

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.