveyed during the 2005 BOZA hearing to review HRG's applications for two variances and a waiver.

**Part IV – Appendixes (p.22):** additional artifacts referenced throughout Part I, II and III.

### Part I - Case Background

1505 Rosewood Ave. is a 21,423 sf rectangular lot located on the north side of Rosewood Avenue between Baxter Avenue and Barrett Avenue. As of January of 2014, the site has one existing building holding 8 units (condos, #1 to #8), and 4 garage structures (capable of accommodating 10 cars). A carriage house, holding one additional unit (#9), is built on top of one of the garage structures.

All units are currently owner-occupied. The Master Deed only authorizes rental to direct family relatives of the owners. The land itself (designated as a Common Element in the Master Deed, Article I, definition E) belongs to the members of the Rosewood Condominium Council Inc. (Master Deed, Article II – (B).d), a non-profit entity governing the affairs of the condominium.

The current setup is the result of a development project, led by HRG [Managing Member: Gene Crawford] and started in 2005. Mr. Crawford included in the Master Deed, a clause (section T) allowing him to expand the condominium regime by building the carriage house (unit #9) and up to 3 new units in a separate new building. This clause expires on July 20, 2016 (10 years from date of Master Deed which was executed on 7/20/06).

The first phase of the renovation project was completed in June of 2007 when unit #9 was officially added to the Master Deed. Prior to starting the construction, Kevin Orr, on behalf of HRG filed the following applications on 4/25/05:

**Docket # B-74-05:**

An application for a variance to permit a "Proposed garage in rear on alley". The application however has 2 attachment sheets (both with 4 paragraphs, numbered 3a to 3d):

- One describing a request to allow a new garage structure to be built zero feet away from the adjacent property line (the 2006 Land Development Code (LDC) requires a 3 feet setback)

- One describing a request for access from Rosewood Avenue to allow entry to and exit from the garage of a new proposed building (the new building with 3 condos mentioned section T of the Master Deed)

**Docket # B-74-05W:**

An application for a waiver to allow the 'open space' (Private Area Yard) to be 650 sf smaller than required by the 2006 LDC.

These requests were examined by Planning & Design Services (PDS), and a Staff Report recommended they be approved. The finding report however:

- Addresses all 3 requests under case # B-74-05W (no further mention of B-74-05)
- Recommends the approval of
  - A variance (although the request was filed as a waiver application) of 2,835 sf (instead of the initially requested 650 sf) to allow the Private Yard Area to be 3,592 sf instead of 6,427 sf as required by the LDC
  - A variance of 3 feet to allow the proposed garages to be located 0 (zero) feet from the property line separating 1435 and 1505 Rosewood Avenue
  - A waiver (although the request was filed as a variance application) to allow access to the new building garage from the street even though there is an existing back alley

The Board of Zoning Adjustment (BOZA) then scheduled a public hearing meeting on 5/16/2005 to review the applications and staff recommendation.

A single notice was sent by PDS on 4/29/05 to Tier 1 owners (list provided by the applicant) to let them know of the upcoming hearing. The notice however:

- Was very un-informatively titled 'CONCERNING DOCKET NO. B-74-05W'
- Mention only the application for "a waiver of dimensions of the private yard area" for the site "located at 1505 Rosewood Ave. and being in Louisville Metro".

**NOTES:**

A - On 6/28/2005 a letter (unsigned) was sent by PDS to Mr. & Mrs. Leist to explain that the notice had referenced the wrong waiver and had omitted the 2 variances, but that everything had been approved. Minutes of the BOZA meeting were attached to that letter.

B - A member of PDS staff verbally stated during an in person discussion on December 2013 that corrected notices were sent out, but aside from the 4/29/05 notice and the 6/28/05 unsigned letter to the Leists, nothing exists in the PDS case file to corroborate that claim.

On May 16 2005, just two neighbors attended the BOZA hearing (almost certainly because the hearing notice was obfuscating the real scope of the development plan under examination) and were very upset to hear about the development plan, and surprised to learn that the meeting was only about the waiver and variances approval (as opposed to discussing the validity of the construction project itself)<sup>1</sup>.

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<sup>1</sup> See accompanying BOZA public hearing meeting video and transcript for additional details.

Kevin Orr attended the BOZA public hearing meeting on behalf of HRG, and provided answers to the numerous questions and concerns raised by the Board Members. Based on significant assumptions, relying entirely on answers provided by Kevin Orr, the Board finally decided to approve both variances and the waiver.

Building permits were then applied for by HRG and issued by PDS (#45216 for renovation of main building, #57878 for new garages). HRG then proceeded with the first phase of renovation that was completed in June 2007 when unit #9 was officially added to the Master Deed.

In 2008 and again in 2013, Gene Crawford offered to sell his development rights to the Rosewood Condo Association<sup>2</sup>, with an asking price of \$300,000 (see Appendix I for the 2013 offer). In 2008, Mr. Crawford rejected the Association's \$10,000 offer.

In September of 2013, HRG completed their application for the second building. They submitted plans and drawings which, as thoroughly documented in the following pages, are first significantly different from the plans they submitted in 2005 to obtain the above-mentioned variances and waiver, and second inaccurate and misleading.

On 01/10/14, 3 new building permits were issued by the Division of Construction Review (Department of Codes & Regulations, Louisville-Jefferson County Metro Government):

#359225 - 1596 SF SECOND FLOOR CONDO WITH 1596 SF 3 CAR GARAGE BELOW SAME CONDO

#359231 - 1596 SF THIRD FLOOR CONDO

#359232 - 1596 SF FOURTH FLOOR CONDO

The remainder of this document provides details for each entry listed in the table of issues presented in the letter to Dr. Jim Mims, Director of the Department of Codes and Regulations of Louisville Metro. This table is reproduced below for reference.

ID	Summary
1	Requirement set forth by the Private Yard Area variance granted by BOZA in 2005 is not met
2	Tree Canopy Preservation Plan is required and missing
3	Other Tree Preservation Issues
4	Landscaping Plan is required and missing
5	Other Landscaping Issues
6	Orientation of entrance of new principal structure
7	Front setback of new principal structure in infill context
8	Height of garage door top in relation to street grade
9	Height of retaining walls in front of new principal structure

The sections below also reference picture appendixes located at the end of this document, as well as the 2005 BOZA public hearing meeting video and transcript included in this package and available on-line at:

- <https://docs.google.com/file/d/0B6szLCnRX9YVLTJPOURJYmZBeFU> (video)
- <https://drive.google.com/file/d/0B6szLCnRX9YVZGxlaEZDb1hic3c> (transcript)

<sup>2</sup> Until July 2012, Gene Crawford was the owner of (via HRG) and occupied unit #3.

## Part II – Discussion of Code Compliance Issues

### 1 – Failure to meet requirement set forth by the Private Yard Area variance granted by BOZA in 2005

As established by the current Land Development Report, 1505 Rosewood Avenue is a lot with a zoning district classification of R7 and belonging to the Traditional Neighborhood form district. In addition, the proposed new building is considered an infill development as per the 2006 LDC definition:

**Infill Development** - Development that occurs on vacant or underutilized land in an area within which a majority of the land is developed or in use. (Refer to form district regulations for specific definitions and criteria relating to infill.)<sup>3</sup>

LDC 2006 – 5.4.1 (Residential Site Design Standards, Traditional Form Districts) describes the applicable requirements related to the four basic components of this lot, where the components definitions are provided in LDC 2006 – 1.2.2 as follows:

**Accessory Structure/ Use Area** - In the context of the Traditional Neighborhood Form, the Accessory Structure/ Use Area lies between the Private Yard Area and the alley or rear property boundary. Most commonly used for off-street parking, accessory structures such as carriage houses and garages and as access for the property from the alley or secondary street.

