

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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**Case No. A-6760**

**APPEAL OF BARRY GUDLESKY et al.**

**OPINION OF THE BOARD**

(Hearing held October 26, 2022)  
(Effective Date of Opinion: December 2, 2022)

Case No. A-6760 is an administrative appeal filed June 23, 2022, by Barry Gudlesky, Steven Gudelsky, and Lisa Barry (the "Appellants"). The Appellants charged error on the part of Montgomery County's Historic Preservation Commission ("HPC") in the May 25, 2022, denial of a Historic Area Work Permit ("HAWP") for "the use of a wood composite such as Azek or Aeratis for the south and west porch floors of the Main House." The HPC denied the issuance of a HAWP filed by the Appellants for Parcel P161, Edgewood Subdivision, located at 16101 Oak Hill Road, Silver Spring, Maryland, 20905, in the RE-1 zone (the "Property").

Pursuant to section 24A-7(h) of the County Code, the Board held a public hearing on October 26, 2022. The Appellants appeared *pro se*. Associate County Attorney Walter E. Wilson represented Montgomery County.

Decision of the Board: Administrative appeal **DENIED**.

**FINDINGS OF FACT**

**The Board finds by a preponderance of the evidence that:**

1. The Appellants filed an application with the HPC for a HAWP, Permit Number 990754, on April 21, 2022. See Exhibit 6, p. 48. The HAWP was for the replacement of the porch floors on the exterior of the main house "with a product such as AZEK PVC Porch Flooring." See Exhibit 6, p. 50.

2. On May 18, 2022, the HPC denied the Appellants' "proposal to replace the existing wood porch flooring on both the south (original dwelling) and west (north addition) porches with Azek porch flooring." See Exhibit 4. The HPC Decision and Order denying the HAWP is dated May 25, 2022.

3. Rebecca Marie Ballo testified that she is a Historic Preservation Supervisor with the Historic Preservation Section of the County's Planning Department, and that she has held this position for four years. She testified that her job duties include the supervision of six professional historical planners and supporting the Planning Board, the HPC, and the County Council. Ms. Ballo testified that she supports the HPC by providing technical expertise and guidance, managing the HAWP process, managing staff reports presented to the HPC, managing the HPC tax credit program, and generally working County-wide on master plan historic preservation. She testified that she has a BA in history and a master's degree in urban and environmental planning, that she has worked for 20 years as a historic planner, that she worked as a preservation planner with HPC staff in Prince George's County in Maryland and Alexandria and Arlington counties in Virginia, that she has written articles about historic preservation and spoken at conferences, and concluding that she is trained in historic preservation.

Ms. Ballo testified that the HPC is composed of nine Commissioners who are recommended by the County Executive and confirmed by the County Council. She testified that under section 24A-4(b) of the County Code, the Commission membership must be represented by a minimum of one member qualified by special interest, knowledge, and training in the fields of: history, architecture, preservation, and urban design. Ms. Ballo testified that several of the current Commissioners are professionally qualified architects, and that the current Chair of the HPC retired after a 45-year career with the National Park Service, where he worked as the Chief Historian.

Ms. Ballo testified that the criteria for the issuance of a HAWP are detailed in Chapter 24A of the County Code, specifically, section 24A-8. She testified that whenever a property owner alters the exterior features of any historic site or any historic resource located within any historic district in the County, the property owner is required to obtain a HAWP from the HPC. See section 24A-6(a) of the County Code. Ms. Ballo testified that an alteration includes any physical alteration, including changing materials on any portion of a building.

Ms. Ballo testified that the review and approval process for a HAWP requires an applicant to submit an application to her office, obtain a permit number from the Department of Permitting Services ("DPS"), submit an intake form, and properly sign and date the application with the permit number. She testified that her office ensures that the application is complete with pictures, information about the alteration, a narrative of the work and, if needed, measured drawings and a site plan. Ms. Ballo testified that, once an application is complete, it is put on the schedule of the next docket of the HPC and legal notice of the application is

provided to the Washington Times and adjacent property owners. She testified that her employees prepare a Staff Report and take the report and application to the HPC.

Ms. Ballo testified that she is familiar with the Property from the initial intake of the application, which she reviewed along with the Staff Report, and that she had driven by the Property. She testified that she conducts site visits of all properties that apply for a HAWP, and that she observed the Property through her car's windshield, noting the Property was very visible from the road. Ms. Ballo testified that the Property was designated to the Master Plan for Historic Preservation in 1981. She testified that the HAWP application, submitted by Appellant Steven Gudelsky, proposed to replace porch floorboards with Azek on two porches. See Exhibit 6, p. 48-50. Ms. Ballo testified that, because the proposal requires the alteration of the material on a building designated historic, it required a HAWP. She testified that, if the Appellants replaced the wood with wood, the work would not require a HAWP, but because Azek is a plastic composite, replacing wood with Azek is considered an alteration under the County Code.

