

APPLICATION NUMBER

5392

A REQUEST FOR

**FENCE HEIGHT VARIANCE TO ALLOW THE
CONSTRUCTION OF A 6' WOODEN PRIVACY FENCE
ALONG A REAR PROPERTY LINE TO THE SIDE
STREET (SOUTH LAWRENCE STREET) PROPERTY
LINE; A 20' SETBACK IS REQUIRED FOR PRIVACY
FENCES OVER 3' HIGH WITHIN A SIDE STREET YARD
IN AN R-1, SINGLE-FAMILY RESIDENTIAL DISTRICT.**

LOCATED AT

501 CHARLESTON STREET

(Southwest corner of Charleston Street and South Lawrence Street)

APPLICANT/OWNER/AGENT

TILLIE V. WARMACK

BOARD OF ZONING ADJUSTMENT

JANUARY 2007

The applicant is requesting a Fence Height Variance to allow the construction of a 6' wooden privacy fence along a rear property line to the side street (South Lawrence Street) property line; a 20' setback is required for privacy fences over 3' high within a side street yard in an R-1, Single-Family Residential District.

The subject fence was installed by the applicant without a permit and this application is to allow the fence to remain at its 6' height in the required 20' side street yard setback off South Lawrence Street. Had a permit been sought by the applicant and reviewed by staff, the applicant would have been given guidance on what would and would not be allowed.

The applicant feels that the fence should be allowed to remain as built due to differences of opinion with the neighbor to the rear, facing South Lawrence Street. No factors associated with the property were mentioned in the application.

The subject property is within a neighborhood redevelopment project of the 1970's with setbacks typically meeting those of the current Zoning Ordinance. The Ordinance requires a side street yard setback of 20' for a corner lot where the site to the rear faces the side street. This setback is primarily to allow sidewalk and street visibility for vehicles exiting driveways onto the side street. In this instance, both the applicant's driveway and the rear neighbor's driveway are along South Lawrence Street. The applicant's driveway is approximately 15' from the subject fence and line-of-site visibility to sidewalk pedestrians and street traffic are concerns in this instance.

In older and historic neighborhoods where fences and walls commonly extend to or along front and/or side street property lines, the Board has typically allowed such fences and walls to be constructed with the approval of Traffic Engineering. Traffic Engineering has conducted an on-site review of the subject site and determined that the privacy fence compromises line-of-sight visibility, primarily for pedestrian traffic.

The Zoning Ordinance states that no variance shall be granted where economics are the basis for the application. Furthermore, the applicant must present 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.

Variances are not intended to be granted frequently. The applicant must clearly show the Board that the request is due to very unusual characteristics of the property and that it satisfies the variance standards. What constitutes unnecessary hardship and substantial justice is a matter to be determined from the facts and circumstances of each application.

The applicant has failed to illustrate that a literal interpretation of the Ordinance would result in an unnecessary hardship. It is simply the applicant's desire to retain an erroneously constructed fence within the required side street yard setback. The applicant should be advised that the fence be corrected where non-compliant and seek an after-the fact fence building permit.

RECOMMENDATION 5392**Date: January 8, 2007**

Based upon the preceding this application is recommended for denial.

LOCATOR MAP



APPLICATION NUMBER 5392 DATE January 8, 2007

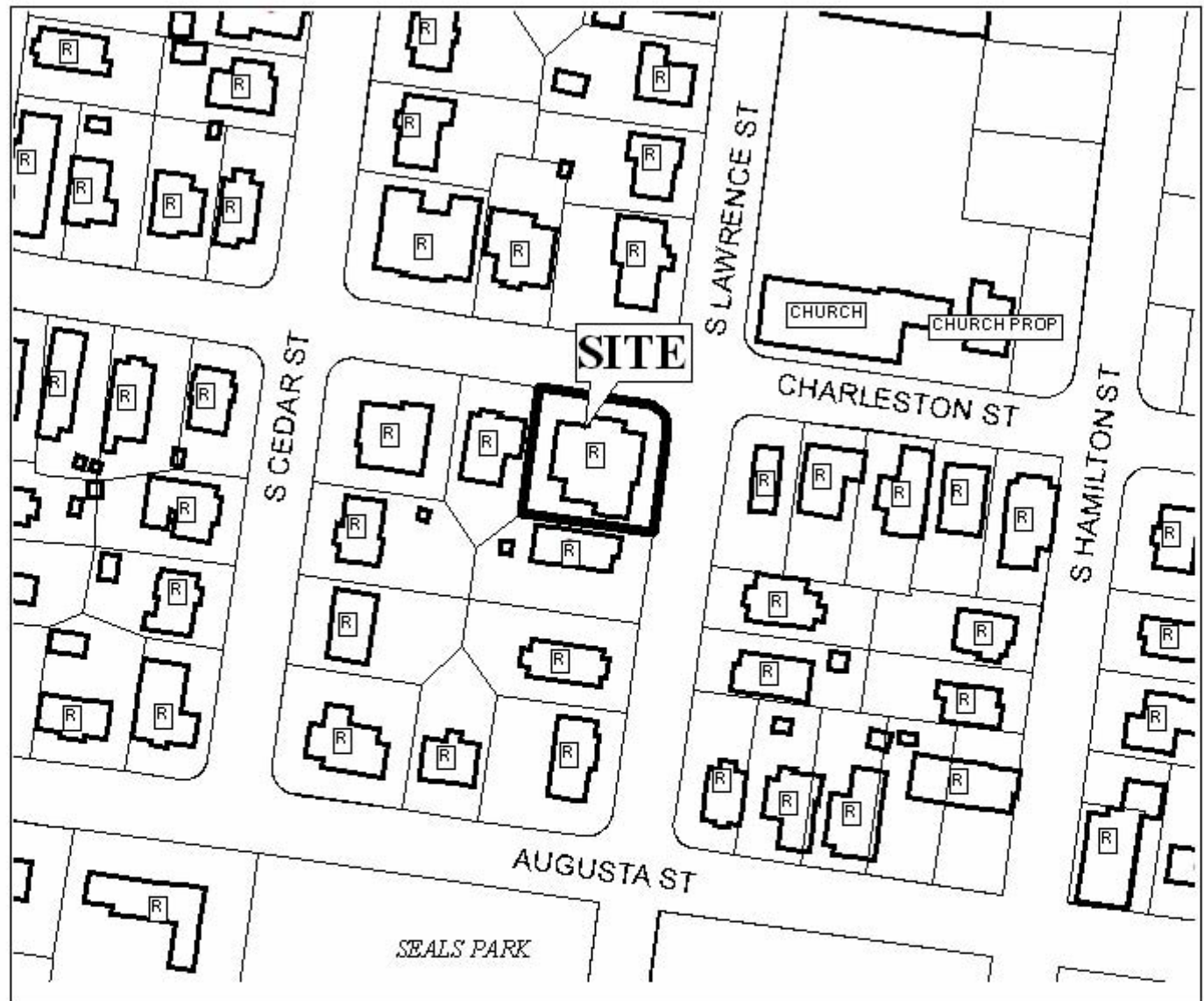
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BOARD OF ADJUSTMENT VICINITY MAP - EXISTING ZONING



