

**CAPITOL ZONING DISTRICT COMMISSION**  
**STAFF REPORT 2023-016**  
8/17/23  
JCL



**Location: 323 W. 21st St.**  
**Applicant: Julianna Brandenberger**  
**Permit Types: Certificate of Appropriateness**

**Project Description:** This application is seeking a Certificate of Appropriates to move an existing fence in order to accommodate a new in-ground pool. The proposal would move the existing 6' fence half the distance to the sidewalk and the existing fence.

**Historic Significance:** The Bush House at 323 West 21st Street was built for Gus Bush, owner of the Bush Nash auto dealership, circa 1927 in an English Revival style. Bush sold the property in 1941 to Mary Gibson who sold it again later that year. A small side porch or carport was replaced sometime after 1950 with the addition seen today on the east side the house. The house appears to have otherwise retained much of its original appearance and configuration. An auto garage at the rear of the property, possibly built at the same time as the main house, was badly damaged in the 1999 tornado and reconstructed the following year. For many years, the house was operated as a group home for developmentally disabled individuals by Community Living, Inc, until the current owner acquired the property in January 2015. The Bush House is listed in the National Register as a contributing resource in the Governor's Mansion Historic District.

**Previous Action:** Staff issued a permit in 1995 to allow for a front yard picket fence. Another staff-level permit was issued in 1998 to re-roof the house. The next year a permit allowed for the reconstruction of the rear outbuilding following the tornado. In 2000, staff issued a permit to allow for the installation of security doors on the rear of the house. Several permits were issued to the current owner in 2015 to allow for various exterior repairs, including the construction of the existing fence in question.

**Zoning:** This property is in Zone M, “Mansion Area Residential”. This zone, comprising most of the Governor’s Mansion Area, allows for the continuation of traditional neighborhood residential development patterns. Single family residences should be predominant, though not the exclusive, land use and building form in this zone.

**Review Standards for Certificates of Appropriateness:**

Capitol Zoning District Commission Rule and Procedure, Section 2-105 *Permit Approval Procedure*

**C.1. (a)** A Certificate of Appropriateness must be obtained prior to effecting any major modification or addition to a structure, site or improvements in the District... Applications for major modifications requiring Commission review will first be scheduled for review by the Design Review Committee which will make a recommendation regarding the proposed work’s appropriateness of the modification to the historical style of the structure and neighboring structures; compatibility with its architectural, historical or cultural significance and level of intactness; and its consistency with the goals of the Commission’s Master Plan and Standards.

**C. 1. (b)** A Certificate of Appropriateness shall ... be required for the erection of any new structure ...Applications for new construction requiring Commission approval will first be scheduled for a review by the Design Review Committee which will make a recommendation regarding proposed work’s appropriateness in historical style in the context of adjoining or neighboring structures; and its consistency with the goals of the Commission’s Master Plan and Standards.

**F.1.** All changes in the Capitol Zoning District will be evaluated according to the General Standards and the applicable Area Master Plan. Also,

**(a)** Changes to historic structures or site features shall be evaluated according to the Rehabilitation Standards for Historic Properties.

**(i)** Structures and site features 40 years or older are assumed to be historic, unless they have been significantly altered, and reversing the alteration(s) would be impossible or wholly unreasonable.

**(ii)** The Commission may waive the Rehabilitation Standards for cause, in which case a proposed change to a historic structure or site feature shall be evaluated according to the applicable Design Standards.

**F.5. (a)** In reviewing the application, the Commissioners shall consider the application and base their decision upon the report of the Staff, the recommendations of the Design Review Committee, advice from Advisory Committees, impact of the proposal on the property, neighboring properties, the District as a whole, the goals of the Master Plan, any applicable review criteria, and the evidence or testimony presented by the applicant(s) and other interested parties. The Commission shall approve the permit(s) if it finds the proposal to be substantially consistent with the applicable review criteria.

*Staff finds the proposal requires a Certificate of Appropriateness that must be reviewed by Design Review, Mansion Area Committees and reviewed by the Commission. Staff also finds the proposal should be evaluated using the Rehabilitation standards (as they relate to the property as a whole), and the Mansion Area Master Plan.*

Capitol Zoning District General Standards, Section 3-202, *Additional Zoning Requirements & Definitions*

**Z9. Accessory uses and structures allowed by right.**

**1.** An accessory use is a use located upon the same parcel as an allowed principle use which is clearly secondary and incidental to the principle use.

d. Typical residential accessory uses include, but are not limited to, children’s playhouses, greenhouses, **swimming pools**, ball courts, etc.

*Staff finds the addition of a backyard in-ground pool is allowed by right.*

Capitol Zoning District Rehabilitation Standards, Section 4-201, *Historic Streetscape & Site Design Features*

**Policy:** Historic streetscape and site features that survive should be preserved. In addition, new features should be compatible with the historic context.

**Fences**

Historically, most properties were not fenced, but several examples of the use of fences survive today indicating that, while not universal features, they were important accents. When used, fences were simple wood picket and cast or wrought iron, usually in front and side yards. These were relatively low in height and had a “transparent” character that allowed views into the yards, providing interest to pedestrians.

**R1.8 A new front yard fence should be in character with those seen historically.**

- On corner lots, both sides that abut public sidewalks and/or streets should be treated as front yard fences.
- For the purposes of this section, a front yard is that portion of a parcel from the street to a line complainer with the building’s front façade. For corner lots, the front yard will continue along the side façade facing the cross street to a line complainer with either the rearmost corner of the building, not including any rear porches or non-historic rear additions, or with the required rear yard setback.

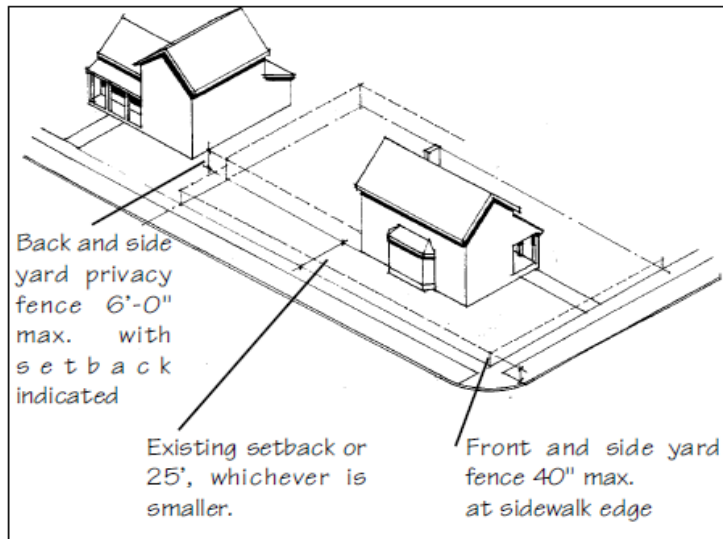
**R1.9 The height of any fence will be measured from the grade on the side of the fence facing the public right-of-way.**

- Taller fences may be considered on a case-by-case basis when set farther back from the property line or other required setback.

**R1.10 A solid fence may be used in a rear or side yard.**

- Although the use of transparent fences is also encouraged in the rear and side yards, a solid stockade fence may be used where privacy is a concern. The Commission will consider requests for masonry privacy fences on a case-by-case basis.
- Privacy fences used in the back yards and along alleys should be 72 inches (6 feet) or less.
- For the purposes of this section, the rear and side yards are those portions of a parcel not covered by the main structure or defined as a front yard, above.
- A backyard fence on a corner lot with an adjoining property to the rear should be set back from the right-of-way according to either the front yard setback for that zone, or complainer with the front façade of the building behind it (if any) on an adjoining property, whichever is less.

*Staff finds the proposal to be inconsistent with these Standard. Staff believes the proposed privacy fence’s location along a public sidewalk on a corner lot is not compatible with the historic context of the neighborhood. Though located in the standards for new construction, staff believes this principle – that one property’s backyard privacy fence should not effectively become another’s front yard fence – remains applicable in this case.*



*The graphic indicates that the transition between a corner lot's side / front yard and its backyard occurs along the plane of the existing setback (or 25 feet, if less).*

*Fence height and setback requirements for a corner residential lot with an adjacent residence.*

#### Mansion Area Master Plan, Section 6-201, *Mansion Area Goals & Recommendations*

##### **A. Mansion Area Goals**

##### **1. To preserve the character of the Mansion Area neighborhood...**

The preservation and restoration of significant buildings ... as well as the preservation of the overall character of the Mansion Area, is the primary goal ...

##### **3. To establish a sense of visual continuity within the Mansion Area neighborhood.**

A theme to visually unify the neighborhood is needed ... It should include ... visual accents that give identity to individual blocks.

