

# City of Santa Fe, New Mexico

# memo

**DATE:** December 10, 2024  
**TO:** Historic Districts Review Board Members  
**FROM:** Lani McCulley, Senior Planner, Historic Preservation Division

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**2024-009478-HDRB, 614 Paseo de Peralta, Downtown & Eastside Historic District, Contributing,** Stefanie Beninato, agent for Miriam Leth Espensen, owner, proposes to construct a 5'-8" high coyote fence with pedestrian gates where the maximum allowable height is 4'-6". Exceptions are requested to 14-5.2(D)(9) to exceed the maximum allowable height.

**REFERENCE ATTACHMENTS (Sequentially):**

**CITY SUBMITTALS**

District Standards & yard wall & fence standards.

Historic Inventory Form

Zoning Review Sheet

Other:

**APPLICANT SUBMITTALS**

Proposal Letter

Site Plan/Floor Plan

Elevations

Photographs

Other: exception criteria

**STAFF RECOMMENDATION:**

Staff finds that the exception criteria of Section 14-5.2(D)(9) have not been met and does not recommend approval of the application as it does not comply with 14-5.2(D) General Design Standards for all Historic Districts, and 14-5.2(E) Downtown and Eastside Design Standards.

While the applicant is requesting an exception from the HDRB to the streetscape height standard of 4'-6", Section 14-5.2(C)(5)(a) states that, "*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.*"

The underlying zoning district for this property is Business Capital District East Marcy/East Palace (BCDMAR) which permits a maximum height of 4'-0" for fences, per Table 14-7.4 (A)-1.

Therefore, if the HDRB approves the exception, the applicant shall proceed to the Board of Adjustment for a variance to the standards of the underlying zoning. If the Board denies the exception, the applicant must produce a new proposal which complies with both the underlying zoning and historic design standards. One motion will be required in this case.

**Sample motion:**

A. Approve or deny Case #2024-009478 to allow an exception to 14-5.2(D)(9) to construct a coyote fence to a maximum height of 5'-8" where a maximum allowable height of 4'-6" is allowed.

**BACKGROUND & SUMMARY:**

The single-family residence at 614 Paseo de Peralta is listed as contributing to the Downtown and Eastside Historic District. The residence is a moderately pitched gabled roof, deep set windows, and a large bay of windows on the north where a porch has been enclosed. It is obvious that the northern portal was enclosed sometime after 1985 because the photo of the 1985 HCPI shows an open portal. There is no case for that enclosure on file with the Historic Preservation Division office.

The property has held several fences along the street frontage of Paseo de Peralta over the years. Figure 1, shows photographic proof of a blue board fence present from 2007 through 2014, and a wood framed wire fence present from 2015 through 2023. The new coyote fence was constructed in 2023. There is no record of an approval from Historic Preservation and there are no permits on record for the changes to the fencing over time.

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, with additional walls that are substantially set back from the plane of the retaining walls. The applicant's proposed coyote fence is not in keeping with this streetscape with regard to height and material.

Section 14-5.2(D)(c)(ii) states that, "*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.*" While the Historic Preservation Streetscape calculation allows for a 4'-6" high fence, this property is located within the BCDMAR subdistrict. In this subdistrict, fences are further limited to a maximum height of 4'-0" per 14-7.4(A)-1 Table of Dimensional Requirements for Townscape Districts. Per Section 14-1.7 the more restrictive code would apply which means the maximum allowable height at this property is the 4'-0" height per zoning code for the BCDMAR.



Figure 1: Board fence 2007-2014, Wire fence 2015-2023, and Coyote Fence 2023

Section 14-5.2(C)(1)(a) states that, “*Each structure to be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as the addition of conjectural features or architectural elements from other buildings, shall not be undertaken.*”

A photograph from the 1985 HCPI (See Figure 2) illustrates that this house, like others in the streetscape, had low transparent fencing at the property line. Although it is difficult to discern the exact fence material, it is clear that historically the house had a direct relationship with the street as do other historic buildings in the streetscape.

