

**BOARD OF ZONING APPEALS
MUNICIPAL CENTER COUNCIL CHAMBERS
Tuesday, September 10, 2013
6:00 p.m.**

The regular meeting of the Board of Zoning and Appeals was scheduled and held in the Council Chambers of the Municipal Center on September 10, 2013. Chairman Evans called the meeting to order at 6:15 p.m. requesting the roll call. Ms. Regina Gibson called the roll of the Board and established a quorum:

COMMISSIONERS PRESENT:

Mr. Henry Evans, Chairman; Mr. Frank Uhlhorn, Vice Chairman; Ms. Jennifer Sisson; Ms. Pat Sherman; Mr. Tony Salvaggio; Mr. David Klevan; and Alderman Forrest Owens.

DEVELOPMENT STAFF PRESENT:

Mr. Wade Morgan, Chief Planner; Ms. Regina Gibson, Administrative Secretary; and Mr. Alan Strain, Attorney

Chairman Evans reminded those in attendance that the Board of Zoning Appeals is a Quasi-Judicial body and as such, the latitude for acting on applications is somewhat limited by State Statute and City Ordinance. He also reminded those appearing before the Board that the meeting is recorded and they would need to identify themselves, give their address and be sworn in for the record. He then swore in the staff.

Chairman Evans stated that he would like to make note that the motions made in all meetings are of an affirmative nature. He stated this does not necessarily mean that the motion will be approved, but that the language will be in an affirmative nature when the motion is made.

1. Approval of Minutes for August 28, 2013

Mr. Klevan moved to approve the Board of Zoning and Appeals minutes of August 13, 2013, seconded by Ms. Sherman, with no further comments or discussions.

ROLL CALL: Mr. Salvaggio – Yes; Ms. Sisson - Yes; Mr. Uhlhorn - Abstain; Alderman Owens – Yes; Ms. Sherman – Yes; Mr. Klevan – Yes; Chairman Evans – Yes.

MOTION PASSED

2. 8103 Meadows Glen Drive – Request a variance to allow a fence to exceed six (6) feet in height in the “R” Low density Residential zoning district.

BACKGROUND:

DATE SUBDIVISION APPROVED: The Poplar Estates, Block J subdivision was approved by the Germantown Planning Commission on December 8, 1969.

DATE PRINCIPLE STRUCTURE APPROVED/BUILT: The home was constructed in 1972.

PREVIOUS VARIANCE REQUESTS: The BZA on August 10, 2010, denied a requested variance to allow an existing fence to exceed six feet in height.

DISCUSSION:

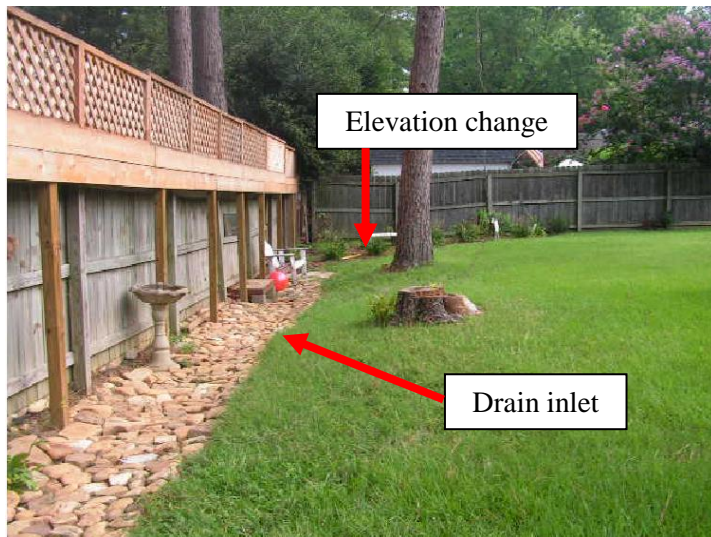
NATURE OF VARIANCE REQUESTED: The specific request by the applicant is to allow a wood fence along the rear and side lot lines to be up to 8 feet in height. The proposed fence will replace an existing fence that is 7 ft., 9 in. in maximum height.

The applicant obtained a permit from the City for a six foot tall fence on May 22, 2003. At some point after that, the homeowner added two (2) feet of lattice board to the top of the wood fence along the rear lot line. The Germantown Code Compliance staff notified the owner of the violation via letter on May 24, 2010. The owner then applied to the BZA for a variance to allow the additional height. The request was denied and the owner appealed the decision to Chancery Court.

The owner now proposes to replace the existing rear lot line fence with a solid, stockade-type fence that is 8 feet in height. In addition, the homeowner proposes to construct an 8 foot tall fence along a 24 foot section of the southern side lot line. The intent is for the new fence to follow the natural contour of the side lot line and connect to the 8 ft. rear lot line fence. The remaining approximately 74 feet of the fence will be 6 feet in height.

SPECIFIC SECTIONS OF ZONING ORDINANCE: The specific request is a variance from §6-102(a) of the Code of Ordinances, which states, “the maximum height of any fence shall be six (6) feet.” The applicants’ fence exceeds six (6) feet in height by an additional two feet.

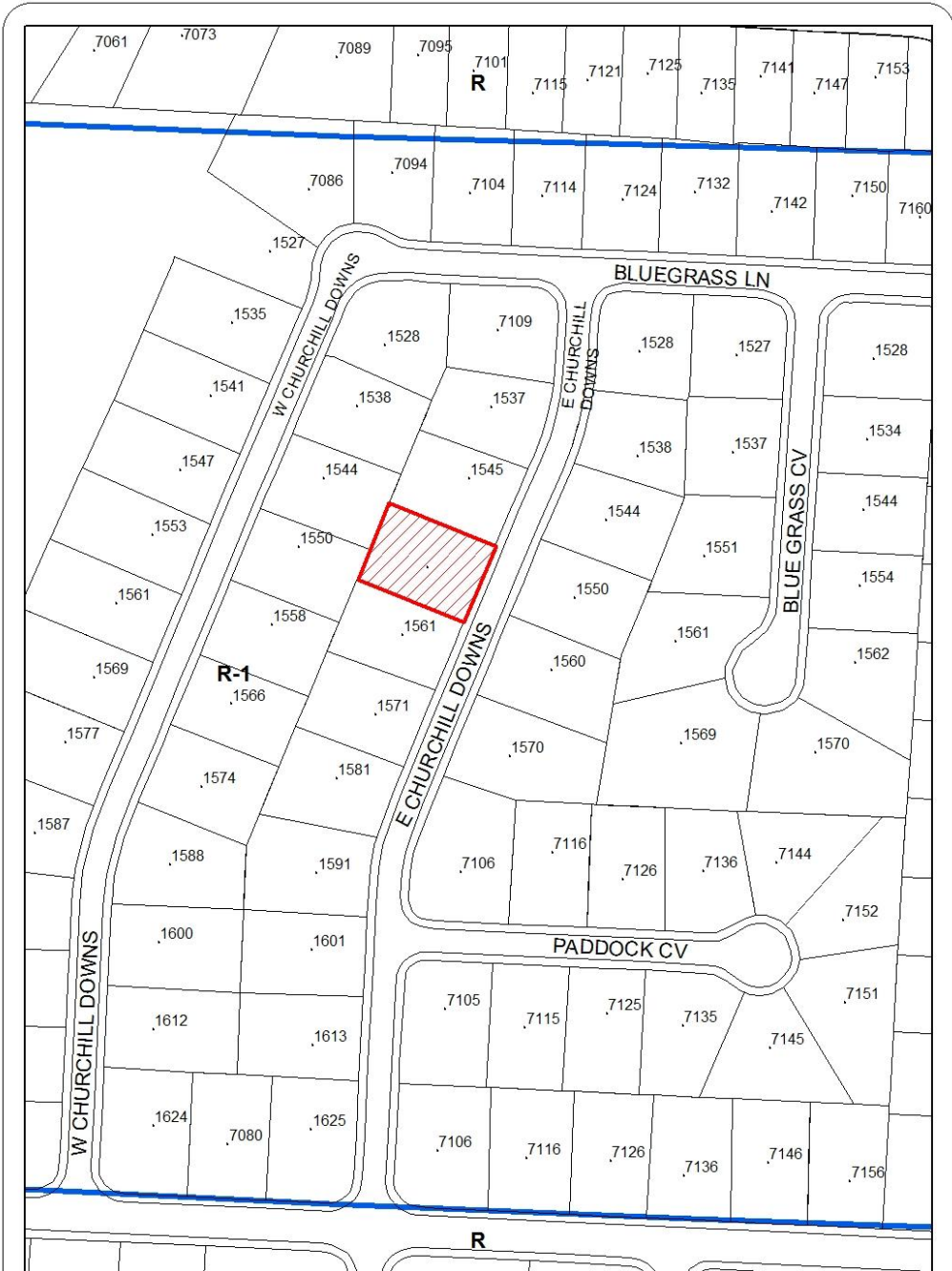
APPLICANT’S JUSTIFICATION: The applicant is requesting the variance due to exceptional topographic conditions of the property. According to the applicant, there is a “4 foot inlet that drains from approximately 5 to 6 other homes. In order for the inlet to provide proper drainage, the grade of our lot is lower than surrounding lots. Thus, when a standard 6 foot fence is installed, because of this lowered grade at the rear of the property, homeowners around ours have complete view of our backyard, allowing us very little privacy.” The applicant further notes that the topographic change causes a hardship in that “homes around us have a more than normal view into our backyard leaving us with less than normal privacy expected from a standard 6 foot fence.”



