



**Regular Meeting of the Historic
Districts Review Board
March 25, 2025, at 5:30 PM
Council Chambers, City Hall
200 Lincoln Avenue**

Meeting Minutes

<https://www.youtube.com/watch?v=p0mvqBjxaAc>

Call to Order

Acting Chair Bienvenu called the regular meeting of the Historic Districts Review Board to order at approximately 5:30pm in the City Council Chambers, City Hall, Santa Fe, New Mexico.

1. Roll Call

Roll Call indicated the presence of a quorum as follows:

Members Present

Mr. John Bienvenu Acting Chair
Ms. Madelein Aguilar Medrano
Ms. Amanda Mather
Ms. Mary Ellen Degnan
Mr. Scott Cherry

Members Absent

Cecilia Rios (excused)
Ms. Jennifer Biedscheid (excused)

Others Present

Ms. Heather Lamboy, Planning and Land Use Director
Mr. Gary Moquino, Historic Preservation Division Manager
Mr. Frank E. Ruybalid, Assistant City Attorney
Ms. Amanda Romero, Senior Planner
Mr. Paul Duran, Senior Planner
Ms. Mariah Kavanaugh, Planner Technician

Note: All items in the Board packet for all agenda items are incorporated herewith by reference. The original Board packet is available on Civic Clerk and can be requested from the Historic Preservation Division.

Chair Bienvenu introduced the new Board Member Scott Cherry who has been working in the city and the historic districts for about 18 years.

2. Approval of Agenda

Mr. Moquino stated that under Item 7 Staff Communications item a will not be heard tonight, but Ms. Romero will be speaking about the Heritage Preservation Awards, and under Item 8 Old Business case 2025-009916-HDRB at 1010 Camino San Acacio is postponed.

Member Degnan moved to approve the agenda as amended. Member Aguilar Medrano seconded. The motion passed unanimously by roll call vote (4-0).

3. Approval of Minutes

a. June 11, 2024

No changes were made to the minutes of June 11, 2024.

Member Aguilar Medrano moved to approve the minutes for June 11, 2024. Member Mather seconded. The motion was approved unanimously by roll call vote (4-0).

b. June 25, 2024

No changes were made to the minutes of June 25, 2024.

Member Aguilar Medrano moved to approve the minutes for June 25, 2024. Member Mather seconded. The motion was approved unanimously by roll call vote (4-0).

c. July 9, 2024

No changes were made to the minutes of July 9, 2024.

Member Degnan moved to approve the minutes for July 9, 2024. Member Aguilar Medrano seconded. The motion was approved unanimously by roll call vote (4-0).

d. July 23, 2024

No changes were made to the minutes of July 23, 2024.

Member Aguilar Medrano moved to approve the minutes for July 23, 2024. Member Mather seconded. The motion was approved unanimously by roll call vote (4-0).

e. August 13, 2024

No changes were made to the minutes of August 13, 2024.

Member Degnan moved to approve the minutes for August 13, 2024. Member Aguilar Medrano seconded. The motion was approved unanimously by roll call vote (4-0).

a. September 10, 2024

No changes were made to the minutes of September 10, 2024.

Member Degnan moved to approve the minutes for September 10, 2024. Member Mather seconded. The motion passed with Members Degnan, Cherry, and Mather voting for, and Member Aguilar Medrano abstaining.

b. September 24, 2024

Member Degnan requested the corrected spelling for Frank Katz.

Member Aguilar Medrano moved to approve the minutes as corrected for September 24, 2024. Member Mather seconded. The motion was approved unanimously by roll call vote (4-0).

a. November 26, 2024

No changes were made to the minutes of November 26, 2024.

Member Degnan moved to approve the minutes for November 26, 2024. Member Mather seconded. The motion was approved unanimously by roll call vote (4-0).

b. February 25, 2025

No changes were made to the minutes of February 25, 2025.

Member Degnan moved to approve the minutes for February 25, 2025. Member Mather seconded. The motion was approved unanimously by roll call vote (4-0).

4. Approval of Findings of Fact and Conclusions of Law

- a. 2024-009128-HDRB. 410 Camino Cabra (October 8, 2024)
- b. 2024-009129-HDRB. 544 Canyon Rd. (October 8, 2024)

Member Degnan moved to approve the Findings of Fact and Conclusions of Law for October 8, 2024, listed as items a and b. Member Mather seconded. The motion passed unanimously by roll call vote (4-0).

- c. 2024-009042-HDRB. 645 Garcia St. (October 22, 2024)
- d. 2024-009207-HDRB. 710 Canyon Rd. (October 22, 2024)
- e. 2024-009209-HDRB. 626 Gomez Rd. (October 22, 2024)
- f. 2024-009208-HDRB. 505 Apodaca Hill (October 22, 2024)

Member Degnan moved to approve the Findings of Fact and Conclusions of Law for October 22, 2024, listed as items c, d, e, and f. Member Aguilar Medrano seconded. The motion passed unanimously by voice vote (4-0).

