

MAX SCOLAR

316 Otero Street · Santa Fe, New Mexico 87501

September 29, 2026

VIA EMAIL AND HAND DELIVERY

Members of the Governing Body
City of Santa Fe
c/o Office of the City Clerk
200 Lincoln Avenue
Santa Fe, New Mexico 87501

Re: Appeal No. 2026-12776-APPL of Case No. 2026-12126-HDRB, 515 Paseo de Peralta
Appellants' Response to the City Attorney's Memorandum dated September 25, 2026
Governing Body meeting of September 30, 2026

Dear Mayor and Members of the Governing Body:

I write on behalf of the Appellants, myself and Sparrow Otero, LLC, the owner of the adjoining properties at 316 Otero Street and 513 Paseo de Peralta. This letter responds to the memorandum of the City Attorney's Office dated September 25, 2026 (the "Memo"). I respectfully ask that the Clerk distribute this letter to every member of the Governing Body before the September 30 meeting and make it part of the record on appeal.

Our counsel and agent of record, Charles V. Henry, IV, of Friedman, Walcott, Henry & Winston, LLC, has been called away to care for a seriously ill family member. He is unable to prepare a response or attend the hearing, so I am submitting this response myself.

SUMMARY

The Memo accurately lists our five grounds of appeal (Memo at 7–8). However, the three questions it poses (Memo at 10–11) and the six motions it proposes (Memo at 11–12) decide only one of them: whether the exception criteria were conclusively demonstrated for an addition exceeding 50 percent of the historic footprint (our Issue 3).

The Memo proposes no question or motion on our Issue 1 (SFCC § 14-4.6(E)(2)(III)(a)), Issue 4 (SFCC § 14-4.6(E)(1)(I)) or Issue 5 (SFCC § 14-7.1(F)(4)(a)). It folds Issue 2 into a question that assumes the very height figure we dispute. It also adds a stand-alone question on the primary-façade exception, which is not even something that we are appealing.

If the Governing Body votes on the Memo's motions as written, it could deny the appeal without ever ruling on most of what we appealed. We ask the Governing Body to decide each ground of appeal separately. Proposed questions and motions for that purpose are attached as Attachment A. Appellants' Exhibits 1–5, enclosed, illustrate the record evidence discussed below.

1. GROUNDS OF APPEAL THE MEMO OMITTS OR MISFRAMES

Issue 1: Height of an addition to a Significant structure, SFCC § 14-4.6(E)(2)(III)(a). This section provides: "The maximum height of building additions to significant and landmark structures shall be at least six inches lower than the parapet or equivalent roof feature of the existing adjacent connecting façade." (Memo, Appendix at 14.) The limit is tied to the roofline of the historic building the addition adjoins (not to the streetscape height, which is a separate issue in this appeal). The two-story addition does not meet it. The applicant's East Elevation, Sheet A205h, shows the addition rising about eight

feet above the historic parapet (Ex. G at 72; Appellants' Exhibit 1). The Staff Report and the May 26 agenda both state that an exception to § 14-4.6(E)(2)(III)(a) was requested (Ex. D at 25; Ex. C at 17). Yet the Board never decided that exception. Its Conclusion of Law 3 grants only three exceptions: primary façade, 50 percent footprint, and removal of historic material (Ex. B at 14). The Memo's Question 3 addresses a different provision, the sloping-site allowance for streetscape height in § 14-4.6(F)(2)(II)(f). That provision concerns the streetscape limit in subsection (F). It does not address or waive the separate limit for additions in subsection (E)(2)(III)(a). The Memo offers no question or motion on this issue.

Issue 2: Height must be measured from grade, SFCC § 14-4.6(F)(2)(III)(a). Correct height 29', which exceeds streetscape plus slope, so an exception is required. Code measures height from existing or finished grade, whichever is more restrictive, at the midpoint of the street-facing façade. The preliminary zoning review records the proposed height as "24'-0" above adjacent grade, per discussion with planning" (Ex. F at 50). The applicant describes the addition's lower floor as "buried mostly below grade" and a "basement" (Ex. D at 35). The 24-foot figure comes from the applicant's South Elevation, Sheet A200h, which is the page the Memo itself cites (Memo at 4; Ex. G at 67). That sheet marks the maximum height as "+24'-0" AFF," meaning above the finished floor, and labels the grade line "(E) Grade @ Street Façade," at "-5'-0" AFF." Measured from the applicant's own street-façade grade line, the addition is 29 feet high, as shown on both the south (street-facing) and west elevations (Ex. G at 67, 69; Appellants' Exhibits 2A and 2B). The Memo's Question 3 assumes 24 feet and asks only whether § 14-4.6(F)(2)(II)(f) "regulates" the project. The threshold question is the measurement itself. At 29 feet, the addition would exceed the 23-foot streetscape limit by six feet. That is beyond the four-foot maximum additional streetscape allowance in § 14-4.6(F)(2)(II)(f), so that section could not apply (Appellants' Exhibit 3). A recalculation of the streetscape average by David Rasch, which adds three buildings omitted from staff's calculation (Ex. E at 45), yields a limit of 21.4 feet, making the excess greater still. A height exception is required under either figure.

