

**Perpetual Building
Planning Board Worksession
3/20/08**

- **Interested Parties Submissions 2/4/08**

David Paris

901 LARCH AVENUE, TAKOMA PARK, MD 20912

February 4, 2008

Via Email: MCP-Chairman@mncppc-mc.org

Royce Hanson, Chair
Montgomery County Planning Board
8787 Georgia Ave.
Silver Spring, MD 20910

Re: Perpetual Building Master Plan Nomination

Dear Dr. Hanson:

Please include the attached testimony in the hearing record pertaining to the Perpetual Building master plan nomination. This material details and explores a number of inaccurate assertions presented by the building owner in opposition to the nomination. Additionally, I seek to provide greater contextual information about the significance the Perpetual institution to Silver Spring.

I urge the planning board to recognize that the overwhelming weight of expert and community testimony has asserted that the Perpetual Buildings meets a number of the designation criteria, each of which is individually capable of sustaining a historic nomination. The Perpetual building is valuable community asset that deserves to be protected from demolition.

The Montgomery County Historic Preservation Commission voted to recommend the nomination after careful consideration, but without the benefit of the wealth of synthesized documentation that has been presented to the planning board. In turn, the arguments that have been advanced by the building owner in opposition to the nomination consist of a recycling of the same undocumented assertions that already had been rejected by the HPC.

The rejected assertions presented on the behalf of the Perpetual Building ownership include the inaccurate and undocumented claims that the Perpetual institution lost assets during the 1950's. In reality, Perpetual's assets continued to grow, and the Silver Spring Building, for twenty years, was one of only four Maryland suburban branches maintained by the largest savings and loan in the Washington area. In 1978, it was reported that 55% of Perpetual's deposits originated in Maryland.

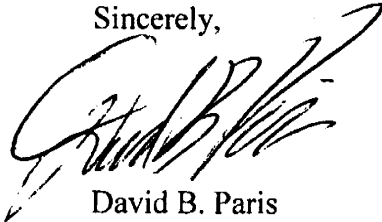
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The owner's attorney, rather than an architectural historian, asserted to the planning board that the Silver Spring Perpetual branch was a failure. Previously, the owner neglected to provide the HPC with requested documentation about how the Silver Spring design was a failure. This assertion is contrary to considerable evidence including Perpetual's decision to follow up the Silver Spring branch with the construction of branch buildings at Hyattsville and District Heights.

Thank you for your attention. Please make the Perpetual Building the first Silver Spring commercial office building designated for preservation protection.

Sincerely,

A handwritten signature in black ink, appearing to read "David B. Paris", written in a cursive style.

David B. Paris

Enclosure

Re: Perpetual Building Master Plan Nomination Submitted by David Paris

HPC Approval Based on Earlier Documentation

The Traceries Report submitted to the Montgomery Planning Board on December 30, 2007 was developed in response to the call of some members of the Montgomery County Historic Preservation Commission for the submission of more scholarly and detailed documentation in support of the master plan nomination.¹ However, it should be recognized that the HPC recommended approval of the nomination, without the benefit of the Traceries Report, despite any perceived shortcomings involving the documentation. It is anticipated that with the benefit of augmented documentation, the planning board will be even more disposed to recognize the merit of the nomination.

HPC Rejected the Owner's Argument

On the other hand, there has been no comparable evolution in the presentation presented by the building owner. Attorney Pat Harris essentially reiterated to the planning board the same rhetoric-heavy arguments presented to the HPC by Consultant Bill Lebovich and rejected by the majority of the HPC. For example, Commissioner Jester stated that he "didn't hear much from the owner in terms of their arguments that really invalidate most of what's been presented....I disagree that there's probably a stronger need for more documentation." Transcript June 27, 2007, p. 68.

¹ The Attorney Pat Harris' misleading comparison of a continuation of the HPC hearing and a second bite of an apple, confused Commissioner Cryor, who inquired whether the HPC turned down the nomination at some point. However, HPC Commissioner Caroline Alderson clarified to the planning commission that the hearing was continued and explained that such a continuance is a common occurrence from which no inference is warranted.

The owner's presentations have been characterized by numerous inaccurate assertions and undocumented, wild speculations. Attorney Harris' attempted to divert attention from the weakness of her positions by seeking information that is only nominally related to the nomination criteria. For example, she seems to demand a level of market analysis that would be worthy of an antitrust case, rather than a historic building designation. She insisted to the planning board that the "significance of Perpetual bank as an institution is debatable" and complained that "[t]he record does not establish the market share, the percentage of the population that received financing from the bank, or the number of bank loans or mortgages that were issued." However, Harris never explained the relevance to the master plan application of so closely focusing on the precise relative market position of Perpetual.

Seeking a micro-assessment of Perpetual's market role appears to be intended to divert attention from the criteria for designation of historic buildings. Moreover, Attorney Harris failed to present any meaningful or accurate documentary evidence rebutting the research presented by the Traceries depicting Perpetual as a significant player in the regional financial market.

The irrelevancy of focusing on economic details of the Perpetual operation was observed by HPC Commissioner Fleming who stated that whether or not Perpetual "gave loans to people, that's not what we're here tonight to talk about." HPC Transcript June 27, 2007, p. 69.

By demonstrating that Perpetual was the Washington area's largest savings and loan, the nominator has met the burden of establishing Perpetual's historic footprint.

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However, a noteworthy institution with a much smaller market share might also warrant a nomination. For example, as pointed out by Commissioner Bryant at the planning board hearing, DC's much smaller African-American owned and run Independence Federal² and Industrial³ Banks would have warranted recognition based on the impact of their targeted service to the African-American community. However, as will be discussed further, the role of Perpetual in both DC and suburban mortgage lending, dwarfed that of DC's largest banks, let alone the two smaller banks.

Perpetual A Regional Financial Powerhouse

In an apparent attempt to downplay Perpetual's historic role in the Washington community, Attorney Harris misrepresented Perpetual's size and power to both the HPC and the planning board.⁴ At the January 10 hearing, she erroneously asserted that Perpetual "was the largest Savings and Loan, more than 20 years before 8700 was constructed. By 1955, their assets had decreased significantly. The nominator's conclusion that the institution was still 'one of the largest in the East' is based solely on Perpetual's self-serving description." She should have known that Perpetual remained a

² "Independence Federal Savings Bank was chartered in 1968 and it became a publicly traded company in 1985. As of December 31, 2006, Independence Federal had approximately \$160.7 million in total assets and approximately \$12.5 million of total stockholders' equity. For more information about Independence Federal Savings Bank, please visit <http://www.ifsb.com>." Observed February 3, 2008, at <http://markets.about.com/about?GUID=1727286&Page=MediaViewer&Ticker=IFSB>

³ "From that first day in 1934, when Industrial Bank had just six employees and \$192,000 in assets, IBNA has grown into an institution with over 150 employees and over \$333 million in assets, making it the largest minority commercial bank in the Washington D.C. metropolitan area and fourth largest minority owned financial institution in the country (June 2005, Black Enterprise Magazine)." Observed February 3, 2008, at <http://www.industrial-bank.com/about/index.html>

⁴ Once again, Harris grossly speculates about a matter that only indirectly relates to the designation criteria.

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giant among savings and loans.⁵ In this instance, unlike Attorney Harris' misinformation, Perpetual's "self-serving" description was accurate.⁶

By mid-1959, despite a \$10 million increase in share "saving" accounts over six months, Perpetual dropped from being the fourth to the fifth largest savings and loan in the country. Senate Hearings before the Committee on Banking and Currency, United States Senate, 86th Congress, August 18-19, 1959, p. 91. Perpetual remained the largest savings and loan in the east until 1964 when it was overtaken by Detroit First Federal Savings and Loan. Moody's Banking and Finance Manual, 1966, page a40. By 1978, worth more than \$960 million, Perpetual was the nation's 50th largest savings and loan, but retained its position as the largest savings and loan of the Washington area. *See* Rudolph A. Pyatt, *Key Role Forseen for S&L's In Solving Urban Problems*, The Evening Star, April 30, 1978, at A-15.