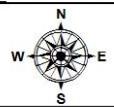
Applicant’s rear yard, with Existing fence, elevation change and inlet depicted.

STAFF COMMENTS:

1. The applicant requests a two foot variance to allow an eight foot tall wood fence along the rear property line and along a 24 foot section of the side (southern) property line.
2. If the variance approved, the existing fence and lattice extension along the rear lot line will be removed.
3. If the variance request is approved, the applicant must apply for a fence permit through the Department of Economic and Community Development.



Vicinity Map





CITY OF GERMANTOWN TENNESSEE

1930 South Germantown Road • Germantown, Tennessee 38138-2815
Phone (901) 757-7200 Fax (901) 757-7292 www.germantown-tn.gov

GERMANTOWN BOARD OF ZONING APPEALS OFFICIAL APPLICATION FORM

1. Date of Application: 7-11-13
2. Action Requested (Circle one): Variance Use on Appeal Interpretation
3. Address of property where action is requested: 1551 E. Churchill Downs
4. Briefly explain the specific action requested (e.g. "variance from required front yard setback in an "R" zoning district", or "variance to allow fencing to exceed six feet in height"):
variance to allow fencing to exceed six feet in height.
5. Name of person submitting this request: Gail R. Burnett
6. Is this person the (circle one): Owner Agent/Representative Attorney
7. Address of person submitting request: same
8. Telephone Number of person submitting request: cell 4867 2869
h 901-755-8871, wk 901-737-7378
9. Fax Number of person submitting request: 901-737-7378
10. Email Address of person submitting request: _____
11. Name and address of property owner (if different from above):
Gail Burnett, Judy Burnett
12. In the space below, describe the reasons for submitting the identified request. Include in the explanation the reason(s) why there is not another solution or why it cannot be accomplished in compliance with the Ordinance. Attach additional sheets if necessary.
At back of lot we have 4' inlet that drains water from approx. 5-6 other homes. In order for inlet (@ right rear) to provide proper drainage, the grade of our lot is lower than surrounding lots. Thus, when a standard 6' fence is installed, because of this lowered grade @ rear, home owners around us have a complete view of our backyard, allowing us, (and them) very little privacy. We have spoken with all neighbors, and they are in total agreement that this taller fence allowance adds much to their surroundings as well as ours.

GERMANTOWN BOARD OF ZONING APPEALS
VARIANCE REQUEST
(Use only if a variance is requested)

As stated in the Zoning Ordinance for the City of Germantown, the Board of Zoning Appeals shall have the following powers: (Section 23-49)

Where, by reason of *exceptional narrowness, shallowness or shape* of a specific piece of property or by reason of *exceptional topographic conditions* or *other extraordinary and exceptional situation or condition of such piece of property*, the strict application of any provision of this chapter would result in *peculiar and exceptional practical difficulties* to or *undue hardship upon the owner* of such property, to authorize upon appeal relating to the property a variance from such strict application so as to relieve such difficulties or hardship, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this chapter. *Financial disadvantage to the property owner is not sufficient proof of hardship.* [Emphasis added]

This application for a variance is based on the condition(s) checked below:

1. **Condition of property:**

Exceptional narrowness, shallowness, or shape _____
(Describe in the space below if checked)

