

City of Santa Fe
Governing Body
Findings of Fact and Conclusions of Law

Case No. #2015-86

Appellants – Jennifer and Brent Cline

THIS MATTER came before the City of Santa Fe (City) Governing Body (Governing Body) for hearing on January 13, 2016, upon the appeal (Appeal) of Jennifer and Brent Cline (Appellants) from the August 25, 2015 decision (the Decision) of the City’s Historic Districts Review Board (HDRB) denying the Appellants’ application (Application) for an exception to restucco a contributing building at 339 Bishops Lodge Road (339 Building) with synthetic stucco. The 339 Building is located in the Downtown and Eastside Historic District.

The record on Appeal (the Record) includes the following documents:

1. The Verified Appeal Petition filed on September 9, 2015;
2. The report of Land Use Department Historic Preservation Division staff dated August 11, 2015;
3. Those portions of the minutes of the August 11, 2015 HDRB meetings pertaining to the Application;
4. Findings of Fact and Conclusions of Law adopted by the HDRB on August 25, 2015 and filed by the City Clerk with the records of the City as Item #15-0879;
5. Memorandum dated December 1, 2015 for the December 9, 2015 Meeting of the Governing Body to the Members of the Governing Body from Theresa Gheen, Assistant City Attorney via Kelley Brennan, City Attorney, regarding the Appeal by the Appellants from the Decision in Case #H-15-70 Approving the Application but Denying an Exception Request to Restucco the 339 Building With Elastomeric Stucco, with Exhibits A-E.

After conducting a public hearing and having reviewed the Record and heard from City staff and the Appellants, the Governing Body hereby FINDS, as follows:

FINDINGS OF FACT

1. The Governing Body reviewed the Record and heard the report of City staff and received testimony and evidence from the Appellant’s representative and members of the public interested in the matter.
2. Pursuant to Santa Fe City Code (SFCC) §14-2.2(F), the Governing Body has the power and authority on appeals of final actions of any Land Use Board to hear *de novo* and decide the matter that is the subject of appeal after giving notice in accordance with the notice provisions of SFCC §14-3.1(H)(4).
3. Pursuant to SFCC §14-3.17(A)(1)(b), final actions of a Land Use Board include a decision made after a public hearing.

4. The Decision is a final action subject to appeal to the Governing Body to hear and decide the matter.
5. Notice of the Appeal was properly given in accordance with the notice provisions of SFCC §14-3.1(H)(4).
6. SFCC §14-5.2(C)(1)(c) identifies the preservation of “[d]istinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a structure” as one of the purposes of Code § 14-5.2, Historic Districts.
7. Stucco is a finish recognized as characteristic of both Old Santa Fe Style (SFCC §14-5.2(E)(1)) and Recent Santa Fe Style (SFCC §14-5.2(E)(2)), the design standards specifically applicable to the Downtown and Eastside Historic District where Building 339 is located.
8. Old Santa Fe Style requires “[m]ud plaster or hard plaster simulating adobe, laid on smoothly...”, also known as cementitious stucco.
9. Based upon the New Mexico Historic Building Inventory Form dated 11/20/85 (Inventory), the 339 Building wall material is “adobe/stucco”, which would require that cementitious stucco be used.
10. The Appellants testified that the 339 Building is of frame construction, based upon an earlier visual inspection when the walls were open and the fact that the walls are only 6 to 7 inches thick, which is not consistent with adobe construction.
11. The 339 Building is not of adobe construction and is therefore of Recent Santa Fe Style.
12. Recent Santa Fe Style is intended to evoke, but not mimic, Old Santa Fe Style and may utilize similar materials, which need not duplicate the materials used in Old Santa Fe Style.
13. Synthetic, or elastomeric, stucco, particularly if hand-applied, is generally visually similar to cementitious stucco and is therefore appropriate for Recent Santa Fe Style buildings.
14. Code § 14-5.2(D)(5)(b) provides that where it is necessary to replace the finish on the façade of any contributing structure, “...the use of new material may be approved.”
15. The HDRB has discretion to approve the use of elastomeric stucco on the contributing buildings.
16. The HDRB has, as a matter of established practice, required Recent Santa Fe Style buildings like the 339 Building that are designated as contributing to obtain an exception for the use of elastomeric stucco.
17. Notwithstanding the practice described in Finding 16 above, in 2002 the HDRB approved the use of “Buckskin color” stucco, without specifying that the stucco be cementitious.
18. Elastomeric stucco was used on the 339 Building in approximately 2003 pursuant to a building permit issued by the City and has remained on the 339 Building since that time.
19. No enforcement action for the use on the 339 Building of elastomeric stucco was taken by the City.
20. A number of other structures in the vicinity of the 339 Building are finished with elastomeric stucco.
21. The Appellants have stated their intention to apply the elastomeric stucco if approved.
22. Hand-applied elastomeric stucco is generally similar in appearance to cementitious stucco.
23. The use of elastomeric stucco on the 339 Building will not damage the character of the Downtown and Eastside Historic District, in that the 339 Building is already finished in elastomeric stucco and has been since approximately 2003, other buildings in the vicinity of the 339 Building are finished in elastomeric stucco, and hand-applied elastomeric stucco is not easily discernible from cementitious stucco.

24. Permitting the use of elastomeric stucco on the 339 Building will prevent a hardship to the Appellants in that the 339 Building has been finished with elastomeric stucco since approximately 2003 in conjunction with a prior HDRB approval and under these unique circumstances, requiring the Appellants to incur the additional expense of applying cementitious stucco to the 339 Building is unnecessary to meet applicable Code design standards.
25. Permitting the use of elastomeric stucco on the 339 Building will strengthen the unique heterogenous character of the City, in that it is a reasonable design option under the unique set of facts relating to the 339 Building which is consistent with its existing finish and meets applicable Code design standards.
26. The Appellants have met the criteria for an exception set out in Code § 14-5.2(C)(5)(b) to permit the use of elastomeric stucco as the exterior finish for the 339 Building.

CONCLUSIONS OF LAW

Under the circumstances and based upon the Record and the evidence and testimony submitted at the hearing, the Governing Body CONCLUDES as follows:

1. The Governing Body has the power and authority to hear and decide the matter that is the subject of the Appeal.
2. The Appellants have met the criteria for an exception to permit the use of elastomeric stucco on the 339 Building.

WHEREFORE, IT IS ORDERED ON THE _____ OF JANUARY 2016 BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

1. That the Appeal is granted.
2. That the Appellants may use elastomeric stucco as the exterior finish for the 339 Building, provided that the elastomeric stucco is hand-applied and not sprayed on.

Mayor

Date:

FILED WITH THE CITY CLERK:

Yolanda Y. Vigil
City Clerk

Date:

[REMAINING SIGNATURES ON FOLLOWING PAGE]

Case No. #2015-86
Appellants' Names – Jennifer and Brent Cline
Page 4 of 4

APPROVED AS TO FORM:



Kelley Brennan
City Attorney

1/21/16
Date: