

HISTORIC PRESERVATION COMMISSION OF MONTGOMERY COUNTY

2425 REEDIE DRIVE, 13th FLOOR

WHEATON, MD 20902

301.563.3400

HAWP Permit Number: 1069614

Received: June 7, 2024

Public Appearance: September 4, 2024
Before the Montgomery County Historic Preservation Commission

Historic Area Work Permit Application of Mr. Arthur Newmyer
7209 Macarthur Boulevard, Bethesda
Potomac Overlook Historic District (#35/157)

DECISION AND ORDER

The above-captioned case having come before the Historic Preservation Commission of Montgomery County Maryland (“Commission”) pursuant to Chapter 24A of the Montgomery County Code (“County Code”), and the Commission having ordered the testimony and evidence of record, it is therefore, this 6th day of September 2024, found, determined, and ordered as follows:

Decision of the Commission: DENY the Applicant’s proposal to paint the subject property’s foundation-level brick exterior.

Commission Motion: At the September 4, 2024 meeting of the Historic Preservation Commission, Commissioner Hains made the motion to deny the proposed retroactive Historic Area Work Permit application to paint the brick foundation exterior relying on the Historic District Design Guidelines for Potomac Overlook. Commissioner Burditt seconded the motion. Commissioners Burditt, Pelletier, Galway, Dominianni, and Hains voted in favor of the motion. Commissioners Doman and Radu voted against the motion. The motion to deny the HAWP passed 5 – 2.

BACKGROUND

On January 24, 2024, the Historic Preservation Staff, Dan Bruechert, conducted a site visit at 7209 Macarthur Boulevard, Bethesda (“subject property”) the home of Arthur and Kim Newmyer (“applicants”) to evaluate and discuss potential alterations to the property hardscaping. At that site visit, Staff documented that the previously unfinished brick foundation level had been painted without a Historic Area Work Permit (“HAWP”) and directed the applicant to submit the required application materials.

Staff received an incomplete HAWP application on June 7, 2024, seeking retroactive approval for the exterior brick painting and additional hardscaping. On August 16, 2024, Staff placed the HAWP on the agenda for the September 4, 2024, Historic Preservation Commission meeting, but limited the scope of the review to only the issue of the brick painting as the plans for hardscape alterations remained incomplete. Pursuant to Chapter 24A of the County Code, the Commission held a public hearing on September 4, 2024, to consider the application. At the September 4, 2024 Commission meeting, Staff presented a report, along with photographs, and recommended action regarding the applicant's proposal. Staff recommended that the HAWP be approved with one condition. The applicant attended the hearing to represent the application. The Commission denied the HAWP application.

FINDINGS OF FACT

Based on the evidence of record, the Commission makes the following finding of facts:

1. 7209 Macarthur Boulevard, Bethesda is categorized as a "Contributing Resource" within the Potomac Overlook Historic District, a district listed on the Master Plan for Historic Preservation, which was designated on the Master Plan for Historic Preservation in Montgomery County on April 21, 2022.
2. On January 26, 2024, Historic Preservation Staff issued a letter to the applicants identifying the work completed without a HAWP was in violation of Chapter 24A of County Code and directed them to file a HAWP seeking retroactive approval.
3. On June 7, 2024, Arthur Newmyer, submitted a HAWP application seeking retroactive approval to paint the exterior brick, to expand the rear patio, and to expand and construct new retaining walls at the subject property.
4. Historic Preservation Staff determined that the information presented for the patio and retaining walls was incomplete.
5. On August 16, 2024, the Historic Preservation Staff placed the HAWP on the agenda for the September 4, 2024 Commission meeting. The scope of work for that HAWP was limited to the exterior painting.
6. Notice of the HAWP application was sent to the Potomac Overlook Local Advisory Panel on August 21, 2024. The Local Advisory Panel provided no comments to the Commission.
7. A written staff report was prepared for this case and sent to the Commission and posted on the Commission website on August, 28, 2024.
8. On September 4, 2024, the Commission held a hearing on the application, considering all materials included in the record, and all materials included or referenced in the staff report.
9. At the September 4, 2024 Commission meeting, staff person, Dan Bruechert, presented the staff report, along with photographs, exhibits, and recommended actions regarding the applicant's proposal.
10. The applicants were represented by Mr. Arthur Newmyer, to testify in support of the application.
11. Consistent with section 1.5 of the regulations, the Commission is guided in their review of Historic Area Work Permits by section 24A-8 of the County Code, the Approved and Adopted Amendment to the Master Plan for Historic Preservation to establish the Potomac Overlook Historic District Design Guidelines (collectively the "Amendment" and "Design Guidelines"), and the Secretary of the Interior's Standards and Guidelines for Rehabilitation ("Standards").