Exceptional topographic conditions
(Describe in the space below if checked) X Land @ rear of our property is sloped allowing for property drainage from surrounding homes into existing '4' inlet

Other extraordinary and exceptional situation or condition of the piece of property _____
(Describe in the space below if checked)

2. **Resulting in:**

Peculiar and exceptional practical difficulties _____
(Describe in the space below if checked)

Undue hardship upon the owner
(Describe in the space below if checked) X Homes around us have a more than normal view into our backyard leaving us with less than normal privacy expected from a standard 6' foot fence

feet. Property owner information is available through the Shelby County Assessor's web site at <http://www.assessor.shelby.tn.us> or by contacting the Shelby County Assessor's office at 901-545-4204.

4. Fees *

All checks should be made payable to the City of Germantown. *All fees are non-refundable.*

Request	Fee
Variance:	
Residential	\$150.00
Non Residential	\$200.00
Use on Appeal	\$300.00

* All fees effective July 1, 2009

5. Correspondence from building official or code enforcement officer (if applicable).

One (1) copy of any applicable rejection slip, stop work order, or other correspondence received from the Memphis & Shelby County Office of Construction Code Enforcement or the City of Germantown Office of Code Enforcement.

6. Ownership Shares in Project (if applicable).

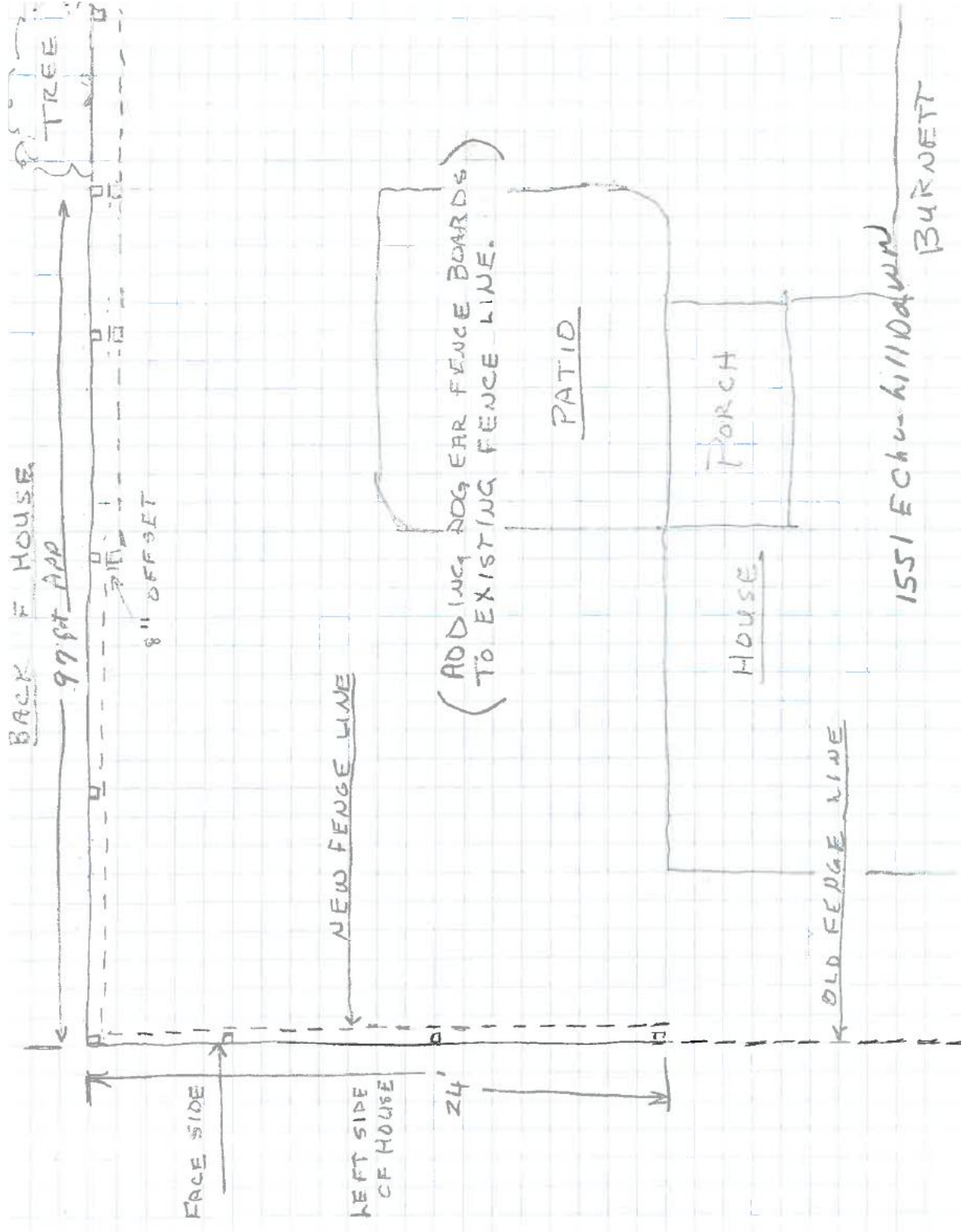
If the owner of the land which is the subject of this Application ("Owner") is a for-profit entity, i.e. general partnership, limited partnership, corporation, limited liability company, R.E.L.T., a trust, or any other form of for-profit business entity or a non-profit entity, the authorized representative of the Owner must list below the respective names and business or home addresses of all persons or entities which own 10% or more of the ownership interests in the Owner. (If another business entity owns 10% or more of the ownership interests in the Owner, all persons owning a 10% or more interest in such last mentioned entity must be identified by name and business or home address.) (If a trust owns a 10% or more interest in the Owner, all beneficiaries of 10% or more of the trust assets must be identified by name and business or home address.) The amount of ownership interest does not have to be disclosed.

