



City of Santa Fe, New Mexico

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www.santafenm.gov

David Coss, *Mayor*

Councilors:

Rebecca Wurzbarger, Mayor Pro Tem, Dist. 2

Patti J. Bushee, Dist. 1

Chris Calvert, Dist. 1

Peter N. Ives, Dist. 2

Carmichael A. Dominguez, Dist. 3

Christopher M. Rivera, Dist. 3

Bill Dimas, Dist. 4

Ronald S. Trujillo, Dist. 4

Memorandum

To: Members of the Governing Body

From: Kelley Brennan *KAB*
Interim City Attorney

Re: Appeal of Stefanie Beninato from the
December 10, 2013 Decision of the Historic Districts Review Board
in Case #H-13-080A and Case #H-13-080B
777 Acequia Madre
Case No. 2013-127

Date: January 21, 2014 for the January 29, 2014 Meeting of the Governing Body

The Appeal

On December 23, 2013 Stefanie Beninato (Appellant) filed a Verified Appeal Petition (Petition) appealing two December 10, 2013 decisions of the Historic Districts Review Board (HDRB) relating to property owned by Paul and Karen Galindo (Applicants) at 777 Acequia Madre (the Property). A copy of the Petition is attached as **Exhibit A**.

The Property

The Property is comprised of .357± acres of land improved with three building: the Benjamin B. and Josefita P. Alarid house (the Main House), a building located behind the Main House, formerly used as a blacksmith shop, a garage and a repair shop (the Garage) and a shed. The Property is also improved with a yard wall (the Wall) and other incidental improvements. The Property is zoned RC8AC (Residential Compound – 8 dwelling units/acre – Arts and Crafts Overlay) and is located in the Downtown and Eastside Historic District (District). The Main House and the Garage (collectively, the Buildings) are designated as contributing to the District.

History of the Case

The approved project includes alterations to the Buildings, demolition of the shed and alterations to the Wall. Three exceptions (collectively, the Exceptions) were requested. Case #H-13-080A

relates to the Main House alterations and includes exceptions to permit the construction of an addition on a primary façade and to permit the alteration of an opening on a primary façade. Case #H-13-080B relates to the alterations to the Garage and includes an exception to remove historic material on a primary façade.

Both cases were heard before the HDRB on November 12, 2013 and Findings of Fact and Conclusions of Law embodying the HDRB’s decisions in the two cases (collectively, the Decisions) were adopted by the HDRB on December 10, 2013.

Basis of Appeal

The Appellant asserts that the HDRB’s decisions to grant the Exceptions were arbitrary and capricious, not based on substantial evidence in the record and in violation of the Land Development Code. We do not address the substance of the Appellant’s claims here because we do not believe that she has standing to appeal and it is therefore unnecessary to do so.

Discussion

Pursuant to Code §14-3.17(D)(6)(a) the City Attorney’s Office has reviewed the Petition and for the reasons set forth below concurs with the determination of the Land Use Department Director that it does not conform to the requirements of Code §14-3.17 in that the Appellant does not have standing to appeal the Decisions.

Code §14-3.17(B)(3) provides that appeals may be filed by “...persons...alleging injury¹ to their economic, environmental or aesthetic interests...” “Injury” implies actual damage. It is not enough to allege hypothetical harm. See, *New Mexico Cattle Growers’ Ass’n. v. New Mexico Water Quality Control Commission*, 2013-NMCA-046 (“A general, undifferentiated threat of hypothetical harm to some unidentifiable person will not serve to establish injury.”) While the Appellant is clearly not an “unidentifiable person”, the injuries she alleges are purely hypothetical.

First, the Appellant claims an economic interest in preserving the original look of the Main House and Garage because she uses “...them on a tour as examples of vernacular architecture that has [*sic*] evolved over time.” Second, she claims an aesthetic interest “[a]s an owner of historic structures and as a professional historian with over 35 years of experience” in “...actually preserving the unique features of historic buildings and not allowing them to be made to look like the majority of other historic or non historic [*sic*] buildings (faux historic...)” Finally, the Appellant asserts due process and equal protection claims as the basis for standing to file the Appeal, stating, “I also want due process and equal protection for those coming in front of the HDRB – if I have to show hardship to get an exception then so do [the Applicants].”

¹ Black’s Law Dictionary (Eighth Edition) defines “injury” as “[t]he violation of another’s legal right, for which the law provides a remedy; a wrong or injustice...” and “[a]ny harm or damage. Some authorities distinguish harm from injury, holding that while *harm* denotes any personal loss or detriment, *injury* involves an actionable invasion of a legally protected interest.” An “injury in fact” is defined as “[a]n actual or imminent invasion of a legally protected interest, in contrast to an invasion that is conjectural or hypothetical...”

