

# VARIANCE OR APPEAL APPLICATION



TOWN OF CHAPEL HILL  
Planning & Development Services  
405 Martin Luther King Jr. Blvd.  
phone (919) 969-5066 fax (919) 969-2014  
www.townofchapelhill.org

Parcel Identifier Number (PIN): 9788-25-1191

Date: 12/13/18

## Section A: Project Information

Project Name: Fence at 415 W. Patterson Place

Property Address: 415 W. Patterson Place

Zip Code: 27516

Existing Zoning District: R-3, Cameron-McCauley Historic District

Request for a dimensional variance to allow existing 8 foot tall wooden fence at the property rear boundary, adjacent to the UNC Cogeneration Coal Power Plant. The fence has received approval from the Historic District Commission but exceeds dimensional restrictions by two (2) feet.

## Section B: Applicant, Owner, and/or Contract Purchaser Information

### Applicant Information (to whom correspondence will be mailed):

Name: James Kitchen

Address: P.O. Box 225

City: Chapel Hill

State: NC

Zip Code: 27514

Phone: 919-801-5230

Email: jim@jimkitchen.org

The undersigned applicant hereby certifies that, to the best of their knowledge and belief, all information supplied with this application is true and accurate.

Signature: James Kitchen

Date: 12/13/18

### Owner/Contract Purchaser Information:

☒ Owner

☐ Contract Purchaser

Name: See Above

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

The undersigned applicant hereby certifies that, to the best of their knowledge and belief, all information supplied with this application is true and accurate.

Signature: James Kitchen

Date: 12/13/18



**VARIANCE OR APPEAL APPLICATION  
SUBMITTAL REQUIREMENTS**  
TOWN OF CHAPEL HILL  
Planning & Development Services

Variances and Appeals may be granted by the Board of Adjustment for dimensional regulations, water and sewer regulations, steep slope regulations, house size limitations, Resource Conservation District regulations, Jordan Buffer regulations, and Watershed Protection District regulations. The following must accompany your application. Failure to do so will result in your application being considered incomplete.

<input checked="" type="checkbox"/>	Application fee ( <u>refer to fee schedule</u> )	Amount Paid \$	<input type="text"/>
<input checked="" type="checkbox"/>	Digital Files – provide digital files of all plans and documents		
<input type="checkbox"/>	Mailing list of owners of property within 1,000 foot perimeter of subject property ( <u>see GIS notification tool</u> )		
<input type="checkbox"/>	Mailing fee for above mailing list	Amount Paid \$	<input type="text"/>
<input checked="" type="checkbox"/>	Written Narrative describing the proposal		
<input checked="" type="checkbox"/>	Statement of Justification – Respond to subsection 4.12.2(a)(1-4) of the Land Use Management Ordinance.		
<input checked="" type="checkbox"/>	Recorded Plat or Deed of Property		
<input type="checkbox"/>	Stream Determination – necessary for all submittals		
<input type="checkbox"/>	Jurisdictional Wetland Determination – if applicable		
<input type="checkbox"/>	Reduced Site Plan Set (reduced to 8.5" x 11")		

Type of Variance or Appeal (Choose one of the following):

- ☒ Dimensional Variance      ☐ Water and Sewer Variance      ☐ Steep Slope Variance
- ☐ House Size Variance
- ☐ Resource Conservation District Variance
- ☐ Jordan Watershed Riparian Buffer Variance
- ☐ Watershed Protection District Variance
- ☐ Appeal

Standing: Explain to the Board how the applicant is an aggrieved party (NC General Statute Sec. 160A-388(b1)(1))

Statement of Justification: Provide justification for decision that is being appealed.



**VARIANCE OR APPEAL APPLICATION  
SUBMITTAL REQUIREMENTS**  
TOWN OF CHAPEL HILL  
Planning & Development Services

**Plan Sets (2 copies to be submitted no larger than 24" x 36")**

Plans should be legible and clearly drawn. All plan set sheets should include the following:

- Project Name
- Legend
- Labels
- North Arrow (North oriented toward top of page)
- Property Boundaries with bearing and distances
- Scale (Engineering), denoted graphically and numerically
- Setbacks
- Streams, RCD Boundary, Jordan Riparian Buffer Boundary, Floodplain, and Wetlands Boundary, where applicable

☐

**Area Map**

- a) Overlay Districts
- b) 1,000 foot notification boundary

☐

**Detailed Site Plan**

**Dimensional Variance Application**  
**Chapel Hill Board of Adjustment**  
Submitted for April 4, 2019 Meeting

<b>Project Name:</b> Fence at 415 W. Patterson Place
<b>Property Address:</b> 415 W. Patterson Place, Cameron-McCauley Historic District
<b>Parcel Identifier Number:</b> 9788-25-1191

**Written Narrative Describing the Proposal**

Project Description: We request approval of an 8-foot wooden fence at the rear boundary of 415 W. Patterson Place, adjacent to the UNC Power Plant.

