

Reverman, Joe

From: Bill Bardenwerper <wbb@bardlaw.net>
Sent: Tuesday, August 19, 2014 1:04 PM
To: Carroll, John G.; Baker, Jonathan; Reverman, Joe; Liu, Emily
Cc: Stpinlou@aol.com; Nick Pregliasco; gcrawfordjr@yahoo.com; Mark Madison (markmadison@milestonedesign.org)
Subject: Crawford's Rosewood condominiums; Case No. 14PARK1002

John, et al: I re-emailed you, John Carroll, a copy of my July 24 communication, with all of the Master Deed and BOZA minute attachments, while we were talking.

For your added benefit, as well as Steve's, Joe's and the Planning Commission's, I guess I need to explain this further. As a lawyer experienced in many areas of real estate law, save apparently condominium law, Steve ought to understand the concept of fee simple absolute versus that of a fee which is determinable, qualified or conditioned. A condo unit owners' interest is always qualified, based on the limitations imposed by the condominium statutes and the underlying condominium documents. Whereas the condo unit owner may convey a right of inheritance, that is to create a fee simple absolute, as to the confines of the unit owners' unit, and whereas all unit owners together have tenant in common rights to share in and enjoy use of the common elements, the rights of both an individual and group of unit owners is limited by the retained rights of the declarant-developer. In other words, they cannot convey or in any way impair the rights that they do not unconditionally own. As such, the condo unit owners represented by Steve do not possess the full bundle of rights they must have in order to file a down-zoning application, UNLESS that application includes the owner of the bundle of rights affected – in this instance the declarant-developer. At some point in the future, when the declarant-developer's bundle of rights have terminated, then the condo unit owners perhaps can file an application like this. But not now.

Otherwise, based on Steve's completely convoluted assertion of the law, once an expandable condominium regime (such as Gene Crawford's) is imposed on a property, and after the 1st of, say, 100 potential units is created (because that unit owner temporarily owns 100 percent of the common elements until further reapportioned as new units are put of record), that unit owner could immediately file to down-zone that property from the multi-family (condominium) zoning district to a single family zoning district, thus depriving the declarant-developer of its statutorily protected retained bundle of rights to complete, as here, his condominium project.

Both statutory and case law clearly reserve unto the developer-declarant its rights to complete its condominium project, limited only by the time periods set forth by statute or in the underlying condominium documents. For Steve to claim that this situation is something akin to a mere private party deed restriction, which the Planning Commission does not ordinarily enforce, misses the entire legal distinction between an imposed, of record condominium regime relating to ownership rights versus use rights. Furthermore, for Steve to claim that the declarant-developer's parking waiver application, which relates to its building permit application, which is guaranteed by its retained declarant-developer rights, necessitates an agreement of the unit owners, is to claim for those unit owners certain rights that they do not possess. His client's bundle of rights, as described above, clearly under the law do not include the retained bundle of rights owned by the declarant-developer.

Steve's entire argument is both legally unsupportable and practically absurd because no developer would ever develop a condominium project if Steve's argument held any merit.

No one should be permitted to make a farce of the law, as Steve is here.

Bill Bardenwerper

Bardenwerper Talbott & Roberts, PLLC
Building Industry Association of Greater Louisville Building
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Louisville, Kentucky 40223
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From: Carroll, John G. [mailto:John.Carroll@louisvilleky.gov]
Sent: Tuesday, August 19, 2014 11:49 AM
To: Bill Bardenwerper
Cc: Baker, Jonathan
Subject: FW: Case No. 14PARK1002

Bill: Following up our conversation this morning, I don't see that you got this letter from Steve. Please send me a copy of your July 24 email with the authorities on the ownership issues. Thanks.

John G. Carroll
Assistant Jefferson County Attorney
531 Court Place, Suite 900
Louisville, KY 40202
Direct: (502) 574-6303
John.Carroll@louisvilleky.gov

From: Stpinlou@aol.com [mailto:Stpinlou@aol.com]
Sent: Tuesday, August 19, 2014 1:15 AM
To: Reverman, Joe
Cc: Baker, Jonathan; Carroll, John G.; Liu, Emily
Subject: Case No. 14PARK1002

Joe,
Please include the attached letter in the record of this case. Thanks.

Stephen T. Porter, Attorney
2406 Tucker Station Road
Louisville, KY 40299
502-297-9991
stpinlou@aol.com

From: Bill Bardenwerper
Sent: Tuesday, August 19, 2014 11:07 AM
To: 'john.carroll@louisvilleky.gov'
Subject: FW: Gene Crawford-Rosewood condominiums

From: Bill Bardenwerper
Sent: Thursday, July 24, 2014 5:45 PM
To: Baker, Jonathan (Jonathan.Baker@louisvilleky.gov); Carroll, John G. (John.Carroll@louisvilleky.gov); Stpinlou@aol.com
Cc: 'Reverman, Joe'; Nick Pregliasco; g Crawfordjr@yahoo.com; Mark Madison (markmadison@milestonedesign.org); Liu,

Emily (emily.liu@louisvilleky.gov)

Subject: Gene Crawford-Rosewood condominiums

Jon, John and Steve: I mentioned this to you the other day, Jon. And since Steve has asked below, we will answer him simultaneously as we are advising you.

As all or some of you know, we here have worked on many dozens of condo regimes over the years, establishing dozens and representing both the developers thereof and the many associations in their on-going condo business. We were also actively involved with the small committee of lawyers and legislators in amending the Kentucky condo statute on two occasions. I mention this because our answer to Steve's underlying question is one we know without equivocation, to wit: once the land is put into the condo regime it is true that the first unit owner and thereafter other unit owners as they come into ownership of units "own" the "common elements", like the land. But all rights both under the Master Deed establishing the condo regime and under state law are subject to the continuing rights of the developer, if any, to complete his condo project in accordance with the total number of units and initial stated timeframe to complete those units set forth in the yellow heightened "expansion" provisions of the attached Master Deed. In this instance, there exists zero legal authority, indeed it would be a violation of state statutory law, the owner's contractual obligations as to the developer, and a slander of title for the condo owners to attempt to deprive the condo developer of his right to complete the condo regime as stated, AND as set forth in the Kentucky Court of Appeals case reproduced below.

There are a very small number of published cases in Kentucky pertaining to condos, and the below is one of them -- a new case directly on point affirming a developer's retained development rights to complete his condo project in accordance with the Master Deed. In this instance, Gene Crawford had at time of recording of the Master Deed, which continues to this day (which is within the 10 years he had to complete the regime), the unilateral right to build 12 units. (The 7-year period set forth in the Master Deed has to do with the transfer of condo association administrative rights and do not diminish the developer's retained development rights. About this the Master Deed, Kentucky's condo statutes and case law are perfectly clear.)

The recent condo owners' filing of a pre-application to down-zone the property is illegal under all of these established laws and legal instruments. The condo residents have only those rights that the Master Deed and Kentucky's condominium statutes and interpretive case law give them; and those rights unequivocally do NOT include the rights to attempt to diminish the developer Gene Crawford's rights to complete the condo regime, as each and every one of these condo unit owners knew them to be when they purchased their individual units.

Also attached to this email are the 1967 and 1969 minutes whereby the property was rezoned (pre-"Plan Certain") to the R-7 zoning district, plus the 2005 plan and minutes where his additional building was approved. Mark Madison with Milestone Design Group and our firm have filed an application for a parking waiver such that the added units can be constructed by Gene, relying on available on-street parking. If the waiver isn't granted, he will proceed with the construction of an on-site garage.

This should fully answer your question, Steve, and further provide you, Jon and John, with what you need to advise DPDS staff that they cannot allow the down-zoning effort to proceed, which would be a completely illegal act.

Please feel free to contact either of us if you need to discuss any of this further. Many thanks.

Bill Bardenwerper

Nick Pregliasco

Bardenwerper Talbott & Roberts, PLLC

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From: Stpinlou@aol.com [mailto:Stpinlou@aol.com]
Sent: Thursday, July 24, 2014 3:30 PM
To: jonathan.baker@louisvilleky.gov; john.carroll@louisvilleky.gov
Cc: Bill Bardenwerper
Subject: Rosewood Condominiums application for rezoning

Jon and John,

Is one (or both) of you familiar with the question about ownership of this condo property? It seems clear to me that the condo association is now in control of the property and the 9 individual unit owners are the overall owners of the common elements, including the land. The developer, Highlands Restoration Group, LLC, may have some remaining development rights, but it is no longer the owner of the common elements. Therefore, the condo association has the right to file an application at PDS. Let's all talk. I think Bill represents the developer.

Stephen T. Porter, Attorney
2406 Tucker Station Road
Louisville, KY 40299
502-297-9991
stpinlou@aol.com

From: Nick Pregliasco
Sent: Thursday, July 24, 2014 5:22 PM
To: Bill Bardenwerper
Subject: Rosewood

The Kentucky Court of Appeals has already ruled on this exact issue, being that the expansion rights granted in the Master Deed trumps conflicting provisions of the Master Deed regarding the termination of the right to amend to create new units.

Section T of the Declaration and Master Deed establishing Rosewood Condominiums of record in Deed Book 8871, Page 375 provides that Declarant has the power to amend the Master Deed for 10 years (until July 2016) to create additional units, with each owner granting Declarant a power of attorney coupled with an interest to do so. Page 16 is attached hereto. Here is the provision:

Reverman, Joe

From: HairyC <hairycairy@twc.com>
Sent: Tuesday, August 19, 2014 11:57 AM
To: Reverman, Joe
Cc: Michal Kuharich
Subject: Case #14PARK1002

Follow Up Flag: Follow up
Flag Status: Flagged

Mr. Reverman,

I am opposed to the granting of a parking waiver for 1505 Rosewood. I often walk my dog on Rosewood. The 1400 block of Rosewood is without sidewalks, so we have to walk by the curb to stay away from cars travelling on the street. If cars are parked on the street we have to be especially careful because some of them are speeding and we have had some close calls. Also there is no street parking on Castlewood Avenue. There are single family homes and an apartment building in the 1300 and 1400 blocks of Castlewood and some of the Castlewood residents park on Rosewood. Guests and visitors also park on Rosewood. The hilly section of Rosewood is especially hazardous when there is snow or ice on the street, and cars have been damaged from being hit while being parked there. I have also seen near accidents on the east side of that block with cars turning off Castlewood, traveling at excessive speeds, and almost hitting persons getting out of their cars. I believe granting the off street parking waiver will exacerbate the parking problem on weekends and evenings and make less safe to walk in the section of Rosewood without sidewalks.

