

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

Case No. #2013-08

Appellant's Name – City of Santa Fe Public Works Department

THIS MATTER came before the City of Santa Fe Governing Body (Governing Body) for hearing on March 12, 2014 (Appeal Hearing), upon the appeal (Appeal) of the City of Santa Fe Public Works Department (Appellant) from the December 10, 2013 decision of the City's Historic Districts Review Board (HDRB) in Case #H-13-076A designating the Defouri Street Bridge (Bridge) at the north end of Defouri Street where it intersects West Alameda Street as "contributing" (the Status Decision) and the HDRB's January 14, 2014 decision in Case #H-13-076B (the Design Decision) approving the demolition of the Bridge, but with conditions altering the Appellant's proposed design (the Original Design) for the replacement structure by eliminating one of two sidewalks and requiring side-mounted railings (collectively, the Conditions) to reduce its width.

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

1. The Verified Appeal Petition filed on January 27, 2014;
2. The report of Land Use Department Historic Preservation Division (HPD) staff on Case #H-13-076A dated December 10, 2013 (the Status Staff Report);
3. The relevant portion of the minutes of the December 10, 2013 HDRB meeting;
4. Findings of Fact and Conclusions of Law embodying the Decision adopted by the HDRB on January 14, 2012 and filed with the City Clerk with the records of the City as Item #14-0029;
5. The report of HPD staff on Case #H-13-076B dated January 14, 2014.
6. The relevant portion of the minutes of the January 14, 2014 HDRB meeting;
7. Findings of Fact and Conclusions of Law embodying the Design Decision were adopted by the HDRB on January 28, 2014 and filed by the City Clerk with the records of the City as Item #14-0052;
8. Memorandum to the Members of the Governing Body from Kelley Brennan, Interim City Attorney and Zachery Shandler, Assistant City Attorney, regarding Appeal of the Appellant from the Status Decision and the Design Decision, with Exhibits A-G;
9. Letter dated March 5, 2014 to the Governing Body from Arthur Firstenberg;
10. Black and white photographs marked "A" through "E", including an aerial view of the Bridge and the surrounding neighborhood and identifying the streetscape determined by HPD staff with a black line (A), views of the Bridge looking west (B) and east (C), a view of the Bridge and Defouri Street looking south from across Alameda (D) and a view of the Bridge looking north from Agua Fria (E);
11. Submittals made by the Appellant at the Appeal Hearing, including a color photograph of the Bridge from the south side of Alto Street looking north and two colored computer-

drawn renderings of the New Bridge and engineering drawings showing a vehicle sweep analysis for the HDRB-approved version of the New Bridge and for the Original Design, together with sections of the Existing Bridge and the HDRB-approved version of the New Bridge; and

12. Submittals by members of the public commenting on the Appeal, including a marked-up copy of the Memorandum referred to in numbered paragraph 8 above offered by Attorney Karl Sommer as the representative of the Historic Guadalupe Neighborhood Association.

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

FINDINGS OF FACT

General

1. The Governing Body reviewed the Record and heard the report of City staff and received testimony and evidence from the Appellant and from 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 Status Decision and the Design Decision are final actions 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).

The Status Decision

6. SFCC §14-5.2(C)(2)(b)(ii) requires that "...the designation of a status shall be based upon an evaluation of data provided through survey or other relevant sources of information and the definitions of "significant," "contributing," or "noncontributing."
7. A "contributing structure" is defined in SFCC §14-12.1 as "[a] structure, located in an Historic District, approximately 50 years old or older that helps to establish and maintain the character of the Historic District...[which] [a]lthough not unique in itself...adds to the historic associations and/or historic architectural design qualities for which a District is significant [and which...] may have had minor alterations, [but] its integrity remains."
8. A "noncontributing structure" is defined in SFCC §14-12.1 as "[a] structure, located in an Historic District, which is less than fifty years old and/or does not exhibit sufficient historic integrity to establish and maintain the character of the Historic District."
9. The Status Staff Report indicates that the Bridge was constructed in approximately 1959 and consists of precast concrete channel beams supporting an asphalt-surfaced deck replacing an earlier timber deck and resting on an earlier substructure of masonry cutwork pier and masonry abutments (collectively, the Bridge Alterations).

10. The Bridge is located in the Westside-Guadalupe Historic District (District) and is approximately 50 years old or older.
11. As a result of the Bridge Alterations, the Bridge does not retain a sufficient level of historic integrity.
12. The Bridge does not meet the definition of “contributing” set out in SFCC §14-12.1.
13. Based upon the facts found in paragraphs 9 and 11 above, the Bridge meets the definition of “noncontributing” set out in SFCC §14-12.1.

