

**CAPITOL ZONING DISTRICT COMMISSION**  
**STAFF REPORT 2023-016**  
**6/7/23**  
**JCL**



**Location: 323 W. 21st St.**  
**Applicant: Julianna Brandenberger**  
**Permit Types: Variance for fencing**

**Project Description:** This application is seeking a Variance to move an existing fence in order to accommodate a new in-ground pool. The proposal would move the existing 6' fence to the property line.

**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 Variances:**

Capitol Zoning District Commission Rule and Procedure, Section 2-105 Variances

**C.3. Variances** – The General Standards (Article 3) allow the Commission to waive several of its provisions on a case-by-case basis. In some extenuating circumstances, however, such waivers may not be sufficient to allow for the appropriate, compatible development of the site. In such cases, the Commission may issue a Variance to grant additional relief from the literal provisions of the General Standards when it is demonstrated to the Commission’s satisfaction that the proposal will be otherwise consistent with the goals of the Master Plan; and

**A.** The proposal will, based on sound documentary, photographic, or physical evidence, restore a historic property to its original appearance, or to another historic configuration dating from the District’s period of significance; or

**B.** The proposal will afford the least intrusive solution possible; and

**(I)** Physical or topographical conditions unique to the land, which were not created or intensified by the applicant or previous owner, will result in an extreme hardship if the literal requirements of the General Standards are applied, resulting in the deprivation of any reasonable use of the property; or

**(II)** The preservation of a historic or archaeological resources will result in extreme hardship if the literal requirements of the General Standards are applied, resulting in the deprivation of any reasonable use of the property.

Under no circumstances shall the Commission grant a Variance to allow a use not identified as permitted or conditional use within a given zone, nor allow for building heights in the Capitol Area greater than the allowed maximums. A Variance may not be granted at staff level.

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

**ii.** The Commission may waive the Rehabilitation Standards for cause (see Section 4-101 C.), 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 request for a Variance cannot be approved by Staff and must be reviewed by the Design Review Committee, Mansion Area Committee, and reviewed by the Commission. Staff also finds the proposal should be evaluated using the General, Rehabilitation, as well as the Mansion Area Master Plan.*

**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 General Standards, Section 4-201, *Historic Streetscape and 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.

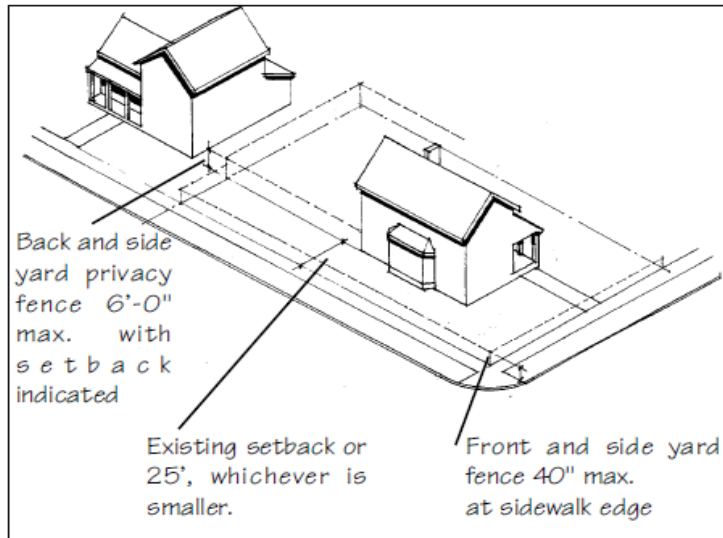
**R1.9 The height of any fence will be measured from the grade on the side of the fence facing the public right-of-way.**

- 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:** At the time of distribution there has been no neighborhood reaction.