The Appellant does not assert a recognizable injury to her economic interests. Rather, she implies generally that the alterations to the Buildings permitted by the Decisions will adversely affect her business because she uses the Buildings on a tour as examples of vernacular architecture that have evolved over time. She does not suggest that there are no other examples of vernacular architecture in the District or elsewhere in the City that she can use on her tours for that purpose. Nor does she acknowledge that the alterations permitted by the Decisions may themselves prove an effective illustration of the evolution over time of the Buildings. In fact, the Appellant can have no reasonable expectation that the Buildings will remain unchanged so that she can continue to conduct a tour past them as part of her business. She has no genuine economic interest in their preservation.

Nor does the Appellant assert a recognizable injury to her aesthetic interests. Instead, she asserts a general interest in preservation common to many others in the community and elsewhere, including, presumably, professional historians and other owners of historic buildings.

As for the Appellant's due process and equal protection claims, she has not asserted any facts that would support such claims. Due process rights presuppose the existence of an entitlement and deprivation, neither of which the Appellant has effectively claimed. A valid equal protection claim presupposes that similarly-situated persons have been treated differently. The Appellant's vague assertion that "[i]f I have to show hardship to get an assertion, then so do [the Applicants]" cannot meet that standard. Nor does the Appellant have a recognizable interest in due process and equal protection "for those coming in front of the HDRB" other than herself.

Conclusion

The Appellant does not have standing to appeal. The CAO recommends that the Appellant's appeal be dismissed.

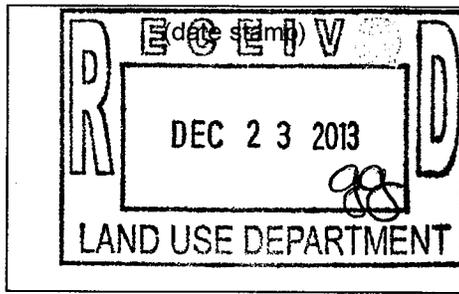


LUD Use Only

Time Filed: 9:28AM

Fee paid: \$100.00

Receipt attached:



Case # 2013-127

**VERIFIED APPEAL
PETITION**

****Two originals of this form must be filed. The Land Use Department Director or his/her designee will enter the date and time of receipt and initial both originals. See Section 14-3.17(D) SFCC 2001 for the procedure.****

Appellant Information

Name: Stephanie Beninato

Address: PO Box 1601
Santa Fe
NM 87504

Phone: 505 9888022 E-mail Address: info@howe-phd-wildtravel.com

Correspondence Directed to: Appellant Agent Both

Agent Authorization (if applicable)

I/We: _____

authorize _____ to act as my/our agent to execute this application.

Signed: _____ Date: _____

Signed: _____ Date: _____

Subject of Appeal

Project Name: Paul + Karen Gamardo owner

Applicant or Owner Name: Martinez Architecture 989 4958

Location of Subject Site: 777 Arroyo Madre

Case Number: 13-080A+B Permit Number (if applicable): _____

Final Action Appealed:

Issuance of Building Permit Other Final Determination of LUD Director

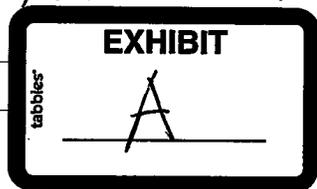
Final Action of Board or Commission (specify): Planning Commission Board of Adjustment BCD-DRC HDRB

Basis of Standing (see Section 14-3.17(B) SFCC 2001): 14-3.17(B)(3)(5)

Basis for Appeal: The facts were incorrectly determined Ordinances/laws were violated and/or misrepresented

Description of the final action appealed from, and date on which final action was taken: see attached ordetermined arbitrarily capriciously without substantive evidence in record.

Check here if you have attached a copy of the final action that is being appealed.



DEC 23 2013
see attached

Description of Harm

Describe the harm that would result to you from the action appealed from (attach additional pages if necessary):

I identified a record of this property as an example of irregular architecture on a few blocks. Having it be like 70 percent of other buildings violates my interest in preserving historic structures in the area.

Explain the Basis for Appeal

Please detail the basis for Appeal here (be specific):

see attached

+ would make it just another "junk" historic building in the area. I would like to see historic preservation in historic preservation.

Signature and Verification

I hereby certify that the documents submitted for review and consideration by the City of Santa Fe have been prepared to meet the minimum standards outlined in the Land Development Code, Chapter 14 SFCC 2001. Failure to meet these standards may result in the rejection or postponement of my application. I also certify that I have met with the City's Current Planning staff to verify that the attached proposal is in compliance with the City's zoning requirements.

Appellant Signature:

Stefanie Beninato

Date:

12/22/13

Agent Signature:

Date:

State of New Mexico)

) ss.

County of Santa Fe)

I/We Stefanie Beninato

duly sworn, depose and say: I/We have read the foregoing appeal petition and know the contents thereof and that the same are true to my/our own knowledge.

Petitioner/s:

Stefanie Beninato

Signature

Signature

Stefanie Beninato

Print Name

Print Name

Subscribed and sworn to before me this 23 day of December, 2013.

Yvonne G. Wignall
NOTARY PUBLIC

My commission expires:

7-24-14

A-2

I am appealing the Historic Design Review Board's decision for the approval of exceptions for the former garage/blacksmith shop that will become a guest unit (13-080B) and for the main house at 777 Acequia Madre (13-080A) for the following reasons:

The board's decisions were arbitrary, capricious, not based on substantial evidence in the record and violates the following provisions of the code 14-5.2A(1)(a); 14-5.2C(1); 14-5.2C(5)(b)(c); 14-5.2D(2)(c)(d); 14-5.2D(5) and 14-5.E(2)(b)(d).

The facts were improperly applied for the following reasons:

There was no evidence presented by the applicant of hardship. In fact, the applicant said it was "impossible" to meet the hardship requirements.

There is no evidence that the changes proposed in the exception will increase the heterogeneity character of the city (diversity). In fact, the applicant stated that he/she wanted the house to look like 70 percent of the other homes in the area rather than celebrating the unique look of these structures.

The applicant has provided no evidence that there are special conditions and circumstances which are not a result of the actions of the applicant that would necessitate an exception or that there are unique circumstances to that lot or building. The applicant did not inherit the property but chose to buy it. It is not a hardship for a home to have only 2 bedrooms or for garage doors to be made into a wall system or for a residential property not to have a carport or garage. The limitations on the property were or should have been obvious to the applicant who claimed experience with historic preservation principles in Austin TX. IF they did insist that the carport was an absolute necessity, which is a joke, they could put the 3rd bedroom on the back of the main house away from the primary façade.

The board ignored the staff's findings that criteria for each exception had not been met but had absolutely no discussion at all as to evidence that would overcome the staff's findings or the applicant's admissions. Ms Woods asked the acting city attorney if they could ignore staff's report; she said yes. The next moment board member Boniface made a motion about the applicants meeting the criteria for the exception in each case.

STANDING

I have an economic interest in preserving the original look of these buildings since I use them on a tour as examples of vernacular architecture that has evolved over time. As an owner of historic structures and as a professional historian with over 35 years of experience, I have an aesthetic interest in actually preserving the unique features of historic buildings and not allowing them to be made to look like the majority of other historic or non historic buildings (faux historic bldgs). Preservation is not making a building into a faux other style. I also want due process and equal protection for those coming in front of the HDRB—if I have to show hardship to get an exception then so do these applicants.

A-3

She requested a change on page 19 on the bottom of the page, it should say, "Ms. Walker added the words, single level streetscape."

Chair Woods noted in the summary index that Case #H-13-095 on San Francisco it said it was postponed with directions but actually it should have said "noncontributing status passed and the new construction was postponed with directions."

Mr. Armijo moved to approve the minutes of November 26, 2013 as amended. Mr. Katz seconded the motion and it passed by unanimous voice vote except Ms. Rios abstained.

E. FINDINGS OF FACT AND CONCLUSIONS OF LAW

- Case #H-12-028 309 ½ Sanchez Street
- Case #H-13-064A 127 Quintana Street
- Case #H-13-064B 127 Quintana Street
- Case #H-13-080A 777 Acequia Madre
- Case #H-13-080B 777 Acequia Madre
- Case #H-13-099A 511 East Palace Avenue
- Case #H-13-099B 511 East Palace Avenue
- Case #H-13-095A 329 W. San Francisco/109 N. Guadalupe Streets
- Case #H-13-100 603 Garcia Street
- Case #H-13-101A 862 Don Cubero Avenue
- Case #H-13-101B 862 Don Cubero Avenue
- Case #H-102A 447 Cerrillos Road
- Case #H-102B 447 Cerrillos Road
- Case #H-13-103 125 W. Coronado Road

Mr. Katz moved to approve all of the listed Findings of Fact and Conclusions of Law as presented and as amended. Ms. Walker seconded the motion and it passed by unanimous voice vote except Ms. Rios abstained.

City of Santa Fe
200 Lincoln Ave.
Santa Fe, NM 87504
505-955-4333

PDR Appeals 11001.431470
1x 100.00 100.00

Payer Name: STEFANIE BENINATO

SubTotal: 100.00
Total: 100.00

CH Visa Card
7000.101551 100.00
Number : *****3570
Date : 08/16

12/23/2013 09:28 LorraineL
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***** DUPLICATE #001 *****

12/23/2013 09:37 LorraineL
Thank You ~