Thank you,

Denis Hommrich
77 Valley Rd.

Reverman, Joe

From: Kathy Baumann <kmkbaumann@gmail.com>
Sent: Tuesday, August 19, 2014 7:23 AM
To: Reverman, Joe
Cc: RosewoodCondoAssociation@gmail.com
Subject: Opposition Statement

Follow Up Flag: Follow up
Flag Status: Flagged

My husband and I have been home owners in the Highlands since 1979, and have lived at 1533 Rosewood since 1990. We both strongly oppose the condo project, and we do NOT support the parking waiver for the proposed condos on the property just west of 1505 Rosewood Ave.

We have had few complaints while living on Rosewood . However, we have noticed that over the past 24 years, the parking on this street has gotten worse. During the daytime hours there is plenty of space. But after work and often during the weekends, the parking has become tight. We are the second house from the corner of Baxter Avenue. Although we are located 8 houses east of 'The Rosewood' (1505), we are also often affected by too many cars and not enough space to park them. Many Rosewood Avenue residents need to utilize on-street parking in front of their own homes. The alleys behind both sides of Rosewood are narrow, with limited parking available.

However, along with vehicle overcrowding on the street, there are other problems connected to the proposed building of condos in the small yard adjacent to 1505 Rosewood. These include the destruction of trees and green space. We are concerned about additional garbage and receptacles, recyclables, yard waste, and noise and light pollution from this proposed new building, not to mention the alteration of our street and neighborhood. Our home was built in the early 1900's and is compatible with the architecture of the neighborhood. The small side yard next to 1505 will be overcrowded with the planned 3 story building, with too many units and too many people. The building will not compliment the neighborhood, and may decrease the property value of all of the homes on our street.

Please do the right thing and protect our street and the Tyler Park neighborhood. Thank you for your time and consideration.

Kathy and Hal Baumann

1533 Rosewood Avenue

Reverman, Joe

From: Stpinlou@aol.com
Sent: Tuesday, August 19, 2014 1:15 AM
To: Reverman, Joe
Cc: Baker, Jonathan; Carroll, John G.; Liu, Emily
Subject: Case No. 14PARK1002
Attachments: Atty-Rosewood-Parking-Letter.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Joe,
Please include the attached letter in the record of this case. Thanks.

Stephen T. Porter, Attorney
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stpinlou@aol.com

Stephen T. Porter
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Louisville, KY 40299-4529
stpnlou@aol.com
502-297-9991 or 502-905-9991

August 18, 2014

Mr. Joe Reverman, AICP
Louisville Metro Planning and Design Services
444 S. Fifth Street
Louisville, KY 40202

Re: Case No. 14PARK1002
1505 Rosewood Ave.

Dear Mr. Reverman,

As you know, I represent the Rosewood Condominium Council, Inc. which is the true, only and absolute owner of the property at 1505 Rosewood Ave, which is the subject of this parking waiver request. We have two very serious objections to this application from a legal and procedural viewpoint, in addition to an objection from a substantive viewpoint.

First, as we have informed you previously, since the applicant in this case is not the owner of the property, and the true owner of the property has not signed the application, this application should never have been processed by staff and should not be considered by the Planning Commission. The applicant falsely signed as the owner of the property, a representation that is untrue. In fact, the applicant has never even requested the owner to sign such an application.

Second, the current membership of the Louisville Metro Planning Commission is in violation of Kentucky statutes in four possible ways:

1. More than four members may have a "direct financial interest in the land development and construction industry", a violation of KRS 100.137(2),
2. One member may not be a resident of Louisville Metro as required by KRS 100.137(2),
3. Only one out of eight appointed members is an African-American (12.5%) (while the membership of the Metro Council is 23% African-American), which is a violation of KRS 67C.117(2), and
4. Only one member out of eight appointed members is a female, a possible violation of KRS 67C.139(1).

As a result of these problems, my clients request that this application be withdrawn from consideration.

Stephen T. Porter

Reverman, Joe

From: Stacey Robinson <robinson.sl@att.net>
Sent: Monday, August 18, 2014 4:27 PM
To: Reverman, Joe
Subject: Rosewood Avenue parking waivers

Follow Up Flag: Follow up
Flag Status: Flagged

Mr. Reverman,

I am a resident at 1518 Rosewood Avenue and I am adamantly opposed to the parking waivers for the proposed condominium project. The idea of the condo construction is absurd as it is - there is no doubt that parking waivers would further complicate the issue. In short, granting the exemption from zoning requirements would be detrimental to our neighborhood. It would simply not be fair to the residents in the area.

Stacey Robinson
Home Owner
1518 Rosewood Avenue
Louisville, KY 40204

Reverman, Joe

From: Keith Kleespies <keithkleespies@gmail.com>
Sent: Saturday, August 16, 2014 10:06 PM
To: Reverman, Joe
Subject: Downzone Proposal for 1505 Rosewood Ave., 0204

Follow Up Flag: Follow up
Flag Status: Flagged

To Whom It May Concern:

A building plan has been submitted for my neighborhood that requires existing zoning statutes to be waived. I oppose the waiver.

And I must ask, would bending the law to stuff an outsized three-story multi-family building into a tiny lot fit for only one small residence benefit our community? Would the clear-cutting of old trees in our neighborhood benefit the community? Would increasing street parking on a steep hill with no sidewalks benefit our community?

The zoning statutes exist to protect Louisville's citizens from such ill-considered projects as this. Please do not waive our legal safeguards.

Sincerely yours,

Keith Kleespies
1525 Rosewood Ave.
Louisville, KY
40204

Reverman, Joe

From: Suzi Zimmerer <suzizimmerer@gmail.com>
Sent: Saturday, August 16, 2014 5:19 PM
To: Reverman, Joe
Subject: OPPOSITION STATEMENT (for 1505 Rosewood)

To all concerned parties,

- 1/ As a resident on Rosewood, block 1500, i absolutely **OPPOSE the proposed parking waivers!!!!**
- 2/ I say **NO** to the atrocious HIGH DENSITY 3-story condo complex proposed for 1505 Rosewood.
- 3/ I say **NO** to the destruction of our green canopy!
- 4/ I say **NO to more cars competing for already sparse street parking** on Rosewood!

Respectfully,
Suzi Zimmerer, 1525 Rosewood Ave.

Reverman, Joe

From: Ralph Koslik <ralphie88@twc.com>
Sent: Tuesday, August 12, 2014 4:14 PM
To: Reverman, Joe
Subject: 1505 Rosewood Ave.

Dear Mr. Reverman,

As a longtime resident of the Highlands I make it a point to be aware of the goings-on in my community. I understand that a developer wants to build a three story condominium in the vacant lot adjacent to 1505 Rosewood Ave. I have also become aware of what could most kindly be described as shady dealings and misrepresentations that have tainted this proposed project and the application for approval over approximately the last decade regarding parking, tree cover, private yard area, and building height. As Planning and Design Supervisor for Louisville Metro Government Department of Codes and Regulations and Case Manager on this proposed project, I assume you have personally visited the vacant lot and seen for yourself that the proposed condo complex cannot physically fit into the vacant lot space, nor would it be compatible and consistent with the ambience and nature of the surrounding neighborhood, or the Comprehensive Plan for the Tyler Park neighborhood.

I expect that in the performance of your official duties you will follow both the letter and spirit of every law, ordinance, and regulation, and put the kibosh on this reckless caper once and for all.

Ralph Koslik
2229 Cherokee Parkway
Louisville, Kentucky 40204



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Reverman, Joe

From: Tanya BeGole <tdbegole@gmail.com>
Sent: Tuesday, August 12, 2014 7:55 AM
To: Reverman, Joe
Subject: Case 14Park 1002

Hello Joe,

I wanted to let you know that my husband and I do **not** support the Parking Waiver for 1505 Rosewood Ave. We live at 1438 Rosewood Ave. The majority of the neighborhood parks on the street in front of their houses. Parking is tight and many of us do not have off street parking. The addition of more multiple household dwelling on the street is not desired but if they are built we must not waive from our zoning and parking laws.

We plan on attending the public meeting and will solicit the other neighbors' opinions.

Thank you.

Tanya and Brett BeGole
1438 Rosewood Ave.
Louisville, KY 40204

Reverman, Joe

From: John Robbins <coachjrobbins@aol.com>
Sent: Friday, August 08, 2014 6:46 PM
To: Reverman, Joe
Subject: 14PARK1002. 1505 Rosewood Ave.

Hello, Mr. Reverman,

I understand that you are handling this parking request. I live at 1407 Rosewood Ave. and I am opposed to reducing the amount of parking required on the site from 18 to 16 by use of a parking waiver.

We already have crowded on-street parking at many times during the day, and this waiver would make things worse.

I am unable to make the hearing, and my husband cannot make it either, but we wanted to share our view. If there is another method that we should use, please let us know.

Thank you,

Julia Robbins.

Sent from my iPad

Reverman, Joe

From: Bill Bardenwerper <wbb@bardlaw.net>
Sent: Thursday, July 31, 2014 6:26 PM
To: Stpinlou@aol.com
Cc: Williams, Julia; efauxpoint@gmail.com; Reverman, Joe; Baker, Jonathan; Carroll, John G.; gcrawfordjr@yahoo.com; Mark Madison
Subject: Re: zone change 1505 Rosewood Ave.

Steve, you are entirely wrong about what you say, as that is not in conformance with statutory or case law regarding a Developer's retained development interest. The condo owners, who own the common elements, cannot do anything with the property that attempts unilaterally to amend the developer's retained rights under the condominium master deed and as guaranteed by statute and case law. This is not even a remotely debatable point in the law it is so well-established. We have written to planning commission legal counsel about this in a memo which included you. We understand that it has been decided that no condo unit owner applications will be accepted or processed as long as the developer has a retained development interest, which he does -- in this case to finish building out his condominium project.

