



5000 Diamondhead Circle · Diamondhead, MS 39525-3260

Phone: 228.222.4626 Fax: 228-222-4390

www.diamondhead.ms.gov

TO: Mayor, City Council and City Manager

FROM: Ronald R. Jones, Building Official *J. R. Jones*

DATE: June 30, 2021

SUBJECT: Recommendation from Planning Commission Fence Variance Request Phillip Sutton

Phillip Sutton filed an application requesting a variance from the Zoning Ordinance (Article 9.8 J) to construct a 6' wood privacy fence starting 8.5' from the southeast corner of the house, continuing toward Pokai Street for 24' and then continuing east along Pokai Street for 48'. This is a corner lot with 2 front setbacks and 2 front facades. The Ordinance states a privacy fence cannot extend beyond the front façade of the house. The variance requested is 8.5' from the front façade (southeast corner) and 24' towards Pokai Street.

The property address is 97440 Diamondhead Drive West. The tax parcel number is 067K-1-36-0567.000. The legal description is Diamondhead Subdivision Phase #2, Unit 4A, Block 5, Lots 5 & 6. The property is located in a R-2 zoning district. The fence is required to be set back 20' from the front property line but not any closer than the façade of the house.

At its regular meeting on June 29, 2021, the Planning Commission voted 5-0 to recommend to approve a modified variance to construct a 6' wood privacy fence starting 8.5' from the southeast corner of the house, continuing toward Pokai Street for 11' and then continuing east along Pokai Street at a 90 degree angle for 48' or more.



- Commissioner Flowers ✓
- Commissioner Layel ✓
- Commissioner Debrow ✓
- Commissioner Rubar ✓
- Commissioner Hourin ✓
- Commissioner Torguson ✓
- Commissioner Hector ✓

5

AGENDA PLANNING AND ZONING COMMISSION

Tuesday, June 29, 2021
6:00 PM CST
Council Chambers, City Hall
and via teleconference, if necessary

Call to Order

Statement of Purpose

1. May our decisions today be made with wisdom, careful deliberation and in the best interest of the City of Diamondhead. May we display patience and kindness in our dealings with each other and all who are in attendance and may any decisions made today promote the health, safety and welfare of the citizens of Diamondhead and the enhancement of the City as a whole.

Pledge of Allegiance

Roll Call

Confirmation or Adjustments to Agenda

Approval of Minutes

2. Approval of May 25, 2021 minutes.

New Business

3. Public Hearing to consider a recommendation to the City Council regarding the Diamondhead Comprehensive Plan (Envision Diamondhead 2040). Presentation by Robert Barber with Orion Planning. *Via Zoom*
4. **Diamondhead Community Church**, represented by Bob Chalmers, has filed an application requesting a variance from the Zoning Ordinance (Article 10.7.d) to place a directional sign at the intersection of Noma Drive and Oak Park Drive that has a copy area of 12 square feet. Maximum copy area is 6 square feet. The variance requested is 6 square feet. The property is located at 5301 Diamondhead Cirlet. The tax parcel number is 132A-2-03-027.000. The legal description is PT. NE ¼ Sec. 3-8-14. The property is located in a PFR-Public Facilities & Recreation zoning district. Maximum copy area is 6 square feet. The Case Number is 202100177.
5. Phillip Sutton has filed an application requesting a variance from the Zoning Ordinance (Article 9.8 J) to construct a 6' wood privacy fence starting 8.5' from the southeast corner of the house, continuing toward Pokai Street for 24' and then continuing east along Pokai Street for 48'. *Oct longer* This is a corner lot with 2 front setbacks and 2 front facades. The Ordinance states a privacy fence cannot extend beyond the front façade of the house. The variance requested is 8.5' from the front façade (southeast corner) and 24' towards Pokai Street. The property address is 97440 Diamondhead Drive West. The tax parcel number is 067K-1-36-0567.000. The legal description is Diamondhead Subdivision Phase #2, Unit 4A, Block 5, Lots 5 & 6. The property is located in a R-2 zoning district. The fence is required to be set back 20' from the front property line but not any closer than the façade of the house.