*Staff finds the proposal to be inconsistent with these goals. Staff believes, generally, that privacy fences abutting sidewalks, can serve to detract from the overall character of the Mansion Area, and, specifically, that privacy fences located in or alongside front yards serve to diminish the neighborhood's visual continuity.*

**Neighborhood Reaction:** By the time of distribution, several comments had been submitted (see attached).

**Design Review Recommendations:** Design Review Committee met at their regular meeting June 7th, 2023, and motioned to approve Staff recommendations to deny the application. The committee members voted 6-0 to deny the application. There was some discussion after the vote, instigated by Carol Worley as another applicant present at the meeting that day. The DRC explained to Ms. Worley and the applicant that the DRC could not express approval of the proposal as it stood, because it was contrary to the area design standards. However, Ms. Brandenberger could work with staff to restate the proposal in order to be more in line with standards; for example, moving the fence in a few feet from the property line, bulking up the landscaping, etc.

**Mansion Area Advisory Committee Recommendations:** Mansion Area Advisory Committee Recommendations met on Thursday, June 15, 2023, but was unable to conduct a full meeting and

thereby consideration of the application because there were not enough committee members present (even online or in-person) to have a quorum.

**CZDC Regular meeting 7/20/23** – The Capitol Zoning District Commission met at their regular meeting on July 20<sup>th</sup>, 2023, and motioned to defer the application as presented.

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**\*\*The following information entails a like application from April and May of 2015 pertinent to the location of the fence, where a compromise was reached to move the fence halfway between the edge of the house and the property line. Due to the compromise, the application was granted a waiver from Rehabilitation Standard R1.8.\*\***

**Proposed Findings:** Based on the materials submitted by the applicant, historic maps from 1913 to 1950, architectural surveys conducted in 1977, 1987, and 1998, and a visit to the property, staff finds that:

- 1) This application represents a request to construct a six-foot privacy fence adjacent to the sidewalk.
- 2) The house was built during the period of significance, has retained its integrity, and should be considered historic, along with the property as a whole.
- 3) The property is a corner residential lot with an adjoining residence.
- 4) On lots such as this, a backyard privacy fence should be set back from the property line at least as far as the existing setback (or 25 feet, if less).
- 5) Locating the proposed privacy fence to abut the public sidewalk will serve to detract from the character and visual continuity of the Mansion Area.

**Proposed Conclusions of Law:**

- 1) Rehabilitation standard R1.8 should be not waived because the proposed fence will adversely affect the historic integrity of the surrounding neighborhood.
- 2) The proposed fence's location is not substantially consistent with the applicable review criteria.

**Staff Recommendation:** Based on the findings and conclusion above, staff recommends denial of the application.

**Design Review Committee Recommendation:** The Committee voted 5-0 (with one member recusing) to recommend approval with the condition:

- 1) That the proposed fence be set back to point halfway between the property line and the existing setback of the house.

**\*\*\*SEE UPDATES ON FOLLOWING PAGE\*\*\***

**\*\*\* UPDATE (5/7/15) \*\*\***

The applicant was amenable to the Design Review Committee's recommended condition and submitted a **revised site plan** to incorporate the suggested change. (*The revised site plan can be found on the last page of this report.*)

Staff believes that the **amended application**, while still not fully compliant with the standards for fences, is sufficient to mitigate the impact of the proposed fence on the adjoining property on Spring Street and on the character of the neighborhood as a whole.

**Proposed Findings (Revised):** Based on the materials submitted by the applicant, historic maps from 1913 to 1950, architectural surveys conducted in 1977, 1987, and 1998, and a visit to the property, staff finds that:

- 1) This application represents a request to construct a six foot privacy fence halfway between the westernmost edge of the house and the western property line.
- 2) The house was built during the period of significance, has retained its integrity, and should be considered historic, along with the property as a whole.
- 3) The property is a corner residential lot with an adjoining residence.
- 4) On lots such as this, a backyard privacy fence should be set back from the property line at least as far as the existing setback (or 25 feet, if less).
- 5) Locating the proposed privacy fence halfway between the house and the property will not detract from the character and visual continuity of the Mansion Area.

**Proposed Conclusions of Law (Revised):**

- 1) Rehabilitation standard R1.8 should be waived because the proposed fence will not adversely affect the historic integrity of the surrounding neighborhood.
- 2) The proposed fence is substantially consistent with the applicable review criteria.

**Staff Recommendation (Revised):** Based on the **revised** findings and conclusion above, staff recommends approval of the application with the following conditions:

- 1) That all State and City Codes be followed at all times; and
- 2) That the property be maintained in a neat and safe condition at all times.

**Mansion Area Advisory Committee Recommendation:** The committee voted unanimously to recommend approval of the revised application.

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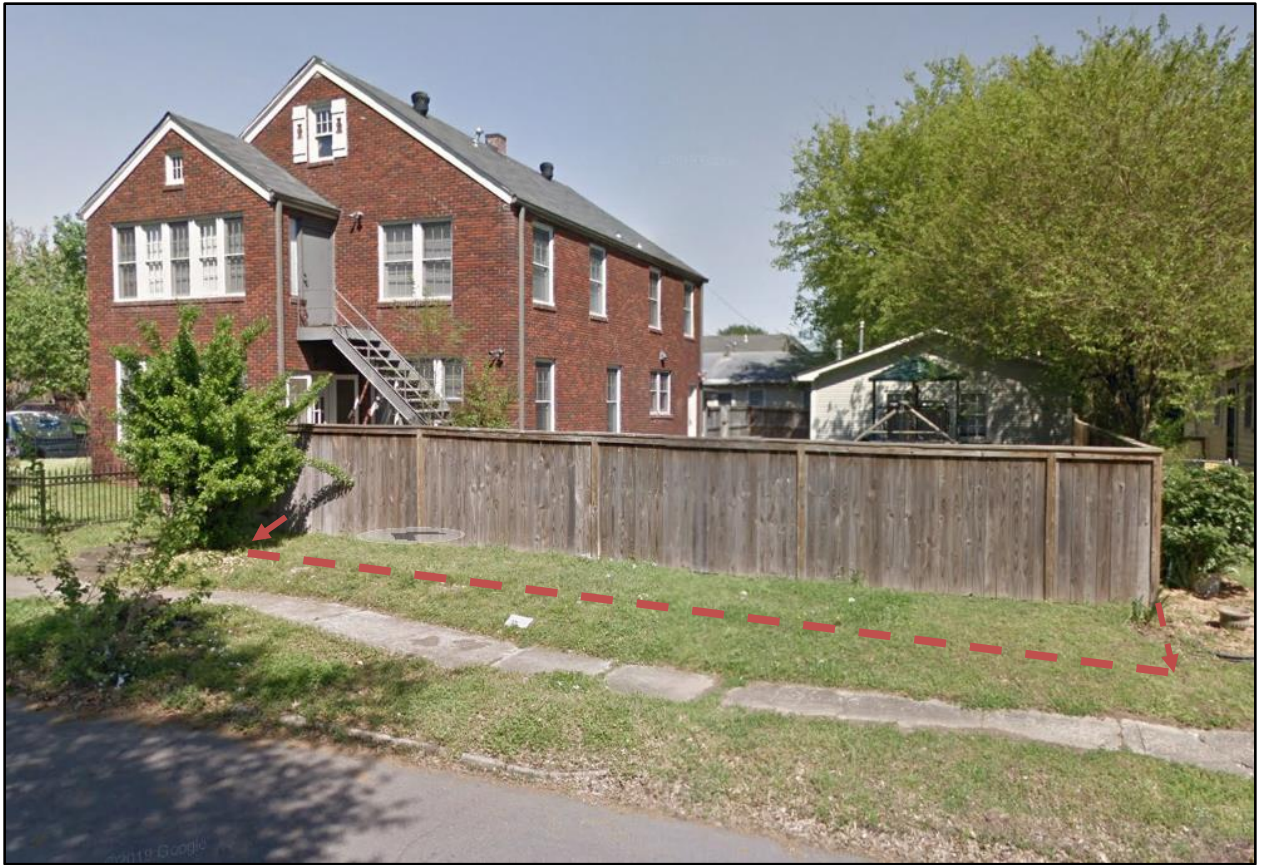
**Design Review Committee Recommendation:** Design Review Committee met at their regular meeting on August 2nd, 2023, where a compromise was presented to move the fence half the distance between its existing location and the property line (roughly 2 feet from the sidewalk). A motion was presented to approve Staff recommendations to deny the application. The committee voted 4-1 to deny the application.

