

FROM : Daniel & Elizabeth Fauxpoint  
1505 Rosewood Ave, #7  
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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).

<b>ID</b>	<b>Summary</b>
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
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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.

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<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 HGR'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.

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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.

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<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.



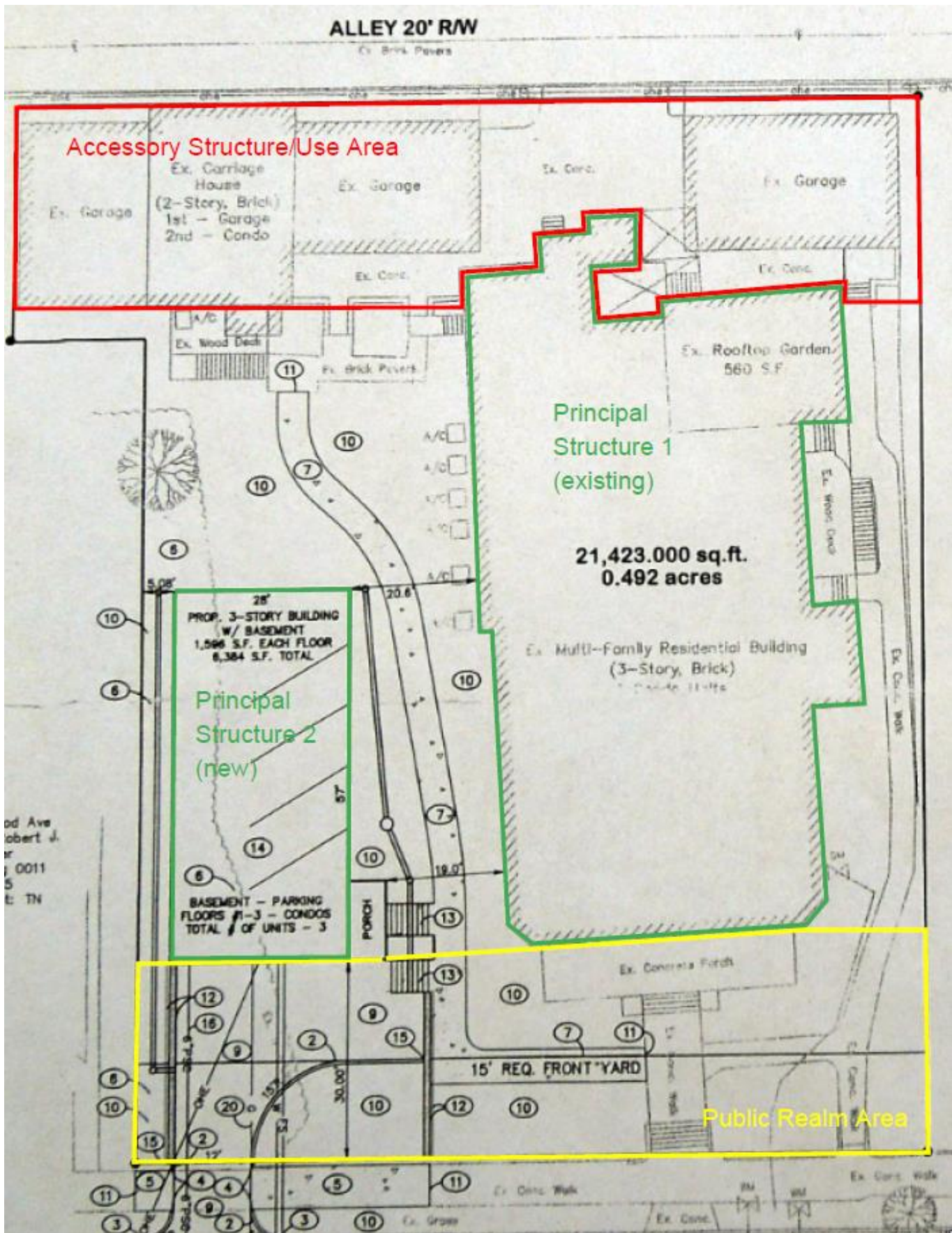


Figure 1 (Based on excerpt of 2013 building permit application document C3 – Site Layout Plan)

