



AGENDA

MEETING OF
THE BOARD OF
ADJUSTMENT
FEBRUARY 16, 2021 AT 11:00
AM
ATTEND VIRTUALLY

SPECIAL PROCEDURES FOR VIRTUAL ATTENDANCE AND PUBLIC COMMENT

Attendance: In response to the State’s declaration of a Public Health Emergency, the Mayor’s Proclamation of Emergency, and the ban on public gatherings in excess of those permitted in the current Public Health Order, the Board of Adjustment meetings will be held virtually.

Viewing on YouTube: Members of the public may stream the meeting live on the City of Santa Fe’s YouTube channel at <https://www.youtube.com/channel/UCuW5Fb7iWuKpTdsWYNDurgA>. The YouTube live stream can be accessed at this address from most computers, mobile devices, or smartphones. A video recording of the meeting will be posted on YouTube and available for viewing after the meeting.

Attending on Zoom: Members of the public may attend the Zoom meeting on a computer, mobile device, or phone. The video conference link and teleconference number will be posted on the City of Santa Fe’s Calendar of Events website at least seventy-two (72) hours before the meeting: <https://www.santafenm.gov/events>. The direct Zoom link is: <https://us02web.zoom.us/j/83138050511?pwd=UlhueHUwd2VLUG5JM1c4RURFZ1NKdz09> and use password: 349362.

Attending Zoom by Phone: Members of the public can attend the Zoom meeting by phone by dialing:

US: 1 346 248 7799 or 1 669 900 6833 or 1 253 215 8782 or 1 312 626 6799 or 1 929 205 6099 or 1 301 715 8592

Webinar ID: 831 3805 0511

Public Comment:

- **By video:** A person attending the Zoom meeting by using a computer, mobile device, or smart phone may provide public comment during the meeting. Attendees should use the “Raise Hand” function to be recognized by the chair to speak at the appropriate time.



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- By phone: A person attending the Zoom meeting by phone may provide public comment during the meeting but **must** provide advance notice to City staff. Please contact Noah Berke (505-490-5930, nlberke@santafenm.gov) at least seventy-two (72) hours in advance of the meeting and provide your **full name, address, and the phone number** you will be using to call in to the teleconference. Without your phone number, the chair will not be able to recognize you to speak at the meeting.
- In writing: A person may submit written public comments in at least seventy-two (72) hours in advance of the meeting via the virtual comment “button” at <https://santafe.primegov.com/public/portal>.

A. ROLL CALL

B. PLEDGE OF ALLEGIANCE

C. APPROVAL OF AGENDA

D. APPROVAL OF MINUTES:

1. January 19, 2021

E. APPROVAL OF FINDINGS/CONCLUSIONS

1. Case #2020-2894. #3 Placita Rafaela Setback/Stepback Variance(s).

F. OLD BUSINESS

G. NEW BUSINESS

H. STAFF COMMUNICATIONS

1. Ethics and Open Government Training (Sally Paez, Assistant City Attorney)

I. MATTERS FROM THE BOARD

J. ADJOURN



City of Santa Fe

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Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6521, five (5) working days prior to meeting date.

Board of Adjustment
January 19, 2021

Item	Motion/Description	Page
Call to Order	Gary Friedman, Chair of the Board of Adjustment called the meeting to order at 6:02 p.m. via virtual meeting	1
Roll Call	A quorum was established with roll call.	1
Introduction of New Members	Comments	1-2
Pledge of Allegiance	Recited	2
Approval of the Agenda	Approved	2
Election of Officers: 1. Chair 2. Vice Chair 3. Secretary	Approved	2-4
Approval of the Minutes from December 1, 2020	Approved	4
Approval of Findings/Conclusions	None	
Old Business	None	4
New Business		
1. <u>Case #2020-2894</u> . #3 Placita Rafaela Setback/Stepback Variance(s). Gayla Bechtol Architect, Agent for Holmes Family Trust, Owner, requests approval of a variance to SFCC Table 14-7.2-1 to enlarge existing 2nd story structure that is non-conforming in regards to minimum setbacks and setback. The property is zoned RC8 (Residential Compound - eight dwelling units per acre), is approximately 0.073 acre, and is within the Downtown and Eastside Historic District. (John Neunuebel, Case Manager,)	Approved	5-11
2. <u>Case #2020-2895</u> . 313 - 317 Camino Alire, Special Use Permit. Andrea Abedi and Hilary Kilpatric, Agents, for Hot Pie, LLC, Owner, requests approval of a	Approved	11-15

special use permit for a Commissary Kitchen at 313 - 317 Camino Alire. The property is zoned C-1 (Office and Related Commercial) and is approximately 1.42 acres. (Donna Wynant, Case Manager)		
Staff Communications	Comments	15
Matters from the Board	Comments	15-16
Adjourn	With all business conducted for the Board of Adjustment, the meeting was adjourned at 8:05 p.m.	16

**Board of Adjustment
Via Virtual Meeting
Tuesday, January 19, 2021**

A. CALL TO ORDER

Gary Friedman, Chair of the Board of Adjustment, called the meeting to order at 6:00 p.m. via virtual meeting due to the current health restrictions. A quorum was established with roll call.

ROLL CALL

Present:

Gary Friedman, Chair
Rachel Winston, Vice Chair
Donna Reynolds
Coleen Dearing
Doug Maahs
Grant Alexander
Daniel Painter

Absent:

Staff and Others Present:

Noah Berke, City Land Use
John Neunuebel, City Land Use
Donna Wynant, City Land Use
Sally Paez, City Attorney's Office
Melissa Byers, Stenographer

NOTE: All items in the packet for all agenda items were incorporated herewith by reference. The original packet is on file with the City Land Use Staff. Any additional attachments will be labeled as exhibits.

