

Board of Zoning Adjustment Staff Report Addendum

July 6, 2015



Case No:	15APPEAL1005
Project Name:	Rosewood Condominium
Location:	1505 Rosewood Ave.
Owner:	Rosewood Condominium Council, Inc.
Appellant:	Elizabeth Fauxpoint
Jurisdiction:	Louisville Metro
Council District:	8 – Tom Owen
Case Manager:	Joe Reverman, AICP

REQUEST

- Appeal of an administrative official action that issued a permit for construction of a 3-unit residential building on property known as 1505 Rosewood Ave.

SUMMARY

This case was continued from the June 1, 2015 BOZA hearing. The Board requested additional information.

- 1. A survey of the existing buildings by a licensed surveyor using outside of exterior walls.**
 - a. The Master Deed shows the 8 units in the existing main structure as having 14,947 sf of floor area. This floor area appears to be measured from interior walls. This Master Deed was recorded on July 21, 2006.
 - b. Milestone Design Group (Milestone) used these surveys to verify the floor area ratio for the June 1, 2015 BOZA hearing on behalf of the developer, Gene Crawford. Milestone calculated the floor area ratio in two methods, from interior of exterior walls, and from exterior of exterior walls, at the request of staff of Planning & Design Services.
 - i. Existing floor area using exterior of exterior walls was found to be 18,649.88 sf.
 - ii. Existing floor area using interior of exterior walls was found to be 17,858.53 sf.
 - c. The site plan submitted by the Rosewood Condominium Council, Inc. and prepared by Jason Graves Land Surveying on August 15, 2014 shows 17,829 sf of floor area in the main structure and 755 sf in the carriage house. A total of 18,584 sf of existing floor area. These measurements were made from the exterior of exterior walls.
- 2. Permits for the proposed building should be placed on hold pending the outcome of this case.**
 - a. The permits have been placed on hold pending resolution of this case.
- 3. A revised staff report for technical review items 2.d, 5 and 6.**
 - a. Item 2.d of the technical review referred to item 2.d of the appellants supporting document, which stated that landscaping and tree requirements were not being met. The landscape and tree preservation plan was approved by Planning & Design staff on March 9, 2015. The original 2005 proposal for the 3-unit multi-family residential structure and 3 accessory structures constituted an increase in square footage of between 20-50% and required the following:
 - i. A 10 ft Landscape Buffer Area (LBA) along the west property line with a 1.5 planting density multiplier, equal to 5 large or medium trees, and a 6 ft screen. Screening can consist of shrubs, fences, berms or walls, individually or in combination.

- ii. 15% tree canopy was be preserved on the site using 3 trees, which required 0% additional tree canopy to be provided. 1 additional tree was provided. 1 existing tree on site counted as multiple existing trees being preserved based on table 10.4.1 of the LDC.
- b. Item 5 of the technical review referred to item 5 of the appellants supporting document, which stated that building permits for this project were issued off of invalid applications from 2013; due to HRG not being the owner of the property, and due to applications being used from 2013, which subsequently had revised information submitted in 2015. It appears that the permitting office made a discretionary decision to use an application that was pending while waiting on Planning & Design Services to review for Land Development Code compliance. Once that review was complete, the permitting office asked the applicant to submit revised and updated materials instead of asking for the applications to be resubmitted.
- c. Item 6 of the technical review referred to item 6 of the appellants supporting document, which stated that building permits were issued to a developer known to have outstanding code violations. The permitting office was made aware of alleged violations. These allegations were investigated to the best of their ability. There were no apparent violations found that would warrant a hold on the building permit.