In 1977, two decades following construction of the Silver Spring building, the Federal Trade Commission brought an antitrust lawsuit against Perpetual that was intended to serve as a test case for an agency national initiative to extend antitrust review

⁵ In contrast, before the HPC Harris seemed to be insisting that the size of Perpetual at the time that the building was constructed is the only relevant measure: "And although the applicants state that Perpetual was 'probably at its zenith in 1965' the record is devoid of any information regarding the size of Perpetual in '58.'" HPC Transcript, August 15, 2007, p. 105. One wonders whether she would contend that the Tastee Diner was unworthy of preservation because it was not as big a business as the Hot Shoppe or that DC's Industrial Bank is unworthy of historic recognition.

⁶ "The total amount of real estate loans made by Perpetual since its organization in 1881 is a staggering sum. My associates in the office figure it to be in excess of a billion and a half dollars. It would, of course, be much more meaningful to figure it in terms of the number of homes financed." Edward Baltz, Perpetual President, Newcomen Society Address, November 19, 1965.

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to S&L's and insurance companies.⁷ The FTC found that "Perpetual, the largest savings and loan association in Washington, D.C., has had seven of its eleven directors on the boards of three of the four largest competing banks in the city." *In the Matter of Perpetual Federal Savings & Loan Association*, 90 F.T.C. 608, 1977 FTC LEXIS 16, 83 (1977), *vacated*, 94 F.T.C. 401 (1979).⁸ Perpetual's mortgage activity was found to be on par with that of the second, third, and fourth largest banks of the District of Columbia. *Id.* at 83. The FTC held that the relationship between Perpetual and three of the four largest DC banks was an antitrust violation of §5 of the Clayton Act because the firms were competitors. *Id.* at 130-131.

The FTC found that "[t]he average dollar amount of the residential loans made by Perpetual and the three banks is approximately the same." *Id.* at 24. "In metropolitan Washington, during the same period of time, Perpetual's average residential loan for 274 loans was for \$42,072.59, American Security's for 225 loans was for \$46,715.55, National Bank's for 112 loans was for \$64,205.36, and Union First's for 129 loans was for \$64,844.96." *Id.*

Perpetual maintained more savings accounts and issues more residential loans than all of the competing major banks, during the period studied by the FTC. For the

⁷ It is a notable testament to Perpetual's importance that the FTC chose the S&L's relationship with DC banks as the subject of the agency's first attempt to expand antitrust coverage to such matters. See generally *Landstreet, Recent Development: Antitrust Law -- The Clayton Act -- The Regulation Of Interlocking Directorates Between Competing Banks And Insurance Companies*, 51 Tenn. L. Rev. 599, 605 n47 (Sp. 1984) (Of four mid-1970's enforcement actions challenging interlocking directorships, only the Perpetual action involved S&Ls.)

⁸ The FTC ruling was vacated in 1979 in acknowledgement of a Congressional antitrust exemption that appears to have been an indication of the power and influence of Savings and Loans. See *In the Matter of Perpetual Federal Savings & Loan Association*, 94 F.T.C. 401 (1979).

period ending December 31, 1975, the FTC found that Perpetual had “savings of more than \$682 million (or more than 97% of its total liabilities) and residential loans of more than \$565 million (or more than 73% of its total assets).” *Id.* at 21. In contrast, at the end of 1975, American Security, the second largest bank in DC, “had savings of more than \$189 million (or more than 18% of its total liabilities) and residential loans of more than \$79 million (or more than 7% of its total assets).” *Id.* at 22. For the same period, National Bank, the third largest bank, had savings of more than \$101 million (or more than 19% of its total liabilities) and residential loans of more than \$42 million (or more than 7% of its total assets). *Id.* Finally, at the time, Union First, the fourth largest DC bank, had savings of more than \$88 million (or more than 19% of its total liabilities) and residential loans of more than \$68 million (or more than 14% of its total assets).” *Id.*