Ms. Ballo testified that Appellant Steven Gudelsky included current photos with his HAWP application showing the deteriorated porch floorboards and mold on the floorboards, as well as other pictures of the Property and a narrative. See Exhibit 6, p. 48-58. She testified that she personally reviewed the application along with Michael Kyne, the reviewer assigned to prepare the Staff Report. Ms. Ballo testified that she and Mr. Kyne work together as team but, ultimately, Mr. Kyne prepared the Staff Report and she reviewed and approved it. See Exhibit 6, p. 43-58. She testified that she reviewed all drafts of the report and also reviewed the PowerPoint presentation Mr. Kyne prepared before he presented it to the HPC at its May 18, 2022, meeting.

Ms. Ballo testified that alterations to a master plan historic site are reviewed pursuant to sections 24A-8(a) and (b) of the County Code. She testified that the Code of Montgomery County Regulations ("COMCOR") states that the HPC also looks to the Secretary of the Interior's Standards and Guidelines for Rehabilitation ("Standards") in its review of a HAWP application. See COMCOR 24A.04.01.01, 1.5. Ms. Ballo testified that the HPC is also guided by pertinent guidance in applicable master plans, sector plans, or functional master plans, and she explained that there was no specific or master plan guidance applicable to this case.

Ms. Ballo testified that, in preparing the recommendation in the Staff Report, she and Mr. Kyne looked at the HPC procedures as well as architectural history and practice. She testified that, pursuant to the National Park Service and HPC practice, replacing wooden features with a material such as Azek does not replicate wood and is inappropriate because it alters a character-defining feature of the Property.

Ms. Ballo explained that Edgewood II, where the Property is located, is one of the first master plan sites in the County, and that the historic house on the Property was built in 1858. She testified that porches were called out in designation of the historic master plan site. Ms. Ballo testified that the wood flooring on the porches has deteriorated and does need to be replaced, and that she considers what material would be an appropriate replacement. She testified that the Department of the Interior's Technical Preservations Services' *Preservation Brief 45: Preserving Historic Wood Porches ("Brief")* discusses historic porches, wooden features, and how to replace these features on historic porches. Ms. Ballo testified that applying this guidance, which is from the National Park Service, the HPC has never found Azek to be appropriate for use at a master plan historic site. She testified that staff, and the HPC, found that replacing the wood with Azek would substantially alter an exterior feature of the historic site, would not be a compatible material, and would not aid in the historic preservation of the feature (the porches). Ms. Ballo testified that Azek would be inappropriate for the ultimate protection of the resource, that is, the preservation of the architecture of the house.

Ms. Ballo testified that the use of Azek to replace wood on the two porches would not be consistent with Standards 2 and 9, as outlined in her office's Staff Report, and also would not meet Standard 6, a discussion of which was included in the presentation Mr. Kyne made to the HPC at its meeting. See Exhibit 6, p. 45. She testified that staff recommended that the HPC deny the HAWP pursuant to section 24A-8a of the County Code, and that the HPC concurred with staff and voted 5-0 to deny the HAWP. Ms. Ballo testified that the proposed use of Aeratis material rather than Azek was not part of what Appellant Steven Gudelsky submitted in the HAWP application, which only mentioned the use of Azek. See Exhibit 6, p. 50. She testified that the HPC decision to deny the HAWP was supportable under the law and consistent with her professional understanding of historic preservation.

Ms. Ballo testified that the ten, broad Standards encompass the full range of alterations that might take place on a historic site. She testified that, to help narrow down these standards, the National Park Service has created detailed design guidelines and briefs on topics to aid property owners and staff. Ms. Ballo testified that staff looked at the *Brief* which concerns porches and discusses what is appropriate in replacing a deteriorated historic porch component. She testified that the National Park Service does not recommend using substitute material for wood that does not convey the same appearance. Ms. Ballo testified that the *Brief* discusses different wood species that may be appropriate to use or consider before using replacement material. See Exhibit 6, p. 46. She testified that wood deteriorates in a short period of time, particularly the white pine species, which does not hold up as well as 100-year old pine. Ms. Ballo testified that the National Park Service has included in the *Brief* a detailed chart about wood species showing how well different species hold up. See Exhibit 6, p. 47. She testified that staff

recommend the Appellants use a different wood such as Douglas fir or cedar, treat the wood at all sides, and use a moisture barrier.

Ms. Ballo testified that the deterioration of historic wood porches is a common issue, which is why the National Park Service has guidance on their replacement. She testified that the appropriate replacement material in this case is wood, and the different species outlined above are options not yet exhausted by the Appellants. Ms. Ballo testified that the use of Azek as a wood porch replacement is not supported by the National Park Service, staff, or the HPC.

Ms. Ballo testified that Standard 2 states “[t]he historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.” See Exhibit 6, p. 39. She testified that the wood tongue and groove flooring is considered a character-defining feature of these historic porches. Ms. Ballo testified that there are only 400 individual historic sites in the County, that the Property was found eligible for the National Register of Historic Places in 1996, and that the Property must maintain the highest architectural quality. She testified that substituting Azek for wood does not preserve the historic character of the porches and does not snap together the same way that wood does, and that allowing this replacement would remove a character-defining component of the porches. Ms. Ballo testified that Azek is not the same as wood, and that the purpose of historic preservation is to make sure the materials used are the same.

