

"Federation Corner" column
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A tale of two Silver Spring garden apartment historic designations

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It was the worst of times in July 1990, the start of a recession as bad as today's, when the owners of the very affordable 130-unit Montgomery Arms Apartments, an art deco garden apartment complex at the corner of Colesville Road, and Fenton Street in Silver Spring, submitted a plan for an optional method project in the CBD-2 zone for this 1.75 acre site. Optional method allows an owner to build a much bigger building than what they could build by right, in exchange for providing community amenities and meeting other regulatory requirements. The CBD-2 zone Optional Method approach allowed a floor area ratio (FAR) of 5, meaning that 5 square feet of building could be constructed for every 1 square foot of land, a high level of development.

The owners, long time residents of and builders in Montgomery County, proposed a 16-story building with 4-1/2 levels of underground parking. Of the 372 units, 15% - 56 - would be Moderately Priced Dwelling Units (MPDUs). Furthermore, an additional 55 units - 15% - would be "Opportunity Units" - part of a Housing Opportunities Commission affordable housing program. The plan stated: "The building articulation, incorporating corner windows, special brick banding reminiscent of art deco detailing, in combination with balconies, terraces, and other fenestration, will provide the level of richness that this Central Business District [CBD] development deserves."

A 1/4-acre corner park and plaza, locally designed sculpture, private gardens, and a retail plaza and promenade would be the community amenity. "The property is located inside the boundary (East-West Highway) of the High Density Multi-Use Core described in the Sector Plan..."

This project would have tripled the number of housing units per acre. The 130 apartments, affordable but not guaranteed to remain so, would be replaced by 111 apartments guaranteed to remain affordable, a .85 to 1 replacement ratio. In addition, the owners offered up to \$1350 for both documented and undocumented moving expenses (\$2220 in today's dollars), and offered to pay any increase between the current and new rent for six months.

The Montgomery Arms Apartments were one of a number of buildings with Art Deco architecture along that section of Colesville Road which had been put into a Silver Spring Locational Atlas Historic District in 1984. The Locational Atlas is a list of buildings and other structures that are believed to have historic value, are protected from demolition, but are not thoroughly evaluated for permanent historic designation until the owner either seeks to greatly change or demolish the building. The filing of this plan triggered this more thorough evaluation.

In addition, according to the law firm representing the owner, any effort at historic designation of this or any other Silver Spring CBD building would have to follow: "The 1990 Amendment [which] expressly mandates the incorporation of the Plan's policy objectives into the balancing, requiring the Planning Board to 'decide preservation issues by using these criteria measured in balance with other public interests. The other public interests which will govern the decision making for the Silver Spring CBD are stated in the Sector Plan as the policy objectives."

So what happened to this project which would have been built by the Gudelskys, builders of Wheaton Plaza and a local family with deep community roots, which would have provided more residential, which would have replaced most of the lost affordable housing where 30% of the new housing would have been guaranteed to be on site and to be very affordable, which would have provided significant financial help for every displaced tenant, and which would be scrutinized using additional criteria than what was in the historic preservation law itself? Historic Preservation and Development Review staff supported designation, as did the County Executive. The Planning Board and the County Council voted unanimously for designation, even District 3 Councilmember Bill Hanna from Rockville, chair of the Planning, Housing and Economic Development (PHED) Committee, a

Councilmember with a reputation for loving every development proposal and who was not considered to be a best friend of historic preservation.

To meet the mandated requirement to balance historic preservation with other public policies, the Planning Department's staff specifically compared the differences between keeping the existing apartments or building new ones based on the affordability of the housing, density of units, garden vs. high-rise apartments, and provision of outdoor space and recreation. I've shown that the new project compared as well or better on affordability and density. However, staff noted that garden apartments made up 23% of the housing stock in the Silver Spring CBD, a percentage that would be reduced below 15% in a few years based on the loss of these 130 garden apartments and the addition of several thousand new units of high-rise apartments from recently approved projects. Staff also noted that the existing Montgomery Arms Apartments provided outdoor space and recreation of 286 square feet per unit, while the new building would provide only 87 square feet, a 70% reduction. The owners were allowed to submit their own comparisons, which were further analyzed by planning staff. This factual analysis actually helped persuade staff to support historic designation because of losses that would harm other public policies.