**Mansion Area Advisory Committee Recommendations:** Mansion Area Advisory Committee met at their regular meeting on August 10, 2023 and motioned to approve the compromise presented by the applicant. Per updated plans, the motion would maintain the new fence location at 4'-8" from both the sidewalk and the existing fence location. The Committee voted 5-4, with 1 abstaining, to approve the application.

**Staff Recommendation 8/21/23:** Staff recommends denial of a Certificate of Appropriateness to waive Rehabilitation Standard R1.8 and move the existing fence to the property line with the following conditions:

- 1) That all state and city codes be followed at all times;
- 2) That the property be maintained in a neat and safe condition at all times;

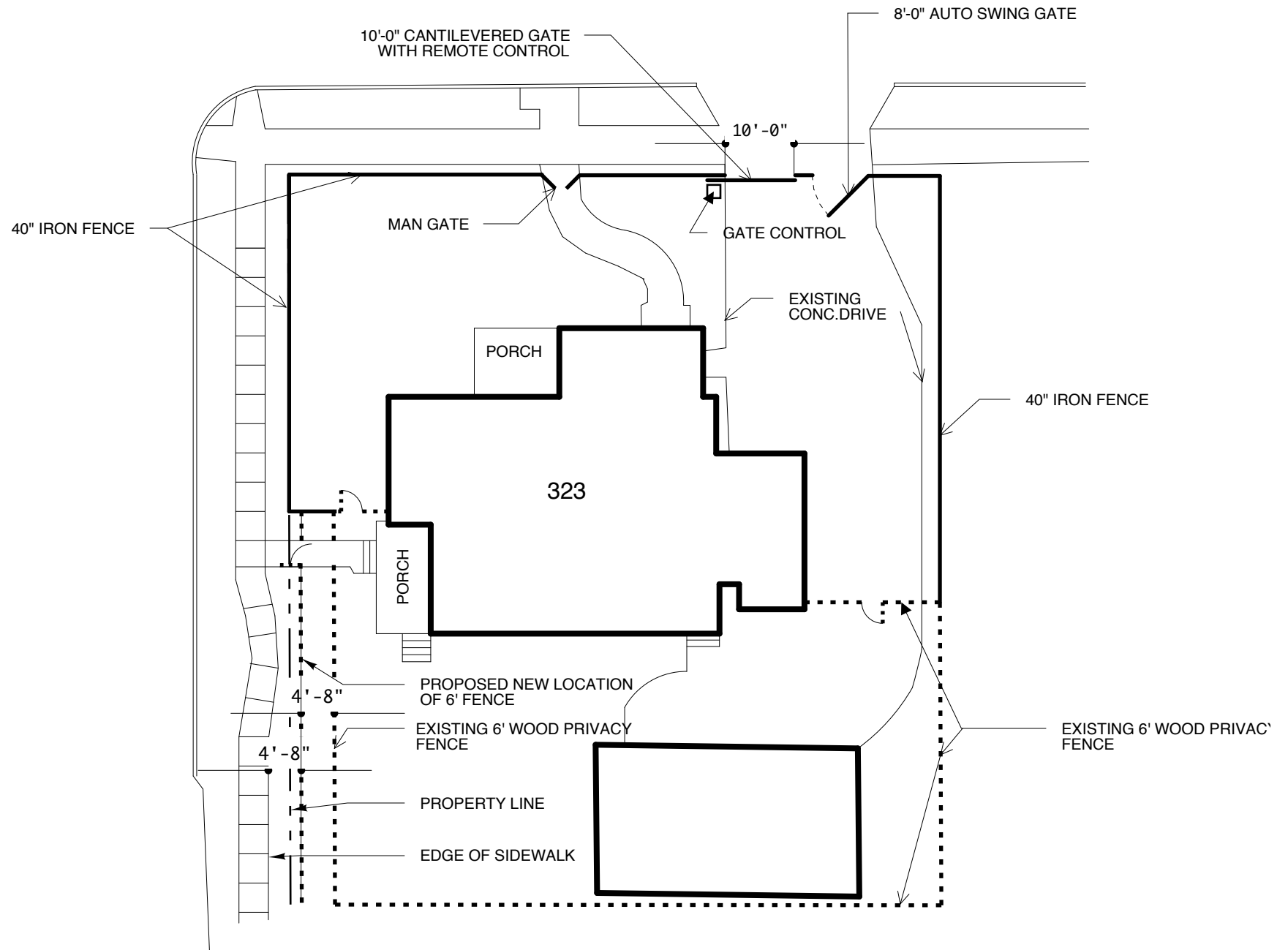




— — — Proposed fence location







**323 WEST 21ST. FENCE DIAGRAM** SCALE: 1" = 20'-0"

James Hendricks  
2113 Spring Street \* 2115 Spring Street  
317 W 21<sup>st</sup> Street \* 319 W 21<sup>st</sup> Street  
Little Rock, AR 72206

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July 3, 2023

Capitol Zoning District Commission  
1100 North Street  
Little Rock, AR 72201

To Whom It May Concern:

This letter is to express my support for the proposed fence extension at 323 W 21<sup>st</sup> Street. I am the property owner for 2113 Spring Street which is directly behind this property. I have spoken with the homeowners, John & Juli Brandenberger, and agree the extension will increase privacy and reduce the security issues we have struggled with within our neighborhood.

There is not a driveway at 2113 Spring so there will be no access or traffic views blocked by the fence extension.

Should you have further questions on this matter you may reach me at 501-680-4393.

Sincerely,

James Hendricks  
Property Owner

A handwritten signature in black ink, appearing to read 'James Hendricks', with a long horizontal flourish extending to the right.



**From:** [AOL](#)  
**To:** [Capitol Zoning](#)  
**Subject:** Brandenberger application  
**Date:** Wednesday, July 12, 2023 1:24:36 PM

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You don't often get email from awjarrard@yahoo.com. [Learn why this is important](#)

TO: Capitol Zoning District Commissioners

RE: 323 W 21st Street

I support the application filed by Julianna Brandenberger to reconstruct her surrounding backyard fence.

I own the property at 322 and 316 W. 21st Street which is directly across the street from Ms. Brandenberger's property.

Furthermore, I own 2200 and 2204 S. Spring Street which is the corner of 22nd and Spring Streets, specifically one block south of 323 W. 21st Street. I see Ms. Brandenberger's back fence from my front porch.

In no way do I feel the change in fence location will detract from our neighborhood. In fact, just the opposite because the pool addition will increase the property values.

Sincerely yours,

Anne W. Jarrard

awjarrard@yahoo.com

**From:** [Juli Brandenberger](#)  
**To:** [Joseph LaRue](#)  
**Subject:** Fwd: letter  
**Date:** Thursday, July 20, 2023 11:47:30 AM

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Hi Joseph - This is the email from Jill Jones.

Thanks!

Juli

On Friday, July 14, 2023 at 11:58:33 AM CDT, Jill <[jill4580@gmail.com](mailto:jill4580@gmail.com)> wrote:

Here's what I propose to send to the capitol zoning commission:

I live at 2208 S. Spring Street, one block away from the property in question, and would like to express my support for the request by Julianna Brandenberger to reconstruct the backyard fence at her property at 323 W. 21st St. which would allow the family to construct a backyard pool. The reconstruction of this fence and moving it a few feet closer to the sidewalk would in no way affect the visual aesthetics of the neighborhood or the safety of residents. The addition of an in-ground pool would also increase the property's value, thus increasing the values of nearby properties in the neighborhood.

Sincerely,  
Jill L. Jones  
Jill Jones  
2208 S. Spring St.  
Little Rock, AR 72206  
828-779-3530  
Professional Writer/Author  
Recently released: *Freedom's Edge*  
A trilogy of America's War for Independence in the South  
[www.jilljonesbooks.com](http://www.jilljonesbooks.com)  
[amazon.com/author/jilljonesbooks](https://amazon.com/author/jilljonesbooks)

On Fri, Jul 14, 2023 at 11:54 AM Jill <[jill4580@gmail.com](mailto:jill4580@gmail.com)> wrote:

Here's what I propose to send to the capitol zoning commission:

I live at 2208 S. Spring Street, one block away from the property in question, and would like to express my support for the request by Julianna Brandenberger to reconstruct the backyard fence at her property at 323 W. 21st St. which would allow the family to construct a backyard pool. The reconstruction of this fence and moving it a few feet closer to the sidewalk would in no way affect the visual aesthetics of the neighborhood or the safety of residents. The addition of an in-ground pool would also increase the property's value, thus increasing the values of nearby properties in the neighborhood.





PRESERVING THE PAST. SHAPING THE FUTURE FOR 55 YEARS.

