

**City of Santa Fe  
Governing Body  
Findings of Fact and Conclusions of Law**

**Appeal # 2025-9812-APPL**

**Appellant's Name** – Miriam Leth-Espensen

**Agent's Name** – Robert Kohn

**Address** – 614 Paseo de Peralta

THIS MATTER came before the City of Santa Fe (“City”) Governing Body (“Governing Body”) for a public hearing on July 30, 2025, to consider the appeal of Miriam Leth-Espensen (“Applicant” or “Appellant”) from the decision of the City’s Historic Districts Review Board (“Board”) in Case # 2024-9478-HDRB. In the Board’s decision, the Board denied an exception the Applicant sought for a fence on her property at 614 Paseo de Peralta (“Property”) which exceeded the height restriction for fences in the Downtown and Eastside Historic District and the Business Capital District. The Board found that the Applicant had failed to conclusively demonstrate the six exception criteria in SFCC 1987 (“SFCC”) Section 14-5.2(C)(5)(c) for height. The Appellant asked the Governing Body to reverse the decision of the HDRB and to grant the exception, permitting her to keep the fence, which had been built in 2023 without a building permit.

**I. RECORD ON APPEAL**

The record on appeal (“Record”) included the following documents:

1. Memorandum dated April 25, 2025, for the April 30, 2025, Governing Body meeting, to the Members of the Governing Body from Frank Ruybalid, Assistant City Attorney (“Memorandum”), with an Appendix of Excerpts from the City Code and a decision chart;
2. Exhibit A, Verified Appeal Petition (“Petition”) filed January 28, 2025;
3. Exhibit B, HDRB Findings of Fact and Conclusions of Law for Case # 2024-9478-HDRB, approved February 11, 2025;
4. Exhibit C, relevant excerpt from Minutes of the December 10, 2024, Board meeting;
5. Exhibit D, Historic Preservation Staff Report and Exhibits for Case # 2024-7892-HDRB from the December 10, 2024, Board meeting, with exhibits:
  - (1) Senior Planner Memo
  - (2) Senior Planner Exhibits
  - (3) Application Packet
  - (4) Historic Districts Wall & Fence Guidelines
6. Exhibit E, Board Action Letter
7. Exhibit F, Notice of Violation
  - (1) Code Report and Stop Work Order, August 18, 2023
  - (2) Notice of Violation, January 11, 2024
  - (3) Notice of Violation and Land Use Citation, April 11, 2024
8. Exhibit G, Historic Districts Application
9. Exhibit H, Business Capital District map detail
10. Exhibit I, Business Capital District table (East Marcy Subdistrict)

11. Exhibit J, Building Historic Status map detail

**II. FINDINGS OF FACT**

After conducting a public hearing and reviewing the record, and having heard from the Appellant, her Agent and all interested persons, the Governing Body hereby FINDS, as follows:

**A. Factual Background**

1. The Property is within the City's Downtown and Eastside Historic District.
2. The Property is within the East Marcy / East Palace Subdistrict of the City's Business Capital District ("BCD").
3. The Property has a contributing historic status in the Downtown and Eastside Historic District.
4. The Property is on the south side of Paseo de Peralta and on the curve between East Marcy and Otero Streets, and only the south side of Paseo de Peralta is within the Business Capital District ("BCD").
5. Presently the south side of the streetscape is lined with lower fences and yard walls with stepped heights, picket and wire fences, and walls combined with wrought-iron fencing creating an open fenestration of the wall.
6. In 2023, a contractor for the Appellant Ms. Leth-Espensen built the latilla coyote fence, 5 feet 8 inches high, without applying for a building permit or HDRB approval.
7. The City has issued Notices of Violation to the property owner. See Case # BLD-2116-2024, BLD-2515-2024 and Land Use Citation # 0951.
8. The Applicant submitted an application to the Historic Preservation Staff on March 1, 2024, seeking retroactive approval of the fence by the Board.

**B. Procedural History**

9. The Historic Preservation ("HP") staff reviewed the application and related materials and information submitted by the Applicant for conformity with applicable Santa Fe City Code requirements and provided the Board a written report of its findings ("Staff Report"), which evaluated the factors relevant to the application.
10. The HP staff determined that the fence did not comply with the City's Historic Districts and Business Capital District standards due to its height and solid, non-fenestrated construction, which obstructed the view of the house from Paseo de Peralta.
11. The HP staff determined that the Historic Districts Review Board would have to consider the exception criteria for Height, Pitch, Scale, Massing and Floor Stepbacks, and the staff recommended that the Board find that the exception criteria had not been met and that the fence be disapproved.
12. At a public hearing held December 10, 2024, the Board heard presentations by the HP staff and sworn testimony from the Applicant, an Agent for the Applicant, and interested members of the public.
13. At the Board meeting, the Board members and the public discussed the height and design of the Applicant's fence, the Property's placement on the streetscape and its connection to the neighborhood, the prominence of its location, the types of fences at the other

houses on the block, the Applicant's concern for her safety, and alternative designs that might serve the same purposes as this fence.