The Design Decision

14. SFCC §14-5.2(C)(3) provides for HDRB review of “...all applications for...alteration...in the historic districts...based on the standards set forth in this Section 14-5.2.”
15. Pursuant to SFCC §14-12.1, an “alteration” is “[a] change of the architectural features of a structure, including the erection, construction, reconstruction or removal of the structure or any of its parts...”
16. Pursuant to SFCC §14-12.1, a “structure” is “[a]nything that is constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground, including buildings...”
17. The Bridge is a structure.
18. The demolition of the Bridge and the construction of the New Bridge (Project) is an alteration within the jurisdiction of the HDRB.
19. SFCC §14-5.2(D), entitled “General Design Standards for All H Districts”, provides that “[i]n any review of proposed additions or alterations to structures that have been declared significant or contributing in any historic district...the following standards shall be met...”
20. Notwithstanding the language of SFCC §14-5.2(D) that appears to limit the application of the standards set forth in that section to significant and contributing buildings, SFCC §14-5.2(D)(9), entitled “Height, Pitch, Scale, Massing and Floor Stepbacks” (Section 9 Standards), specifically provides that “[t]he height, pitch, scale, and massing of any structure in an historic district...shall be limited as provided for in this section, unless further restricted within [Chapter 14].”
21. SFCC §14-5.2(D)(9)(a)(ii) provides for HPD staff to determine the applicable streetscape for a project.
22. Pursuant to SFCC §14-12.1, “streetscape” means “[t]he visual character of a street or section of a street as defined by topography; the pattern of structures and open space; building and wall setbacks; street design; architectural design; and heights, widths and proportions of structures, fixtures and graphics.”
23. SFCC §14-5.2(D)(9)(b) establishes streetscape standards applicable to the District.
24. SFCC §14-5.2(I), entitled “Westside-Guadalupe Historic District”, sets out specific design standards for the District (District Standards).
25. The Section 9 Standards and the District Standards apply generally to buildings and walls.
26. Pursuant to SFCC §14-12.1, a “building” is “[a] structure...covered and connected by a permanent roof and intended for shelter, housing or enclosure.”
27. Pursuant to SFCC §14-12.1, a “wall” is “[a] constructed solid barrier...that closes, marks or borders a field, yard or lot and that limits visibility and restricts the flow of air and light.”
28. The Bridge is not a building or a wall and as a result, the Section 9 Standards and the District Standards have limited applicability to the Project.

29. In the absence of specific design standards it is the established practice of the HDRB, and, on appeal, the Governing Body, when reviewing applications for alterations in the historic districts, to harmonize the proposed development with the applicable streetscape.
30. In accordance with SFCC §14-3.14(G)(1)(b), where a structure to be demolished is an essential part of a unique street section, that street section must be reestablished by the structure proposed to replace it.
31. HPD staff determined that the Bridge's streetscape is defined by Code §14-5.2(D)(9)(a)(ii)A and B and extends for 600 feet east and west from the midpoint of the Bridge along the Alameda and 600 feet south on Defouri and north to its end at a cross-street.
32. Photographs of the applicable streetscape submitted by HPD staff at the Appeal Hearing show Defouri Street narrowing to meet the Bridge at its south side and the Passenger sweep vehicle analysis provided by the Appellant at the Appeal Hearing indicates that Defouri Street south of the river, if the New Bridge is built to the Original Design, will still be wider than the New Bridge.
33. Based upon the facts found in paragraphs 20 through 32 above, the New Bridge if built to its Original Design will harmonize with the applicable streetscape and will reestablish through its small scale and size the essential part of the unique street section affected by the demolition of the Bridge.
34. The Original Design includes 5-foot-wide sidewalks on both the west and the east sides of the New Bridge in accordance with the requirements of SFCC §14-9.2 which indicate in all street sections a minimum sidewalk width of 5 feet.
35. SFCC §14-9.2(B)(3) authorizes the Governing Body in the case of city street projects to consider and approve innovative street designs that provide adequate pedestrian and bicycle facilities.
36. The Governing Body has considered that modifying the Original Design by substituting 4-foot-wide sidewalks for the 5-foot-wide sidewalks on the east and west sides of the New Bridge provides (the Modified Design) adequate pedestrian facilities and that the lane configuration of the New Bridge provides adequate bicycle facilities.

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 matters that are the subject of the Appeal.
2. The Bridge is a noncontributing structure.
3. The Appellant was not required to obtain the Exceptions in order to demolish the Bridge.
4. The Modified Design harmonizes with the applicable streetscape and reestablishes the essential part of the unique street section affected by the demolition of the Bridge.

[ORDER AND SIGNATURES APPEAR ON FOLLOWING PAGE]

WHEREFORE, IT IS ORDERED ON THE _____ OF MARCH 2014 BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

That the Appeal is hereby granted on the Status Decision and the Design Decision to the extent that the Modified Design replaces the Original Design.

Mayor

Date:

FILED WITH THE CITY CLERK:

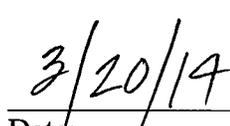
Yolanda Y. Vigil
City Clerk

Date:

APPROVED AS TO FORM:



Kelley A. Brennan
Interim City Attorney



Date: