

"Federation Corner" column

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## **Lawsuits filed against County Council and Planning Board**

by Wayne Goldstein

Chair, MCCF Historic Preservation Committee

In addition to being the MCCF Education Committee chair, I am the chair of the MCCF Historic Preservation Committee. This additional chairmanship reflects my role as president of Montgomery Preservation, Inc. (MPI) the county's umbrella historic preservation advocacy organization. On Monday, December 1, MPI, along with its local partner organization, the Silver Spring Historical Society, and local residents, filed three legal actions in Montgomery County Circuit Court against the County Council and the Planning Board.

We did so to remedy the County Council's failure to follow its designation process with respect to the Perpetual Bank Building at the corner of Georgia Avenue and Cameron Street in Silver Spring. Backed by an advocacy coalition that also includes the National Trust for Historic Preservation and Preservation Maryland, the legal actions seek to defend the County's historic preservation ordinance, established to safeguard the historical and cultural heritage of the County. We want to restore a process, complete with its checks and balances, which has worked for the past 30 years.

MPI and other preservationists believe that the Perpetual Building is significant to Montgomery County's heritage and easily meets several criteria for placement on the County's Master Plan for Historic Preservation (MPHP). The staff of the Historic Preservation Commission (HPC) found that it met five of the nine criteria, and only one of the criteria need be met to warrant placement on the MPHP.

Emily Eig, noted architectural historian and principal of D.C.-based EHT Tracerics, Inc. commented: "The Perpetual Building, with its sleek red granite and limestone facade and soaring trapezoidal windows, is one of the most important examples of mid-century modernism that remains in Silver Spring. Its importance has been recognized by experts across the country, and it has been judged eligible for listing on the National Register of Historic Places. Demolition of this iconic building would be a tremendous loss of local heritage."

The Perpetual Building epitomizes the rise of Silver Spring as an important financial and residential suburb within the Washington DC metropolitan area in the mid-twentieth century. Perpetual was the leading savings and loan association in the nation and region, and played a significant role in the development of Silver Spring. It is one of most important examples of mid-century modernism in downtown Silver Spring as established by many experts across the region and the nation; was found to be National Register eligible by the Maryland Historical Trust; and its value was recognized in two historic resource surveys performed for the County in 1985 and 2002.

Since 1980, historic properties in the county have been placed on the MPHP through a designation process established under County law. The HPC, Planning Board and County Executive each make a recommendation to the County Council, which makes a final decision after a public hearing on the merits.

In August 2007, the HPC and staff recommended designation of the Perpetual Building. In March 2008, the Planning Board voted 3-0 to recommend against amending the MPHP to include the Perpetual Building. In October 2008, the County Executive noted the significance of the building to the region and urged the Council to show deference to the HPC staff report. At the end of October, Councilmembers Ervin, Elrich and Praisner supported setting a public hearing date for the Perpetual Building since Council President Knapp had failed to act. The Council in a 6-3 vote did not set a date and stated it would not publicly consider any historic designation with a negative recommendation from the Planning Board. This left the Planning Board as the final word in this master plan process.

I added the following comment: "To hand over to the Planning Board the power to become the final decision maker on this master plan shows the County Council is willing to abandon its land planning authority and, in this case, its obligation to safeguard worthy resources county-wide as mandated by law. The overriding master plan implications raised here have negative ramifications for all County citizens."

The National Trust for Historic Preservation and Preservation Maryland also share deep concerns over the Council's refusal to publicly consider this issue. The National Trust issued the following statement: "The National Trust for Historic Preservation concurs that the Perpetual Building is architecturally and historically significant and, therefore, should be preserved and adapted for an economically sustainable new use that benefits Silver Spring. Ultimately, of course, historic preservation is recycling on a large scale, and the 'greenest' building is one that already exists. There is no good reason to send the Perpetual Building to the landfill," said Rob Nieweg, director of the Trust's Southern Field Office.

Tyler Gearhart, Executive Director of Preservation Maryland added, "Unfortunately, Montgomery County's official process for deciding which buildings should be preserved and protected has gone off the rails. It's clear to our advocacy coalition that the County Council should resume its role as a final informed decision-maker for the designation of historic properties in Montgomery County, drawing heavily upon the expert recommendation of the Historic Preservation Commission. The Planning Board, acting alone, is not authorized to decide the fate of historic properties found eligible for the Master Plan in Montgomery County."

The advocacy coalition has challenged this incomplete process. The plaintiffs are asking the court to reverse the County Council's refusal to hold a public hearing to discuss the merits of this application and instead to require that the Council decide this master plan issue. We also seek to remand the matter to the Planning Board for proper evaluation based on the historic preservation criteria established by County law.

MCCF is going to have a program on Historic Preservation at its January regular meeting. In the weeks leading up to it, I will be telling the history of historic preservation in the U.S., Maryland, and Montgomery County to educate the public and public officials about what historic preservation really is and why it is so important, often in ways that most people do not know about.

*The views expressed in this column do not necessarily reflect formal positions adopted by the Federation. To submit an 800-1000 word column for consideration, send as an email attachment to [waynengoldstein@hotmail.com](mailto:waynengoldstein@hotmail.com)*