





# CITY OF SANTA FE CITY ATTORNEY

## MEMORANDUM

**To:** Members of the Governing Body

**From:** Frank Ruybalid, Assistant City Attorney 

**Via:** Erin K. McSherry, City Attorney 

**Re:** Appeal # 2025-11127-APPL of Case # 2025-10494-HDRB. Property Owner FC3 Ltd. Co. Appeals the Historic Districts Review Board's July 22, 2025, Decision Denying the Project Applicant Archaeo Architects' Request for an Exception to Remove and Replace All Windows and Doors on a Contributing Building at 206 McKenzie St. in the Downtown and Eastside Historic District.

**Date:** November 26, 2025, for the December 10, 2025, Governing Body meeting

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The Property owner, FC3 Ltd. Co., and its agents Mindy Hale and Pamela Koster (“Appellants”), have filed an Appeal challenging a decision by the Historic Districts Review Board (“HDRB” or “Board”) denying their application to remove and replace certain windows and doors on a historic building at 206 McKenzie Street. The building is a mixed-use commercial and multi-family complex listed as contributing to the Downtown and Eastside Historic District.

The architect, Bradyn Furry (the “Applicant”), proposed several alterations to the building, one of which was to remove and replace all the windows and doors. Three of the proposed alterations required Historic Districts Review Board (“HDRB” or “Board”) approval as exceptions to Historic Districts standards in Santa Fe City Code 1987 (“SFCC”), Section 14-5.2(C)(5)(c). In public meetings June 24, 2025, and July 22, 2025, the HDRB approved most of the architect’s proposal, including two changes that required exceptions, but the Board denied an exception to remove and replace all the existing windows and doors. The Board approved replacing (or installing in newly created openings) 37 windows and 18 doors, but found that the proposal did not meet the exception criteria for replacing 52 other windows and three other doors. The Appellants appeal the HDRB’s denial of this exception.

The Code restricts the replacement of windows and doors on the primary façades of buildings that have a “contributing” designation. The Code requires “historic” windows (generally, those 50 or more years old) on primary façades of contributing buildings to be repaired or restored “wherever possible.” [SFCC Section 14-5.2(D)(5)(a)(i)]. The Code

permits exceptions to the Historic Districts standards [SFCC Section 14-5.2(C)(5)(b)] if the Applicant conclusively demonstrates exception criteria.

In this “de novo” appeal, the Governing Body may uphold or reverse the HDRB’s decision to deny the application and the exception. [SFCC Section 14-2.2(F)] A “de novo” hearing is one in which the Governing Body conducts an independent application of the law to the evidence to decide whether the facts and the law support the request for an exception.

## I. BACKGROUND

### A. The Property and its History

The large, complex building at 206 McKenzie Street is a conjoined cluster of structures built in different eras on a 0.6-acre lot. [Ex. D, Staff Memo, at COSF 34] (References to page numbers are to the exhibit compilation, preceded by “COSF”.) In contrast to other buildings on the street which, consistent with the Historic Districts Code, have earth-toned colors, the Building is white, reflecting the religious beliefs of former owner Edna Ballard, and is commonly called the “White Building.” [Ex. E, Staff Documents, at 124] Historians have some evidence of man-made structures on the property dating back to 1766, and the original core of the structure appears clearly on an 1846 Territorial engineer’s map. [Ex. E, Staff Documents, at 106-107] The original Spanish Pueblo style building was developed in a vernacular and accretional manner, undergoing many changes, including alterations of its architectural style to Territorial, then Renaissance Revival. Owners added a two-story addition at the northwest corner in the 1930s, and another second-story addition at the southeast corner in the 1940s. Further additions at the southwest corner were present by 1958, although it is not clear what year they were built. [Ex. E, Staff Documents, at 58]