- g. 2024-009321-HDRB. 1 Plaza Fatima (November 26, 2024)
- h. 2024-009376-HDRB. 907 Don Miguel Pl. (November 26, 2024)
- i. 2024-009378-HDRB. 835 E. Alameda St. (November 26, 2024)
- j. 2024-009369-HDRB. 345 Garcia St. (November 26, 2024)
- k. 2024-009372-HDRB. 1182 Cerro Gordo Rd. (November 26, 2024)
- l. 2024-009381-HDRB. 532 Don Gaspar Ave. (November 26, 2024)

Member Degnan moved to approve the Findings of Fact and Conclusions of Law for November 26, 2024, listed as items g, h, i, j, k, and l. Member Mather seconded. The motion passed unanimously by voice vote (4-0).

5. **Matters from the Public**

Stefanie Beninato shared quorum requirements research as suggested by Attorney Ruybalid at the last hearing when she initially spoke on the subject.

6. **Staff Communications**

Ms. Romero presented an update on the progress of the Heritage Preservation Awards with a reminder that the nominations will be presented on April 8, 2025, and the deadline is March 30, 2025. She solicited nominations from the Board members.

Ms. Lamboy announced that the purpose of the evolution of the ordinance presentation was to introduce the Board to the presentation for the ordinance updates that are in process. She also mentioned that the Green Building Code and Santa Fe General Plan updates are in progress as well. She stated if anyone is interested in the process santafeforward.org to look for information.

7. **Old Business**

No items were listed under Old Business.

8. **New Business**

- a. **2025-009941-HDRB, 416 Sosaya Ln.**, Downtown and Eastside Historic District, Non-contributing. Marc Naktin, agent for Louise Epstein, owner, proposes to construct a 170 sq. ft. pergola on the southwestern façade to a height of 9', remodel an existing pergola into a 497 sq. ft. portal on the northeastern façade to a height of 8'-10", and infill a door on the north elevation.

Paul Duran presented the case sharing the staff report and photos with a summary of the proposed project. Staff recommended approval of the proposed project and found that the application complies with Section 14-5.2(D) General Design Standards for all Historic Districts, and 14-5.2(E) Downtown and Eastside Design Standards.

Member Cherry questioned if cladding over the beams of the pergola was proposed.

Mr. Duran asked the applicant to share that information. He did note that there would be a copper drip edge on the wood beams of the portal.

Mark Naktin, 1523 Tahoe Street, Santa Fe, NM, was sworn in. Mr. Naktin stated that there would be a layer of anodized bronze caps on the beams, but it should not be visible.

Public Comment:

Ms. Stefanie Beninato, PO Box 1601, Santa Fe, New Mexico was sworn in. Ms. Beninato had some questions regarding the arrows pointing at the windows and doors and the distance of the pergola to the residence. She also questioned if the square footage on the lot seems greater than 50%, which may not be this Board's jurisdiction, but wasn't sure it was allowed. She also asked if the metal on the pergola would be a sheet which creates a roofed area even if not connected to the structure or if it is metal on each piece of the wood and she asked the Board to ask these questions.

Mr. Duran explained that the applicant is removing the glass sliding door and infilling and installing an additional window by the other sliding glass door. The zoning requirements, the applicant worked with the staff and met with the zoning team who did sign off on the PZR (preliminary zoning review). They are just at the 40% lot coverage maximum. The sheeting on the pergola is on each beam to protect each beam individually. There is not a single sheet of metal, and the pergola is about four to five feet from the residence.

Mr. Naktin confirmed that they met the zoning requirements.

Board Action:

Member Aguilar Medrano moved in case 2025-009941-HDRB, 416 Sosaya Lane to approve the application as submitted. Member Mather seconded. The motion passed with the Board voting unanimously (4-0).

- b. **2025-009943-HDRB, 925 Acequia Madre**, Downtown and Eastside Historic District, Contributing. Gregory Waits, agent for A. Jason Flanagan, owner,

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proposes to construct a 178 sq. ft. portal on the north façade of the main structure to a height of 9’.

Paul Duran presented the case sharing the staff report and photos with a summary of the proposed project. Staff recommended approval of the proposed project and found that the application complies with Section 14-5.2(D) General Design Standards for all Historic Districts, and 14-5.2(E) Downtown and Eastside Design Standards.

Member Aguilar Medrano questioned the clear (translucent twin wall polycarbonate) roof.

Mr. Duran stated it was unique and that there would be no public visibility. So, staff felt there was no impact on the district.

Member Aguilar Medrano asked if the edge would be hidden by the wood beams or if it would show.

Mr. Duran felt it was concealed by the parapet and wood but asked the applicant to answer the question.

Gregory Waits, 925 Calle Arco, Santa Fe NM, was sworn in. Mr. Waits stated that the idea of the translucent material was to bring light into the area and keep it cooler. The edging on the structure would hide the edge of the material. He had no other comments.

Member Degnan asked if there was another example in the historic district.

Member Cherry asked how the edge of the roof is concealed.

Mr. Waits there would be metal flashing over the edge of the roofing material.

Member Cherry confirmed that the flashing would cover the roofing material, and it would be painted to conceal the edging. He was not sure he had seen this elsewhere. He has seen them in greenhouses but usually out of glass.

AM confirmed that it has been approved for greenhouses not for portals. She suggested a more traditional material such as latillas. She pointed out that the area was not requiring protection from the elements so latillas would be more traditional.

