

**BOARD OF ADJUSTMENT, PANEL C  
PUBLIC HEARING MINUTES  
DALLAS CITY HALL, COUNCIL CHAMBERS  
MONDAY, OCTOBER 13, 2008**

MEMBERS PRESENT AT BRIEFING: Sharon Boyd, Panel Vice-Chair, Robert Moore, regular member, Elizabeth Wahlquist, regular member, Tony Rios, regular member and Marc Bateman, alternate member

MEMBERS ABSENT FROM BRIEFING: Joel Maten, regular member

MEMBERS PRESENT AT HEARING: Sharon Boyd, Panel Vice-Chair, Robert Moore, regular member, Elizabeth Wahlquist, regular member, Tony Rios, regular member and Marc Bateman, alternate member

MEMBERS ABSENT FROM HEARING: Joel Maten, regular member

STAFF PRESENT AT BRIEFING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

STAFF PRESENT AT HEARING: Steve Long, Board Administrator, Casey Burgess, Asst. City Attorney, Donnie Moore, Chief Planner, Kyra Blackston, Senior Planner, Todd Duerksen, Development Code Specialist, Chau Nguyen, Traffic Engineer and Trena Law, Board Secretary

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**11:05 A.M.** The Board of Adjustment staff conducted a briefing on the Board of Adjustment's **October 13, 2008** docket.  
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**1:00 P.M.**

The Chairperson stated that no action of the Board of Adjustment shall set a precedent. Each case must be decided upon its own merits and circumstances, unless otherwise indicated, each use is presumed to be a legal use. Each appeal must necessarily stand upon the facts and testimony presented before the Board of Adjustment at this public hearing, as well as the Board's inspection of the property.

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**MISCELLANEOUS ITEM NO. 1**

To approve the Board of Adjustment Panel C September 15, 2008 public hearing minutes.

**BOARD OF ADJUSTMENT ACTION:    **OCTOBER 13, 2008****

**MOTION:    **Wahlquist****

I move **approval** of the Monday, **September 15, 2008** public hearing minutes.

**SECONDED:    **Moore****

**AYES: 5–Boyd, Moore, Wahlquist, Rios, Bateman**

**NAYS: 0–**

**MOTION PASSED: 5 – 0 (unanimously)**

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**MISCELLANEOUS ITEM NO. 2**

To consider and adopt Board of Adjustment Panel C’s 2009 public hearing schedule.

**BOARD OF ADJUSTMENT ACTION:    **OCTOBER 13, 2008****

**MOTION:    **Wahlquist****

I move **approval** of the Board of Adjustment Panel C’s 2009 public hearing schedule.

**SECONDED:    **Moore****

**AYES: 5–Boyd, Moore, Wahlquist, Rios, Bateman**

**NAYS: 0–**

**MOTION PASSED: 5 – 0 (unanimously)**

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**FILE NUMBER:        BDA 078-091(K)**

**BUILDING OFFICIAL’S REPORT:**

Application of John C. Herndon for a variance to the front yard setback regulations, a special exception to the fence height regulations, and a special exception to the visibility obstruction regulations at 3435 W. Lawther Drive. This property is more fully described as Tract 6 (Old Lot 1) in City Block 4401 and is zoned R-1ac(A), which requires a front yard setback of 40 feet, limits the height of a fence in the front yard to 4 feet, and requires a 20 foot visibility triangle at driveway approaches. The applicant proposes to construct a residential dwelling accessory structure and swimming pool and provide a 10 foot front yard setback, which will require a 30 foot variance to the front yard setback regulations, to construct and maintain an 8 foot fence in a required front yard setback, which will require a 4 foot special exception to the fence regulations, and to construct

and maintain a fence in a required 20 foot visibility obstruction triangle which will require a special exception to the visibility obstruction regulations.

**LOCATION:** 3435 W. Lawther Drive

**APPLICANT:** John C. Herndon

**REQUEST:**

- A variance to the front yard setback regulation, a special exception to the fence height regulation, and a special exception to the visibility obstruction regulation.

**STAFF RECOMMENDATION (variance to front yard setback):**

Approval, subject to the following condition:

- Compliance with the submitted site plan is required.

Rationale:

- The site is different from other parcels of land in the R-1ac zoning in that it has two 40' front yard setbacks (one along Wendy Lane. and another on Lawther Dr).
- Granting this variance does not appear to be contrary to the public interest because the building footprint on the submitted site plan shows compliance with the site's 40' front yard setback along Lawther Drive.

**STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

**STAFF RECOMMENDATION (fence height special exception):**

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

**STAFF RECOMMENDATION (visibility obstruction):**

Approval

Rationale:

- The Development Services Senior Engineer submitted a comment sheet stating that “Has no objections if certain conditions are met: if Wendy Lane remains a dead-end street at this site.”