Your condo clients will be liable for serious monetary damages if they continue to attempt to interfere with his well-established property rights in this manner. It is one thing to object to a discretionary application, such as the developer-applicant has pending. It is entirely a different matter to start interfering with his rights in a way that cause him financial loss. We would be very very careful about that if we were you. Bill

Bill Bardenwerper
Nick Pregliasco
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On Jul 31, 2014, at 5:13 PM, "Stpinlou@aol.com" <Stpinlou@aol.com> wrote:

Sorry, here is the attachment

In a message dated 7/31/2014 5:11:42 P.M. Eastern Daylight Time, Stpinlou@aol.com writes:

Julia and Joe,

I am attaching a letter explaining the ownership situation of this property. It is clear that the 9 individual unit owners, acting through their Council, are the owners of this property and, therefore, eligible to make this application. Thanks.

Steve Porter

In a message dated 7/31/2014 11:24:20 A.M. Eastern Daylight Time, Julia.Williams@louisvilleky.gov writes:

I forwarded your email to Joe Reverman. He will be answering any questions and otherwise will be handling this case in the future. Please have Steve contact Joe with any documents he may have regarding the ownership.

Thanks

Julia

From: Elizabeth Fauxpoint [<mailto:efauxpoint@gmail.com>]
Sent: Thursday, July 31, 2014 11:21 AM
To: Williams, Julia; stpinlou
Subject: Re: zone change posting to open portal

Hi Julia - I wanted to follow up on your request for proof of ownership of the Rosewood property. Our attorney, Steve Porter, will email you a letter today. It delineates that the condo owners are the legal owners of the property and requests for PDS to proceed with the zoning application.

Steve noticed that I've been referring to our colloquial name the Rosewood Condominium **Association**. He pointed out that technically, I should instead refer to the Rosewood Condominium **Council** because that is the correct name of the legal entity.

I've attached a corrected application form with the name "Council" instead of "Association." Assuming that PDS accepts our established proof of ownership and proceeds with the review, is this corrected form sufficient? If so, I can mail the original to you today.

I wasn't sure if I should complete the Checklist on this corrected form, so I left it blank.

Please let me know if you require anything else. Would you also notify me when you've made a decision about proceeding with our zoning proposal?

Thanks very much, Elizabeth

On Mon, Jul 21, 2014 at 3:13 PM, Williams, Julia
<Julia.Williams@louisvilleky.gov> wrote:

Before accepting a pre-application date and before I can proceed with the pre-application review, I need verification/documentation that the Rosewood Condominium Association is the land owner of the property. PVA indicates that Highlands Restoration Group LLC is the landowner. The land owner was required to sign off on the pre-application application. I'm not comfortable proceeding without having the actual landowner sign off on the application.

Thanks

Julia

From: Elizabeth Fauxpoint [mailto:efauxpoint@gmail.com]
Sent: Monday, July 21, 2014 10:28 AM
To: Williams, Julia
Subject: Re: zone change posting to open portal

Hi Julia - I wanted to give you a quick update on my side. The site plan is completed and ready for submission. I also contacted the Highlands-Shelby Library to reserve a date for the neighborhood meeting. The only available date in August is the 6th. I know that the staff comments are due this Wednesday. Could we schedule the pre-application conference for this Thursday or Friday so that I can meet the 10 day requirement for the neighborhood notice?

Thanks very much, Elizabeth

On Fri, Jul 11, 2014 at 11:23 AM, Elizabeth Fauxpoint
<efauxpoint@gmail.com> wrote:

Hi Julia,

The Zoning - Land Use Application contact information has my name rather than the Rosewood Condominium Association. Could you please add the Association to the list of contacts? It gives the impression that it's only me requesting this zone change when it's actually the Association's proposal. I'm the Association's primary contact person, but the application is on behalf of the Association, not me individually.

Thanks, Elizabeth Fauxpoint

<Atty-Rosewood-Ownership.doc>

Reverman, Joe

From: Stpinlou@aol.com
Sent: Friday, August 08, 2014 1:15 AM
To: Reverman, Joe; Baker, Jonathan; Carroll, John G.
Subject: 1505 Rosewood Avenue, 14PARK1002
Attachments: Atty-Rosewood-Ownership.doc

Joe,

First, since I represent the Rosewood Condominium Council, Inc., the owner of the property at 1505 Rosewood Ave., please include me in any correspondence to anyone in this case. Thanks.

Second, since the Rosewood Condominium Council, Inc. is the true and only owner of this property (see my previous letter of July 29, 2014 which is attached) and since that entity has not signed the application, it is the position of the Council that Case No. 14PARK1002 should not proceed. According to the Land Development Code, any application for a waiver must be signed by the owner of the property. Mr. Crawford has falsely claimed that Highlands Restoration Group, LLC is the owner and has signed the application as owner.

Third, your e-mail of August 7, 2014, to Elizabeth Fauxpoint of the Rosewood Condominium Council, Inc., states that "The applicant has demonstrated, to my satisfaction, that they will be able to meet all setback, LBA's, private yard area (as permitted by the variance granted by the BOZA), and other LDC requirements." Would you please provide me with any correspondence, reports, or other materials that "demonstrated" that compliance and caused you to reach that conclusion and which support your position. The current file does not seem to have anything in it which would support that conclusion, other than just a site plan with no explanations.

Thanks for your prompt consideration of my requests.

Steve

Stephen T. Porter, Attorney
2406 Tucker Station Road
Louisville, KY 40299
502-297-9991
stpinlou@aol.com

Stephen T. Porter
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2406 Tucker Station Road
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502-297-9991 or 502-905-9991

July 29, 2014

Ms. Julia Williams
Louisville Metro Planning & Design Services
444 S. 5th Street
Louisville, KY 40202

Re: 1505 Rosewood Ave.
Application for Rezoning
Rosewood Condominium Council, Inc.

Dear Ms. Williams:

I represent the Rosewood Condominium Council, Inc., which is the owner of the common elements, including the land, of the Rosewood Condominium at 1505 Rosewood Ave. The Board of Directors of that corporation has submitted a rezoning application to Planning & Design Services. I understand you have delayed any staff reviews of that application until you have proof that the property is owned by the applicant.

As you know, one of the entities that can file such an application is the owner of a parcel of property. Rosewood Condominium Council, Inc. is clearly the owner. The Declaration and Master Deed Establishing Rosewood Condominiums is filed in DB 08871, Page 0375-0394, and was originally filed on July 21, 2006. KRS 381.9167(d) clearly gives a unit owners' association the right to "Institute... administrative proceedings in its own name on behalf of itself... on matters affecting the condominium." On page 14 (DB 08871, P 0388) of the Master Deed, it clearly states that the original developer controls the Council until "7 years after the date of the filing of this Declaration and Master Deed". After that time, the Council is controlled by the unit owners. That 7-year time elapsed on July 21, 2013. Therefore, the unit owners are now in control of the Council, not the original developer, Highlands Restoration Group, LLC.

On page 2 (DB 08871 P 0376) of the Master Deed, the "Common Elements" are defined as consisting "of all the property as set forth on the set of floor plans of the buildings, excepting the individual units, including but not limited to, the land (including the Land under the units)..." As with all condominiums, the common elements are owned proportionately by the individual unit owners and are maintained and controlled by the Council. In this case, the individual unit owners are acting through their representative Council, as authorized on page 14 of the Master Deed.

Even Mr. Bardenwerper, attorney for the original developer, in his e-mail of July 24, 2014, admits as follows::

once the land is put into the condo regime it is true that the first unit owner and thereafter other unit owners as they come into ownership of units "own" the "common elements", like the land.

Any other arguments put forth by Mr. Bardenwerper are items between the developer and the Council, not items of any concern to PDS. The only concern to PDS is the ownership of the property, and **all** agree that is the owners of the units, as represented by the Council. Therefore, we respectfully request this application be processed as usual.

Sincerely,

Stephen T. Porter

pc: Jonathan Baker
John Carroll
Bill Bardenwerper
Rosewood Condominium Council, Inc.

Reverman, Joe

From: Reverman, Joe
Sent: Thursday, August 07, 2014 3:23 PM
To: Elizabeth Fauxpoint; Wethington, Jessica
Subject: RE: what is the current status on HRG's site plan and DRC hearing?

1. PDS's position on the cited Code violations is as follows:
 - a. The request is for a parking waiver to reduce the required number of parking spaces from 18 spaces to 16 spaces. As part of the parking waiver request, the Planning Commission requires a site plan to be presented to demonstrate the location and use of parking spaces.
 - b. The Planning Commission will not be considering approval of a site plan with this parking waiver request. As part of review of this site plan, I have endeavored to ensure compliance with certain requirements of the Land Development Code (LDC) as an assurance that the proposed 3-unit building is feasible, and that there is reason to continue through the process of Planning Commission review of the parking waiver. I have done this by asking the applicant to show certain elements on the parking waiver site plan, such as building setbacks, Landscape Buffer Areas (LBA), and private yard calculations.
 - c. The applicant has demonstrated, to my satisfaction, that they will be able to meet all setback, LBA's, private yard area (as permitted by the variance granted by the BOZA), and other LDC requirements.
 - d. Planning Commission action on this parking waiver request does not bind the applicant to the footprint, square footage, and exact placement of the proposed building as shown on this parking waiver site plan.
2. As stated above, I am satisfied the site plan has enough detail to show that all setbacks, LBA's, private yard area, and other LDC requirements can be met.
3. I believe MSD has since updated comments in Hansen and approved its review of this parking waiver site plan.
4. I will have updated staff comments in the file as soon as possible. PDS, Transportation Planning, and MSD have approved the parking waiver site plan to move forward to the Planning Commission for consideration.
5. Notices are being mailed today for a public hearing in front of the Planning Commission on August 21, 2014 at 1:00 pm at the Old Jail Auditorium located at 514 W. Liberty St., Louisville, KY 40202.

The case file is available in office for review by anyone during business hours. No appointment is necessary.

You may file an open records request for records pertaining to the renovation of the existing Rosewood condominium building.

Joseph Reverman, AICP
Planning Supervisor
Louisville Metro Department of Codes & Regulation
Division of Planning & Design Services
444 S. 5th St., Suite 300
Louisville, KY 40202
Phone: (502) 574-6246
Fax: (502) 574-8129
<http://www.louisvilleky.gov/PlanningDesign/>



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From: Elizabeth Fauxpoint [<mailto:efauxpoint@gmail.com>]
Sent: Thursday, August 07, 2014 7:18 AM
To: Reverman, Joe; Wethington, Jessica
Subject: what is the current status on HRG's site plan and DRC hearing?

Hi Joe and Jessica - I'm following up on two emails I sent last week.

1. What is PDS's position on the summary of Code violations? Do you agree or disagree with any of those points?
2. Will HRG be required to revise the site plan?
3. I noticed on the Open Data Portal that MSD posted the same comments from previous reviews. So I'm trying to understand what this means. Has HRG already submitted a revised site plan that is going through another review process?
4. If so, could you please email me a copy of the staff comments and the revised site plan? If HRG submitted revised or new applications, please email them, too.
5. Has a hearing date been set? A lot of neighbors have contacted me about this but I have no answer for them.

Jessica - if I don't hear back from Joe soon, could I make an appointment to meet with you today so I can review the entire case file?

I would also like to review the case file for the Rosewood renovation (I don't mean the proposed building, I mean the original building). I don't think I have all the records.

Thanks, Elizabeth

Reverman, Joe

From: Stpinlou@aol.com
Sent: Wednesday, August 06, 2014 3:21 PM
To: Reverman, Joe
Cc: Williams, Julia; Baker, Jonathan; Carroll, John G.; wbb@bardlaw.net; Liu, Emily; Mims, James L
Subject: Re: Zoning Change at 1505 Rosewood Ave.

Joe et al.,

I do not understand your position. It is long established in law and in practice that the Planning Commission does not enforce deed restrictions or private agreements among private parties. That is what the possible right to construct three additional units is: a private right between private parties. Your agency cannot enforce private rights. That right is always subject to compliance with local ordinances and regulations. Except for the density allowance from the original zoning in 1967, there is no public agency decision which has granted HRG the absolute right to construct the three-story building. If that zoning were changed (as is the prerogative of the Metro Council), HRG would be free to build anything it wants within the confines of the new zoning and the regulations in the Land Development Code.

Again, neither PDS nor the Planning Commission has the right to enforce private agreements. Therefore, the application for rezoning should proceed and the Commission can make whatever decision it can justify under Cornerstone 2020. The Rosewood Condominium Council, Inc. is the undisputed owner of this property and, therefore, has the right to file this application and have it processed in a normal manner. Has the Jefferson County Attorney given advice on this? I would like the opportunity to meet with you and Jon or John to discuss this.

If your position does not change for some reason, I would like a formal letter from the Director, dated so we have a final action from which we may appeal.

Steve Porter

In a message dated 8/6/2014 12:04:52 P.M. Eastern Daylight Time, Joe.Reverman@louisvilleky.gov writes:

I apologize for the delay. Our position as of now is that HRG has certain rights to construct the proposed 3-unit building on 1505 Rosewood Ave. And that construction of this 3-unit building would cause the proposed rezoning pre-application under case number 14ZONE1034 to be improper. We will not review the rezoning request until such time that we have some assurance that the proposed 3-unit building is no longer proposed, or until we have reason to believe that HRG no longer has rights to construct the 3-unit building.

Joseph Reverman, AICP

Planning Supervisor

Louisville Metro Department of Codes & Regulation

Division of Planning & Design Services

444 S. 5th St., Suite 300

Louisville, KY 40202

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Fax: (502) 574-8129

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From: Stpinlou@aol.com [<mailto:Stpinlou@aol.com>]
Sent: Wednesday, August 06, 2014 11:28 AM
To: Reverman, Joe
Cc: Williams, Julia; Baker, Jonathan; Carroll, John G.; wbb@bardlaw.net
Subject: Re: Zoning Change at 1505 Rosewood Ave.

Joe,

I am following up my e-mail of July 31, 2014, regarding the application by the Rosewood Condominium Council, Inc. for the rezoning of 1505 Rosewood Ave. Is that application being processed? Thanks for your help.

Steve

Stephen T. Porter, Attorney
2406 Tucker Station Road
Louisville, KY 40299
502-297-9991
stpinlou@aol.com

Reverman, Joe

From: Elizabeth Fauxpoint <efauxpoint@gmail.com>
Sent: Wednesday, July 30, 2014 3:38 PM
To: Reverman, Joe
Cc: Wethington, Jessica; Hamilton, Doug; Mims, James L; Liu, Emily; stpinlou; Dan; Marchal, David
Subject: Re: Rosewood Plans
Attachments: photo of HRG revised site plan_July of 2014.jpg; Summary of inaccurate and omitted data on HRG revised site plan of July 21 2014.docx; 57. Crawford to Kuharich re cheaper, less desirable building_02.16.14.pdf; Excerpt from the Rosewood Association zone change propoal.pdf

Hi Joe - thank you for responding to my questions. I've attached a summary of what I believe to be additional Code violations related to HRG's revised site plan, along with three attachments that should help clarify a few things. If I have misunderstood Code requirements, please let me know. It's very much a learning process for me.

I'd be glad to respond to your points tomorrow. Meanwhile, I hope you have some time to review this summary before finalizing staff comments on the revised site plan. There are quite a few issues that should be addressed before a DRC hearing date is set.

As to the existing Code violations, I am referring to a number of violations involving construction activity that occurred during the Rosewood renovation under HRG's control, not prior to it. These previous violations do impact the current development project.

I will explain in greater detail, although much of what I'm referring to is clearly delineated in the Rosewood Association's proposal to rezone the property to the more appropriate R6 classification. Unfortunately, PDS has placed our application on hold, so I am unsure as to what extent the proposal has been reviewed, what relevant issues have been identified, or what assertions have been verified. Julia Williams is our case manager, so if PDS protocol allows, perhaps she can forward it to you. It really does provide a comprehensive picture of the many deficiencies of HRG's development plan and the inappropriateness of the current R7 classification.

I will get back to you soon. If you could possibly answer a few additional questions from the attached summary, I'd really appreciate it.

Elizabeth

On Wed, Jul 30, 2014 at 2:03 PM, Reverman, Joe <Joe.Reverman@louisvilleky.gov> wrote:

Mrs. Fauxpoint,

1. I have finished reviewing the plan and it appears that the applicant has addressed all of Planning & Design's comments. I am still waiting to hear from MSD before finalizing and printing our agency comments, but they should be ready sometime this week.

2. The applicant updated the parking study and submitted this to us on June 18th. They also submitted an updated parking waiver justification on July 24th. I will try to get the up to date file scanned and forward to you. In the meantime, the file is in our office for review.

3. The plan submitted on July 21st shows the proposed building setback 10 feet from the side property line. Therefore there is no LBA waiver required now.

4. I'm not sure what Code violations are existing on the site that you are referring to. Are you referring to the previous approval from the Board of Zoning Adjustment (BOZA) that resulted in the permitting of one or more accessory structures in the rear of the site? We acknowledge that mistakes are sometimes made in the planning and permitting process. However, to my knowledge, the buildings and uses existing on 1505 Rosewood Ave that were subject of BOZA review obtained proper permits from the permitting office. Speaking generally, the courts have acknowledged that property owners and developers have certain vested rights once permits are obtained and physical construction takes place. Also, generally, there is an appealable period by which aggrieved parties have to appeal a decision or permit. In regards to existing buildings at 1505 Rosewood Ave that have been present for many years, and obtained proper permits (to the best of my knowledge), we do not have plans on requiring the owner/developer of the property to obtain variances or waivers for these existing structures. We do not have a written policy for this decision.

Please let me know if you have further questions or comments.

Joseph Reverman, AICP

Planning Supervisor

Louisville Metro Department of Codes & Regulation

Division of Planning & Design Services

444 S. 5th St., Suite 300

Louisville, KY 40202

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From: Elizabeth Fauxpoint [mailto:efauxpoint@gmail.com]
Sent: Wednesday, July 30, 2014 9:07 AM
To: Wethington, Jessica; Hamilton, Doug
Cc: Reverman, Joe; Mims, James L; Liu, Emily; stpinlou; Dan
Subject: Re: Rosewood Plans

The revised site plan is riddled with serious Code violations. I am preparing a summary now. It should be completed in a few hours. In the meantime, could you please assist with the following:

1. Please provide me with a copy of the staff comments so that I don't repeat something that PDS has already addressed.
2. Please verify whether or not the attached site plan and parking waiver application are the only submissions since June 2nd. If there are other documents, I'd appreciate a copy of whatever else what submitted.
3. Please verify that the LBA waiver request was withdrawn.
4. Please clarify what Codes & Regulations' policy is regarding existing Code violations that directly impact a current development project. Should the developer apply for a variance/waiver retroactively, pay a penalty, or do nothing at all? In other words, is there some kind of procedural remedy to address prior violations to ensure that a proposed project won't exacerbate a site's noncompliance?

Thank you,

Elizabeth Fauxpoint

On Tue, Jul 29, 2014 at 4:59 PM, Wethington, Jessica <Jessica.Wethington@louisvilleky.gov> wrote:

Hi, Elizabeth,

Attached are the documents from the case file that show they were received on June 18, 21 and 24.

I apologize for any confusion.

Jessica Wethington
Public Information Specialist

Develop Louisville
444 South Fifth Street, Ste. 300
Louisville, KY 40202-4313
502-574-5174

jessica.wethington@louisvilleky.gov



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**ROSEWOOD ASSOCIATIONS' SUMMARY OF OMITTED & INEFFICIENT DATA
RELATED TO HRG'S REVISED 7/21/14 SITE PLAN**

1. Parking waiver application

The revised parking waiver application is missing the Parking Study spreadsheet that documented conditions on Rosewood throughout the 5-day study. Is this a mistake or has HRG withdrawn the actual results? If they've withdrawn the results, how can the study be validated?

2. Front setback

The proposed building must be within the range of the two adjacent buildings. The measurements should be applied consistently so that you're comparing apples to apples instead of apples to oranges.

The facade of Jeff DeReamer's home is set back 30.11 from the property line. The Rosewood's facade is set back 31.56, so the proposed building's facade should be set back between 30.11 - 31.56. HRG is basing their set back of 30.5 on the front **porch** facade rather than the building's facade.

Please verify whether front setbacks should be measured to a building's porch or a building's facade and please enforce whichever is the correct method.