Perpetual Loan Activity Served Maryland

From 1972 to mid-1975, the DC Commission on Residential Mortgage Investment, an official District Government body, discovered that Perpetual issued five times as many suburban mortgages as DC mortgages. Over this time, Perpetual made 3,092 loans worth \$124,591,000 in the non-DC portion of the DC standard metropolitan statistical area (SMSA) and made 838 DC loans worth 24,035,000.⁹ *See* DC Commission on Residential Mortgage Investment (DC-CRMI), Residential Financing Practices in the

⁹ “[T]he [DC] S&L’s are loaning a higher percentage of their money on higher priced housing than they did in the past, as is reflected in the average mortgage amount lent.” DC Commission on Residential Mortgage Investment, Redlining Study, Summary of Major Findings. May 1976. But, despite a trend toward concentrating loan activity in the area west of Rock Creek Park, the S&L’s’ lending was still “less geographically restricted” than that of the banks. *Id.* “The S&L’s had a sharp decrease in city (in proportion to suburban) mortgages in 1972, in comparison with their pre-1972 mortgage holdings. By mid-1975 the

District of Columbia, May 6, 1976, Chart Number 2.

In comparison, the Riggs National Bank, the largest DC Bank, made 843 residential realty loans worth 34,314,000 in the non-DC portion of the SMSA, and 530 residential realty loans worth \$20,296,000 within DC, and National Permanent, DC's second largest savings and loan, 1904 comparable loans worth 65,078,000 in the non-DC portion of the SMSA and made 671 comparable loans worth \$22,247 within DC. Therefore, Perpetual made almost twice as many residential real estate loans in the suburbs as National Permanent, the second largest DC S&L and over six times more suburban residential real estate loans than Riggs Bank, the largest DC Bank.

Since Perpetual was the dominant force in DC and suburban home finance market, it is very significant that the institution established an early policy supporting equal opportunity lending practices.¹⁰ Particularly in the suburbs, Perpetual's role was vastly greater than that of even the largest DC banks, let alone the much smaller Independence and Industrial institutions that sought bring a measure of fairness to lending.¹¹

It seems reasonable to estimate that more than half of the suburban SMSA

District's share from the S&Ls, though was on the rise. As with the banks, this came from increased lending west of the Park." *Id.*

¹⁰ This is not to claim that, particularly from the perspective of DC, Perpetual might not have played an even more progressive role with regard to issues such as the neighborhood disinvestment. However, even if Perpetual's service to the DC African-American community was not equivalent to the targeted role of Industrial and Independence, the extent of Perpetual's mortgage lending practice was vastly greater.

¹¹ During the 1972 to mid-1975 period, Independence made 244 residential realty loans totaling \$5,420,000 within DC and 28 residential realty loans totaling \$822,000 to the non-DC portion of the SMSA. In turn, during the same period, Industrial made 176 residential realty loans totaling \$2,159,000 within DC and 12 residential realty loans totaling \$393,000 to the non-DC portion of the SMSA. DC-CRMI, *supra*, Chart's 1, 2. Therefore, their mortgage activity was only a small fraction of Perpetual's. Their collective suburban mortgages are barely more than \$1 million dollars compared to Perpetual's \$124,000,000.