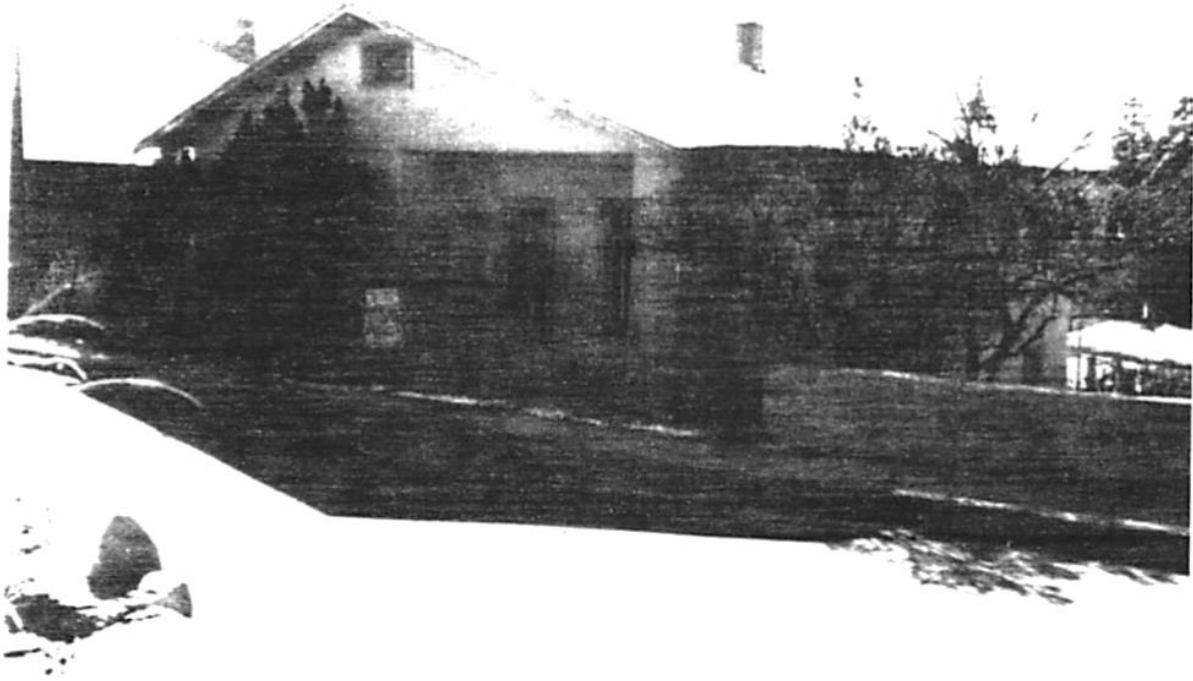


Figure 2: Photo from the 1985 HCPI

Section 14-5.2(D)(1)(a) states, “*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 5’-8” high coyote fence causes a disruption in how the structure relates to the streetscape and if allowed, poses a threat to the building’s historic status and the legibility of the streetscape. Additionally, the townscape, as set forth in the BCD design standards for the East Marcy/E Palace subdistrict also identifies the unique nature of the streetscape by limiting the height of fences and/or walls to a maximum height of 4’-0”.

The city’s inspections office issued a Stop Work Order (red tag) in August 2023 for the construction of the coyote fence without approval from the HDRB, the Historic Preservation Division or a construction permit.

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

- 1) 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 section 14-5.2(D)(9) to exceed the maximum allowable height is requested.

**EXCEPTION CRITERIA AND RESPONSES:**

Exception to Section 14-5.2(D)(9): The applicant requests an exception to exceed the maximum allowable height of a fence.

(i) *Do not damage the character of the district;*

Applicant Response: The streetscape has a variety of fencing types from stone and solid masonry walls to wood fencing including coyote and picket fencing. There are 8 and 10 ft retaining walls less than half block away at the intersection of Paseo and Otero (NW and NE corners) and several coyote fences across the street.