The historic associations of this property are noteworthy. Cleofus Jaramillo, the widow of Territorial Col. V. Jaramillo, lived there for about 10 years from 1923 through the early 1930s, and the house became known as the Cleofus Jaramillo house. [Ex. E, Staff Documents, at 54-55] Cleofus Jaramillo’s profile in the community was bolstered by her formation of La Sociaded de Folklorico of Santa Fe and publication of her autobiography, *The Romance of a Little Village Girl*. The property became a sanctuary for followers of the I Am religious order after Edna Ballard acquired it in 1942. [Ex. E, Staff Documents, at 56] Edna Ballard’s husband Guy Ballard had founded the “I Am” religious order in the 1930s, which encouraged its followers to dress and decorate in bright colors and to avoid black and red. Ms. Ballard had all structures on her compound painted white in accordance with I Am’s doctrine. [Ex. E, Staff Documents, at 56, 115] Ms. Ballard and her son, Donald, were later indicted for and convicted of mail fraud for using the U.S. Mail to defraud persons by seeking donations to a false religion. Famously, the Ballards appealed their convictions to the United States Supreme Court, which overturned the convictions, holding that the First Amendment prohibits juries from deciding the truth or falsity of a defendant’s religious beliefs. *United States v. Ballard*, 322 U.S. 78 (1944). [Ex. E, Staff Documents, at 114]

In 2013, in Case # H-13-003, the HDRB reviewed the historic status of the property and designated the main structure as contributing and the two carports as non-contributing to the

Downtown and Eastside Historic District. The Board also designated all but the southernmost half of the west elevation and the westernmost third of the south elevation as primary façades. **[Ex. E, Staff Documents, at 124]**

In 2020, Case # 2020-1990-HDRB, the Board approved a list of repairs and renovations proposed by a previous architect, including the repair of various historic windows, replacement of some historic windows deteriorated beyond repair, replacement of some non-historic windows, re-roofing of all the structures, and other alterations. **[Ex. E, Staff Documents, at 124-127]** The present architect, Bradyn Furry, alleges that previous contractors damaged the structure and some of its fixtures by removing historic material, and damaging some walls, making them unstable. **[Ex. G, Applicant Documents, at 136, 145]** Mr. Furry alleges that the previous contractor destroyed, rendered inoperable, and incorrectly sealed and flashed some of the historic windows. **[Ex. C, Minutes, at 23, 27]**

## **B. Historic District Standards**

This property has been designated historically “contributing” under the Historic Districts Code. **[Ex. D, Staff Memo, at 34-35]** SFCC, Section 14-12.1, defines this status level for historic properties:

CONTRIBUTING STRUCTURE: A structure, located in a historic district, approximately 50 years old or older that helps to establish and maintain the character of that historic district. Although a contributing structure is not unique in itself, it adds to the historic associations or historic architectural design qualities that are significant for a district. The contributing structure may have had minor alterations, but its integrity remains.

### **[SFCC Section 14-5.2(D)(5)(a)]**

All work in the Historic Districts is governed by general design standards, which differ from district to district. The Historic Districts Code also has special protections for certain windows on historic structures. SFCC Section 14-5.2(D)(5)(a)(i) reads, in part:

For all facades of significant and landmark structures and for the primary facades of contributing structures: . . . Historic windows shall be repaired or restored wherever possible. Historic windows that cannot be repaired or restored shall be duplicated in the size, style, and material of the original.

In accord with this Code section, a window that is (1) historic, (2) on a primary façade, and (3) is not so deteriorated that it cannot be repaired, *must* be repaired or restored. (Alternatively, the Applicant may choose to leave these windows and doors as they are.)

Proposed additions or alterations that do not comply with Code restrictions for significant or contributing buildings are not entirely prohibited; the HDRB can permit them if the property owner or project applicant requests “exceptions” and meets three criteria described in the Code at SFCC Section 14-5.2(C)(5)(b):

- (i) Do not damage the character of the district;
- (ii) Are required to prevent a hardship to the applicant or an injury to the public welfare; and
- (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.

