



**HISTORIC LANDMARK COMMISSION MEETING MINUTES
1st FLOOR, CITY COUNCIL CHAMBERS
CITY HALL BUILDING, 300 N. CAMPBELL
MAY 5, 2014
4:00 P.M.**

The El Paso Historic Landmark Commission held a public hearing in the City Council Chambers, 1st Floor, City Hall Building, May 5, 2014, 4:00 p.m.

The following commissioners were present:

Chairman David Berchelmann
Vice-Chairman Edgar Lopez
Commissioner Beatriz Lucero
Commissioner Randy Brock
Commissioner Cesar Gomez
Commissioner William C. Helm II
Commissioner John L. Moses
Commissioner Ricardo Fernandez

The following City staff members were present:

Ms. Providencia Velázquez, Historic Preservation Officer, Economic Development
Ms. Kristen Hamilton, Assistant City Attorney, Legal
Ms. Nickole Heater, Economic Development Liaison, Economic Development
Ms. Jessica L. Herrera, Redevelopment Manager, Economic Development

CALL TO ORDER

Chairman Berchelmann called the meeting to order at 4:02 p.m., quorum present.

CHANGES TO THE AGENDA

None.

I. CALL TO THE PUBLIC – PUBLIC COMMENT

None.

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II. REGULAR AGENDA – DISCUSSION AND ACTION

Certificate of Appropriateness

- 1. **PHAP14-00007:** Being Lot 6 Mills 54 Ft. on Oregon X 120 Ft. on Sheldon
NEC, City of El Paso, El Paso County, Texas
- Location: 109 N. Oregon Street
- Historic District: Downtown
- Property Owner: James Scherr
- Representative: MariCarmen Ramos
- Representative District: 8
- Existing Zoning: C-5/H (Commercial/Historic)
- Year Built: 1920
- Historic Status: Landmark
- Request: Certificate of Appropriateness for the installation of a canopy at the restaurant entrance façade after-the-fact.
- Application Filed: 4/07/14
- 45 Day Expiration: 5/15/14

Ms. Velázquez gave a presentation and noted the property owner sought approval for a Certificate of Appropriateness for the installation of a canopy at the restaurant entrance façade after-the-fact.

Ms. Velázquez presented photos (dated 2013) of the property and existing canopies. Those canopies are in compliance the Downtown Historic District Design Guidelines as they fit within the window openings. Ms. Velázquez explained she was notified of the *non-compliant awning* last year. The *non-compliant awning* was constructed without approval from the Historic Landmark Commission and without proper permits. Presentation photos of neighboring properties were shown; no awnings were noted on those properties.

Ms. Velázquez explained the *non-compliant awning*: a roof basically, covered the entire length and width of the outdoor extension. Via a Special Privilege, City Council approved the outdoor extension in 2004. Photos of the *non-compliant awning's* interior structure showed metal beams and supports. Ms. Velázquez reiterated the contractor's drawing was not submitted to her office, the Building & Development Permitting Department, or the Commission prior to construction.

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Ms. Velázquez read the following staff recommendations into the record:

The Historic Preservation Office recommends **DENIAL** of the proposed scope of work based on the following recommendations:

The Downtown Historic District Design Guidelines recommend the following:

- *Awnings and canopies should be placed at the top of openings, but they should not cover important architectural details/elements.*
- *Awnings and canopies should be of an appropriate size and scale in relation to the building's façade.*
- *Fixtures should not extend across the façades of several buildings. Instead, fixtures should fit within vertical elements such as columns.*
- *Awning should not cover more than one-third of the window opening. Un-proportioned awnings may appear awkward.*
- *Fixtures should always fit within their openings. Attempting to fit a square awning into a round opening (and vice-versa) should be avoided. Generally, the shape of an awning should respect the shape of the window.*

The Secretary of the Interior's Standards for Rehabilitation recommend the following:

- *The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features that characterize a property will be avoided.*
- *New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.*

Chairman Berchelmann clarified the *non-compliant awning* was constructed without approval of the Commission and without a permit. He described the *non-compliant awning* as “an extreme awning” and agreed it was a roof.

Ms. Velázquez agreed the *non-compliant awning* was “an extreme awning.” She noted the *non-compliant awning* was an awning due to the canvas fabric; however, the installation looks like a roof structure. Most awnings need some support; however, most awnings fit within the window.

Chairman Berchelmann asked Ms. Velázquez to define *non-compliant awning*.

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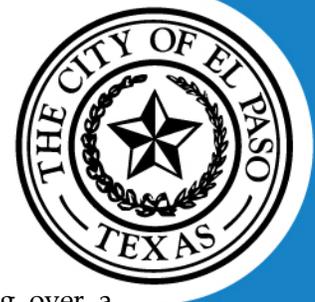
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Per the code, Ms. Velázquez read the following definitions into the record:

1. Awning – a roof-like shelter of canvas or other material extending over a doorway from the top of the doorway, from the top of the window; and
2. Canopy – an overhanging projection or covering as a long awning stretching from the doorway of the building to the curb.

Vice-Chairman Lopez clarified the area, now covered by the *non-compliant awning*, was previously open space. Per the presentation photos, he observed heaters hung on the wall and noted the required fire sprinkler system was omitted. This omission concerned him greatly.

Ms. Velázquez agreed and stated the area, covered by the *non-compliant awning*, should be considered an “addition.”

Chairman Berchelmann questioned, as an addition, would that have an impact on the Commission’s decision with regard to the guidelines.

Ms. Velázquez commented on the guidelines and noted, ideally, additions are located in the rear façade.

Commissioner Helm clarified the area, covered by the *non-compliant awning*, is public right-of-way.

Ms. Velázquez concurred and stated the Special Privilege allows the encroachment into the right-of-way.

Commissioner Helm asked Ms. Velázquez what the terms of the Special Privilege were and when the Special Privilege expired.

Ms. Velázquez replied the Special Privilege document was issued July 2000, will expire July 2015

Ms. Hamilton added most likely the Special Privilege includes an option to extend the terms for another 15 years; however, that extension will have to be approved by the City Council.

Chairman Berchelmann wondered how the *non-compliant awning* was brought to Ms. Velázquez’s attention.

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Ms. Velázquez responded a City staff member, who received a phone call regarding the property, brought this to her attention. Additionally, Ms. Velázquez noted, she has met with Fire Department staff to discuss their concerns.

Chairman Berchelmann questioned if the building owner or property manager had approved the enclosure with the *non-compliant awning*, prior to construction. He wondered if this individual was aware of the Downtown Historic District Design Guidelines. He was surprised, considering how this had slipped through so many hands, that staff was not aware this construction had occurred.

Ms. Velázquez responded she is aware of or observes violations daily, and that incidents (violations) like this are almost commonplace.

Regarding the engineer stamped drawing of the *non-compliant awning*, Vice-Chairman Lopez wondered if the engineer completed the drawing before construction, after, or at the time of inspection. Vice-Chairman Lopez explained the engineer, via his stamp, is assuring that the structure is sound.

Mr. Alejandro Orozco, leaser, explained he was not aware he had to have approval from the Commission prior to the construction. He stated he hired a company, ACS of El Paso, to construct the awning; furthermore, ACS of El Paso should have applied for the permit. The purpose of the awning is to protect customers from high winds that blow through the alley and to provide shade in the summer. Mr. Orozco received a phone call from the Fire Department requesting he relocate the FDLC; the FDLC has been relocated. To conclude, he acknowledged he must apply for a permit to legalize the awning.

Chairman Berchelmann asked Mr. Orozco if, prior to construction, he asked permission from the property owner or manager. He wondered if ACS of El Paso had told Mr. Orozco that they would apply for the permit.

Mr. Orozco replied he spoke with Mr. Jim Scherr, property owner, regarding the awning and that Mr. Scherr had approved; however, Mr. Scherr did not explain/inform Mr. Orozco the policies and procedures of the Downtown Historic District Design Guidelines. Mr. Orozco was not aware of the historical significance of the structure. Yes, ACS of El Paso told him they would take care of the permit.

Vice-Chairman Lopez asked Mr. Orozco when the awning was constructed.

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Mr. Orozco responded approximately two years ago.

Chairman Berchermann wondered when the original awnings were installed.

Mr. Orozco replied approximately eight years ago.

Chairman Berchermann asked Ms. Velázquez if the Historic Landmark Commission approved those original awnings.

Ms. Velázquez could not say; however, she believed the awnings were approved administratively, not through the HLC. She explained the building owner was aware of the structure’s historical significance because approximately three years ago he requested HLC approval for the installation of new windows.

Commissioner Helm clarified ACS of El Paso had not applied for the permit prior to construction.

Mr. Orozco agreed.

Vice-Chairman Lopez asked Mr. Orozco if there was an exit door for the patio area.

Mr. Orozco explained the exit, located to the right, was installed when the patio was built. Furthermore, the exit door is not locked when the restaurant/bar is open.