**Public Realm** -In the context of the Traditional Neighborhood Form, the area of the lot occupied by the public right-of-way and the area in front of the principal structure or to the required principal structure setback/ build-to line.

**Principal Structure** -A structure or combination of structures of primary importance or function on a site. In general, the primary use of the site is carried out in a principal structure. The difference between a principal and accessory structure is determined by comparing the size, placement, and similarity of design, use of common building materials, and the orientation of the structures on a site.

**Principal Structure Area** -In the context of the Traditional Neighborhood Form, the area of the lot located between the Public Realm Area and the Private Yard Area and is occupied by one or more principal structures.

**Private Yard Area** -In the context of the traditional form districts, the Private Yard Area is the area of the lot located between the Principal Structure Area and Accessory Structure/ Use Area. The Private Yard Area must be unenclosed and open to the sky except for permitted fences, decks, and small sheds. Sheds may not exceed 120 square feet. Unroofed pools, atriums, gardens, garden courts, walks, patios, and other similar uses are acceptable. No other uses may be located within this area, including off-street parking.

Figure 1 on the following page shows how these definitions translate to the site map that was submitted by HRG with the application for the building permits issued on 1/10/2014.

<sup>3</sup> LDC 2006 – 5.4.1 (Residential Site Design Standards, Traditional Form Districts) does not provide a separate specific definition for infill development.

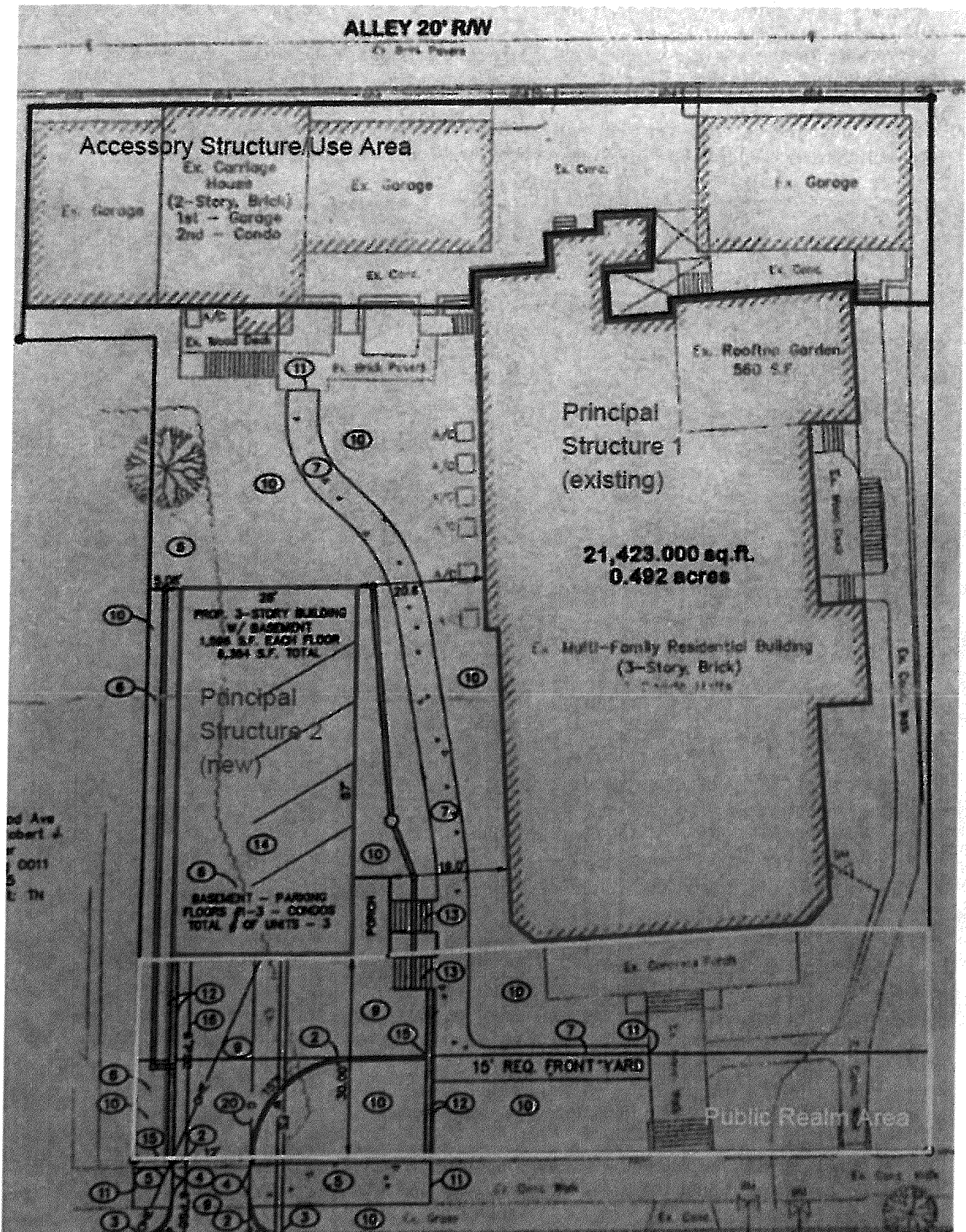


Figure 1 (Based on excerpt of 2013 building permit application document C3 - Site Layout Plan)

The first observation is that no area on this site fits the strict definition for Private Yard Area since the Principal Structure Area and the Accessory Structure/Use Area share a common boundary.

The developer however, as illustrated in Figure 2 below, is claiming four surfaces as qualifying for inclusion in the calculation of the Private Yard Area for the lot once the new building is in place:

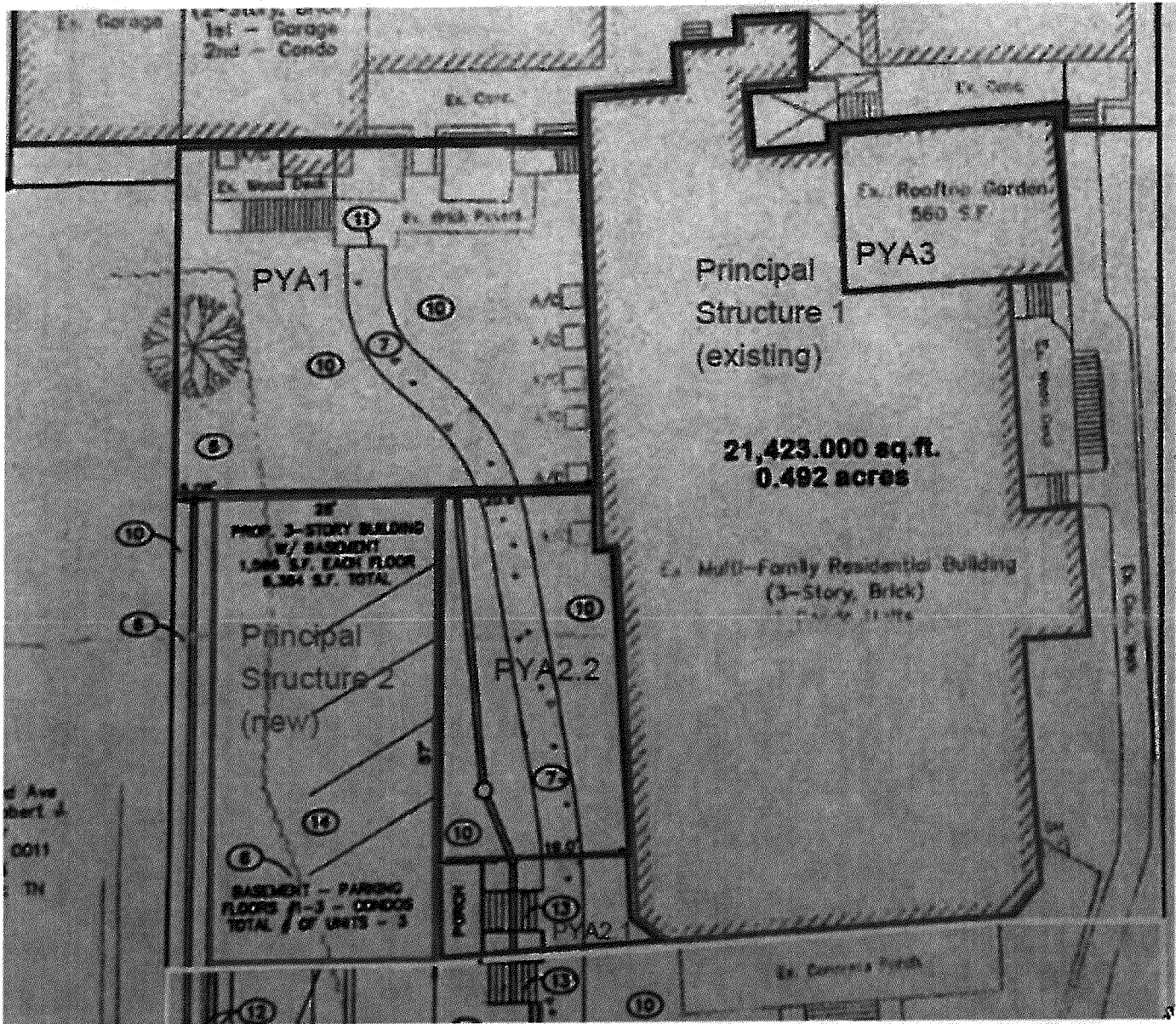


Figure 2 (Based on excerpt of 2013 building permit application document C3 – Site Layout Plan)

An analysis of these surfaces leads to the following observations:

- PYA1: between the back of the new building, the left side of the existing building and the front of the Accessory Structure/Use Area. This surface is technically an encroachment in the Principal Structure Area.



- PYA2.1: between the first twelve feet of right side of the new building (measured from the front façade), and the corresponding section of left side of the existing building. This surface is also an encroachment in the Principal Structure Area, and it does not meet the minimum dimension requirement of “20 feet for a lot of 6,000 sf. or more” found in LDC 2006 – 5.4.1.D.2 (p. 524) for the following reasons:
  - the covered porch cannot be counted as Private Yard Area (LDC 2006 – 5.4.1.D.1)
  - there are only 19 feet between the left most side of the porch and the right side of the existing building (and significantly less than 19 feet from the edge of the porch stairs)
- PYA2.2: the remainder of the area between the left side of the new building and the right side of the existing building. This surface is also an encroachment in the Principal Structure Area.
- PYA3: the so-called ‘Rooftop Garden’, is actually a plain wooden deck, built on top of the existing building roof, and is clearly disqualified by LDC 2006 – 5.4.1.D.1 (p. 524) which states:

Permitted Structures. Unroofed pools, atriums, gardens, garden courts, walks, patios, unroofed decks constructed at the same elevation as the first floor of the residence and other similar improvements are permitted; the area occupied by these improvements shall be considered in the calculation of the required private yard area.

Note in particular that LDC 2006 – 5.4.1.G.2.a (p. 527) clarifies:

Multi-family residential development shall be subject to the four areas of traditional neighborhood residential development with the following exceptions:

- i. The accessory structure size limitation shall not apply.
- ii. The accessory structure area depth maximum shall not apply.

It is clear from these observations, that even a very liberal interpretation of the code leaves the developer with at most the ability to claim PYA1 and PAY2.2 as Private Yard Area. Assuming generous measurements of the dimensions involved, these surfaces represent respectively:

- PYA1: 45 ft by 52<sup>4</sup> ft = 2,340 sf
- PYA2.1: 45 ft by 23<sup>5</sup> ft = 1,035 sf

For a total of **3,375 sf**, a value that is not even close to meeting the requirements set by the Private Yard Area variance<sup>6</sup> that was granted in 2005 for the entire development project by BOZA.

Note also that there are encroachments both in PYA1 and PYA2.1, in the form of 6 A/C units, covering approximately 32’6” by 4’6”, further reducing by approximately 146 sf the area that is really usable as a private yard (see Appendix A).

<sup>4</sup> Average distance from the left side of property line to the right side of the existing building for that zone.

<sup>5</sup> Average distance from the left side of the new building to the right side of the existing building for that zone.

<sup>6</sup> the variance approved requires a Private Yard Area of at least 3,592 sf which already represent a strikingly high reduction of the requirements specified by LDC 2006 – 5.4.1.D.2 (p. 524) [“The Private Yard Area shall be at least 30% of the area of the lot”, or 6,427 sf for this specific lot]

## 2 - Tree Canopy Preservation Plan Requirements

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Tree Canopy Regulations are covered in Chapter 10, Part 1 of the 2006 LDC. The plans submitted with the application that led to the issuance of the building permits on 1/10/2014 fail to meet the requirements expressed by these regulations.

The developer had actually initially submitted a Landscaping / Tree Preservation application<sup>7</sup> (#18719) that was reviewed by PDS. The conclusion of the review (completed on 1/25/2013) was that a landscaping plan was not required for the following reason:

The % of improvement (19.6%) was determined to be under 20%, therefore a landscape review is not required. This case is being withdrawn.

First, we do not understand why PDS did NOT examine Tree Canopy Preservation requirements and Landscaping requirements independently from each other, since these two sets of requirements are covered in separate parts of the 2006 LDC (10.1 and 10.2 respectively), and also have distinct applicability requirements (detailed in 10.1.2 and 10.2.2 respectively).

In any case, the conclusion reached by PDS is incorrect since LDC 2006 – 10.1.2 (Applicability and Basis of Calculation [for Tree Canopy Preservation]) states:

A. The requirements of this Part shall apply to all new residential subdivisions creating more than five (5) buildable lots and to all new multi-family and nonresidential development. New single-family residential construction shall provide tree(s) in accordance with the residential design standards found within chapter 5.

It seems that PDS may have chosen instead to consider LDC 2006 – 10.1.2.B, as this section is the only one that takes into consideration the increase in building area or impervious surfaces<sup>8</sup>, and states:

B. Expansion or reconstruction of an existing **nonresidential building or development** shall be subject to the requirements of this Part as follows:

...

3. Any development site on which there is an increase in building area or impervious surface area by twenty (20) percent or less shall not be required to provide the tree canopy required by this Part.

Unfortunately, the new building is indeed a new development (which is why LDC 2006 – 10.1.2.A **does** apply), since the building itself is brand new and fully detached from any existing structure. In addition the new building is a **residential building** (which is why LDC 2006 – 10.1.2.B **does not** apply)

Finally, even if LDC 2006 – 10.1.2.B were to be considered applicable, both the increase in building area<sup>9</sup> and the increase in impervious surfaces are significantly greater than 20%. As a reminder LDC 2006 1.2.2 provides the following definition:

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<sup>7</sup> This application was rife with inaccuracies, for example claiming credit for non-existent trees, and for trees that do exist but are, for all intent and purposes, dead.

<sup>8</sup> Which is what we assume the “% of improvement” in the PDS review log refers to.

<sup>9</sup> See “4 – Landscaping Plan Requirements” for details around the real building area percentage increase.

**Impervious Surface Area** -The area of ground covered by any part of a building, street, vehicular use area, or any other structure, improvement, facility or material which prevents or severely restricts natural percolation of moisture. This includes all asphalt and brick surfaces, and areas devoted to any outdoor storage and/ or display of materials and merchandise, but does not include residential accessory swimming pools. Gravel surfaces shall be considered impervious when used for a vehicular use area, and porous otherwise. Unpaved vehicular use areas shall also be considered impervious, except those designated and approved for occasional vehicular use only. Wooden patios under Chapter 8 shall be considered pervious.

