

Legislation Text

File #: Resolution 04-2019, **Version:** 1

Agenda Date: 01/15/2019

Subject:

Appeal of a decision by the Historical Preservation Board regarding a certificate of historic appropriateness application for an automated teller machine for the Littleton Mixed Use Building, 2679 West Main Street

Presented By: Andrea Mimnaugh, Historic Preservation Planner
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REQUESTED COUNCIL ACTION:

The council is requested to act on an appeal of the decision by the Historical Preservation Board (HPB) to deny a Certificate of Historic Appropriateness (COA) for an Automated Teller Machine (ATM) and a deposit box in the storefront of the Littleton Mixed Use Building, 2679 West Main Street.

BACKGROUND:

Littleton Mixed Use is a three-story brick building under construction in the Main Street Historic District. The denied COA proposed the following:

- An ATM in the glass storefront of the Main Street façade with window screening to obscure the interior portion of the ATM from view along the street
- A deposit box on the side of the building, to be set into the west-facing storefront

Per Section 4-6-14 (C), the Historical Preservation Board shall issue a COA for any proposed work on a historic landmark or any property in a historic district when the following criteria are met:

1. The proposed work would not detrimentally alter, destroy or adversely affect any architectural or landscape feature which contributes to its original historic designation; and
2. Is otherwise in conformance with any applicable adopted design guidelines.
3. The board must find the proposed work is visually compatible with designated historic structures located on the property in terms of design, finish, materials, scale, mass, and height.
4. When the subject site is within a historic district, the board must find that the proposed work is visually compatible with the development on adjacent properties.
5. In the case of partial demolitions, the board must find that the:
 - a. Partial demolition is required for the renovation, restoration, or rehabilitation of the structure; and

- b. Impacts on the historic importance and architectural integrity of the structure(s) located on the property have been mitigated to the greatest extent possible.

PRIOR ACTIONS OR DISCUSSIONS:

The COA application was considered by the HPB at its meeting December 17, 2018. The HPB voted to deny the application by a vote of 6-1 finding that the ATM, as proposed, did not meet criteria for approval. The motion was as follows:

Deny HPB Resolution 08-2018 concerning the certificate of historic appropriateness for 2679 West Main Street, the Littleton Mixed Use Building. The foregoing denial is based on the findings that the proposed work:

1. Does not detrimentally alter destroy or adversely affect the architectural or landscape features that contribute to the original historic designation
2. Is in conformance with Littleton design standards and guidelines which do not address ATMs
3. Criterion 3 does not apply
4. Is not visually compatible with development on adjacent properties for the following reasons:
 - a. A previous HPB decision did not allow an ATM on the front façade of Main Street
 - b. Concern over making the front windows on Main Street opaque
 - c. Concern over the lighting on the ATM

In its deliberation, HPB considered all of the applicable criteria for a COA, as set forth in section 4-6-14(C) of the historic preservation code. Board members evaluated the appropriateness of the location of the ATM on the front of the building, as opposed to the side or the interior of the building, and discussed the compatibility of the lit elements of the ATM and the screening of storefront glass with development on adjacent properties. HPB found these features to be inconsistent with the character of the Main Street Historic District and therefore not in compliance with criterion #4 of section 4-6-14(C):

When the subject site is within a historic district, the board must also find that the proposed work is visually compatible with the development on adjacent properties.

STAFF ANALYSIS:

The process for appeals of a denial of a COA by the board is set forth in section 4-6-18 of the City Code. Under this section an applicant or property owner may appeal any decision of the HPB to the city council by filing an appeal within thirty (30) days of notice of the decision. The city council shall hold a public hearing to consider the appeal; however council review shall be limited only to consideration of whether the board has abused its discretion. Unlike most actions before council, in this matter the council is acting as an administrative review body and not as a quasi-judicial body. The only evidence which the council may consider is the decision of the HPB and whether the decision constitutes an abuse of discretion.

Abuse of discretion is commonly defined as a decision that was either arbitrary, capricious, or unreasonable. Arbitrary is defined as failing to follow the provisions of law; capricious is defined as a failure to consider any of the evidence in the record. Unreasonable means that a reasonable person could not come to the conclusion reached by the HPB.

The decision of city council shall be a final order subject to appeal in District Court under Rule 106.

Please reference the following attachments regarding this application:

1. COA Criteria Analysis for the Littleton Mixed Use COA
2. Draft Resolution 08-2018 Approving
3. Draft Resolution 08-2019 Denying
4. Appeal Public Notice
5. Applicant Appeal Letter
6. Reference: COA Application Materials
7. Reference: COA Staff Report
8. Reference: COA Plan Set
9. Reference: HPB Resolution 08-2018
10. Reference: HPB Minutes of 12-17-2018
11. Presentation

OPTIONS/ALTERNATIVES:

The city council may take the following actions on the appeal of the COA:

- (a) Affirm the decision of the HPB denying the COA
- (b) Find that the HPB abused its discretion and overturn the decision and approve the COA

FISCAL IMPACTS:

N/A

STAFF RECOMMENDATION:

Staff has no recommendation on the appeal as the issue of abuse of discretion is a legal determination as compared to a substantive determination.

PROPOSED MOTION:

Motion to Affirm the decision of the HPB denying the COA

I move to affirm the decision of the Historical Preservation Board on Resolution 08-2019, denying the Certificate of Historic Appropriateness for 2679 West Main Street, The Littleton Mixed Use Building. The foregoing denial is based on the findings that the Historical Preservation Board did not abuse its discretion in denying the proposed application.

Motion to Overrule the decision of the HPB denying the COA

I move to overrule the decision of the Historical Preservation Board denying approval of a Certificate of Historic Appropriateness for 2679 West Main Street, the Littleton Mixed Use Building for the reason that the Historical Preservation Board abused its discretion in denying the application.