



September 11, 2017

Chairman, Board of Adjustment

City of Austin

Re: Supplemental Documents Regarding Interpretation (LDC 25-2-475), 2005 Manana Street on Lake Austin, TX

Dear Chairman:

On behalf of the Owner of the referenced property I am presenting for the Board's consideration this written response as a supplemental document. We don't have confidence in that the "documents" provided to the Board by the Building Official per LDC 25-2-475 at this point have met all the principal truths and findings of fact for the matters under review.

While we have been working with several multi-disciplined and diverse City Staff members across three (3) separate City Divisions on this matter; it appears that only two of the three, Development Services Department (DSD) and the Watershed Protection Department (WPD) have provided the Board with documents on behalf of Building Official per LDC 25-2-475 for consideration on the appeal.

#### **OWNER/AGENT REPLY TO DSD STAFF DOCUMENTS**

*DSD Comment on the Report to Board > "I have reviewed the information provided for this site and discussed the situation with City staff and have determined that the recently constructed wall does not qualify for modification or maintenance under this section of City code. The existing wall parallel to the shoreline appears to have been constructed after January 1, 1984. Additionally, there has been no evidence provided that indicates a permit was obtained to authorize construction as required by 25-2-963(D)(7)."*

DSD staff have appeared to make their determinations with confusion about how to properly label, or define the structural elements from a code definition condition. DSD has elected to label/denote the structure as both, a recently constructed, and existing "wall".

We are unsure if the DSD staff may have failed to recognize or remember that "retaining walls" have always been allowed under code provisions. The current code LDC 25-2-1179(B) states: *A retaining wall, bulkhead, or other erosion protection device must be designed and constructed to minimize wave return and wave action in accordance with the Environmental Criteria Manual.* Source: Section 13-2-798; Ord. 990225-70; Ord. 031211-11; Ord. 20101209-075; [Ord. No. 20140626-113, Pt. 13, 7-7-14](#).

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Our site plan application and appeal application documents put forward exhibit records demonstrating that the retaining walls, bulkhead, and other erosion protection devices are, in fact, designed for the purpose of stabilizing and modifying the shoreline. Most all of these stabilizing and modifying structures can be seen on aerial photography developed on the legal Tract of Land going back to at least 1966. Here is a copy of the aerial document we provided to DSD/WPD/Austin Code for review:



DSD also suggested that “there has been no evidence provided that indicates a permit was obtained...” We have reminded DSD that there was no site plan permitting condition required for bulkheads and/or retaining walls until City Council’s passing of the 2010 ordinance. Source: Sections 13-2-820 and 13-2-823; Ord. 990225-70; Ord. 031211-11; Ord. 20060216-043; Ord. 20060309-058; Ord. 20060622-022; Ord. 20060928-022; Ord. 20100624-149; Ord. 20101209-075; Ord. 20130627-075; Ord. 20140626-113.

It should be noted that the City of Austin formally accepted all 2005 Manana Street site conditions with the March 13, 2003 issued Site Development Permit SP-03-0016D.

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The DSD Report further purported that a Land Use Commission variance may be required for alleged non-compliance with City Code section 25-8-261 (*Critical Water Quality Zone Development*). We are unclear about DSD's comment commanding that possible other approvals "may" be required from the Land Use Commission separate and apart from the actions being taking on the matters now, but we believe that the supporting documents provided August 31, 2017, along with this reply here make these review matters whole for a comprehensive review and determination from the City on these matters.

**OWNER/AGENT REPLY TO WPD STAFF DOCUMENTS**

The WPD provided a recent September 5, 2017 Report to the Board in support of DSD's interpretation, and on behalf of the Building Official per LDC 25-2-475. WPD found similar opinions with DSD about their opinions of the aerial imagery, but also failed to recognize or remember all parts of the rules regarding retaining walls and other erosion protection devices.

WPD makes note that Ord. 20140626-113 established January 1, 1984 as the so-called *grandfathering provision date for maintaining any noncomplying structures*, but fails to mention that retaining walls <4' in height have always been exempted from the site planning and permitting requirements in the Lake Austin Critical Water Quality Zone. The Report then implies that "*because of this code change, under current code no prior permit is required to repair or maintain non-complying structures that were constructed prior to 1986.*"

We are again confused with WPD's reference to any permitting condition nexus with 1986? However, we have provided the proper source references in the reply described above, affirming that 2010 would be the first promulgated code rule condition requiring site planning and permitting for bulkheads, retaining walls, and shoreline modifications.

WPD then purported that the "*wall is a boating navigation hazard...*" This comment is particularly disconcerting, and appears to be without any merit – and we are even more uncertain how this claim could be substantiated by WPD? Why would WPD all of the sudden be making this implication, considering that we have specifically worked with the City's DSD/Austin Code Inspection staff, the staff with authority on that matter? For the record, we have been formally requesting that the Building Official perform a "safety" inspection at the site for several months now and inform us quickly of the results.