Please ensure that all 3 front setbacks are calculated *consistently*. If HRG is allowed to use the porch facade to determine their front set back, then DeReamer's porch setback should also be measured and the proposed building should come much closer to the street.

Either way, the front setback must be corrected or HRG must apply for a waiver.

3. Primary entrance

The proposed building has no independent entryway from the street to the front porch. 100% of the Rosewood blockface has a walkway to the primary entrance. 0% piggy back on the walkway of an adjacent home.

Section 5.4.B.2 requires that "an **improved** means of pedestrian access to the principal structure shall be provided between the sidewalk and the principal structure entrance that is facing the street." HRG must provide a proper *improved* means of access to the structure or apply for a waiver.

4. Side yard setback

The side yard setback at the rear of the proposed building is 15.3 feet from the Rosewood. It must be 20 feet. The *entire* side yard must have a distance of 20 feet or HRG must apply for a waiver.

Also, the site plan no longer claims this area as PYA. Is PDS enforcing BOZA's requirement for the PYA to consist only of the area *between* the proposed building and the accessory use area, or has HRG opted to abide by BOZA's requirement of their own volition?

5. Floor Area Ratio

The site plan omits the required FAR data. The development exceeds the FAR 1 threshold for an R7 district. The combined floor area is 22,617 divided by the lot area of 21,423 = 1.055. HRG must reduce the building's floor area.

6. Alley Access/Curb Cut waiver

The site plan must document all variances and waivers related to this property. The previous waiver granted in 2005 is omitted from the site plan.

7. Landscape plan

The site plan omits the necessary data to determine the exact percent of improvements, which should include the dimensions of the proposed walkway, the porch, and steps leading up to the porch. However, the data can be extrapolated. The proposed improvements exceed the 20% threshold for impervious surfaces.

Based upon the January of 2013 site plan, the combined existing footprint is 8,114 sqft. The proposed building is 1,596. The concrete walkway is roughly 550. The porch appears to be about 96, and the stairs is about 42.

The combined improvements are 2,284, which is 28% of the existing footprint. When you include the requisite walkway from the street to the porch, the improvements will total about 30%.

This value triggers a requisite landscape plan. According to HRG's testimony to BOZA, the landscape plan should also include a landscaped brick patio terrace between the proposed building and the Rosewood in order to provide an essential mitigating buffer between the adjacent, high density multi-family structures. HRG must submit a landscape plan or apply for a waiver.

8. Private Yard Area

The site plan should provide precise measurements for all claimed PYA in order to verify if HRG actually meets the claimed 3,696 sq ft. The identified areas claimed as private yard cannot possibly add up to this value.

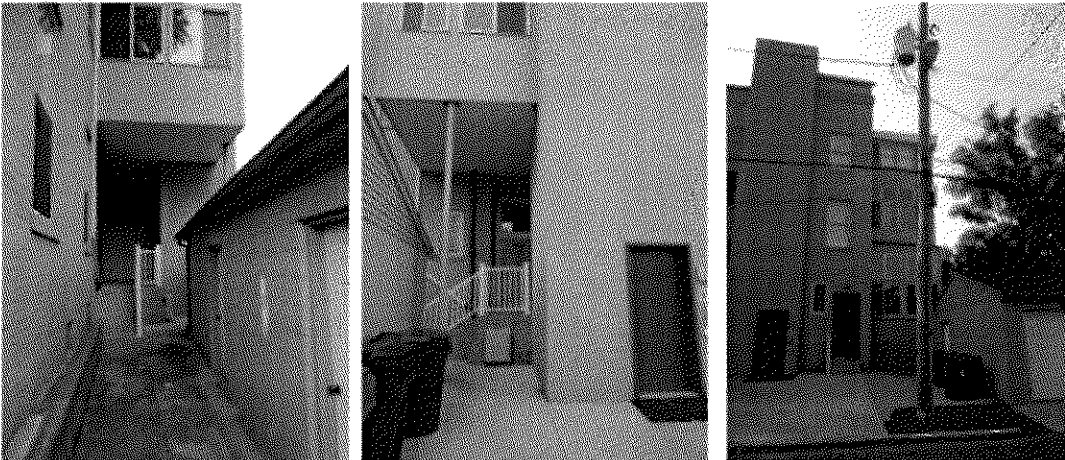
I have included an excerpt of the Association's zoning proposal, which provides an in-depth analysis as to why this attempt to claim the accessory use/service/loading area involves numerous Code violations and entails a direct violation of the owners' property rights.

In addition to those identified violations, the expansion of the claimed PYA further violates Code:

- a. It appears that HRG is including the 560 sqft. "Rooftop Garden" in the total PYA of 3,696. Based upon our February meeting with the directors of C&R and PDS, the roof deck was explicitly disallowed. Have the directors revised their position? Either way, HRG must exclude the roof deck from the PYA or apply for a waiver.
- b. Does the area marked TBR mean "to be reviewed"? If so, please note that Section 5.4.1.E.2. requires a minimum rear setback of 5 feet "that *cannot* be counted toward the private yard requirement." [see attached photo of site plan. Approximate 5 ft. line depicted by dotted red line]. HRG must exclude the 5 ft. rear set back or apply for a waiver. Also note that the site plan does not identify the utility pole/transformer located on the left side of the service area [see below photo].

Also note that this is a storage area for the units' trash and recycling. There is no indication of how these 10 garbage cans will fit if this area is confiscated by HRG. Lastly, the dimensions of the proposed walkway are not provided to determine if it meets handicap accessible requirements.

- c. Section 5.1.7 states that "every part of the required yard shall be *open to the sky*." There are two areas claimed as PYA that are completely covered by the floor area of an enclosed rear sun room on the second floor [see attached photo of site plan. Areas outlined in red are covered by the sun room as depicted in below photos. Utility area is also outlined in red]



- d. Section 5.4.1.D.2 states that the "private yard shall be composed of *contiguous open area*." The claimed PYA is not contiguous because it stops at the covered areas. So the area marked by the black boundary lines cannot count towards the PYA either. HRG must exclude the areas marked in red and black or apply for a waiver.

Very specific PYA measurements would be extremely helpful. The site plan does not indicate how HRG can meet the minimum PYA requirement of 3,592 sqft. Based upon measurements from previous site plans, the disallowed areas in red and black are over 700 sqft. If the roof deck is also rightly excluded, that's another 560 square feet. HRG is short at the very least by 1,260.

I stress that these are only rough estimates. Even if you do not exclude a single area now claimed as PYA, **including the roof deck**, it still falls short of 3,696. Considering that HRG already obtained a PYA reduction of 2,835 sqft., the development project must be restricted to a value of 3,592 sqft. The entire project hinges on meeting that PYA value. Accurate and precise measurements should be provided for every single subsection that HRG now claims as PYA. That is the only way for HRG to sufficiently prove that they've met the PYA requirement.

9. Property Perimeter LBA

I assume that the revised site plan depicting a 10 foot west LBA means that HRG withdrew the LBA reduction waiver. However, withdrawing the waiver does not resolve the fundamental problem: a new development of a higher intensity class than the adjacent property must provide a property perimeter LBA. Code requires a continuous LBA along the west, north, and east property lines.

Obviously, this requirement was never enforced on this nonconforming site (HRG expanded the site's nonconformity via unpermitted construction activity, which we will detail at a later date). That is no reason to completely absolve HRG of their responsibility to somehow account for this Code requirement. It is based on the authority of the Comprehensive Plan, which serves to alleviate nuisances caused by a new multi-family development constructed next to a single-family home.

So, the west LBA must still be addressed, even if it remains 10 ft. wide. Based upon the depiction of the tree canopy area, HRG intends to reduce the LBA anyway. A high intensity development still requires a planting density multiplier and screening. HRG must provide a landscape plan that also addresses this requirement or apply for a waiver.

10. Architectural drawing

We have not yet had an opportunity to address the proposed building's design elements that are completely incompatible with the neighborhood. Can we assume that the building design submitted in September of 2013 is, in fact, what HRG intends to build?

If so, at what point will the design be evaluated by PDS? I ask this because Gene Crawford has admitted in an email to the Association's president, Mike Kuharich, that if zoning regulations are correctly enforced, he will build a cheaper, less desirable building that will not complement current property values (see attached email).

Will PDS require an updated architectural drawing in order to proceed any further with the development plan?

ALLEY 20' R/W

N 47°09'00" E 148.00'

N 42°51'00" W 38.00'

0.68'

S 47°09'00" W 21.00'

N 42°51'00" W 127.00'

PROP. 3-STORY BUILDING
1,596 S.F. EACH FLOOR

PROPOSED WALK

Ex. Multi-Family Residential Building
(3-Story Brick)
& Condo Units

Ex. Recitation Garden
560 S.F.

S 42°51'00" E 166.00'

1435 Rosewood Ave
Martha L. & Robert J.
Dereamer
DB 9799, Pg 0011
Zone: R5
Form District: TN

1500 Rd
James D.
Cord H.
DB 922
Zone
Farm I

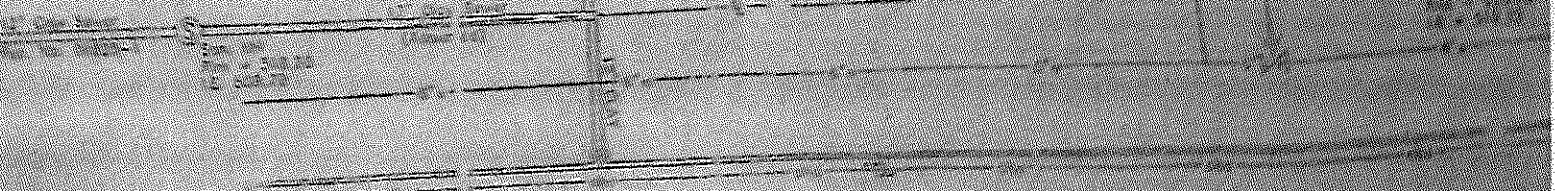
PORCH

15' REQ. FRONT YARD

S 47°09'00" W 125.00'

ROSEWOOD AVENUE 60' R/W

6 SPACES





FW: Rosewood

Daniel Fauxpoint <daniel.fauxpoint@gmail.com>
Draft

Mon, Feb 17, 2014 at 10:30 AM

From: GENE CRAWFORD [mailto:gcrawfordjr@yahoo.com]
Sent: Sunday, February 16, 2014 11:56 AM
To: Michael P. Kuharich
Subject: Re: Rosewood

1. All correspondence will be in written form so there is an accurate and reproducible record.
2. There was an offer for the Condo Association to buy out our "Right to Expand the Regime" which was never formally responded to. Please remember that this was simply keeping our word to the original buyers of the condo that when it came time for phase two, we would allow them to purchase the "right to expand" if they wanted more control over the project.
3. My requests in the email below have not been responded to.
4. We have now retained counsel.
5. Our engineers will make necessary changes to correct any errors that the review staff at Metro Development have decided they missed in giving approval. They will have to explain to my lawyer why they are questioning "stamped" plans in which they themselves designed.
6. Having any dialog with you has proven to be just a way for you to get information in order to allow the newspaper to write a negative article, have the neighborhood association decide that they were against the project even though they did not seek any information from us, and find some way to disrupt progress. This building was a part of the original plan, is specifically addressed in the master deed and we have paid taxes on the lot since purchase of the property many years ago. Involving the association in the process has not proven to be at all productive and as such, I see no point in meeting again.

