

## **Which siding are you on? Through the historic looking glass**

Advocates for historic districts often claim that historic status does not materially increase the costs and hassles of homeownership. They also tend to support the Historic Preservation Office (HPO) and the Historic Preservation Review Board (HPRB) review process as a way of ensuring community input into their neighbors' home renovations or additions.

Well, you might want to check out what happened to a couple who own a historic house on Capitol Hill. HPRB's actions nearly turned their dream house into a nightmare – requiring them to spend six times as much as necessary to replace non-historic siding. And in the process, HPRB conveyed the message to the couple's supportive community, their ANC, their near neighbors, and even the Capitol Hill Restoration Society, that it does not really care what that community thinks.

With some legal help from a family lawyer friend, the couple got the HPRB's decision overturned on appeal. But not everyone is lucky enough to have free legal help – or to draw the inside straight of winning on appeal. And this couple's story reveals some of the larger challenges with the historic preservation process in DC.

### **HPRB**

DC's Historic Preservation Review Board (HPRB) is a nine-person body (which currently only has seven members) appointed by the Mayor to make decisions on whether to designate individual buildings as historic landmarks or areas/neighborhoods as historic districts. Composed of architects, historians, archeologists and regular citizens, the Board is also charged with ensuring that changes to the exteriors of historic buildings, whether landmarks or "contributing" buildings in historic districts, as well as new construction in historic districts, are "compatible" with the "historic character" of their neighborhood. The Board has crafted historic district design guidelines which cover almost anything owners of contributing buildings would do to the outsides of their houses.

In practice, basically any homeowner project that requires a building permit must first be approved by the HPRB or HPO staff and some projects which

don't require permits or which can be done by online permitting will require an in-person visit by you or your contractor to HPO. You can find more on this site in "Historic District – Get Ready For Hassles and Expenses".

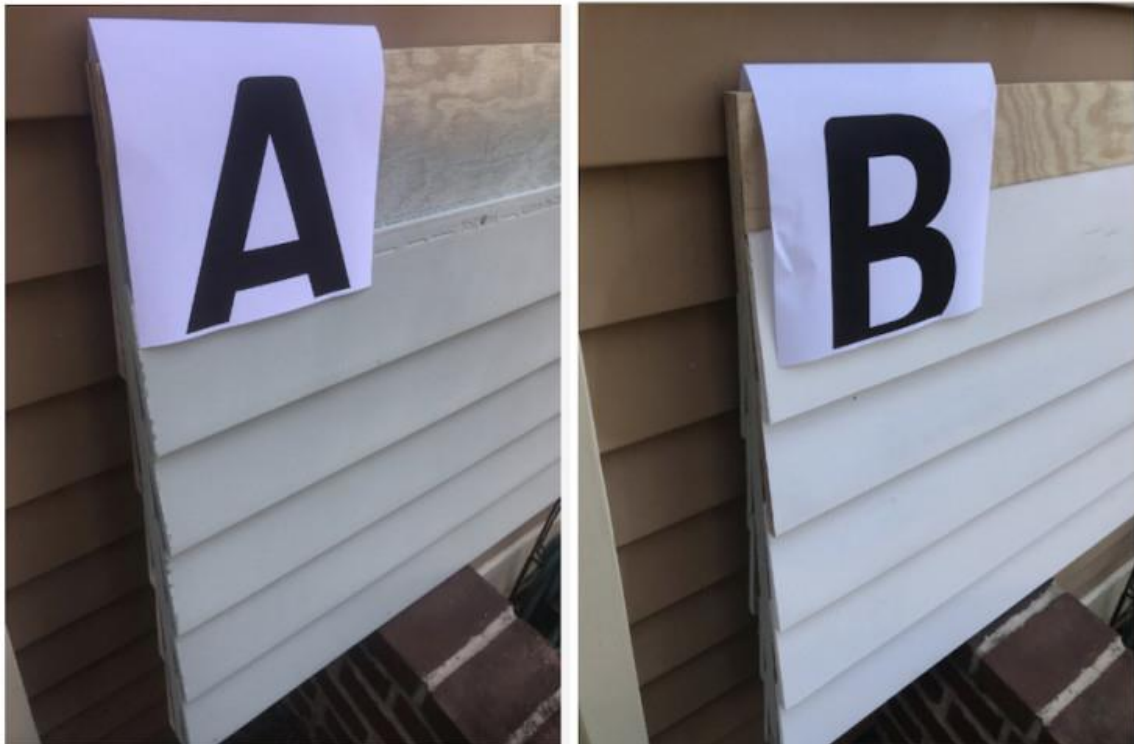


Home of Matt Handverger and Sarah Struble.