Chair Friedman recognized Daniel Painter, the new Board member and asked him to introduce himself.

Member Painter said he retired from 35 years in the planning field. He moved to Santa Fe from Virginia a few years ago. He lived in Colorado for 30 years, prior to that. He feels like he's coming back home a little and is glad to be out west. He loves Santa Fe.

Chair Friedman recognized Grant Alexander, a new Board member as well and asked that he introduce himself.

Member Alexander said he works as an architect in Santa Fe and as a realtor. He worked as a planner for a number of years in Boston doing traffic engineering and

transportation planning as well. He is excited to be part of this Board and excited to help. He said also, he lives in Sol y Lomas as apparently half the people here do.

B. PLEDGE OF ALLEGIANCE

Chair Friedman led the pledge of allegiance.

C. APPROVAL OF AGENDA

MOTION: Member Maahs moved, seconded by Vice Chair Winston to approve the agenda.

VOTE: The motion passed by unanimous roll call vote (7-0).

D. ELECTION OF OFFICERS

Chair Friedman said the officer slate currently is himself as the Chair, Rachel Winston is the Vice Chair, and the Board does not have a current Secretary.

Mr. Berke said staff proposed having the election in an efficient way with the Chair opening up nominations from the floor.

Ms. Paez indicated staff reviewed Robert's Rules of Order since this Board has not done elections in a long time and never on Zoom. Staff is looking for an effective way to do this and Mr. Berke will propose the process. She recommends someone make a motion to adopt the process to hold the election and the Board can then move on to the election.

Mr. Berke said staff proposed the process be for the Chair to open the floor for nominations. Any Board member can nominate themselves or another Board member. The nomination will be the chair first, then vice chair and secretary. A poll will be taken for each position. He created a poll that he is hoping will work. In the event the poll does not work, the votes can be texted to Director Isaacson. If for some reason the texting fails, the election would happen the old fashion way, which is nomination, acceptance of the nomination followed by a roll call vote.

Mr. Berke said that is the staff's suggestion, if the process is acceptable to the Chair and Board members.

Vice Chair Winston asked what the role of the secretary is.

Mr. Berke said the secretary would be the third in command in case the chair or vice chair were absent from a meeting. The main duty of the secretary is to review the

minutes and the findings before each meeting and propose any changes to the stenographer or staff. So, the position is key for the Board.

Vice Chair Winston asked what the secretary does in terms of the minutes.

Mr. Berke said the secretary reviews the minutes in detail.

Chair Friedman asked if the minutes would be signed by the secretary or by the president and the secretary.

Mr. Berke said the minutes will still be signed as they were in the past.

Vice Chair Winston asked when nominations open if a slate is nominated or position by position nominated.

Ms. Paez said for a group this size, per Robert's Rules, it would actually be to nominate one office at a time and then vote on that. Then you would know who is out of the running when nominating for the remaining positions.

MOTION: Member Dearing moved, seconded by Member Maahs to follow the election procedures as stated by Mr. Berke.

VOTE: The motion passed by unanimous roll call vote (7-0).

1. Nomination for Chair

Chair Friedman opened up the floor for nominations for the position of Chair.

Member Dearing nominated Rachel Winston for Chair.

Ms. Paez said seconds to nominations are permitted.

Chair Friedman seconded the nomination for Rachel Winston as Chair.

Vice Chair Winston nominated Gary Friedman for the position of Chair. Member Maahs seconded the nomination.

Vice Chair Winston declined the nomination saying she preferred to be the Vice Chair.

Chair Friedman accepted the nomination for the position of Chair.

Ms. Paez explained the position must be elected by a majority, so four votes are needed to elect.

2. Nominations for Vice-Chair

Chair Friedman opened up the floor for nominations for the position of Vice Chair.

Member Maas nominated Rachel Winston for the position of Vice Chair. Member Dearing seconded the nomination.

Vice Chair Winston accepted the nomination.

3. Nominations for Secretary

Chair Friedman opened up the floor for nominations for the position of Secretary.

Vice Chair Winston nominated Member Dearing for the position of Secretary. Chair Friedman seconded the nomination.

Member Dearing accepted the nomination.

ELECTION BY POLL

Mr. Berke launched the Zoom polling feature to allow each Board member to vote on each position.

Mr. Berke announced the results of the election poll for the Board of Adjustment as follows: Gary Friedman elected as Chair; Rachel Winston as Vice Chair; and Colleen Dearing as Secretary. Each person was unanimously elected for their respective positions.

E. APPROVAL OF MINUTES AND FINDINGS/CONCLUSIONS:

MINUTES: December 1, 2020 Minutes

MOTION: Vice Chair Winston moved, seconded by Member Dearing to approve the minutes of December 1, 2020.

VOTE: The motion passed by majority roll call vote (5-2) with Vice Chair Winston, Members Reynolds, Dearing, Maahs and Chair Friedman voting in favor and Members Alexander and Painter abstaining.

FINDINGS/CONCLUSIONS: None

F. OLD BUSINESS

None.