Mr. Waits stated that latillas would compromise the space over the roofing material. The material would keep the cost down and provide a full roof with waterproofing. The desire is for light. That it would look like a typical portal with metal drip edge flashing. Mr. Waits offered some solutions like a typical roof with wood decking with water proofing and adding a few light areas.

Member Aguilar Medrano stated it is a contributing structure, so it needed to be taken into consideration.

Mr. Waits assured the Board the roof was not publicly visible.

Member Cherry liked the solution that Mr. Waits provided if the roof were to be a regular Brai style roof with skylights because the idea is to protect the area, and the skylights would be more visible than the flat surface with the drip edge. The fact the material is flat is a good thing, so it would not be as visible as domed skylight. He confirmed that it would not be attached to the other structures. He noted he would be concerned about the drainage in the area and the location of the water mitigation at the contributing building.

Mr. Waits felt the permitting would address the drainage.

Public Comment:

Ms. Stefanie Beninato, previously sworn, stated a portal must be attached to a structure by definition. Traditionally materials used should be in harmony with the existing structure and this is not. She recalled a greenhouse but not its exact location where the owner was required to remove this type of material and another where glass was required. She agreed with Member Aguilar Medrano's suggestion to roof it and attach it to a structure and use flat glass or low-profile skylight or possibly some of this material in smaller segments. She reiterated that it is important whether it is publicly visible and that the material is in keeping with the structure itself to produce harmony. This type of material has not been allowed in historic districts in the past.

Member Aguilar Medrano stated she did not like the idea of this becoming a stucco structure with parapets and skylights because that design would be worse than what is proposed. What she wanted to see is this be a more traditional portal with wood construction and something like latillas. She questioned staff if there was any code guidance on breezeways.

Ms. Lamboy pointed out that it is important to remember this is a contributing structure and that while the portal does not connect, it does give the effect of attachment, and more modern material does communicate that this is not part of the historic structure. So, it would not overtake the historic material. The materials that are permitted in the Downtown and Eastside Historic District, the operating language, are relative to public visibility. As to the flashing and all of that, if it was in an approved color that might address the visibility of that solution. There is no easy answer but that is the perspective of staff.

Mr. Waits offered that the columns and supporting beams are of ordinary material and he confirmed that the issue seems to be the translucent material of the roof. He did not feel that the objections were not necessary as the material would not be publicly visible.

Member Degnan pointed out that this is setting a precedent so please keep that in mind.

Member Aguilar Medrano asked if there was a section of code that mentions that materials should be in keeping with the streetscape.

Ms. Lamboy pointed out that the code for the Downtown and Eastside District was for overall dominating walls and the colors be of an earthtone nature and again that the operative word is publicly visible, and there is some about texture. However, it is silent on not publicly visible facades. She communicated that keeping the integrity of the two historic structures and communicating that clearly through a different material might be a good approach in this case, so that we know going forward that the contributing structure and the casita were two different times of construction.

Member Cherry pointed out in the proposed north elevation proposed the rafters look tapered. He explained it looks like post and beam construction with four round posts with horizontal beams. Those will be resting on those tops of the posts with purlins that span the longer posts and there seems to be a tapered rafter above that. Is that correct to create the pitch of the roof? It looks like they rip to nothing.

Mr. Waits stated that it is a practice to die the ripper at the beam before the last beam. The design detailing shows as visible so he can move something down an inch to accommodate a ripper that the contractor may require.

Mr. Cherry confirmed that they are not steel due to their profile.

Member Aguilar Medrano summarized that what she is hearing is that the Board is on the fence because they want to be accommodating but it is also dealing with a contributing structure and is on Acequia Madre, a more prominent street. We seem to still have a lot of questions about the profile and that is what this really hinges on. I think we need confirmation that this translucent roof would truly be invisible at both ends.

Board Action:

Member Aguilar Medrano moved to postpone the case to the next hearing on April 8, 2025, asking the applicant to provide construction detail of the roof profile to show how the edge of the translucent material interacts with the flashing material and that it will not be publicly visible. Member Degan seconded. The motion passed with the Board voting unanimously (4-0).

Mr. Waits approved the date for the postponement.

- c. **2025-009946-HDRB, 329 Otero St.**, Downtown and Eastside Historic District, Contributing. Lisa Martinez, agent for Mike and Christine Foster, owners, propose to replace all doors and windows and requests an exception to 14-5.2(D)(5)(a)(i) historic windows shall be repaired or restored whenever possible.

Paul Duran presented the case sharing the staff report and photos with a summary of the proposed project. He emphasized that on September 10, 2024, under Case No. 2024-008868-HDRB, the Board adopted staff's recommendation that the exception criteria had not been met for replacement of historic windows and that the request was denied on the primary façades, but that all other aspects to the application should be approved with a friendly amendment to the non-historic, non-primary façade windows that to clarify replacement of windows shall not be vinyl as proposed but that the windows be wood windows, and is accepted and that this motion passed unanimously. He stated that the project did not change drastically as the request is for a change of material of the window only. The windows will be wood-clad but with vinyl material as stated in this application. The window assessment does state that the windows can be repaired. Staff found that the exception criteria have not been met and recommended denial of an exception to replace historic windows on the primary facades of the contributing structure.