Any WPD opinions regarding navigation safety on the Lake Austin Waterway are unaccredited and beyond the scope of the Division's purview. We would welcome immediate delivery of the Building Official's communications regarding any/all documented safety inspection results performed at the site; along with being provided a copy of the specific criteria developed by the Land Use Commission per Ord. 20130627-075, used for the navigation inspection at this particularly long-standing 2005 Manana Street residential property.

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The WPD Report advocates that structures built in floodplains *"should have greater scrutiny under the code..."* but failed to mention how all reviewing City staff agreed that the existing structure does in fact function incredibly well toward abating the enormous boat wave forces on Lake Austin -- and naturally stabilizes the expansive root zones of several glamorous heritage size Bald Cypress trees abutting the shoreline.

We made a special effort to sit down with all of the assigned City review staff at their request to demonstrate how the existing structures meet the technical intent of the code and criteria manuals with respect to "code compliant wave abatement", but at the meeting staff simply drew a line in the sand and said that the "wall" must be removed – declining our request to talk about how the devices may have offered exceptional shoreline erosion protection for many years.

In accordance with the City's Environmental Criteria Manual (ECM 1.13.6) and as per LDC 25-2-1174(C), the existing retaining wall(s), bulkhead(s), and other protection devices developed along the 2005 Manana Street shoreline does in fact meet the *purpose and intent of the promotion of non-vertical, stable shoreline that provides effective wave abatement as well as provide the environmental function of native riparian vegetation and shoreline geomorphology.*

Furthermore, the WPD Report positions forward separate opinions of concern for possible precedent-setting; with groundless claims that the existing shoreline stabilization methods involved on the property for several years, is now *"...claiming a space for a private individual that belongs to the public."*

We believe that the WPD Report prepared on behalf of the Building Official should be considered biased, misleading, and elusive to actual truths regarding the technical merits involved with these matters. We sense that WPD may be trying to fit all Lake Austin **grandfathering** situations into some kind of one-size-fits-all solution matrix based solely on their individual missions, feelings, and desires.

The specific circumstances of these matters have many tangible and compelling facts inherently common to this situation ONLY. We continue to pray that WPD will get over their fear of the dark soon – and will find that feeling of comfort necessary to embrace moving the Lake Austin management practices fairly and reasonably onward through the regulating landscape at all times of the day and night.



Chairman, Board of Adjustment

Supplemental Documents

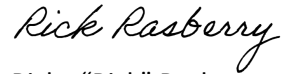
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The Austin Code Department may not have presented any documents on behalf of the Building Official per LDC 25-2-475, but there are several outstanding issues and communications pending with this Department on these matters.

Please let me know if you should have any questions or require any additional information and we look forward to receiving the Board's favorable reply of acceptance.

Very truly yours,

A handwritten signature in black ink that reads "Rick Rasberry". The signature is written in a cursive, flowing style.

Ricky "Rick" Rasberry, CESSWI

cc: Mrs. Gail Findlay

**PUBLIC HEARING INFORMATION**

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- delivering a written statement to the board or commission before or during the public hearing that generally identifies the issues of concern (*it may be delivered to the contact person listed on a notice*); or
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**Case Number:** C15-2017-0043, 2005 Manana Street

**Contact:** Leane Heldenfels, 512-974-2202, [leaneheldenfels@austintexas.gov](mailto:leaneheldenfels@austintexas.gov)

**Public Hearing:** Board of Adjustment, September 18, 2017

*LEANE SCHECH*

Your Name (please print)

1907 Manana

Your address(es) affected by this application

*Leane Schech III*

Signature

Date

Daytime Telephone: 512-415-3247

Comments:

*I am in agreement with  
Ms Fidler. I have knowledge  
of this property since 1959.  
There were no other central  
retaining walls and built back installed  
at this site before Jan 1, 1984.  
The property was then owned by  
William & May Hart.*

Comments must be returned by 10am the day of the hearing to be seen by the Board at this hearing. They may be sent via:

**Mail:** City of Austin-Development Services Department/ 1st Floor

Leane Heldenfels

P. O. Box 1088

Austin, TX 78767-1088

(Note: mailed comments must be postmarked by the Wed prior to the hearing to be received timely)

**Fax:** (512) 974-6305

**Email:** [leaneheldenfels@austintexas.gov](mailto:leaneheldenfels@austintexas.gov)



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**Contact:** Leane Heldenfels, 512-974-2202, [leane.heldenfels@austintexas.gov](mailto:leane.heldenfels@austintexas.gov)  
**Public Hearing:** Board of Adjustment, September 18, 2017

Stephen Yackman  
 Your Name (please print)

☒ I am in favor  
☐ I object

2005 Manana + 2012 Manana

Your address(es) affected by this application

Leane Heldenfels 9/11/17  
 Signature Date

Daytime Telephone: 847-530-9010

Comments: I think that restoration of the wave  
breaking wall is a great idea. My brother-in-law  
used to live next door and I know the area  
well. It should be restored. The Her  
neighbor at 2007 has a history of being  
completely unreasonable and hypocritical. Thank  
you for your time.

