

Board of Zoning Adjustment Staff Report

June 1, 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, Planning Supervisor

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.

CASE SUMMARY/BACKGROUND/SITE CONTEXT

Pursuant to KRS 100.257 and 100.261 the Board of Zoning Adjustment shall hear appeals of an official action, order, requirement, interpretation, grant, refusal or decision of an administrative official, zoning enforcement officer or code enforcement officer. Appeals must be taken within 30 days of the official action. Action in this case was determined to be from the time when permits were let on May 4, 2015. The appeal was filed on May 11, 2015.

The appeal asserts that the proposed development does not comply with the Land Development Code.

The site is located on the north side of Rosewood Ave between Baxter Ave and Castlewood Ave. The developer proposes to construct a 3 dwelling unit structure on the front of the site.

Zoning District: R-7, Multi-Family Residential
Form District: TN, Traditional Neighborhood
Existing Dwelling Units: 9 Condominiums

This 3 dwelling unit structure was originally proposed in 2005 and was subject of a Board of Zoning Adjustment (BOZA) case for review of a variance and waivers. The structure was not constructed at that time and that area of the lot is still vacant.

In 2014, Highlands Restoration Group, LLC proposed to construct this 3 dwelling unit structure. At that time, it was discovered that there were inconsistencies and errors between the BOZA approvals in 2005 and the current proposed structure. In order to remedy the inconsistencies and errors from the 2005 plan, PDS staff advised the developer to either eliminate any noncompliance of the current plan that did not comply with the Land Development Code and did not receive a waiver or variance in 2005, or to request a new waiver or variance. Subsequently, the applicant revised the proposal to eliminate noncompliant site design issues. However, it resulted with a parking deficiency of 2 spaces. The 2005 proposal included 4 parking spaces in a basement level with vehicular access from Rosewood Ave. The current proposal does not include the

basement level parking. A parking waiver to waive 2 parking spaces was approved by the Planning Commission in 2014 under case number 14PARK1002.

Permits for construction of this 3-unit structure were let by Develop Louisville on May 4, 2015.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<i>Subject Property</i>			
Existing	Multi-Family Residential	R-7	TN
Proposed	Multi-Family Residential	R-7	TN
<i>Surrounding Properties</i>			
North	Single Family Residential	R-5	TN
South	Single Family Residential	R-4	TN
East	Single Family Residential	R-5	TN
West	Single Family Residential	R-5	TN

PREVIOUS CASES ON SITE

14PARK1002

Parking Waiver to reduce the minimum number of required spaces from 18 to 16 was approved by the Planning Commission on August 21, 2014.

B-74-05

Board of Zoning Adjustment case heard on May 15, 2005

- Variance to allow the private yard area between the proposed multi-unit residence and existing/proposed garages to be 3,592 square feet.
- Variance to allow the proposed garages to be located 0 feet from the west side property line.
- Land Development Code Waiver to allow the new structure/garage to have access from Rosewood Avenue.

9-94-69

- Change in Zoning from R-5 to R-7. Public hearing on May 1, 1969 and June 16, 1971.

9-62-67

- Change in Zoning from R-5 to R-7. Denied

TECHNICAL REVIEW

The appellant submitted a supporting statement detailing the grounds for the appeal. The following are responses to specific items referenced in this document.

1. The appellant asserts that the proposed 3-unit building should have triggered a Category 3 level of review for “Construction of 10 or more multi-family residential dwelling units.” Staff’s long-standing interpretation of this threshold is to not count existing dwelling units toward meeting this threshold. There are 3 dwelling units being constructed with this proposal.
2. The appellant asserts there are several Land Development Code (LDC) compliance issues.
 - a. The appellant asserts the proposed building would cause the Floor Area Ratio (FAR) to exceed the limits allowed in the R-7 zoning district, which is 1.0. The numbers submitted by HRG differ

from those submitted by Elizabeth Fauxpoint. I have asked HRG to verify the accuracy of the FAR calculation.