Chair Bienvenu questioned the validity of the case coming forward since the Board denied the application in the past year and findings of fact and conclusions of law have been entered denying the request to replace the historic windows on the primary facades in-kind. He wanted clarification on what was different about this application that would allow it to be heard a second time. His concern is that if we permit an application to be reapplied that asks for the same relief that was sought in the original application that the case could be extended indefinitely. There would be no prohibition on someone continuing to ask for the same thing until they got a Board that might approve it and that is not procedure normally, we would consider for case that has been resolved especially if it has not been appealed to the governing body. So, the question for staff and the attorney's office is how can we hear this case at all if it is essentially the same application that the Board has already issued a decision on?

Mr. Duran stated that there was discussion between staff and the city attorney, and the direction was that for due process to meet the applicants' needs. However, the city attorney disagreed with this. The attorney recommended that because the findings of fact and conclusions of law had been entered that this case should not come before the Board for review. Staff are giving the applicant their due process by coming before the Board and if the Board renders the same decision, she has the right to appeal to the Governing Body.

Chair Bienvenu clarified that this was the staff's decision, but that the city attorney had a different point of view.

Ms. Lamboy stated that she and assistant director Moore reviewed the application when it came in and they looked at the review and approval procedures found under section 14-3 regarding the rehearing of the existing case and unfortunately, only in the case of rezonings is there a time frame in which an identical application can not be resubmitted. This may be a subject for the rewrite of the code, but as of right now this is how the code is written. So, when it comes to any other development approvals, such as that with the

historic districts review board, there is no minimum time frame for it to be reheard. This perspective is why staff is of the opinion that it is compliant with code if they are to reapply.

Attorney Ruybalid stated that the question as to whether legal principles like *res judicata* or *collateral estoppel* apply to hearing before a land use board are not necessarily decided with specificity, I could not find a case that decides those issues when it comes to an application to a land use board or historic district review board. In a case that is parallel to this one, I did find a case where a historic district review board case that was taken to a district court the doctrine of *res judicata* was applied and the case was thrown out at the district court level. Whether the historic district's review board could have heard it again, was not necessarily answered. The concern I have is that I don't see anything under due process principles that require the same hearing to be made twice if the Board has already made that decision. It also seems that if the code prohibits somebody from appealing more than once, it seems that if their opportunity to appeal came and went and they didn't appeal. Essentially what they are doing is applying to the board to get a new finding in effect so they can appeal because they did not appeal first time. So, I am concerned that this sets a bad precedent. I do find the doctrine of *res judicata* in respect to land use hearings that have gone to a district court is respected in the state of New Mexico. So, it is an open question, I am just concerned about the precedent this will set.

Chair Bienvenu stated it would be an absurd interpretation of our land use code to nullify the deadline for an appeal, which is what this would do. Under the interpretation staff have given there would never be an appellant deadline. Because you could indefinitely continue to file a new application and reset the clock every time. It cannot be the proper interpretation. This is my concern, and I think that proceeding with a decision tonight would reset the clock, which I do not think should happen in this case unless it is clear as opposed to being ambiguous that that is the only proper procedure for the board to undertake. At the very minimum, I would suggest that the board should continue this matter if it does not feel it has sufficient information to decide how to proceed.

Member Degan asked if the representative for ownership was present and asked about due process, it seems to me that due process was executed and received, and it seems the attorney has confirmed that then it is unclear why it is being heard.

Member Cherry stated he understood that if an application was heard and denied that a new application could be heard if there were significant changes to the application. He further clarified that the application change was the material to an aluminum wood clad window rather than the vinyl window of the original request, but that the request was still for replacement where the recommendation of the window assessment as restorable.

Mr. Duran confirmed that this was correct.

Attorney Ruybalid felt the findings for the September 10th hearing that were approved in January should be reviewed. He read a list of non-historic or windows not a primary

façade as windows A, B, F, and doors 1, 2, and 3. The Board approved to stucco to the entire structure. The board denied an exception sought by the applicant denying replacement of historic windows on the north, west, and south facades consisting of windows C, D, E, G, H, and I. The board approved the replacement of the windows which were non-historic windows on the non-primary facades with the condition that the replacement windows shall have wood not vinyl frames. So, he believes that the applicant is presenting non-vinyl frames on non-historic primary facades and the board could consider these, but it seems that it is a settled matter that historic windows on the primary facades which required an exception, that that exception has been denied.

Member Bienvenu confirmed that that is correct, and the basis was not because of the replacement material but because the windows were repairable. So, changing the material does not change the application in mind or the board's decision.

Ms. Lamboy stated that while the code needs to be fixed, it is our obligation not to look at just the historic district's ordinance, but also to look at the other components of the code relative to submission of applications. It has been our practice that it must be significantly different that question was posed to us whether that could be resubmitted, and it is not significantly different, it does get closer to the overall intent of having the same appearance and the like. Although the packet the applicant submitted is contradictory between the details that were provided and what was written in the letter. So, there are a lot of concerns here and I also understand what you are saying, the clock would not stop clicking forever and that is an accurate representation. That is the perspective of our office, but we are happy to defer to the city attorney's office and this board as to the proper decision.