Please refer to the attached Historic District Commission application for Certificate of Appropriateness which includes photos of the new fence in relation to the Power Plant.

On July 2, 2018, we erected an 8-foot picket fence at the rear of the property, adjacent to the existing chain-link and barbed-wire fence of the same height. The new fence is intended to help hide the UNC coal-fired power plant, railroad tracks, coal train cars, plant equipment, in addition to hiding the existing, chain-link and barbed-wire fence.

Historic District Commission Approval: On October 9, 2018, the Historic District Commission unanimously approved an after-the-fact Certificate of Appropriateness for the 8-foot fence.

Variance Requested: We understand that a dimensional variance is required because the fence exceeds the 6-foot height limit for fences at the rear boundary line.

**Statement of Justification**

Section 4.12.2 of the Land Use Management Ordinance states the following regarding dimensional variances (and our justification follows each required finding):

(a) When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance, the board of adjustment shall have the power to vary or modify any

of the regulations or provisions of the ordinance so that provisions of the ordinance upon a showing of all of the following:

- (1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

**Justification:** In this particular case, unnecessary hardship would result from the strict application of the ordinance. The property abuts the existing UNC coal-fired power plant. An unsightly 8-foot chain-link and barb-wire fence exists on the rear property boundary and provides no protection from the residue and noise coming from the coal trains and the UNC power plant itself. An 8-foot wooden fence would provide residents some protection from these hazards and relieve much of the unnecessary hardship associated with abutting a power plant and associated coal cars.

- (2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

**Justification:** This hardship results from conditions that are peculiar to this property. The property at 415 W. Patterson Place is uniquely located such that it shares its rear property boundary with the UNC coal-fired power plant, railroad tracks, coal-filled train cars, and various plant equipment, in addition to the unsightly chain-link and barbed-wire fence located on the property line.

- (3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

**Justification:** This hardship did not result from actions taken by this property owner. The conditions are unique and relate to the University's placement of a coal-powered plant and chain-link/barbed-wire fence at this location many years ago.

For many years it was thought that the University would stop using coal by the year 2020.

Please refer to this article from May, 2010:

<https://alumni.unc.edu/news/no-coal-university-seeks-new-energy-source-by-2020/>

New information indicates that the University no longer intends to meet this 2020 goal and is instead suggesting it will strive to achieve carbon neutrality by 2050:

<https://www.dailytarheel.com/article/2018/11/coal-plant-1111>

These articles further support that this hardship did not result from actions taken by the property owner.

- (4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

**Justification:** This request for a dimensional variance to allow an 8-foot tall wooden fence at the rear property boundary, adjacent to the UNC power plant and its associated railroad tracks and railroad cars is consistent with the spirit, purpose and intent of the Land Use Management Ordinance such that public safety is secured and substantial justice is achieved.

The stated purpose of the Land Use Management Ordinance “is to provide for the regulation of development.” The granting of a dimensional variance when a hardship exists is an intended relief of particular regulations.

Regarding the spirit and intent of the Ordinance, the Land Use Management Ordinance is to “incorporate the themes and goals from the comprehensive plan.” We suggest that there are no conflicts with the 2020 comprehensive plan associated with this dimensional variance request. As evidence, below are the 6 themes from the town plan:

- A Place for Everyone
- Community Prosperity and Engagement
- Getting Around
- Good Places, New Spaces
- Nurturing Our Community
- Town and Gown Collaboration

If the variance is granted, we believe the residents at Patterson Place will experience an improved quality of life and security. In addition, we believe other residents in the neighborhood may benefit from the addition of an 8-foot wooden fence at this location. The granting of this dimensional variance is a positive property improvement that will provide relief from many of the conditions associated with the hardship of living adjacent to the UNC coal-powered plant.

Thank you for considering this dimensional variance request.