Commissioner Helm wondered what concerns the Fire Department had.

Ms. Velázquez noted the following:

1. Access to the water apparatus was attainable; and
2. The proximity of the heaters to the awning.

She added that Fire Department staff did not have an opportunity to determine whether or not the awning was fireproof.

Commissioner Helm stated ACS of El Paso should provide sample of the awning to the Fire Department.

Mr. Orozco noted the gas heaters were designed for the patio area as the heat blows down.

Commissioner Gomez asked Mr. Orozco if the patio area was also a dining area.

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Mr. Orozco replied not really, customers usually order appetizers. Moreover, customers complain the patio area is too hot in the summer and too cold in the winter. The maximum number of customers in the patio area is 20.

Chairman Berchelmann asked staff what Commissioners should be addressing.

Ms. Velázquez understood Commissioners are reviewing whether or not the design is appropriate. The Fire Department and Building issues are separate.

Chairman Berchelmann added even though the building's heaters were attached to the outside of the building, etc.

Ms. Velázquez responded, even without the *non-compliant awning*, those heaters would have to come before the Commission as well.

Chairman Berchelmann asked Ms. Velázquez if the patio is still considered as being *outside*.

Ms. Velázquez replied that is a very good question.

Commissioner Moses asked if the patio was protected by the Special Use permit approved by the City Council. Commissioners cannot comment on the patio if it is covered under that permit. He clarified, excluding the *non-compliant awning*, are the brickwork and glass covered under the permit, whatever it is called.

Ms. Hamilton questioned if Commissioner Moses was referring to the Special Privilege approved by the City Council. She explained that she had not reviewed the Special Privilege prior to the meeting today. The Special Privilege authorizes encroachment onto the right-of-way. The structure of the outdoor café, design-wise, should have been approved by the HLC. The area of encroachment into the sidewalk is what is approved under the Special Privilege. Regarding the design of the patio, the applicant would have had to apply for building permits. However, at this time, the concern of the Commission is whether or not the *non-compliant awning* meets the guidelines, does it harm the historic nature of the building, and does it cover the windows. Today's question is regarding the *non-compliant awning* not necessarily the structure of the patio café.

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Commissioner Moses did not see things that way. He saw this *non-compliant awning* covering a patio as opposed to a portico cover like the one they had in the past, before this mega-patio was put onto the sidewalk.

Ms. Velázquez noted that Municipal Code, Special Privilege – Right-of way, does have language for *exceptions* and she read the following into the record:

“The following activities, improvements, facilities or uses on public right-of-way shall not require a license or permit as herein provided:

Arcades, awnings, canopies and galleries that comply with subsection I.

Section 3. Location.

B. Awnings and canopies shall be placed within window bays and must not cover piers or other architectural details of the principal building

Ms. Velázquez stated that Section 3. Location B. defines awnings *as they should be in place*; however, the *non-compliant awning* goes outside the definition.

Ms. Hamilton noted the typical outdoor patio café that the city approves does not necessarily have a covering.

Commissioner Helm stated he previously applied for and received a permit for pipe-fitting design, of which he had to submit plans for.

Ms. Velázquez concurred.

Chairman Berchelmann explained the applicant obviously has an issue/need due to the wind coming through the alleyway, but from a design aspect, are there any viable alternatives the applicant could consider to allow his customers to have an enjoyable experience outside while at the same time trying to comply with the guidelines.

To the applicant, Vice-Chairman Lopez suggested raising the height of the glass walls to block the wind. Additionally, had the applicant presented this request to the HLC, it probably would not have been approved. Furthermore, since the applicant constructed the *non-compliant awning* without the HLC’s approval, it is harder to approve this request.

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Commissioner Helm clarified the heaters, speakers, TVs, etc. were added after the construction of the *non-compliant awning*.

Mr. Orozco responded yes, that is correct.

Commissioner Fernandez commented on the considerable amount of investment the applicant has expended for the *non-compliant awning* for the patrons. He felt that the landlord should have guided Mr. Orozco regarding the guidelines. Commissioner Fernandez commented on the rest of the building *not being up to par*.

Chairman Berchelmann responded should the Commissioners deny the request, the applicant can appeal the decision to the City Council, per the Code. Additionally, there are building concerns that the applicant must abide by per the Fire and Building Permits Departments.

Mr. Orozco asked Commissioners for recommendations/suggestions, as to what he could and could not do regarding the *non-compliant awning*, besides applying for the building permit.