Chair Bienvenu felt the solution would be to continue this matter and let staff and the attorney's office work out a solution to this problem because again the board hearing the matter has consequences, even if it is denied it has consequences. The board should not enter that process unless it is quite certain that there are no other options and that it is required to hear this matter.

Mr. Duran pointed out that:

*** Member Mather left the hearing for the evening. It was determined that quorum requirements were still met.

Chair Bienvenu confirmed if a motion could be made to continue the case if it could be made now or if the board needed to hear from the applicant and the public first.

Attorney Ruybalid agreed that because the conclusion of the staff and the attorney upon further research might compel the board to decide not to hear this case, that the legal matter should be decided and the whole hearing should be considered prior to hearing from the applicant and the public.

Board Action:

Member Degnan moved to continue this case to an unknown later date to allow the staff and attorney's office to determine if the case can or should be heard by the Board or determine whether this matter be rescheduled or be withdrawn. Member Aguilar Medrano seconded. The motion passed with the Board voting unanimously (4-0).

- d. **2025-009947-HDRB, 214 Old Santa Fe Trl.**, Downtown and Eastside Historic District, Contributing. John Padilla, agent for Mark Suleiman, owner, requests approval for non-permitted alterations including replacement of doors and windows, installation of a metal fence and gate on the publicly visible east façade, construction of a landscape planter on the north primary façade, and requests two exceptions to 14-5.2(D)(5)(b) architectural features and 14-5.2(E) Downtown and Eastside Design Standards.

Paul Duran presented the case sharing the staff report and photos with a summary of the proposed project and the unapproved work on the property. Staff found that all the exception criteria had not been met and recommended denial 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.

Chair Bienvenu requested clarification on what exactly was being presented tonight specifically the glass door facing the street on the apartment portion of the structure was in the application.

Chair Bienvenu clarified the division of the case exceptions into two categories with the first being the planter on the primary façade which is multiple planters connected and being reviewed as a single piece. Secondly, the board is to consider whether the exception criteria are met for the metal gate, the windows and doors on the north façade as a single exception because it is a single façade though they seem they should be different

Mr. Duran confirmed that this was the approach to avoid having five exceptions before the board. The entire façade is under section 14-5.2(E) and therefore, grouped together.

Chair Bienvenu stated he understood this was a way to try to simplify things but felt that each item raises different considerations when trying to decide what exception criteria have been met for those two design features. He also mentioned that the general design standards for all districts under subsection D should have been taken into consideration as it has two important provisions that pertain here. The first being that no alterations to a contributing structure are to be made that could cause it to lose its contributing status and that is something the board needs to consider here in deciding whether to approve retroactive changes whether because if it affects the status, the board is not permitted to approve them. The second is that no alteration of features and spaces that embody the status shall be made and that's a standalone mandate separate from all the others that

you've brought about the design standards. I've always read that provision to be broader than the primary façade. The primary facade designation does not necessarily encompass all the features and characteristics that make a building contributing. In fact, we often wrestle with that because we have reasons to believe lots of facades have important characteristics but we're cognizant of the fact that if we start designating every single elevation as a primary facade it would be impossible for anyone to ever be able to modify the house. So, it's important to clarify that the owner is not permitted to alter characteristics that embody the contributing status even on non-primary facades such as the eastern facade here.

Chair Bienvenu also mentioned that several issues were brought up that the staff felt were violations including the pilasters in the front that were required to be stuccoed and are not along with the permanent glass cases that were attached to those pilasters. He stated these were in the original application and according to the packet were removable and would only be on site during the working hours and working days. He clarified if this was something before the board tonight or if this was just informational.

Mr. Duran stated it was coming before the Board tonight. He explained that these are observations staff had at a site visit and some red flags that popped up. These are issues here that are ongoing and show a pattern of illegal work without city approval or board approval and are not in keeping with what they've been approved to do.

Member Aguilar Medrano commented that Mr. Padilla is in a tough position because this application doesn't represent his practices. She went on to point out that the pilasters were not something she would have expected the board would have approved. So, she did some reading and found that those were another red tagged case in 2009, where the owner came back to the board asking for retroactive approval. She pointed out the board was rather gracious that night and decided to grant it on condition that there would be cementitious stucco, and the owner never did that. Therefore, the pilasters are not compliant. She felt they should be on the table because when an application comes before the board and something's not compliant the board has the authority to request that it be brought up to code. She pointed out that there has been back and forth since 2009 about the work on this property and she couldn't see a way that the board could approve any of these changes tonight.

Member Cherry asked for clarification on the issuance of the red tag and the dates of photos in the packet.

It was confirmed that the red tag was issued in September 2023 with a notice of violation in 2024 and the only previous notice of violation in 2009.

Mr. Moquino shared section 14-5.2(C) regulations of significant and contributing structures under section (F) for restoration of status If a property owner makes changes to a structure without the property proper city approval which results in lowering the

structure status staff or board may require the property owner to restore the structure such as that in the form of status restored.

John Padilla, P.O. Box 22986, Santa Fe, NM, was sworn in. Mr. Padilla requested that the inspector clarify the date of the most recent citation.

Mr. Duran clarified the citation was given on April 24, 2024.

Mr. Padilla clarified that the 2009 citation was prior to this owner as he has only had the property for the past two years since 2022. So, any issues outside of the 2024 issue are not applicable to this owner. He stated that staff represented this case as a habitual practice of the owner, and he wanted to make it very clear that the previous violations were not the doings of this owner. He understood that the cases in front of the property were approved in 2009 and is not relevant to this case. He stated he was not aware of all the seven points staff gave and therefore they are not all a part of the current submittal. He made specific notes regarding each of the items. The signage has been there historically so it should not be an issue at this hearing. The hardscape was part of repairs for spalling concrete that is on the ground which is the walking surface for the public and is a substitution for hard tile or larger formatted tile to provide a safe travel path for customers and the public approaching the building. The height for the existing fence was referenced as ten feet tall. It is about seven at the highest point. The windows touching the ground require an exception. That is what is before you this evening. An Ada accessibility handrail on the south where the gate is not a public access point. Accessibility is not an issue as it is through the main door.

Mr. Padilla continued that he is here to work with the board and staff. The owner has made it clear that he is not asking for any special exceptions or attention. His tenant made the changes without the knowledge of the property owner. He noted that some items specifically the door on the north which is an east elevation on the north side of the building were done due to a fire in the building so that the building could be secured while they went through the approval and permitting processes. He also pointed out that he understood that under portals windows with larger than 30" panes were allowed. The portal has been on the structure for an extended period. He also pointed out that metal fencing and gates are on this streetscape pointing out the most prominent at the chapel across the street. Mr. Padilla emphasized he is looking for a solution with the board so that a permit can be obtained, and he would like to discuss each item separately to come to an agreement on each item. He reiterated that the owner did not approve of any of the changes and was not aware of them until after the incident. It is obvious that the low landscape walls need to be discussed, they are clearly for landscaping and do not display product as can be seen in the photos. He stated that the historic integrity or the primary façade were affected by the planters because the architectural elements that are called out as reasons for the primary façade are still present and are still visible. While it was built without a permit, we are here now to discuss how to find a resolution. The southern

planters are not on the wall which on that façade are not primary. I stand for questions and am ready to work with the Board for a resolution for my client.

Chair Bienvenu questioned the issue of ownership and who was and was not involved and verified that the current owner was not the owner in 2009, and the owner was not aware of the changes, and that the changes were made by the current tenant.

Mr. Padilla admitted he did not know the tenant, only that his name was Jack. He was not aware of the contractor who did the work, but he was hired by the owner after the work was completed.

Chair Bienvenu referenced the case at the neighboring lot at 216 Old Santa Fe Trail, heard at the last hearing, and questioned if that retroactive approval request was from a different client and if it was done in coordination with this project.

Mr. Padilla was not sure if it was done in coordination. The applicant at the 216 Old Santa Fe Trail was a different client and tenant issue. He was not prepared to answer questions about the other case since they were not the same applicant.

Chair Bienvenu stated he was not sure if it was the applicant or staff that had discussed the non-divided lite windows on the streetscape.

Mr. Padilla pointed out that that was a different project and this case at 214 Old Santa Fe Trail has not previously been heard, only the status was previously reviewed for this project.

Chair Bienvenu explained that both cases are on the same streetscape and each of them affect the streetscape and so he is looking for clarification if the this projects non-divided lites were consistent with the streetscape and that it was his understanding that none of the buildings without divided lites were approved as they were built and he wanted to know if the contractor doing the work did all of those projects.

Mr. Padilla was not sure if the contractor was the same for each of those projects. He stated that each of the projects are their own case with their own applicants and he could not understand why the conversation from a previous case was being brought up on this case.

Chair Bienvenu reiterated it is because of the testimony that these windows and doors are not harmful to the streetscape though the streetscape is affected by each of the projects which are similar installations of windows.

Mr. Padilla stated he had no knowledge about the projects at 218, 220, 224, or 228 Old Santa Fe Trail, and he was brought in after the fact for the 214 and 216 projects.

Chair Bienvenu stated this was discussed at the last hearing, that he did not want the project to come before them repeatedly with new applications with new designs at infinitum and hoped that there would be a request to restore the structure to its' original status.

Mr. Padilla pointed out that the owner of this property has brought the case before the Board for the work done on this property and if the Board chooses to deny the request for the work then he (the owner) is willing to do what the Board needs to have done so that they can get the project to a position so that it can be approved.

Chair Bienvenu stated that it is good for the Board to know that if the Board decides not to approve these, it can state what would be required to be acceptable.

Mr. Duran offered that the 2009 application reflects the current owner as the owner in 2009 and he was sure it was also the same agent for the owner.

Chair Bienvenu asked Mr. Duran to research that and double check the information.

Member Aguilar Medrano asked staff if a maximum height had been calculated for the streetscape and what that was. She also asked Attorney Ruybalid if ownership has switched hands and the previous owner has outstanding non-compliant renovations, can the new owner be held for those if the direction of the Board is to require that owner to bring it back into acceptable status.

Attorney Ruybalid stated that the owner can not get out of restoring compliance to a structure just by selling it to another owner. The new owner takes on those compliance issues. The non-compliant issues are a part of public record, and the new owner will be responsible for the non-compliant issues. Liens can be applied to the structure and the structure can be required to be sold in what is called an *in rem proceeding* in which case the proceedings are against the property rather than an owner.