TO: Amy E. Jones, Director, CZDC  
FROM: Patricia M. Blick, Executive Director, QQA  
RE: Comments for CZDC Hearing, August 17, 2023  
DATE: August 9, 2023

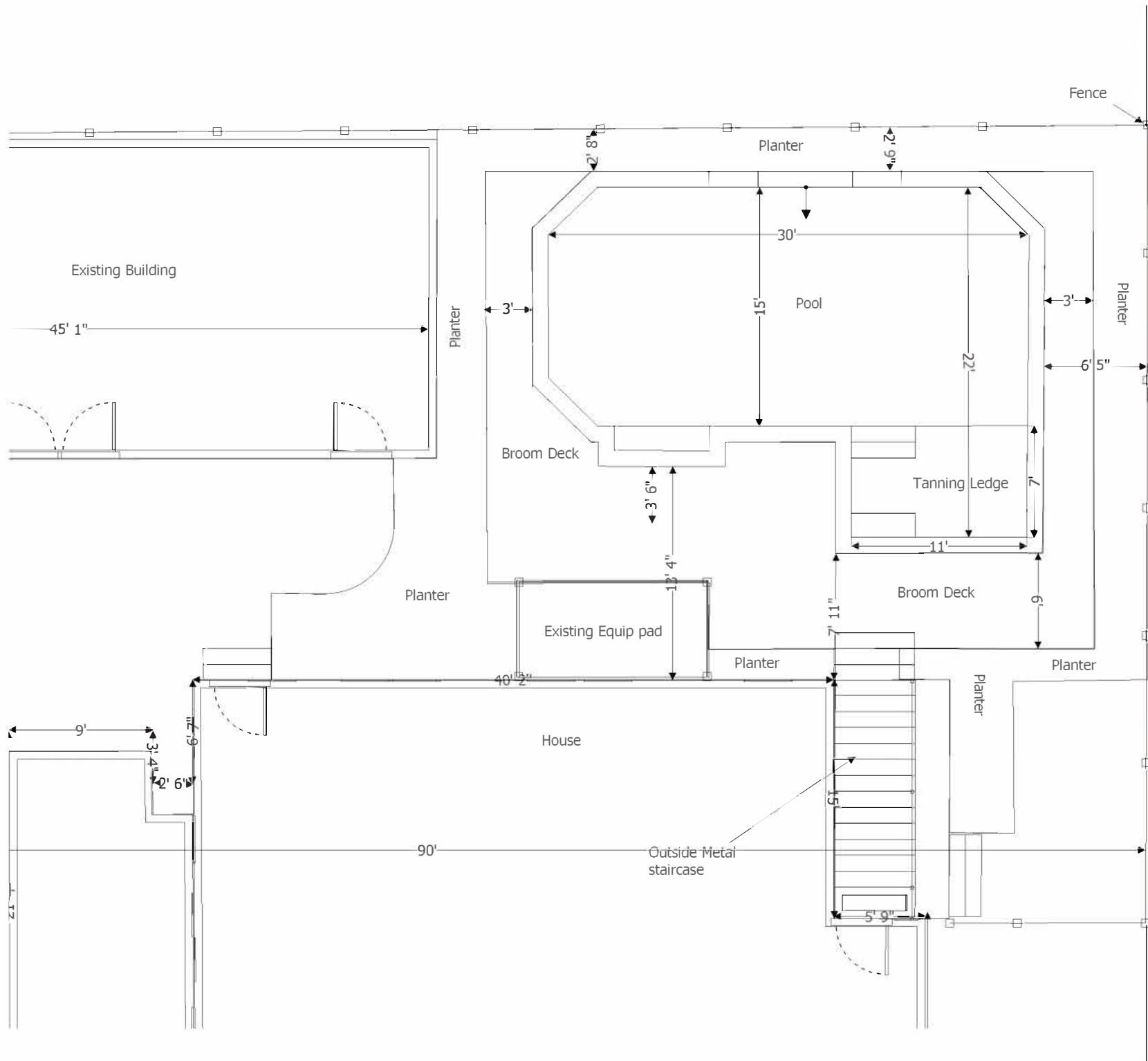
The QQA Advocacy Committee met on Tuesday, August 8, 2023. Please share these comments with the Commission and enter them into the record. The Committee reviewed the revised application to waive Rehabilitation Standard R1.8 to move the fence to the property line at 323 W. 21<sup>st</sup> Street.

We understand the applicant is seeking to move the 6-foot privacy fence to the sidewalk to accommodate a rear yard pool. The applicant is seeking a waiver to relocate the existing 6-foot fence on the west side of the property up to the sidewalk.

We surveyed other historic districts, via the National Alliance of Preservation Commission list serve and asked about their guidelines for corner lots, and universally corner lots should have shorter fences, set back or transparent.

The QQA concurs with the staff recommendation to deny the waiver. Constructing the tall privacy fence adjacent to the sidewalk does not create a pedestrian-friendly environment. Based on the plans that were submitted with the application, the project would still be viable without granting the waiver.

Quapaw Quarter Association  
Curran Hall  
615 E. Capitol Avenue  
P.O. Box 165023  
Little Rock, Arkansas 72216  
501-371-0075



Spring St.



PROPERTY ADDRESS  
323 W 21ST

LEGAL DESCRIPTION PROVIDED  
WEST 90 FEET OF LOT 1 AND THE WEST  
90 FEET OF LOT 2, BLOCK 14, FULTON'S ADDITION.

CURRENT OWNER OF RECORD

COMMUNITY LIVING, INC.

GEORGANNA IMHOFF HUDDLESTON

105 E. ROOSEVELT RD.

LITTLE ROCK, AR. 72201

FOR THE USE & BENEFIT OF

JOHN F. BRANDENBERGER

JULIANA BRANDENBERGER

BANK OF THE OZARKS

BEACH ABSTRACT & GUARANTY COMPANY

STANDARD ABSTRACT & TITLE COMPANY, INC.

#### LEGEND

- SET 1/2" REBAR W/ CAP
- FOUND MONUMENT
- △ COMPUTED CORNER (NOT SET)
- R/W — RIGHT-OF-WAY
- OVERHEAD UTILITIES
- FENCE
- ROADWAY CENTERLINE
- ⊕ POWER/LIGHT POLE
- (M) MEASURED
- (P) PER PLAT
- (D) PER DEED
- BUILDING SETBACK LINE
- UTILITY EASEMENT

#### CERTIFICATION

I HEREBY CERTIFY THAT THE ABOVE PLAT REPRESENTS A SURVEY MADE BY ME OR UNDER MY SUPERVISION ON THIS DAY AND THAT ALL CORNERS ARE SET AS SHOWN. NO INDEPENDENT SEARCH FOR EASEMENTS, COVENANTS, ENCUMBRANCES, OR ANY OTHER FACTS WHICH AN ACCURATE TITLE SEARCH MAY DISCLOSE WAS PERFORMED.

*Raymond Hickey*  
RAYMOND HICKEY, AR PLS #1401

#### GENERAL NOTES

- BASIS OF BEARING FOR THIS SURVEY IS BASED ON ARKANSAS STATE PLANE GRID COORDINATES (NAD83 DATUM). MEASURED DISTANCES ARE GRID DISTANCES. ELEVATIONS SHOWN ARE ABOVE MEAN SEA LEVEL (NAVD88 DATUM).

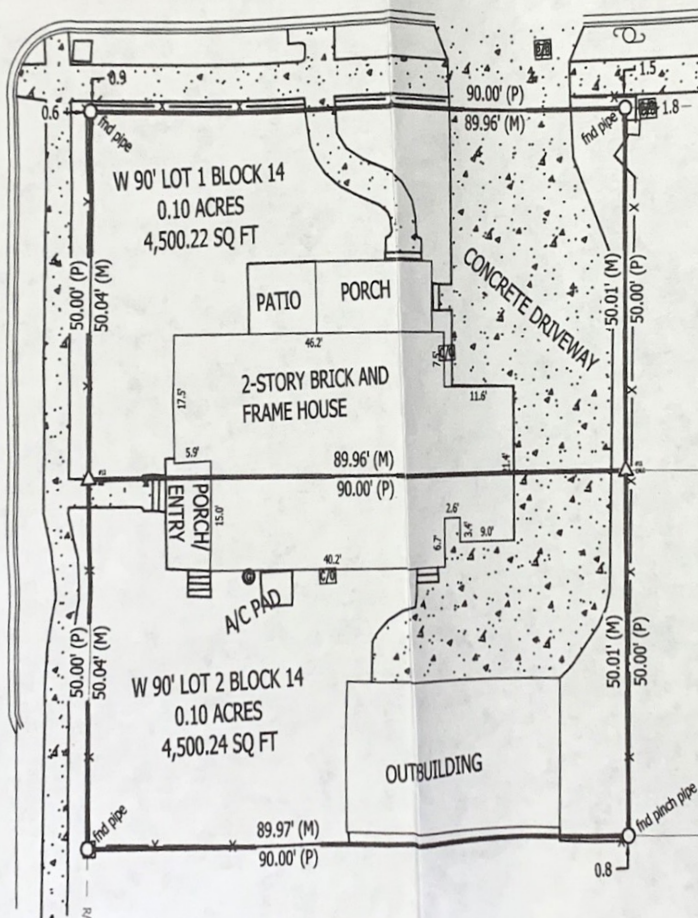
- REFERENCES:  
A. PLAT OF FULTON'S ADDITION PLAT BOOK 3, PAGE 437.