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISIBILITY OBSTRUCTION REGULATIONS:**

The Board shall grant a special exception to the requirements of the visibility obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

**GENERAL FACTS:**

- Structures on lots zoned R-1 ac(A) are required to provide a minimum front yard setback of 40 feet.
- The site is flat, rectangular in shape (119’ x 311’) and 45,053 square feet in area. The site is zoned R-7.5(A) where lots are typically 1 acre in area.
- According to DCAD, the site was developed in 2000 with a single family home that is in “very good” condition with 4,737 square feet of living space. DCAD states that there is an attached unfinished space (875 sq. ft) on the property.
- A 40’ front yard setback is required in the R-1 ac (A) zoning district. The applicant submitted a site plan indicating a “pool and deck” on the site that is located 10 feet from the front yard property line (or 30 feet into the 40 foot front yard setback).
- The applicant is requesting to maintain an 8 foot high fence and gate in the property’s Wendy Lane front yard setback, which will require a special exception of 4 feet to the fence height regulations.
- There are other fences in the immediate area.

**BACKGROUND INFORMATION:**

**Zoning:**

Site: R-1ac (A) (Single family district 1 acre)  
North: R-1ac (A) (Single family district 1 acre)  
South: R-1ac (A) (Single family district 1 acre)  
East: R-1ac (A) (Single family district 1 acre)  
West: R-1ac (A) (Single family district 1 acre)

**Land Use:**

The subject site is developed with a single-family dwelling. The areas to the south and west are developed with single family uses. The area to the north is White Rock Lake and the property to the east is developed with White Rock Lake.

**Zoning/BDA History:**

There is no case history for this site or other properties in the immediate area.

**Timeline: ]**

May 6 2008           The applicant's representative submitted an "Application to the Board of Adjustment" and related documents which have been included as part of this case report.

September 18, 2008: The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel B.

May 27 2008:        The Board of Adjustment Senior Planner contacted the applicant and shared the following information by phone and letter:

- the public hearing date and panel that will consider the application;
- the criteria or standard that the board will use in their decision to approve or deny the request;
- the September 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
- the October 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
- that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
- that the board will take action on the matter at the October public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

July 29, 2008        A comment sheet was submitted by the Chief Planner marked no comment.(attachment A)

August 25, 2008     The applicant's representative submitted additional information for the Board's consideration (see attachment B)

September 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearing. Review team members in attendance included: the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Board of Adjustment Senior

Planner, the Development Services Senior Engineer, the Building Chief Arborist, and the Assistant City Attorney to the Board.

No review comment sheets with comments were submitted in conjunction with this application.

October 1, 2008 The applicant's representative submitted a revised site plan.

October 6, 2008 The Development Services Senior Engineer submitted a review comment sheet (see attachment C).

**STAFF ANALYSIS:**

- The site is developed with a single family structure. According to DCAD the site was developed in 2000 and is in "very good" condition. The following are additional improvements reported on the site:
  1. enclosed patio (1 sq ft)
  2. detached garage (1040 sq ft)
  3. unfinished space (875 sq ft)
- The submitted site plan and elevation illustrates a fence varying in height from 4'7" to 8' in height, with columns and capstones. The applicant is requesting a special exception to fence height regulations to maintain the open metal fence, columns and gate. The submitted site plan shows a portion of the existing fence and columns are located beyond the southern property line (Wendy Lane). The Board of Adjustment is only able to grant a special exception to the fence height regulation for the portion of the fence that is located within the property line (approximately 63 linear feet)
- The site is flat, rectangular in shape (119' x 311') and 45,053 square feet in area. The site is zoned R-1ac(A) where lots are typically 1 acre in area. The lot is encumbered with two front yard setbacks one along Lawther Drive and the other on Wendy Lane.
- The applicant is requesting the Board of Adjustment vary the front yard setback standard of 40' by reducing the Wendy Lane's 40' front yard setback to 10' in conjunction with constructing and maintaining a pool, deck, and accessory structure. Staff is recommending approval for this request because this parcel of land differs from other properties with the same R-1ac(A) zoning in that it has two required front yard setbacks. The Wendy Lane front yard is being used as what would typically be considered a rear yard.
- The applicant has the burden of proof in establishing the following:
  - that granting the variance to the front yard setback regulations of 40 feet requested to construct and maintain a pool, pool deck and accessory structure that is 10 feet from the front property line of Wendy Lane is necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in

a manner commensurate with the development upon other parcels of land in districts with the same zoning classification;

- that granting the special exception to fence height regulation of four feet allowing the applicant to maintain a fence and columns that are a maximum of 8 feet in height will not adversely affect neighboring property and;
- that granting the special exception to the visibility obstruction regulations by allowing the applicant to maintain 24" x 24" columns in the 20' visibility triangle will not constitute a traffic hazard.

- Should the Board choose to grant the request for the variance to the front yard setback, by reducing the front yard setback requirement to 10 feet along Wendy Lane, staff recommends a condition of compliance with the submitted site plan.
- If the Board approves the special exception to the visibility obstruction regulation and a special exception to the fence height regulation, the condition of compliance with the submitted site plan, elevation, and sectional view document is recommended.

**BOARD OF ADJUSTMENT ACTION:      **OCTOBER 13, 2008****

**APPEARING IN FAVOR:**                      No one

**APPEARING IN OPPOSITION:**      No one

**MOTION:      **Wahlquist****

I move that the Board of Adjustment grant application **BDA 078-091** listed on the uncontested docket because it appears, from our evaluation of the property and all relevant evidence, that the application satisfies all the requirements of the Dallas Development Code or appropriate PD as applicable, and are consistent with its general purpose and intent of the Code or PD. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code.

- Compliance with the submitted revised site plan and elevation is required.
- Compliance with the submitted revised site plan, elevation, and section view is required.

**SECONDED:      **Moore****

**AYES:** 5–Boyd, Moore, Wahlquist, Rios , Bateman

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:**              BDA 078-136(K)

**BUILDING OFFICIAL'S REPORT:**

Application of Sheila Terese Sowder for a special exception to the fence height regulations at 3880 Walnut Hill Lane. This property is more fully described as Lot 22 in City Block 2/6220 and is zoned R-10(A) which limits the height of a fence in the front yard to 4 feet. The applicant proposes to construct an 8 foot fence in a required front yard setback which will require a special exception of 4 feet.

**LOCATION:** 3880 Walnut Hill Lane

**APPLICANT:** Sheila Terese Sowder

**REQUEST:**

A special exception to the fence height regulations of 4 feet is requested in conjunction with constructing and maintaining a solid fence and gate in the site's Dresden Drive 30' front yard setback.

**STAFF RECOMMENDATION:**

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

**GENERAL FACTS:**

- The subject site is located on Walnut Hill Lane. The site has two front yard setbacks one along Walnut Hill Lane and another on Dresden Drive.
- The applicant is proposing to maintain a 8' solid fence and gate along Dresden Drive frontage.
- The Dallas Development Code states that a fence may not exceed 4' above grade when located in the required front yard in all residential districts except multifamily districts. And a person shall not erect or maintain a fence in a required side yard more than nine feet above grade.

**BACKGROUND INFORMATION:**

**Zoning:**



Site: R-10 (A) (Single family district 10,000square feet)  
North: R-16(A) (Single family district 16,000 square feet) with SUP 1684  
South: R-7.5(A) (Single family district 7,500 square feet)  
East: R-10 (A) (Single family district 10,000square feet)  
West: R-10 (A) (Single family district 10,000square feet)

**Land Use:**

The subject site is being developed with a single family home. The areas to the east, south, and west are developed with single family uses. The property to the north is developed with a permitted special use

**Zoning/BDA History:**

There is no history for this or any properties in the immediate vicinity.

**Timeline:**

- August 29 2008      The applicant submitted an “Application/Appeal to the Board of Adjustment” and related documents which have been included as part of this case report.
- September 18 2008:    The Board of Adjustment Secretary assigned this case to Board of Adjustment Panel C.
- September 24 2008:    The Board of Adjustment’s Senior Planner contacted the applicant’s representative and shared the following information via telephone and letter:
- the public hearing date and panel that will consider the application;
  - the criteria and standard that the board will use in their decision to approve or deny the request;
  - the importance of evidence submitted by the applicant with regard to the board’s decision since the code states that the applicant has the burden of proof to establish the necessary facts to warrant favorable action by the board;
  - the September 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis and incorporate into the board’s docket;
  - the October 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board’s docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the recently adopted Board of Adjustment Working Rules of Procedure pertaining to “documentary evidence,” and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the October public hearing after considering the information and evidence and testimony presented to them by the applicant and all other interested parties.

September 30 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Development Services Department Current Planning Division Assistant Director, the Board of Adjustment Chief Planner, the Board Administrator, the Development Services Transportation Engineer, the City of Dallas Chief Arborist, the Board of Adjustment Senior Planner; and the Assistant City Attorney to the Board.

No review comment sheets with comments were submitted in conjunction with this application.

### **STAFF ANALYSIS:**

- A scaled site has been submitted that document the location of the proposed fence and gate relative to their proximity to the property line.
- A scaled elevation has been submitted that documents the height of the board on board fence to be 8 feet in height.
- There are no other fences visible in the immediate area.
- The scaled site plan details the following information regarding the placement and dimensions of the fence.
  - The fence along the Dresden Lane front yard;
    - 8' tall board on board fence. (83 linear feet),
    - Sliding gate (10 linear feet)
    - The fence is located 10 feet away from the Dresden Lane property line and approximately 20 feet from the curb cut.
  - The proposed fence will encroach 20 feet into the 30 foot front yard setback for Dresden Lane.
- The applicant has the burden of proof in establishing that the special exception to the fence height regulations (whereby the fence, and gate that are proposed to exceed 4' in height) will not adversely affect neighboring property.
- Granting this special exception of 4' with conditions imposed that the applicant complies with the submitted site plan, and elevation would assure that the proposed fences, columns, and gates are constructed and maintained as shown on these documents.

**BOARD OF ADJUSTMENT ACTION:     **OCTOBER 13, 2008****

**APPEARING IN FAVOR:**             Sheila Sowder, 3880 Walnut Hill Lane, Dallas, TX

**APPEARING IN OPPOSITION:**    No one

**MOTION:     **Rios****

I move that the Board of Adjustment, in Appeal No. **BDA 078-136**, on application of Sheila Terese Sowder, **grant** the request of this applicant to construct and maintain an eight-foot-high fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.

