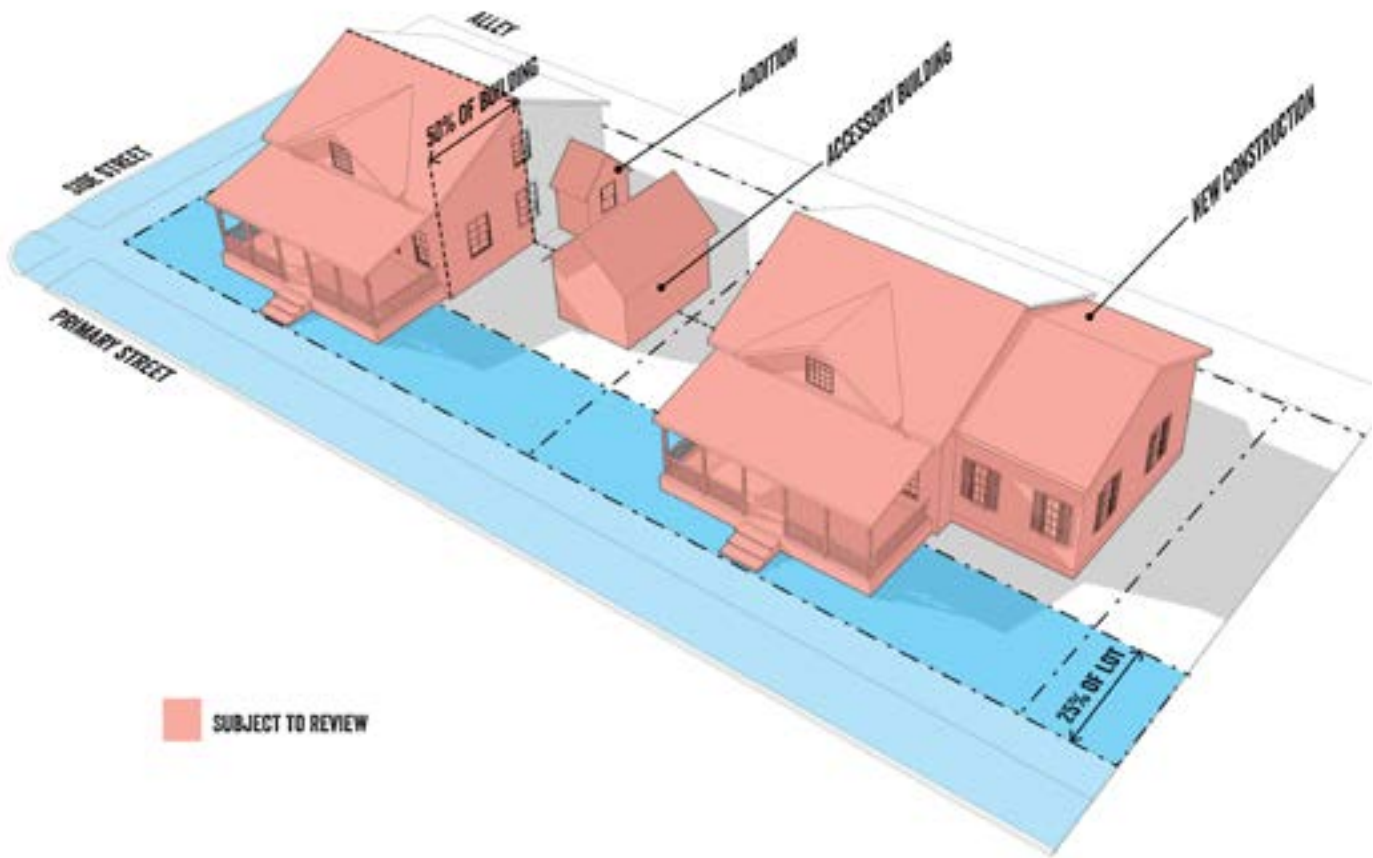


## DIVISION 5: CERTIFICATES OF APPROPRIATENESS

### Section 2.5.5.1 Purpose, Applicability, Exceptions and Effect

- A. Purpose.** The purpose of a certificate of appropriateness is to assure that construction, alteration, restoration, relocation, or demolition of a structure, or alterations to the site or appurtenances in a Historic District or at a Historic Landmark is congruous with the historical, architectural or cultural aspects of the district or landmark. Furthermore, the purpose of a certificate of appropriateness is to make certain that historic structures, streets and neighborhoods are preserved and protected.
- B. Applicability.** A certificate of appropriateness is required for portions of buildings and sites visible from adjacent public rights-of-way, streets or alleys as defined by Section 2.5.5.1(D) prior to undertaking any of the following activities in a local Historic District or at a local Historic Landmark:
1. Construction and reconstruction, including fences and walls;
  2. Alteration, additions, restoration and rehabilitation;
  3. Relocation;
  4. Signage;
  5. Construction or reconstruction of a parking lot;
  6. Construction or reconstruction of an appurtenance;
  7. Demolition; and
  8. Establishment or alteration of lighting, furniture and seating plans, and/or awnings and umbrellas within public right-of-ways.
- C. Exceptions.** A certificate of appropriateness is not required for the following activities:
1. Changes in color to a structure's exterior;
  2. Interior arrangements for structures in a local Historic District or at a local Historic Landmark;
  3. Ordinary maintenance or repair of any exterior feature that does not involve a change in:
    - a. Design,
    - b. Material, or
    - c. Outer appearance.
- 4.** With the written approval of the Responsible Official, construction, reconstruction, alteration, restoration or demolition of any feature which the Building Official or other city department director shall certify is required for the public safety because of an unsafe or dangerous condition.
- D.** The provisions of this Division 4 apply only to the following areas within the boundaries of each Historic District or Historic Landmark:
1. The lot area between the property line and the facade of any existing building or structure;
  2. 25% of the depth of the lot area adjacent to the public right-of-way for vacant lots;
  3. The first 50% of the depth of any existing principal building from the facade adjacent to a public right-of-way;
  4. Any addition to a building or structure that projects beyond an existing building's front or side wall and roof plane envelope regardless of distance from the public right-of-way;
  5. The entirety of any new principal building construction on a vacant lot;
  6. The entirety of any new accessory building construction located in whole or in part in areas Section 2.5.5.1(D)1-3