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Perpetual loans financed Maryland, as opposed to Virginia, home purchases. In 1978, Perpetual reported that 55% of its deposits originated in Maryland, while only 14% derived from Virginia and 31.6% from DC. *See* Rudolph A. Pyatt, *Key Role Forseen for S&L's In Solving Urban Problems*, The Evening Star, April 30, 1978, at A-15. Perpetual maintained Maryland branches and was licensed to do business in Maryland. In contrast, although Perpetual had always financed some Virginia home purchases, it maintained no Virginia branches until a 1982 merger.¹²

In 1954, Perpetual acquired Bethesda Chevy Chase Savings and Loan. Traceries, p. 3. During the 1980's Perpetual engaged in a flurry of merger activity resulting in about sixty additional branch locations.¹³

Perpetual's was the largest Silver Spring savings and loan. In 1963, its assets made up \$466.8 million representing over 85% of the combined assets of Silver Spring's total of three savings and loans.

Savings and loan association also have played an important part in development of Silver Spring where three major federally insured associations have large offices. Their combined assets exceed \$537.5 million.

These include the main office of the citizens building and loan association with \$43.7 million, a large branch office of Perpetual Building Association which has assets of \$466.8 million, and the main office of Guardian Federal Savings and Loan with \$27 million of assets.

¹² In 1982, Perpetual was merged into the Perpetual American SFB of McLean Virginia. The same year, Perpetual American merged with an entity that had been Washington & Lee Savings and Loan Association. *Perpetual Fin. Corp. v. United States*, 61 Fed. Cl. 126, 129 (Ct. Cl. 2004).

¹³ See footnote 20, *infra*.

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Donald Hadley, *Silver Spring to Have Five Banks with Total of \$1 Billion in Assets*, The Evening Star, July 24, 1963. Moreover, Perpetual's reported assets exceeded \$270.4 million in assets of the Suburban Trust Company but only rivaled the \$637 in holdings of Maryland National Bank, Maryland's largest bank.

Further, the DC CRMI found that, during the 1972-1975 period, Perpetual's DC loans represented 21.6% of the number of SMSA loans and 17.4% of the amount of total SMSA mortgages. *Id.* The DC commission found that "a large majority of the local financial institutions have not fully met their responsibilities to the city as a whole and to the minority community in particular." DC CRMI, Press Release, May 6, 1976, p. 1. In a 1978 interview, Thomas J. Owen, the President of Perpetual "expressed concern about the lack of sufficient banking facilities in Far Southeast and Far Northeast. The two areas, he said 'appear to be under-branched by financial institutions.'" Pyatt, *Key Role Forseen for S&L's*, *supra*.

The Maryland suburbs received greater mortgage funds than DC because during the postwar period, Montgomery County was a more attractive realty investment environment than the District and because the District is a smaller geographical area. The Montgomery County population doubled several times during the first twenty years following World War II,¹⁴ while DC lost population and faced growing concerns about

¹⁴ "After the war, the County embarked on a period of unprecedented growth. The population doubled from 1946 to 1950 and doubled again in the next decade." Montgomery County Historicial Society, Montgomery County, *Maryland Our History and Government*, 1999. "In 1962 the MNCPPC unveiled a new General Plan known as 'wedges and corridors'.... In the years following the implementation of the "wedges and corridors" plan it became clear that the MNCPPC had drastically underestimated the growth that would take place in Montgomery County." Montgomery County Archives, *Guide to the Printed Material of the MNCPPC*, February 17, 1999, p.1

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neighborhood disinvestment, particularly involving the portion of the city located to the east of Rock Creek Park. *See* DC CRMI, Press Release, p. 2. Moreover, following World War II, Silver Spring was the second busiest commercial area in Maryland.¹⁵

In a 1977 letter to the Federal Home Loan Bank Board supporting the governmental approval of a Gaithersburg, Maryland Perpetual branch, twelve members of the DC City Council acknowledged the DC Government's concern about the flight of money to the suburbs.¹⁶ *See* Letter by DC City Council to Hon. Robert H. McKinney, Chairman, FHLBB, April 26, 1978, p. 1. However, although the DC Council members were convinced that interstate banking would benefit DC residents, an influential United States Senator had a contrary view. Senator William Proxmire, Chairman of the Senate Banking Committee wrote a letter to Hon. Robert McKinney, Chairman of the FHLBB, recommending going slow regarding granting interstate banking privileges to DC savings