*Approved
5-0*

*Denied
5-0*

*Modified +
Approved
5-0*



City of Diamondhead

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STAFF REPORT TO PLANNING COMMISSION

*Approved as modified
5-0*

DATE: June 29, 2021

CASE FILE NUMBER: 202100176

APPLICANT: Phillip Sutton

PROPERTY OWNER: Phillip Sutton

TAX PARCEL NUMBER: 067K-1-36-057.000

PHYSICAL STREET ADDRESS: 97440 Diamondhead Drive West

LEGAL DESCRIPTION: Diamondhead Phase 2, Unit 4A, Blk 5, Lots 5 & 6

ZONING DISTRICT: R-2

TYPE OF APPLICATION: Variance

NATURE OF REQUEST: Phillip Sutton has filed an application requesting a variance from the Zoning Ordinance (Article 9.8 J) to construct a 6' wood privacy fence starting 8.5' from the southeast corner of the house, continuing toward Pokai Street for 24' and then continuing east along Pokai Street for 48'. This is a corner lot with 2 front setbacks and 2 front facades. The Ordinance states a privacy fence cannot extend beyond the front façade of the house. The variance requested is 8.5' from the front façade (southeast corner) and 24' towards Pokai Street. The property address is 97440 Diamondhead Drive West. The tax parcel number is 067K-1-36-0567.000. The legal description is Diamondhead Subdivision Phase #2, Unit 4A, Block 5, Lots 5 & 6. The property is located in a R-2 zoning district. The fence is required to be set back 20' from the front property line but not any closer than the façade of the house. The Case Number is 202100176.

DATE OF PUBLIC HEARING BEFORE PLANNING COMMISSION: June 29, 2021

ACTION BY THE PLANNING COMMISSION:

FINDINGS: The Planning Commission may recommend granting a variance provided affirmative findings of fact are made on each of the following criteria:

- A. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district. By way of example, special conditions or

circumstances peculiar to land could include irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions.

- B. That literal interpretation of the provisions of this title would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this title.
- C. That special conditions and circumstances do not result from the actions of the applicant.
- D. That granting the variance requested will not confer on the applicant any special privilege that is denied by this title to other lands, structures, or buildings in the same zoning district.
- E. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- F. The Variance would observe the spirit of the Ordinance and would not change the character of the district.
- G. The Variance would observe the spirit of the Comprehensive Plan.
- H. That the Variance requested will not result in any change in use or density of the subject property.

NOTES: In recommending that any variance be granted, the Planning Commission may prescribe appropriate conditions and safeguards in conformity with the zoning ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the zoning ordinance and punishable as determined within the zoning ordinance.

Under no circumstances shall the Planning Commission or Mayor and City Council grant a variance to allow a use not permissible under the terms of the zoning ordinance in the district involved, or any use expressly or by implication prohibited by the terms of the zoning ordinance in said district.

RECOMMENDATION TO PLANNING COMMISSION: To **deny** the variance as petitioned;

The staff recommends to deny the variance based on the following findings of fact.

- A. There are no special conditions or circumstances regarding the property. The property is a corner lot which has two front yard setbacks and two front facades.
- B. There are no other properties in the same zoning district that have been granted this variance.
- C. That special conditions and circumstances, do result from the actions of the applicant.
- D. That granting the variance requested will confer on the applicant any special privilege that is denied by this title to other lands, structures, or buildings in the same zoning district.
- E. The variance will not represent the minimum variance that will afford relief and will not represent the least modification possible of the regulation in issue.
- F. The Variance does not observe the spirit of the Ordinance and would not change the character of the district (area).
- G. The Variance would not observe the spirit of the Comprehensive Plan.
- H. That the Variance requested will not result in any change in use or density of the subject property.





