

"Federation Corner" column
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Strange behavior at the Planning Commission

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These days, strange behavior seems to be occurring in the Montgomery County Planning Commission in its building on Georgia Avenue in Silver Spring. Some is strange in small, but perhaps telling ways. We remember that Clarksburg was about improperly-altered site plans caused by an indifference to following the rules both inside and outside the Commission, an indifference that was to have been permanently corrected with explicit new rules and a determination to enforce them. Yet, this week, an engineering firm sent out a letter about notice of an amended site plan with a statement that "A copy of the proposed site plan is enclosed." However, the plan was not enclosed, not just in my letter, but in the letters of at least two other colleagues. This week, I also received a preliminary plan of subdivision from yet another professional company where the "Professional Certification," indicating that a licensed professional had signed the document, as required by the Planning Board's new Rules of Procedure, was unsigned, meaning that Planning Commission staff could now be required to reject the plan as incomplete.

The larger, stranger occurrences concern two controversial items coming to the Planning Board next week. The first involves a project plan to build a large building above the Bethesda Metro Station. The first time, in 2005, the owner proposed a 16-story condominium building to replace an existing 3-story structure. Certain staff, responsible for writing and interpreting master and sector plans, wrote a memo stating that such a building was incompatible with the Bethesda Sector Plan for several reasons. The plan was withdrawn and was later resubmitted as an office building. This staff said the same thing about the new proposal as well. However, other staff, those responsible for presenting development plans to the Planning Board, believe that the project is compatible with the Sector Plan. What helps make this situation even stranger is that the owners of several large, adjacent office towers believe that the project violates specific language in the Sector Plan and they are vigorously opposing the project.

A well-known county blogger has written this about the project: "If the Planning staff wanted to approve Meridian's office tower, they could propose amending the Bethesda CBD Master Plan or even writing a new one. But that would take many months of staff time, many thousands of dollars and lots of community input. That would slow down Meridian's timeline. Instead, the staff has chosen to create a new standard for measuring density that would speed this particular project but create unintended consequences down the road. I have previously written in favor of channeling development into downtowns, but not at the cost of opening a Pandora's Box of soaring density everywhere else. Will the Planning Board go along with the staff? We'll find out after they hold a hearing on the project on June 12."

The strangest occurrence of all concerns the second controversial item, the historic designation hearing for the Falkland Apartments which occupies three of the four corners of 16th Street and East-West Highway in Silver Spring. This 1930s garden apartment complex, with 450 units built to affordably-house middle class government workers during the Depression, has successfully housed people for 70 years. It was the first affordable housing complex built in the county that set high standards for environmental compatibility and the resultant high quality-of-life for the tenants. Being near the Silver Spring Metro station, it has been periodically threatened by proposals for very large apartment or office towers since at least 1968. In 1985, one structure, known as the Cupola Building, was placed on the county Master Plan for Historic Preservation (MPHP). However, in recent years, the Maryland Historical Trust has found that all three sections are now eligible for listing on the National Register of Historic Places (NRHP). Since all local preservation ordinances in the nation always have the same criteria as those related to the NRHP - although local laws can also have

more - such a finding sets a national standard that would be extremely difficult, if not impossible, for a local government to objectively disagree with.

In fact, the Falkland Apartments have, in recent years, been subjected to more scrutiny as to its historic value than any other property in Montgomery County and perhaps in the entire state. So far, due to minor technical errors or to arcane legal requirements, there have been SEVEN sets of public hearings, work sessions, and votes, when only two would have been necessary, one with the county Historic Preservation Commission (HPC) and the other with the Planning Board. There have been four hearings before the HPC and three before the Planning Board. On June 12th, there will be a FOURTH hearing before the Planning Board. The remarkable group of architects, historians, architectural historians, preservation professionals, preservation, environmental and civic advocacy organizations, as well as local civic groups and Falkland Apartment tenants has only grown larger and more persuasive with each successive hearing.

Seven times the HPC and the Planning Board have found, with near unanimity, that the Falkland Apartments meet numerous criteria for historic designation. The only thing that has changed from hearing to hearing is that the owner of the property has trotted out one or another self-styled expert who claim, with scant evidence or authority, that the buildings have little historic value, or the owner claims that a proposed new project is better for Silver Spring than keeping all of the historic buildings. The Falkland Apartments are considered by the real experts to be one of the county's most important historic resources.

Our preservation law is very clear about how to historically designate buildings. First, the HPC, the Planning Board, and finally, the County Council, determine if the building or buildings meets one or more of the nine local criteria. They only are allowed to make the decision based on whether or not it meets the criteria, not for other reasons, such as personal taste or economic development. Once it is placed on the MHP, the HPC has the legal duty and authority to approve changes to the buildings, including demolition, as they are allowed to consider other public purposes besides historic preservation in making their decision. In 1998, the HPC approved the demolition of the historically-designated Silver Spring Armory to make way for part of the Downtown Silver Spring redevelopment project.

So far, the HPC and the Planning Board have not allowed themselves to be swayed to ignore the requirements of the law with a proposal to redevelop one of the three sections with apartment towers. However, something strange is going on with the Planning Commission staff itself. As has been done hundreds of times in the past, an HPC staff person always prepares the staff report for both the HPC and the Planning Board. When the HPC approves the staff recommendation, it is little changed when it is presented to the Planning Board. However, for this eighth hearing, the HPC staff person is NOT writing the staff report nor presenting it to the Planning Board. Instead, the planning director and two department heads are together doing the report and the presentation. One of the department heads was previously in charge of the historic preservation staff. If there were some compelling, yet so-far unknown reason not to have the preservation planner do her job, her former supervisor could do the job in an equally professional manner. However, there is absolutely no reason for anyone else to "help" her do what she herself has done for decades.

Furthermore, the new Rules of Procedure require that all staff reports for nonregulatory items, such as historic designation, be made public at least five days before the hearing, which means the Friday before the Thursday hearing. However, I am told that the staff report will not be available before Monday or even Tuesday of next week, as little as 48 hours before the hearing itself. Since there is no reason that the staff report should not be what it has been for the previous seven hearings, there is no excuse to delay the release of the eighth staff report. The historic facts have not changed since last December when the Planning Board last found the Falkland Apartments met numerous criteria. Next week's hearing should be nothing more than a legally-required rehearing of well-established facts. I hope that there is no staff interference in this process.

If there is interference, this could be further, even stronger evidence that the Planning Commission staff is on the verge of or in the midst of actions large and small that may presage even darker days ahead for this agency that has endured repeated body blows to its reputation in the last three years and really can't take much more bad news or public disenchantment with it.