G. NEW BUSINESS

1. **Case #2020-2894. #3 Placita Rafaela Setback/Stepback Variance(s).**
Gayla Bechtol Architect, Agent for Holmes Family Trust, Owner, requests approval of a variance to SFCC Table 14-7.2-1 to enlarge existing 2nd story structure that is non-conforming in regards to minimum setbacks and stepback. The property is zoned RC8 (Residential Compound - eight dwelling units per acre), is approximately 0.073 acre, and is within the Downtown and Eastside Historic District. (John Neunuebel, Case Manager)

Public correspondence related to this case is attached as Exhibit "1".

Staff Report:

John Neunuebel presented the staff report. He said the applicant is seeking to increase the floor area of an existing second story structure from 242 ft.² to 340 ft.², in addition to an outside deck and railing. Table 14-7.2-1 establishes a minimum side yard setback of 5 feet and minimum rear yard of 15 feet in the RC8 District. The existing structure is 3 feet from the rear property line at its widest point. A portion of the structure is directly adjacent to the rear property line at its lowest setback.

The 1019 ft.² residential structure was constructed in 1992, prior to the City's current setbacks. The second story was added in the 1970s. The variance intent is to balance reasonable views of the applicant's property, and its compliance with the letter and intent of the adopted regulations. Both must be consistent with at least one of the circumstances listed in criteria 1A and 1B, and consistent with criteria two through five.

Staff finds that the applicant has not provided sufficient evidence to meet the approval of criteria and recommends denial of the variance request.

Staff stood for questions.

Applicant Report:

Gayla Bechtol, 418 Montezuma Ave, Santa Fe was sworn in. The request for this project was approved by the Historic Design Review Board (HDRB) in October of last year. The project is in an historic neighborhood in a district with long, narrow lots. The physical characteristics are based on the flow of water down the river from the uphill ditch. This house sits on what was formally fields in Placita Rafaela. Mr. Garcia built houses for his family, as needed.

The subdivision has regular size lots and streets, and everyone is setback orderly from each other. The defined setbacks, however, are proving onerous to residents who want to make their home safer, as evidenced by the footprint of the neighborhood. [A 1988 map of the neighborhood was shown]. The houses set atop each other.

Criterion 1A, *“Unusual physical characteristics exist that distinguish the characteristics from others in the vicinity that are subject to the same relevant provisions.”* Ms. Bechtol said they feel the unusual characteristic is both the land and the structure. The land is unusual because of a long lot that is now an alley. When Mr. Garcia built the houses, he lived at the back and lined up all the houses on the street. (shown in 1965-1973 photographs). The second floor was added in 1973 and is another unusual characteristic. The stair accessibility has only eight risers, five are over 12 inches with treads under 6 inches, making the stairs more like a ships ladder. The second floor has access to the roof and vigas were added. This is also part of the unusual physical characteristic among single-story houses. They feel therefore, criterion 1A is satisfied.

Criterion 2, *special circumstances make it infeasible to develop the property in compliance with Code.* The second floor is dangerous. The request for 70 ft.² is required to redesign the stair safely. Currently the footprint makes the second floor practically unusable, as well as much of the ground floor. A redesign with the setback provision is not practical and would overwhelm the house and require it to be cantilevered. The HDRB would probably not approve. The second floor was shown on screen verifying no options other than what was proposed because the stairs must be aligned. That meets criterion #2 for the special circumstances.

Criterion 3, *the intensity of the development shall not exceed what is allowed on other properties in the vicinity.* This is a single-family home and will never be more. The request for 70 ft.² is equivalent to most and when completed would be unnoticeable. The intensity of the development does not exceed anything nearby. That satisfies criterion number three.

Criterion 4, *the variance is the minimum to make reasonable use possible.* The addition is minimal and provides a safe access to the second floor which otherwise is not safe and does not meet Code. The applicant could never get a building permit to make the space usable. Additional height is not requested, just to extend in width 6 feet to align with the wall below (shown in the rendering). The request is for 98 ft.² of which 68 is a necessary variance of the total house that is just over 1100 square feet. The variance is not “contrary to the public interest.” Public interest includes the ordinance but is also broader and can go beyond. It is ultimately based on safety, health, and welfare. Allowing the extension of the second floor is exactly the intent of the Code for safety, health, and welfare. Using unsafe stairs or the loss of the space because this was built prior to the current City Code, is contrary to the public interest.

Ms. Bechtol said Chapter 14 implies the design should be harmonious with the neighborhood. She, as well as the Historic Design Review Board believe this complies with Chapter 14. She has letters from neighbors supporting the request but missed the deadline to submit them.

Ms. Bechtol summarized how criterion was met: criterion A, the unusual physical characteristics is the lot and land itself, and the second floor. The special circumstances that make it unfeasible is the second floor is dangerous and has no other option to put the stair without making the house even less useful or not be approved at H-Board. They will not exceed the intensity of what is allowed on other properties, and this is a single-family residence and will continue to be single-family. The variance request of 68 ft.² is minimum and makes this practical and reasonable; and public interest is based on the tenets of public safety, health, and welfare, which this expansion follows. That makes the house practical and usable. The applicant agrees with staff that criterion 6 has been met. They will appear before HDRB again to revisit the railing around the second floor and request approval of the setback variance prior to that.

Ms. Bechtol stood for questions.

Public Comment:

No one presented public comment; therefore, Chair Friedman closed the public hearing.

Board Discussion

Vice Chair Winston asked staff when the regulation was adopted on criterion #1: *characteristics that exist for the adoption of the regulation.*

Mr. Neunuebel believed the Code was adopted in 1968.

Member Painter asked to clarify if the Code overseeing the property was adopted in 1968 and the house was built in 1973.