14. At the conclusion of the hearing, by a vote of 4 to 0, the Board
  - a. Found that the exception criteria for height had not been conclusively demonstrated;
  - b. Denied the application for approval of the 5'8" coyote fence; and
  - c. Affirmed that it would consider an application for another fence at that location if the Applicant submitted a modified design for a fence compliant with the applicable Codes.
15. On February 11, 2025, the Board adopted written Findings of Fact and Conclusions of Law reflecting its decision denying the fence and the exception criteria, and its willingness to consider a redesigned fence.
16. As reflected in the Findings of Fact and Conclusions of Law adopted by the Board, the Board based its decision about the fence and the exception criteria on the following findings:
  - a. 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);
  - b. The property is located in the Business Capital District, East Marcy / East Palace Subdistrict, and is subject to the district and subdistrict design standards set forth in SFCC Section 14-7.4(A) and (B)(3)(e);
  - c. In Santa Fe's Historic Districts, 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;
  - d. The Applicant's 5'8"-high coyote fence exceeds the maximum allowable height on that streetscape, which is 4'6";
  - e. 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; and
  - f. The coyote fence at that height is a threat to the historic status of the historically contributing structure, and obstructs the view of the house, which is uncharacteristic for that streetscape.
17. The Board's decision was based on the following provisions of the Historic Districts Ordinance:
  - (a) SFCC Section 14-5.2(E) sets forth the design standards in the Downtown and Eastside Historic District where this property is located.
  - (b) SFCC Section 14-7.4(A) and (B)(3)(e) sets forth the district and subdistrict design standards for the Business Capital District, East Marcy / East Palace Subdistrict, where this property is located.
  - (c) 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.
  - (d) The standards for the Business Capitol District, East Marcy / East Palace Subdistrict, in SFCC Section 14-7.4(B)(3)(e)(iii) express a preference for low walls that are compatible with the characteristic open yards.
  - (e) SFCC Section 14-5.2(D)(1)(a) reads, in part, that if a proposed alteration will cause a structure to lose its significant, contributing, or landmark status, the

application shall be denied.

- (f) SFCC Section 14-5.2(C)(5)(c) reads that for the Historic Districts Review Board to approve an exception to Height, Pitch, Scale, Massing and Floor Stepback standards, an applicant must conclusively demonstrate that requested exception complies with six criteria:
- (i) Does not damage the character of the streetscape;
  - (ii) Prevents a hardship to the applicant or an injury to the public welfare;
  - (iii) Strengthens 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;
  - (iv) Is due to special conditions and circumstances which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the related streetscape;
  - (v) Is due to special conditions and circumstances which are not a result of the actions of the applicant; and
  - (vi) Provides the least negative impact with respect to the purpose of the Historic Districts Code.

### **C. Appeal to Governing Body**

18. Under SFCC Section 14-3.17(A)(1)(b), final actions of a Land Use Board include a written decision made after a public hearing.
19. On January 28, 2025, the Appellant timely filed a Verified Appeal Petition, asking the Governing Body to review the decision of the Board and approve the fence, finding that the Applicant has fulfilled the criteria for a height exception.
20. In the Verified Appeal Petition, the Appellant argued that:
- a. She is in danger from trespass, vandalism and burglaries, and the Board's decision impairs her physical safety and the peaceful enjoyment of her property.
  - b. Other parts of her property have coyote fencing, and the disapproval of a coyote fence on the street frontage requires two different types of fencing, creates an aesthetically incongruous and disharmonious property and devalues the property.
  - c. Coyote fencing is commonplace on the Paseo de Peralta streetscape and elsewhere on the block, notably in the Castillo Plaza, which provides off-street parking to the Appellant's property and other business on that block.
  - d. The Appellant has been treated unfairly because property owners at 803 Agua Fria St. and 301 Hillside Ave. (Girls, Inc.) have been permitted to build high coyote fences, the property owners at 803 Agua Fria St. have not complied with conditions the HDRB imposed, and they have not been issued a Municipal Court citation.
  - e. The Appellant has suffered a disadvantage by the City's failure to adopt Findings of Fact and Conclusions of Law within 35 days after the HDRB hearing, and the time for the Appellant to file her Appeal starts running on the 35th day after the hearing.
  - f. The Board did not correctly apply the definition of "Streetscape," set forth in SFCC Section 14-12.1, which includes both sides of the street for 300 feet in either direction of the subject property.