Ms. Ballo testified that Standard 9 states, “[n]ew additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.” She testified that this standard looks to whether the exterior alteration destroys the historic material. Ms. Ballo testified that this proposal does destroy the historic material by removing the wood porch flooring to replace it with a plastic component.

Ms. Ballo testified that the Appellants had cited to Standards 3 and 6 as support for their argument that the HAWP should be granted. She testified that Standard 3, which states “[e]ach property shall be recognized as a physical record of time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken,” is not relevant to this case. Ms. Ballo testified that this standard would apply to adding inappropriate features to a house, such as putting a portico on a Queen Ann style house.

Ms. Ballo testified that Standard 6 states “[d]eteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials.

Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.” She testified that this standard does not usually apply because items are more often repaired than replaced. As an example of when this standard would apply, Ms. Ballo testified that, for a standing seam metal roof that failed and needed to be replaced, construction methods now differ, so the seams would be the same, but pieces of metal used to construct the roof were smaller in the 1900s and can’t be replicated due to how the sheets of metal are currently rolled out. She testified that repair and replacement would meet Standard 6, and that while the HPC discussed this standard in this case, she did not feel it applied and the HPC relied on Standards 2 and 9.

Ms. Ballo testified that the HPC has never found that Azek, which is a solid core mailable plastic, could be used as a replacement for a wood porch at a master plan historic site. She testified that the National Park Service also asks historic homeowners to look at alternative wood species and to do due diligence to find wood to replace historic porches. She reiterated her opinion that the HPC decision to deny this HAWP is supportable under law.

In response to questions from the Board, Ms. Ballo testified that eight of the current nine HPC Commissioners have a background in historic preservation and/or are practicing historic architects, and that the Chair was a historian with the National Park Service. She testified that one Commissioner is a Master Carpenter who makes his living working on historic buildings. Ms. Ballo testified that she did not know why the material Aeratis was mentioned in this appeal’s charging letter because the use of Aeratis was not part of the HAWP application or the HPC decision.

In response to further questions from the Board, Ms. Ballo testified that if another wood species with a moisture barrier was attempted as a replacement and failed, the HPC has considered Azek appropriate in certain situations. She testified that the HPC would consider how Azek would work and locations where it would work. Ms. Ballo testified that cementitious fiber board such as Hardie Plank, Hardie Trim, and Hardie Board are an appropriate replacement for wood on new construction, for example, when adding an addition. She testified that the HPC has allowed the use of Azek on new construction in areas with very specific moisture problems, located in areas such as for trim pieces or basement levels. Ms. Ballo testified that she and her staff attend trade conferences to see what materials are available, discuss materials with other colleagues, and go back to see what the material looks like years later. She testified that cementitious material looks good years later, and that while Azek may be found to be compatible to wood in the future, it is not compatible now.

In response to further questions from the Board, Ms. Ballo testified that if the Appellants put in Douglas fir or cedar wood, primed and painted all four sides of the wood, and applied a moisture barrier, and the wood still did not last more than four years, that could be grounds to consider another material other than

wood in this case, including perhaps Azek. She testified that the County Council has recognized that the maintenance of historic properties is expensive and that historic homeowners must use certain materials and replace them often. Ms. Ballo testified that, for this reason, since 1985 the Council has developed a tax credit program for historic homeowners wherein the homeowner can obtain a 25% credit to help offset maintenance of their historic property. She testified that to obtain the credit the homeowner must spend a minimum of \$1,000 on a qualified project, then can receive a 25% credit on their property tax and carry the credit forward 5 years.

In response to further questions from the Board, Ms. Ballo testified that under Standard 2, both porches are character-defining features of the Property, based on existing documentation on the house and her professional conclusion as a historical preservationist, and as outlined in the Staff Report. See Exhibit 6, p. 45-46. As an example of a feature that would not be character-defining, she testified that soffit and bracket and eave features on Arts and Craft style houses would not be character-defining, noting that style of house uses eaves as a final expression. Ms. Ballo testified that other style houses might look at materials on the roof itself as character-defining, noting that what is considered character-defining depends on the property.

In response to further questions from the Board, Ms. Ballo testified that for every HAWP application that comes in, the applicant interacts with her staff, who will evaluate the application; and, if staff sees issues, they are instructed to reach out to the applicant to discuss these issues along with what staff plans to present to the HPC, and to give the applicant options. She testified that her staff are trained professionals in architectural history, and that they make recommendations to applicants. Ms. Ballo testified that while her office does not currently have a list of wood that it recommends using, she would work on getting such a document together, and explained that the list of wood she referenced in this case came from guidance from the National Park Service. See Exhibit 6, p. 47.