Owner / President or Equivalent: _____

Persons or Entities* Owning
10% or More of the Ownership
Interests of the Owner:

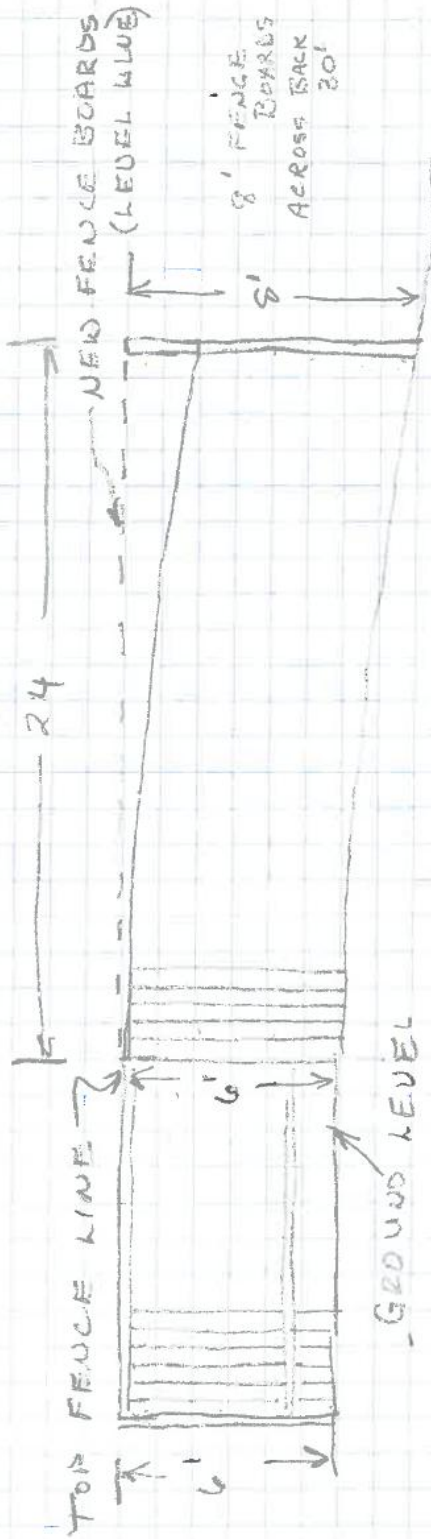
Name
Nail Bennett

Business or Home Address
1551 Echvichill Dawn



1551 E Chus-hill Dr
BURNETT

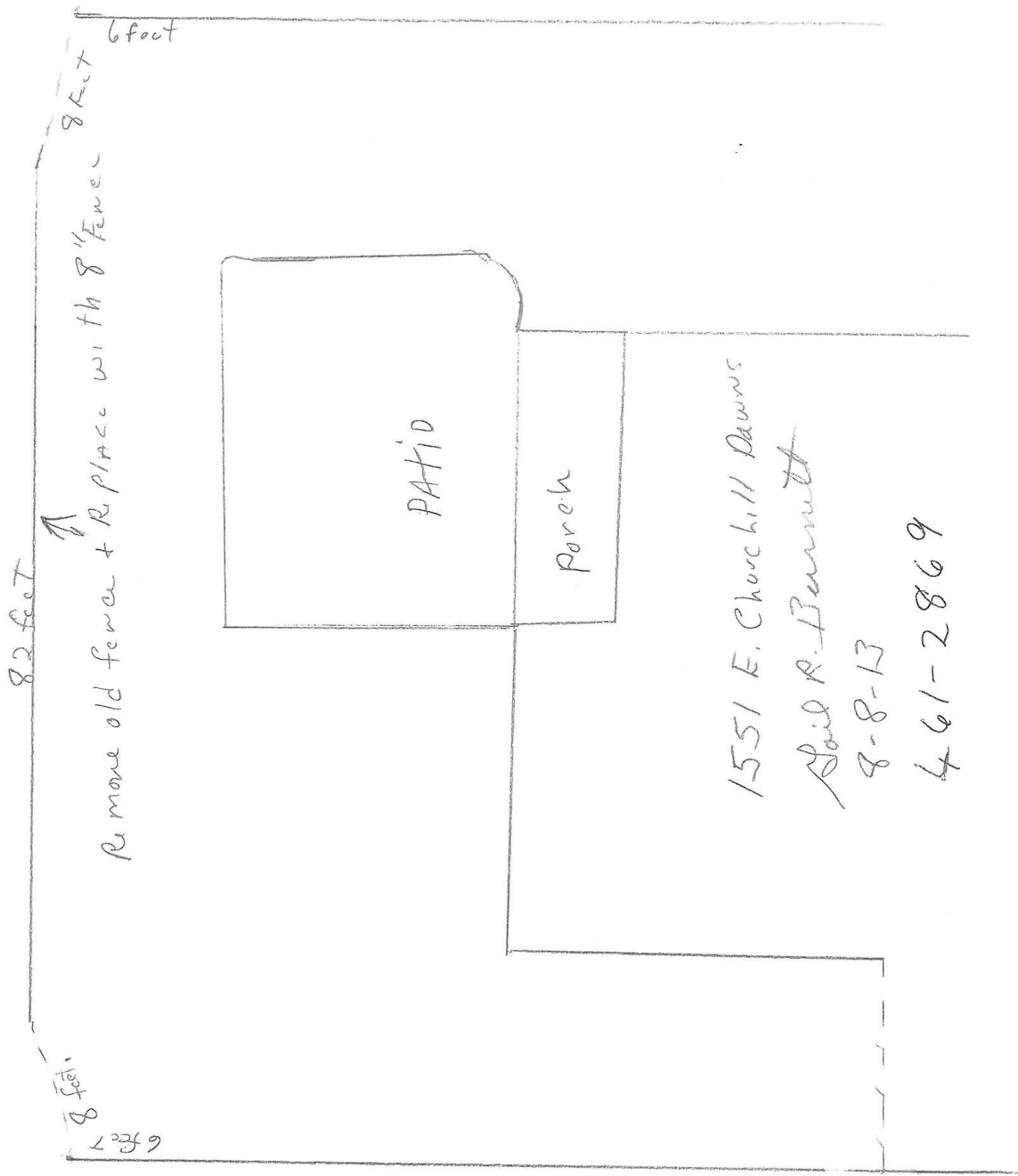
SIDE FENCE



THIS WILL CONTINUE
ACROSS BACK 97' OF
EXISTING FENCE.

BURWETT

($\frac{1}{4}$ " SCALE = 1')



PROPOSED MOTION: To approve a variance for 1551 East Churchill Downs to allow a fence along the rear property line and along a 24 ft. section of the side property line to be eight feet in height, subject to staff comments and the plans submitted with the application.

WITHDRAWN BY APPLICANT

ADJOURNMENT

There being no further business, comments, or questions by the Commission, the Chairman adjourned the meeting at 6:20 p.m.