Document C4 (Drainage Area Calculations) that was submitted by the developer to support the new building permits application, and was reviewed by PDS prior to the issuance of these new permits on 1/10/14 states (lower left corner):

**IMPERVIOUS SURFACES CALCULATIONS:**

EXISTING IMPERVIOUS SURFACE: 11,940 S.F.

PROPOSED IMPERVIOUS SURFACE: 15,266 S.F.

NET INCREASE IN IMPERVIOUS SURFACE: 3,326 S.F.

The net increase in impervious surface represents an increase of **27.85%** over the existing impervious surface.

Therefore, no matter which applicability requirement is selected, a Tree Canopy Preservation plan is required in order to issue new building permits based on the plans provided by HRG.

Note that a Tree Canopy Preservation plan must include a tree inventory (LDC 2006 – 10.1.6.A.1)

### **3 - Other Tree Preservation Issues**

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In addition to the issues noted above in relation with the Tree Canopy Regulations, we want to highlight the following concerns:

- Informal surveying and aerial views of the lots at 1435 and 1505 Rosewood Avenue indicate that some of these trees that would be affected by construction activities are on 1435. To the best of our knowledge, HRG has not obtained the consent of the current owner of 1435 Rosewood Avenue to remove these trees, or discussed potential compensation for their destruction.
- In addition, the new building is expected to require digging 10 to 12 feet deep in the ground<sup>10</sup>, causing significant damage to the root system of all surrounding trees (including the above-mentioned trees located on 1435 Rosewood Avenue), as well as great disruption of soil volume, effectively resulting in the death of these trees even if they were not brought down prior to the beginning of construction work (see Appendix C and Appendix D).
- The amount of green space that is going to be lost if a new building is allowed to be built is substantial, as illustrated in Appendix F & G.

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<sup>10</sup> Source: May 2005 BOZA Hearing Transcript at 43:44

#### 4 - Landscaping Plan Requirements

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As outlined in the Tree Canopy Preservation Plan Requirements section above, the 2006 LDC has separate requirements for landscaping plans. Also as established earlier, the proposed building is a new development, and LDC 2006 – 10.2.2(Applicability [for Landscaping]) states:

**NEW DEVELOPMENT** - No site development, building or structure shall hereafter be constructed nor vehicular use area (VUA) created unless landscaping is provided as required by the provisions of this part. Any building, structure or VUA that in its entirety is removed and reconstructed, or relocated to a new on-site location, shall be considered new development for purposes of this part.

Even if the new building were to somehow be considered an expansion of an existing development, it would still be subject to Landscaping requirements because of LDC 2006 – 10.2.2.A.1:

- A. Existing Development is subject to this part as defined below:
1. Any increase/expansion of an existing building/structure's square footage by 20% or more

As part of its initial Landscape / Tree Preservation application (landscaping case #18719), the applicant provided a map which with the following indications:

Existing Footprint	8,114 sqft
(garage and condo bldg)	
Proposed Footprint	1,596 sqft

These indications led the PDS staff to estimate that the percentage of building footprint increase would be 19.6%, which would make the Landscaping requirements inapplicable (only if the new building were to be considered an expansion instead of a new development).

However, LDC 2006 – 1.2.2 (Definitions) defines a building's footprint as follows :

**Building Footprint** - The outline of the total area covered by a building's perimeter at the ground level.

Based on this definition, the existing footprint is under 5,500 sf, which translates into an increase of building footprint by almost 30%.

Therefore, no matter which applicability requirement is selected, a Landscaping plan (separate and distinct from the above-mentioned Tree Canopy Requirement plan) is required in order to issue new building permits based on the plans provided by HRG.

#### 5 - Other Landscaping Issues

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In addition to the issues noted in the Landscaping Plan Requirements section above, LDC 2006 includes additional requirements that have not been addressed by the plans provided with the most recent building permits application. These additional requirements are described in the following pages.

5.1 – The proposed development is subject to the Property Perimeter Landscape Buffer Area.

As indicated in LDC 2006 – 10.2.4.A, 1505 Rosewood Ave belongs to Intensity Class 2, while the 2 adjacent properties (1435 and 1509 Rosewood Avenue) belong to Intensity Class 1.

Table 10.2.2 ‘LBA Size and Planting Requirements’ indicate that the configuration above implies meeting requirements combination B.2, with the corresponding details documented in:

- Table 10.2.3 ‘Property Perimeter Landscape Buffer Areas’, which specifies width options for the buffer area and corresponding planting density multipliers
- Table 10.2.4 ‘Planting Density and Screening’, which specifies the size and type of required trees and screen

5.2 – The A/C units on the left side of the existing building require screening

LDC 2006 – 10.2.6 (Other Uses And Structures Requiring Screening) states:

Screening shall be provided around all service structures (e.g., propane tanks, dumpsters, heating/air conditioning units, electrical transformers, telecommunications boxes) that exceed 42 inches in height and 42 inches in width or are visible from adjoining property when located on roofs.

Therefore the 6 A/C units lined up against the existing building (and which encroach the claimed Private Yard Area) must be screened since they are visible from the roof (and from several windows for that matter) of 1435 Rosewood Ave (see Appendix A and Appendix B).

In addition, if a new building were to be built, then the A/C units would also be in the direct line of sight from the roof of that new building (as well as from every single window located on the porch façade). Finally these A/C units are visible from the roof of 2 other houses located opposite 1505 on the other side of Rosewood Avenue.

Note that this requirement further negatively impacts the claimed Private Yard Area, which, as it is, is already failing to meet the requirements of the corresponding variance approved for this project.

## **6 – Orientation of Entrance of New Principal Structure**

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LDC 2006 – 5.4.1.C.1 (p. 521) states:

Orientation. The entrance of the principal structure(s) shall be oriented to the primary street.

Site plans (#C3, #C4) and drawings (#1, #2, #3, #4) provided by HRG to support their application for the 2014 permits clearly show that the porch and associated stair case that make up the entrance of the new building are oriented away from Rosewood Avenue and towards the existing original building, and therefore do not meet the code requirements.

## **7 – Front Setback of New Principal Structure in Infill Context**

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As established earlier in this document, the new building meets the criteria to be considered an infill development. As such, it must comply with LDC 2006 – 5.4.1.B.3.a (p. 521), which states:

### **3. INFILL CONTEXT**

a. Front Setbacks. New structures shall be built within the setback lines of the two nearest existing residential structures.

The new building will be placed between the existing original building at 1505 and the single-family house on 1435 Rosewood Ave.

- The survey submitted in April 2005 to PDS by HRG establishes that the front setback of the existing building is 31'8".
- Direct measurement of the front set back of the primary structure at 1435 Rosewood revealed that the front setback for this house is 31'6".

Site plans (#C3, #C4) provided by HRG to support their application for the 2014 permits indicate that the planned setback for the new building is exactly 30', which is outside of the range defined by the setback lines of the two nearest existing residential structures. Therefore the front setback of the new building does not meet the code requirements.

Note: it is interesting to note that the 2005 application package states (item B of attachment page to Waiver Application in Docket #B-74-05W):

"... The front setback will be as required (30 ft), an average of the 2 adjacent buildings."

## **8 – Height of New Principal Structure Garage Door in Relation to Street Grade**

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LDC 2006 – 5.4.1.G.3 (p.527) states:

3. <...> Garages may also be located under the multifamily structure; garage doors on the front façade are permissible if the top of the door is at or below the mean elevation of the established grade of abutting public right-of-way

Even though HRG provides little direct information about the planned height of the garage door of the new building in relation to the mean elevation of Rosewood Avenue, drawing #1 submitted as part of the application for the 2014 permits indicates that the garage door would be 18 feet wide by 8 feet high.

