

Lt. Col. John Andrew and Dr. Kimberly Wells
442 Ontario St.
Shreveport, LA 71106
July 15, 2013

RECEIVED

Ron Norwood, P.E.
City Engineer
Suite 300
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Shreveport, LA 71101
318-673-6000

JUL 16 2013

SHREVEPORT CITY COUNCIL

Mr. Norwood:

We are writing to formally request a variance to the "apparent right-of-way encroachment along the north side of Ontario Street" at our address, noted above. Your letter, dated July 9, 2013, requests that we "remove the pond from the right of way" or file for City Council permission for an encroachment permit. This letter will thus list, in detail, the reasons why an encroachment permit should be granted and will therefore also formally file for said encroachment permit.

1. **The encroachment is a pond** (as stated twice in your initial request letter of July 9). As a pond, it is a water garden, and/or landscaping, and neither requires a permit. Landscaping regularly encroaches upon easements throughout the city. Our water garden/landscaping should not be singled out, and in fact, is significantly smaller from other, unregulated water features in town. (See attachment).

- a. Ponds are considered landscaping and landscaping does not require permits, and landscaping is regularly allowed to encroach upon the city easement. Nor are fences required around landscaping features. However, we would be willing to put up a fence if that would fix the concerns over the pond's safety. We will ask for a permit for said fence as well as an encroachment permit if necessary. John spoke with Mr. Norwood on July 12, about this issue. Mr. Norwood mentioned that we did not have a permit for the pond and that if we had applied for one, it would have been denied because Mr. Norwood felt it was a safety hazard. John asked if, given the alarm system we have purchased, plus a fence installation, the City would allow us to keep the pond. The request was denied. If the issue is about safety, we would like to be given the chance to make the pond as safe as it can be rather than immediate removal.

- b. What is a pond? Ponds are generally defined as "standing water, which provides habitat for wetland plants and animals" that is under 20 acres and shallow enough that light penetrates to the bottom. A pond also is affected by seasonal temperature changes—i.e., it can freeze over in cold weather,

or reach high temperatures throughout the summer because of its shallow nature. Our pond contains water plants, tadpoles, dragonflies, and most importantly, fish. All of the above conditions make it a pond, and thus part of our landscaping.

- c. How deep is it? The pond's majority of the pond is not much over 1.2 feet. At the shallow end, there is a gradually sloping "beach" and the water level is somewhere between 4 and 10 inches deep. At its deepest it is approximately 2 feet (27 inches) deep. The pond's depth and width are required for the expensive fish to more successfully avoid predators. The pond is approximately 9000 gallons of water or less, depending on rain levels.
- d. What is the equipment making it an animal/plant habitat? It has an Atlantic Gardens "Big Bahama" water filter waterfall and a "Pondbuilder Crystal Falls" skimmer that serve as a biological filtration system, allowing the water to move and keep it from becoming stagnant. This filter system is in order to be certain that the pond does not harbor mosquitoes. This filter system also assures that it remains a healthy habitat for the environment's fish and plants. The liner is made of EDPM pond liner with a Geotexture underlayment layer.

2. We further request to be granted the variance because **the pond does not actually meet the legal liability definition of an "attractive nuisance,"** which is the justification given for considering the encroachment of our private property as a public nuisance.

- a. An attractive nuisance must meet ALL of the following conditions:
 - i. The landowner knows (or should know) that children are likely to trespass on the property.
 - ii. The condition on the property has the potential to cause death or serious bodily harm to children.
 - iii. The children involved are too young or inexperienced to understand the risk presented by the condition.
 - iv. The benefit of maintaining the condition or the cost required to remedy the condition is minimal compared with the risk to children.
 - v. The landowner fails to take reasonable measures to eliminate the danger posed by the condition.

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There are a number of reasons our pond does not meet the above requirements to be considered a "nuisance" and danger. The first is that the children in our neighborhood who are under the age of four, who could face the potential for death or serious bodily harm, are, at a minimum, more than approximately 200 or more feet away from the pond, and would have to be unsupervised for long periods of time before encountering the pond. Young children are unlikely to trespass on the property (i). The significant majority of children in the neighborhood are old enough to understand the pond as a risk and thus avoid getting in (ii). Any child who is likely to get into the pond is also old enough to get out. Any child old enough to walk from their home to our private property and enter the pond unsupervised would be old enough to understand and avoid the risks at climbing into the small body of water (i; iii). Given the very slight depth of the pond, a child would have to be under three years old to not be able to simply walk out of the shallow end of the pond (i, v). We took serious measures to be sure the pond was shallow enough to climb out of (v) and that there is a gradual slope/beach on one end that ensures easy egress. The deepest end of the pond is also the one closest to our front door, thus making it the most easily available within the line of sight of the property owner. Additionally, courts have frequently ruled that lakes and ponds-- even artificial ones -- are dangers that children should reasonably understand and avoid.

