

"Federation Corner" column  
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## **DPS drops the ball again**

by Wayne Goldstein

There is a block of Art Deco buildings along the west side of Colesville Road, just south of Fenton Street, in downtown Silver Spring, which was placed on Montgomery County's Locational Atlas and Index of Historic Sites in 1984 to provide interim protection from major exterior alteration and demolition until such time that the buildings would one day be evaluated for permanent protection by placement on the county Master Plan for Historic Preservation (MHP). Since then, work that has needed to be done to these buildings and other nearby commercial buildings, also on the Locational Atlas, such as the former Hecht's Building - now City Place - have been accomplished by the owners working cooperatively with the Montgomery County Historic Preservation Commission (HPC) so that such work has never risen to the level of being a major renovation or a demolition.

However, a major alteration and partial demolition was begun last week at the former Rostas store at 8668 Colesville Road, at the corner of Colesville Road and Fenton Street. This was done without any communication with the HPC or its staff. It was handled by the Department of Permitting Services (DPS). The Silver Spring Business District has been designated a State of Maryland Enterprise Zone (EZ) to provide incentives "to attract and retain businesses in the EZ zone. As one of these incentives... DPS created a 'Green Tape' permitting and inspection program to expedite the land-use and building-permit processes for prospective EZ businesses. The mission of the Green Tape Program is to facilitate the issuance of building permits for commercial construction in the EZ involving new construction, additions, structural alterations, or changes in use." DPS has a "Green Tape Team" that also works closely with the county's Silver Spring Regional Center (SSRC) "to identify qualifying businesses and coordinate Green Tape services."

However, thanks to an outcry from community members and county officials, a stop work order has been placed on this project, although it took four days for DPS to make that decision. For those who remember and those who now need to learn, this event is an extremely unpleasant reminder of a far more traumatic event that took place almost 23 years ago on this very same block, across the street at the Silver Theater. In that incident, the then-owners applied for and received a renovation permit from DPS' predecessor agency, and proceeded to do the "renovation" work on Labor Day weekend in 1984, which consisted of demolishing most of the exterior decorative Art Deco features, disfiguring work that could not be stopped until county employees returned to their offices on the following Tuesday.

This destruction was done just days before the HPC was to decide whether or not to recommend that the theater be placed on the Locational Atlas. Despite this proactive sabotage, the Silver Theatre, and adjacent Shopping Center, were placed on the Locational Atlas, then later found eligible to be placed on the National Register of Historic Places, and eventually placed on the MHP.

While there is absolutely no evidence that this weekend's partial destruction of another historic building has been motivated by any malice whatsoever, this event again points out the failure of DPS to do its job, in this case being unable to provide unsupervised oversight to ensure that improper permits are not issued for work to be done on historic structures.

Under the simplest of interpretations, one could say that Clarksburg was about DPS and MNCPPC looking at each other in disbelief and simultaneously saying to one other: "I thought YOU were supposed to do that!" In other words, there was confusion between the two agencies as to who was to do what inspections and verifications of documents. However, DPS can't make that excuse about this big mistake, because it has long retained the sole responsibility for issuing building permits for historic properties and then inspecting that work.

Apparently our historic preservation regulations also allow DPS officials to make judgment calls about whether proposed work for a Locational Atlas structure is minor or major. I believe that common sense would cause anyone to agree that demolishing the first floor facade of a building would at least constitute a major renovation, if not partial exterior demolition. However, DPS officials made the decision to let this one go through, perhaps because they were narrowly focused on the fact that this was an expedited "green tape" project, rather than seeing that it involved a historic building.

This unjustifiable mistake shows that DPS should not be trusted to protect our county's historic resources without supervision. In the past, there have been instances where HPC staff have visited work sites for historic buildings, seen that unauthorized or seriously deficient work had been done, and demanded that DPS issue a stop work order. Since this is a new variation of this failure, I believe that the County Executive should immediately order DPS to follow a rule that any work, no matter how seemingly minor, proposed for any Locational Atlas property, must be initially reviewed by the HPC or its staff. Only after an informal or formal determination has been made by them would DPS be allowed to proceed with the permitting process.

I have known HPC staff to periodically complain about the quality and attitude of DPS inspectors who have the responsibility to monitor the progress of Historic Area Work Permits (HAWPs), work approved by the HPC that requires very precise construction to prevent serious damage to the facades of historic buildings. The complaints have centered around the stubborn unwillingness of inexperienced DPS inspectors to implement the precise requirements of HAWPs and to not do frequent enough inspections to ensure that an obvious construction mistake does not go uncorrected for so long that it destroys a building's historic integrity.

It seems that the best way that most DPS inspectors can be reined in and be properly trained is if HPC staff directly educate and supervise them. This problem could most easily be solved if just one properly trained DPS inspector were permanently assigned to the HPC, with the inspector's duties to also include being on call to respond to occasional emergencies such as what could have taken place on Colesville Road this weekend.

In addition, it must be determined who bears responsibility for this particular breach of historic preservation law so that it can be determined who should pay to restore the building's historic façade where required. As to the case of who bore the responsibility for repairing the massive vandalism done by the owners of the Silver Theater to their building, this ultimately fell to the county government when it eventually bought the theater and restored it, after it sat shuttered and deteriorating for more than a decade.

This year, the long-authorized DPS Advisory Committee was finally made operational. This group, made up of voting members of representatives of civic, environmental, and business organizations, as well as the county's Regional Centers, along with nonvoting representatives from other county and state agencies "... must advise [DPS] on the performance of its functions and recommend to the Director, the Executive, and the Council any steps necessary to improve the Department's performance." I have suggested that this Advisory Committee may want to review the facts of this case so that it might make appropriate recommendations to DPS, the County Executive, and the County Council about what changes to personnel responsibilities, operations, regulations, and laws are needed to prevent similar occurrences in the future related to all types of permits, including dealing with the seeming inability of senior DPS management to quickly stop destructive activity once they learn of it.

It does not seem at all acceptable for DPS management to apparently dither for days on this case trying to figure out if there actually is a problem that needs to be dealt with. If it were a standard practice to automatically and immediately issue a stop work order to prevent irreversible change or destruction, even if all of the facts were not yet known, the stop work order could always be immediately lifted as soon as the investigation was satisfactorily completed. However, irreversible change or damage can never be undone and can be very expensive to replicate, if that is even an option.

All of us need to keep an eye on DPS to ensure that it does not drop the ball so badly or so often in the future and to report problems to the DPS Advisory Committee to try to improve accountability and performance.