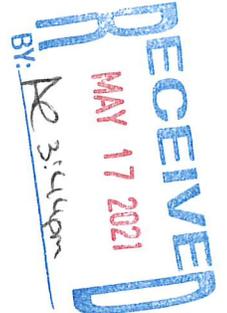
5000 Diamondhead Circle
Diamondhead, MS 39525
Ph: 228-222-4626
FX: 228-222-4390

submital date: May 17th

APPLICATION FOR VARIANCE REQUEST

Case Number: 202100176

Date 5/17/21



Applicant: Phillip Sutton

Applicant's Address: 97440 Diamondhead Drive W

Applicant's Email Address: psutton27@yahoo.com

Applicant's Contact Number: (Home) _____ (Work) _____ (Cell) 228-224-4549

Property Owner: Phillip Sutton

Owner's Mailing Address: 97440 Diamondhead Drive W

Owner's Email Address psutton27@yahoo.com

Owner's Contact Number: (Home) _____ (Work) _____ (Cell) 228-224-4549

Tax Roll Parcel Number: 0617R-1-36-057.000

Physical Street Address: 97440 Diamondhead Drive W

Legal Description of Property: DH PH 2 unit 4A BIKS lots 5+6

Zoning District: R-2

State Purpose of Variance: (Front/Side/Rear/Lot Size/Parking/Building/Coverage)
(Signage-Size-Height)

6ft Privacy Fence

Wood

24ft x 48ft

going off side of house to rear property line

STATEMENT OF UNDERSTANDING

As the applicant or owner/s for the requested Variance in the City of Diamondhead, I (we) understand the following:

The application fee of \$100.00 ^{2 (+1.00 A/H fee) = total of 101.00} must be paid prior to the acceptance of the application. Further, that if the application is withdrawn for any reason that the application fee is forfeited to the City of Diamondhead.

As the applicant or owner/s, I (we), or the designed representative, must be present at the public hearing.

That all information provided with this application is true and correct to the best of my knowledge.

That this application represents only property owned by me (us) and that any other adjoining property owners must apply for a Variance on his own behalf.

That all required attachments have been provided to the City of Diamondhead.

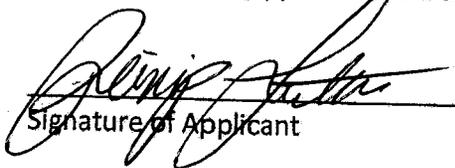
That additional information may be required by the Planning Commission prior to final disposition.

The City Council will not accept new case evidence once the recommendation has been made by the Planning Commission. If new evidence needs to be presented, the applicant will need to request that the matter be referred back to the Planning Commission for review.

The Public Hearing will be held on June 29, 2021 at 6 p.m. in the Council Chambers of the Diamondhead City Hall.

If a continuance of the hearing is necessary at my (our) request, the request must be made to the Zoning Official a minimum of seven (7) days prior to the hearing. If such request is not made in writing, I understand that a new application must be filed and an application fee paid to the City.

If the application is denied by the City Council, a new application for the subject property may not be submitted for one (1) year from the date of denial.


Signature of Applicant


Signature of Property Owner

_____ For Official Use Only _____

- \$100.00
- Copy of Deed, Lease or Contract
- Site Plan
- Parking Spaces
- List of Property Owner

- Application Signed
- Written Project Description
- Drainage Plan NA
- Notarized Statement NA

REQUIRED ITEM A

Property Owner Phillip Sutton

Street Address 9740 Diamondhead Drive W.

Statement Describing Variance Request

I am requesting a variance to put a privacy fence on my property. I have two dogs and a two year old daughter that I would like to keep safe from the street.

The reasons why it complies with the criteria for variances:

1. DO THE SPECIAL CONDITIONS AND/OR CIRCUMSTANCES EXIST WHICH AFFECT ONLY THE LAND OR STRUCTURE IN QUESTION AND NO OTHER SURROUNDING OR SIMILAR PROPERTIES?

Response: Yes, because of the shape of the property and location of the house.

2. WOULD LITERAL INTERPRETATION OF THE ZONING ORDINANCE DEPRIVE THE OWNER/APPLIANT OF RIGHTS COMMONLY ENJOYED BY OTHER PROPERTIES IN THE SAME ZONING DISTRICT?