The site is surrounded by single family residential units and there is a church to the northeast.

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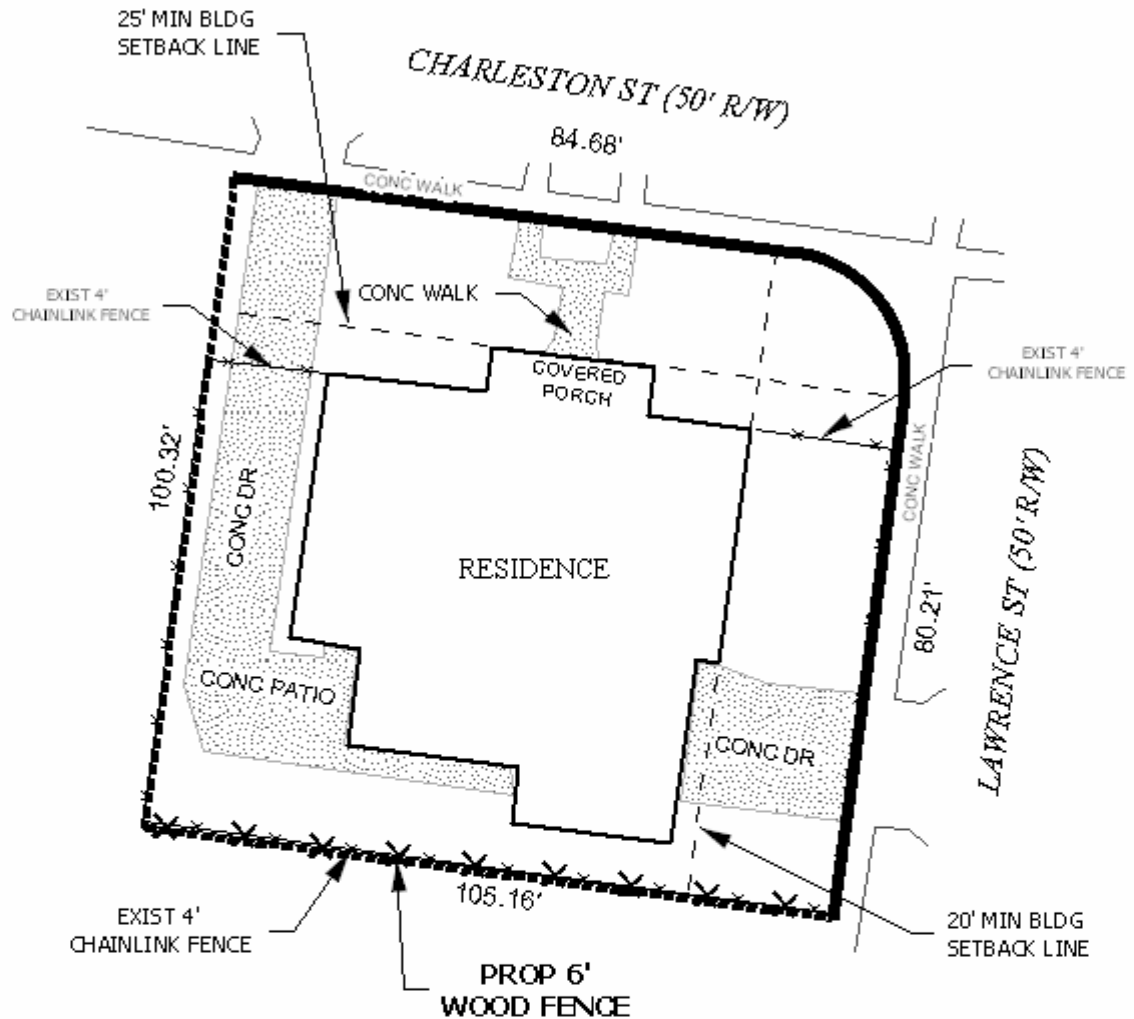
LEGEND

R-1	R-2	R-3	R-A	R-B	H-B	B-1	LB-2	B-2	B-3	B-4	B-5	I-1	I-2
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SITE PLAN



The site plan illustrates the existing residence, concrete walks, drives, patio, existing chainlink fence, and proposed wood fence.

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