#### UTILITIES DISCLAIMER

UTILITIES SHOWN ARE NOTED BY VISIBLE OBSERVATION ONLY. UNDERGROUND UTILITIES ARE TAKEN FROM UTILITY MAPS; EXACT LOCATION OF UNDERGROUND UTILITIES ARE APPROXIMATE AS NO EXCAVATION HAS TAKEN PLACE AS OF THIS DATE TO DETERMINE THE EXACT LOCATION OF THE UNDERGROUND UTILITIES SHOWN ON THIS DRAWING.

WEST 21ST STREET 60' R.O.W.

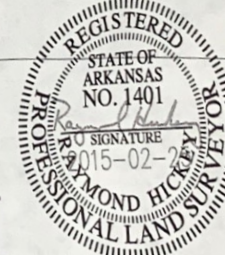
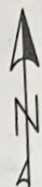
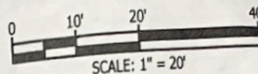
SPRING STREET 60' R.O.W.



EAST 60' LOT 1 BLOCK 14

EAST 60' LOT 2 BLOCK 14

LOT 3 BLOCK 14



CENTRAL ARKANSAS ENGINEERING

DATE  
CHECKED BY  
DATE 02-25-2011  
SCALE 1"=20'  
PROJECT No. 20150  
PAGE 1 of 1



CAPITOL ZONING  
DISTRICT COMMISSION

# CAPITOL ZONING DISTRICT COMMISSION PERMIT APPLICATION

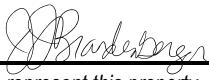
**PROPERTY ADDRESS** 323 W 21st Street, Little Rock, AR 72206

**PROPERTY OWNER** John and Julianna Brandenberger

**PERSON FILING APPLICATION** Julianna (Juli) Brandenberger  
*if other than owner, complete the Authorization of Representation statement provided.*

**APPLICANT PHONE** 501-350-3064 **EMAIL** juli.brandenberger@gmail.com

**MAILING ADDRESS** 323 W 21st Street, Little Rock, AR 72206

**APPLICANT SIGNATURE**  **DATE** 4/24/23  
*Signature certifies that applicant is authorized to represent this property, and that all information presented in this application, as well as in any supporting materials, is true and correct to the best of the signatory's knowledge.*

## DESCRIPTION OF PROPOSED WORK

**This application is for general work.**

*Attach as many pages or supporting materials as necessary (see attached for more information). An application is not complete and will not be scheduled for Commission review until all applicable supporting materials have been submitted to staff. Electronic submittals (email, scanned documents, PDFs, digital images, etc.) are welcome. You may submit the application in person or by mail at 1100 North St., Little Rock, AR, or via email at [capitol.zoning@arkansas.gov](mailto:capitol.zoning@arkansas.gov). Please call 501.324.9644 for assistance.*

This permit application is for the installation of a backyard in ground pool and fence rebuild. Attached is a copy of the proposed design of the in ground pool. Construction is estimated to begin in August with completion by the end of October. No trees or utility lines will need to be moved or removed.

This pool does require the West side of the backyard fence to be moved from it's existing location to the property line. Currently we have an iron fence around the front perimeter. This change to the backyard would put both the front and back fence in direct line with each other on the West side. When we received a fence permit for the backyard in 2015, the plan was to include a large natural border of trees on the exterior of the fence. This would block road noise and add privacy. We've had a lot of problems with people walking up to the fence (from within the vegetation) to access the backyard or peer in to it. We have a twelve year old daughter and have had increasing concerns about privacy and access. So after the pool installation we want to extend that fence back to the property line (8' or so) where it was prior to the 2015 application.





**CAPITOL ZONING DISTRICT COMMISSION**  
**STAFF REPORT**  
**04/29/2015**  
**BIM / TDM**



**Location:** 323 West 21st Street  
**Applicant:** John & Juli Brandenberger  
**Permit Type:** Certificate of Appropriateness

**Project Description:** This application is for a Certificate of Appropriateness to allow for the construction of a backyard privacy fence. The proposed height, style and materials are all allowed by right. At issue in this application is the location of the proposed fence and gate near the western property line, abutting the sidewalk along Spring Street, and joining with the house's west (right) façade.

**Historic Significance:** This lot was originally developed as the circa 1910 home of Alex Watson, owner of a grocery store next door at 315. The Watson House was removed around 1926, and the store may also have been demolished at this time. The Bush House seen today at 323 West 21st Street was built for Gus Bush, owner of the Bush Nash auto dealership, circa 1927 in an English Revival style. Bush sold the property in 1941 to Mary Gibson who sold it again later that year. A small side porch or carport was replaced sometime after 1950 with the addition seen today on the east side the house. The house appears to have otherwise retained much of its original appearance and configuration. An auto garage at the rear of the property, possibly built at the same time as the main house, was badly damaged in the 1999 tornado and reconstructed the following year. For many years, the house was operated as a group home for developmentally disabled individuals by Community Living, Inc, until the current owner acquired the property in January 2015. The Bush House is listed in the National Register as a contributing resource in the Governor's Mansion Historic District.

**Previous Action:** Staff issued a permit in 1995 to allow for the picket fence seen today in the front yard. Another staff-level permit was issued in 1998 to re-roof the house. A 1999 permit allowed for the reconstruction of the rear outbuilding following the tornado. In 2000, staff issued a permit to allow for the installation of security doors on the rear of the house. Two permits were issued to the current owner in 2015 to allow for various exterior repairs and tree removal.

**Zoning:** This structure is located in Zone "M". This residential zone comprises most of the Mansion Area.

**Review Standards for Certificates of Appropriateness:**

Capitol Zoning District Commission Rule, Section 2-105. C. 1. (b) A Certificate of Appropriateness shall ... be required for the erection of any new structure, including accessory structures ... Applications for new construction requiring Commission approval will first be scheduled for a review by the Design Review Committee which will make a recommendation regarding proposed work's appropriateness in historical style in the context of adjoining or neighboring structures; and its consistency with the goals of the Commission's Master Plan and Standards.



### Capitol Zoning District Commission Rule, Section 2-105. C. 1. (e)

When considering an application for a Certificate of Appropriateness, the Commission shall consider any applicable review Standards and Master Plan goals, the recommendations offered by the committees and staff, as well as any public testimony or evidence presented at the public hearing.

### Capitol Zoning District Commission Rule, Section 2-105. F.

... All changes in the Capitol Zoning District will be evaluated according to the General Standards and the applicable Area Framework Plan. Changes to historic structures or site features shall be evaluated according to the Rehabilitation Standards for Historic Properties. Structures and site features 40 years or older are assumed to be historic, unless they have been significantly altered, and reversing the alteration(s) would be impossible or wholly unreasonable.

*Staff finds the property, as a whole, to be historic because of main house's age and historic integrity. Staff finds the proposal should be evaluated using the General Standards, the Rehabilitation Standards (as they relate to the property as a whole), and the Mansion Area Master Plan.*

### Capitol Zoning Rehabilitation Standards for Historic Properties, Interpretation of Terms Related to Compliance

**Historic** - In general, a historic property is one that is at least 40 years old or older and largely unchanged and some properties less than 40 years old may also be considered historic if they are of exceptional significance. The CZDC is especially concerned with those properties that are associated with significant people or events or convey a character of building and design found during the District's period of significance, roughly 1880-1940. Note that in some cases, a CZDC-designated property may also be listed in the National Register of Historic Places.