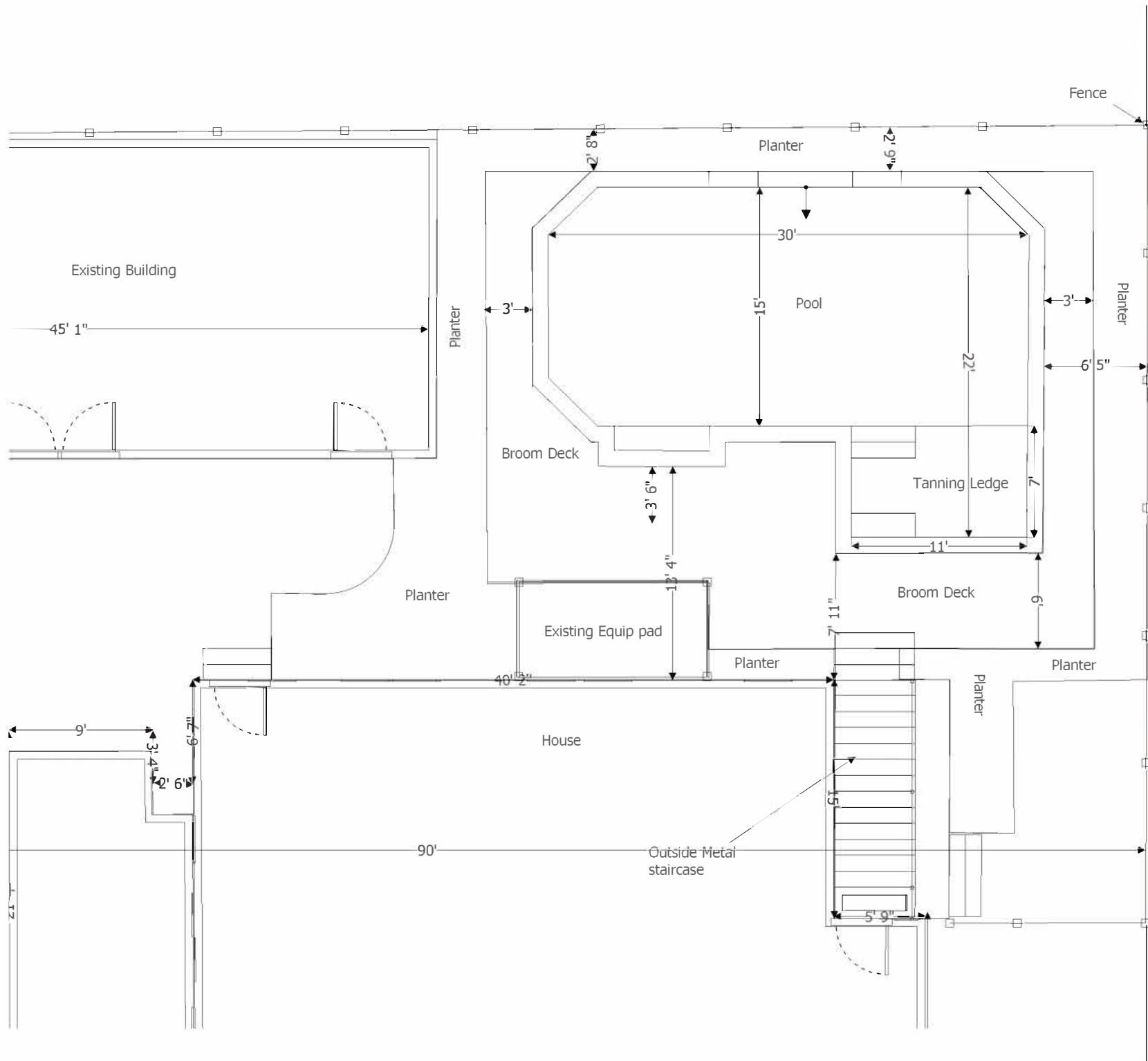
**Staff Recommendation:** Staff recommends denial of a Variance to move the fence in its current location with the following conditions:

- 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 (6 ft.)



Spring St.



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  
1100 North Street • Little Rock, AR 72201