Issue 4: Loss of Significant status, SFCC § 14-4.6(E)(1)(I). This section is mandatory: "If a proposed alteration will cause a property to lose its significant, contributing, or landmark status, the application shall be denied." Our appeal explains that the addition's size, height and attachment to a primary façade, taken together, treat this Significant structure as if it were contributing. (The Appellants do not appeal the primary-façade exception itself; its effect is cited only as part of the cumulative loss of Significant status.) The addition adds a full second story, which the Code allows only for additions to Contributing structures (§ 14-4.6(E)(2)(III)(b); Appellants' Exhibit 5). It also places addition elements within the 10-foot setbacks required from every façade of a Significant structure, all of which are primary (§§ 14-4.6(E)(1)(III), (E)(2)(II)(b)). The Board made no finding on whether the property will retain its Significant status after these alterations. The Memo proposes no question or motion on this issue.

Issue 5: Garage setback, SFCC § 14-7.1(F)(4)(a). A garage with a vehicle entry facing the street must be set back at least 20 feet from the street property line. The planned garage is approximately eight feet from the Loma Street property line. Because this is a zoning matter, the Appellants do not ask the Governing Body to decide it in this appeal and reserve it for the appropriate zoning proceeding. The omission is nonetheless material to this appeal, because the preliminary zoning review was incomplete. The purpose of that review is to identify, before the HDRB hearing, the zoning standards the project must meet; the review form requires a proposed site plan with setbacks and lists the required setbacks for each side of the lot (Ex. F at 50). Here the review applied only a seven-foot setback for Loma Street and never identified the 20-foot garage setback in § 14-7.1(F)(4)(a) (*id.*). The HDRB then relied on that review in Finding 1 to conclude that the application "appears to meet the underlying zoning standards" (Ex. B at 10–11). As a result, the HDRB approved the addition's size, siting and massing without a

material zoning requirement ever being identified to it, and without knowing that the garage as designed would need either a variance or a redesign. The HDRB's approval therefore rests on an incomplete record.

2. CORRECTIONS TO THE MEMO

a. The “historic footprint” includes non-contributing and/or detached structures. The Memo and the Board's Finding 13 use a historic footprint of 2,776 square feet (Memo at 1, 3; Ex. B at 12). The applicant's own narrative states: “The existing house's historic footprint measures 2,776 sf, including existing noncontributing additions to be demolished.” It gives the existing historic building as 1,560 square feet (Ex. D at 35; Ex. G at 55; Ex. H at 78). In Case No. 2025-10763-HDRB, on August 12, 2025, the Board retained Significant status for the residence “excluding the northwest addition, and excluding the original garage addition” (Ex. B at 9). Chair Rios asked for clarification of the historic footprint at the hearing (Ex. C at 18). Measured against the 1,560-square-foot Significant structure, the 2,256-square-foot addition footprint is about 145 percent of the historic footprint, not 81 percent. It is nearly 2.9 times the 780 square feet that § 14-4.6(E)(2)(II)(c) permits (Appellants' Exhibit 4).

b. The Board approved the application; it did not deny it. The Memo states that the Governing Body “may uphold or reverse the HDRB's decision to deny the application and the exception” (Memo at 2). The HDRB approved the application and granted three exceptions (Ex. B at 14).

c. The standard of review. The Memo states that this is a de novo appeal in which the Governing Body conducts “an independent application of the law to the evidence” (Memo at 2). It later states that the Governing Body “should determine whether there is substantial evidence to support the HDRB designations” (Memo at 10). These standards differ significantly. We ask the Governing Body to apply the de novo standard the Memo itself identifies and to decide each issue independently.

d. The exception criteria were not examined at the hearing. The Memo acknowledges that “the Board did not extensively discuss the exception criteria in the hearing” (Memo at 9). The applicant bears the burden to “conclusively demonstrate” each criterion (SFCC § 14-4.6(D)(2)(II)). The Board's motion adopted staff's recommended findings without separate analysis (Ex. C at 20).

e. The facts offered in the Memo's Motion 1 do not support the criteria. Residential density under R-21 zoning is offered to show that the addition will not “damage the character of the streetscape” (Ex. B at 12, Finding 16a). Density does not bear on the historic character of the streetscape. The hardship offered is the unsound garage and shed, but the Board already approved their demolition in Case No. 2025-11354-HDRB. That hardship is resolved by demolition and does not require an addition exceeding 50 percent of the historic footprint. None of these facts conclusively demonstrates that an addition of this size is warranted.

3. REQUESTED ACTION

The Appellants respectfully request that the Governing Body:

1. Apply the de novo standard of review and decide each of the five grounds of appeal separately, using the questions and motions in Attachment A;
2. Grant the appeal and reverse the HDRB's May 26, 2026 approval; or, in the alternative,
3. Vacate the approval and remand the case to the HDRB with the directions stated in the remand motion in Attachment A.

4. OBJECTION FOR THE RECORD

The Appellants object to the Memo's Motion Options to the extent they would resolve this appeal without a ruling on Issues 1, 2 and 4. Issue 5 is reserved as stated in Section 1. We ask that any decision state a ruling and the supporting findings on each ground of appeal. We do not waive any ground raised in our Verified Appeal Petition, as amended September 9, 2026.

Thank you for your consideration and for your service to the City.

Respectfully submitted,

/s/ Max Scoular

Max Scoular
Individually and as Manager of Sparrow Otero, LLC

Enclosures:

Attachment A — Proposed Questions and Motions
Appellants' Exhibit 1 — Addition rises 8 ft above the historic parapet (Sheet A205h; Ex. G at 72)
Appellants' Exhibits 2A and 2B — Height of 29 ft above grade: south elevation (Sheet A200h; Ex. G at 67) and west elevation (Sheet A202h; Ex. G at 69)
Appellants' Exhibit 3 — Height exceeds the 27-ft streetscape limit (23-ft staff streetscape limit plus 4-ft slope allowance)
Appellants' Exhibit 4 — Addition footprint (2,256 sf) exceeds the 50% footprint limit for the 1,560 sf historic home
Appellants' Exhibit 5 — Second story permitted only for Contributing structures (Sheet A202h)

cc:

Marcos Martinez, City Attorney
Frank Ruybalid, Assistant City Attorney
Charles V. Henry, IV, Friedman, Walcott, Henry & Winston, LLC

ATTACHMENT A

Proposed Questions and Motions

Appeal No. 2026-12776-APPL · 515 Paseo de Peralta

These follow the format of Section V of the Memo, with one question for each ground of appeal.

Question A (Issue 1). Does the two-story addition comply with SFCC § 14-4.6(E)(2)(III)(a), which requires additions to Significant structures to be at least six inches lower than the parapet of the existing adjacent connecting façade?

Motion A-1: I move to grant the appeal on this issue, on the grounds that the addition exceeds the height permitted by SFCC § 14-4.6(E)(2)(III)(a); no exception to that provision was decided or granted; and SFCC § 14-4.6(F)(2)(II)(f) governs streetscape height and does not authorize an addition to exceed the limit in § 14-4.6(E)(2)(III)(a).

Motion A-2: I move to deny the appeal on this issue, on the grounds that [finding on the height of the addition relative to the connecting parapet, with record citation].

Question B (Issue 2). Measured as SFCC § 14-4.6(F)(2)(III)(a) requires, from existing or finished grade (whichever is more restrictive) at the midpoint of the street-facing façade, what is the height of the addition, and is it within the maximum allowed by § 14-4.6(F)(2)(II)(f)?

Motion B-1: I move to grant the appeal on this issue, on the grounds that the height of the addition was not measured as SFCC § 14-4.6(F)(2)(III)(a) requires, from grade at the midpoint of the street-facing façade. Measured that way, the addition is 29 feet high, not 24 feet. Because 29 feet exceeds the 27-foot maximum permitted under § 14-4.6(F)(2)(II)(f) (the 23-foot streetscape limit plus the four-foot sloping-site allowance), the application required a height exception under § 14-4.6(D)(1) and (D)(3), which was never decided or granted.

Motion B-2: I move to deny the appeal on this issue, on the grounds that the height measured from grade at the midpoint of the street-facing façade is [] feet, as shown at [record citation].

Question C (Issue 3). Did the applicants conclusively demonstrate all three criteria of SFCC § 14-4.6(D)(2)(II) for an addition exceeding 50 percent of the historic footprint, measured against the footprint of the Significant structure excluding non-contributing and/or detached structures?