## So What Happened?

In February 2020, Matt Handverger and Sarah Struble purchased a frame duplex in the Capitol Hill Historic District on 4th St SE. The house had been the final home of Ms. Struble's parents, who previously sold it in 2004. It turned out, however, that the house had some issues. There had been a fire back in 1986 before Ms. Struble's parents owned it, and the prior owner had gutted the house and replaced the outside siding on the front and sides with clearly non-historic aluminum siding.

The couple also noticed rot around the windows and dings, holes, gaps and peeling paint on the aluminum siding. They decided to replace both the window trim and siding at the same time and consulted with a respected siding contractor. The contractor peeked under the aluminum to ascertain the original siding but found nothing but plywood from the 1986 rebuild. So he advised them that the best solution was a fiber-cement siding called Hardie board.



The Hardie board is image A above, painted gray, and the wood is image B, painted white.

Hardie board is designed to look like wood, particularly when painted. It has significant advantages over wood: it is far more durable (with a 30-year warranty), provides better insulation, is more water-resistant, is noncombustible, and is much, much cheaper.

Wood, as it happens, is no longer your parents' wood. The forests producing "old" or "slow" growth wood that covers most of the older frame houses in DC have been largely cleared, and old growth wood is now very scarce, available apparently only from vendors who resell wood from deconstructed older homes.

"New" or "fast" growth wood is essentially farmed wood. It is far less durable, requiring repainting and resealing every five to seven years and replacement every 10-15 years. And even the new growth wood would roughly triple the initial cost of his project – increasing the price from \$27,000-\$30,000 for Hardie board to \$80,000-\$90,000. And with the maintenance and premature replacement cost added in, the total cost of wood would be closer to \$180,000-\$200,000 over the 30-year warrantied period of Hardie board.

The HPRB has a couple hundred pages of [Design Guidelines](#) on just about every aspect of repairing or replacing or adding to historic buildings. But despite their volume, the guidelines contain surprisingly few bright line rules, relying very heavily on case-by-case rules that can only be learned from the staff. There are 17 pages on [Walls and Foundations](#), most recently updated in 2009, most of which deal with treatment of historic materials such as brick and wood. It has only three paragraphs on "substitute materials." The guidelines state that substitute materials "may be considered" by a homeowner in cases where replication is not "technically or economically feasible." As for wood substitutes, the guidelines contain a rambling dissertation on the flaws of metal and vinyl siding coverings and nothing on any other materials. They simply conclude, as many of HPRB regulations do, with an admonition to check with the HPO staff before planning your project.

### **Striking out at the HPRB**

Mr. Handverger played the game correctly and sent an email to the HPO in October 2021 informing staff that he intended to replace the decayed non-historic aluminum siding on the front and sides of his house with Hardie board. An HPO staffer responded that neither Hardie board nor any other fiber-cement product had ever been approved for use on front-facing

elevations in any historic district. Mr. Handverger asked what he could do to get that changed. The staffer said the only way was to apply for a permit and appeal the denial to the Board. So Handverger filed for his permit in January 2022. A subsequent staff report to the Board recommended denial of the permit saying that fiber-cement does not “match the shadow lines, depth and natural irregularity of natural wood.” It further claimed that the difference was “discernible even from the sidewalk at a distance [in this case 37-feet with a 5-foot elevation] and thus has an impact on the overall experience of the historic district.”

The HPO staffer, surmised from the date of the house (before 1874) and location that the original siding was probably wood and thus concluded that the replacement would have to be wood. She generously added that she would not require customized detailing that might have been in the original. As she said in later testimony, “I am willing to be flexible as long as people are willing to propose wood.”

In March 2022 there was a full hearing in front of HPRB. Mr. Handverger and his contractor testified about the advantages of Hardie board described above and the expense of wood. They showed pictures and examples of the fiber cement to demonstrate its similarity in appearance to wood. Mr. Handverger noted that his contractor had found three examples of front-facing Hardie board in nearby houses.

Mr. Handverger also came armed with a unanimous resolution in support of his project from his ANC and the support of nine of his neighbors, including the owner of the other half of his duplex who said that the use of fiber-cement would not only not detract from the look of the house, it would have a small but discernible positive effect on his energy usage.

As Mr. Handverger testified, “Cutting down trees to fulfill the dream of everyone is [sic] living in the 1850’s doesn’t really make sense.”

Beth Purcell, head of the Capitol Hill Restoration Society Historic Preservation Committee also phoned in some testimony. She said the Committee generally was in support of the use of more durable materials that closely replicate wood because of the scarcity of old growth wood, though at the same time she asked the homeowner to do a more thorough investigation of the original siding, with the implication that if it turned out to be wood, he might be stuck with wood replacement.



The questioning from the Board came almost entirely from one member, Outerbridge Horsey, who asked about the difference in thickness of the Hardie plank and wood paneling and ascertained that the Hardie board was about 1/8" thinner. He said that he knew of other fiber-cement products that might be thicker.

Another member, Gretchen Pfaehler, said it didn't seem like replication was possible. She said she knew that old growth resources or higher grade secondary growth materials were available because she had gotten some for her own house. She said Mr. Handverger should look to recycling places like "Community Forklift" that might have old growth siding from deconstructed houses. She did not, however, contradict the testimony of Mr. Handverger's contractor that installing any type of wood would drastically increase the cost of the project.

At that point the Chair, Marnique Heath, said that questioning was over, announced that deliberations had commenced, and almost immediately declared that she supported the current staff position opposing the use of Hardie board in place of wood on the front-facing elevation. Heath took a voice vote. The decision was unanimous.

The HPO staffer asked for clarification that fiber-cement could be used on a rear addition at the house and Heath said yes. But the first architect interjected saying that Mr. Handverger should use a thicker product. The confused Mr. Handverger tried to ask a question but Heath told him that no further questions were permitted and that he should take up his concerns with the staff.

Mr. Handverger, however, did not go quietly into the night. Instead he took the case to the next level – seeking relief from the Mayor's Agent who handles HRPB appeals. The Mayor's Agent is the head of the Office of Planning but the hearings are conducted by the Mayor's Agent Hearing Officer. The current Hearing Officer is a Georgetown law professor named Peter Byrne, who has taught and published extensively on preservation issues. Hearings before the Mayor's Agent are a matter of discretion but if granted are *de novo*; that is to say, the applicant gets another full hearing and is not restricted to review of the hearing record at the HPRB.

The hearing took place in June. Now represented by legal counsel, a family friend and clinical law professor, Mr. Handverger testified, as did his contractor and a representative of the Hardie company, along with the HPO

staffer. The evidence included most of what was presented in the HPRB hearing. Mr. Handverger noted that two near neighbors had installed Hardie board, one after the Handverger-Strubles had moved in, and that from the street he could not tell the difference between Hardie board and wood. (There was considerable but indeterminate discussion at both hearings as to whether any of the Hardie board installations had been properly permitted.)

In addition, the contractor presented a mockup of Hardie board and wooden planks attached to two sides of a piece of plywood. He declared that the only discernible difference was that from the right angle a “trained eye” could see that the Hardie board sits “slightly differently.” A representative of Hardie testified about the increasing acceptance of the product by numerous other historic jurisdictions such as Annapolis, and locally including the Park Service and the DC Commission on Fine Arts.

The HPO staffer testified that neither she nor the Board had been presented with the mockup shown to the Mayor’s Agent. But she said that HPRB had brought enforcement cases against unpermitted installations of fiber-cement sidings she had seen because she was capable of seeing “something amiss” “out of the corner” of her eye, that the “shadow lines” of Hardie board make a building look “flatter on its face.”

The Hearing Officer asked the HPO staffer what role the Mayor’s Agent was expected to play here. She said she did not know because this was the first time she had ever been involved in such an appeal.

The most frustrating aspect of his case, Mr. Handverger pointed out, was that he was proposing to install a siding that looked much closer to the original than the current siding.

“I would get it if I were replacing wood siding, but I am replacing a decidedly unhistoric and shabby looking aluminum with something that looks frankly almost if not just like wood,” Handverger said, adding that the cost differential was so great that if he lost his appeal he would probably have just fixed the windows and left the aluminum siding in hopes that the HPRB would eventually join the parade of historic jurisdictions accepting cementitious sidings.

## **Help from above**

On November 4, 2022, the Mayor's Agent issued a decision, rejecting the Board's decision and instructing it to grant the Handverger's building permit. The Mayor's Agent ruling is lucidly straightforward: "The proposed use of Hardie siding [is consistent with the Preservation Act because it] will certainly preserve the house and will enhance its resilience to fire and water damage.... [and] is consistent with the character of the [historic district] because no one who is not highly expert can perceive any difference in appearance ... from the public way." The opinion hedged, noting the "unique" circumstances of this case, the lack of any original siding, the house's distance from the street, the care the applicant took in sizing the siding, and the lack of any visual difference from the public space.

Tellingly, he also noted that the Board's Design Guidelines for historic buildings do not expressly prohibit the use of modern substitute materials for front-facing siding. More on that below.