**SECONDED:     **Wahlquist****

**AYES:** 5–Boyd, Moore, Wahlquist, Rios, Bateman

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:**     BDA 078-117

**BUILDING OFFICIAL’S REPORT:**

Application of Christy Gaston Bass, represented by Robert Baldwin, for a special exception to the fence height regulations and for special exceptions to the visual obstruction regulations at 4555 Harrys Lane. This property is more fully described as Lot 5 in City Block D/5534 and is zoned R-1ac(A) which limits the height of a fence in the front yard setback to 4 feet, and requires a 20 foot visibility triangle at driveway approaches and a 45 foot visibility triangle at street intersections. The applicant proposes to construct an 8 foot 6 inch high fence in the required front yard setback which will require a 4 foot 6 inch special exception to the fence height regulations, and to locate/maintain items in required visibility triangles which will require special exceptions to the visual obstruction regulations.

**LOCATION:**             4555 Harrys Lane

**APPLICANT:**         Christy Gaston Bass  
                              Represented by Robert Baldwin

**October 13, 2008 Public Hearing Notes:**

- The applicant's representative provided testimony at the public hearing that his client would comply with the visual obstruction regulations at the site's Welch Road drive approach.

**REQUESTS:**

- The following appeals have been made in this application on a site that is currently developed with a single family home:
  1. A special exception to the fence height regulations of 4' 6" is requested in conjunction with completing and maintaining the following in the site's 40' front yard setback along Harrys Lane:
    - a 4' 6" high combination open wrought iron fence (that includes an approximately 2' high stone base) with approximately 5' high stone columns;
    - two arched 6' 7" high open wrought iron vehicular gates with 7' 6" high stone columns (that include 12" high light fixtures atop); and
    - an 8' 6" high pedestrian gate with flanking 6' – 7' 8" high curved solid stone wing walls (each at approximately 10' in length).
  2. Special exceptions to the visual obstruction regulations are requested in conjunction with completing and maintaining:
    - portions of the 4' 6" high combination open wrought iron fence with stone base in the site's four 20' visibility triangles at the two drive approaches into the site from Harrys Lane;
    - portions of (according to the applicant's representative's September 30<sup>th</sup> letter) a "small portion of the fence" located in the site's two 20' visibility triangles at the drive approach into the site from Welch Road (even though the submitted September 30<sup>th</sup> site plan and elevation show merely two approximately 8.5' high columns and one unspecified landscape material that appears in these triangles); and
    - portions of (according to the revised site plan submitted on September 30<sup>th</sup>) the 4' 6" high combination open wrought iron fence with stone base and two 5' high stone columns in the site's 45' visibility triangle at the intersection of Harrys Lane and Welch Road (even though it appears from a field visit that there are potentially landscape materials in this triangle as well).

**STAFF RECOMMENDATION (fence height special exception):**

No staff recommendation is made on this or any request for a special exception to the fence height regulations since the basis for this type of appeal is *when in the opinion of the board*, the special exception will not adversely affect neighboring property.

**STAFF RECOMMENDATION (visual obstruction special exception):**

Approval of the requests for special exceptions to maintain items in the Harrys Lane drive approach visibility triangles, subject to the following condition:

- Compliance with the submitted revised elevation/partial site plan document is required.

Rationale:

- The City's Development Services Senior Engineer recommends approval of these requests (i.e. that the 4' 6" high combination open wrought iron fence with stone base in these visibility triangles will not constitute a traffic hazard).

Denial of the requests for special exceptions to maintain items in the Harrys Lane/Welch Road intersection visibility triangle and in the Welch Road drive approach visibility triangles.

Rationale:

- The City's Development Services Senior Engineer recommends that these be denied (i.e. that the 4' 6" high combination open wrought iron fence with stone base, entry columns, and/or landscape materials in these visibility triangles will constitute a traffic hazard).

**STANDARD FOR A SPECIAL EXCEPTION TO FENCE HEIGHT REGULATIONS:**

Section 51A-4.602 of the Dallas Development Code states that the board may grant a special exception to the height requirement for fences when in the opinion of the board, the special exception will not adversely affect neighboring property.

**STANDARD FOR A SPECIAL EXCEPTION TO THE VISUAL OBSTRUCTION REGULATIONS:**

The Board shall grant a special exception to the requirements of the visual obstruction regulations when, in the opinion of the Board, the item will not constitute a traffic hazard.