The applicant has the burden of “conclusively demonstrating” the exception criteria. **[SFCC Section 14-5.2(C)(5)(b)]**

In their Appeal, the Appellants claim that they met the exception criteria, including hardship, because to repair and restore the windows and doors they cannot replace would require the removal of old jambs and frames, which would damage the jambs and frames beyond repair. **[Ex. A, Verified Appeal Petition (“Petition”), at 3]** Further, Appellants argue that the windows’ inadequate flashing is permitting moisture to seep into the walls, deteriorating the adobe, and it would be impossible to install proper flashing without replacing the windows. **[Ex. A, Petition, at 3]** The Appellants also complain that the Board’s decision disregarded the written assessment of a professional who evaluates historic windows and concluded that many of these windows and doors were either non-historic or deteriorated beyond repair.

## **II. PROCEDURAL HISTORY**

### **A. Application for Renovations**

In May 2025, Mr. Furry and Archeo Architects submitted an application for several changes, in addition to those approved by the HDRB in 2020. The new proposal included:

- Replacing all the doors and windows
- Install rooftop solar panels and HVAC units
- Install a new pedestrian gate on the north elevation
- Build a steel carport within the courtyard parking lot
- Increase the height of a parapet on the north elevation
- Where needed, replace exterior stucco to match the existing

**[Ex. G, Applicant Documents, at 141-142]**

Of these six project elements, the Historic Preservation staff determined that three of them – replacing all windows and doors, the new steel carport, and augmenting the northside parapet – would require the Applicant to fulfill the exception criteria in SFCC Section 14-5.2(C)(5)(b). **[Ex. D, Staff Memo, at 34-35]** The Staff set an HDRB hearing on the application for June 24, 2025. The Applicant requested that the HDRB grant the three exceptions, and he offered reasons that he believed fulfilled the criteria for each of the three required exceptions. **[Ex. G, Applicant Documents, at 143-145]**

## **B. Staff Recommendations**

In its Staff Report, the Historic Preservation Staff recommended a finding that the Applicant fulfilled the exception criteria for replacing all windows and doors and for the addition of the steel carport (concealed behind walls off the west façade). **[Ex. D, Staff Memo, at 34]** The HP Staff recommended a finding that the Applicant had *not* fulfilled the exception criteria to extend the parapet. The Staff did not object to the other elements of Mr. Furry’s application.

## **C. Board Decision to Deny Window and Door Replacement**

On June 24, 2025, the HDRB held a public hearing about the application and request for the exceptions. Five members of the Board participated in the hearing. Vice Chair John Bienvenu acted as the Chair for the meeting. **[Ex. C, Minutes, at 11]** Because the chair only has a vote in the event of a tie, four members voted. **[City Resolution # 2009-20, Art. 11, § 2(B); Ex. C, Minutes, at 32-33]** The Staff gave a history of the property; described the project application; and recommended that the HDRB deny the exception for the parapet extension, that the HDRB approve the exceptions for the window and door replacement and addition of the carport, and that the remainder of the project proposal be granted. **[Ex. C, Minutes, at 11-12]**

The Board approved all the components for which no exceptions were necessary, granted the exception for the steel carport, and tabled the request for parapet extension to give the Applicant time to redesign it. **[Ex. C, Minutes, at 14, 21]** When the Board took up the window and door replacement, Acting Chair John Bienvenu gave a synopsis of SFCC, Sections 14-5.2(D)(1)(a), which prohibits the removal of historic material, and 14-5.2(D)(5)(a)(i), which protects historic windows on primary façades that are repairable. **[Ex. C, Minutes, at 21, 23]** Both Acting Chair Bienvenu and Member Scott Cherry discussed the history of this building and its prominence in Santa Fe. Both noted that windows are an important part of the integrity of any historic building, and for the Board to carelessly approve window replacement for historic windows that can be repaired would have a huge impact in the district. **[Ex. C, Minutes, at 22-23, 26]** Member Cherry noted, based on a site visit the day before the hearing, that he did not see much evidence that the existing windows were causing damage to the structure, which is a hardship the Applicant claimed in his application. **[Ex. C, Minutes, at 23]**