*Staff finds the property to be historic because of the documentary and physical evidence indicating the main house was constructed within the District's period of significance and has retained much of its historic integrity.*

### Capitol Zoning Rehabilitation Standards for Historic Properties, Historic Streetscape & Site Design Features

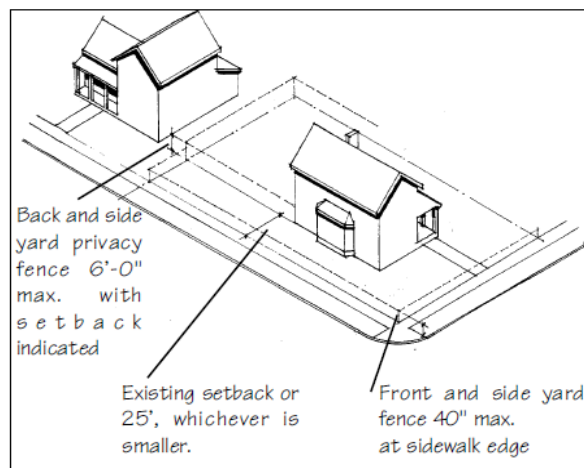
**Policy:** Historic streetscape and site features that survive should be preserved. In addition, new features should be compatible with the historic context.

*Staff finds the proposal to be inconsistent with this policy. Staff believes the proposed privacy fence's location along a public sidewalk is not compatible with the historic context of the neighborhood.*

#### **R1.8 A new fence should be in character with those seen historically.**

- Where a fence is to be used along a public right of way, a metal picket fence, in the character of traditional wrought iron, is preferred. A painted wood picket fence also is an appropriate alternative in most locations. Pickets should be evenly spaced ...
- A fence that defines a front yard is usually low to the ground (less than 40 inches). This scale should be maintained.
- Unpainted wood, chain link and solid "stockade" fences are inappropriate materials in front yards and side yards when they face the street.
- Privacy fences may be used in back yards, side yards and along alleys (less than 72 inches).
- On corner lots, both sides that abut public sidewalks and streets should be treated as front yard fences.

*Staff finds the proposal to be inconsistent with this standard because of the proposed privacy fence's location along a public sidewalk. Staff believes, however, that construing this standard to mean that corner lots may never have a privacy fence located parallel to the cross street represents an absurd interpretation. The question then becomes "At what point does a side / front yard on a corner lot become a backyard?" The illustration below from the Mansion Area Design Standards addresses this.*



*Fence height and setback requirements for a corner residential lot with an adjacent residence.*

*The graphic indicates that the transition between a corner lot's side / front yard and its backyard occurs along the plane of the existing setback (or 25 feet, if less).*

*Though located in the standards for new construction, staff believes this principle – that one property's backyard privacy fence should not effectively become another's front yard fence – remains applicable in this case.*

### Capitol Zoning Rehabilitation Standards for Historic Properties, *About This Document*

An asterisk adjacent to a statement in the text indicates that it is a standard that will not be waived by the Capitol Zoning District Commission for historic structures or site features built during the District's period of significance ... Other text, without an asterisk, will also be considered in the Commission's reviews, but may be waived if it is demonstrated to the Commission's satisfaction that such a waiver will not adversely affect the historic integrity of the surrounding neighborhood.

*Staff finds the property to be historic, and dating from the District's period of significance, but the applicable standard listed above is not marked with an asterisk. Staff believes, however, that standard R1.8 should not be waived because the proposed fence's location along the sidewalk is not consistent with the goals for the Mansion Area (see below) and may therefore serve to adversely affect the historic integrity of the surrounding neighborhood.*

### Mansion Area Master Plan, *Urban Design Goals*

#### **1. To preserve the character of the Mansion Area neighborhood...**

The preservation and restoration of significant buildings ... as well as the preservation of the overall character of the Mansion Area, is the primary goal ...

#### **3. To establish a sense of visual continuity within the Mansion Area neighborhood.**

A theme to visually unify the neighborhood is needed ... It should include ... visual accents that give identity to individual blocks.

*Staff finds the proposal to be inconsistent with these goals. Staff believes, generally, that privacy fences abutting sidewalks, can serve to detract from the overall character of the Mansion Area, and, specifically, that privacy fences located in or alongside front yards serve to diminish the neighborhood's visual continuity.*

**Neighborhood Reaction:** None to date.

**Proposed Findings:** Based on the materials submitted by the applicant, historic maps from 1913 to 1950, architectural surveys conducted in 1977, 1987, and 1998, and a visit to the property, staff finds that:

- 1) This application represents a request to construct a six foot privacy fence adjacent to the sidewalk.
- 2) The house was built during the period of significance, has retained its integrity, and should be considered historic, along with the property as a whole.
- 3) The property is a corner residential lot with an adjoining residence.
- 4) On lots such as this, a backyard privacy fence should be set back from the property line at least as far as the existing setback (or 25 feet, if less).
- 5) Locating the proposed privacy fence to abut the public sidewalk will serve to detract from the character and visual continuity of the Mansion Area.

#### **Proposed Conclusions of Law:**

- 1) Rehabilitation standard R1.8 should be not waived because the proposed fence will adversely affect the historic integrity of the surrounding neighborhood.
- 2) The proposed fence's location is not substantially consistent with the applicable review criteria.

**Staff Recommendation:** Based on the findings and conclusion above, staff recommends **denial** of the application.

**Design Review Committee Recommendation:** The Committee voted 5-0 (with one member recusing) to recommend **approval** with the condition:

- 1) That the proposed fence be set back to point halfway between the property line and the existing setback of the house.

**\*\*\*SEE UPDATES ON FOLLOWING PAGE\*\*\***

**\*\*\* UPDATE (5/7/15) \*\*\***

The applicant was amenable to the Design Review Committee's recommended condition and submitted a **revised site plan** to incorporate the suggested change. (*The revised site plan can be found on the last page of this report.*)

Staff believes that the **amended application**, while still not fully compliant with the standards for fences, is sufficient to mitigate the impact of the proposed fence on the adjoining property on Spring Street and on the character of the neighborhood as a whole.

**Proposed Findings (Revised):** Based on the materials submitted by the applicant, historic maps from 1913 to 1950, architectural surveys conducted in 1977, 1987, and 1998, and a visit to the property, staff finds that:

- 1) This application represents a request to construct a six foot privacy fence halfway between the westernmost edge of the house and the western property line.
- 2) The house was built during the period of significance, has retained its integrity, and should be considered historic, along with the property as a whole.
- 3) The property is a corner residential lot with an adjoining residence.
- 4) On lots such as this, a backyard privacy fence should be set back from the property line at least as far as the existing setback (or 25 feet, if less).
- 5) Locating the proposed privacy fence halfway between the house and the property will not detract from the character and visual continuity of the Mansion Area.

**Proposed Conclusions of Law (Revised):**

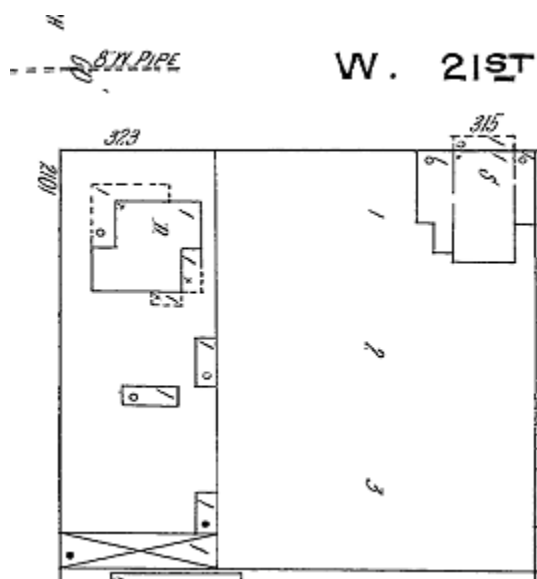
- 1) Rehabilitation standard R1.8 should be waived because the proposed fence will not adversely affect the historic integrity of the surrounding neighborhood.
- 2) The proposed fence is substantially consistent with the applicable review criteria.

**Staff Recommendation (Revised):** Based on the **revised** findings and conclusion above, staff recommends **approval** of the application with the following conditions:

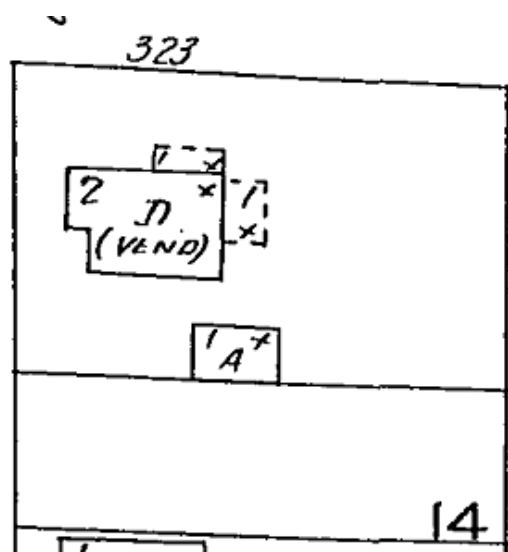
- 1) That all State and City Codes be followed at all times; and
- 2) That the property be maintained in a neat and safe condition at all times.