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:

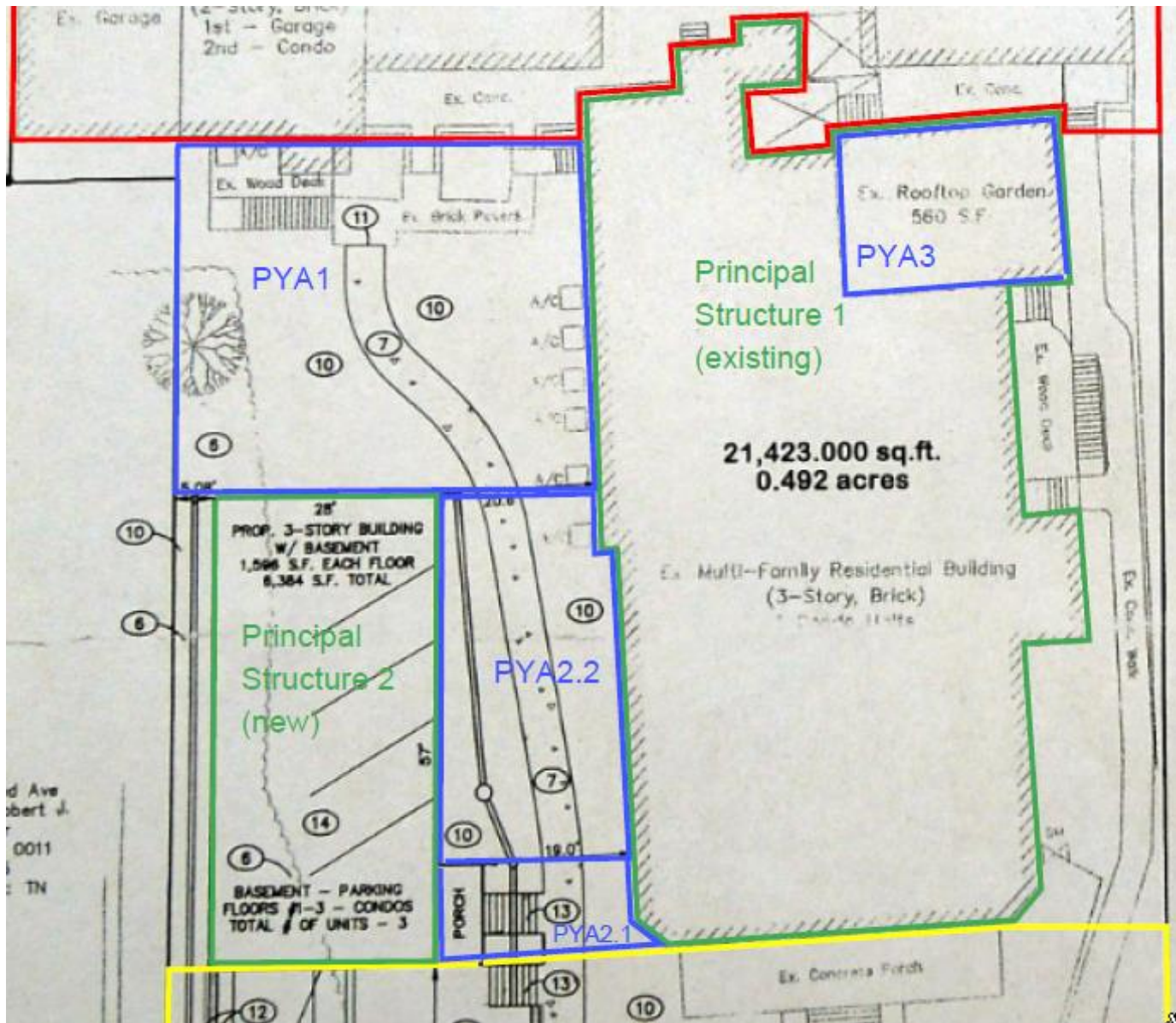


Figure 2 (Based on excerpt of 2013 building permit application document C3 – Site Layout Plan)

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]