Motion C-1: I move to grant the appeal on this issue, on the grounds that the historic footprint of the Significant structure is 1,560 square feet; the addition's 2,256-square-foot footprint is about 145 percent of it; and the record does not conclusively demonstrate each of the three criteria for an exception of that size.

Motion C-2: I move to grant the appeal on this issue and remand to the HDRB to recalculate the historic footprint excluding non-contributing and/or detached structures and to make findings on each exception criterion based on that figure.

Motion C-3: I move to deny the appeal on this issue, on the grounds that the applicants conclusively demonstrated each of the three criteria of SFCC § 14-4.6(D)(2)(II) for a 2,256-square-foot addition to a Significant structure with a historic footprint of [] square feet, as follows: (a) [finding, with record citation]; (b) [finding, with record citation]; (c) [finding, with record citation].

Question D (Issue 4). Taken together, will the proposed alterations cause the property to lose its Significant status, so that the application “shall be denied” under SFCC § 14-4.6(E)(1)(I)?

Motion D-1: I move to grant the appeal on this issue, on the grounds that the addition’s size, height and attachment to a primary façade, in combination, are inconsistent with retaining Significant status, and SFCC § 14-4.6(E)(1)(I) requires denial.

Motion D-2: I move to remand to the HDRB to make an express finding on whether the property will retain its Significant status after the proposed alterations.

Motion D-3: I move to deny the appeal on this issue, on the grounds that the property will retain its Significant status after the proposed alterations because [finding, with record citation].

Issue 5 (garage setback). Reserved for the appropriate zoning proceeding (see Section 1 of the letter). The Appellants ask only that the record reflect that the preliminary zoning review did not identify SFCC § 14-7.1(F)(4)(a).

Remand alternative. I move to grant the appeal in part, vacate the HDRB’s May 26, 2026 approval and September 22, 2026 Findings of Fact and Conclusions of Law, and remand Case No. 2026-12126-HDRB to the HDRB with directions to: (a) measure the height of the addition from grade under SFCC § 14-4.6(F)(2)(III)(a); (b) determine compliance with § 14-4.6(E)(2)(III)(a) and, if an exception is requested, decide it expressly; (c) recalculate the historic footprint excluding non-contributing and/or detached structures and make findings on each exception criterion; and (d) make an express finding under § 14-4.6(E)(1)(I) on whether the property retains its Significant status.

APPELLANTS' EXHIBITS 1–5

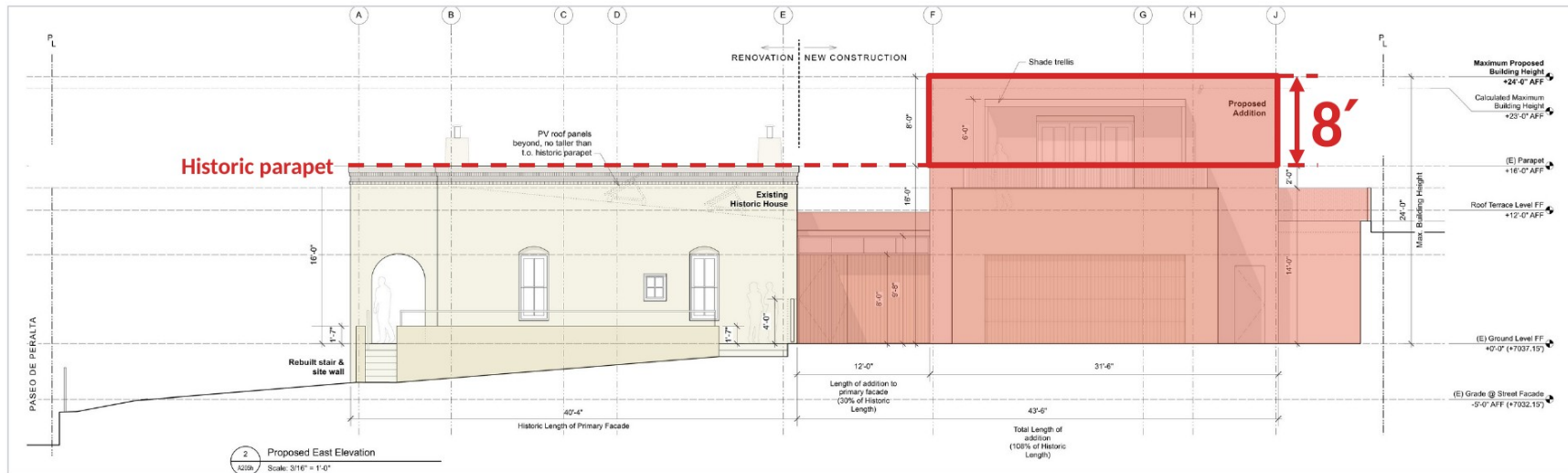
Appeal No. 2026-12776-APPL of Case No. 2026-12126-HDRB

515 Paseo de Peralta

Submitted with Appellants' letter of September 29, 2026

Proposed East Elevation: addition rises 8'-0" above the historic parapet

Applicant's Sheet A205h. Paseo de Peralta and the historic house are at left; the two-story addition is at right.