Staff Response: Staff does not agree with this statement. The coyote fence as proposed damages the character of the district, is a violation so the streetscape standards and the underlying BCDMAR zoning standards. The heights of the walls and fences along this streetscape of Paseo de Peralta range in height from 24” (2’-0”) and 108” (9’-0”) and the walls and fences vary from retaining walls constructed of rock or stuccoed concrete masonry on the north side of the street. The tallest wall is a retaining wall with yard wall on top. The combination of a yard wall with retaining wall is allowed at a height greater than properties with no retaining wall. There is a 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, with additional walls that are substantially set back from the plane of the retaining walls. The south side of the street is lined with lower yard walls and fences with stepped heights or wrought iron creating an open fenestration of the yard wall, two picket fences, one wire fence, and at the edge of the streetscape there is a single coyote fence located on the Girls, Inc. Property. The Girls, Inc property is part of the Hillside streetscape rather than the Paseo de Peralta streetscape, and is visually disrupted from the property, as it is located around the curve from the subject property. Furthermore, the Girls, Inc. property is part of a different zone district than the subject streetscape.

Streetview images have been provided to illustrate the streetscape and context of yard walls and/or fences in the streetscape.

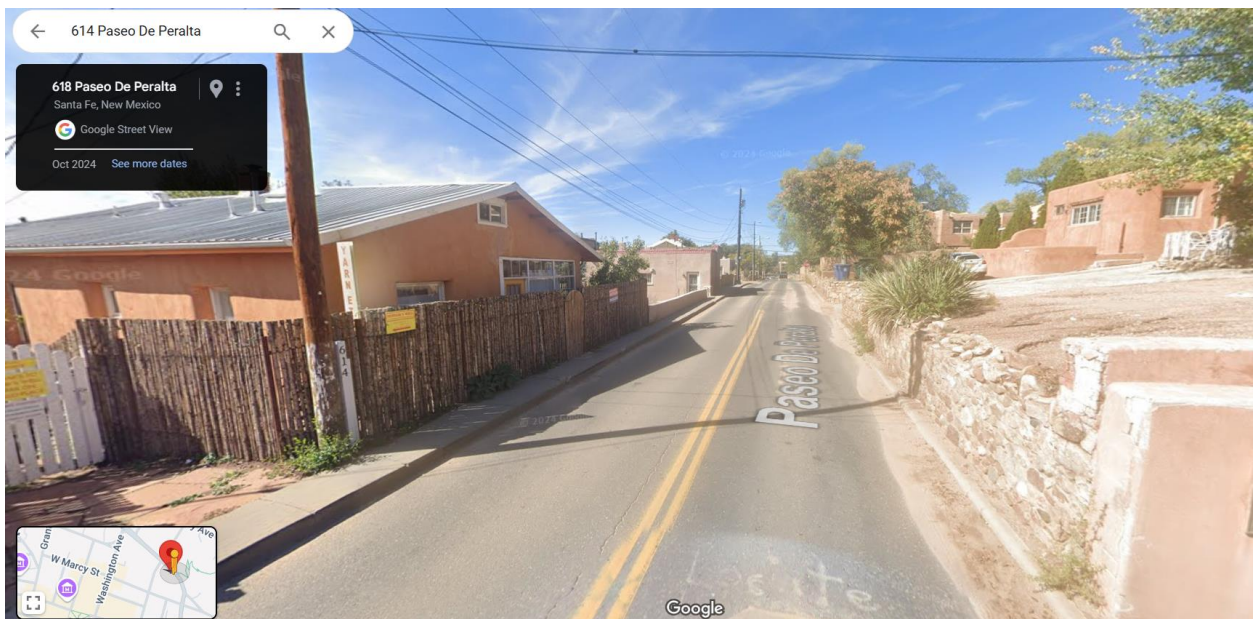


Figure 3: Streetview looking west



Figure 4: Streetview looking east

(ii) *Are required to prevent a hardship to the applicant or an injury to the public welfare;*

Applicant Response: The owner is and has been a full-time resident at the address since 1988 and in order to continue to reside there safely needs to raise the fence to its current built height. There have been several 911 calls and a break in at the residence which is located in close proximity to two parks-the Cross of the Martyrs and the Tommy Macione Park.

The owner had replaced a blue wood fence with a lower chain link fence that supported the older wire fencing in 2003. However, with the increase in trespass and robbery at her residence, the owner felt her only recourse was to replace the damaged wire fencing with a fence made of stronger material that will deter unwanted entries.