Ms. Bechtol clarified that the second floor was added in 1973 but the house was built in 1932.

Member Painter asked if there were staff records indicating that a variance was given when the second story was added; and if it failed to meet the criteria, how was it allowed to be developed.

Mr. Neunuebel explained staff couldn't locate any information on the issuance of a building permit for the second story.

Member Painter noted that the second story has existed for 40 some years. He asked if the City has taken any action regarding the second-story development. Mr. Neunuebel wasn't aware of any.

Ms. Bechtol added that the Historic Heights ordinance was not adopted until 1995 or '96 and it is possible that the second floor was allowed at that time. The setbacks may have been different and RC8 could have changed over the many years. There is no indication that the second floor was built before, or against, Code. And Code has evolved over time.

Mr. Berke said they could look at the regulations today and what has been done in the past. The City is required to keep records for 10 years, but Historic Preservation keeps archives of the records. Staff was not able to locate any second-story approvals from the HDRB. That information was probably not obtained. Staff is looking at this from the perspective of the current requirements for approval criteria.

Member Painter said it makes it difficult because this is not a new development. In a City like Santa Fe with a considerable amount of development over the last 50 years, they probably didn't have building permits issued for them. That doesn't give them a right to expand the use but does set a precedent that the structure is there and was allowed to exist. The City allowed services to the property for almost 50 years. That gives tacit approval to exist and be occupied during that time. The Board can consider that there were no records.

Member Alexander noted the stairwell looks to be about two feet wide, regarding the argument on safety. You can't get to the second level.

Ms. Bechtol indicated they tried to conserve square footage and use the two sides as much as possible but still access the first floor.

Member Alexander said the upstairs space cannot be used for anything other than storage. The stairs would be onerous for the owner if trying to do anything else to the property. The plan is to spend a lot of money to redo the layout and this would be the time to do it.

Member Painter asked if the point at which the property was subdivided is known.

Ms. Bechtol replied the plat is from 1944 and we know the date for the building is 1932 because of the Santa Fe Directory.

Chair Friedman asked how far into the setback does the improvement go.

Ms. Bechtol calculated that part of the building is on the setback and the other part 3 feet from the property line with the rear setback at 15 feet. So, the improvement is about 12 feet into the setback.

Chair Friedman asked if a residence is near the lot line.

Ms. Bechtol said no, the back of the property is a driveway with development to the west. The people who own the property behind them are fine with the applicant's plans.

Chair Friedman asked about letters of support and if there was a letter from the neighbor with the adjacent driveway.

Ms. Bechtol explained they have positive letters from the neighbors, but she missed the deadline to submit them. They were submitted for the HDRB hearing. She believed the applicant talked with the neighbor with the adjacent driveway. She could probably get a letter. The neighborhood seems to appreciate the structure.

Chair Friedman pointed out that typically Ms. Bechtol would be allowed to bring the letters to show to the Board. Ms. Bechtol offered to read the letters.

Chair Friedman asked if Board members wanted Ms. Bechtol to read the letters. Vice Chair Winston said she wanted to hear them.

Member Painter asked about procedure and if members should say prior to voting whether they were in favor and why, or just vote.

Chair Friedman explained discussion is fine with respect to the issues and questions. Typically, someone will make a motion, for or against followed by Board discussion with respect to the motion. He said Member Painter could certainly voice his comments.

Mr. Berke explained to new members that the approval of a variance requires all of the variance criteria to be met. The Board can follow staff's recommendation, or not, but the Findings of Fact and Conclusions of Law must be adopted tonight. Should the Board choose not to go with staff recommendations, they will have to make new findings. Or they could also fine-tune staff's findings, but that must be included in the motion or accepted by the person making the motion.

Chair Friedman clarified that the Board does not have to adhere to staff recommendations and staff's feelings would not be hurt if they don't. Staff has to go by the book in how they feel criteria was satisfied. The Board has found on a number of occasions, that some circumstances may warrant approval.

Ms. Bechtol read the first letter into the record from Mr. Walker, which is included in Exhibit "1", attached hereto. He stated the project looks fantastic and is a marked improvement and he is delighted that staff is recommending design approval. He offered

to write a letter when the applicant seeks a variance and speak at the hearing if needed on the setbacks. Ms. Bechtol apologized because she had missed that Mr. Walker had offered to speak at the hearing.

Ms. Bechtol read the second letter which is also included in Exhibit "1", from the next-door neighbor who said it is exciting and she loved the proposals. They will add a lot to the house and street. The improvement on the second floor is major in the sense of proportion and aesthetics. She loved the railing around the second floor for safety and it will be an improvement as well. She thought it a shame to have the unsightly, mis proportioned second floor that is of no use. She thought what the applicant has done in terms of use is thrilling and an attractive expansion. She added that she and Tim Hall are totally in favor of all the changes and hope that permission is granted. It will enhance the whole street. She thanked them for including her in the whole conversation.

Ms. Bechtol said she just received an email from her client that he has other letters. She asked Graham Holmes if he would read the others.

Chair Friedman said Mr. Holmes would need to be sworn in.

Mr. Holmes commented that the letters he referred to were read by Ms. Bechtol.

Chair Friedman thanked Ms. Bechtol and asked that she send copies for the record.

Vice Chair Winston asked staff why an ENN is not required for this type of variance request.

Mr. Berke explained ENNs are not required if the request is associated with a single-family residential building permit.

Member Dearing asked to confirm that the expansion of the structure on the second floor would not expand into the setback further than the first floor does.

