

"Federation Corner" column  
The Montgomery Sentinel - April 2, 2009

### **Does the County Council wish to destroy historic preservation?**

by Wayne Goldstein  
MCCF Past President

This was a strange but important week for historic preservation in Montgomery County, showing how threatened it could be even as an otherwise out-of-control County Council demonstrated it was still capable of following the county's historic preservation law. The council also heard from numerous experts that an effort by one of them to try to codify and legalize their multiple violations could not be done.

In my Dec. 4, 2008 column, I described the details of several legal actions filed against the County Council for their failures to follow our preservation law in the designation process for the Perpetual Building. I haven't yet written about another legal action filed against the council in late February alleging far more numerous violations of this law in the designation of a number of Damascus area historic resources.

On Tuesday of this week, the council made a strong effort to follow the law when it voted to designate Wild Acres, Gilbert Grosvenor's mansion in Bethesda. The owner wanted to designate the mansion, its large garage with living quarters above and a minimal footprint of land surrounding the buildings. The Historic Preservation Commission recommended a much larger 16-acre environmental setting. The Planning Board recommended it to be just 5 acres as did the PHED Committee. Surprisingly, the County Council then voted to designate the house, the garage, a caretaker's cottage that kept moving on and off the various recommendations, and 9 acres of land, a compromised offered by the community.

Nobody questioned the historic and architectural value of the mansion and its impressive garage and no council member opposed including some amount of acreage. There was much discussion of the facts and disagreement based on the facts. The owners had a long-standing special exception and no one used the needs of the special exception to trump historic designation. Instead, there was discussion of how to fairly balance both needs without harming either.

Then, an hour later, the old, law-ignoring County Council was unfortunately resurrected, one that again showed it could still be as arbitrary and capricious in disregarding the requirements of our preservation law as it had with the Perpetual Building and the Damascus area historic designations. This time it was the Falkland Apartments nomination, a subject I've written about numerous times, most recently on March 19 where I referred to my 20-page, 14,000-word Silver Spring zoning and sector plan analysis, as well as my Silver Spring CBD housing analysis.

Since I was building the record for others to read, I didn't expect the council members to read any of it, and they didn't disappoint. After the PHED Committee had an extraordinarily short Falkland Apartments worksession last week, the full council also sought to do as little work in their worksession as possible, being eager to vote. Those council members who did speak were quick to acknowledge that all three sections of the Falklands Apartments met the historic criteria. Only Councilmember Marc Elrich questioned how much affordable housing would be created by the proposed Falkland North project. There was some other discussion about affordable housing only on the Falkland Apartments property, but none concerning the sector plan's specific policy goals and housing achievements with which I had sought to engage the council.

I have never seen as complex and detailed a subject as the Falkland Apartments--one required to have nine public hearings--be given as little time and attention for evaluation as this council did on Tuesday when they swiftly voted to just designate two sections, handing over the third, Falkland North section to the owner for development.

That evening, the Council then held a hearing on what is being called the Knapp Amendment, an assault by Councilmember Mike Knapp on the historic preservation ordinance to end its effectiveness. Knapp wants to enshrine owner consent in our law by requiring a property being considered for evaluation to meet more criteria, to be subjected to more evaluation, and to get more votes of support from the Planning Board if the owner objects to designation. A negative recommendation by the Planning Board would also stop the process cold. The National Trust for Historic Preservation has done a legal analysis of the Knapp Amendment and has found that it violates at least three Maryland laws, violates 43-year-old national historic preservation standards, and even violates the U. S. Constitution. The Maryland Historical Trust, the county executive, the Planning Board and the HPC all oppose the Knapp Amendment. Of 34 speakers at the hearing, 32 opposed it.

No other council members have yet signed on to this ominous amendment. Although he'd been asked to withdraw this largely illegal effort, Knapp stubbornly refuses to yield, narrowly focusing on his claim that owners of properties being considered for designation are not notified of the process. He all but accuses historic preservation staff of repeatedly lying to him of the many efforts they always make at outreach in a process where owners are able to testify at three different historic designation hearings. He has yet to explain why he didn't just seek to change the notification requirement in law rather than seek to radically change the law itself with so many major changes.

It seems unlikely that even this council would knowingly pass a law about which they have been told, in no uncertain terms, violates state laws and the U. S. Constitution. However, this council has already engaged in many of the actions Knapp wants to try to make legal with his amendment. They have baldly used owner consent in deciding not to designate a number of properties and have used a negative recommendation by the Planning Board on any property as a reason to refuse to evaluate such properties at all. The courts will not decide on the legality and perhaps the constitutionality of the council's previous actions. Let's hope this council doesn't decide to pass the Knap Amendment and invite even more judicial scrutiny.

Many of those calling for the withdrawal or defeat of the Knapp Amendment want to use their own scrutiny of our law as an opportunity to take Montgomery County's preservation law, which was among the best preservation laws in the nation in 1979, and again make it be among the best in 2009. Let's also hope that this council will willingly choose to become a reformer rather than continue to try to be a destroyer of the important public policy.