In response to further questions from the Board, Ms. Ballo testified that the Appellants have applied for the tax credit in the past. She testified that any property in the County's local list that is designated as a master plan historic property, or that is in a historic district, is automatically eligible for the credit. Ms. Ballo testified that there is a form on the Historic Preservation Section's website that a homeowner can fill out in the calendar year following the work, wherein the homeowner would put in the work done and certify expenses with invoices and canceled checks. She testified that the work must be completed by a contractor certified to do the work in Maryland and must meet the standards of Chapter 24A of the County Code; for example, if the work requires a HAWP and the homeowner did not get one, they are not eligible for the credit. Ms. Ballo testified that Mr. Kyne reviews these applications to see if they comply with these requirements, will get in touch with homeowners if something is missing, and takes the applications to the HPC for approval. She testified that her office holds a workshop every year to educate homeowners about this tax credit, and that during the Covid-19 pandemic

they held a virtual workshop which can still be found on the Historic Preservation Section's website. Ms. Ballo testified that last year, 158 homeowners applied for this tax credit and her office processed between 300-350 work permits. She testified that when a homeowner comes to the HPC for a HAWP, they are provided with information about whether they are eligible for the tax credit. Ms. Ballo testified that if a homeowner replaces wood with wood, they are eligible for the tax credit.

In response to further questions from the Board, Ms. Ballo testified that, for a character-defining feature such as these porches, the HPC has never approved Azek as a replacement material. She testified that the HPC has approved its use for new construction, but not for a rehabilitation project. Ms. Ballo testified that for new construction, the materials standards are not as rigorous as the standards for the protection of historic buildings. She testified that for new construction or for additions to a house, it is best to match materials but not an absolute requirement because the requirement for new construction is whether it is generally compatible.

In response to further questions from the Board, Ms. Ballo testified that the HPC did approve the use of Aeratis on a deck addition in Takoma Park. She testified that, in this case, she does not have an opinion on the use of Aeratis because she has not been able to handle the material or weigh it against wood, and she has not done any of the research on the use of Aeratis in this case.

In response to questions from Appellant Lisa Barry, Ms. Ballo testified that in her professional opinion, the use of certain types of wood such as redwood and cedar can perform better than pine and can last for decades. She testified that she has seen the use of these types of wood last for decades on projects she has worked on. Ms. Ballo testified that the term "Azek" is a specific product sold, not a catch-all. She testified that the HPC was asked to consider the use of the brand name Azek, not on the use of wood versus PVC in general.

In response to further questions from Appellant Barry, Ms. Ballo testified that the cases provided by the Appellants as evidence that the HPC has allowed the use of PVC as a replacement material at historic properties differ from this case. She testified that Chevy Chase Village has its own design guidelines which provide broad latitude as to what materials are considered compatible at the streetscape. See Exhibit 1, ex. 1. She testified that this is true of all historic districts that have their own design guidelines, including Takoma Park. See Exhibit 1, ex. 2. Ms. Ballo testified that additional cases provided by the Appellants are cases where the HPC approved the use of Aeratis, while in this case the HPC considered the use of Azek. See Exhibit 1, ex. 3 and 4. She testified that in the fourth case, the use was appropriate for the standard for new construction on the rear of the house. See Exhibit 1, ex. 4.

In response to questions from Mr. Wilson on rebuttal, Ms. Ballo testified that Section 24A-8(d) of the County Code, which requires leniency on the part of



the HPC, does not apply to this case because that section applies to "work on an historic resource located within an historic district." See Exhibit 6, p. 13. She testified that a historic district, such as the Capital View Park, is defined as "[a] group of historic resources which are significant as a cohesive unit and contribute to the historical, architectural, archeological or cultural values within the Maryland-Washington Regional District..." See Section 24A-2 of the County Code. Ms. Ballo testified that in this case the Property is an individually listed Master Plan Site, not a historic resource within a historic district.

In response to further questions on rebuttal, Ms. Ballo testified that in over 42 years of administering the law, the HPC has consistently considered a change in material an alteration requiring a HAWP. She testified that in this case the HPC found the use of a specific PVC material (Azek) to be an incompatible material alteration to the historic site under Section 24A-8(b)(2) of the County Code. Ms. Ballo testified that COMCOR 24A.04.01.01, 1.6(f), cited by the Appellants, is not applicable to this case because that law outlines permits that can be delegated to staff for approval instead of the HPC, and this case required a HAWP. See Exhibit 6, p. 30.

In response to further questions on rebuttal, Ms. Ballo testified that the HPC criteria for approval are found in COMCOR 24A.04.01.01, 1.5(a). See Exhibit 6, p. 27. She testified that the HPC consideration starts with Section 24A-8 of the County Code, then the Standards, then any applicable guidance for districts that have guidance that has been approved by the County Council. Ms. Ballo testified that the only standards applicable to this case are Chapter 24A of the County Code and the Standards.

4. Appellant Barry testified that the HAWP only had Appellant Steven Gudelsky as an applicant because he was the one that sent in the application. She testified that the application stated that they wanted to replace the porch floors with a product such as Azek, but that they have now focused on Aeratis because they found out that Aeratis is a paintable product that looks more like painted wood. Appellant Barry testified that is why, when the Appellants filed this appeal, they included Aeratis as a possible wood substitute. She testified she had emailed the HPC and said she was looking to use a product to replace porch floors, she was told she needed a HAWP and that the HPC allowed Hardie Plank, so Appellant Steven Gudelsky submitted a HAWP application. Appellant Barry testified that when she went to the HAWP hearing, she felt like the decision to deny their HAWP had already been made. She testified that the Appellants were given seven minutes to present their case, and she felt she had no other options presented but to use wood. Appellant Barry testified that no one suggested that if they couldn't use Azek they could try Aeratis.

