

**City of Santa Fe  
Historic Districts Review Board  
Findings of Fact and Conclusions of Law**

**Case # 2024-9478-HDRB**

**Address** – 614 Paseo de Peralta

**Agent’s Name** – Stefanie Beninato, Attorney at Law

**Owner/Applicant’s Name** – Miriam Leth-Espensen

THIS MATTER came before the Historic Districts Review Board (“Board”) for hearing on December 10, 2024.

**BACKGROUND**

The single-family residence at 614 Paseo de Peralta has a contributing historic status in the Downtown and Eastside Historic District. The Applicant, who owns and lives on the property, has built an unpermitted 5’8” coyote fence, abutting the sidewalk and extending across the entire north street frontage for this property. The streetscape along Paseo de Peralta was built after the Anglo-American arrival and the houses in this area reflect the Anglo-American style of architecture, including low front-yard fences. There is a consistent grade change between the properties on the south side of the street and those on the north side. Retaining walls characterize the streetscape on the north side, where there is a pronounced slope, with some retaining walls substantially set back from the street.

The property has had several fences along the street frontage in the years since 1985. A photograph from the 1985 HCPI shows that this house, like others in the streetscape, had low, transparent fencing at the property line. Historically the house was unobstructed and apparent from the street as were other historic buildings in the streetscape. Photos show a blue board fence present from 2007 through 2014, and a wood-framed wire fence from 2015 to 2023. The coyote fence which is the subject of this application was built in 2023. There is no record of approval from Historic Preservation and no permits on record for changes to the fencing over time. A City inspector issued a Stop Work Order in August, 2023, for construction of the coyote fence without approval from HDRB or the Historic Preservation staff or a construction permit. The City of Santa Fe sent the Leth-Espensen Trust (the owner of record) a Notice of Violation in January, 2024, and the matter is pending in Municipal Court. See Case # CE-2024-5.

The Staff has determined that the Applicant’s 5’8”-high coyote fence is inconsistent with this streetscape with regard to height and material. Santa Fe City Code (“SFCC”) Section 14-5.2(D)(9)(c)(ii)(C) reads, “Yard walls and fences shall be limited to a height that does not exceed the average of the height of other yard walls and fences in the streetscape.” The Staff’s streetscape calculation allows for a 4’6”-high fence. The Staff’s opinion is that the 5’8”-high coyote fence disrupts the structure’s relationship with the streetscape and, if permitted to remain, threatens the building’s historic status. SFCC Section 14-5.2(D)(1)(a) reads, “The status of a significant, contributing, or landmark structure shall be retained and preserved. If a proposed alteration will cause a structure to lose its significant, contributing, or landmark status, the application shall be denied.”

The Applicant now requests approval of the coyote fence by proposing the following exterior alterations:

Construct a 5'8"-high coyote fence with two wood-plank pedestrian gates (one on the street frontage and one on the side property line) where the maximum allowable height is 4'6". An exception to SFCC Section 14-5.2(D)(9) to exceed the maximum allowable height is requested.

This property also is located within the Business Capital District East Marcy / East Palace Subdistrict (BCDEAS). In this subdistrict, fences are further limited to a maximum height of 4'0", per SFCC Section 14-7.4(A)-1, Table of Dimensional Requirements for Townscape Districts. While the applicant is requesting an exception from the HDRB to the streetscape height standard of 4'6", SFCC Section 14-5.2(C)(5)(a) reads:

“If the applicant requests approval of a height in the historic district that exceeds the underlying zoning district requirement, the applicant shall first receive an exception to this Section 14-5.2. If approved by the historic district board, the applicant shall proceed to the board of adjustment for consideration of the proposed variance.”

Therefore, if the HDRB approved the exception, the Applicant would proceed to the Board of Adjustment for a variance to the standards of the underlying zoning.

At the outset of this hearing, Stefanie Beninato, the Agent for the Applicant, asked Board member Jennifer Biedscheid to disqualify herself, claiming Ms. Biedscheid had a conflict of interest in this case. Ms. Biedscheid declined to disqualify herself, denying that she had a conflict of interest and noting that she had consulted the City Attorney's Office about Ms. Beninato's request.

### **FINDINGS OF FACT**

After conducting a public hearing and having heard from the Applicant and all interested persons, the Board hereby FINDS, as follows:

1. Land Use Department Staff conducted a preliminary zoning review (“PZR”) and determined that the application appears to meet the underlying zoning standards set forth in the Santa Fe City Code.
2. Historic Preservation Staff reviewed the application and related materials and information submitted by the Applicant for conformity with applicable SFCC requirements and provided the Board with a written report of its findings (“Staff Report”), which evaluates the factors relevant to the application.
3. Historic Preservation Division Staff Recommendation: Staff found that the exception criteria of SFCC Section 14-5.2(C)(5)(c) had not been met and did not recommend approval of the application, as it did not comply with SFCC Sections 14-5.2(D), General Design Standards for all Historic Districts, and 14-5.2(E), Downtown and Eastside Design Standards.