¹⁵ "Other commercial development followed. Joseph R. Harris, a women's clothing retailer, built a store across Ellsworth Drive from the Hecht Company store in 1949. The Hahn Shoe store also opened in 1949; the Lee Building, which has been on the same site (northeast corner of Georgia Avenue and Colesville Road) since 1987, follows the architectural example set by the Hahn building. Sears closed their store at 5928 Georgia Avenue in the Brightwood Area of D.C. and moved to a new store at 8455 Colesville Road (between Ramsey Avenue and Second Street) in October 1949. A month later, the Bank of Silver Spring [founded 1946] opened its new building at 8665 Georgia Avenue. This was the first bank in Montgomery County to have a drive-in window. The building was later used by the Chambers Funeral Home and is now the District Court [now Eagle Bank]. The J.C. Penney store opened across Colesville Road from Hecht's in 1950. Jellef's, another major retailer, was located on Colesville Road between the Shopping Center and Hecht's. The Eig Building at 8641 Colesville Road, which had offices, stores, and a Hot Shoppes, opened in 1951. Downtown Silver Spring also had a number of "dime" stores and many other well-known merchants. By 1949, Silver Spring was home to 60,000 residents, and the *Washington Times-Herald* reported that about 420,000 people drove to Silver Spring to shop. Silver Spring had the second busiest business district in Maryland; only downtown Baltimore surpassed it. Indeed, with the exception of downtown Washington, nothing surpassed Silver Spring between Baltimore and Richmond." *See* Robert Oshel, Woodside Park History, *The Development of Silver Spring*, copied on January 26, 2008 from <http://users.starpower.net/oshel/H02.htm>.

¹⁶ "In 1976, Thomas Owen, President of Perpetual pointed out that 'owner-occupied' housing units in D.C. comprised only 16.5 per cent of the entire housing stock in the metropolitan area." The Intowner, *People Places, and Programs*, October 1976, p. 2.

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and loans:

In the light of your announced intention to resign from the Federal Home Loan Bank Board, it is my view that it would be unwise for the Board to issue final regulations allowing District of Columbia savings and loan associations to branch across state lines into Maryland and Virginia until your successor has been appointed and has had an opportunity to study this issue.

Letter of May 17, 1979.

Because of the economic trend favoring the Maryland suburbs, it is predictable that Perpetual would have issued more loans in Maryland than DC. It is particularly likely that a significant portion of the Montgomery County mortgages were focused on the Silver Spring area, since one of Perpetual's two Montgomery County branches was located in Silver Spring, an area of intensive postwar growth. Until 1980, the Silver Spring location was one of a four suburban branch offices.¹⁷ Moreover, as a savings and loan, Perpetual would have been more tied to real estate loans than competing banks.¹⁸ Additionally, Perpetual's lending activity was subject to geographic limitations established by the Federal Home Loan Bank act of 1932. Traceries has documented that Perpetual's general real estate loan activity was restricted to a radius within 50 miles of its branches. Traceries, December 30, 2007, p. 15. Furthermore, Perpetual's Federal Housing Authority (FHA) loans were subject to a 100-mile radius.

¹⁷ During the 1980's Perpetual added about sixty new Perpetual branches. See further discussion, *infra*. A 1978 FTC decision, *infra*, states that in 1975 Perpetual had four suburban branches. In light of the Maryland limitation on interstate branch banking, it is likely that Perpetual maintained the four suburban branches until, four branches planned to open in 1979 were followed by the commencement of 1980's merger activity. See *Infra*; see Rudolph A. Pyatt, Jr., *Key Role Forseen for S&L's In Solving Urban Problems*, Washington Star, April 30, 1978, at A-15.