## Project Narrative

Below is a picture of the home located, which in the rear looks out on the UNC Cogeneration Facility.



As you can see in the picture, the UNC Cogeneration Facility has erected an 8' high chain-link fence with barbed wire at the top of the fence. This fencing is likely decades old, and rusted in numerous places, and is unsightly.





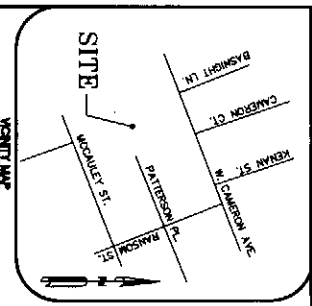
An 8' wooden fence has been constructed to hide the plant railway tracks and Cogeneration Facility equipment, benefiting the entire neighborhood.



The existing chain link and barbed-wire fence provides no protection from the residue and noise coming from the coal train and the UNC cogeneration plant. An 8' wooden fence provides residents in this area some protection from these hazards.

An 8' wooden fence obscures the existing barbed-wire at the top of the existing fencing.

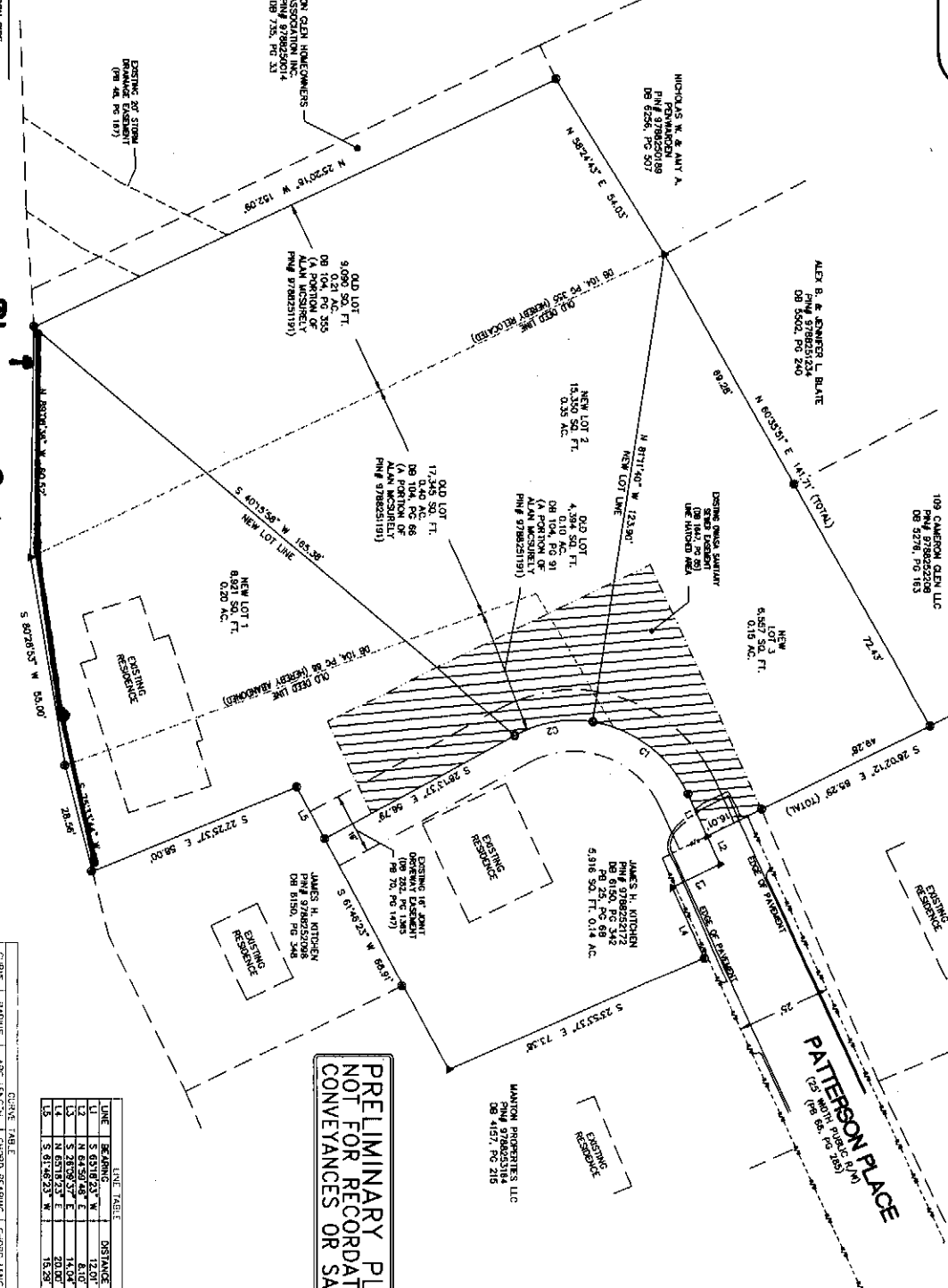




- GENERAL NOTES**
1. THIS IS A SURVEY OF AN EXISTING PARCEL(S) OF LAND. THIS IS AN EXISTING RECOMBINATION PLAT.
  2. COORDINATES AND DISTANCES ARE BASED ON THE NORTH CAROLINA STATE PLANE COORDINATE SYSTEM, NAD 83 (2011) BASED ON THE DATA PROVIDED BY THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION.
  3. ALL DISTANCES ARE HORIZONTAL. GROUND DISTANCES.
  4. AREA BY COORDINATE GEOMETRY.
  5. FLOOD HAZARD ZONE (FHA). IT IS LOCATED WITHIN ZONE "X" (FLOOD RISK OF 1% ANNUAL CHANCE FLOODING) DATED FEBRUARY 01, 2007.

**LEGEND**

- EXISTING POINT
- ▲ EXISTING MAIL
- △ NON PRE SET
- CALCULATED POINT
- ADDRESS



**PRELIMINARY PLAT  
NOT FOR RECORDATION  
CONVEYANCES OR SALES**

LINE	BEARING	DISTANCE
L1	S 63°18'23" W	12.07'
