

TO: Paul A. Hofmann, City Manager  
From: Jennifer C. Bills, Director of Planning & Development  
Date: July 6, 2022  
Subject: Certificate of Appropriateness Appeal 910/912 Main Street



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**ITEM DETAILS:**

Site Address: 910/912 Main Street  
Property Owner: Ryan and Samantha Holiday  
Agent: Jane Knight  
Current Use: Commercial  
Existing Zoning: P5 Core  
Designations: Texas Medallion, in National Register Bastrop Commercial District

**BACKGROUND/HISTORY:**

The businesses occupying 910 and 912 Main Street, Astro Records and The Painted Porch Bookstore, painted a mural on the rear wall of the building, which faces Alley B. This work was done without a Certificate of Appropriateness. Upon receiving a Notice of Violation, the applicant promptly submitted their application for this CoA. The building is historically designated at the state level and is part of the Bastrop Commercial District.

As seen in the attachments to the March 10, 2022 Historic Landmark Commission report, the applicant indicates that the cleaning process was done in a manner that did not damage the wall (Attachment 2), and elastomeric paints designed for masonry surfaces were used (Attachment 4); however, painting brick on historic buildings is not advisable. Staff has attached a memo from the Building Official with industry data on painting exposed masonry and brick (Attachment 5). Once a masonry surface has been painted, it is very hard to remove.

At the February 16, 2022, meeting, the Commission reviewed this case and requested more information on actions that could be taken for starting/completing work prior to receiving approval from the HLC and if there are feasible options for removing the paint from the wall.

Staff has presented the information to legal staff. For violation of Section 9.3.001 Requirement for a Certificate of Appropriateness, the City can file a criminal case for violation of this section. If convicted, they will be guilty of a misdemeanor, for which the fine can range between \$1 - \$500. If there are additional violations of the code, each violation can be filed as a separate charge. The violation can be filed regardless of the approval or denial of the Certificate of Appropriateness for the paint. If the HLC requires the mural to be removed, the City would have to seek a civil order from the court mandating the property be put back in compliance with the code.

In Attachment 6, the Building Official has provided pictures of existing brick in the Bastrop Commercial National Register District that shows different types of brick and the damage that can be done from improperly applied and removed paint.

At the March 10, 2022 meeting, the Commission reviewed the additional information and voted on a motion to approve the COA with following conditions; No further changes to be made to the building without HLC presentation and approval, and any damages to the building or brick as a result of the using the incorrect paint be corrected by the owner and present to HLC prior to making these changes. The

motion failed by a vote of two to three. No replacement motion was proposed, so the Certificate of Appropriateness was denied.

The applicant has appealed the decision by the Historic Landmark Commission to City Council (Attachment 2).

With the review of fees conducted with the annual budget, Planning Staff will be proposing new fees that are specific to conducting working prior to receiving Planning approvals. Fees have already been established for conducting work without a building permit.

#### **POLICY EXPLANATION:**

When a Certificate of Appropriateness is required, no work can begin before the Historic Preservation Officer, or the Commission has first issued a Certificate of Appropriateness. The Certificate of Appropriateness shall be in addition to and not in lieu of any permits required (i.e. building, sign, alcohol, etc.). The Building Official cannot approve any application for a sign or building permit to a structure and/or site that requires but does not have a Certificate of Appropriateness.

#### *Section 9.3.006 Criteria of Approval of a Certificate of Appropriateness (COA)*

- (1) In considering an application for a Certificate of Appropriateness, the commission shall be guided by any locally adopted design standards, and where applicable, the following from the *Secretary of the Interior's Standards for the Rehabilitation of Historic Buildings*. Any adopted design standards and *Secretary of the Interior's Standards* shall be made to the property owners of historic landmarks. (relevant criteria bolded)
  - (A) Every reasonable effort shall be made to adapt the property in a manner which requires minimal alteration of the building, structure, object, or site and its environment.
  - (B) **The distinguishing original qualities or character of a building, structure, object, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.**
  - (C) All buildings, structures, objects, and sites shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create an earlier or later appearance shall be discouraged.
  - (D) Changes that may have taken place in the course of time are evidence of the history and development of a building, structure, object, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.
  - (E) **Distinctive stylistic features or examples of skilled craftsmanship which characterize, a building, structure, object, or site shall be kept to the greatest extent practical.**
  - (F) Deteriorated architectural features shall be repaired rather than replaced, wherever possible. **In the event replacement is necessary, the new material should reflect the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historical, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other building or structures.**

- (G) **The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.**
- (H) Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any project.
- (I) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural, or cultural material, and such design is compatible with the size, color, material, and character of the property, neighborhood, or environment.
- (J) **Wherever possible, new additions or alterations to buildings, structures, objects, or sites shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the building, structure, object, or site would be unimpaired.**

*SEC. 9.3.005 Historic Landmark Commission Approval of Certificate of Appropriateness*

- (c) An Applicant for a Certificate of Appropriateness who is dissatisfied with the action of the Historic Landmark Commission relating to the issuance or denial of a Certificate of Appropriateness shall have the right to Appeal the determination to the City Council. The Applicant has 15 calendar days from date of the Historic Landmark Commission action to file for the Appeal. The Appeal request will be placed on the next available City Council agenda. To be considered, the Appeal shall set forth in writing the grounds for such Appeal and shall provide the City with any pertinent evidence and all related documentation related to the Appeal. The City Council shall use the adopted approval criteria for the Appeal review.

**RECOMMENDATION:**

Consider action on Resolution No. R-2022-55 approving the appeal of the Certificate of Appropriateness and provide direction to Planning Staff on any punitive action to be taken for working prior to a COA being approved.