October 14, 2008

Dear Council Members,

My name is Tiffany Russell and I am neighbor to 328 Heartwood Drive. I was present at the last meeting speaking against any variances for the subject property. I apologize now that I am unable to make the meeting on October 28, 2008. Please, however, do not take this as a disregard for the importance of the meeting, I am not any less worried about the direct impact that the wall and fill have on my property but also all the properties located upstream.

The applications for variances are being applied for in pieces and real issues are not being addressed appropriately. I urge the panel to take time to understand the impact of this wall and fill. Any adverse effect in flood water is detrimental to other properties. A couple of inches in rise may seem insignificant to anyone not being affected by the flood water, but it can mean all the difference to our homes being flooded. Currently I pay $772.00 per year in flood insurance and each year the insurance rate goes up. To my knowledge, FEMA regulates the amount of insurance that each property must have by the levels of floodplain that they are located in. It's my opinion that the rise in insurance and revisions in the floodplain maps are a direct indication that the floodplain in our neighborhood is a serious issue to FEMA.

I am also of the opinion that the City of Austin would not have allowed the construction of the retainer wall with fill had they had a clear understanding of the project and of the obstruction of water flow and its impact beforehand. Allowing people to apply for variances after a reprimand sends a clear message that homeowners can apply for and do questionable projects without having to do proper fact finding beforehand.

I have included information that may be useful in trying to understand the situation at hand. You will notice that I have attached a previous letter written to Chairman Fuentes and other board members for the Board of adjustment in 2007. I believe this letter, with its attachments, will give you the proper history needed to resolve this matter sooner rather than later.

Again, I apologize that I cannot attend this very important meeting, but want to assure you that I take very seriously this wall and its impact on our neighborhood.

Thank you for your time and for reviewing the information that I have provided.

Tiffany Russell
330 Heartwood Drive

Dear Chairman Fuentes and Members of the Board:

I am the owner of the residence located at 330 Heartwood Drive, Austin, Texas 78745 ("330 Heartwood"). My residence is located to the west of the residence located at 328 Heartwood Drive ("328 Heartwood") owned by Mr. Rubin Rodriguez, who requesting a variance for a fence over six feet in height. The enclosed package details the detrimental impact of the "fence" and the multiple violations the have occurred in its construction. This "fence" is truly a retaining wall which holds approximately 10 feet of fill, all of which has been constructed in the floodplain without permits or variances. Please review this package and contact me with any questions.

As way of background, Community of Fairview is a subdivision just south of the Williamson Creek that was platted in July of 1968.(Please reference the attached plat map) In addition to City of Austin zoning setbacks, the lots located along Heartwood Drive were platted to have: (i) a 7.5 foot public utility easement and drainage easement running along the rear of the lots, and (ii) a 5 foot surface drainage easement reserved along each side the lots. (Please reference the recorded document in Vol. 3654,Page 224-of the Real Property Records for 328 Heartwood and attached surveys for both 328 and 330 Heartwood). The survey submitted for 328 Heartwood is a boundary survey (not a title survey) and therefore does not detail the easements. Nevertheless, based on my research and title work it appears that they are applicable. In the drainage easement previously referenced for 328 Heartwood, Section B6 specifically states that "within these easements, no structure, planting or other material shall be placed or PERMITTED to remain which may change the direction of flow in the drainage channels or swales in the easements or which may obstruct or retard the flow of the water through the drainage channels or swales in the easements." Heartwood Drive backs to the creek and is located in a floodplain created by Williamson Creek. Section 25-7-3 of the Code of the City of Austin requires that any homeowner that lives in a flood plain "shall keep the waterway free from an obstruction that is not authorized by a site plan," and there shall be no adverse impact to others by obstructing the existing waterway or by placing fill in the floodplain. Please refer to photo #1; you will see that in the retaining wall is really utilized to hold a massive amount of fill. Based on discussions with City staff, they have not yet seen the plans that have been submitted to the Board, and are therefore unaware of the amount of fill used by the property.

In 2005 when Mr. Rodriguez began construction, I informed him that this would significantly increase the chances of flooding for all of the neighbors to the west of his property. Please refer to photos #2 through #4. In particular, photo #4 was taken after <u>one</u> night of rain. You will see that the water is backing into my yard and being dammed by the retaining wall.

million to $17.9 million). At this time the existing FEMA floodplain map shows that both 328 and 330 Heartwood are located in the 100 year floodplain. As you can see based on the attached map, the proposed FEMA map shows that the proposed floodplain will encompass even more homes in the area.

I ask that you review the violations that I have accounted for through the past two years as well as the enormous impact on the environment and our safety. Please reject this variance and have this wall taken down. Based on my discussions with the environmental dept., City staff is doing further research on the potential environmental violation. This wall has ruined my quality of life, the resale value of my home, and it puts all of the neighbors in danger.

Thank you for your time and consideration in this matter.

Sincerely,

Tiffany Russell
Owner of 330 Heartwood

I have accounted for timelines and all information given, based on the research done through the past two years. Please verify for accuracy