**GENERAL FACTS (related to the fence height special exceptions):**

- The Dallas Development Code states that a person shall not erect or maintain a fence in a required yard more than 9' above grade, and additionally states that in all residential districts except multifamily districts, a fence may not exceed 4' above grade when located in the required front yard.  
The applicant has submitted a revised elevation/partial site plan document and a revised full site plan on September 30<sup>th</sup> indicating a proposal that would reach a maximum height of 8' 6" in the site's required 40' front yard setback on Harrys Lane.
- The following additional information was gleaned from the revised September 30<sup>th</sup> elevation/partial site plan document and full site plan:
  - The proposal appears to be approximately 190' in length parallel to Harrys Lane and approximately 40' in length perpendicular to the street on the east and west "sides" of the site in the front yard setback.
  - The proposal is located on the front property line or approximately 12' from the pavement line with recessed vehicular ingress/egress points.
- There is one single family home (with no fence in its front yard setback) that would have direct frontage to the proposal to exceed 4' in height in the required front yard setback.
- The Board Administrator conducted a field visit of the site and surrounding area and noted one other fence above four (4) feet high which appeared to be located in the

front yard setback. The noted fence is located at the southeast corner of Harrys Lane and Welch Road and is approximately 6' in height and is of open wrought iron material with no recorded board of adjustment case history.

- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter providing additional details about the request, and a revised elevation/partial site plan document and full site plan.

### **GENERAL FACTS (related to the visual obstruction special exceptions):**

- The Dallas Development Code states the following with regard to visibility triangles: A person shall not erect, place, or maintain a structure, berm, plant life or any other item on a lot if the item is:
  - in a visibility triangle as defined in the Code (45-foot visibility triangles at intersections and 20-foot visibility triangles at drive approaches); and
  - between 2.5 – 8 feet in height measured from the top of the adjacent street curb (or the grade of the portion on the street adjacent to the visibility triangle).A September 30<sup>th</sup> revised elevation/partial site plan document and full site plan have been submitted that shows portions of the 4' 6" high combination open wrought iron fence with stone base in the site's four 20' visibility triangles at the two drive approaches into the site from Harrys Lane; portions of the 4' 6" high combination open wrought iron fence with stone base and two 5' high columns in the site's 45' visibility triangle at the intersection of Harrys Lane and Welch Road; and from what appears to be shown on the submitted site plan as two 8.5' high entry columns (and unspecified landscape materials) in the site's two 20' visibility triangles at the drive approach into the site from Welch Road even though the applicant's representative's letter describes what is in these triangles to be a "small portion of the fence."
- The applicant's representative submitted additional information beyond what was submitted with the original application (see Attachment A). This information included a letter providing additional details about the request, and a revised elevation/partial site plan document and full site plan.

### **BACKGROUND INFORMATION:**

#### **Zoning:**

Site: R-1ac (A) (Single family district 1 acre)  
North: R-1ac (A) (Single family district 1 acre)  
South: R-1ac (A) (Single family district 1 acre)  
East: R-1ac (A) (Single family district 1 acre)  
West: R-1ac (A) (Single family district 1 acre)

#### **Land Use:**

The subject site is developed with a single family home. The areas to the north, east, south, and west are developed with single family uses.

## **Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

## **Timeline:**

- July 22, 2008      The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- August 14, 2008:    The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- August 14, 2008:    The Board Administrator contacted the applicant's representative and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the August 26<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the September 5<sup>th</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and, if not, may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the September public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.
- August 26, 2008:    The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the September public hearings. Review team members in attendance included: the Assistant Director of Development Services, the Board of Adjustment Chief Planner, the Building Inspection Chief Planner, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.
- Sept. 2, 2008      The applicant's representative requested that the application be postponed from Panel C's September 15<sup>th</sup> hearing to Panel C's October 13<sup>th</sup> hearing.
- Sept. 30, 2008:    The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October

public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

- October 1, 2008 The Building Inspection Development Code Specialist forwarded a revised Building Official's Report to the Board Administrator (see Attachment B).
- October 3, 2008 The Development Services Senior Engineer submitted a review comment sheet with the following comments:  
"Recommends:  
1. "Approval of the special exception to the 20-foot visibility triangles at the two (2) driveway approaches on Harrys Lane.  
2. Denial of the 45-foot visibility triangles at the intersection of Harrys Lane and Welch Road.  
3. Denial of the 20-foot visibility triangles at the driveway approach on Welch Road.  
Note: The site plan does not show a gate at this driveway on Welch Road."

**STAFF ANALYSIS (related to the fence height special exception):**

- This request focuses on completing and maintaining a 4' 6" high combination open wrought iron fence (with an approximately 2' high stone base) with approximately 5' high stone columns; two arched 6' 7" high open wrought iron vehicular gates with 7' 6" high stone columns (with 12" high light fixtures atop); and an 8' 6" high pedestrian gate flanked by 6' – 7' 8" high curved solid stone wing walls (each at approximately 10' in length) in the site's 40' front yard setback along Harrys Lane.
- A revised elevation/partial site plan document and a revised full site plan have been submitted documenting the location of the proposal relative to the front property line (on the property line) and pavement line (approximately 12' from the pavement line), the length of the proposal relative to the entire lot (about 190' long parallel to the street and approximately 40' perpendicular to the street on both sides of the site in the front yard setback), and the proposed heights and building materials.
- There is one single family home (with no fence in its front yard setback) that would have direct frontage to the proposal to exceed 4' in height in the required front yard setback.
- One other fence was noted in the general area of the subject site above four (4) feet high which appeared to be located in the front yard setback. The noted fence is located at the southeast corner of Harrys Lane and Welch Road and is approximately 6' in height and is of open wrought iron material with no recorded board of adjustment case history.
- As of October 6, 2008, no letters had been submitted to staff in support or in opposition to the proposal.