**Mansion Area Advisory Committee Recommendation:** The committee voted unanimously to recommend **approval** of the revised application.

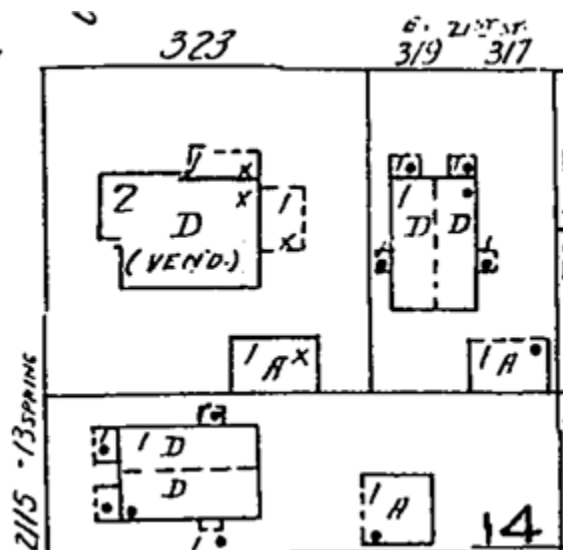
## Details from Sanborn Fire Insurance Company maps



1913 - Note the former Watson House at 323 (with its several outbuildings, including a stable) and the grocery store ('S') next door at 315, with its front canopy extending into the 21<sup>st</sup> Street right-of-way.



1939 - The Watson House is gone, as is the store, and the lots have been re-platted. The brick-veneered (VEN'D) Bush House is now seen on the corner lot. Note the unenclosed projection on the east façade.



1950 - There do not appear to have been any further changes to the Bush House, but the lot has been subdivided again, and the twin duplexes to the east and south are now present.

Archive photos of property



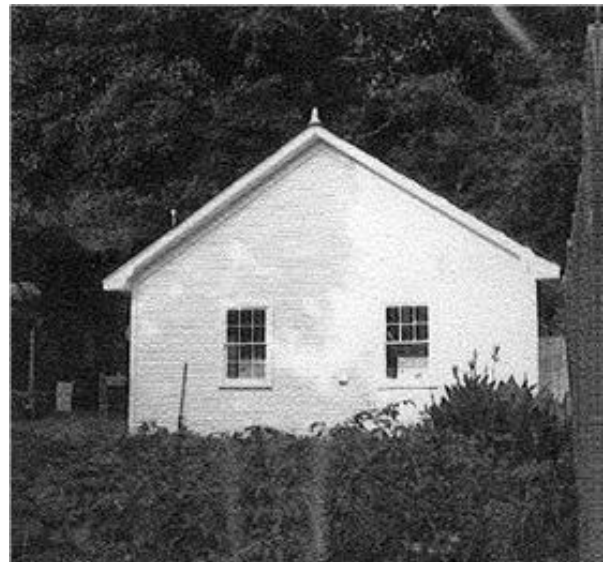
1977



1987



1998





## Current photos of property



This photo shows the existing front and side yard fencing.



The proposed six-foot privacy fence would replace the existing four-foot fence, seen toward the left side of this photo, along the property line abutting the sidewalk, and then turn 90 degrees to join with the house in front of the back patio. This smaller section of fence would feature a three-foot wide gate. The **dotted red** line represents the approximate location of the proposed fence and gate. The standards for fences, however, indicate that on a corner lot with another house “behind” it, a privacy fence should be placed no closer to the sidewalk than the existing setback (or 25 feet, if less). The **dashed red** line approximates the existing setback. (The portion of privacy fence at the far right, between the existing setback and the sidewalk, is non-conforming).

**UPDATE:** The **solid blue** line represents a plane approximately halfway between the two red lines. The Design Review Committee recommended the proposed fence be approved at this location, and the owner subsequently revised the application to incorporate this suggestion.





## CAPITOL ZONING DISTRICT COMMISSION

### APPLICATION FORM

PROPERTY ADDRESS 323 W 21ST

PROPERTY OWNER JOHN & JULI BRANDENBERGER

PERSON FILING APPLICATION  
*if other than owner*

APPLICANT PHONE AND EMAIL

APPLICANT SIGNATURE AND DATE

J. Brandenburger 3/30/15

Signature certifies that applicant is authorized to represent this property, and that all information presented in this application, as well as in any supporting materials, is true and correct to the best of the signatory's knowledge.

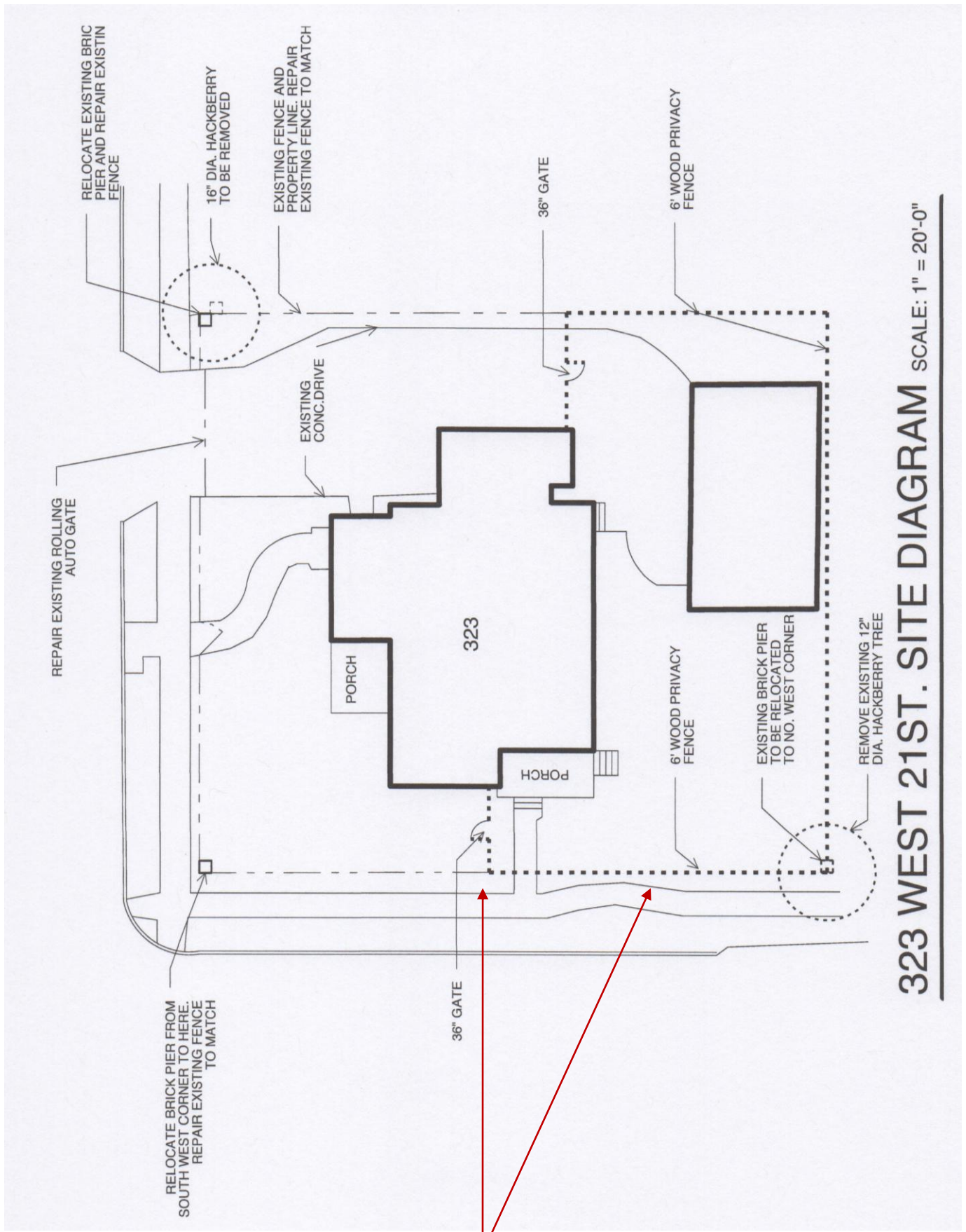
DESCRIPTION OF PROPOSED WORK AND / OR USE

REPAIR FRONT FENCE & ROLLING AUTO  
GATE, RELOCATE BRICK PIER FROM SW CORNER,  
REMOVE HACKBERRY TREES (2 LOCATIONS), REPLACE 6' WOOD