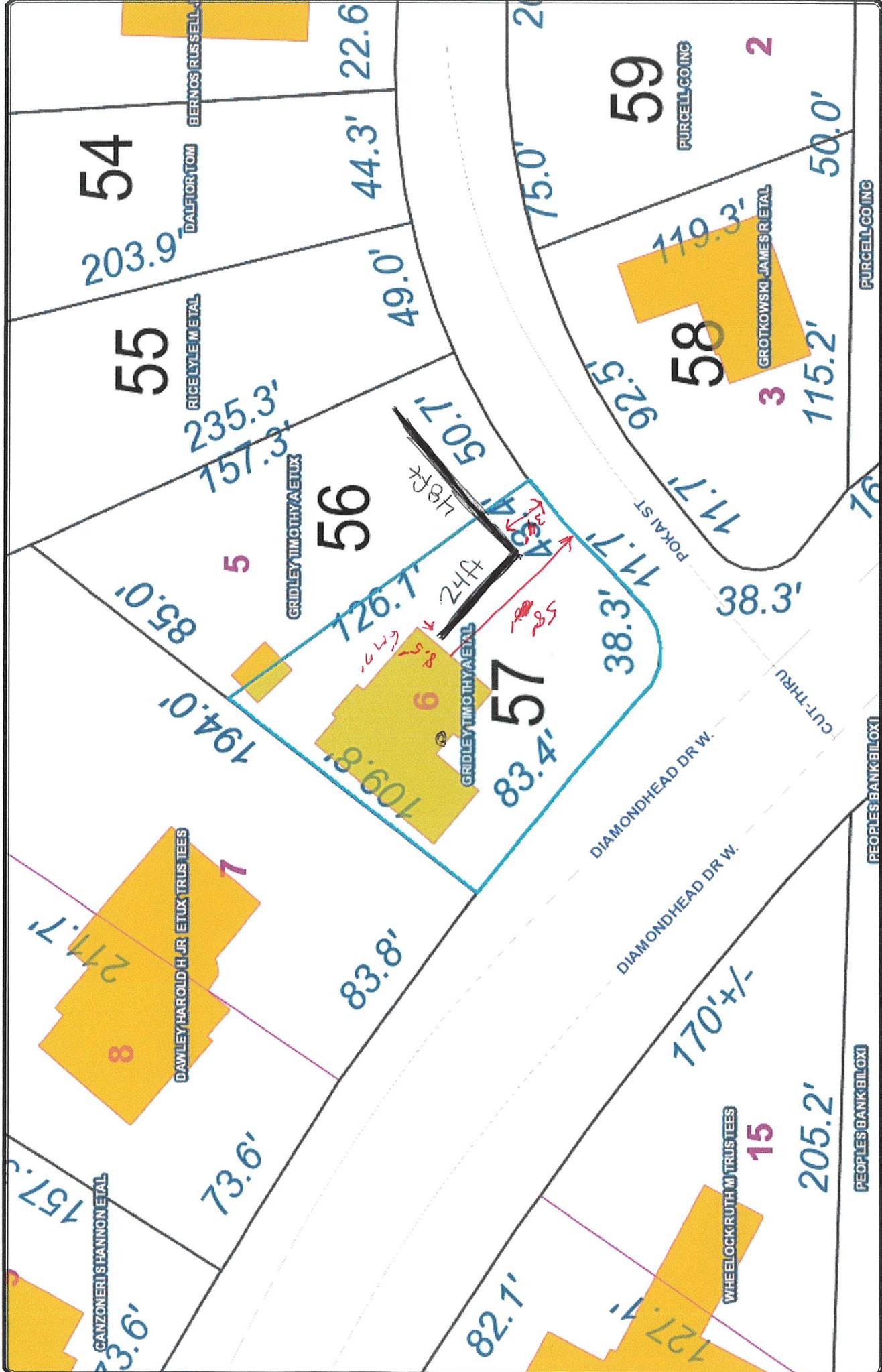
Response: Yes, because it will cut off access to my backyard.

3. ARE THE SPECIAL CONDITIONS OR CIRCUMSTANCES NOT CAUSED BY THE OWNER/APPLICANT?

Response: Yes, the lot size and shape

4. WOULD THE REQUESTED VARIANCE NOT GIVE THE OWNER/APPLICANT ANY SPECIAL PRIVILEGES OR RIGHTS NOT SHARED BY OWNERS OF SIMILAR PROPERTIES?

Response: it would not give me any special privileges. Other houses around the area have similar fences



April 21, 2021

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NOTICE OF PUBLIC HEARING
PLANNING AND ZONING COMMISSION
DIAMONDHEAD, MS

Phillip Sutton has filed an application requesting a variance from the Zoning Ordinance (Article 9.8 J) to construct a 6' wood privacy fence starting 8.5' from the southeast corner of the house, continuing toward Pokai Street for 24' and then continuing east along Pokai Street for 48'. This is a corner lot with 2 front setbacks and 2 front facades. The Ordinance states a privacy fence cannot extend beyond the front façade of the house. The variance requested is 8.5' from the front façade (southeast corner) and 24' towards Pokai Street.

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In accordance with the Comprehensive Zoning Ordinance Article 2.6.4, the Planning Commission may recommend to the Mayor and City Council a variance be granted as the variance was applied for or in a modified form or subject to conditions or the application may be denied. A variance may be revocable, may be granted for a limited time period, or may be granted subject to conditions as the Planning Commission or Mayor and City Council may prescribe.

The Planning and Zoning Commission will consider this application at its next regularly scheduled meeting on **Tuesday, June 29, 2021 at 6:00 p.m.** The public hearing will be held at Diamondhead City Hall in the Council Chambers at 5000 Diamondhead Circle in Diamondhead, MS 39525. Interested members of the public are invited to attend.

If you have any questions or comments or would like to review the application, you may contact the Building Department at the above address and/or at 228-222-4626.



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TO: Phillip Sutton and adjacent property owners

FROM: J. Pat Rich, Planning and Zoning Administrator

A handwritten signature in black ink, appearing to read "J. Pat Rich", is written over the printed name.

DATE: June 14, 2020

SUBJECT: Notice of Public Hearing

Phillip Sutton has filed an application requesting a variance from the Zoning Ordinance (Article 9.8 J) to construct a 6' wood privacy fence starting 8.5' from the southeast corner of the house, continuing toward Pokai Street for 24' and then continuing east along Pokai Street for 48'. This is a corner lot with 2 front setbacks and 2 front facades. The Ordinance states a privacy fence cannot extend beyond the front façade of the house. The variance requested is 8.5' from the front façade (southeast corner) and 24' towards Pokai Street.

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The Planning and Zoning Commission will consider this application at its next regularly scheduled meeting on **Tuesday, JUNE 29, 2021 at 6:00 p.m.** The public hearing will be held at Diamondhead City Hall in the Council Chambers at 5000 Diamondhead Circle in Diamondhead, MS 39525. Interested members of the public are invited to attend.

If you have any questions or comments or would like to review the application, you may contact the Building Department at the above address and/or at 228-222-4626.

Pat Rich

From: Ronald Jones
Sent: Friday, June 18, 2021 10:02 AM
To: Pat Rich
Subject: FW: Supporting a request for a fence variance

From: Harold Dawley <hdawley@bellsouth.net>
Sent: Friday, June 18, 2021 9:01 AM
To: Ronald Jones <rjones@diamondhead.ms.gov>
Subject: Supporting a request for a fence variance

[EXTERNAL EMAIL] DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

To: J. Pat Rich, Planning and Zoning Administrator

Subject: Notice Of Public Hearing

Dear Mr. Rich:

I recently received your notification that the owner of the land next to my home, Phillip Sutton, has requested a variance to construct a 6' wood privacy fence along the side of his home running along Pokai Street. As an adjoining property owner, I am writing to state I wholly support his request. In my opinion, the variance he is requesting will have no negative consequence on the neighborhood,

I urge the Planning Commission to approve Mr. Sutton's request for a variance to construct a fence along the side of his home running along Pokai Street.

Please feel free to contact me if you have any questions or need more information.

Thank you.

Harold Dawley

97444 Diamondhead Drive Wet

Diamondhead, MS

228-437-4210