- The applicant has the burden of proof in establishing that the special exception to the fence height regulations of 4' 6" (whereby the proposal that would reach 8' 6" in height) will not adversely affect neighboring property.
- Granting this special exception of 4' 6" with a condition imposed that the applicant complies with the revised elevation/partial site plan document and revised full site plan would assure that the proposal would be completed and maintained in the location and of the heights and materials as shown on these documents.

**STAFF ANALYSIS (related to the visual obstruction special exceptions):**

- These requests focus on:
  1. completing/maintaining portions of a combination wrought iron fence with stone base (about 10' in length each) in the four 20' drive approach visibility triangles into the site from Harrys Lane;
  2. completing/maintaining portions of the same combination wrought iron fence with stone base and stone columns (about 20' in length) in the 45' intersection visibility triangle at Harrys Lane and Welch Road into the site from Harrys Lane; and
  3. completing/maintaining what is referenced in the applicant's representative's September 30<sup>th</sup> letter, a "small portion of the fence" but what appears from what is shown on the submitted revised full site plan, two 8.5' high entry columns and unspecified landscape materials in the two 20' drive approach visibility triangles into the site from Welch Road.
- The Development Services Senior Engineer submitted a review comment sheet that recommends approval of the special exception requests to maintain items in the visibility triangles at the driveway approaches on Harrys Lane, and denial of special exception requests to maintain items in the 45' visibility triangle at the Harrys Lane/Welch Road intersection and at the driveway approach on Welch Road.
- The applicant has the burden of proof in establishing the following:
  - Granting the special exceptions to the visual obstruction regulations in all seven visibility triangles (6 drive approach triangles and 1 intersection triangle) on the site will not constitute a traffic hazard.
- If these requests are granted, subject to compliance with the revised elevation/partial site plan document and full site plan, only the items shown on these plans would be "excepted" into the visibility triangles on the subject site (i.e. any other items such as but not limited to landscape materials determined to be located in any required visibility triangle that is not shown on these plans would not be "excepted" from the visual obstruction regulations).
- Note that if the board were to grant specific special exception requests and to deny others, staff would make necessary notations on any imposed plan and/or elevation to clarify the board's decision.

**BOARD OF ADJUSTMENT ACTION:      **OCTOBER 13, 2008****

APPEARING IN FAVOR:                      Robert Baldwin, 401 Exposition Ave., Dallas, TX

APPEARING IN OPPOSITION:      No one

**MOTION #1: Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 078-117**, on application of Christy Gaston Bass, represented by Robert Baldwin, **grant** the request of this applicant to construct and maintain an eight-and-a-half-foot-high fence on the property as a special exception to the height requirement for fences contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not adversely affect neighboring property. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised elevation/partial site plan document and revised full site plan is required.

**SECONDED: Wahlquist**

**AYES:** 5–Boyd, Moore, Wahlquist, Rios, Bateman

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

**MOTION #2: Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 078-117** on application of Christy Gaston Bass, represented by Robert Baldwin, **grant** the request of this applicant to construct and maintain a fence in the four drive approach visibility triangles into the site from Harrys Lane as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised elevation/partial site plan document and revised full site plan is required.

**SECONDED: Bateman**

**AYES:** 5–Boyd, Moore, Wahlquist, Rios, Bateman

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

**MOTION #3: Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 078-117** on application of Christy Gaston Bass, represented by Robert Baldwin, **deny** the Welch Road drive approach visibility obstruction special exception requested by this applicant **without** prejudice, because our evaluation of the property and the testimony shows that granting the application would constitute a traffic hazard.

**SECONDED: Bateman**

**AYES:** 4–Boyd, Moore, Rios, Bateman

**NAYS:** 1 – Wahlquist

**MOTION PASSED:** 4 – 1

**MOTION # 4: Moore**

I move that the Board of Adjustment, in Appeal No. **BDA 078-117** on application of Christy Gaston Bass, represented by Robert Baldwin, **grant** the request of this applicant to construct and maintain a fence in the 45 foot visibility triangle at the corner of Harrys Lane and Welch Road as a special exception to the visibility obstruction regulation contained in the Dallas Development Code, because our evaluation of the property and the testimony shows that this special exception will not constitute a traffic hazard. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted revised elevation/partial site plan document and revised full site plan is required.

**SECONDED: Wahlquist**

**AYES:** 5–Boyd, Moore, Wahlquist, Rios, Bateman

**NAYS:** 0–

**MOTION PASSED:** 5 – 0 (unanimously)

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**FILE NUMBER:** BDA 078-128

**BUILDING OFFICIAL’S REPORT:**

Application of David Sutherland for a variance to the front yard setback regulations at 8806 San Leandro Drive. This property is more fully described as Lot 17 in City Block 15/5242 and is zoned R-7.5(A) which requires a front yard setback of 25 feet. The applicant proposes to construct and maintain a structure and provide a 22 foot 11 inch front yard setback which will require a variance of 2 feet, 1 inch.