¹⁸ See David Mason, *Savings and Loan Industry*, observed January 24, 2008 at <http://eh.net/encyclopedia/article/mason.savings.loan.industry.us>

Perpetual Building Design Bridged Decades

The success of the Perpetual Building design may be inferred from Perpetual's repeated incorporation of the common design into signature construction that spanned several decades. It seems unlikely that Perpetual would have compounded a colossal mistake by constructing 1963 the District Heights and the 1965 Hyattsville branches. It is quite extraordinary that the design elements that inspired the 1953 downtown Perpetual building were incorporated into the Perpetual's Hyattsville building a decade later.

Harris specifically complains that "there is absolutely no information that this particular branch [Silver Spring] was significant." However, Attorney Harris once again has provided no documentation to rebut considerable evidence presented by Traceries and the Silver Spring Historical Society demonstrating that the Silver Spring Building is a successful design and institution. Harris testified to the planning board:

More importantly, with respect to this building, the record's devoid of any information suggesting this bank's value or importance. The record does not establish the market share, the percentage of the population that received financing from the bank, or the number of bank loans or mortgages that were issued. For all we know, this bank could have been a complete failure for whatever reason the people had to go to the DC headquarters to get their loans...Perpetual's no more relevant other than in scale and price than a corner ice cream parlor. Houses were being built and people would have gotten a home loan whether Perpetual existed or not. Perpetual did not have a corner on the market."

Planning Board Hearing, January 10, 2008.

The record does not contain even a scintilla of evidence that functions of the Silver Spring branch office were performed by the downtown office. Moreover, the enduring vitality of the building design tends to disprove Harris's assertions, which are

based on Lebovich's unsupported "speculation" that Perpetual "found out fairly quickly that it's a terribly inefficient building. It's not a very good design. It doesn't work very well. And for those reasons it probably was never replicated further." HPC Transcript, June 27, 2007, p. 36.

Perpetual's Signature Branches Predominated

On the other hand, it would not be appropriate to infer design problems from the mere failure for Perpetual to replicate its signature design at each branch location. There are too many intervening legitimate design and business considerations to permit an informed inference.

Obviously, Perpetual eventually did not require a large building at each branch location. Even the 1963 mini-sized District Heights Perpetual-style building, which included a second-story public auditorium, was a two-story building¹⁹ that would have been larger than required for some latter-day small branches.

Contrary to the suggestion of Harris, the historical significance of Perpetual's signature building design should not necessarily be affected by the subsequent introduction of a different design intended to meet different needs or specifications. The significance of classic designs, such as the Volkswagen "beetle" and the original all-in-one Macintosh computer, is not affected by the subsequent introduction of different designs.

In 1965, Perpetual had six branches offices, in addition to the main building at

¹⁹ The Evening Star, *Perpetual Opens New Building Tomorrow*, May 12, 1963. ("It is the fourth new building to be erected by Perpetual at various locations in recent years.")

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11th and E Streets, NW. *See* Edward Baltz, President Perpetual, Newcomen Society Presentation, November 19, 1965. The six branches included a “somewhat scaled down replicas of our main office building in Bethesda, Silver Springs [sic], District Heights, and in the Prince George's Plaza area. In addition, we have established branch offices in midtown Washington and Anacostia, both of which have been completely rebuilt or renovated, making six branches in all plus the Main Office.” *Id.*

Over the next ten years, Perpetual established two more branches in DC. The 1977 FTC antitrust decision found that in 1975 Perpetual maintained five offices in Washington, DC, and four offices in the Maryland suburbs. *In the Matter of Perpetual Federal Savings & Loan Association*, 90 F.T.C. 608, 1977 FTC LEXIS 16, 21 (1977). In comparison, American Security Bank, National Bank, and Union First, the District’s second, third, and fourth largest banks, each had 30, 25, and 19, offices respectively. *Id.* Therefore, it appears that Perpetual might have focused a good deal of its Maryland lending activity on the community immediately surrounding its Silver Spring building, one of its four Maryland locations.²⁰

Up to 1975, just short of two decades after the Silver Spring location was constructed, over half of the nine Perpetual branches incorporated the Perpetual brand architecture. The five “branded” buildings included all four Maryland Perpetual branches; two branches were operated in each of the two Maryland suburban jurisdictions. Therefore, about 55% of Perpetual’s offices utilized the Perpetual design –

²⁰ The FTC found that “The average dollar amount of the residential loans made by Perpetual and the three banks is approximately the same.” *Id.* at 24.