This drawing, along with the elevation information provided on the Grading, Drainage & EPSC Plan (#C4) clearly confirm that the top of the garage door would be well above the mean elevation of Rosewood Avenue in that area (at least 4 feet above the street mean elevation). Therefore the proposed garage door does not meet the code requirements.

## **9 – Height of Retaining Walls in front of New Principal Structure**

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LDC 2006 – 4.4.3.1.a.i (p. 382) states:

Fences and walls, up to 48 inches in height in the suburban form districts and 42 inches in the traditional form districts, may be located within required front and street side yards except as provided in Figure 4.4.1.

A note on the left side of that same page further specifies:

NOTE: Retaining walls shall be subject to the height and setback requirements of this section.

Again HRG provides little direct information about the planned height of retaining walls on both sides of the garage entry way, identified in site plan #C3 as item 12 (Construction Reference Notes section in the top left corner of that plan).

The note for item 12 references architecture drawing #1, which reveals that the retaining wall located on the right side of the garage door (when facing the new building), would be much higher than the allowed 42" (a quick estimate puts it at 60" to 72" instead).

This estimate is also confirmed by the Grading, Drainage & EPSC Plan (#C4), showing the average elevation in front of the garage door at 21 feet and the average elevation near the porch area at 26+ feet. Therefore the proposed retaining wall does not meet the code requirements.

### Part III – 2005 Variances & Waiver Application and BOZA Approval

In addition to the troubling irregularities surrounding HRG's variances and waiver application and review process previously addressed in this document (Part I – Case Background), this section discusses important aspects of the 2005 BOZA hearing itself.

Kevin Orr, who spoke on behalf of HRG as both partner and general contractor, presented an ambitious plan for owner-occupied, half million dollar luxury condos that would blend gracefully with its surroundings, provide ample parking, and enhance the neighborhood's property value.

BOZA recognized that the entire project hinged upon the approval of two crucial requests: a variance that would drastically reduce the required Private Yard Area; and a waiver that would allow for a curb cut access from Rosewood to the proposed underground garage, even though there is an existing alley designed specifically for garages and off-street parking.

While making their final decision, Board members relied upon HRG's erroneous calculations<sup>11</sup> and accepted at face value much of Mr. Orr's testimony, which included inaccurate information and misleading statements. Despite their many concerns, the Board members voted unanimously to approve these significant deviations from the established Code.

In the process of justifying the considerable flexibility shown to HRG, the Board made a number of key assumptions. **The fundamental issue is that, in addition to relying on false premises, these assumptions are entirely invalidated by the final plans for the new building submitted by HRG to obtain the building permits issued in January of 2014.**

Based on the considerable evidence provided so far, HRG has clearly encountered great difficulties in its attempt to fit too large of a building within too small of a space. This has resulted in such significant plan modifications that the proposed building of 2014 is an altogether different building than what was presented to BOZA nearly nine years ago.

One basic problem with issuing the building permit nine years later is a corresponding disconnect from the special circumstances upon which the variance and waiver were granted. It is therefore reasonable and appropriate to review the current plan within the very relevant context of the 2005 BOZA hearing.

Variances and waivers carry an inherent risk of setting undesirable precedents in which the exception becomes the rule. To avoid this slippery slope, projects with approved variances and waivers, particularly those that deviate so significantly from Code, should be subjected to an even greater scrutiny for Code compliance. HRG has already benefited greatly from BOZA's lenient interpretation of Code and should now be held to the strictest of standards.

In the following pages we dismantle the claims made by Kevin Orr for HRG throughout the 2005 BOZA hearing, claims upon which the Board relied to build the key assumptions justifying their final approval.

We also highlight elements that should have warranted further discussion during the hearing itself.

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<sup>11</sup> including the Private Yard Area surface, the building's footprint, impervious area surface, distance between buildings, front setbacks, etc.



## 1 – Misleading application for a reduction of a "small percentage of the open space"

HRG had initially applied for a variance of only 650 square feet, as they clearly did not understand what surfaces could be claimed as PYA. PDS realized that in fact, a variance of 2,835 square feet was needed. It must be emphasized that even with BOZA's permitted reduction of the Private Yard Area by this staggering number, the latest plans submitted by HRG still falls short of the minimum requirement by over 200 square feet. Also note that such a reduction was of great concern to Board members, best expressed by Ms. Stewart, who observed:

"The first variance calls for a **humongous** reduction of green space. Just percentage wise, we're talking about lots of lost green space. I'm stating the obvious, right?"<sup>12</sup>

Moreover, it is unclear if the Board realized that in addition to the massive loss of green space, the construction plan necessitates a substantial reduction of the tree canopy running along the property line of the adjacent lot (See Appendix C, D, F and G). Within this tree canopy on Jeff DeReamer's property at 1435 Rosewood Avenue, are five healthy, mature Magnolias over 40 feet tall. One Magnolia is a mere 32 inches away from the property line. As David Thomas (first tier property owner at the time) pointed out in his opposition testimony, these are "just gorgeous trees. If you approve a building so close to them, they just can't withstand it. Because if you're talking underground, you're digging down."<sup>13</sup>

In short, it seems that BOZA did not fully take into account the substantial tree loss in light of this "humongous" reduction of green space. Note also that BOZA did not question Mr. Orr on the topic of the Property Perimeter Landscape Buffer Area requirements, which do apply to this development project and actually calls for increasing, not reducing, the green space area between 1435 and 1505 Rosewood Ave.

## 2 – Misconception that project would include "aesthetically nice" landscaping

A Landscaping Plan was most definitely required<sup>14</sup> but was apparently missing from the 2005 development plans. At the start of the BOZA Business Session, Mr. Anderson commented that "even though it is a big reduction, if it's properly landscaped and paved and made to be a real nice sort of -" who was then interrupted by Chairwoman Francis:

"You know what? At a half million dollars, it better. I would imagine - I mean, I'm just assuming that at a half million dollars, I'm assuming that we're going to have landscaping that is not only Code but aesthetically nice."<sup>15</sup>

We now know that the target selling price has dropped substantially from \$500,000 to \$275,000, as confirmed by Gene Crawford in a 2013 email to the President of the Rosewood Condo Association (see Appendix I). This price reduction has resulted in an overall diminished quality in terms of materials and design.

<sup>12</sup> see BOZA hearing video at 45:23

<sup>13</sup> see BOZA hearing video at 28:50

<sup>14</sup> Note that such a plan was initially submitted and then withdrawn in January of 2013 when applying for the new building permits.

<sup>15</sup> see BOZA hearing video at 46:56

For example, HRG initially planned to offset the massive loss of green space by providing a landscaped terrace area between the Rosewood and the proposed new building.<sup>16</sup> As explained by HRG's architect, this terrace would be a "brick paving, patio type area for the residents' use. It won't be parking or asphalt paving."<sup>17</sup> However, the landscaped brickyard has disappeared from HRG's 2013 plan, replaced with a concrete sidewalk that runs the entire length of lot.<sup>18</sup>

### 3 - Claiming underground parking planned "specifically for aesthetics"

The justification for allowing a curb cut to provide access to an underground parking garage despite the existing alley was debated throughout the hearing. Joe Leist (first tier property owner at the time) pointed out that an underground garage is completely out of character with the other 41 homes on Rosewood Ave. and he strongly urged for a redesign that would make appropriate use of the existing alley. Mr. Thomas put it more bluntly: "It appears to me that that's kind of subterfuge. You don't need underground parking if you're not going to be in violation of the existing space requirements of the lot."<sup>19</sup>

Mr. Orr initially asserted in his rebuttal testimony that "we are putting underground parking in specifically for aesthetics, specifically for it being upscale property. And in order to provide that parking off-street, we have to go underground."<sup>20</sup>

However, when Mr. Anderson later pointedly asked him if HRG ever explored the possibility of a curb cut from the alley rather than from Rosewood, Mr. Orr replied:

"No, it's not possible at all. In order to do that, we'd have - we would not be able to put garages in the building. We would not be able to meet - we would not be able to put garages to meet the requirements of the large building. And would significantly reduce the viability of selling that building and those units. It would cut into the number of garages we could offer for sale."<sup>21</sup>

In other words, an alternative plan would cut into HRG's profit. In actuality, HRG could build its 3-plex without an underground garage; the project would simply make less money.

### 4 - Claiming that proposed garage would "significantly reduce the parking on Rosewood"

Mr. Orr also claimed that the underground garage would provide a total of 6 parking spaces, which would "reduce significantly the parking on Rosewood."<sup>22</sup> This number was later corrected when Mr. Anderson pointed out that the plan actually provided 5 spaces in order to make room for an elevator, which incidentally has been eliminated from the latest building design.

<sup>16</sup> see HRG plans included in 2005 application for PYA Variance

<sup>17</sup> see BOZA hearing video at 11:18

<sup>18</sup> see HRG Site Plan included in 2013 application

<sup>19</sup> see BOZA hearing video at 25:32

<sup>20</sup> see BOZA hearing video at 33:30

<sup>21</sup> see BOZA hearing video at 38:37

<sup>22</sup> see BOZA hearing video at 13:11 and also 39:37

The Board approved the waiver based on the assumption that a total of 5 parking spaces would be provided in the underground garage, which would address the neighborhood's concern over adequate street parking. However, since HRG still failed to meet the revised minimum Private Yard requirements, it was necessary in the 2013 plans to shorten the proposed building by another 19 feet, which in turn, forced the reduction of the number of parking spaces in the underground garage down to only 3 spaces.

So in effect, the parking situation in 2014 would look like this:

- each two-bedroom unit will add 2 cars for a total of 6 additional cars
- the new building offers only 3 parking spots in the underground garage
- the curb cut itself eliminates at least 2 existing parking spots on Rosewood Ave.

The end result is that the area within the vicinity of 1505 Rosewood (where parking is already a concern) must somehow absorb the added parking pressure created by the equivalent of 5 additional cars, squarely contradicting the claims made in 2005.

#### **5 - Claiming that other Rosewood curb cuts are "about the same"**

Despite Mr. Orr's assurance that the six other curb cuts leading to garages on Rosewood are "probably about the same" as the proposed garage, they are, in fact, quite different for several reasons.<sup>23</sup> First, they are set back farther from the street and are therefore far less visually prominent. Second, as both Mr. Leist and Mr. Anderson pointed out, they do not lead to subterranean garages of questionable safety.<sup>24</sup> Third, the garages are tastefully designed with attractive features such as glass panel inserts and ivy covered trellises, so that they actually contribute to rather than detract from the overall aesthetics of the street.

The computer rendering submitted by HRG to BOZA depicts a very different garage than today's current plan, which offers no such niceties (compare Appendix J and Appendix K). The garage door is now 18 feet long and physically dominates the street level view of the building's facade. Strangely missing from this rendering is the now prominent emergency exit door.

#### **6 - Assuring the Board the new building will "provide a transition" between the adjacent properties**

Perhaps the most dismaying of HRG's many revisions since the BOZA hearing is the building's height, which has dramatically increased by an additional 10 feet -- almost the equivalent of an additional story. HRG's architect emphasized to Board members that the new building's height would be 35 feet in order to "provide a transition from the large structure built in the 1860s [at 42 ft.] to the new buildings that are next to it [at 26 feet]."<sup>25</sup>

However, according to the revised 2014 plans, the new building now stands at 45 feet. Gene Crawford also verbally confirmed to the Rosewood Condo Association that the new building will be as tall as the physically imposing Rosewood I.

<sup>23</sup> see BOZA hearing video at 38:20

<sup>24</sup> see BOZA hearing video at 40:20

<sup>25</sup> see BOZA hearing video at 8:15

The increased building height touches upon a fundamental pitfall of deviating from Code devised specifically to "avoid undue concentration of population by regulating and limiting the height and bulk of buildings."<sup>26</sup> In HRG's attempt to meet the minimum space requirements and also address the Board's concerns over public safety related to the driveway's steep slope and lack of visual clearance, the building's revised dimensions have resulted in a consequential redesign of the underground garage. The end product is a significantly taller building than what was presented to BOZA in 2005.

#### **7 - Misrepresenting the "approximate location" of adjacent house at 1435 Rosewood Ave.**

HRG's Proposed Elevation Drawing A102 shown to BOZA depicts an inaccurate distance of approximately 20 feet between the property line and adjacent building. Mr. Anderson questioned Mr. Orr about this discrepancy, noting that the correct distance of 5-6 feet is actually "significantly less than what's shown on [HRG's] plan."<sup>27</sup> After an evasive back and forth exchange, Mr. Orr finally conceded that the adjacent property is "probably closer to that property line than it appears there."<sup>28</sup> We highlight this particular discrepancy because it is indicative of HRG's pattern of attempting to minimize the building's true footprint in terms of density, size and proportion.

#### **8 - Claiming "almost unanimous support" for the proposed building**

Mr. Orr's assertion to the Board that HRG had "almost unanimous support" for the proposed building is highly questionable.<sup>29</sup> He deliberately conflated support for the historic Rosewood's renovation with support for the proposed building, stating that he spoke to first tier neighbors who were "all in favor of what we're doing, understand what we're trying to get to - from turning transient rental property into owner-occupied property. And what we got from them was, you know, you do it."<sup>30</sup>

In fact, neighborhood support for the proposed building was essentially nonexistent. Due to crucial errors in the PDS notification process, most of the neighborhood was completely unaware of HRG's intention to build an additional 3-plex. The PDS notice incorrectly stated "we have received an application for a waiver of dimensions of the private yard area."<sup>31</sup> It made absolutely no reference to the additional curb cut request and most certainly failed to convey the enormity of the requested green space reduction. No reasonable person could possibly deduce from this cryptic and wholly inadequate notice that HRG also planned to build a subterranean garage, let alone a four story condominium building.

Moreover, the first tier neighbors who did attend the hearing, Joe Leist and David Thomas, were adamantly opposed to the proposed 3-plex and strongly contested Mr. Orr's claim to such widespread neighborhood support.

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<sup>26</sup> see 2006 LDC 1.1.5

<sup>27</sup> see BOZA hearing video at 34:38

<sup>28</sup> see BOZA hearing video at 36:29

<sup>29</sup> see BOZA hearing video at 5:06

<sup>30</sup> see BOZA hearing video at 32:18

<sup>31</sup> see PDS 2005 Notice

Mr. Leist learned to his great surprise at this very BOZA hearing that the neighborhood had absolutely no say-so over whether the condos could even be built.<sup>32</sup> He also described the neighborhood's general confusion and lack of knowledge about the true scope of the project:

"I'm not certain that most of the neighborhood...really knows of the details of the variances and the waiver. The mailing was just sent out to a few surrounding. My neighbors didn't know about it and they live one house over."<sup>33</sup>

Mr. Thomas explained that his neighbors wrongly believed that the BOZA hearing was simply about parking, asserting that "the whole purpose of requesting this is not for parking. It's for making a real small piece of property very dense... And the reason why the existing law says you have to have this much green space is so that people don't do what they're asking to do."<sup>34</sup>

It appears that the Board failed to grasp how inadequately the notification process had been handled, and therefore did not specifically address or analyze its impact on the neighborhood, which could neither support nor oppose a project of which they knew virtually nothing about.

#### **9 - Claiming that the proposed building will "add to the neighborhood property value"**

Mr. Orr's contention to BOZA that the new building will "add to the neighborhood property value" is completely unsubstantiated<sup>35</sup> and in all likelihood will reduce the property value, most especially for the adjacent property owners.