**LOCATION:** 8806 San Leandro Drive

**APPLICANT:** David Sutherland

### **October 13, 2008 Public Hearing Notes:**

- The applicant and owners/neighbors opposing the request submitted photographs at the public hearing of the site and surrounding area.

### **REQUEST:**

- A variance to the front yard setback regulations of 2' 1" (or 25 inches) is requested in conjunction with constructing/maintaining an approximately 16 square foot front stairway "structure" that would attach to a recently constructed 3-level single family home and be located in the site's 25' front yard setback.

### **STAFF RECOMMENDATION:**

Denial

Rationale:

- The applicant has not substantiated how a literal enforcement of the code provisions would result in unnecessary hardship; how the variance is necessary to permit development of the subject site in that it is different from other parcels of land by its restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of the R-7.5(A) zoning district; nor how the variance is not needed to relieve a self-created hardship.
- The subject site is rectangular in shape and is 160' long and 50' wide as are all other parcels of land (excluding the corner lots which are 55' in width) on the southern side of the 8800 block of San Leandro Drive. The subject site is 8,000 square feet in area - 500 square feet larger than the size of the typical lot in the R-7.5(A) zoning district at 7,500 square feet.
- The proposed front stairway structure proposed to encroach into the front yard setback is uncharacteristic of any other home observed in the blockface on the south (or same) side of the block as the subject site. Staff observed that most (if not all) other lots on the south/same side of San Leandro Drive as the subject site did not have stairs leading up to homes given that the slope of the site and these other lots goes downward/southward from the street to the alley. (Staff observed conversely that many of the lots on the *north/* opposite side of San Leandro Drive *did* have stairs leading up to the homes given how the slope of these lots went upward/northward from the street to the alley).
- The proposed stairway structure that would lead up to the front entryway of the home on the subject site and encroach into the front yard setback appears only a need given the location of and design of the recently constructed house – a house uncharacteristic of most homes observed on the block in that it has three levels, whereby the middle level (or what would appear to be the first level from the street) is raised higher from the ground than other homes on either side of the site. The newly constructed home appears to be raised higher from the ground than other homes on the south side of the blockface in order to accommodate the

first/basement level of the house – a level that can only be fully detected from the alley.

- Any hardship attributed to having to locate the requested stairway structure in the front yard setback on the subject site is self-created considering that there were no apparent physical site constraints that precluded the applicant from locating the recently constructed house on the site where a front stairway structure could have been located at/behind the 25' setback line. Lastly, it appears that the design of the recently constructed home on the site still affords that applicant the ability to locate the front stairway structure at/behind the setback line by incorporating it into the existing outdoor covered porch area.

### **STANDARD FOR A VARIANCE:**

The Dallas Development Code specifies that the board has the power to grant variances from the front yard, side yard, rear yard, lot width, lot depth, coverage, floor area ratios, height, minimum sidewalks, off-street parking or off-street loading, or landscape regulations that will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done. The variance must be necessary to permit development of a specific parcel of land which differs from other parcels of land by being of such a restrictive area, shape, or slope, that it cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same zoning classification. A variance may not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in districts with the same zoning classification.

### **GENERAL FACTS:**

- The minimum front yard setback for structures on lots zoned R-7.5(A) is 25'. The application and Building Official's Report state that a structure would encroach into the front yard setback by 25" (or 2' 1" into the 25' front yard setback). However, a site plan has been submitted that indicates that the steps appear to encroach by approximately 18" (or approximately 1' 6" into the 25' front yard setback). Elevations/sections documents have been submitted that show the stairway structure as well.
- According to calculations taken from the site plan by the Board Administrator, the proposed stairway structure has an approximately 16 square foot building footprint of which an approximately 8 square foot area is proposed to be located in the 25' front yard setback.
- The site slopes southeasterly from the street to the alley, is rectangular in shape (160' x 50') and approximately 8,000 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- DCAD states that the site is developed with the following:
  - a single family home in good condition built in 2008 with 2,637 square feet of living space.

## **BACKGROUND INFORMATION:**

### **Zoning:**

Site: R-7.5(A) (Single family district 7,500 square feet)  
North: R-7.5(A) (Single family district 7,500 square feet)  
South: R-7.5(A) (Single family district 7,500 square feet)  
East: R-7.5(A) (Single family district 7,500 square feet)  
West: R-7.5(A) (Single family district 7,500 square feet)

### **Land Use:**

The subject site is developed with a recently constructed single family home. The areas to the north, south, east, and west are developed with single family uses.

### **Zoning/BDA History:**

There has not been any recent related board or zoning cases recorded either on or in the immediate vicinity of the subject site.