PRIVACY FENCE, ADD INTERIOR FENCE W/ TWO GATES. SEE  
ATTACHED DRAWINGS: SITE DIAGRAM AND GATE DETAIL

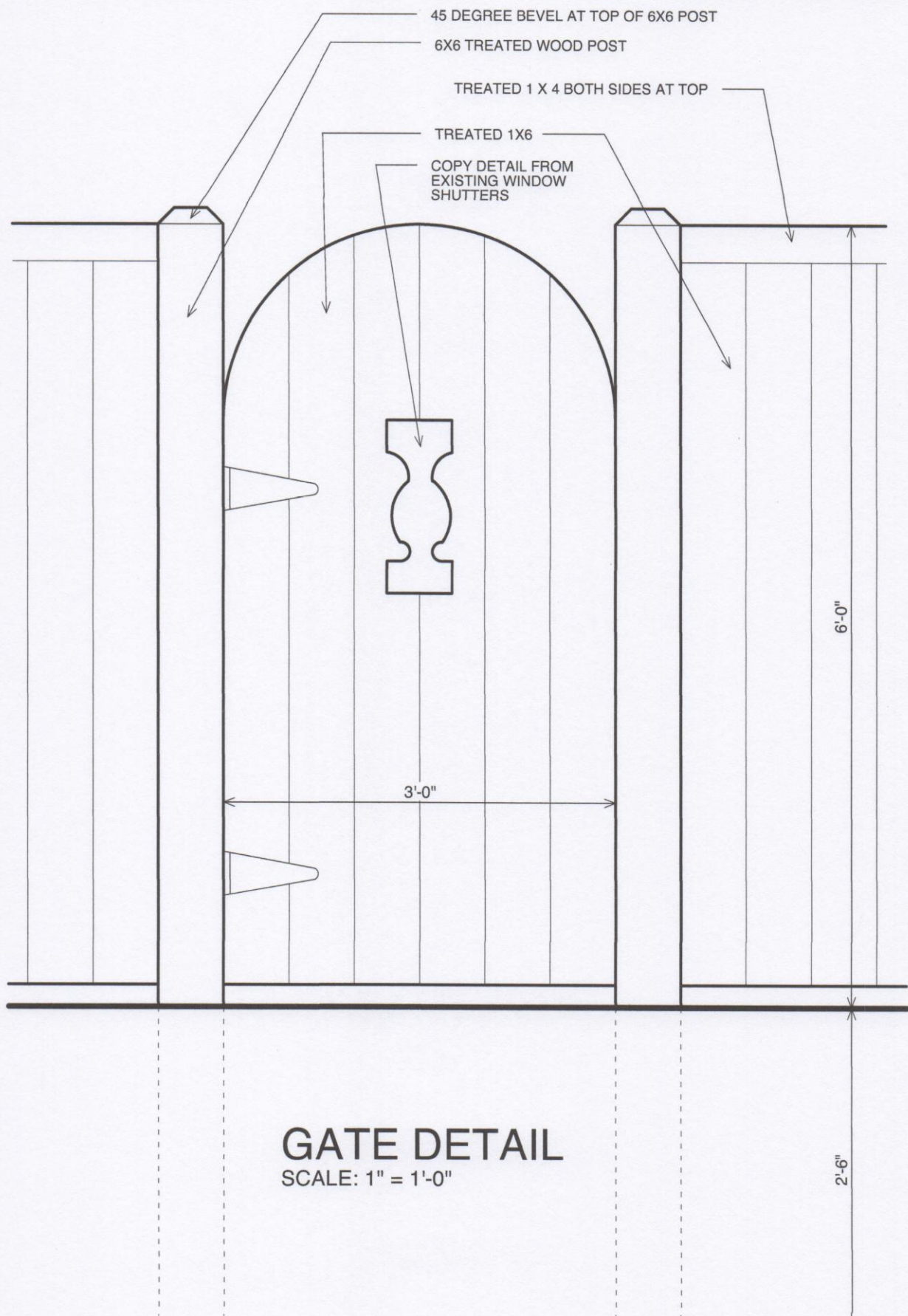
Attach as many pages or supporting materials as necessary. The Commission and its staff cannot make a determination on your application without a complete description of the property's proposed appearance, materials, and/or function. An application is not complete until all applicable supporting materials have been submitted to staff. Electronic submittals (email, scanned documents, PDFs, digital images, etc) are welcome.

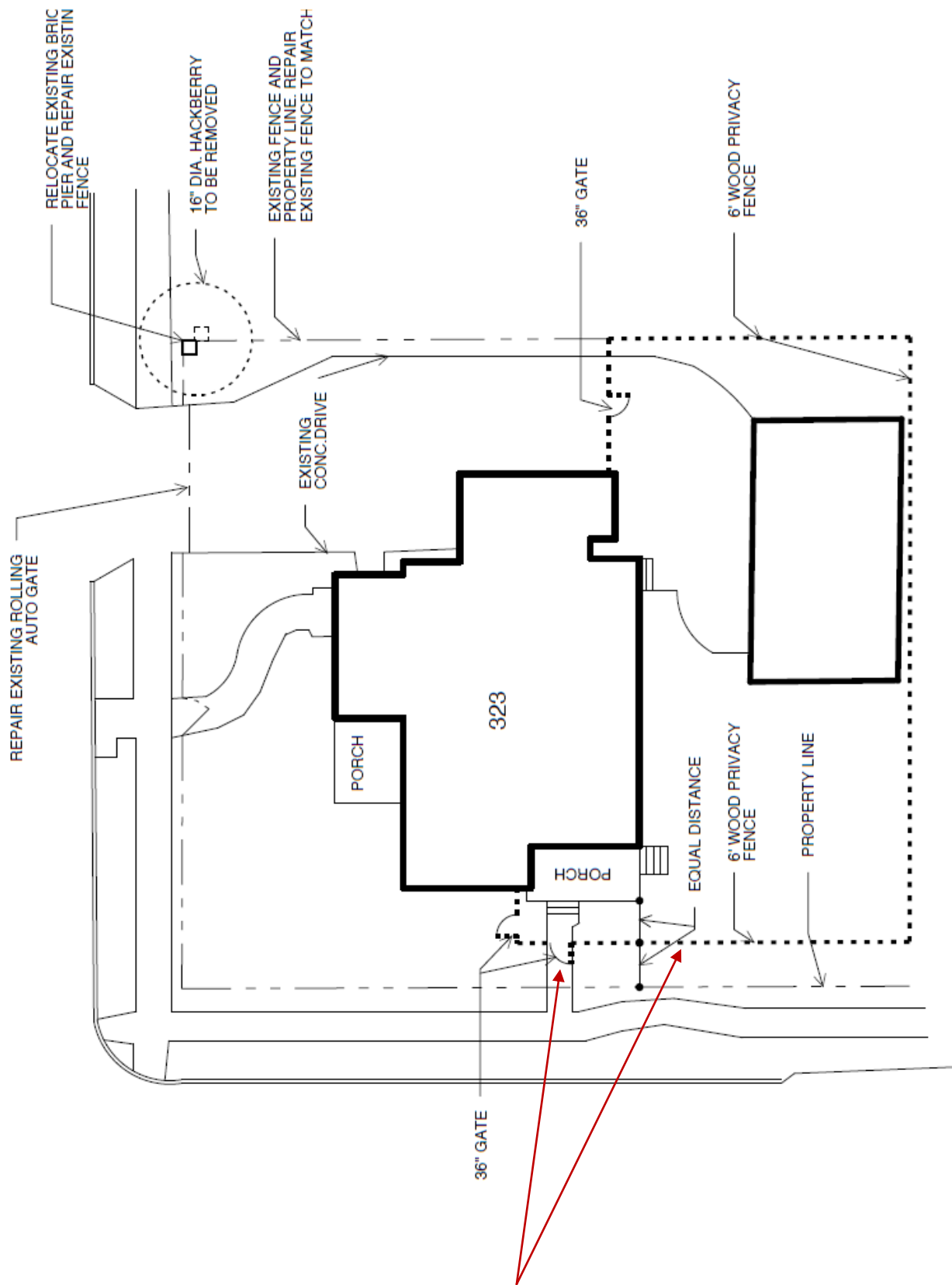
NOTE: This application form includes items that were approved at the staff level and not covered in this report.



NOTE: This report deals only with the location of the proposed privacy fence along the western (bottom) property line, and then joining the house near the middle of the west façade.







**323 WEST 21ST. SITE DIAGRAM** SCALE: 1" = 20'-0"

NOTE: The applicant submitted this **revised site plan** to incorporate the recommendations of the Design Review Committee. The revised application calls for placing the proposed privacy fence halfway between house's western setback and the property line on the Spring Street side. The updated drawing also includes a second gate at the existing walkway between the sidewalk and the back porch.