4. The project is subject to SFCC Section 14-5.2(C), Regulation of Significant and Contributing Structures.
5. The project is subject to the requirements and general design standards set forth in SFCC Section 14-5.2(D), General Design Standards.
6. The property is located in the Downtown and Eastside Historic District and is subject to the district design standards set forth in SFCC Section 14-5.2(E).
7. The property is located in the Business Capital District, East Marcy / East Palace Subdistrict (BCDEAS), and is subject to the district and subdistrict design standards set forth in SFCC Section 14-7.4(A) and (B)(3)(e).
8. Under SFCC Sections 14-2.6(B-C), 14-5.2(A)(1), 14-5.2(C)(2)(a-d & f), 14-5.2(C)(3)(a-b), 14-5.2(C)(4), and 14-5.2(D), the Board has authority to review, approve, with or without conditions, or deny, all or some of the Applicant's proposed design to assure overall compliance with applicable design standards.
9. Under SFCC Section 14-5.2(D)(9)(c)(ii)(C), yard walls and fences are limited to a height that does not exceed the average of the height of other yard walls and fences in the streetscape.
10. The Applicant seeks approval for a 5'8"-high coyote fence on the street frontage and on a side property line where the maximum allowable height is 4'6". Staff determined that an exception to SFCC Section 14-5.2(D)(9)(c)(ii)(C) would be required for approval of the application, and the Applicant requested an exception.
11. To obtain an exception, the Applicant was required to conclusively demonstrate that the six exception criteria set forth in SFCC Section 14-5.2(C)(5)(c) have been met.
12. Based on the information set forth in the Staff Report and exhibits, and the evidence and testimony presented at the hearing, the Board agrees with Staff's finding that the Applicant has not conclusively demonstrated that all exception criteria have been met:
  - a. Pursuant to SFCC Section 14-5.2(C)(5)(c)(i), the Board finds that granting the exception would damage the character of the streetscape because the height of the fence is inharmonious with the streetscape, and disregards the standards for the BCDEAS district. The heights of the walls and fences along this streetscape of Paseo de Peralta range in height from 24" (2 feet) and 108" (9 feet), with the highest walls being rock or stuccoed-masonry retaining walls on the north side of the street where there is a substantial grade change. The south side of the street, where the house walls do not abut the sidewalk, is lined almost entirely with lower yard walls and fences with stepped heights or wrought iron, picket and wire fences, creating an open fenestration of the wall or fence;
  - b. Pursuant to SFCC Section 14-5.2(C)(5)(c)(ii), the Board finds that the exception is not required to prevent a hardship to the Applicant or an injury to the public welfare, because there has been no persuasive showing that the security of the property cannot be upheld by features less harmful to the character of the district, such as a lower fence or yard wall, a fence or wall with more fenestration, or other security measures;
  - c. Pursuant to SFCC Section 14-5.2(C)(5)(c)(iii), the Board finds that granting the exception would not strengthen the unique heterogeneous character of the City by providing a full range of design options to ensure that residents can continue to reside within the historic districts, because the Applicant has not

shown a need for safety at her property greater than at any other heavily traveled location, and other design options are available to enhance the occupants' safety there;

- d. Pursuant to SFCC Section 14-5.2(C)(5)(c)(iv), the Board finds that there are not special conditions or circumstances that are peculiar to the land or structure involved that are not applicable to other lands or structures in the related streetscape: All the properties on the south side of Paseo de Peralta abut the sidewalk or have a minimal setback, similar to the subject property, and are in a heavily traveled area. The setback, traffic and pedestrian travel are not peculiar to this lot. Some of the properties are commercial and others are residential, but the use of the property can change and is not inherent in the land or the structure;
  - e. Pursuant to SFCC Section 14-5.2(C)(5)(c)(v), the Board finds there are no special conditions or circumstances affecting this property that fulfill this exception criterion. The Applicant should be held to the same standard as the occupants of other structures in the streetscape, which must follow the height and design restrictions in the ordinances;
  - f. Pursuant to SFCC Section 14-5.2(C)(5)(c)(vi), the Board finds that granting the exception would not provide the least negative impact with respect to the purposes set forth in SFCC Section 14-5.2(A)(1), because the proposed coyote fence at that height is a threat to the historic status of the historically contributing structure. It obstructs the view of the house, which is uncharacteristic for that streetscape. The standards for the Business Capitol District, East Marcy / East Palace Subdistrict, express a preference for "low walls that are compatible with the characteristic open yards." See SFCC Section 14-7.4(B)(3)(e)(iii).
13. The Board finds that the Applicant has failed to conclusively demonstrate that all of the exception criteria have been met.
  14. The information contained in the Staff Report and exhibits, and the testimony and evidence submitted at the hearing, establishes that all applicable requirements for Board review as herein described have been met.
  15. The information contained in the Staff Report and exhibits, and the testimony and evidence submitted at the hearing, establishes that all applicable design criteria have not been met.

### **CONCLUSIONS OF LAW**

Under the circumstances and given the evidence and testimony submitted during the hearing, the Board acted upon the application as follows:

1. The Board has the authority to review and approve the application.
2. The Board denies Item # 1 as set forth in the application.
3. The Board denies the exception requested in the application.
4. These denials are without prejudice, and the Board may reconsider the project if the Applicant submits another application with a redrawn design for the fence.

**IT IS SO ORDERED ON THIS 11th DAY of FEBRUARY, 2025, BY THE HISTORIC DISTRICTS REVIEW BOARD OF THE CITY OF SANTA FE.**

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Cecilia Rios, Chair

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Date

FILED:

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Andréa Salazar  
City Clerk

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Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Frank Ruybalid  
Assistant City Attorney

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Date