Board Members had differing interpretations of a report by Ra N. Patterson, RPA & Associates, LLC, who regularly submits reports to the Board on the condition of windows and doors on historic buildings. **[Ex. H, Window Assessment, at 160-166]** Member Jennifer Biedschied noted that Patterson classified windows in “fair” condition when they had 30 to 40 percent deterioration, making them unrepairable, but Acting Chair Bienvenu said the Board should rule only “unsatisfactory” windows to be unrepairable, not windows in “fair” condition. **[Ex. C, Minutes, at 24, 29]** Architect Bradyn Furry and FC3 CEO Pamela Koster addressed the Board on the issue of the feasibility of repair. **[Ex. C, Minutes, at 27]** Furry told the Board that many windows were installed without flashing and insulation, this substandard installation was causing damage to the walls and could not be corrected without replacing the window, which supported his claim under the exception criteria that to replace them prevented a hardship. **[Ex. G, Applicant Documents, at 43]**

Three members of the public addressed the Board, all of them suggesting that the Applicants have Mr. Patterson more clearly explain his criteria for deciding which windows should be replaced and which should be repaired. **[Ex. C, Minutes, at 28]**

In voting on the window and door replacement, the Board decided it would be clearest to make a motion for each of the four elevations, specifying which windows on each elevation could be replaced, which could be repaired **[Ex. C, Minutes, at 30-31]** (There were as many as 34 windows and 5 doors on each elevation.) Board Member Scott Cherry made four motions and the Board voted four times, once for each elevation:

**North elevation:** Approve replacement of 23 windows and 4 doors, and deny approval to replace 7 windows and 1 door. This motion passed on a vote of 3 to 1. **[Ex. C, Minutes, at 31-32]**

**East elevation:** Approve replacement of 4 windows and 4 doors, and deny approval to replace 8 windows and 2 doors; passed 3 to 1. **[Ex. C, Minutes, at 32]**

**South elevation:** Approve replacement of 3 windows and 5 doors, and deny approval to replace 31 windows; passed 3 to 1. **[Ex. C, Minutes, at 32]**

**West elevation:** Approve replacement of 7 windows and 5 doors, and deny approval to replace 6 windows; passed 3 to 1. **[Ex. C, Minutes, at 32-33]**

For all these votes, Board Members Scott Cherry, Mary Ellen Degnan and Amanda Mather voted yes, and Member Jennifer Biedscheid voted no. **[Ex. C, Minutes, at 31-33]**

The Board's consideration of the Applicants' project proposal was incomplete until its July 22, 2025, meeting, when the Board reviewed the architect's redesign for the north parapet, found the exception criteria had been met, and approved it. **[Ex. B, Findings & Conclusions, at 9-10]** The Appellants request that the Governing Body review the HDRB's denial of their request to replace all the windows and doors.

### **III. APPEAL TO THE GOVERNING BODY**

#### **A. Applicable Code Sections**

Under SFCC Section 14-3.17(A)(2), an appeal of an HDRB decision may be filed for one or more of the following reasons:

- (a) To contest non-compliance of a final action with Chapter 14 or Sections 3-21-1 through 3-21-14 NMSA 1978 (the New Mexico zoning enabling act);
- (b) To contest the application of SFCC Chapter 14; or
- (c) To appeal a decision lacking substantial evidence to support it.

#### **B. The Appellants' Claims**

In their Verified Appeal Petition ("Petition"), the Appellants claim the HDRB made a

ruling which was not based on the facts of the case. **[Ex. A, Petition, at 3]** They claim as follows:

1. Full removal of the jambs and frames of all windows and doors is the only way to install adequate flashing, removing them will damage them beyond repair, and many are already damaged to the point that they cannot be restored to their historic condition. “Repairing” these would still require replacement of most of the historic materials. **[Ex. A, Petition, at 3]**

2. The window assessment by Ra Patterson, RPA & Associates, LLC, is based on many site visits and extensive study of each window and door, and his informed conclusion is that the doors and windows have been damaged beyond the point where they can be restored to their historic design and function. **[Ex. A, Petition, at 3]**

3. Analysis by some Board members who voted to deny the window and door replacement completely disregarded the window and door assessment by Ra Patterson, devising their own assessment criteria based on a single site visit at which they did not examine each window and door in detail. **[Ex. A, Petition, at 3]**

4. Inconsistencies and errors in the specification of the windows and doors to be restored make it impossible to comply with the Board’s determination; for example, by requiring repair to doors and windows that had been deemed non-historic and were removed during the previous work on the building. **[Ex. A, Petition, at 4]**

These arguments may be characterized as a challenge under SFCC Section 14-3.17(A)(2) (c), that the HDRB’s decision lacked substantial evidence to support it.