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 Leane Heldenfels  
 P. O. Box 1088  
 Austin, TX 78767-1088

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**Public Hearing: Board of Adjustment, September 18, 2017**

MARK MATIAS

Your Name (please print)

2001 MANANA ST.

Your address(es) affected by this application

Leane Heldenfels

Signature

Date

9.13.17

Daytime Telephone: 512 327 0512

Comments: I AM A REAL ESTATE BROKER AND THE PROPERTY MANAGE FOR 2001 MANANA, NEXT DOOR TO THE SUBJECT PROPERTY. I AM WAITING IN BEHALF OF BOB ESTES, THE OWNER. HE IS CURRENTLY OUT OF THE COUNTRY BUT HAS ASKED THAT I EXPRESS HIS SUPPORT FOR THE WORK TO BE DONE BY GAIL FINOLAY

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Public Hearing: Board of Adjustment, September 18, 2017

William A. Buchholz

Your Name (please print)

1905 Manana St.

Your address(es) affected by this application

Signature

Signature

Daytime Telephone:

512-285-0916

Date

9/13/12

Comments:

Her wall has been here for years. She should be allowed to repair it to prevent erosion.

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**Public Hearing: Board of Adjustment, September 18, 2017**

☒ I am in favor

☐ I object

Your Name (please print)

Your address(es) affected by this application

Signature

Date

Daytime Telephone:

Comments:

I have lived on the lake for 21 years and I have no problem with the change and construction of this repair to the retaining wall.

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September 13, 2017

City of Austin – Development Services Dept./ 1<sup>st</sup> Floor

**Contact: Leane Heldenfels (512) 974-2202**

Fax: (512) 974-6305

Email: [leana.heldenfels@austintexas.gov](mailto:leana.heldenfels@austintexas.gov)

**Case Number: C15-2017-0043, 2005 Manana Street**

**Public Hearing: Board of Adjustments, September 18, 2017**

Dear Ms. Heldenfels,

We are writing to express our support in favor of the applicant in the case listed above. We believe that the property owner, our neighbor Gail Findlay, is basically attempting to restore a shoreline system that has worked well during the years that we have resided in this neighborhood, but which has now deteriorated. We believe that a variance deserves to be permitted on the basis of grandfathering, and because this project preserves the shoreline, which is an issue of importance to all of us along Lake Austin.

Property Owner Signature: Sori Trenasty  
 Printed Name: LORI TRENASTY  
 Address: 2009 MANANA STREET  
 Resident since: 2001

Property Owner Signature: William A. Rugh  
 Printed Name: William A. Rugh  
 Address: 1905 Manana St  
 Resident since: 2004

Property Owner Signature: William A. Rugh  
 Printed Name: William A. Rugh  
 Address: 1905 Manana St  
 Resident since: 2004

Property Owner Signature: Kristina Wilkins  
 Printed Name: 2465 Pearce Rd.  
 Address: Kristina Wilkins  
 Resident since: 2005

Property Owner Signature: Dawnette Hodge  
 Printed Name: Dawnette Hodge  
 Address: 2307 Manana St  
 Resident since: 1999



(2)

September 13, 2017

City of Austin – Development Services Dept./ 1<sup>st</sup> Floor**Contact: Leane Heldenfels (512) 974-2202**

Fax: (512) 974-6305

Email: [leane.heldenfels@austintexas.gov](mailto:leane.heldenfels@austintexas.gov)**Case Number: C15-2017-0043, 2005 Manana Street****Public Hearing: Board of Adjustments, September 18, 2017**

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Property Owner Signature: Printed Name: Kip RichmondAddress: 2303 MananaResident since: 2009Property Owner Signature: Printed Name: Sheryl R. MillerAddress: 2305 MANANA ST.Resident since: 1995Property Owner Signature: Printed Name: David Kirk MillerAddress: 2305 MANANA STResident since: 1995Property Owner Signature: Printed Name: Deanne BreedloveAddress: 1709 Manana StreetResident since: 1993Property Owner Signature: Printed Name: MARYANNE CUNNINGHAMAddress: 1603 Manana StResident since: 2015

(2)

September 13, 2017

City of Austin – Development Services Dept./ 1<sup>st</sup> Floor**Contact: Leane Heldenfels (512) 974-2202**

Fax: (512) 974-6305

Email: [leana.heldenfels@austintexas.gov](mailto:leana.heldenfels@austintexas.gov)**Case Number: C15-2017-0043, 2005 Manana Street****Public Hearing: Board of Adjustments, September 18, 2017**

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EUGENE SCHUCH III

Your Name (please print)

☒ I am in favor  
☐ I object

1907 Manana

Your address(es) affected by this application

EP Schuch III

Signature

9-11-17

Date

Daytime Telephone: 512-415-3247

Comments: I am in agreement with  
Ms Findley. I have knowledge  
of this property since 1959.  
There were erosion control

retaining walls and bulkheads installed  
at this site before Jan 1, 1984.  
The property was then owned by  
William & Mary Hart.

Comments must be returned by 10am the day of the hearing to be seen by the Board at this hearing. They may be sent via:

**Mail:** City of Austin-Development Services Department/ 1st Floor  
Leane Heldenfels

P. O. Box 1088

Austin, TX 78767-1088

(Note: mailed comments must be postmarked by the Wed prior to the hearing to be received timely)

(512) 974-6205