L2	N 44°50'48" E	8.07'
L3	S 53°18'23" E	15.29'
L4	N 63°18'23" E	20.00'
L5	S 61°48'23" W	15.29'

LINE	BEARING	DISTANCE
L1	S 63°18'23" W	12.07'
L2	N 44°50'48" E	8.07'
L3	S 53°18'23" E	15.29'
L4	N 63°18'23" E	20.00'
L5	S 61°48'23" W	15.29'



I HEREBY CERTIFY THAT THIS PLAT IS OF THE FOLLOWING TYPE:  
G.S. 47-30 (11/14/04). THIS SURVEY IS OF ANOTHER CATEGORY,  
SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-  
ORDERED SURVEY, OR OTHER EXCEPTION TO THE DEFINITION OF  
SURVEYING.

I, ERIC M. MANTON, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY  
SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION FROM  
DEED DESCRIPTIONS RECORDED IN BOOK AND PAGE (S.S. 2000) THAT  
THE BOOKS WERE NOT SURVEYED FOR ALLEGEDLY UNRECORDED DEEDS. THAT  
THE BOOKS WERE NOT SURVEYED FOR ALLEGEDLY UNRECORDED DEEDS. THAT  
THE RATIO OF PRECISION AS CALCULATED IS 1:10,000. AND THAT THIS PLAT  
WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS  
MY ORIGINAL SIGNATURE, RECOMBINATION NUMBER, AND SEAL THIS  
DAY OF \_\_\_\_\_ A.D. 20\_\_

ERIC M. MANTON, P.L.S. 1-5019

JAN & S. HINDS, LLC  
DB 3002, PG 286

109 CAMERON GLEN LLC  
DB 3278, PG 163

ALEX B. & JENNIFER L. BLAKE  
DB 3002, PG 280

NICHOLAS W. & ANITA A.  
DB 3002, PG 307

CAMERON GLEN HOMECOMINGS  
ASSOCIATION INC.  
DB 725, PG 21

MANTON PROPERTIES, LLC  
DB 4127, PG 215

OLD LOT  
9,090 SQ. FT.  
0.21 AC.  
DB 104, PG 305  
ALAN MCSHERRY  
PIN# 978623191

OLD LOT  
17,345 SQ. FT.  
0.40 AC.  
DB 104, PG 31  
ALAN MCSHERRY  
PIN# 978623191

OLD LOT  
4,394 SQ. FT.  
0.10 AC.  
DB 104, PG 31  
ALAN MCSHERRY  
PIN# 978623191

JAMES H. KITCHEN  
PIN# 978623172  
DB 25, PG 88  
5,916 SQ. FT. 0.14 AC.