Mr. Neunuebel replied that was correct.

Member Alexander asked if Criteria 1A "*distinguishes from others in the vicinity*", if there is a general sense of what vicinity means; the streets, the neighborhood.

Mr. Neunuebel explained it is the neighborhood and the adjacent properties that have the same zoning.

MOTION: In #2020-2894, #3 Placita Rafaela Setback/Stepback Variance, Member Painter moved, seconded by Vice Chair Winston to approve the request as supported by the document's rationale submitted by the applicant. He has read the document and agrees that the applicant meets the criteria; and that extending the footprint on top of the existing structure will not encroach further into the setback.

VOTE: The motion passed by unanimous roll call vote (7-0).

Vice Chair Winston confirmed this is a two-step process to approve/deny and if approved, the Board will need to modify the Findings of Fact and Conclusions of Law.

Ms. Paez explained the process. Usually if the Board agrees with staff's recommendation that is an assumption that the Board agrees with staff regarding the criteria. If the Board does not want to follow staff recommendations, it is appropriate to state the reasons why they find that the applicant meets the variance criteria, as Member Painter has done in this motion.

She recommended with something as complicated as this, the Board should direct staff to propose a draft consistent with the Board's decision rather than writing the Findings tonight. Staff can bring the Findings back for approval at the next meeting.

Member Painter said he doesn't need to restate the motion. He was fine with Ms. Paez's recommendation.

MOTION: Member Dearing moved, seconded by Member Maahs to direct staff to rewrite the Findings of Fact and Conclusions of Law for Case #2020-2894 to reflect the Board's decision.

VOTE: The motion passed by unanimous roll call vote (7-0).

The Board took a break from 7:15 pm until 7:20 pm.

2. **Case #2020-2895. 313 - 317 Camino Alire, Special Use Permit.** Andrea Abedi and Hilary Kilpatric, Agents, for Hot Pie, LLC, Owner, requests approval of a special use permit for a Commissary Kitchen at 313 - 317 Camino Alire. The property is zoned C-1 (Office and Related Commercial) and is approximately 1.42 acres. (Donna Wynant, Case Manager, djwynant@santafenm.gov, 955-6325)

Staff Report:

Ms. Wynant presented the request for a special use permit for a commissary kitchen located at 313 Camino Alire. The site is surrounded by residential property except for the magnet school to the east. The mixed-use of the surrounding area was shown. The applicants request was because the ordinance did not permit commissary kitchens

until the ordinance was changed last year. A commissary commercial kitchen is defined as performing a number of functions but not open to the public. The building was previously a psych hospital that became Desert Academy in 2000 and was rezoned in 2014. The applicant has a number of things planned for the building; some have already been vetted for an office building.

Materials submitted include a measurable site and floor plan. The site is well set up for the kitchen and is now permitted in the C1 zoning district, the only zoning that permits a commissary kitchen use. Those attending the ENN were supportive of the request.

Ms. Wynant explained the applicant would provide a thorough presentation. The building wraps around a courtyard area. Other nonprofits use the building, but not at 100% of building use. The portions of the building to be used by the applicant were shown. When rezoned to C1 the building was reevaluated for parking. Code states that parking would be determined by staff and although they have not had input from a traffic engineer, staff feels parking is not an issue.

Applicant Report:

Hillary Kilpatrick 2323 Calle Halcon, and Andrea Abeyta, at 1633 La Cieneguita, were sworn in.

Ms. Kilpatrick and Ms. Abeyta presented a PowerPoint presentation with information on their commissary community kitchen project.

- A certified kitchen is where food products can be cooked to distribute to the public. Commercial kitchens are designed for food production and food safety.
- The City of Santa Fe lacks proper facilities with the closest commissary commercial kitchens in Taos and Albuquerque.
- Community benefits include creating jobs and encouraging local supply chains and entrepreneurship and a place for food businesses to collaborate and exchange ideas and advice, and it provides a link between local farmers and food entrepreneurs.
- A special use permit, C1 zoning allows the commissary commercial kitchen. It will not affect surrounding zoning and is consistent with the neighborhood land use. (The site plan was shown)
- The kitchen is not open to the public and is limited to those renting the kitchen facilities.
- The use would promote security in the neighborhood and add beauty with small aesthetic changes that will be made to landscaping.

Public Comment:

Nina Yozell-Epstein, 15 Nambe West, Santa Fe was sworn in. As the Director of Squash Blossom, she is in favor of the commissary kitchen. She is currently a tenant of the building and plans to be a tenant of the commercial kitchen. Squash Blossom supports farmers from about 30 different farms throughout New Mexico. She distributes their foods to restaurants and local food subscription services. Squash Blossom is able to strengthen the local economy in Santa Fe and as a small local business, looks forward to being a tenant. In addition, they support other local businesses such as farms and restaurants and look forward to providing opportunities for them to process their own value-added products at the kitchen and be a source for local ingredients for chefs. We are very excited about the project and feel it brings a lot to Santa Fe and the neighborhood.

Chris Clavio, 534 Onate Place, was sworn in. He is a serial entrepreneur and is here to speak in favor of the commercial kitchen. He started a bakery at 19 using the commercial kitchen in Albuquerque. This will be an invaluable resource to the community and local entrepreneurs. He wouldn't have been able to start his business without such a resource and it is important that be available locally in Santa Fe.