## **The Mount Unpleasant Historic District**

Handvergers' case is not an isolated one. About the same time the Handvergers approached HPO, a group of condominium owners in Mt. Pleasant also sought approval to replace rotting wood siding with a synthetic product. One of the owners I spoke with, who asked to remain anonymous, said it had been very difficult to find a contractor who would even work in a historic district. He finally located contractors who quoted him prices ranging from \$50,000-\$100,000 for 30-plus year high quality synthetic products. The lowest cost wood option turned out to be \$111,000 for new growth pine which has a projected lifespan of 10-15 years. Again the wood option at the very least more than doubled and more likely tripled the cost of the project.

The condo building is on a corner so it has two street-facing walls and a back wall visible from the street. As it did with the Handvergers, the HPO said synthetic siding could only be used on the fourth, not-visible-from-the-street wall. The rest would have to be wood and indeed a specific type of wood siding design called double ogee which presents as narrow, non-overlapping slats. The condo owners learned that the Handvergers were going to a hearing on this issue and several of them were in attendance. After watching what happened to Mr. Handverger, they decided their siding was in sufficiently bad shape that they did not really have the time to wait for a possible reversal by



the Mayor's Agent or for HPRB to change its policy. So they proceeded with the pine installation.

And while they might feel some regret for not waiting, there is no guarantee that the Board will read the Mayor's Agent's decision as a broad repudiation of its Hardie Board rule and continue to apply it to buildings like the Mount Pleasant condo which are quite close to the street.

One of the condo owners is an urban planner. He said he had investigated the city's program for subsidizing homeownership costs in historic districts but found that the program was income-restricted and that he and his fellow owners, while not wealthy, did not qualify. He said the whole process "made me wonder what historic preservation is for and who is it for? If only affluent people can live in historic districts, are we just prettying up the city for rich people?"

### **Why is the HPRB getting this so wrong?**

The most striking and disheartening aspect of the experience of Mr. Handverger and Ms. Struble is the lack of concern by the Board about any value other than visual impact. Nothing was said in the HPO staff report or by any of the Board members at the hearing about the homeowner's costs or about energy efficiency or the environmental impact of requiring wood siding or the noncombustibility of a product being used on a house which had already burned once.

It didn't seem to matter that the homeowner was proposing to replace already non-historic existing siding with something clearly superior in every way and very much closer in appearance to the historic siding. Nor did it matter that the project was supported by all the near neighbors and by the ANC. Nor that conditional support had been offered by the Capitol Hill Restoration Society which chimed in noting that "it is important to recognize that old growth materials are no longer available and that in many instances modern materials should be employed."

Some of this laser-focused myopia appears to stem from the HPRB's narrow interpretation of its statutory remit – "compatibility" with historic character being the sole statutory lodestar for nearly all its decisions. But the Mayor's Agent noted that preserving the historic structures has equal status with compatibility and if achieving compatibility can't come at the cost of ordering repairs that are so expensive that they won't be made. And why isn't the

concept of compatibility broad enough to accommodate changes which may not be perfect but are more in character than the existing conditions? And given the enormous disparity in costs here, why was the test of what is a discernible difference in appearance so subjective, ad hoc, and unsystematic? It all came down to the self-proclaimed “trained eye” of one HPO staffer. There was no field test or any other systematic effort to measure whether the difference was objectively discernible despite a 37-foot setback and 5-foot elevation gain. The Mayor’s Agent properly observed that compatibility should not be based on what can be discerned only by “highly expert” observers.

### **Could change be coming?**

In recent years the HPRB has been crafting district-specific design guidelines which at least implicitly do take homeowner income into account. In one district, Kingman Park, the design guidelines preamble notes that the district has a high percentage of homeowners “of modest means.” Indeed increased home repair costs were a major source of Kingman Park community unrest over the prospect of historic designation.

The guidelines “seek to reflect the concerns” over increased costs and are “intended to provide more flexibility.” As for wall coverings, the Kingman Park guidelines provide that removal of non-original siding does not require replacement with wood and that “(n)ew cementitious siding is allowed on frame houses.”

Will the Board do the right thing and, as an increasing number of historic districts like Annapolis and Charleston are doing, extend the Kingman Park rule to wealthier historic districts such as Capitol Hill and Mt. Pleasant? Or will it limit the Mayor’s Agent’s decision to its facts – limiting the decision’s reach to houses set well off the street? And if it goes that route, will it at least look to establish some systematic way to discern the visible difference of materials? And will it then develop a design guideline that provides actual guidance instead of simply saying, “we know it when we see it”?

Stay tuned. But one thing seems certain – life under the HPRB will always be uncertain – and potentially catastrophic.

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