- g. Member Biedscheid's refusal to disqualify herself resulted in an unfair hearing to the Appellant.
21. SFCC Section 14-3.17(A)(2) sets forth the valid grounds for an appeal of a Board decision and provides that an appeal may be filed for one or more of the following reasons only: (1) the Board's final action does not comply with SFCC Chapter 14 or the Zoning Enabling Act, NMSA 1978, Sections 3-21-1 to -14; (2) the Board misapplied SFCC Chapter 14; or (3) the Board's decision is not supported by substantial evidence.
  22. As required by SFCC Section 14-3.17(D)(6), the City Land Use Director reviewed the Verified Appeal Petition for conformity with the requirements of SFCC Section 14-3.17 and determined that the Appeal conformed to the requirements.
  23. The Governing Body appeal hearing was scheduled for April 11, 2025, postponed to July 30, 2025, and the Appellant provided notice of the Governing Body hearing in accordance with the notice provisions of SFCC Section 14-3.1(H)(4).
  24. Under SFCC Section 14-2.2(F), the Governing Body conducts a de novo hearing on an appeal of a final action of a land use board.
  25. The Appellant appeared in person at the hearing and was represented by Agent Robert Kohn.
  26. During the hearing, the Governing Body received a presentation by an Assistant City Attorney, presentations by Agent Robert Kohn and Appellant Miriam Leth-Espensen, and comments from City Land Use Director Heather Lamboy.
  27. During the hearing, the Governing Body opened the floor and heard comments from members of the public.
  28. During the hearing, City Councilors asked questions of the Applicant and her Agent and the City staff, who provided additional information.
  29. The Governing Body finds:
    - a. The 5-foot-8-inch, solid fence is non-conforming to Historic District height and design standards for that streetscape, and the Appellant has not conclusively demonstrated the exception criteria to these standards;
    - b. This property is part of the Business Capital District where there is a very specific height restriction of four feet, under SFCC Section 14-7.4(A), Table (A)(1);
    - c. The BCD height limitation is more restrictive than that of the Historic Districts Code found at SFCC Section 14-5.2(D)(9)(c)(ii)(C), but the Land Use Code, SFCC Section 14-1.7(B)(2), reads that the more restrictive height standard prevails in the event of conflict with another Code section; and
    - d. The circumstances that affect this property are long-standing, existed prior to this Appellant's purchase of the property, and not extenuating circumstances that affect only her.

### **III. CONCLUSIONS OF LAW**

Under the circumstances and based upon the record and the evidence and testimony submitted at the hearing, the Governing Body CONCLUDES as follows:

1. The Governing Body has the power and authority to hear and decide the matter that is the subject of the Appeal.

2. The Board's written decision adopted February 11, 2025, was a final action subject to appeal.
3. The Appellant timely appealed the Board's decision to the Governing Body and complied with the procedural requirements set forth in the SFCC.
4. Substantial evidence in the record supports the Historic Districts Review Board's findings that the fence for which the Applicant sought approval did not comply with the City's Historic Districts and Business Capital District standards and that the Applicant did not conclusively demonstrate the six criteria for a height exception.
5. This Appeal should be denied because the fence for which the Appellant has sought approval does not comply with the City's Historic Districts and Business Capital District standards and the Appellant has not conclusively demonstrated the six criteria for a height exception.

**IV. VOTE AT THE HEARING**

The Governing Body voted to deny the appeal and to uphold the Board's final action, with a vote of eight (8) in the affirmative and Councilor Alma Castro in the negative.

**WHEREFORE, IT IS ORDERED ON THE 13TH OF AUGUST, 2025, BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

Considering the foregoing findings and conclusions, the Governing Body:

DENIES the appeal with respect to the fence at 614 Paseo de Peralta, upholds the Historic Districts Review Board's decision, denies the application and denies the exception.

\_\_\_\_\_  
Alan M. Webber  
Mayor

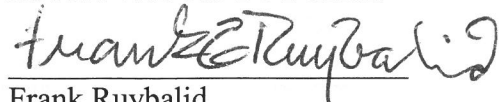
\_\_\_\_\_  
Date

FILED WITH THE CITY CLERK:

\_\_\_\_\_  
Andréa Salazar  
City Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

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

8-8-2025  
Date