#### **IV. ANALYSIS**

##### **A. Evidence Considered by the Board**

The Board’s comments addressed the impact to historic integrity of comprehensive window and door replacement to this and other buildings, and the impact to the character of the Historic Districts; and whether the condition of the existing windows was causing damage and would continue causing damage to the building. As these facts apply to the exception criteria under SFCC Sections 14-5.2(5)(b)(i) (will cause no damage to the character of the district) and 14-5.2(5)(b)(iii) (are required to prevent a hardship to the applicant or injury to the public welfare), the Governing Body may consider:

##### **1. Whether there is a hardship to the Applicants by requiring them to repair the windows for which exceptions were denied:**

Member Cherry is the President of Lightfoot, Inc., a construction company specializing in natural building and design, and extensively involved in historic restoration. **[Ex. C, Minutes, at 26, 28]** He said that many of the windows were open during the HDRB’s site visit (June 23, 2025), and he looked at them closely to get an idea of their condition. He said that much of the historic material, such as the interior trim and sashes, can be reused. **[Ex. C, Minutes, at 25-26]**

Member Cherry disagreed that the original installation of the windows was defective, and reasoned that many historic windows in the Historic Districts do not have “buck” frame inserts, and they have remained functional for over 100 years. Of the windows on the south, primary façade, Member Cherry said he saw little evidence during the site visit that moisture is leaking between the window and the wall. [Ex. C, Minutes, at 23]

**2 & 3. Whether Ra Patterson’s window assessment is “substantial evidence,” a basis for appeal under SFCC Section 14-3.17(A)(2)(c), conclusively demonstrating the hardship of repairing the windows for which an exception was denied:**

Although Ra Patterson can give an opinion based on his expertise, similarly to an expert witness in a trial, New Mexico law holds that a fact-finder is not bound by the opinion evidence of expert witnesses. *Martinez v. Martinez*, 1984-NMCA-026, 101 N.M. 493, 684 P.2d 1158.

Further, Ra Patterson’s window assessment does not specifically declare which windows are repairable and which windows are deteriorated beyond repair. [Ex. H, Window Assessment, at 161-166] Rather, Mr. Patterson’s assessment categorizes windows and doors on a scale from “premium” to “unsatisfactory.” The “fair” category is for windows with exterior finishes that are cracked and peeled, putty glazing that is cracking or missing on 30 to 40 percent of the sashes, and “all sashes, frames, and casings have some members 30% to 40% completely deteriorated.” [Ex. H, Window Assessment, at 161] Windows categorized as “unsatisfactory” have exterior finishes that are completely deteriorated, putty glazing mostly missing, and “all sashes, frames and casing members have more than 30% - to 40% deterioration, beyond repair.” [Ex. H, Window Assessment, at 161]

Thus, for windows deemed “fair,” Mr. Patterson has not given his opinion whether they can be repaired, and the Board has discretion how to decide this question, and whether a 30- to 40-percent deterioration of “some members” makes the window unrepairable. Also, the Board must consider whether all the evidence, including photos and personal observations during site visits, support Patterson’s perspective.