The building is going to happen and should be complimentary to the existing building, however Metro government may force enough change that it will not resemble our original plans. It is unfortunate that we have designed the building in order to complement the existing building, planned on using maintenance free items and designs so there is less impact on the Condo Association, and planned on using more expensive materials in finish work to get higher sales to complement current property values. It now seems likely that unnecessary further involvement by the bureaucratic process may hinder our ability to create a building that you would be proud to have as part of your association. Since you now have Metro scrutinizing our plans there is no going back as far as they are concerned. We will have to build what fits even though in my opinion will be less desirable. It's certainly going to allow us to reach more potential buyers with lower listing prices.

Gene Crawford

Highlands Restoration Group, LLC.

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EXCERPT FROM THE ROSEWOOD ASSOCIATION'S ZONE CHANGE PROPOSAL SUBMITTED TO PDS ON JULY 7, 2014

PRIVATE YARD AREA

The PYA issue best exemplifies the gross inappropriateness of the R7 zoning and the absurdity that this development project has become. Despite the PYA reduction from the required 6,427 sq. ft. to 3,592 sq. ft. (for an exorbitant loss of 2,835 sq. ft. of open green space), HRG still cannot meet a single open space standard or PYA requirement.

The Private Yard Area is defined as the "area of the lot located between the Principal Structure Area and Accessory Structure/Use Area...Unroofed pools, atriiums, garden courts, walks, patios, and other similar uses are acceptable. **No other uses may be located within this area.**"ⁱ In other words, no other use is permitted in an area claimed as PYA.

BOZA's 2005 finding is consistent with this language: "The variance allows the Private Yard Area between the proposed multi-residence and the existing/proposed garages to be 3,592."ⁱⁱ In other words, the PYA perimeter is confined to this area and, in fact, should not include the 20 x 57 square foot side yard at all.

The Code reiterates elsewhere that: "the area occupied by other improvements... **other accessory buildings...** shall not be considered private yard area."ⁱⁱⁱ Therefore, the PYA cannot be located within or between the Accessory Use Area, which is clearly depicted in the attached LDC Figure 5.4.1.^{iv}

The Code further states that: "any area contained within any of the following shall not be considered as open space unless specifically permitted: buildings, streets, public or private rights-of-ways, parking areas, utility rights-of-way."^v Therefore, the PYA cannot be located within or adjoining an alley, a garage, or loading area.

Finally, the PYA must be "at least 30% of the area of the lot and shall be located between the principal structure and the accessory structure area. The private yard shall be composed of contiguous open area."^{vi} Therefore, since the Rosewood's PYA ends at the concrete boundary line separating the PYA from the Accessory Use Area, it is physically disconnected to any area beyond the Accessory Structure/Use Area and so should not be construed as contiguous. Figure 5.4.1 illustrates the meaning of "contiguous" in this context.

No matter how the calculations are sliced, diced, or manipulated, there simply is not enough land. Since the current Site Plan omits the existing and proposed PYA dimensions, we do not know precisely how much more land HRG needs, but we do know they are short by many hundreds of square feet.

HRG's renewed attempt to claim as PYA the "Rooftop Garden" was explicitly disallowed by C&R. PDS Staff therefore directed HRG to claim as PYA the Loading/Service Area directly behind the principal structure.^{vii} Please refer to the attached photos and ponder the definition of the word "Private" as it relates to the below description.

This Service Area is adjacent to the alley, an elevator, a rear entry door, and is sandwiched between two large garages. It is also a storage area for the property's ten garbage and recycling bins, which the City must access and collect on a bi-weekly basis. Directly across this alley is a parking area for neighboring residents. It also contains a utility pole with a transformer box, which the City must access for maintenance.

This is also a Loading Area for the service elevator. The three-story Rosewood is situated at the apex of a steep and dangerous hill. Rosewood Ave. is a narrow residential street that is chronically congested with parked cars. As such, this Loading Area is an absolute necessity for residents moving in and out, as well as short-term parking for medium and heavy service and delivery trucks.^{viii} Furthermore, it is the *only* means by which anyone who is disabled, injured, elderly, or in poor health can access the principal structure.

No reasonable person could possibly justify this multi-purpose Accessory Use/Service/Loading Area -- with its odor of decaying trash and car exhaust, the sound of dogs barking and garage doors slamming, surrounded by cracked

concrete, an elevator, garages, and utility lines along an unkempt alley -- as a respectable private yard. It mocks the very notions of green space and the peace and quiet that one should enjoy in the privacy of one's own yard.

Any claim to this area as "private yard" should be recognized exactly for what it is: a blatant attempt to circumvent the requirements of zoning regulations.

More importantly, this area is a Common Element legally owned by the Rosewood Association. It is by no means subject to HRG's development rights and cannot be altered in any way, shape, or form.

It must be made absolutely clear to both HRG and planning and zoning officials: Any attempt to claim or alter this area is a gross violation of the Association's property rights. It would amount to the confiscation of private property and is no different from encroaching upon the adjacent land to meet a developer's Private Yard Area requirement.^{ix}

Objective A1.1 ensures that "zoning ordinances and land use regulations are consistent with constitutional guarantees and evolving case law, in order to ensure private property rights and preserve the public interest."^x

We are appalled by this cheap trick, first devised by HRG and now encouraged by PDS staff. Removing this utilitarian concrete to replace with sod so that a developer can gain a measly 65 square feet defies all logic and *still* fails to resolve the inescapable problem of not enough land.

As discussed in Part IV in great detail, Ordinance 63, Series 1971 enacted the R7 zone change in a way that violated residents' constitutional rights, conflicted with evolving case law, and disregarded the public interest. It now directly interferes with the Rosewood Association's private property rights.

ⁱ LDC 2006, Chapter 1 Part 2 Definitions 1.2-37.

ⁱⁱ see BOZA 2005 - Meeting Minutes, page 19.

ⁱⁱⁱ LDC 2006, 5.4-5 - Residential Site Design Standards.

^{iv} Diagram - Figure 5.4.1 from LDC Chapter 5 Part 4 Residential Site Design Standards, which depicts the four designated property areas and illustrates the meaning of "contiguous."

^v LDC 2006 10.5.4.A.1 - Open Space Standards

^{vi} *ibid*

^{vii} PDS Staff Comments pertaining to current 2014 Site Plan Deficiencies #9, page 1, dated June 19, 2014.

^{viii} LDC Chapter 9.1.18 Parking and Loading Area Requirements.

^{ix} Rosewood Condominiums Master Deed, which explicitly states that this service area is a Common Element legally owned by the Rosewood Condominium Association., pages 3-4

^x Cornerstone 2020, Objective A1.1 - Land, page 45.

Reverman, Joe

From: Elizabeth Fauxpoint <efauxpoint@gmail.com>
Sent: Thursday, June 19, 2014 4:15 PM
To: Reverman, Joe
Subject: Re: Agency Comments: 1505 Rosewood Ave.

Thanks for sending this, Joe.

On Thu, Jun 19, 2014 at 2:47 PM, Reverman, Joe <Joe.Reverman@louisvilleky.gov> wrote:

Elizabeth, here are the agency comments. They were also forwarded to the applicant just now. I believe my comments address all outstanding issues that need to be addressed prior to docketing the requested parking waiver and landscape waiver before a committee of the Planning Commission.

My understanding is that the proposal is to construct a 3 dwelling-unit structure on the site. This proposal meets the threshold for review of parts 4 and 8 of Chapter 5 of the LDC in the Traditional Neighborhood Form District Table. Therefore, this proposal has only been reviewed for compliance with those parts of chapter 5, as well as chapter 9 and 10.

Please let me know if you have any further questions.

Joseph Reverman, AICP

Planning Supervisor

Louisville Metro Department of Codes & Regulation

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Reverman, Joe

From: Elizabeth Fauxpoint <efauxpoint@gmail.com>
Sent: Wednesday, June 18, 2014 11:48 AM
To: Reverman, Joe
Subject: Re: Question about Highland Restoration Group's revised site plan for 1505 Rosewood
Attachments: 4 Don Underwood Design - Drawing of Front and Courtyard Side_10.18.13.jpg

Sorry. Maybe "building design" is the wrong term. I mean a drawing/depiction of the building like the attachment. Since they've gotten rid of the garage, the building itself will look vastly different.

What is the correct term for what I've attached? You're not saying they can request to waive an actual drawing of the building, right?

On Wed, Jun 18, 2014 at 10:41 AM, Reverman, Joe <Joe.Reverman@louisvilleky.gov> wrote:

They have not requested a building design waiver as of yet. They applied for a parking waiver and a landscape waiver.

Joe

From: Elizabeth Fauxpoint [<mailto:efauxpoint@gmail.com>]
Sent: Wednesday, June 18, 2014 10:35 AM
To: Reverman, Joe
Subject: Re: Question about Highland Restoration Group's revised site plan for 1505 Rosewood

Hi Joe - thanks for getting back to me about the hearing. And thanks in advance for forwarding the comments to me.

I'm confused about one more thing... why did HRG apply for waivers **before** submitting a revised building rendering? It seems pretty odd to request waivers for a building design that doesn't technically exist.

Wouldn't it make more sense to to require that HRG submit a building rendering **prior** to waiver applications? Seems like they're putting the cart before the horse :)

Take care, Elizabeth

On Wed, Jun 18, 2014 at 8:34 AM, Reverman, Joe <Joe.Reverman@louisvilleky.gov> wrote:

Elizabeth, thank you for the email. I will forward you the agency comments when they are available, which should be later this afternoon.

The applicant will have to address these comments before we schedule the case for a public meeting. Therefore we will not be certain of a public meeting date this week, but I am certain it will not be within the next 2 weeks.

Thank you.

Joseph Reverman, AICP

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From: Elizabeth Fauxpoint [<mailto:efauxpoint@gmail.com>]

Sent: Tuesday, June 17, 2014 3:43 PM

To: Reverman, Joe; Mims, James L; Dan

Subject: Question about Highland Restoration Group's revised site plan for 1505 Rosewood

Hi Joe - I understand that you're currently reviewing HRG's recent submissions. I'm trying to get a sense of the building's location in relation to our private yard area.

Could you please verify some required dimensions that are missing from the revised site plan?

1. the distance of the front setback from the front property line to the building's facade
2. the dimensions for both the porch and front steps area
3. the length of the front building facade (I know that it measures 28 ft. in the back but previous plans showed a narrower front with the building expanding slightly in the rear).
4. the building's exact physical height from its foundation to the highest point of the roof
5. whether there will be a grade change that would effect how tall the building would eventually stand

If you don't have that information handy, I would really appreciate it if you would contact Milestone or HRG. I am drafting the opposition statement and so I definitely need this information for the sake of accuracy.

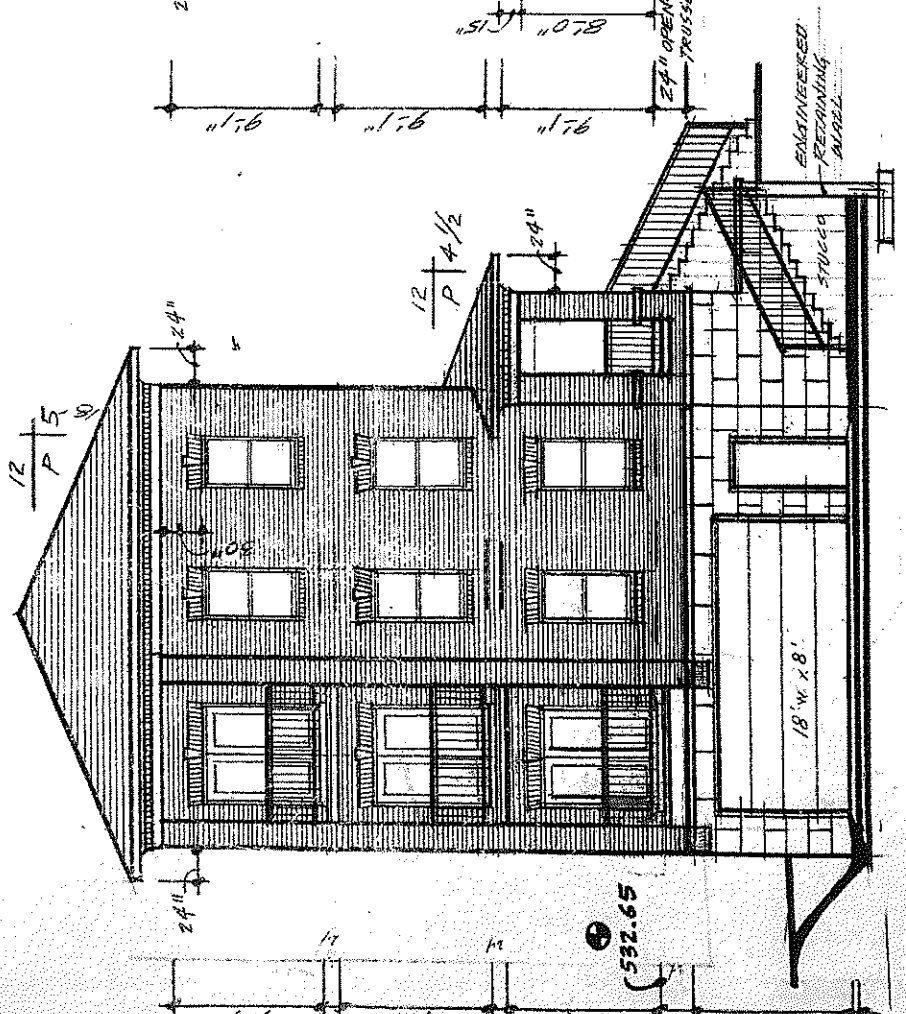
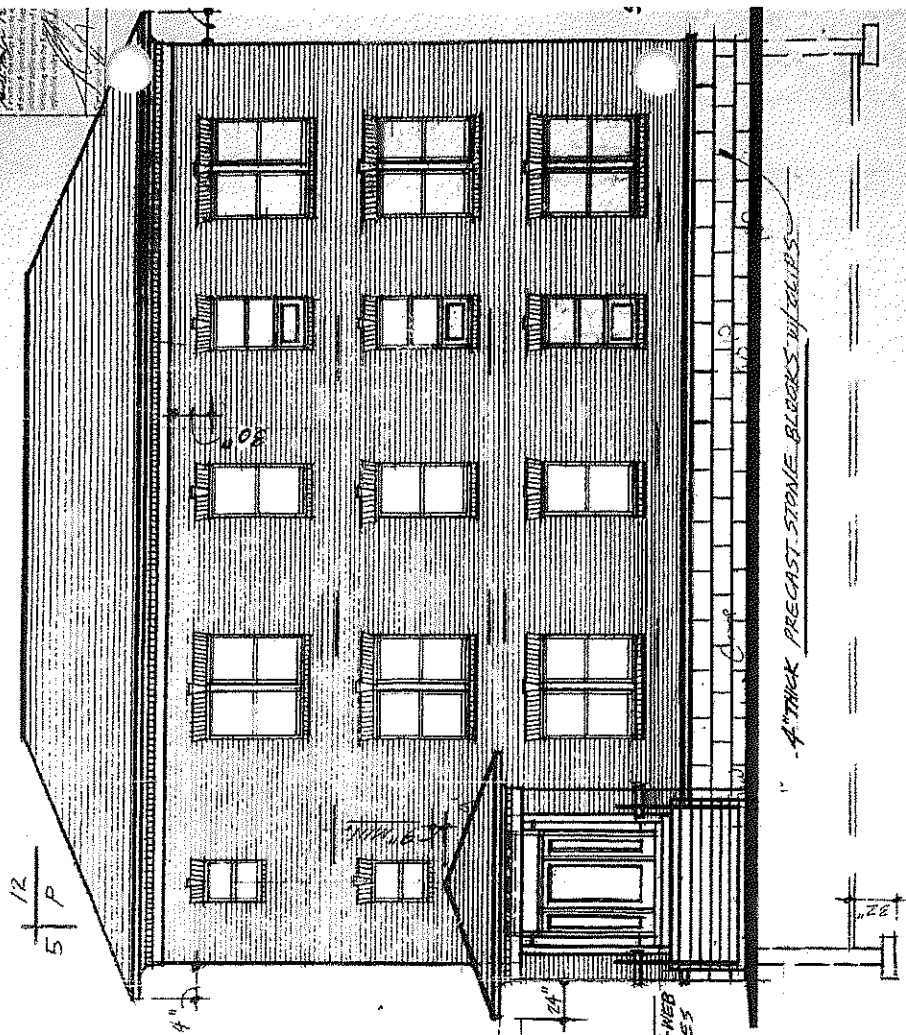
Also, could you please let me know the outcome of tomorrow's staff determinations and comments? Many of our neighbors are eager to speak at the DRC hearing and need to take off of work to attend. It'd be super helpful if I knew as soon as possible whether the hearing will go forward and when or if it'll be postponed.

Thanks very much. I hope all is well with you :)

Elizabeth Fauxpoint

DON UNDERLY
 CUSTOM HOME &
 COVERLOADER
 RESIDENTIAL
 502-89

349225
 304331
 349225



1" - 4" THICK PRECAST STONE BLOCKS w/ REINFORCING BARS

COURTYARD SIDE

FRONT ELEVATION

10-1

Reverman, Joe

From: Elizabeth Fauxpoint <efauxpoint@gmail.com>
Sent: Tuesday, June 17, 2014 11:20 AM
To: Mims, James L; Marchal, David; Reverman, Joe; stpinlou@aol.com
Subject: Highland Restoration Group's recent submissions re: 1505 Rosewood Ave.
Attachments: Analysis of HRG Revised Plan 2014.docx

Dear Dr. Mims,

As you may know, HRG recently submitted a revised Site Plan, Parking Study, two parking waiver applications, and a third waiver to reduce the Land Buffer Area from 10 ft. to 5 ft. We have carefully reviewed these submissions. They are wholly inadequate and contain numerous omissions, inaccuracies, and misleading information. Please review the attached Word document entitled Analysis of HRG Revised Plan 2014, which provides a detailed overview of the many discrepancies.

We understand that staff reports and comments are due tomorrow, so we want to ensure that our concerns and objections are brought to the staffs' attention and included in the case record.

Please note that we are currently preparing an Opposition Statement, which will include a much more detailed analysis and supporting documentation. In the meantime, we are confident that the enclosed analysis clearly demonstrates that HRG's submissions are in no way ready for a DRC hearing. We assume that the hearing will be postponed and that HRG will be required to address the deficiencies noted in the analysis and hopefully noted by planning and zoning staff as well.

We look forward to hearing from you soon as to the staff determinations and the current status of the DRC hearing.