JAMES H. KITCHEN  
DB 8150, PG 346

EXISTING  
RESIDENCE

EXISTING  
RESIDENCE

EXISTING  
GARAGE

EXISTING  
GARAGE

**415 W PATTERSON PLACE**  
CHAPEL HILL TWP, ORANGE CO, NORTH CAROLINA

RECOMBINATION PLAT

ISSUED	DATE

OWNER INFORMATION:  
415 W PATTERSON PLACE  
CHAPEL HILL, NC 27516  
OWNER REPRESENTATIVE:  
DANIEL W. MANTON  
TEL: (919) 300-2000



**BALLENTINE ASSOCIATES, P.A.**  
221 PROVIDENCE ROAD, CHAPEL HILL, NC 27514  
(919) 683-6300  
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ER  
JAA



20180518000090630 DEED  
Bk:RB6465 Pg:564  
05/18/2018 04:17:51 PM 1/3

FILED Mark Gilton  
Register of Deeds, Orange Co., NC  
Recording Fee: \$26.00  
NC Real Estate TX: \$920.00

JAA

## NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$920.00

Parcel Identifier No.: 9788-25-1191

YLB

Mail after recording to: James Kitchen, 109 New Castle Drive, Chapel Hill, NC 27517 (Tax notice address)

This instrument was prepared by: TriCity Lawyers, 1415 W NC Hwy 54, Suite 112, Durham, NC 27707

Brief Description from the Index: Lot A, PB 70/147

THIS DEED made this 16th day of May, 2018, by and between

### GRANTOR

Alan McSurely and OLinda Watkins, a married couple

144 Leake St

Carthage, NC 28327

### GRANTEE

James Kitchen, a married man

109 New Castle Drive  
Chapel Hill, NC 27517

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in , City of Chapel Hill, Orange County, North Carolina and more particularly described as follows:

See Exhibit "A" Attached Hereto and Made a Part Hereof

The property herein described [ ] is or [XXX] is not the primary residence of the Grantors.

The property herein described was acquired by Grantor by instrument recorded in Book 1212, Page 103, Orange County Registry.

A map showing the above described property is recorded in Plat Book 70, Page 147, and referenced within this instrument.

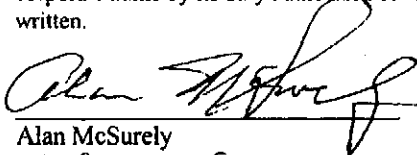
TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.




And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated.

Title to the property hereinabove described is subject to the following exceptions:

IN WITNESS WHEREOF, the Grantor has hereunto set his hand, or if corporate, has caused this to be signed in its corporate name by its duly authorized officers by authority of its Board of Directors, the day and year first above written.



Alan McSurely

  
OLinda Watkins

STATE OF NORTH CAROLINA  
COUNTY OF ~~DURHAM~~ WAKE

I, VIRGINIA BARLOW, Notary Public, do hereby certify that Alan McSurely and OLinda Watkins personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official seal this 16th day of May, 2018.

VIRGINIA BARLOW

Official Signature of Notary  
Printed or typed name of Notary

My Commission Expires: 3/17/21

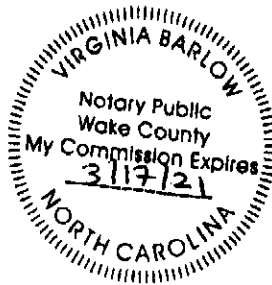




Exhibit "A"

BEING ALL OF LOT A, CONTAINING 30,831 SQUARE FEET, AS SHOWN ON PLAT AND SURVEY ENTITLED "RECOMBINATION PLAT, PROPERTY OF WILLIAM D BASNIGHT, TOWN OF CHAPEL HILL, ORANGE COUNTY, STATE OF NORTH CAROLINA" DATED JANUARY 23, 1994, BY TERRY L WESTENDORF, REGISTERED LAND SURVEYOR, AS RECORDED IN PLAT BOOK 70 AT PAGE 147, ORANGE COUNTY REGISTRY, SAID PLAT AND SURVEY BEING INCORPORATED BY REFERENCE HEREIN FOR A MORE PARTICULAR DESCRIPTION OF SAME.

Tax Parcel Number: 9788-25-1191

Property Address: 415 West Patterson Place, Chapel Hill, NC 27516