Gabe Gomez, 2100 Calle la Cuesta was sworn in. He works for a prominent nonprofit in town that promotes global and local cultures across the nation and beyond. He is very much in support of the project. This business will add a tremendous amount to not only the local economy, but the local food culture. He believes it may not be as prominent as the Arts but will be a real hub for local entrepreneurs, chefs, and creators to build a food identity for Santa Fe. Additionally, it will provide jobs and other benefits and is a wonderful idea. He wholeheartedly supports it.

Chair Friedman thanked for everyone for their comments and closed the public comment portion of the hearing.

Board Discussion

Member Painter asked if there would be evening deliveries from semi-trucks. Ms. Kilpatrick explained they would ensure that all deliveries were within the regular business hours and comply with the City's Noise Ordinance.

Member Painter asked how many users would be in the facility at one time. Ms. Kilpatrick said pre-COVID maximum was about 8 people in the kitchen at one time; now possibly two.

Member Painter asked in reference to the statement that this "would be a place where farmers can distribute their food" if it would be like a farmers' market.

The applicants explained farmers could clean their greens and store them but there is no market, and the public is not allowed in the facility.

Member Painter asked on parking if the southeast side of the property was owned by the same owners. He was told it is all owned by the same person and would not be sold off at some point.

He voiced concerned about the loading area against the outside fence. There are 3 parking spaces across from the loading/unloading zone. He was sure Transportation had no problem and had reviewed that, but he thought it more practical to put the loading next to the building.

The applicants explained that the refrigerators and entrance to the kitchen, the dry storage and the locker room is in the back where the loading/unloading would be.

Member Painter asked if other food processors/users would be in the building. He noted that the dumpster is in the extreme corner of the property separated from the residential by the new parking. He was concerned about the smell of the dumpsters, especially in the summer. He asked if it was discussed to place the dumpsters somewhere other than next to the residential area.

The applicants explained during the ENN application they developed a plan for the trash. Organic waste will be composted with Reunity Farms and they have methods to cover the smell and *offered* to do multiple pickups in the summer. They will also maximize the use of the City trash and recycling pickup.

Chair Friedman asked if a maximum of eight people in the kitchen at one time is per Code, or self-imposed. The applicants explained maximum is based on the amount of equipment and space available at one time to comfortably cook in the kitchen. There are separate areas; a hot kitchen, dry storage, etc. and people are spread out in the facility.

Chair Friedman said he knew direct sales to consumers are not planned but wondered if they foresee a point where a baker would sell/ship to other retail operations. The applicants indicated they plan to partner with Fresh Food New Mexico to create a packaging client.

Chair Friedman confirmed that the business hours of 3:00 a.m. to 7:00 a.m. were for the bakers.

MOTION: Vice Chair Winston moved to approve the variance request recommended by staff in Case #2020-2895, subject to technical corrections. The motion was seconded by Member Dearing.

VOTE: The motion passed by unanimous roll call vote (7-0).

MOTION: Vice Chair Winston moved, seconded by Member Maahs on the special use permit for Case 2020-2895, to approve and incorporate the Findings of Fact and Conclusions of Law as shown in Exhibit A2.

VOTE: The motion passed by unanimous roll call vote (7-0).

H. STAFF COMMUNICATONS

Mr. Berke thanked the new members regarding the elections. He reported the meeting in February was canceled but they may call a special meeting to adopt the Findings of Fact and Conclusions of Law for the first case. Staff will redraft those with the applicant's responses as directed by the Board.

He informed the Board that Daniel Werwath was not reappointed, and he thanked Mr. Werwath for his service and doing a great job.

Mr. Berke said a new fee schedule became effective January 1 that affects all of the Land Use fees across all Divisions. Some fees doubled, if not tripled to recoup the City's costs. An example is zoning verification letters are now \$75 and used to be free. The fees can be found on the City's website, the Building Permit website and the homepage.

I. MATTERS FROM THE BOARD

Member Maas thanked Member Painter for his questions and the knowledge he brings to the Board. Member Painter responded that he is happy to be on the Board and looks forward to be a part of what is happening in Santa Fe.

Chair Friedman thanked the new Board members and apologized for not remembering names. Mr. Berke offered to circulate the membership list and contact numbers.

Member Dearing inquired about staggered terms. Mr. Berke explained Ms. Paez had worked diligently to ensure terms do not overlap. Ms. Paez reported that staff will include the specifics of the term lengths on the membership list.

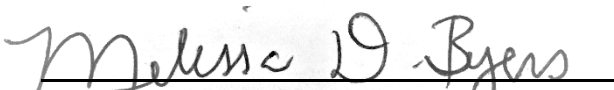
Chair Friedman thanked Patricia Hawkins after learning she resigned at the last meeting, and Daniel Werwath for their service. He wished them well.

Vice Chair Winston said she found the last two meetings more interesting. Members discussed exciting presentations now happening compared to past cases.

J. ADJOURN

With all business conducted for the Board of Adjustment, the meeting was adjourned at 8:05 p.m.

Submitted by:



Melissa D. Byers, Stenographer for
Byers Organizational Support Services

Approved by:

Gary Friedman, Chair

**City of Santa Fe
Board of Adjustment
Findings of Fact and Conclusions of Law**

Case #2020-2894

#3 Placita Rafaela Variance

Owners/Applicants – Holmes Family Trust

Agent – Gayla Bechtol, Architect

THIS MATTER came before the Board of Adjustment (Board) for hearing on January 19, 2021 upon the application (Application) by Gayla Bechtol, agent for Homes Family Trust, owner of #3 Placita Rafaela. The Application pertains to a property located at #3 Placita Rafaela totaling approximately 0.073 acre (Property). The Property is zoned RC-8 (Residential Compound - eight dwelling units per acre) and is within the Downtown and Eastside Historic District. The Applicant requests a Variance to Table 14-7.2-1, “Table of Dimensional Standards for Residential Districts,” to allow a rear yard setback of less than 15 feet (Project).