  7. The entirety of any Historic Landmark and its designated boundary area.

FIGURE 2.1 HISTORIC DISTRICT APPLICABILITY



- E. Effect.** Approval of a Certificate of Appropriateness authorizes the applicant to apply for permits allowing construction, alteration, restoration, relocation, or demolition of a structure, or alterations to the site or appurtenances, in a Historic District or at a local Historic Landmark.

#### Section 2.5.5.2 Application Requirements

- A.** An application for a certificate of appropriateness shall be submitted in accordance with Section 2.3.1.1 except as otherwise provided in this Division 5.
- B.** A certificate of appropriateness must be approved prior to the issuance of a building permit or any other permit that authorizes construction, alteration, restoration, relocation, or demolition of a structure, or alterations to the site or appurtenances in the local Historic District or at a local Historic Landmark.

#### Section 2.5.5.3 Approval Process

##### A. Responsible Official Action

1. The Responsible Official shall review the application for a certificate of appropriateness in accordance with the criteria in Section 2.5.5.4 and provide a report and recommendation to the Historic Preservation Commission.
2. The responsible official shall schedule a public hearing and prepare personal notice before the public hearing in accordance with Section 2.3.2.1.

##### B. Historic Preservation Commission Action

1. The Historic Preservation Commission shall conduct a public hearing concerning the application in accordance with Section 2.3.3.1
2. The Historic Preservation Commission shall approve, approve with conditions or deny the application for a

certificate of appropriateness after consideration of the request during the public hearing.

3. If the Historic Preservation Commission determines that a certificate of appropriateness should not be issued, or should be issued subject to conditions, it shall place upon its records the reasons for its determination.
4. The Historic Preservation Commission shall render its decision on the request within forty-five (45) days of the date the application is deemed complete and adequate for review, subject to the supplemental options available under Section 2.5.5.3(c).

#### Section 2.5.5.4 Criteria for Approval

The following criteria shall be used to determine whether the application for a certificate of appropriateness shall be approved, conditionally approved or denied:

- A. Consideration of the effect of the activity on historical, architectural or cultural character of the Historic District or Historic Landmark;
- B. For Historic Districts, compliance with the Historic District regulations;
- C. Whether the property owner would suffer extreme hardship, not including loss of profit, unless the certificate of appropriateness is issued; and
- D. The construction and repair standards and guidelines cited in Section 4.5.2.1.