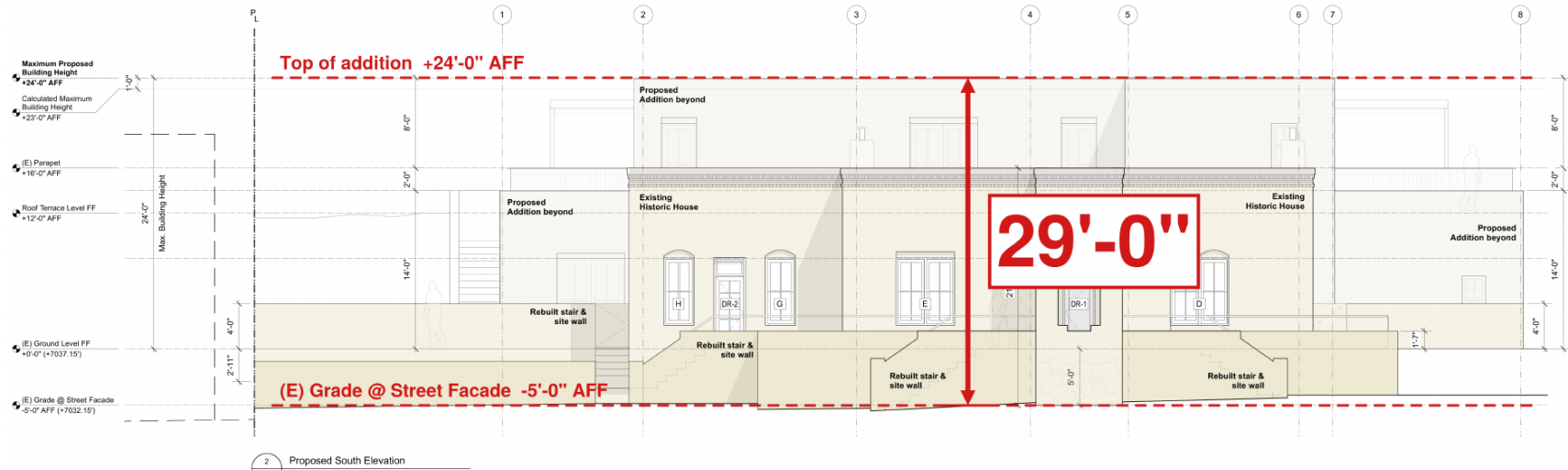
From the applicant's own dimensions: the top of the addition is **8'-0"** higher than the historic parapet. The Code requires the addition to be at least **six inches lower**.

SFCC § 14-4.6(E)(2)(III)(a): "The maximum height of building additions to significant and landmark structures shall be at least six inches lower than the parapet or equivalent roof feature of the existing adjacent connecting facade."

Source: DNCA Architects, Sheet A205h, Proposed East Elevation (plotted 5/21/26), HDRB Applicant Submittal, Case 2026-012126-HDRB (May 26, 2026 hearing), p. 22; record on appeal Ex. G at 72. Red annotations added by Appellants; all dimensions are the applicant's.

Proposed South Elevation (street-facing facade): 29'-0" above grade

Applicant's Sheet A200h. Red dimension drawn at the approximate midpoint of the street-facing facade.