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

FINDINGS OF FACT

1. At the hearing, the Board received reports from staff, testimony and evidence from the Applicant, and testimony offered by any interested members of the public.
2. The Santa Fe City Code (SFCC) Section 14-3.1 sets out certain procedures to be followed on the Application, including a pre-application conference [SFCC § 14-3.1 (E)] and compliance with notice and public hearing requirements [SFCC § 14-3.1(H)-(I)].
3. A pre-application conference was held on September 24, 2020 in accordance with SFCC Section 14-3.1(E).
4. Pursuant to SFCC Sections 14-2.4(B) and 14-3.16(B)(1), the Board has the authority to hear and decide requests for variances.
5. Under SFCC Table 14-7.2-1 and note 13, a residential structure in an RC-8 district requires a minimum, rear yard setback of 15 feet, and “[n]o portion of any story above ground-level story shall be closer than 15 feet from property line.”
6. The subject property includes an existing single-family residential structure that partially straddles the rear property line, effectively providing for no building setback/rear yard.
7. The Applicant seeks to expand the second story of the existing structure from 242 square feet to 340 square feet and to construct a rooftop deck and guard railings.
8. At a hearing held October 27, 2020 (Case #2020-2693-HDRB), the City’s Historic Districts Review Board approved the design of the proposed addition with regard to the City’s Historic Districts Ordinance, SFCC Section 14-5.2, but postponed a decision on the design of the rooftop deck and railings.
9. Approval of the Project requires a variance to the underlying zoning requirements because the Project would increase the existing nonconformity with the rear setback requirement in SFCC Table 14-7.2-1.

10. City staff reviewed the Application and related materials and information submitted by the Applicant for conformity with applicable SFCC requirements and provided the Board with a written report of its findings (Staff Report), which evaluates the factors relevant to the Application.
11. To obtain a variance, the Applicant must demonstrate that all applicable criteria set forth in SFCC Section 14-3.16(C)(1) through (6) have been met.
12. Staff recommended denial of the requested variance because Staff found that the Applicant failed to meet all of the variance criteria.
13. The Board finds that the variance criteria are met, as set forth below.

Criterion 1:

14. First, under SFCC Section 14-3.16(C)(1), to grant a variance the Board must find that “[o]ne or more of the following special circumstances applies: (a) unusual physical characteristics exist that distinguish the land or structure from others in the vicinity that are subject to the same relevant provisions of Chapter 14, characteristics that existed at the time of the adoption of the regulation from which the variance is sought, or that were created by natural forces or by government action for which no compensation was paid; or (b) the parcel is a legal nonconforming lot created prior to the adoption of the regulation from which the variance is sought, or that was created by government action for which no compensation was paid; or (c) there is an inherent conflict in applicable regulations that cannot be resolved by compliance with the more restrictive provision as provided in Section 14-1-7; or (d) the land or structure is nonconforming and has been designated as a landmark, contributing or significant property pursuant to Section 14-5.2 (Historic Districts).”
15. The Applicant asserted that the Criterion 1 was met due to unusual physical characteristics exist that distinguish the land or structure from others in the vicinity, specifically, the existing nonconformity of the structure and the narrowness of the lot, and further asserted that there is no room to have a 15’ setback without severely renovating or demolishing the house, and even then it is doubtful that a minimum size house could be built with the required parking and open space. The Applicant also indicated that construction of a replacement, non-compliant stairway to the second floor would provide for little useable space left over.
16. Staff found that the Applicant failed to meet the first criterion due to staff not observing unusual physical characteristics that distinguish the subject land or structure from others in the vicinity, nor characteristics that existed at the time of the adoption of the regulation from which the variance is sought, or that was created by natural forces or government action.
17. The Board finds, based on the Staff Report and the additional evidence and testimony presented at the hearing, that the Applicant has provided a rationale that meets Criterion 1, particularly in regard to the existing nonconformity of the structure and the narrowness of the lot.

Criterion 2:

18. Second, under SFCC Section 14-3.16(C)(2), to grant a variance the Board must find that “special circumstances make it infeasible, for reasons other than financial cost, to develop the property in compliance with the standards of Chapter 14.”

19. The Applicant asserted that the lot depth is narrow and further diminished by the access easement so that the available lot depth for development is a total of 48'. In order to setback 15' the house would have to be demolished. There is no other place on the property to develop a practical extra room and keep the existing open space and parking available. There are driveways on both sides of this house, so the proposed second-story addition will not impact a neighboring home. The second-floor gross square footage now is 242 square feet. As of right, with the 15' rear setback and required stepback, only a 30 square foot addition would be allowed. A 100 square foot addition is requested, with a difference of 70 square feet. This is a nominal easing of the setback/step back requirements. The total gross square footage of the house is 1019 on the ground floor, and 242 on the second floor. In order to live in this house, the owners are requesting a slight easing of a variance of a condition that already exists so that the house can be made more livable and practical with reasonable stairs without tearing down the house, or altering the extant historic fabric on the front facade.
20. Staff found that development has occurred on the subject property in the form of an existing single-family residence, and further commented that the Applicant could redesign the second story addition in conformance with the applicable setback regulations and obtain a building permit to expand the second story. Such an option might not be optimal for design and aesthetic reasons, but could accomplish the Applicant's intent in expanding living space.
21. The Board finds, based on the Staff Report and the additional evidence and testimony presented at the hearing that sufficient rationale is provided to meet Criterion 2, particularly in regard to the impending need to replace a staircase to the second story structure that adheres to existing city codes and requirements.