#### Section 2.5.5.5 Appeals

- A. **General Procedure.** An applicant or other interested person within the four-hundred foot (400') personal notification area may appeal a final decision of the Historic Preservation Commission on an application for a certificate of appropriateness to the Zoning Board of Adjustments within ten days of the Historic Preservation Commission's action on the application. The Zoning Board of Adjustments shall decide the appeal in accordance with Section 2.8.1.1.
- B. **Supplemental Procedure.** In considering the appeal, the Zoning Board of Adjustments shall:

1. Review the record of the proceeding from which an appeal is sought;
2. Receive an overview of the case from the Responsible Official, including previous recommendations from city staff and the decision of the Historic Preservation Commission;
3. Hear arguments from the party appealing the decision of the Historic Preservation Commission; and
4. Remand the matter back to the Historic Preservation Commission when relevant testimony and newly-acquired evidence is presented that was not previously presented at the time of the hearing before the Historic Preservation Commission.

#### C. Criteria on Appeal.

1. The Zoning Board of Adjustments shall apply the substantial evidence test as established under Texas law to the decision of the Historic Preservation Commission;
2. The burden of proof before the Zoning Board of Adjustments shall be on the appealing party, who must establish that the record reflects the lack of substantial evidence in support of the decision of the Historic Preservation Commission;
3. The Zoning Board of Adjustments may not substitute its judgment for the judgment of the Historic Preservation Commission on the weight of the evidence on issues committed to the Planning and Zoning Commission's discretion.

#### Section 2.5.5.6 Expiration and Extension

- A. **Time of Expiration.** A certificate of appropriateness shall expire one year from the date it is issued if the proposed activity has not commenced, or two years from the date the certificate is issued, if the proposed activity has not been completed.
- B. **Extension.** A certificate of appropriateness may be extended by the Historic Preservation Commission for a period not to exceed one year from the date required for commencement and two years from the date required for completion of the activity authorized by the certificate.

**DIVISION 5: ZONING BOARD OF ADJUSTMENTS (ZBOA)****Section 2.2.5.1 Structure of Board**

The members of the zoning board of adjustments are appointed by the council in accordance with the city's code of general ordinances.

**Section 2.2.5.2 Review Authority**

The Zoning Board of Adjustments shall act as a final decision maker or authority in deciding appellate or relief requests in accordance with Table 2.1 of this development code.

**Section 2.2.5.3 Rules Governing Proceedings**

- A. Vote required for decisions.** The concurring vote of four members of the ZBOA is necessary to reverse an order, requirement, decision or determination of any administrative official, or to decide in favor of the applicant on a matter upon which the ZBOA is required to pass under this development code, or to authorize a variance from the terms of a provision of this development code.
- B. Quorum.** A quorum shall consist of four members of the ZBOA.
- C. Limitation on Authority.** The authority delegated to the ZBOA under this development code shall not be construed to affect any of the following:
  1. Any legislative decision;
  2. Approval of a conditional use permit;
  3. Approval of a request for alternative compliance;
  4. Authorization of a use not authorized in the district in which the applicant's property is located, except to the extent necessary to decide a variance or an application for a change in status of a nonconformity.

**Section 2.2.5.4 Appeals**

- A. Procedure for Appeal.** Upon receiving a notice of appeal of a matter for which appeal to the ZBOA is authorized under this development code, the responsible official shall immediately transmit to the ZBOA all papers constituting the record of the action that is appealed. An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the ZBOA

facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the ZBOA or a court of record on application, after notice to the official, if due cause is shown.

- B. Appeals of Board Decisions.** Appeals of any decision of the ZBOA may be taken to a state district court, county court, or county court-at-law by filing a verified petition stating that the decision of the ZBOA is illegal in whole or in part and specifying the grounds of the illegality. The petition must be filed within ten days after the date the decision being appealed is filed with the department of Planning and Development Services and shall proceed in accordance with the rules and procedures of the court to which the appeal is taken.

**Section 2.2.5.5 Public Hearing**

Personal notice of hearing before the ZBOA is required on all applications, appeals and relief applications in accordance with Table 2.1.

**DIVISION 6: HISTORIC PRESERVATION COMMISSION****Section 2.2.6.1 Structure of Commission**

The members of the historic preservation commission are appointed by the council in accordance with the city's code of general ordinances.

**Section 2.2.6.2 Review Authority**

- A.** The historic preservation commission shall act as an advisory body to the city council and as a final or initial decision maker in deciding certificates of appropriateness.
- B. Initiation of Application.** The historic preservation commission may initiate an application for the establishment or expansion of historic districts and historic landmarks.
- C.** The historic preservation commission shall review, prepare reports upon and make recommendations concerning approval, conditional approval or denial of an application for the establishment or expansion of historic districts and historic landmarks.