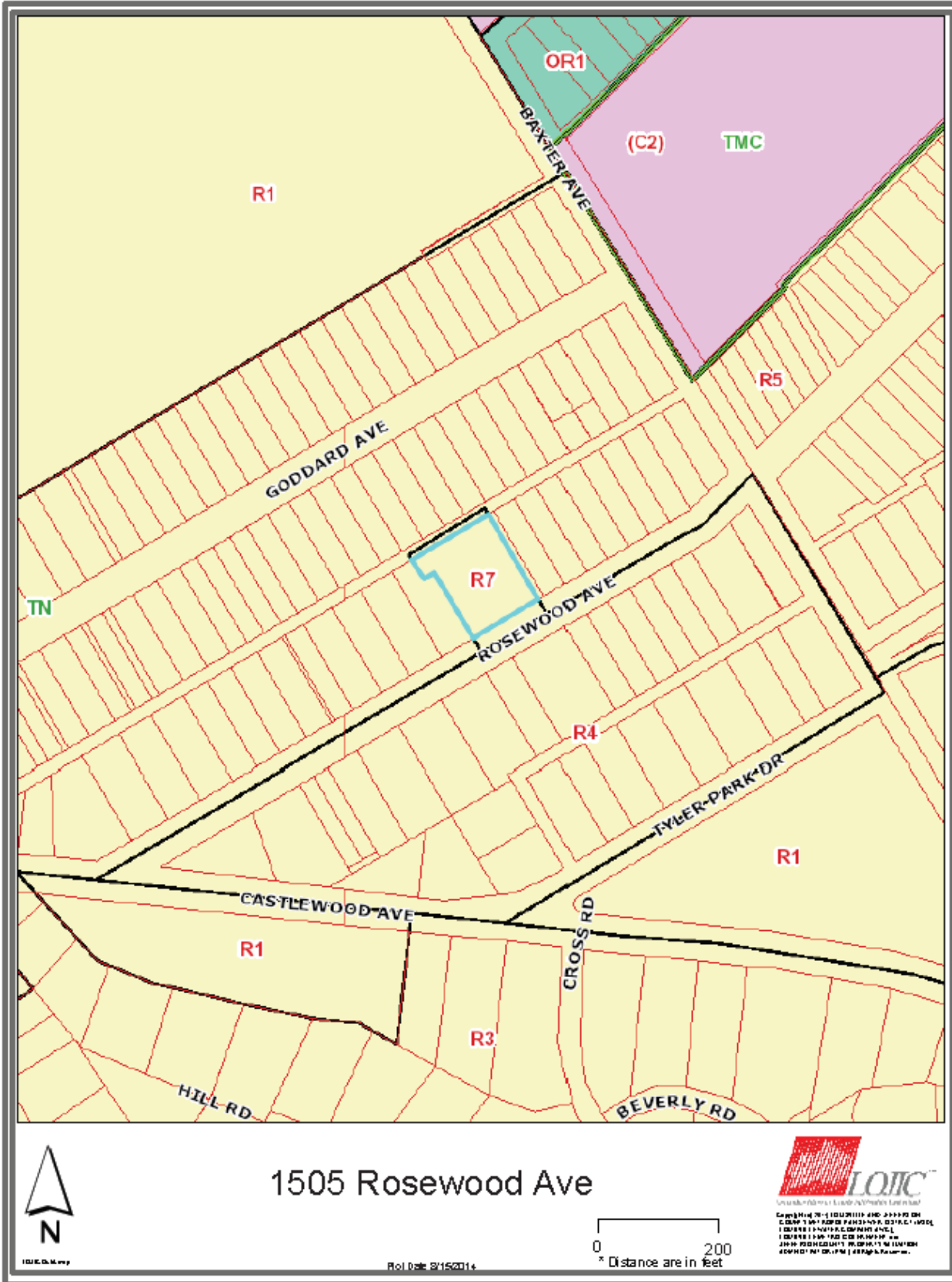
- b. The appellant asserts that the proposed private yard area does not comply with the variance granted by the Board of Zoning Adjustment (BOZA) in 2005. Staff of Planning & Design has instructed HRG on the portions of the site to count toward the private yard area, and asked HRG to confirm its calculations. The proposed private yard area appears to meet the requirement of the variance granted by BOZA in 2005.
 - c. The appellant asserts there was a condition attached to the variance to allow a maximum of 11 dwelling units on the property. The applicant stated in its justification for the variances that there would be 11 units, but in the context of being “well below the maximum permitted,” which was stated as being 17. There does not appear to be any legally binding condition limiting the number of dwelling units on the lot as it relates to the granting of the variances in 2005.
 - d. The appellant asserts that the approved Landscape Plan is non-compliant with Chapter 10 of the Land Development Code pertaining to tree canopy and landscape requirements. The appellant will need to provide more detail as to how the approved Landscape Plan does not comply with Chapter 10 of the LDC.
 - e. The appellant asserts that the proposed building exceeds the height of the principal structure, which is not allowed per the infill standards. Infill development on this lot must comply with one of the following standards; 1) Building height shall be within 10% of the average height along the block face; or 2) building height shall fall within the range of the two nearest existing structures within the same block face; or 3) building height may be as permitted in Table 5.2.2, which is 45 ft or 3 stories.
3. The appellant asserts that the existence of multiple nonconforming structures should prevent further development of this site. The appellant will need to clarify what structures are nonconforming, and why their existence should prevent further development on the property.
 4. The appellant asserts there is documented evidence of a potential sinkhole within the development site and that no karst survey or geological assessment report has been required. The site does fall within the karst prone area of Jefferson County, which is identified in Core Graphic 14, and shows the majority of Jefferson County east of I-65 as being a karst prone area. No karst survey has been required by the developer.
 5. The appellant asserts that building permits for this project were issued off of invalid applications from 2013. More information is needed to determine the nature of this alleged violation.
 6. The appellant asserts that building permits were issued to a developer known to have outstanding code violations. More detailed information is not provided. However, Develop Louisville does not typically withhold permits from a developer due to alleged outstanding violations.
 7. The appellant asserts that this developer has misrepresented plan elements of this proposal, and has since changed those elements significantly. Planning & Design staff has reviewed the proposed building permits for compliance with the variances approved in 2005, the parking waiver approved in 2014, and the landscape plan approved in 2015. The proposal appeared to comply with all Land Development Code requirements, including the approvals by the Board of Zoning Adjustment and Planning Commission.
 8. The appellant asserts that Develop Louisville withheld public records. Open records requests were received from the appellant for this property, which were released to the requestor as soon as they were made available in accordance with the Kentucky Open Records Act.

NOTIFICATION

Date	Purpose of Notice	Recipients
5/15/15	Hearing before the Board of Zoning Adjustment	Subscribers of Council District 8 Notification of Development Proposals (365 recipients)
5/18/15	Hearing before the Board of Zoning Adjustment	US mail to adjoining property owners and interested parties submitted by the appellant.
5/22/15	Hearing before the Board of Zoning Adjustment	Legal advertisement in the Courier Journal

ATTACHMENTS

1. Zoning Map



2. Aerial Photograph



LOIC, Inc.

Roll Date: 8/15/2014

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* Distance are in feet



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