Member Aguilar Medrano confirmed that the windows under the portal do not have to be divided lite windows, but the issue for her was the ratio of stucco to glazing. She felt that the requirement would not be met. It seemed like a doable fix. Also, in the past, the glazing was not allowed to come all the way down to the floor, again she felt this was an easy fix. She also had an issue with the pilasters, and she confirmed with Attorney Ruybalid that those were outstanding and not compliant from the previous owner so they would be able to request that those be looked at. Her proposal for the pilasters would be for them to be removed even though there was conditional approval if they were to be cementitious stucco, but since that was never met the Board should look at them again, since it is something which they would not approve of with this Board. Her last point was that the low planter walls seemed black and white since they are attached to a primary façade. It is not an issue that there is a wall but that it is attached to the primary façade.

Mr. Duran stated that the code regarding the storefront plate glass doors and window is under section E of the design standards for the Downtown and Eastside and it reads: "windows and doors under portals on publicly visible portions of the building and walls shall be of one of the Old Santa Fe styles except that buildings with portals may have larger plate glass areas for windows under portals." He concluded however, that this is a French door plate glass system, so the doors themselves are plate glass windows and do not meet the code standard, and that is the staff's concern.

Mr. Duran also stated the maximum allowable height is eight feet for commercial properties in the Historic Districts.

Mr. Moquino clarified that there has not been a street front wall height calculation done for the address. The height that Mr. Duran shared is for fences that are located greater than twenty feet from the street.

Mr. Duran stated that the fence and gate are over twenty feet from the street.

Member Aguilar Medrano clarified that the issue is then material rather than the height of the gate.

Mr. Duran confirmed.

Chair Bienvenu clarified that the issue is more about the door and window under the portal, so these needed to be conceptualized differently since they are not all one issue. There is the door and window issue and then the gate issue. With the door and window issue there does not seem to be a provision for a glass door even under the portal as the divided lite portion of the code applies only to the windows and not the door.

Mr. Duran clarified that the code does not apply to the door since the doors are not called out in the code, so an exception for a plate glass door would have to be requested.

Chair Bienvenu stated that the windows are considered separately, and the Board would need to resolve those issues. He asked clarification if the code does permit glass greater than 30" in diameter under the portal and then the three feet from the corner rule also applies here.

Mr. Duran confirmed and stated that this would also apply to the distance from the ground, so the three-foot corner rule from the ground to the window would require an exception as well.

Ms. Lamboy confirmed that the window to the ground would also require an exception based off this section of the code.

Mr. Padilla stated that the glass goes to the floor as there is no ground in that location, and the exception was requested on this case. This is the first time he had heard of the three feet from the ground to an opening. He has often used it for the corner of the building to the window. He pointed out there is a regulation height for sleeping rooms per building code, but this is first from the floor to the window.

Ms. Lamboy clarified that this is a “rule of thumb” when considering the dominating effect of adobe construction and in the case of storefront windows although this was originally a residential building and designated as such, it is related to its residential use, although it is converted to a commercial use store windows typically had the base. If you walk along San Francisco Street you see that all under throughout the streetscape and this type of feature, glass to the floor, is not found in the Downtown and Eastside Historic District.

Mr. Duran shared that in the 2009 case the current owner was the applicant for 2009, but Mr. Padilla was not the agent.

Public Comment:

Ms. Elizabeth West, 318 Sena Street, Santa Fe, NM, was sworn in. Ms. West stated when she walked by the building off the plaza with the large windows to the ground, they had installed lighting around the window to add emphasis to the metal, which adds insult to the injury. This hearing reminds her of this, and she feels bad about the building, she supported the Board in their concern and diligence on the case. She felt she heard the applicant was willing to do anything to go back to where it was, and she would like it to be denied.

Ms. Stefanie Beninato, PO Box 1601, Santa Fe, New Mexico was sworn in. She stated that she heard Mr. Padilla state that the owner did not approve of the changes, not that he did not know about them. If you have a tenant, you are responsible for what the tenant does. You cannot just walk away because the tenant did it nor can you walk away from the fact that you had a fire. Structures have fires, you still must comply with the code when you redo it and something that was red tagged in 2009 and has never been corrected is not approved non-conforming use. It is just non-conforming and in violation. I would ask that, as Ms. West did, that you do not grant the exceptions here and that you require the windows to come and that there be a mass displayed in this front façade. I would also ask that the advertising, that is the placement of sculptures or whatever these objects are in the planters, be removed and that the window or door where they have that triangulated top and then the door that you also look at that. I point out that on Old Sant Fe Trail right at the plaza, their rationale was they needed the window to display goods, and they have never used it for display. It really detracts from the harmony of the streetscape and the idea of a historic structure. I would urge you not to grant exceptions for anything here and that you require the applicant to come back as you did the other case recently and resubmit so that it actually complies with the historic design standards and I appreciate

that you pointed out the larger on section D that gives you more authority to look at the whole as opposed to just a primary façade.

Mr. Padilla asked again that since the owner is asking him to get the application to a point where it can be approved, that this be the approach on the case.

Mr. Duran stated that staff requests that the structure be restored to the original façade from 2023, design. The planter and the gate will still need to be discussed but staff believe the structure should be restored. He believed that the Board should make a recommendation regarding the pilasters and staff would support their recommendation.

Member Aguilar Medrano asked Mr. Padilla if he would prefer postponement or denial if the Board does not believe this can be approved tonight.

Mr. Padilla stated he preferred a postponement because he was not prepared for a denial which would start the case over.

Member Degnan asked Attorney Ruybalid asked the legal implications of what the best approach would be.

Attorney Ruybalid stated if denied, they can represent a new case with a new design, but he understands that they would be required to pay another fee and go through the application process again and get a new case number, if the project is postponed, with the applicants implicit approval, they can redesign and bring the case back without going through the application process again and the same case number would be used. He was unsure about the municipal court process in respect to the notice of violation, but the court may have to proceed unless the applicant makes a pitch to the municipal judge that we are trying to get this redesigned so that we can get the Boards approval in which case that may have a bearing on how the municipal judge handles that.

Mr. Duran shared that a postponement means that the applicant can come back as many times as they desire, but a denial gives the court a decision to base judgement on and staff would desire a denial over a postponement.

Attorney Ruybalid assured the Board that the city attorney's office and the staff and Board should always be mindful of due process but due process does not require more than notice of an opportunity to be heard by an impartial tribunal and an opportunity to appeal to a higher tribunal so due process only requires that he have the opportunity to come in and make his presentation and call his witnesses and answer questions and present drawings and so on. But the idea that an applicant gets to come before the Board over and over again is not required by due process. If the applicant and Board can work something out that allows the applicant more time, you can do that, there is nothing that states you can't do that. But due process does not require more than one hearing.

Chair Bienvenu clarified that if the Board does decide that these changes are detrimental to public welfare then that is an ongoing injury as long as this matter continues.

Board Action:

Member Degnan moved in case 2025-009947-HDRB, 214 Old Santa Fe Trail to deny the application in its entirety finding that the exception criteria have not been met as stated in the staff report and this hearing, and that the applicant and staff work together to have the structure returned to its condition before the unauthorized changes were made.

Member Aguilar Medrano questioned if we could require the restoration to the property be to the condition prior to the stone pilasters.

Mr. Duran stated that he found an approval and permit for the stone pilasters in November of 2009.

Member Aguilar Medrano clarified her question, that since the pilasters were non-compliant of the condition of approval if they could require the pilaster either be removed or stuccoed.

Member Cherry stated he could tell at the site visit earlier that they had previously been stuccoed and he wanted to know if there was any approval for the rock or a record of a final inspection for the stucco.

Mr. Moquino stated they had a final inspection that passed with the stucco rather than the rocks.

Mr. Cherry asked for a point of clarification if this could be approved, denied, postponed, or if it can be required for the applicant to remove all unapproved items.

Chair Bienvenu clarified how the fourth option would be in addition to one of the other options rather than being in lieu of them.

Attorney Ruybalid felt it would make a better record if the decision that this has to be restored were stated in the motion. If it is not stated, the municipal court through the red tag and notice of violation can also accomplish the same thing. But just to make a good record if that is something that the Board agrees on that should be stated in the motion. It would be in lieu of an approval or denial. It would not be normal to make a motion that is partial approval or denial and postpone other elements since a final action must be made.

Chair Bienvenu reiterated the motion as it stood.

Member Aguilar Medrano seconded with friendly amendment that the property owner restores the structure to the condition prior any unapproved work that staff has on record with the oversight and working with the staff on that.

Member Degnan accepted the friendly amendment.

The motion passed with the Board voting unanimously (4-0).

Chair Bienvenu directed Mr. Padilla to work with staff from here as this was an action on the case.

9. Discussion Items

Ms. Lamboy clarified the difference between item 9 and 10 on the agenda. There were no other discussion items.

10. Matters from the Board

Member Aguilar Medrano questioned the parking sign on Washington Avenue.

Mr. Moquino stated that it is being investigated by Mr. Maestas.

Chair Bienvenu stated that he did not feel it was appropriate in the context of the case 9947, because it wasn't related to the application, but he has always had concern over the proliferation of sculptures and rugs and knickknacks on Canyon Road but specific areas such as parking lots, walls, roofs and other locations are being used for the display of materials for sale. He asked if there were some regulations on this especially concerning properties as you near downtown and Plaza area because it is detrimental to the Historic character of the area and to the building that is covered all day long. Is there a regulation and if not is it something that can be added to the code?

Ms. Lamboy explained that the current code does not comprehensively deal with the retail outdoor display of goods. There is nothing specific to the historic districts except the window displays. So, this would be a good subject to add to the list of items to review for the code rewrite.

Member Aguilar mentioned that it would be nice if the code also addressed historic trees for the Board to have some jurisdiction over landscapes.

Chair Bienvenu questioned if the roll call vote for adjournment, minutes, or Findings, was required. Could it be more if there were any objections. Is that in conflict with City apologies.

Ms. Lamboy stated it was not required and is not done for all Land Use Boards.


11. Next Meeting
April 8, 2025

12. **Adjournment**

Member Cherry moved to adjourn. Member Aguilar Medrano seconded. The vote passed unanimously, and the meeting was adjourned.



Lani McCulley, Transcription



Cecilia Rios, Historic District Review Board Chair



Date