Thanks,
Elizabeth and Daniel Fauxpoint

SUMMARY OF OMITTED, INSUFFICIENT, INACCURATE, AND MISLEADING DATA RELATED TO HRG'S SITE PLAN, WAIVER APPLICATIONS, AND PARKING STUDY

SITE PLAN

1. **Data required for parking waiver application is omitted and relevant data is inaccurate**
 - Site Plan misstates the precise nature of the first parking waiver request, which is to reduce the minimum parking requirement. Site Plan omits altogether the second parking waiver request, which is to use on-street parking spaces that are not directly adjacent or abutting the site.
 - Vicinity Map does not provide the distance from property to the nearest intersecting street.
 - Building Limit Lines do not provide front setback measurements, porch and step dimensions, or distances from proposed building to surrounding structures.
 - Data related to electric, telephone, and drainage easements is not provided.
 - Dimensions for both adjacent buildings are omitted.
 - Distance of left adjacent building to property line is specifically omitted.
 - Required side yard setback is not indicated and location of requested waiver is not highlighted in yellow.
 - Depiction of tree line in relation to front porch indicates either a gross miscalculation/misrepresentation or an undocumented revision of the precise building location and/or porch.
2. **Requirements related specifically to infill standards are not addressed**
 - Revised calculations for proposed elevation are not provided.
 - Building heights for proposed and adjacent buildings are not provided.
3. **Data related to the Private Yard Area is insufficient**
 - Building appears to have shifted back by an unknown distance, which further reduces the PYA.
 - Site Plan does not provide revised PYA calculations to determine whether or not the minimum PYA requirements has been met, which is extremely relevant to the LBA reduction request as well as the overall development plan.
 - Notation on Site Plan incorrectly refers to an approved PYA waiver instead of variance and lacks the requisite specificity provided on previous site plans.
 - Site Plan does not indicate the walkway material (concrete or brick) between the proposed and existing buildings.

WAIVER APPLICATION TO REDUCE THE MINIMUM PARKING REQUIREMENT

1. **Information required for parking waiver application is incomplete**
 - Land Development Reports and deeds for **all properties** (including the 153 adjoining property owners identified in Parking Study) are not included in the submittal and/or case file.
 - Development proposals related specifically to this Rosewood property are omitted from the application, including: BOZA Case No. ZV-31-58 variance request and appeal; Jefferson Circuit Court Case No. 73753 and related appeal by Building Inspector; Planning Commission Docket No. 9-62-67; Planning Commission Docket No. 9-94-69 and related Ordinance No. 63 Series 1971; as well as HRG's own 2005 waiver related to its previous curb cut request.
 - Applicant's answer to #3 is simply N/A, which the Criteria specifically deems as NOT ACCEPTABLE.

PARKING STUDY

1. Applicant gives no indication of who specifically conducted the study, offers no signature to attest to the veracity of its results, and provides no certification by a qualified consultant or engineer.
2. Results of the Saturday, May 17th counts of available parking spaces are highly questionable in light of the strong attendance of the Bardstown Bound event that took place the day, which greatly reduced available parking in the

immediate area. The Highlands Beer Festival event at the Mid City Mall in particular caused significant congestion and insufficient parking specifically on Rosewood throughout the entire day.

3. Results are muddled by irrelevant data that is not required in a Parking Study, such as the number of garage spaces and car ports, which also contributes to the misleading impression of a parking surplus. Results are further muddled by the failure to identify duplexes and additional multi-family dwellings that were included in the study's vicinity.
4. Instructions provided by Codes & Regulations to applicant related to the 2 hour daily count in 15 minute intervals is in direct contradiction of the LDC requirement to conduct a 9 hour count in 1 hour intervals.
5. Study fails to follow Codes & Regulations instructions to provide a Tuesday count between the hours of 6:00 a.m. and 8:00 a.m. - a peak time interval on a peak day - and instead provides counts for evening hours.
6. The established "vicinity" of the study limits from Baxter to Castlewood is arbitrarily based upon the poorly defined and entirely subjective standard of a "walking distance of 1,000 feet" rather than a rational and useful analysis of the specific area in question, which would show a consistent concentration of parked cars within its general vicinity.
7. City Planners typically apply this "Walking Distance" standard to scenarios such as the distance of a residence to public transit, an office, a school, or retail areas. It is completely inappropriate to apply such a standard to the distance between a resident's home and their car within a Traditional Neighborhood residential street.
8. Extending the study limits to Castlewood Ave. by such an unreasonable distance for a mere two parking spaces significantly skews the results in the applicant's favor by greatly increasing the potential parking spaces. This gives the false impression that there is much more available parking than what actually exists within the **relevant** vicinity.

WAIVER APPLICATION TO USE ON-STREET PARKING SPACES NOT DIRECTLY ADJACENT OR ABUTTING SITE

1. The vast majority of the 45 "surplus" parking spaces are actually concentrated in one specific area from Castlewood to 1433 Rosewood. The study's extension to Castlewood Ave. presumes that it is somehow reasonable to expect residents to park **as far as 865 feet** from their homes. This presumption fails to account for factors unique to this site that pose serious safety hazards. There is no realistic scenario in which Rosewood residents would or should be expected to park within this area, which should be completely excluded from the parking study limit for the following reasons:
 - This entire distance is actually a significantly long and steep hill that would preclude young children, the elderly, the disabled and injured, or anyone in generally poor health from walking comfortably up the hill.
 - Any resident carrying children, groceries, or any burdensome or heavy thing would have serious difficulties walking up the hill in even moderate weather, let alone in rain, ice, or snow.
 - There is no sidewalk on either side of Rosewood that would help buffer pedestrians from dangerous traffic. Rosewood is a high traffic route between Barret and Baxter, and irresponsible drivers speed through Rosewood with an alarming frequency.
 - Public safety would be further jeopardized because the hill itself and the parked cars on either side of Rosewood serve as a visual obstruction to both drivers and pedestrians.

WAIVER APPLICATION TO REDUCE THE PERIMETER LBA FROM 10 FT. TO 5 FT.

1. Since the Applicant requests a reduction of the LBA rather than removing it entirely, the appropriate request should be for a variance that would be heard by BOZA.
2. Since the Applicant's Site Plan is insufficient, a building rendering is extremely applicable and relevant to the LBA waiver request. Applicant's claim that PDS staff advised to "leave the building where shown" rather than "to reduce the interior open space" is a misleading statement that implies some choice in the matter. In fact, the building cannot shift any further to the right because there is not enough land and the building would encroach on the required 20 foot distance between the two buildings.

3. Applicant's numerous references to previously approved plans is misleading and nonsensical since the Applicant is fully aware that such plans were so irreparably non-compliant with Code that the building permits were revoked and HRG was instructed to go back to the drawing board in terms of the building design and Site Plan. The only relevant point is that the LBA encroachment is a result of this land being too small to build a multi-family complex, and is nothing more than another non-compliant plan element that simply fell through the cracks.
4. Applicant must first provide a Landscaping Plan before any LBA reduction is considered since the two are inextricably linked, and because the Applicant should substantiate his claim that the "same amount of landscaping will be provided in the LBA as if the full LBA distance was provided" by offering a specific plan to do so.
5. An LBA reduction necessitates a corresponding Planting Density Multiplier of 2, which the applicant has not addressed and would require an additional waiver if this requirement is not met.
6. An LBA reduction **further** necessitates a Category 2 density requirement that must be **doubled**, which the applicant has not addressed and would also require an additional waiver.
7. The tree canopy calculation includes credit for a non-existent tree to the front right of property.

Reverman, Joe

From: Jeff DeReamer <Jeff.DeReamer@us.icapenergy.com>
Sent: Tuesday, June 10, 2014 5:31 PM
To: Reverman, Joe
Subject: Re: 1505 Rosewood

Thank you sir

Sent from my hand phone

Jeff DeReamer
859-312-7155

On Jun 10, 2014, at 4:55 PM, "Reverman, Joe" <Joe.Reverman@louisvilleky.gov> wrote:

Here is the plan submitted with the application. We can discuss further after you have had time to review.

Thank you.

Joseph Reverman, AICP
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From: Jeff DeReamer [<mailto:Jeff.DeReamer@us.icapenergy.com>]
Sent: Tuesday, June 10, 2014 4:01 PM
To: Reverman, Joe
Cc: rjdereamer@yahoo.com
Subject: 1505 Rosewood

Good afternoon Mr. Reverman....

Can you send me an update on the proposed project at 1505 Rosewood.....? I am not able to comment on the specific plans, because I have not seen the new plans.....I will send a formal response after seeing the actual plans.....Thank you....

We live next door, at 1435 Rosewood....we strongly oppose the proposed project.....

We already have trouble parking in front of our house (we do not have a garage or alley parking). The addition of probably six, maybe more, vehicles, will push our vehicles, and the current residents at 1505 Rosewood, much, much further down the already crowded street.

The construction of a three story unit will eliminate some of the tree canopy, several mature trees on the 1505 Rosewood property. Also, a number of our trees will be in jeopardy, including several extremely large, beautiful, fully mature magnolias and a mature dogwood on our property (1435 Rosewood). I already have a written report from a reputable certified arborist describing the expected root and tree damage, which could result in death (especially with the five foot variance). The trees and other ground foliage would also suffer from light deprivation with a three story unit five to ten feet from the property. The Louisville Tree Advisory Commission should be aware of the expected tree canopy impact, and the resulting green space and landscape reduction.

The unit would cut off most of the eastern sunlight to our property (1435 Rosewood), resulting in a natural light reduction. Noise and light pollution would be significant with a condominium unit built five feet (or ten feet) from our property line.

Finally, the construction of a three story condominium unit will reduce the value of our property, and I'm sure the value of the existing units at 1505 Rosewood, as well as other residences in the area. A condominium unit, that looks like a condo unit, does not fit into the existing architecture at 1505 Rosewood, the existing architecture on Rosewood Avenue, and the Tyler Park neighborhood. The existing building at 1505 Rosewood is historically significant. The construction of a condominium unit immediately next to the existing structure will negatively impact the value of the existing building.

Additionally, we oppose the increased density. The addition of three more units will bring the total to twelve units, with single family/single unit housing on both sides of 1505 Rosewood. I'm sure you have a calculation for determining population with this level of density, but if we use three people per unit, that is 36 people immediately next to our single family house. Also, this would be twelve garbage containers in the alley, in a relatively small area, plus additional items for recycle, and yard waste. We oppose this level of density immediately next to our single family residence.

When we invested in the property at 1435 Rosewood, we were not aware of the intentions to further develop the property at 1505 Rosewood, even after a detailed search, and discussions with local realtors. Unfortunately, several property owners at 1505 Rosewood were not aware as well.

This is just a brief comment, As stated before, a full formal response will be submitted after we have reviewed the new plans.

Thanking you in advance for your response.....

<image004.png>

Jeff DeReamer

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<14PARK1002_Development Plan.pdf>

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