Chairman Berchelmann reiterated it's a matter of the building, a designated landmark building. He wished the owner would have informed Mr. Orozco of the process prior to investing so much money and time into the *non-compliant awning*. Chairman Berchelmann asked if Commissioners had any further questions for the applicant or staff.

Chairman Berchelmann asked Ms. Velázquez how she would remedy the situation.

Ms. Velázquez recommended the following:

1. She would have asked Mr. Orozco if he had considered utilizing the interior space as an extension for the restaurant. Utilizing the interior space would not have to come before the Commission; it would have been approved administratively.
2. If Mr. Orozco decided not to utilize the interior space as an extension; therefore, the outdoor patio construction would be considered as an *addition* and she would recommend Mr. Orozco construct a *real roof* that would have worked architecturally. If you look at the building there is no other location to construct the extension. Mr. Orozco could have found other viable alternatives; it would take some work, but it could be done.

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Commissioner Moses asked if there was any way the HLC would have approved the design of the patio, as it stands, without the *non-compliant awning*.

Ms. Velázquez responded yes, in 2000.

Chairman Berchelmann reiterated that there were not any real viable alternatives, other than those expressed by Ms. Velázquez.

Commissioner Helm stated the concern was how is the *non-compliant awning* going to affect the historic fabric and integrity of the building where the *non-compliant awning* is attached but that is water under the bridge considering this was done after-the-fact. He was concerned that there would be damage to the brick, the exterior of the wall, etc.

Chairman Berchelmann explained that City Council would be the entity to recommend removal of the *non-compliant awning*.

Ms. Velázquez added Commissioners could always make that recommendation.

MOTION:

Motion made by Chairman Berchelmann , seconded by Commissioner Lucero AND CARRIED TO DENY THE CERTIFICATE OF APPROPRIATENESS FOR THE INSTALLATION OF THE CANOPY FOR THE PROPERTY AT 109 NORTH OREGON STREET.

NAYS: *Commissioners Fernandez and Moses*

After the vote, Chairman Berchelmann thanked Mr. Orozco for attending the meeting and explained that Mr. Orozco could appeal the Commission’s decision to the City Council

- Addresses of property HLC commissioners have requested that HLC staff review or investigate and provide a report to the HLC. If no addresses are submitted in advance and listed under this agenda item, commissioners may announce such addresses under this agenda item. Discussion on property announced at this meeting will take place during the next regularly scheduled meeting. May 5, 2014 deadline for HLC members to request for agenda items to be scheduled for the May 19, 2014 meeting. May 19, 2014 deadline for HLC members to request for agenda items to be scheduled for the June 2, 2014 meeting.

Economic & International Development – Historic Preservation Division
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Commissioner Gomez noted he had sent an email to Ms. Velázquez inquiring what the status was for the property located at 1001 Upson Drive.

UPDATE REGARDING THE PROPERTY LOCATED ON UPSON

Ms. Velázquez responded Commissioner Gomez was not the only one inquiring about this particular property. She explained she forwarded Commissioner Gomez' email to Code Enforcement and requested they look into it.

Additionally, Commissioner Gomez asked for the status on the property located at 111 Los Angeles. He commented on the ongoing construction.

UPDATE REGARDING THE PROPERTY LOCATED ON YANDELL

Ms. Velázquez replied she had also forwarded that email to Code Enforcement adding that the HLC had not approved the construction and that there were no permits for the construction.

HLC Staff Report

3. Update on Administrative Review Cases since the last HLC meeting for the properties listed on the attachment posted with this agenda.

Chairman Berchelmann asked commissioners if they had any comments and/or questions for staff. *There were none.*

MOTION:

Motion made by Chairman Berchelmann, seconded by Commissioner Moses AND UNANIMOUSLY CARRIED TO APPROVE THE HLC STAFF REPORT.

Other Business

4. Approval of Regular Meeting Minutes for April 7, 2014

Chairman Berchelmann asked commissioners if they had any additions, corrections, and/or revisions for staff.

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MOTION:

Motion made by Commissioner Lucero, seconded by Vice-Chairman Lopez AND UNANIMOUSLY CARRIED TO APPROVE THE REGULAR MEETING MINUTES FOR APRIL 7, 2014.

ABSTAIN: *Commissioner Brock*

MOTION:

Motion made by Chairman Berchelmann, seconded by Vice-Chairman Lopez AND UNANIMOUSLY CARRIED TO ADJOURN THE MEETING AT 4:40 P.M.

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