How does this compare to the current Falkland Apartments historic designation process? I'll skip the details of the project, which are readily available, except to note that there would be 5-1/2 times more new units on the Falkland North section, the section not recommended for designation by the Planning Board. The Planning Board, its staff, and the owners' attorneys all claim that historic designation must be balanced with other public policies. This claim was made despite the fact that the 1990 amendment, legal or not, was eliminated when the 1993 Silver Spring CBD Sector Plan was approved. Such balancing is certainly allowed by a planning body that regularly does balancing, but the law doesn't allow balancing to trump a recommendation as to whether or not a property meets the fact-based historic criteria. However, let's pretend, for a moment, that it did. If it did, it seems that the process used for the Montgomery Arms Apartments designation process is an excellent model to use.

In fact, that's just what I did when I submitted my 20-page, 14,000-word comparative analysis, with 142 pages of supporting government documents, to the Planning Board on 7/31/08, five weeks before they were to hold their worksession on the Falkland Apartments to decide what to recommend to the County Council. Readers of this column may recall my July 17, 2008 column where I documented the gross omissions and inaccuracies of a purported Silver Spring CBD housing analysis done by the Planning Director, and where I pointed out, among other deficiencies, that he did not include in his housing count the 448 housing units in the apartment tower where he lived and the development proposed for where he worked.

Under my "Summary of Comments:" I wrote: "Legal basis to balance other public policies with historic criteria during designation process. Page 3; Zoning changes of three Falklands parcels - 1968-2000. Page 4; Relevant language in Silver Spring CBD Sector Plans since 1975 related to Falklands parcels, the Core, areas targeted for redevelopment, and housing goals and accomplishments. Pages 4 - 9; Documents and issues that compare and contrast the Montgomery Arms Apartments historic designation process and the Falkland Apartments historic designation process. Pages 9 - 20. Issues begin at Page 18."

At that September worksession, neither the Planning Board nor its staff made any reference to my work, except in the briefest and most oblique of ways. The Planning Board engaged in no factual discussion of balancing with these or any other issue or public policy when they decided to recommend that Falkland North not be designated so that the owner's project could be approved.

When I compared the existing Falkland Apartments with the proposed project as the county government had done for the Montgomery Arms Apartments in 1990-1991, I found that "with 10,850 housing units built, approved and proposed, with a potential for 4,000 more, that total housing in the CBD will have more than tripled with residential build-out without redeveloping Falkland North." I also found that the percentage of garden apartments in the Silver Spring CBD would decline to being only 5% of the housing stock if the Falkland North project was approved.

The tenants of Falkland North currently have 903 square feet of outdoor and recreation space per unit, larger than their apartments and more than three times the outdoor and recreation space available to the tenants of the Montgomery Arms Apartments. However, if the Falkland North project were approved, the new tenants would have 71 square feet per unit, 20% less than what the other project would have provided.

Then there is affordable housing. The replacement for the Montgomery Arms Apartments would have provided 30% of true affordable housing on-site. The replacement for the Falkland Apartments would provide 12.5% affordable housing and 4.5% workforce housing on-site, workforce housing being what a family of four earning \$100,000 per year could qualify for. There would be another 9% of off-site housing that would purportedly serve those needing housing help but which would cost the owner nothing to provide.

If the Montgomery Arms Apartments designation process was the best of times, the most balanced act of balancing ever done by our government in the historic designation process, and it resulted in historic designation being found to be a more important public priority than getting 30% guaranteed affordable housing, then how can our current government justify a blatantly unbalanced process for the Falkland Apartments that would result in us getting less than half the percentage of affordable housing, along with substituting for the rest with an even larger percentage of middle class or government paid-for housing subsidies?

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