Appellant Barry referred the Board to the PowerPoint that she submitted as evidence for the Appellants' case, and read through portions of the PowerPoint. See Exhibit 3. Appellant Barry testified about the work she has done on the

Property, and testified that the Appellants have exceeded their budget with work done on the Property. She testified that they received permission from the HPC to demolish the Blacksmith Shop on the Property. See Exhibit 3, p. 11-13. Appellant Barry testified that instead of demolishing the Blacksmith Shop, they had all the trees and surrounding mess moved away and had an Amish family that restores outbuildings rebuild it. See Exhibit 3, p. 13. She testified that pursuant to Section 24A-9 of the County Code, which governs demolition by neglect, the Appellants have done a great deal of work to prevent the demolition of the Blacksmith Shop. Appellant Barry testified that the Tenant House on the Property would have been eligible for demolition, as well. See Exhibit 3, p. 15-17. She showed the Board pictures of these two buildings after they had been restored. See Exhibit 3, p. 25-26.

Appellant Barry testified that the costs of all the repairs to the houses and outbuildings far exceeded the Appellants' budget, and that they do not want to restore the wood porch floors with the same wood product. She testified that even a denser wood costs twice as much as other options and does not hold paint as well. Appellant Barry testified that, even with the tax credit, the Appellants don't want to spend the money for replacement wood floors that will then rot out. She testified that she did not think the Standards applied to the Property, but that even if they do, the HPC did not mention Standard 3. See Exhibit 6, p. 39. Appellant Barry testified that the Appellants are not adding anything that would change the architectural design under this standard. She testified that the proposed replacement in this case will match the old and that, therefore, the proposal also meets Standard 6.

Appellant Barry testified that, following the Standards guidance for replacing an entire character-defining feature with new material, the use of Aeratis would maintain the essential form and detail of wood. She testified that because it is not economically feasible to use wood that will again rot out in a short time period, the use of a compatible substitute material is the Appellants' best solution. See Exhibit 3, p. 28. Appellant Barry testified that if using the same kind of material (wood) is not technically or economically feasible, then a compatible substitute material may be considered. She testified that Aeratis as a substitute will far outlast wood, making it economically feasible as a choice for a compatible substitute. Appellant Barry testified that the Appellants do not propose to remove the feature or to replace it with a new feature that does not convey the same visual appearance. See Exhibit 3, p. 29.

Appellant Barry testified that using Aeratis as an economical substitute for the porch floors will result in a porch with the form and detailing still evident. See Exhibit 3, p. 30. She testified that the goal of the Historic Preservation Tax Incentives program is the rehabilitation and successful reuse of historic properties. See Exhibit 3, p. 31. Appellant Barry testified that a project meets the Standards when the overall effect of the work is consistent with the property's historic character. See Exhibit 3, p. 31.

Appellant Barry referred the Board to further language from guidance for the Standards, and testified that the amount of change to features and spaces that can be accommodated within the Standards will vary according to the roles they play in establishing the character of the property. See Exhibit 3, p. 32. Reading page 32 of the Appellants' PowerPoint, she testified that, similarly, features and spaces that have been so substantially changed outside the period of significance or are so severely deteriorated as to no longer convey historic character can be more readily altered than those aspects of a property that retain a high degree of integrity. See Exhibit 3, p. 32. Appellant Barry testified that historic character is not readily lost through deterioration, and that most deteriorated historic features must be replaced to match when they are beyond repair. See Exhibit 3, p. 32.

Appellant Barry testified that even if the Appellants try a different kind of wood, they do not think it will have as good an outcome as Aeratis. She referred the Board to information about Aeratis in the Appellants' PowerPoint presentation, and noted that Aeratis was used at the Oak Alley Plantation, in New Orleans, Louisiana and the Kenmare House in Bowling Green, Virginia. See Exhibit 3, p. 33-37. Appellant Barry testified that the porch is rotting from the top, and that the porch roof does not keep rain from getting onto the porch. She testified that the porch edges get wet, and that is where they rot the most. Appellant Barry testified that when they bought the Property the porch floor was not compliant with historic requirements and therefore they did not have to correct it. She testified that they have now replaced the floor with a compliant tongue and groove floor.

Appellant Barry testified that the HPC has approved the use of substitute material in HAWP applications previously. See Exhibit 3, p. 38. She testified that the use of substitute material in this case would not be visible from the public right-of-way, and that no one would know that the material was not wood. Appellant Barry testified that, even under close examination, it is hard to differentiate between wood and some substitute materials. She testified that the Property is a private residence and that there are no tours to show this historic property. Appellant Barry testified that, when Aeratis is painted, it has the same appearance as wood.

Appellant Barry testified that in case number 35/13-1700, the HPC did not question the installation of a 48" PVC composite fence along the front and side of the property. See Exhibit 3, ex. 1. She testified that the porches on the Property are 88 feet to the west from Oak Hill Road and 149 feet from the south. Appellant Barry testified that the Property is along a rural County Road with no sidewalk. She testified that in other cases the HPC has approved a HAWP for Azek trim, Aeratis composite treads and risers, and Azek for a screened-in porch. See Exhibit 3, ex. 2-4.