The proposed building will inarguably entail the loss of green space, the loss of trees, the loss of natural light, the loss of a buffer between the adjacent properties and the corresponding loss of privacy, the loss of adequate parking, as well as an overall decrease in the safety of drivers and pedestrians, and most of all the diminished beauty and continuity of Rosewood Avenue. In truth, only HRG and its partners would potentially stand to gain from this venture. The neighborhood itself will be forced to absorb financial losses in order to increase HRG's bottom line.

One of the expressed intents and purposes of the Code is "to conserve the taxable value of land and buildings."<sup>36</sup> It therefore makes little sense to protect the financial interests of developers at the expense of the very tangible and established value of the existing properties in a highly desirable neighborhood.

#### **10 - Assuring the Board that new units will be "owner-occupied"**

The assumption made by BOZA that perhaps carried the greatest weight was that the three new units of the proposed building would indeed be owner-occupied. This theme was repeated throughout the hearing, stressed by Mr. Orr, and ultimately one of the fundamental justifications for

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<sup>32</sup> see BOZA hearing video at 18:38

<sup>33</sup> see BOZA hearing video at 24:20

<sup>34</sup> see BOZA hearing video at 27:05 and also 29:28

<sup>35</sup> see BOZA hearing video at 4:54

<sup>36</sup> see 2006 LDC 1.1.5

granting the variance and waiver. As Mr. Rhodes reasoned: "The improvement they're making to the neighborhood with owner-occupied residents versus rental I think will offset my concerns."<sup>37</sup>

However, it is imperative to understand that in spite of HRG's well-received project of "turning a rundown, transient rental property into owner-occupied condominiums," developer Gene Crawford has since made abundantly clear his desire to obtain the right to rent all units in the proposed new building.

In June of 2009, when Mr. Crawford was still a member of the Rosewood Condominiums Association, he was the only owner to vote against the No Rental Clause to the Master Deed (see Appendix H). Note that that in July of 2012, the Council did amend the Master Deed to allow renting only to direct family for a minimum duration of 24 months.

Then again in October of 2013, Mr. Crawford strongly urged the current members to reconsider their position on the No Rental Clause and to allow renting to any tenant instead of family members only.

The above evidence suggests that Gene Crawford had, in fact, every intention to turn these condominiums into rental properties.

#### **Concluding Remarks**

**In light of the information reviewed in these pages, it is difficult to avoid concluding that the proposed new building for which new permits were issued on 01/10/14, not only fails to comply with applicable Codes, Regulations and Variances, but is also a project that was approved under considerable misconception by all actors involved in the review and approval processes that came into play, both in 2005 and in 2013.**

**These misconceptions are driven mostly by the continuous, and unfortunately successful, attempts made by the Highland Restoration Group LLC, via some of its members, representatives and contractors to distort and hide or obfuscate vital pieces of information that form the basis of the decisions made by the Planning Design Services and Code & Regulations departments of the city of Louisville.**

**The lack of precision, lack of understanding of code and regulations, and lack of information provided also indicates that HRG is a very inexperienced development company. This is also illustrated by the financial difficulties that HRG encountered during the renovation of the historical building at 1505 Rosewood Avenue.**

**These financial difficulties led HRG to cut many corners, an approach that later caused many financial headaches for the first individuals who bought units in the renovated building. A telling example is the fact that the purportedly brand new roof, turned out to be leaking so much that it required, shortly after new owners moved in, the installation of a \$30,000 water proof roof cover. Interestingly enough, HRG refused to foot the bill for this emergency repair.**

<sup>37</sup> see BOZA hearing video at 46:18

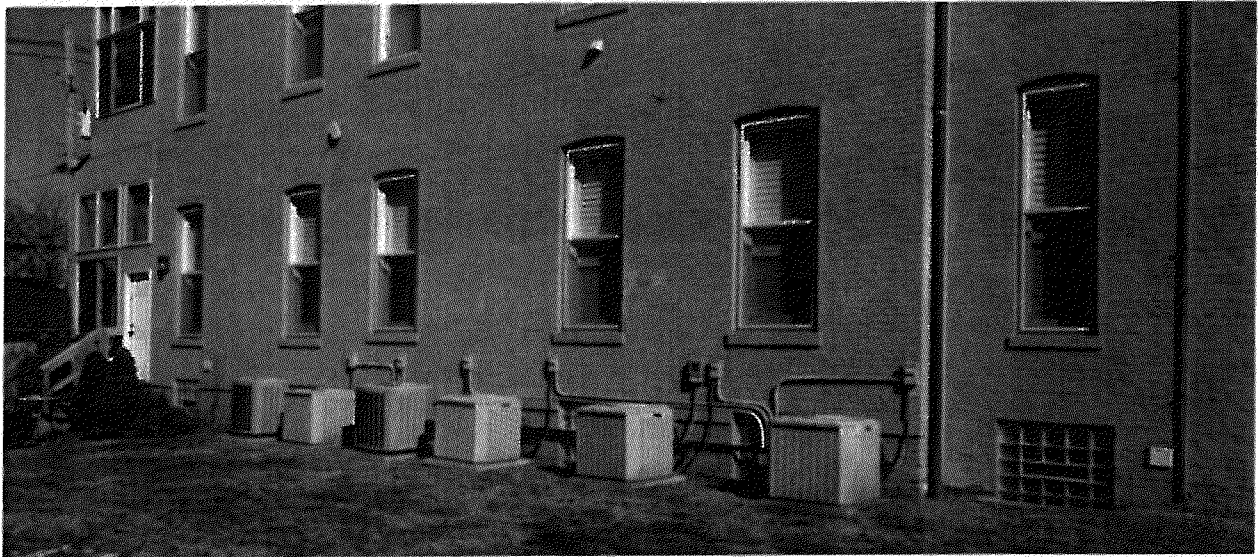
Because HRG has a documented history of consistently underestimating the complexities and costs associated with their projects, there is a very real risk that, should the new building construction start, HRG will again face costs overruns and issues and will abandon a half-completed structure. This would be the worst possible outcome for the current owners of 1505 and the entire neighborhood of Rosewood Avenue.

For these reasons we make a passionate and highly concerned plea to the officials of Louisville Metro Code & Regulations Department and Planning & Design Services Department to carefully consider the contents of this entire document, re-evaluate most of the decisions that have been made so far, and take swift appropriate corrective actions.

**Part IV – Appendixes**

**Appendix A – 6 HVAC units inside the proposed Private Yard Area**

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**Appendix B – Direct line of sight between roof and windows of 1435 Rosewood and HVAC units**

