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May 17, 2023

Abdul Patel, c/o Kevin Childs, Esq. *via email*
248 Addie Roy Road, suite B204
Austin, TX 78746

Re: Wickersham and Oltorf Project

Dear Kevin:

I am writing on behalf of the Monaco community association in follow up to our zoom meeting and in reply to your client's concept plan proposal. The association appreciate the revised plan but is not amenable to the proposal.

As we discussed on the phone, by far the largest objection is the massive amounts of fill, leaving Monaco in a "hole", looking up at looming retaining walls and buildings. The proposed plan still requires a variance from the permitting authorities for massive amounts of cut and fill, and will seriously detract from Monaco homeowners' property enjoyment, light, and property values, among other things.

We respectfully disagree with the assertion in your client's variance request that such a large amount of fill, more than 21' of fill in many places, is "necessary for ADA", "necessary to allow a reasonable use of the property" or that the plans "made every effort to minimize cuts and fills on the site." Prior plans, including one submitted to the City for approval in 2002 but never constructed, were designed under ADA, and asked for no cut and fill variance. In these 2002 plans, the application noted "site grading to remain approximately the same."

There are many designs for development of Mr. Patel's property that could comply with ADA and actually minimize cuts and fills. One suggestion is attached. My clients are not trying to tell Mr. Patel what to build, but they are asserting their understandable objection to such massive amounts of earth piled up adjacent to the homes they live in and the yards they and their children and animals relax and play in. Mr. Patel's plans ask owners in the association to effectively look at this (below) – a wall very much like this *plus* a large building on top of it. Mr. Patel is wanting to build a wall 22' tall, and put an 18' building on top of it, causing the adjacent homeowners from their back yard to look up at 40' of building and wall.

This wall on Bee Caves Road is similar to the scale that Mr. Patel proposes to build. Counting all terraces this wall is approximately 21' tall – equivalent to or smaller than the wall Mr. Patel proposes to build. So the Monaco neighbors will be looking at this, *plus* 18' more in the form of the building on top of it:



Mr. Patel's plans were pretty clearly designed to maximize usable square footage and to build the property high up for increased visibility and enhanced view from the gravel area. My client respectfully submits that it is not their responsibility to live underneath large retaining walls and towering buildings so that your client can maximize parking, access, views and visibility. Your client purchased land that is on a sloped grade. *The onus is not on neighbors to help Mr. Patel maximize his profit with a variance that puts them in a hole looking up at walls and buildings, affecting their light, their property values, compromising their safety with potential wall collapses (the wall on Bee Cave Rd. in the above example has collapsed twice), rather than looking at a development that respects the contour of the land and that is more in keeping with existing grade and for which either a variance would not be required or minimal variance (far less than the 21' + requested) would be required.*

Monaco appreciates Mr. Patel's offer to reduce the height from the level of Monaco's ground floor by 56% from 39' to 22' by moving a building. The wall height proposed has not changed however and this is a primary objection, as has been made known, but which does not seem to have "taken", with Mr. Wittliff each time the parties have spoken. A 22' wall still represents vastly more height/fill than is allowed without a variance, and Monaco continues to object to the variance and the revised concept on this basis. The Monaco neighbors should not have to live in a hole, looking up at a towering retaining wall, so a commercial owner who bought a sloped lot can create a towering flat lot with enhanced visibility. Under the proposed plan, even from the second story Monaco units, the unit owners standing on their balcony would be looking at the side of the 22' tall retaining wall. The below picture was taken standing on a second story balcony. The unit owner under the proposed plan would be staring directly at the top portion of the retaining wall.



Monaco's suggestion is as follows, and involves creating a development more harmonious and organic with the land that does require massive amounts of cut and fill that will put Monaco residents in a hole, requiring owners on both stories to look directly and only at a towering retaining wall:

1. Eliminate the immediate access points adjacent to Wickersham as proposed and slope the driveway from Wickersham at a grade near 9% to reduce the height of walls along the HOA property line as shown on the attached marked up exhibit. Have parking along the joint property line to provide the required parking for the development, with a short fence/wall (5-6') for mutual privacy.
2. The proposed grading concept will lower the pond and site significantly from what Mr. Patel has proposed, which will reduce the height of the walls.
3. The HOA is amenable to and would far prefer that Mr. Patel pipe the pond outfall between its buildings to minimize drainage concerns and impact to adjacent building. Under the proposed plan the outfall will spill over into HOA property and create runoff over their land and between the buildings.

Below is a photo of a similar concept at a center in Lakeway, Texas, built on a sloped grade and respectful of the grade. The Wickersham entrance could for example be designed like akin to this entrance:



Monaco also objects to the project because of title issues previously discussed. We suggest that first priority is working together to get the entire Lot 4 replatted so that both parties own legal tracts. After that is complete we are happy to review new plans. Or if Mr. Patel would like to propose a new concept plan in the meantime, my clients are amenable reviewing and providing feedback for that as well.

Thank you.

NIEMANN & HEYER, L.L.P.

By 
Connie N. Heyer

Attachments: sample concept plan