Appellant Barry testified that the HPC should follow the same guidelines for all historic properties. She testified that section 24A-8(d) of the County Code

states "[i]n the case of an application for work on an historic resource located within an historic district, the commission shall be lenient in its judgment of plans for structures of little historical or design significance..." and argued that the HPC should be lenient in this case. Appellant Barry testified that she does not understand how the HPC could approve a PVC fence on a road but not approve this HAWP application. See Exhibit 3, p. 39. She testified that both the property in that case and her property are designated historic in the master plan for historic preservation. Appellant Barry testified that she does not understand how the HPC can decide that because the Property is a historic site it should be under more restrictions.

Appellant Barry testified that she has provided photographs of the deterioration of the south porch, which show that the wood is bowing and coming apart. See Exhibit 3, p. 42. She testified that the edges are also deteriorating. See Exhibit 3, p. 43-44. Appellant Barry testified that the west porch has an area that gets wet every time it rains. See Exhibit 3, p. 45-48. She testified that these photographs show how the wood is rotting away.

Appellant Barry introduced pages 50-70 to her PowerPoint presentation, which she had sent as an update to the Board, and showed pictures from these pages to the Board, including pictures of the porches after rain and of painted wood. See Exhibit 9, p. 50-70. She also showed the Board a sample of wood and a sample of Aeratis. Appellant Barry testified that she has signatures from surrounding neighbors and that they all said that they do not object to the use of a substitute for wood on the porches. See Exhibit 8.

Appellant Barry looked to Section 24A-8 of the County Code and read the requirements under (a) wherein the HPC would deny a HAWP and (b) wherein the HPC would issue a HAWP. She testified that, pursuant to 24A-8(b)(1), the Appellants are not altering the exterior features of the historic site by putting down Aeratis instead of wood. Appellant Barry testified that altering a historic feature would be, for example, taking down a wood railing and putting up a metal railing, or taking a chimney off a house and not replacing it. She testified that other portions of the County Code say that a substitute material is allowed. Appellant Barry testified that this proposal also meets the requirements of 24A-8(b)(2) through (5) and therefore this HAWP should be granted. She testified that Section 24A-8(c) states that "[i]t is not the intent of this chapter to limit new construction, alteration, or repairs to any 1 period or architectural style."

Appellant Barry testified that she did not think a moisture barrier would help, even if the Appellants use another type of wood. She testified that the main goal of this appeal was to avoid using wood to replace the floor of the porches. Appellant Barry testified that, even with a 25% credit, using wood would still be very expensive. Looking to COMCOR, Appellant Barry noted that COMCOR 24A.04.01.01, 1.6(d) authorizes the repair or replacement of missing or deteriorated architectural details such as porch decking with new materials, and

testified that the Appellants have given enough photographic evidence of what they want to do and why they want to use something other than wood. She testified that the product they propose to use matches wood in design characteristics. Appellant Barry testified that people like to use wood so the patina of the wood shows, but that this factor would not apply if the Appellants paint the wood.

In response to questions from the Board, Appellant Barry testified that the HPC and/or staff did not give the Appellants an idea of how long other types of wood would last. She testified that the HPC and/or staff also did not explain to the Appellants that the HPC wants them to exhaust using wood before going to a non-wood option. Appellant Barry testified that the Appellants have been busy working on other parts of the house, which was gutted, and that they have been working to restore the inside.

In response to questions from the County, Appellant Barry testified that their HAWP application states that the Appellants want to replace the wood floors with a product like Azek. She testified that the Appellants took several samples to the HPC meeting, and conceded that the application does not mention Aeratis.

5. Appellant Steven Gudlesky showed the Board pictures of the front porch of the house, and testified that the floorboards had spaces in between them when the Appellants bought the Property. He testified that the exterior porch was replaced in 2007 or 2008, and then replaced again around 2014 or 2015. Appellant Steven Gudlesky testified that the porch has needed to be replaced for a few years, but that the Appellants have not done so because they have had other construction at the Property. He testified that he does not know how much the construction has cost.

In response to a question from the County, Appellant Steven Gudlesky testified that the Appellants' HAWP application says they want to use a product such as Azek. He testified that the HPC only came back with requiring the use of wood.

6. Appellant Barry Gudlesky testified that the HPC and/or staff did not provide the Appellants with different type of wood options. He testified that the Appellants have done everything that was required of them. Appellant Barry Gudlesky testified that Aeratis has the same appearance as wood.

## **CONCLUSIONS OF LAW**

1. Section 2-112(c) of the Montgomery County Code provides the Board of Appeals with appellate jurisdiction over appeals taken under specified sections and chapters of the Montgomery County Code, including section 24A-7.

2. Section 2A-2(d) of the Montgomery County Code provides that the provisions in Chapter 2A govern appeals and petitions charging error in the grant or denial of any permit or license or from any order of any department or agency of the County government, exclusive of variances and special exceptions, appealable to the County Board of Appeals, as set forth in Section 2-112, Article V, Chapter 2, as amended, or the Montgomery County Zoning Ordinance or any other law, ordinance or regulation providing for an appeal to said board from an adverse governmental action.

3. The Annotated Code of Maryland, Local Government Article, section 10-305(a), provides "[a] county may enact local laws to provide for:

- (1) the establishment of a county board of appeals, whose members shall be appointed by the county legislative body;
- (2) the number, qualifications, terms, and compensation of the members of the county board of appeals;
- (3) the adoption by the county board of appeals of rules of practice that govern its proceedings; and
- (4) a decision by the county board of appeals on petition of any interested person, after notice and opportunity for hearing, on the basis of a record before the board."

4. The Annotated Code of Maryland, Land Use Article, section 8-308, provides that "[a]ny person aggrieved by a decision of a commission may appeal the decision in the manner provided for an appeal from the decision of the planning commission of the local jurisdiction."

5. Section 24A-7 of the County Code, "Historic area work permits-Application procedures; appeals," reads as follows:

**Sec. 24A-7. Historic area work permits-Application procedures; appeals.**

(a) Applications. An applicant for an historic area work permit must file an application with the Director. The application must contain all information the Commission requires to evaluate the application under this Chapter.

(b) Referral of application. Within 3 days after the application is complete, the Director must forward the application to the Commission for review.

(c) Public meeting. When the Commission receives the application, the Commission must schedule a public meeting to consider the application.

(d) Notice. The Commission must notify the Director and any citizen or organization that the Commission reasonably determines has an interest in the application of the time and place of the public meeting.

(e) Conduct of Commission meeting. The public meeting on the application must be informal and formal rules of evidence do not apply. The Commission must encourage interested parties to comment and must keep minutes of the proceedings on the application.

(f) Action by the Commission.

(1) The Commission must make a public decision on the application under paragraph (2) not later than 45 days after the applicant files the application or 15 days after the Commission closes the record on the application, whichever is earlier.

(2) The Commission must instruct the Director to issue or deny the permit. The Commission may require the Director to issue the permit with reasonable conditions necessary to assure that work under the permit does not harm the historical, architectural, archeological or cultural value of the historic resource.

(3) If the Commission instructs the Director to deny the permit, the Commission must notify the applicant in writing why the Commission denied the application.

(4) The Commission must instruct the Director to issue the permit if the Commission finds that:

(A) denial of the permit would prevent the reasonable use of the property or impose undue hardship on the owner; and

(B) within 120 days after the finding in subparagraph (A), no person seeking preservation has submitted an economically feasible plan for preserving the structure.

(5) If the Commission does not act on an application within the time periods provided in this subsection, the application is approved, unless the applicant agrees to extend the deadline for Commission action.

(g) Miscellaneous provisions.

(1) The applicant for a permit has the burden of production and persuasion on all issues the Commission determines. If another historic preservation organization holds a deed of easement for the property in the application, the applicant must submit proof to the Commission that the organization conducted an exterior architectural review and approved the action for which the applicant is seeking a permit.

(2) (A) The Commission may, by regulations issued under method (2), delegate authority to a County employee qualified in historic preservation and assigned to staff the Commission to review and approve an application for work that commonly has no more than an insignificant effect on an historic resource.

(B) The regulations:

(i) must describe the types of work that staff can review and approve, and require the Commission to review any application that is not clearly subject to staff approval; and

(ii) may waive the public meeting and notice requirements of subsections (c) and (d) for applications clearly subject to staff approval.

(C) If the staff denies or does not act on an application within 5 days after the Commission received the application from the Director, the Commission must review the application de novo.

(D) Staff must report monthly to the Commission and each appropriate Local Advisory Panel about any application reviewed by the staff in the

previous month, including the disposition of the application.

(3) A permit may impose conditions that require waiver of a provision of the building code if the waiver is allowed under the "historic structures" provision of the building code adopted under Section 8-14 and the code inspector determines that waiver is appropriate for the specific work covered by the permit.

(4) The Director must enforce this Chapter.

(h) Appeal.

(1) Within 30 days after the Commission makes a public decision on an application, an aggrieved party may appeal the Commission's decision to the Board of Appeals, which must review the decision de novo. The Board of Appeals may affirm, modify, or reverse any order or decision of the Commission.

(2) A party may appeal a decision of the Board of Appeals under Section 2-114.

6. Section 24A-8 of the County Code, "Same-Criteria for issuance," reads as follows:

**Sec. 24A-8. Same-Criteria for issuance.**

(a) The commission shall instruct the director to deny a permit if it finds, based on the evidence and information presented to or before the commission that the alteration for which the permit is sought would be inappropriate, inconsistent with or detrimental to the preservation, enhancement or ultimate protection of the historic site or historic resource within an historic district, and to the purposes of this chapter.

(b) The commission shall instruct the director to issue a permit, or issue a permit subject to such conditions as are found to be necessary to insure conformity with the purposes and requirements of this chapter, if it finds that:

(1) The proposal will not substantially alter the exterior features of an historic site or historic resource within an historic district; or

(2) The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site or the historic district in which an historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter; or

(3) The proposal would enhance or aid in the protection, preservation and public or private utilization of the historic site or historic resource located within an historic district in a manner compatible with the historical, archeological, architectural or cultural value of the historic site or historic district in which an historic resource is located; or

(4) The proposal is necessary in order that unsafe conditions or health hazards be remedied; or

(5) The proposal is necessary in order that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship; or

(6) In balancing the interests of the public in preserving the historic site or historic resource located within an historic district, with the interests of the public



from the use and benefit of the alternative proposal, the general public welfare is better served by granting the permit.

(c) It is not the intent of this chapter to limit new construction, alteration or repairs to any 1 period or architectural style.

(d) In the case of an application for work on an historic resource located within an historic district, the commission shall be lenient in its judgment of plans for structures of little historical or design significance or for plans involving new construction, unless such plans would seriously impair the historic or architectural value of surrounding historic resources or would impair the character of the historic district.

7. The Secretary of the Interior's Standards for Rehabilitation, 36 C.F.R. 67, Standards 2 and 9, read as follows:

**Standard 2:** "The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided."

**Standard 9:** "New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment."

8. COMCOR 24A.04.01.01, 1.5, Criteria for Approval, states:

(a) The Commission shall be guided in their review of Historic Area Work Permit applications by:

(1) The criteria in Section 24A-8.

(2) The Secretary of the Interior's Standards and Guidelines for Rehabilitation.

(3) Pertinent guidance in applicable master plans, sector plans, or functional master plans, including categorization of properties in historic districts by level of significance - if applicable. Such categories will be defined and explained clearly in the applicable plans.

(4) Pertinent guidance in historic site or historic district-specific studies. This includes, but is not limited to, the 1992 Long Range Preservation Plans for Kensington, Clarksburg, Hyattstown, and Boyds.

(b) Where guidance in an applicable master plan, sector plan, or functional master plan is inconsistent with the Secretary of the Interior's Standards and Guidelines for Rehabilitation, the master plan guidance shall take precedence.

9. After considering the testimony and evidence of record, Chair John H. Pentecost moved to grant the appeal. That motion was seconded by Member Roberto Pinero, but failed on a 2-2 vote, with Vice-Chair Richard H. Melnick and Member Caryn Hines in opposition. In support of their denial of the appeal, Vice-Chair Richard H. Melnick and Member Caryn Hines found that, based on the Staff

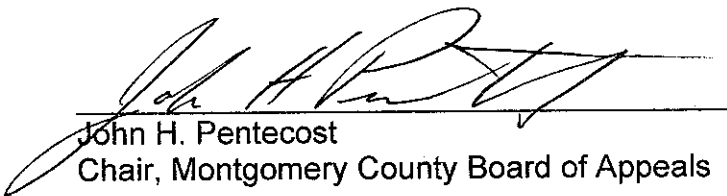
Report and the testimony, particularly that of Ms. Ballo, that the HAWP was properly denied. The Board finds that the HPC is composed of members with specializations in historic preservation and has experience in applying these laws, and that HPC voted 5-0 to deny this HAWP. The Board further finds that the HPC considered only the use of Azek, not the use of Aeratis or some other material, and that the HPC properly denied the Appellants' request to substitute Azek for wood on the south (original dwelling) and west (north addition) porches. In support of this finding, the Board finds that the Property is an individually listed historic master plan site and that the porches on the historic site are both significant and character-defining features of the Property both in design and in the material that the Appellants seek to replace. The Board further finds that the porches are currently made of traditional material, wood, which is appropriate for the character of the historic house, and that the HPC has never permitted the use of Azek to replace traditional materials in the front of an existing, individually significant historic building, such as the historic house on the Property.

The Board finds that other types of wood are available to replace the wood on the porches, such as Douglas fir or cedar, and notes that the National Park Service also does not recommend replacing wood with Azek on a porch, finding that Azek does not accurately reflect the look of wood. The Board concludes the HAWP was properly denied because it failed to meet Standard 2, which requires that the historic character of a property be retained and preserved, and that alteration of historic materials be avoided. The HAWP also failed to meet Standard 9, which requires that exterior alterations not destroy historic materials that characterize a property. Finally, the Board finds that the proposal fails to satisfy the requirements of Section 24A-8(b)(1) through (3) of the County Code. Specifically, the Board finds that the Appellants' proposal would remove character-defining materials and substantially alter exterior character-defining features of the historic resource on the Property. The Board finds that the proposal would substantially alter the exterior features of the porch ((b)(1)); is not compatible in character or nature of the historic site ((b)(2)); and would not aid in the protection and preservation of the historic resource ((b)(3)). Thus, the Board finds that the use of Azek to replace wood on the porches would be inappropriate, inconsistent with, and detrimental to the preservation, enhancement, and ultimate protection of the historic resource and is incompatible in character with the historic resource, as well as the purposes of Chapter 24A of the County Code.

9. The Appellants' appeal in Case A-6760 is **DENIED**.

On a motion by Chair John H. Pentecost and seconded by Member Roberto Pinero to grant the administrative appeal, and with Vice-Chair Richard H. Melnick and Member Caryn Hines in opposition, the Board voted 2 to 2 to statutorily deny the administrative appeal and adopt the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above-entitled petition.

  
John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 2nd day of December, 2022.

  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 2A-10(f) of the County Code).

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure (see Section 2-114 of the County Code).