The coyote fencing will also be easier to maintain given the heavy barrage of salt that it gets in the winter due to the location of the residence at a curve and its extreme proximity to Paseo de Peralta.

Staff Response: This criterion has not been met. There is no hardship that is unique to this property; other residences/shops in the streetscape have direct access to the street. Through the establishment of the Downtown & Eastside Historic District and the adoption of the historic districts ordinances, it was determined by the community that the preservation of historic streetscapes and buildings is important to retain the overall character of Santa Fe.

The proposed coyote fence is a threat to the historic status of the historically contributing residence, and furthermore it disrupts the streetscape as is regulated by both the Historic Districts Ordinance and the Business Capitol East Marcy/East Palace subdistrict standards.

(iii) *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;*

Applicant Response: The streetscape has a variety of fencing types from stone and solid masonry walls to wood fencing including coyote and picket fencing. The increased height will allow the continued use of the structure as a residence since it will increase the owner's personal safety and decrease maintenance costs.

Staff Response: The Applicant's response does not address the approval criteria. While safety and security are concerns for all residents within the city, they are not a valid reason to violate the height and preservation standards established in the ordinance, which inherently considers the welfare and safety of residents. Other security measures could be employed that would not violate the ordinance.

- (iv) *Are 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;*

Applicant Response: Other structures have more setback from the street. This lot lost most of its setback when Paseo de Peralta was created in the 1960s. Additionally this structure is the only one that still serves as a live workspace, which has been the historic use of these homes since the 1960s.

Staff Response: The Applicant's response does not address the approval criteria and staff disagrees with this statement. While most of the properties on the north side of Paseo de Peralta are set back further from the road, all the properties on the south side of Paseo de Peralta are set back similarly to the subject property. The setback is not peculiar to this lot. Staff does recognize that some of the properties are commercial such as the art galleries, but the use of the property can change and is not peculiar to the land or structure, other uses are permitted, and other structures could be converted to live work as well, or the existing property could be similarly repurposed.

Street map and aerial images have been provided to illustrate the streetscape and context of yard walls and/or fences in the streetscape.



Figure 5: 1912 Kings map of the vicinity



Figure 6: 1957 Aerial of the vicinity

- (v) *Are due to special conditions and circumstances which are not a result of the actions of the applicant; and*

Applicant Response: The owner is not responsible for the rise in property crime and drug use. Her property is located near two parks which at times serve as magnets for these types of behavior.

Staff Response: The Applicant’s response does not address the approval criteria. While staff recognizes that the property owner is not responsible for crime rates, the presence of crime or an incidence of crime is not a justification to violate the preservation or height standards of the ordinance, which is the law of the city. All residents may consider responsible and code compliant safety measures to secure their homes and businesses. The applicant should be held to the same standard as all other structures in the streetscape, which must follow the height and design restrictions set in the ordinance. It should be noted that this exception request is due to the action of the applicant to build a fence without a permit and Historic Districts Review Board approval. Had the applicant proceeded through the typical review process there may not have been a need for this request.

- (vi) *Provide the least negative impact with respect to the purpose of this section as set forth in Subsection 14-5.2(A)(1).*

Applicant Response: The owner understood from the contractor that if she kept the fence below six feet, she would not need a permit. She deliberately kept the fence to 5 ft 8 inches for its entire length whether on the street or on a sideline. It is the minimum she feels will deter entry onto her property from Paseo. The type of material being used is compatible with the existing streetscape. There are fences and walls in close proximity that are or will be higher

Staff Response: The Applicant’s response does not address the approval criteria. The applicant and her contractor are not in a position to set the rules for permitting, or for height standards and design standards within the historic district, and ignorance of the appropriate processes and standards is not valid justification for violating those standards.

The proposed coyote fence negatively impacts the historic streetscape and a design that does not negatively impact the streetscape has not been considered or proposed by the applicant.

**APPROVED AS TO FORM BY THE PLANNING AND LAND USE DEPARTMENT:**

Title	Name	Initials
Department Director	Heather Lamboy	HLL
Assistant Department Director	Maggie Moore	<b>MRM</b>
Planning Manager	Gary Moquino	GM
Planner Senior	Lani McCulley	