

APPLICATION NUMBER

5145

A REQUEST FOR

**SIDE YARD SETBACK AND COMBINED SIDE YARD
TOTAL SETBACK VARIANCES TO ENCLOSE A PATIO
WITHIN 2.4' OF THE SIDE PROPERTY LINE, AND
PROVIDE A TOTAL COMBINED SIDE YARD OF 12.4'; A
MINIMUM SIDE YARD SETBACK OF 7.1' AND A TOTAL
COMBINED SIDE YARD SETBACK OF 16.6' IS
REQUIRED FOR A 50' WIDE LOT IN AN R-1, SINGLE-
FAMILY RESIDENTIAL DISTRICT**

LOCATED AT

2158 DICKENS STREET

(East side of Dickens Street, 217' ± North of Osage Street)

APPLICANT/OWNER

NATHANIEL JOHNSON

BOARD OF ZONING ADJUSTMENT

DECEMBER 2002

The applicant is requesting Side Yard Setback and Combined Side Yard Total Setback Variances to enclose a patio within 2.4' of the (Southeast) side property line, and provided a total combined side yard setback of 12.4'; a minimum side yard setback of 7.1' and a total combined side yard setback of 16.6' is required for a 50-foot wide lot in an R-1, Single-Family Residential District.

The applicant states the reason for the request is due to recent improvements to an existing patio, which was cited by a Zoning Inspector as too close to the side yard property line.

The applicant was issued a Notice of Violation and a Stop Work Order on September 27th, which required compliance with setbacks, or an application to the Board of Adjustment.

This situation was brought to light by a complaint from a resident stating that an addition was being constructed close to the property line. Additionally, there were other alternatives, which should have been considered, such as seeking a building permit (which is required) prior to any construction, or scheduling a consultation with a building and/or zoning inspector.

Three of the primary concerns relating to side yard setbacks are the potential for the spread of fire from one property to another, water run-off onto adjacent properties, and the ability to properly maintain the proposed structure. Other concerns relate to privacy and adequate circulation of light and air.

In considering such applications, the Board has rarely granted side yard setback variances for less than 5 feet and in allowing a 5-foot setback, the proposed construction was typically "in-line" with the existing structure. In this instance, the side yard variance is to allow an existing patio to be covered and enclosed, which as proposed, will be 2.4' from the (Southeast) side property line. Moreover, the Board typically considers the character of the neighborhood when reviewing applications located in older areas of the city. However, this site is located in a suburban area, and as illustrated on the Vicinity Map, the area consists of larger lots which provide more than ample room for structures to comply with the setback requirements of the Zoning Ordinance.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application; and, unless the Board is presented with sufficient evidence to find that the variance will not be contrary to the public interest, and that special conditions exist such that a literal enforcement of the Ordinance will result in an unnecessary hardship. The Ordinance also states that a variance should not be approved unless the spirit and intent of the Ordinance is observed and substantial justice done to the applicant and the surrounding neighborhood.

The applicant failed to illustrate that a literal enforcement of the Zoning Ordinance would result in an unnecessary hardship. It is simply the applicant's desire to construct a roof and enclose the existing patio that is within 2.4' of a side property line. Furthermore, it should be noted that if a permit had been requested prior to the actual construction, the staff would have instructed the applicant that the roof and enclosure would violate setback requirements of the Zoning Ordinance and the permit would have been denied.

RECOMMENDATION 5145**Date: December 2, 2002**

Based on the preceding, it is recommended that this application be denied.

BOARD OF ZONING ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single family residential dwellings.

APPLICATION NUMBER 5145 DATE December 2, 2002

APPLICANT Nathaniel Johnson

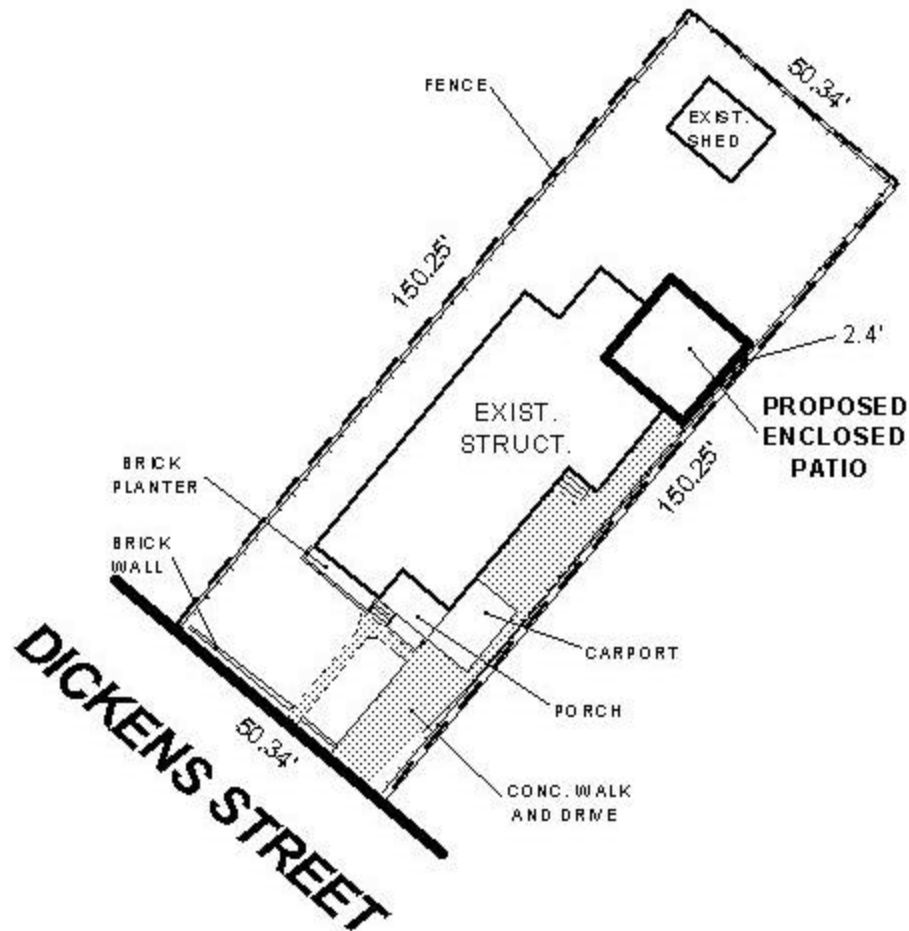
REQUEST Side Yard Setback And Combined Side Yard Total Setback Variances

LEGEND

R-1	R-2	R-3	R-B	H-B	B-1	B-2	B-3	B-4	B-5	I-1	I-2



SITE PLAN



The site is located on the East side of Dickens Street, 217' North of Osage Street.
The site plan illustrates the existing and proposed structures.

APPLICATION NUMBER 5145 DATE December 2, 2002
 APPLICANT Nathaniel Johnson
 USE/REQUEST Side Yard Setback and Combined Side Yard
Total Setback Variances.



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