4. Staff should re-evaluate the Category 3 procedures.

- a. Development proposals that do not require a Conditional Use Permit (CUP), a zoning map amendment, or a plan certain approval are divided into three categories based upon the size thresholds established in the Form District regulations. Those categories are Category 1, Category 2 and Category 3. Initial or revised submissions follow the procedure determined by the size of the new or additional development proposed unless a higher level of review is required by another section of this code (i.e. zoning map amendment or CUP). This process was established with the adoption of the Land Development Code effective on March 1, 2003, which is the first Development Code in Louisville/Jefferson County that used the two-tier approach to zoning with zoning and form districts. Prior this LDC, proposals that complied with the Development Code went straight to the permitting office, regardless of size. Developments that meet the Category 3 threshold are required to go through the Community Design Review Process, which requires notice to adjoining property owners and a meeting in front of the Planning Commission or the Board of Zoning Adjustment.
- b. The Land Development Code states, "*Initial or revised submissions shall follow the procedure determined by the size of the new or additional development proposed...*" Since March 1, 2003, the Category 3 threshold has been applied to each development plan, based on what is being proposed, and not counting existing development on site. Once that approved development has been built, subsequent development plans are reviewed based on the new or additional development proposed at that time.
- c. The argument in this case is that the redevelopment of the 6 units in the main structure into 8 units should count as 8 new units. Adding the 1 unit in the accessory structure and 3 units in the proposed structure would meet the threshold of "*Construction of 10 or more multi-family residential dwelling units*" in the Traditional Neighborhood Form District, which would require a Category 3 process. The Form District regulations apply "*only to new construction and development, including expansions.*" The Form District regulations also state that "*No building shall be erected, converted, enlarged, reconstructed, or structurally altered except in conformity with the area requirements of the district in which the building is located.*" For proposals such as this, changing a 6 unit building to an 8 unit building has been considered "converting" or "altering," and only the additional units have been counted toward the Form District thresholds. In this case, only 2 units. Adding the 1 unit in the accessory structure and the proposed 3 unit building makes 6 new units proposed.

5. Additional information for the existing carriage house, including research of permits.

- a. No information was found by the permitting office related to the dwelling unit located in the accessory structure.

6. Review the portion of the Master Deed concerning development rights.

- a. The Master Deed referenced in this case refers to Deed Book page 08871, Pages 0375 – 0394.
- b. This was the “Declaration and Master Deed Establishing Rosewood Condominiums.” It was prepared at the direction and caused to be recorded by Highlands Restoration Group, LLC (HRG).
- c. The appellant asserts that HRG has relinquished all control of the condominium project to the association.
- d. Following are excerpts from the Master Deed that appear to discuss development rights.

DECLARATION AND MASTER DEED 00 08871 PG 0375
Establishing

ROSEWOOD CONDOMINIUMS

THIS DECLARATION AND MASTER DEED (the “Master Deed”) has been prepared at the direction and caused to be recorded by **HIGHLANDS RESTORATION GROUP, LLC**, (hereinafter referred to as "Declarant") a Kentucky limited liability company having an office at 1505 Rosewood Ave., Louisville, KY 40207; to wit:

ARTICLE II

(A) Description of Buildings; Units and Commons Area; Amendments to Declaration and Master Deed to Comply with Law.
The Master Deed and Declaration initially establishes eight (8) units in one (1) three-story existing apartment building with right to construct and establish as part of the condominium regime an additional building with up to 3 units and to create a unit in the garage building, as contemplated by section T of this Master Deed. The location of the buildings on the Land, the number by which each Unit in the building shall be designated, and the area of each of the Units are as set forth on the plans.

(T) Expandable Regime. This is an expandable condominium regime. In other words, additional buildings may become a part of this Regime at the option of Declarant, its successors and assigns, as follows. Declarant currently contemplates that this condominium regime will consist of up to 12 units in 3 Buildings, as follows: 8 units in the existing Building as such units are established by this Master Deed and the plans recorded with this Master Deed; 1 unit in the area above the garage Limited Common Elements in the existing garage Building (which Declarant may or may not convert into a Unit; and one new Building with up to 3 units in it), but this expression of intent does not obligate Declarant, its successors or assigns, to construct all such units nor does this expression of intent prohibit Declarant from constructing more units, and Declarant expressly reserves the right to construct the one additional Building referenced in this Master Deed. If expanded, the percentage of common interest appurtenant to each unit in this condominium regime shall be redistributed on an as-built basis upon completion of additional units. The redistribution shall be done by an amendment or amendments to this Master Deed. Declarant hereby reserves for itself, its successors and assigns, for a period of ten (10) years from the date of this Master Deed, the right to execute on behalf of all contract purchasers, unit Owners, mortgagees or other lien holders, or other parties claiming a legal or equitable interest in this condominium regime, any amendment, agreement or supplement that may be required to expand this condominium regime, and by taking any interest in this condominium regime or by taking any interest in a unit, each such person or entity shall be deemed to have granted to Declarant a power of attorney for such purposes, coupled with an interest, running with this condominium regime or unit, as applicable, and binding upon the successors or assigns of any of the foregoing parties, with that power of attorney not being affected by the death or disability of any principal. Declarant, for itself, and for its successors and assigns, reserves an interest in any real estate, including this condominium regime and each unit, for these purposes. This interest reserved by Declarant and the power of attorney hereby granted by each interest holder includes the right to amend the percentage of common interest appurtenant to each unit and otherwise to amend this Master Deed to supplement the floor plans to accomplish the expansion of this condominium regime, as contemplated by this section.