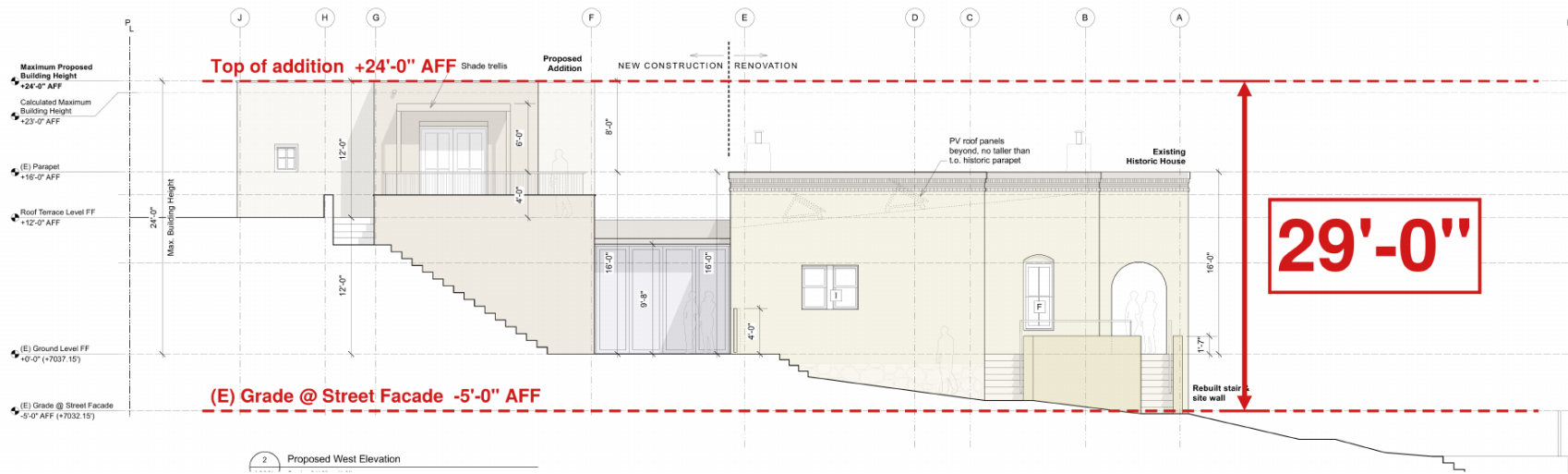
From the applicant's own dimensions: maximum proposed building height +24'-0" AFF (above the ground-level finished floor) + ground-level finished floor 5'-0" above the line the applicant labels "(E) Grade @ Street Facade, -5'-0" AFF" = 29'-0" above grade.

SFCC § 14-4.6(F)(2)(III)(a): "In historic districts, height shall be the vertical distance measured between the highest part of a structure and the existing grade or finished grade, whichever is more restrictive, at the midpoint of the street-facing facade..."

Source: DNCA Architects, Sheet A200h, Proposed South Elevation, HDRB Applicant Submittal, Case 2026-012126-HDRB (May 26, 2026 hearing), p. 17; record on appeal Ex. G at 67. Red dimension lines and labels added by Appellants; all dimensions and datum labels are the applicant's.

Proposed West Elevation: addition rises 29'-0" above grade at the street facade

Applicant's Sheet A202h. Paseo de Peralta is at right; the grade datum is the same street-facade grade as on Sheet A200h.

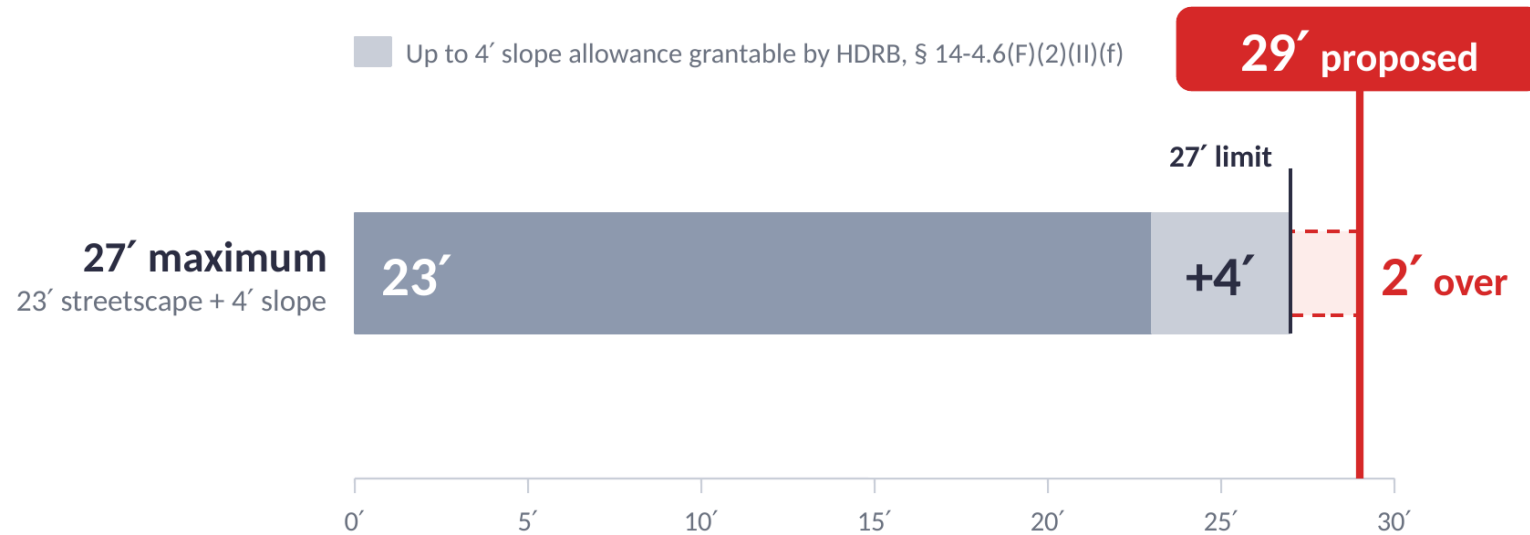


From the applicant's own dimensions: maximum proposed building height +24'-0" AFF (above the ground-level finished floor) + ground-level finished floor 5'-0" above the line the applicant labels "(E) Grade @ Street Facade, -5'-0" AFF" = 29'-0" above grade.

SFCC § 14-4.6(F)(2)(III)(a): "In historic districts, height shall be the vertical distance measured between the highest part of a structure and the existing grade or finished grade, whichever is more restrictive, at the midpoint of the street-facing facade..." The west elevation is shown because it presents the full two-story addition against that same grade datum.

Source: DNCA Architects, Sheet A202h, Proposed West Elevation, HDRB Applicant Submittal, Case 2026-012126-HDRB (May 26, 2026 hearing), p. 19; record on appeal Ex. G at 69. Red dimension lines and labels added by Appellants; all dimensions and datum labels are the applicant's.