### **Timeline:**

- August 22, 2008      The applicant submitted an "Application/Appeal to the Board of Adjustment" and related documents which have been included as part of this case report.
- Sept. 18, 2008:      The Board of Adjustment Secretary randomly assigned this case to Board of Adjustment Panel C.
- Sept. 18, 2008:      The Board Administrator contacted the applicant and shared the following information by phone and email:
- the public hearing date and panel that will consider the application;
  - the criteria/standard that the board will use in their decision to approve or deny the request;
  - the September 29<sup>th</sup> deadline to submit additional evidence for staff to factor into their analysis;
  - the October 3<sup>rd</sup> deadline to submit additional evidence to be incorporated into the Board's docket materials;
  - that additional evidence submitted past this date should be brought to the public hearing, should adhere to the Board of Adjustment Working Rules of Procedure pertaining to "documentary evidence," and may result in delay of action on the appeal or denial; and
  - that the board will take action on the matter at the October public hearing after considering the information/evidence and testimony presented to them by the applicant and all other interested parties.

Sept. 30, 2008: The Board of Adjustment staff review team meeting was held regarding this request and the others scheduled for the October public hearings. Review team members in attendance included: the Board of Adjustment Chief Planner, the Chief Arborist, the Board Administrator, the Development Services Senior Planner, the Development Services Senior Engineer, the Building Inspection Development Code Specialist, and the Assistant City Attorney to the Board.

No review comment sheets with comments were submitted in conjunction with this application.

### **STAFF ANALYSIS:**

- This variance request is made to add/maintain a front stairway structure that would attach to a newly constructed 3-level single family home and encroach into the 25' front yard setback by either 25" (as stated in the Building Official's Report and application) or by about 18" (as shown on the submitted site plan).
- The site plan shows that about half of the proposed approximately 16 square foot stair structure is located in the front yard setback.
- The site is similar to other lots on the south side of the 8800 block of San Leandro Drive in that it slopes southeasterly from the street to the alley, is rectangular in shape (160' x 50') and approximately 8,000 square feet in area. The site is zoned R-7.5(A) where lots are typically 7,500 square feet in area.
- The applicant has the burden of proof in establishing the following:
  - That granting the variance to the front yard setback regulations of 25" requested in conjunction with constructing/maintaining a front stairway structure that would attach to the recently constructed house with approximately 2,600 square feet of living space and be located in the 25' front yard setback will not be contrary to the public interest when, owing to special conditions, a literal enforcement of this chapter would result in unnecessary hardship, and so that the spirit of the ordinance will be observed and substantial justice done.
  - The variance is necessary to permit development of the subject site (a site that is developed with a recently constructed 3-level single family home, and a site that is like other lots on the south side of San Leandro Drive that is sloped, rectangular in shape, and approximately 8,000 square feet in area) that differs from other parcels of land by being of such a restrictive area, shape, or slope, that the subject site cannot be developed in a manner commensurate with the development upon other parcels of land in districts with the same R-7.5(A) zoning classification.
  - The variance would not be granted to relieve a self created or personal hardship, nor for financial reasons only, nor to permit any person a privilege in developing this parcel of land (the subject site) not permitted by this chapter to other parcels of land in districts with the R-7.5(A) zoning classification.
  - If the Board were to grant the front yard variance request of 25", imposing a condition whereby the applicant must comply with the submitted site plan and elevation, the structure in the front yard setback would be limited to that what is shown on this plan – which in this case is a front stairway structure that is shown

on the submitted site plan to be located as close as approximately 23' 6" from the site's front property line (or approximately 18" or 1' 6" into the site's 25' front yard setback).

**BOARD OF ADJUSTMENT ACTION:    OCTOBER 13, 2008**

APPEARING IN FAVOR:                    David Sutherland, 1657 Nob Hill Dr., Dallas, TX

APPEARING IN OPPOSITION:    Mike Schmitt, 8702 San Benito Way, Dallas, TX  
Mildred Grove, 8810 San Leandro, Dallas, TX  
Carl McFarland, 8815 San Leandro, Dallas, TX

MOTION:    **Bateman**

I move that the Board of Adjustment, in Appeal No. **BDA 078-128**, on application of David Sutherland, **grant** the two-foot-one-inch variance to the front yard setback regulations requested by this applicant because our evaluation of the property and testimony shows that the physical character of this property is such that a literal enforcement of the provisions of the Dallas Development Code, as amended, would result in unnecessary hardship to this applicant. I further move that the following condition be imposed to further the purpose and intent of the Dallas Development Code:

- Compliance with the submitted site plan and elevation is required.

SECONDED:    **Moore**

AYES: 5–Boyd, Moore, Wahlquist, Rios, Bateman

NAYS: 0–

MOTION PASSED: 5 – 0 (unanimously)

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MOTION:    Moore

I move to adjourn this meeting.

SECONDED:    **Bateman**

AYES: 5 –Boyd, Moore, Wahlquist, Rios, Bateman

NAYS: 0 - None

MOTION PASSED: 5 – 0 (Unanimously)

**2:07 P. M.** - Board Meeting adjourned for **October 13, 2008.**

\_\_\_\_\_  
CHAIRPERSON

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BOARD ADMINISTRATOR

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BOARD SECRETARY

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**Note:** For detailed information on testimony, refer to the tape retained on file in the Department of Planning and Development.