Criterion 3:

22. Third, under SFCC Section 14-3.16(C)(3), to grant a variance the Board must find that the "intensity of the development shall not exceed that which is allowed on other properties in the vicinity that are subject to the same relevant provisions of Chapter 14."
23. The Applicant asserted that Criterion 3 is met because non-conformity to setbacks and step backs occur throughout the city, especially in the historic districts. The intensity of use is not increasing. The room is only extending 6' along the setback/stepback line in order to make the space useable with a code-compliant stairway.
24. Staff concurred with the Applicant that this Criterion is met, with there being no increase in intensity of development.
25. The Board finds, based on the Staff Report and the additional evidence and testimony presented at the hearing, that the Applicant has met Criterion 3.

Criterion 4:

26. Fourth, under SFCC Section 14-3.16(C)(4), to grant a variance the Board must find that the "variance is the minimum variance that will make possible the reasonable use of the land or structure. The following factors shall be considered: (a) whether the property has been or could be used without variances for a different category or lesser intensity of use; and (b) consistency with the purpose and intent of Chapter 14, with the purpose and intent of the articles and sections from which the variance is granted and with the applicable goals and policies of the general plan."

27. The Applicant asserted the following: “In the General Plan – Opportunities are provided for housing for all income segments of the population in all areas of the city...Maintain and respect Santa Fe’s unique personality, sense of place and character...promote a compact urban form and encourage sensible/compatible infill development.” The Applicant argued that Criterion 4 is met because it would further the General Plan’s purpose of providing good housing that is practical, habitable, and promotes the general welfare of the citizens of Santa Fe. Providing this minimal extension creates a diverse range of housing in this neighborhood, allows a diversity of people to live downtown, maintains the compact urban form, and is sensitive to infill development.
28. Staff found that the subject property inclusive of an occupied single-family residence already comprises a reasonable use without the approval and implementation of the requested variance. Reasonable use of a property is that which can be developed, and this property has been developed. The property has been utilized for a single-family residence and can continue to be so utilized without the variance.
29. The Board finds, based on the Staff Report and the additional evidence and testimony presented at the hearing, that the Applicant has provided sufficient rationale that meets Criterion 4, particularly in regard to the proposed expansion being consistent with applicable goals and policies contained within the City of Santa Fe General Plan.

Criterion 5:

30. Fifth, under SFCC Section 14-3.16(C)(5), to grant a variance the Board must find that the “variance is not contrary to the public interest.”
31. The Applicant asserted that Criterion 5 is met because the public has no interest in this property. The only public interest imaginable is the fear of second stories in the historic districts and the existing second story that was built by previous owners of this house sometime in the 1970’s; however, the immediate neighbors are positive about the proposed development.
32. Staff found that the requested variance is contrary to the public interest in that it seemingly does not meet required approval criteria, and may result in establishing a precedent that weakens the integrity of City of Santa Fe standards and requirements for new development. The “public interest” appropriately include the ordinances that are adopted by elected officials, with requirements regarding building setbacks so adopted.
33. The Board finds, based on the Staff Report and the additional evidence and testimony presented at the hearing, that the Applicant has provided sufficient rationale to meets Criterion 4, particularly in regard to the proposed expansion being minimal (98 square feet) and the fact that the addition will allow for increased livability of the residence, including the upgrade of an existing staircase that does not meet existing city codes and requirements, as well as consideration that the proposed expansion will not increase the extent to which the existing structure is out of compliance with rear yard setback requirements.

Criterion 6:

34. Finally, SFCC Section 14-3.16(C)(6) provides, “There may be additional requirements and supplemental or special findings required by other provisions of Chapter 14.”
35. The Applicant provided that the Historic Districts Review Board approved the extension of the second floor, appreciating the more balanced massing. The railing for the proposed

rooftop deck is under revision and will be reviewed with the HDRB pending approval for this variance to the setback/stepback.

36. Staff found and the Board agrees that the proposed project would require additional review by the Historic Districts Review Board if the proposed variance were to be approved.

CONCLUSIONS OF LAW

Under the circumstances and given the evidence and testimony submitted during the Hearing, the Board CONCLUDES as follows:

1. The Board has the authority to review and approve or deny the variance requested for the Property.
2. The Applicant complied with the applicable procedural requirements for requesting a variance, including proper and sufficient notice.
3. The request for variance should be approved because the Applicant has demonstrated that all of the variance criteria set forth in SFCC Section 14-3.16(C) have been met.

WHEREFORE, IT IS ORDERED ON THE 16TH DAY OF FEBRUARY 2021 BY THE BOARD OF ADJUSTMENT OF THE CITY OF SANTA FE:

That the application for a variance to Table 14-7.2-1, "Table of Dimensional Standards for Residential Districts," is approved. The variance shall expire three years after the date of this Final Action approving it unless actual development of the improvements has begun and is continued pursuant to SFCC Section 14-3.19(B)(6) or an extension is granted, per SFCC Section 14-3.19(C).

Gary Friedman
Chair

Date

FILED:

Kristine Mihelcic
City Clerk

Date

APPROVED AS TO FORM:

Sally A. Paez
Assistant City Attorney

Date