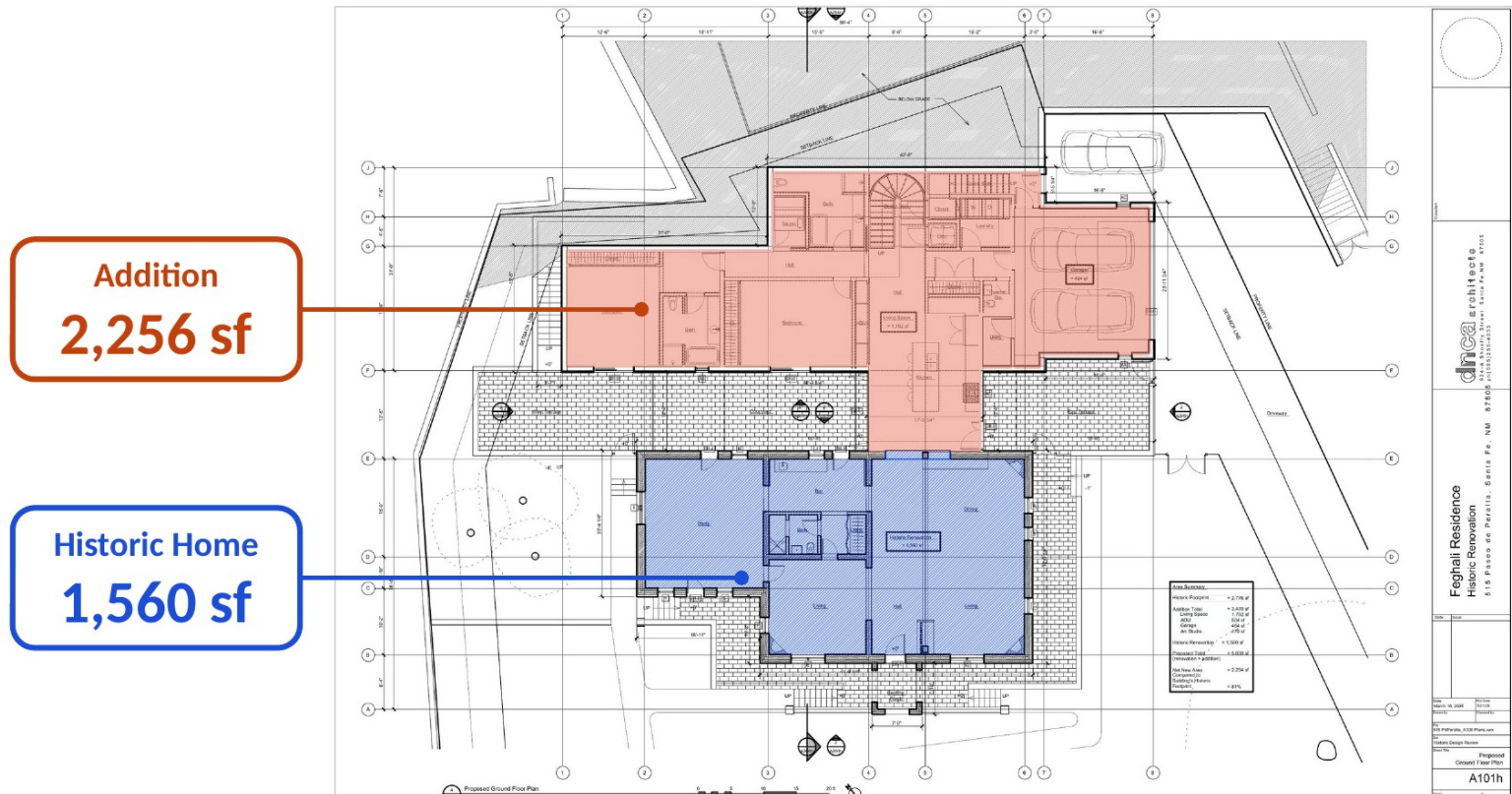
Height Exceeds Streetscape Limit



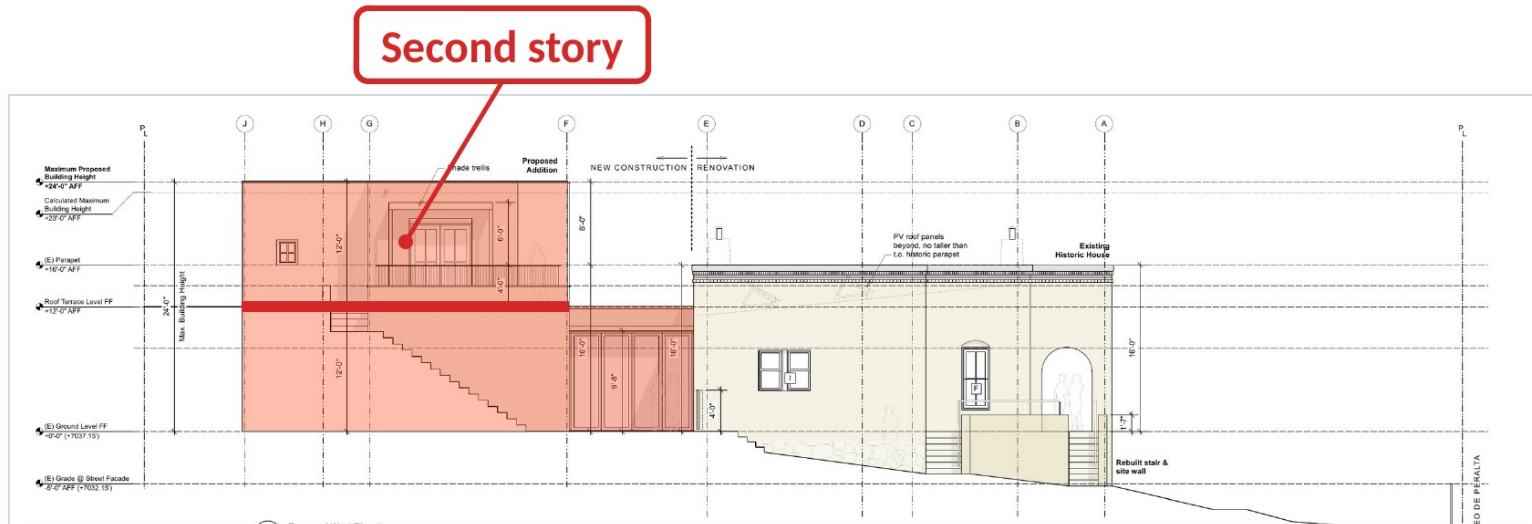
Streetscape limit **23'** (staff calculation, Ex. E at 45) + up to **4'** that the HDRB may grant for a sloping site = **27' maximum**. The addition is **29'** above grade (Exhibits 2A, 2B), **2' over the maximum**.

SFCC § 14-4.6(F)(2)(II)(f): "The HDRB may increase the allowable height for proposed buildings and additions located on a sloping site where the difference in the natural grade along the structure's foundation exceeds two feet. In no case shall the height of a façade exceed four feet above the allowable height of the applicable streetscape measured from natural or finished grade, whichever is more restrictive."

Addition Exceeds 50% Footprint Limit



Extra story means Contributing, not Significant



Significant: “The maximum height of building additions to significant ... structures shall be at least **six inches lower** than the parapet...” §14-4.6(E)(2)(iii)(a)

Contributing: “Building additions to contributing structures shall be no more than **one additional story** higher than the existing structure.” §14-4.6(E)(2)(iii)(b)

Source: dnca architects, Sheet A202h West Building Elevations (plotted 5/19/26), otero draw10.pdf.