We have taken the additional reasonable measure of purchasing and installing a 400 foot range wireless perimeter alarm for installation in our front yard that will alert us inside the house should anyone cross into the yard when we are not outside, thus significantly reducing the danger that a child could enter the pond and suffer loss of life. The pond is also in the front yard, just off of our living room, and is very frequently in direct sight of not only the property owners, but can be seen from multiple houses on the street, all of whom would immediately come to the aid of any distressed, unattended child. We have also taken the measure of sending a letter to all neighbors on the street to warn them that the pond is here and to warn them to not let their small children be unattended on our private property, thus reducing any danger of the pond being a hidden hazard.

There are no schools or other unfamiliar child attracting elements in the neighborhood that are closer in distance than .5 miles away, thus, the risk of a child and parents unfamiliar with the danger of coming in contact with the pond is negligible. There are also no sidewalks in this neighborhood, meaning that any children would have had to walk a long distance, unattended, in the unsafe street to have gotten to our pond.

In addition, the cost of the pond to build and the difficulty to "remedy the condition" of the pond being near the right of way and/or removing it would result in considerable monetary loss for the property owners, and said cost is significant compared to the minor chance that a small child would be unsupervised long enough to get into the pond and suffer injury or death before being saved.

Also, compared to the cost of removal of the pond, the benefit to maintaining the pond is significant. Hundreds of neighbors have spoken out in support of the pond as an improvement to the neighborhood. The large amount of American Toads the pond has

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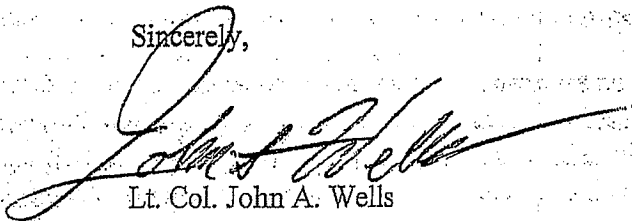
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been a habitat to seems to be resulting in a significant reduction in mosquito activity in the nearby neighborhood. Local dragonflies are also helpful in eating gnats, mayflies, flies, mosquitoes and other small flying insects. The benefit to the neighborhood children also comes when you note that we have had several visits by children with their parents, exploring the tadpoles and watching the biodiversity in the pond, allowing a simple walk down the street to become a science lesson. The delight in their eyes and the desire to research more about pond life is breathtaking to see. Whenever we, the homeowners, are outside, we go out of our way to explain the complexity of the ecosystem we have created in our yard. Numerous neighbors have remarked upon the joy they receive from the waterfall noise, and the calming presence of the "Zen-like" plants and water features. Finally, our yard and thus the neighborhood has been improved because we had difficulty, for years, trying to grow a lawn. Our yard was essentially a mass of weeds and sparse grass because of a combination of a large magnolia tree and high sunlight in the afternoon. We have not only improved the appearance of our house but reduced our need to water the lawn, thus conserving water on a daily basis.

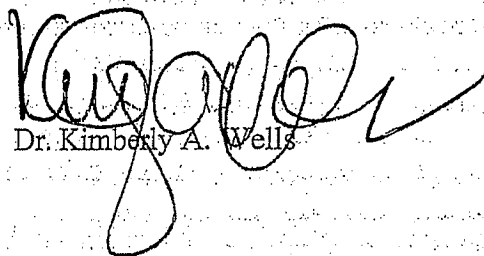
Included with this request are photographs of dozens of water features in Shreveport that are unregulated, some of which are in front yards, some of which are in side yards, some of which are in apartment complexes where any resident could access them, some are public places. We also include the lists of "fans" of our Facebook page who have come out in support of the pond. By the time a City Council meeting can be held, we expect that the number of fans will be significantly higher, as the group has gotten multiple "likes" each day it's been online.

Thank you for your consideration and your re-evaluation of the pond. It would be a significant loss for the pond to be removed, both to ourselves and our children and the neighborhood. It is within the public's self-interest to improve our cityscape. We have done so and should be supported, not penalized.

Sincerely,



Lt. Col. John A. Wells



Dr. Kimberly A. Wells