**4. Whether errors in specifying which windows and doors cannot be replaced demonstrate that the Board disregarded the substantial evidence favoring an exception:**

The Appellants give no indication which windows or doors they believe the HDRB erroneously protected, and for a building with 89 windows and 21 doors it is impossible to know which doors and windows the Appellants are referring to without more specificity. However, it is clear that the Board members paid careful attention to Mr. Patterson’s door and window assessment and, for the most part, accepted his conclusions which doors and windows were historic. For example, the Board permitted replacement of the three windows labeled H, nine windows in the DD cluster, and 11 windows in the TT cluster on the north elevation; replacement of windows J, EE, FF and YY on the east; replacement of windows D, Q and XX on the south; and replacement of windows C and F on the west. [Ex. C, Minutes, at 31-33] The H, DD, TT, J, EE and FF windows clearly are on primary façades, but Mr. Patterson concluded that all these windows are non-historic. [Ex. H, Window Assessment, at 155, 157-158] Non-historic windows would not be protected under SFCC Section 14-5.2(D)(5)(a)(i), even

on primary façades.

Further, the windows and doors for which the Board would not approve replacement were all designated historic by Mr. Patterson and are on primary façades, with one exception. The exception was window I on the primary, north elevation, a steel casement window set in a wood jamb, which Patterson found to be non-historic. **[Ex. H, Window Assessment, at 155]** However, Member Cherry found it to be historic based on its materials and construction and noted that his conclusion differed from Mr. Patterson’s when Member Cherry made the motion to deny its replacement. **[Ex. C, Minutes, at 30-31]**

The floor plan of this iconic property is, no doubt, complicated, with elevations that abut the sidewalk, elevations that are set back in courtyards, insets with small windows, and architectural protrusions with walls facing three directions. Nonetheless, it is clear from the various floor plans, elevation drawings, Mr. Patterson’s detailed window assessment and Member Cherry’s specificity when he made his motions, that the Board gave ample consideration to all available evidence.

## **B. Standard of Review**

On appeal, the Governing Body should determine whether there is substantial evidence to support the exceptions. **[SFCC Section 14-3.17(A)(2)(c)]** The Governing Body should independently apply the Code provisions described above to the facts of this case. *See* Appendix, SFCC Sections 14-5.2(C)(5)(b)(i-iii), 14-5.2(D)(1)(a) and 14-5.2(D)(5)(a)(i).

## **V. CONCLUSION**

In considering the Appellant’s appeal, the Governing Body must address the following question:

Have the Appellants conclusively demonstrated they fulfill the three criteria for an exception to the Historic District standards?

If the answer is “**no**,” deny the appeal.

If the answer is “**yes**,” state the facts supporting each of the three criteria.

## **VI. MOTION OPTIONS**

There are two options for motions in this case:

**Motion 1:** I move to deny the appeal, on the grounds that the Historic Districts Code prohibits the replacement of repairable historic windows on the primary façades of contributing structures in the Historic Districts, and the Appellants have not conclusively demonstrated the three criteria for an exception to these standards.

**Motion 2:** I move to grant the appeal, on the grounds that the Appellants have

conclusively demonstrated the three exception criteria for replacement of historic windows on the primary façades of a contributing structure in a Historic District because [insert the facts supporting the exception criteria].

## VII. LIST OF EXHIBITS

A	Verified Appeal Petition	Sept. 4, 2025	pp. 1-4
B	HDRB Findings of Fact and Conclusions of Law	Dec. 9, 2025	pp. 5-10
C	Excerpts from Board Meeting Minutes	June 24, 2025	pp. 11-33
D	Historic Preservation Staff Memo	June 24, 2025	pp. 34-49
E	Staff Documents		pp. 50-132
	Building History	(undated)	pp. 50-57
	Historic Cultural Properties Inventory	Sept. 15, 2005	pp. 58-112
	Narrative: The Flaming Sworn of St. Germain	Dec. 23, 2012	pp. 113-119
	Preliminary Zoning Review	Mar. 5, 2025	pp. 120
	Previous Administrative and HDRB Cases		pp. 121-132
E	Board Action Letter		pp. 133-135
F	Applicant Documents		pp. 136-153
	Project Description, Bradyn Furry, Architect	May 13, 2025	pp. 136-145
	Floor Plans and Elevation Drawings	Apr. 28, 2025	pp. 146-153
G	Window Assessment, RPA & Associates, LLC	Jan. 2, 2025	pp. 154-240

### APPENDIX: EXCERPTS FROM SANTA FE CITY CODE

#### § 14-5.2 – Historic Districts

##### (A) General Provisions

###### (1) General Purpose

In order to promote the economic, cultural, and general welfare of the people of the city and to ensure the harmonious, orderly and efficient growth and development of the city, it is deemed essential by the governing body that the qualities relating to the history of Santa Fe, and a harmonious outward appearance, which preserve property values and attract tourists and residents alike, be preserved, some of these qualities being:

- (a) The continued existence and preservation of historical areas and buildings;
- (b) The continued construction of buildings in the historic styles; and
- (c) A general harmony as to style, form, color, height, proportion, texture and material between buildings of historic design and those of more modern design.

...

##### (C) Regulation of Significant and Contributing Structures in the Historic Districts

###### (1) Purpose and Intent

It is intended that:

(a) 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;

(b) Changes to structures that have acquired historic significance in their own right shall be retained and preserved, recognizing that most structures change over time;

(c) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a structure be preserved; and

(d) New additions and related or adjacent new construction be undertaken in such a manner that if removed in the future, the original form and integrity of the historic property and its environment would be unimpaired.

...

(5) Exceptions

Staff shall determine if an exception to this section is required. The historic board may grant or deny an exception to the regulations set forth in this section provided that such exception does not exceed the underlying zoning.

...

(b) Design Standards and Signage:

The board is the city administrative board reviewing and granting or denying requests for exceptions from standards set forth in Subsections 14-5.2(D)(1-8, 10, 11) and 14-5.2(E) through (I) for construction or alterations within the historic districts, and in 14-8.10(H), for signs in historic districts. . . .

Exceptions are project specific and do not apply to the subject property in perpetuity. In order to approve an exception, the board shall make findings of fact that the applicant conclusively demonstrated that requested exceptions comply with all the criteria listed as follows:

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

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

(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.

**(D) General Design Standards for All H Districts**

In any review of proposed additions or alterations to structures that have been declared significant or contributing in any historic district or a landmark in any part of the city, the following standards shall be met:

(1) General:

(a) 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 removal of historic materials or alteration of architectural features and spaces that embody the status shall be prohibited.

(b) If a proposed alteration or new construction will cause an adjacent structure to lose its significant, contributing, or landmark status, the application may be denied.

...

(5) Windows, Doors, and Other Architectural Features:

(a) For all façades of significant and landmark structures and for the primary façades of contributing structures:

(i) Historic windows shall be repaired or restored wherever possible.

Historic windows that cannot be repaired or restored shall be duplicated in the size, style, and material of the original. Thermal double pane glass may be used. No opening shall be widened or narrowed.

### **§ 14-12.1 – Definitions**

#### **CONTRIBUTING STRUCTURE**

A structure, located in a historic district, approximately fifty years old or older that helps to establish and maintain the character of that historic district. Although a contributing structure is not unique in itself, it adds to the historic associations or historic architectural design qualities that are significant for a district. The contributing structure may have had minor alterations, but its integrity remains.

#### **HISTORIC STRUCTURE**

A structure that is fifty years old or older.

#### **PRIMARY FAÇADE**

One or more principal faces or elevations of a building with features that define the character of the building's architecture.

# Appeal # 2025-11127-APPL of Case # 2025-10494-HDRB, 206 McKenzie St.

Appeal by FC3 Ltd. Co. of HDRB Denial

Have the Appellants conclusively demonstrated ALL THREE CRITERIA for an EXCEPTION to Historic District standards:

- Prohibiting removal of historic material, and
- Prohibiting replacement of repairable historic windows on primary façades?

The deviation:



(1) Does not damage the character of the district

NO →



YES ↓

(2) Is required to prevent a hardship to the applicant or an injury to the public welfare

NO →



YES ↓

(3) Strengthens the City's unique heterogeneous character by providing a full range of design options to ensure that residents can continue to reside in the Historic Districts

NO →



YES →



GRANT the appeal

**Signature:** Erin McSherry

Erin McSherry (Dec 5, 2025 16:57:52 MST)

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