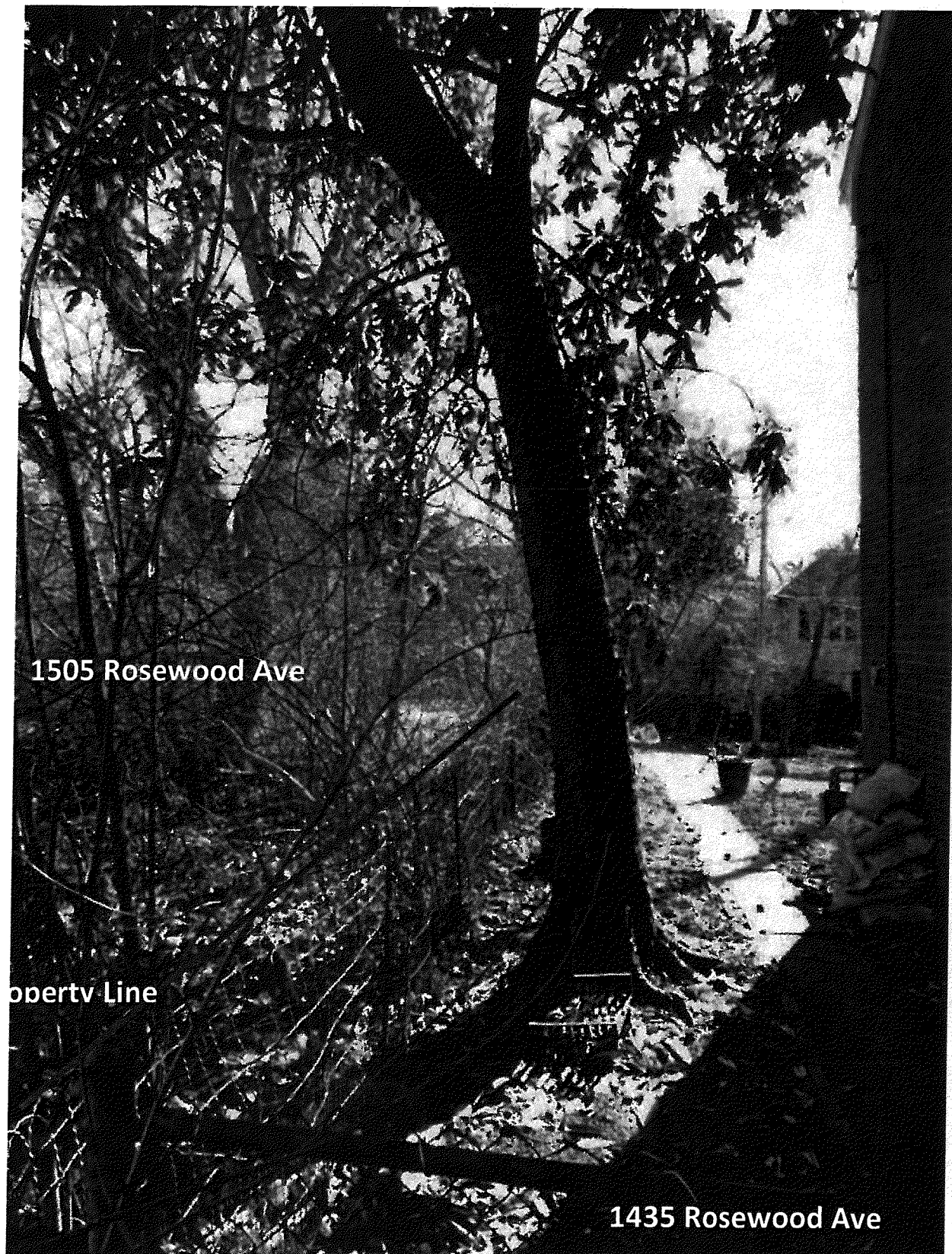
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**Appendix C – Mature Tree on 1435 Rosewood Likely to be Killed by 12 ft of Digging**

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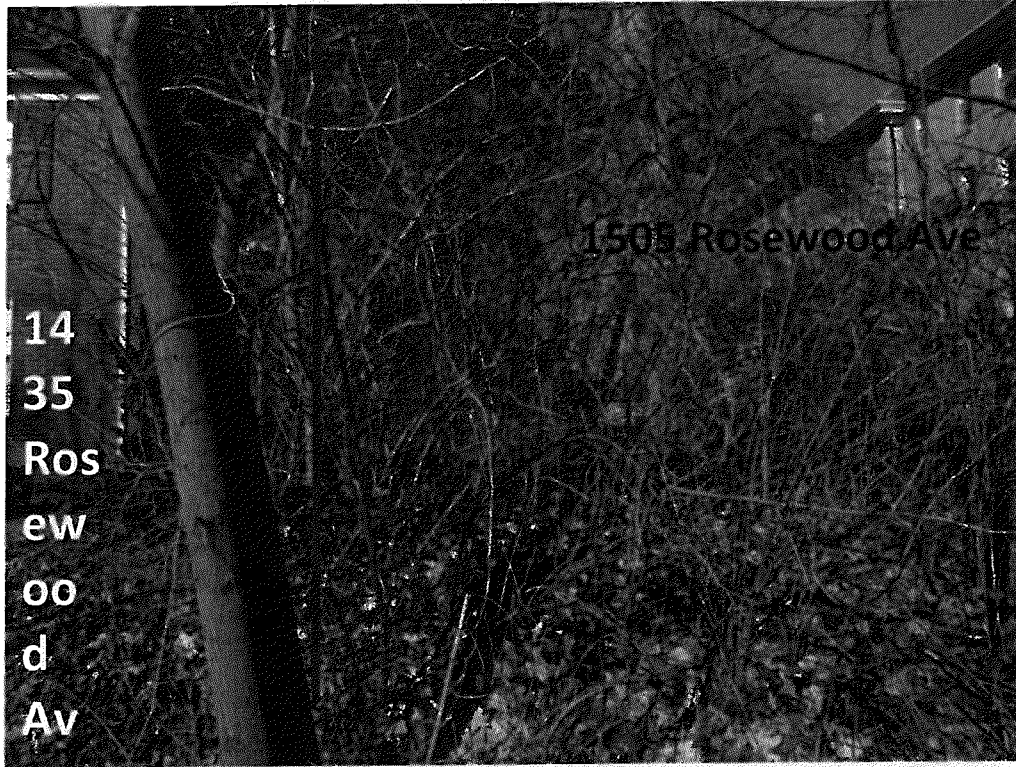
1505 Rosewood Ave

Property Line

1435 Rosewood Ave

**Appendix D – Rosewood Avenue View of Property Line**

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**Appendix E – 1505 Roof Deck**

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**Appendix F – Existing Green Space Bound to Disappear – View #1**

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**Appendix G – Existing Green Space Bound to Disappear – View #2**

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Appendix H – Excerpt of 2009 Rosewood Condos Association Voting Record on NO RENTAL Clause

DB 09630PG0337

**Voting Record for No Rental Clause to Master Deed.**

**June 1, 2009**

**The Rosewood Condominiums Council of Co-Owners, Inc.**

**Majority Vote "Yes"**

**Gordon Carter  
Margaret Lawson  
Michael Driscoll  
Scott Gagel  
Robby Cannon  
Carol LaFever  
Anne Gordon**

**One "No"  
Gene Crawford**


**One "Neutral"  
Michael Kuharich**

**STATE OF KENTUCKY**

**COUNTY OF JEFFERSON**

**SUBSCRIBED AND SWORN to before me this first day of June, 2009 by Gordon Carter and Scott Gagel as Co-Presidents of The Rosewood Condominiums Council of Co-Owners, Inc.**

**My Commission expires: April 15, 2013.**

  
**Notary Public**

## Appendix I – 2013 Email from Gene Crawford with \$300,000 Buy-out Offer

From: GENE CRAWFORD <gcrawfordjr@yahoo.com> Sent: Tue 9/17/2013 11:34 AM  
To: Michael P. Kuharich  
Cc:  
Subject: Rosewood II

Michael,

Highlands Restoration Group, LLC., has received all the necessary approvals for Rosewood II to be built on the vacant lot next to The Rosewood. As you know, the Master Deed addresses this in Section T "Expandable Regime".

We will want to meet to fully inform all current owners of what will transpire next door.

We are willing to discuss alternatives to going forward with the new building as we have previously stated such as selling the right to Expand Regime, all approvals, new construction plans and fees paid to date.

Our plan is for a 3 story, 3 unit (2 bedroom, 2 bath) building with parking underneath. Current market asking price of \$275,00 per unit.

Our buyout price is \$300,000. This is based on the taxable assessment the county has established of (\$150,000) for the vacant lot plus \$150,000 which is a significantly reduced profit potential of new condo sales.

Please speak with the Condo Association and let me know how they want to proceed.

We will be available to meet anytime after September 25, 2013.

Regards,

Gene Crawford  
Highlands Restoration Group, LLC.  
Managing Member

Appendix J – 2005 Rendering of New building



Appendix K – 2013 Rendering of New building