12. Section 28A-8 requires the Commission to deny an application if the Commission finds that the proposal is “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 purpose of this chapter,” (County Code Section 28A-8(a)) unless the commission finds that the proposal is necessary in order that:
 - a. “The proposal will not substantially alter the exterior features of a historic site or historic resource within an historic district” (28A-8(b)(1)); or
 - b. The proposal is compatible in character and nature with the historical, archaeological, 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 (28A-8(b)(2)); or
 - c. 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, archaeological, architectural or cultural value of the historic site or historic district in which an historic resource is located (28A-8(b)(3)); or
 - d. The proposal is necessary in order that unsafe conditions or health hazards be remedied (28A-8(b)(4)); or
 - e. 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 (28A-8(b)(5)); or
 - f. In balancing the interest of the public in preserving the historic site or historic resource located within an historic district, with the interest of the public from the use and benefit of the alternative proposal, the general public welfare is better served by granting the permit (24A-8(b)(6)); or
 - g. The resource is of “little historical or design significance” and requires the Commission to be lenient in its judgment (24A-8(d)).
13. The Design Guidelines require a HAWP for painting of previously unpainted masonry or the removal of paint on masonry.
14. The Design Guidelines include the design objective to not paint previously unpainted masonry surfaces.
15. The Standards dictate that 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.
16. The Standards dictate that distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be maintained.
17. The Standards dictate that chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible.
18. The staff report prepared for the September 4, 2024 hearing recommended approval of the application, consistent with section 24A-8(b)(6), finding the work incompatible with the character of the subject property, but that the subject property’s long-term preservation was better served by not requiring physical or chemical removal of the exterior paint.
19. The staff report found that previously painted surfaces do not require a HAWP.
20. The staff report found the Design Guidelines include the design objective, “Do not paint previously unpainted masonry surfaces.”
21. The staff report found that while the painting contravened the Design Guidelines, and changed the character of the subject property, a chemical or physical stripper could potentially damage the historic brick.

22. The staff report found that the long-term preservation of the and the long-term preservation of the subject property was better served by approving the HAWP under 24A-8(b)(6).
23. The staff report found that improvements in technology could allow for more complete paint removal with less risk to the underlying historic masonry.
24. The staff report included a recommended condition to the approval of the HAWP to not consider re-painting the brick to be in-kind work that could otherwise be completed without a HAWP.
25. In reaching its finding, the Commission considered the staff report, the Applicants' testimony, and the criteria for evaluation established in section 1.5 of the Historic Preservation Commission Rules, Guidelines, and Procedures (Regulation No. 27-97).
26. The Commission determined preserving the character of the exposed brick foundation was necessary, and that the Design Guidelines for Potomac Overlook contained a specific prohibition against painting the unpainted masonry, and denied the HAWP.
27. The Commission directed the applicant to consult with Staff to identify the best method of removing the paint without damaging the underlying brick.

CONCLUSIONS OF LAW

Accordingly, based upon a full and fair consideration of the evidence, the Commission concludes that:

1. Under Chapter 24A-6 of the Montgomery County Code, the owner of the subject property (7209 Macarthur Boulevard, Bethesda) is required to obtain a Historic Area Work Permit pursuant to the provision of this chapter before modifying, in any manner, the exterior features or environmental setting of the subject property.
2. Under the approved and adopted Historic District Design Guidelines for Potomac Overlook, painting of previously unpainted masonry or the removal of paint on masonry requires a HAWP. Chapter 24A of the Montgomery County Code and Historic Preservation Commission Rules, Guidelines, and Procedures (Regulation No. 27-97) ("Regulations") establish the process by which a property owner shall seek approval for proposed work in the designated historic districts and the criteria The Commission uses in the review of Historic Area Work Permits.
3. Section 1.5(a) of the Regulations establishes that "[t]he 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 the applicable master plans...; (4) pertinent guidance in historic site or historic district-specific studies."
4. The proposal under consideration is not consistent with the provision of the adopted Design Guidelines that states, "Do not paint previously unpainted masonry surfaces."
5. The proposal under consideration is not consistent with Standard #2 which states, "The historic character of a property will be retained and preserved. The removal of distracting materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided."
6. The proposal under consideration is not consistent with Standard #5 which states, "Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved."
7. Finding no basis for approval on the criterion in section 24A-8(b), and finding subject to section 24A-8(a) that the proposed work item is "inappropriate, inconsistent with or detrimental to the preservation, enhancement or ultimate protection of the historic site or resource within a historic

district, and the purpose of this chapter,” the Commission voted (5 – 2) to deny Historic Area Work Permit #1069614, with Commissioners Sutton and Naser being absent.

ORDER

The Historic Area Work Permit application submitted by Mr. Arthur Newmyer seeking retroactive approval to paint the previously unfinished brick foundation exterior is denied.

If any party is aggrieved by the decision of the Commission, pursuant to Section 24A-7(h) of the Montgomery County Code, an appeal may be filed within thirty (30) days with the Board of Appeals, which will review the Commission’s decision *de novo*. The Board of Appeals has full and exclusive authority to hear and decide all appeals taken from the decision of the Commission. The Board of Appeals has the authority to affirm, modify, or reverse the order or decision of the Commission.



Robert K. Sutton, Chairman
Montgomery County Historic Preservation Commission

September 6, 2024
Date