100% of the Maryland branches and 20% of the DC branches.²¹

Until the 1980's, when Perpetual acquired about sixty branches through mergers,²² the number of Perpetual branches was limited by the Federal FHLBB's authority to review new branch applications. Moreover, the construction of any additional branch in the Maryland suburbs would have been foreclosed by a protectionist Maryland limitation restricting the expansion of out-of-state banks to a location substituting for an existing branch located, in the same county, within a mile of one of only four grandfathered locations. *See* Md. Code 1957, art. 23, § 156; *see also* Md. Code Ann. Financial Institutions § 9-803 (successor of 1955 provision); Traceries Report, p. 15.

Perpetual was only one of three out-of-state savings and loans with a grandfathered limited right to maintain a Maryland branch office. Traceries Report p. 10²³. "The amendment was specifically aimed at Perpetual Building Association, which is completing a large new branch building in Bethesda." S. Oliver Goodman, Article, *Saving-Loan Branch Ban Voted in Md*, Washington Post, March 24, 1955, at 41. The

²¹ In 1978, The Evening Star reported that Perpetual added five additional branch locations in DC., planned additional DC Branches and sought approval for a Germantown, Maryland location. Pyatt, Key Role Foreseen for S&L's, *supra*, at 1-2.

²² In 1982, Perpetual was merged into the Perpetual American FSB of McLean Virginia. The same year, Perpetual American merged with an entity that had been Washington & Lee Savings and Loan Association. *Perpetual Fin. Corp. v. United States*, 61 Fed. Cl. 126, 129 (Ct. Cl. 2004). It seems likely that in 1982 Perpetual first obtained a license to do business in Virginia. Perpetual also merged with American Federal S&L in 1980, Guardian Federal S&L in 1982, and Interstate Federal S&L in 1983. *Id.* at 132-33. In 1984, Perpetual American converted from a mutual form of ownership to a federal savings bank via a public offering. *Id.* at 133. It was then renamed Perpetual Savings and Loan Association. *Id.* at 134. In 1987, Perpetual S&L was acquired by Perpetual Financial Corporation. *Id.* at 133-34. In 1990, Perpetual S&L failed to meet regulatory capital requirements. *Id.* at 134.

²³ One of the three out-of-state savings and loans must have been Anacostia Federal Savings & Loan Association, which Perpetual purchased in 1956, the year following enactment of the branch banking restriction. *See* Traceries Report, pp. 3, 10. Moreover, it appears that the Anacostia S&L location at 7118 Marlboro Pike became the site of the first Prince Georges County Perpetual building-style design or at least received the grandfathered rights relating to the previous location.

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effect of the amendment was to freeze the number of Perpetual branches.²⁴ The amendment was sponsored by Delegate Warren Browning, a Democrat representing the Bethesda area of Montgomery County. *Id.*, see 169 Maryland Manual 466 (1961-62).

A spokesman for DC financial institutions, which desired to establish suburban branches to service large numbers of depositors residing in Montgomery and Prince Georges' counties, characterized the legislation as "provincial in character" and a potential restraint to suburban growth. *Id.* A newspaper account indicated that it was anticipated that DC retaliation to the protectionist legislation²⁵ "would be a blow to at least one Free State institution which is well along in plans toward starting a branch in the Dupont Circle area." *Id.*

The 1978 letter to the Federal Home Loan Bank Board signed by members of the DC City Council supported approval of a Germantown, Maryland Perpetual branch because the signatories recognized that "[c]learly District of Columbia associations operate under an unreasonably debilitating interstate branching restriction." See Letter DC City Council, *supra*, p. 1.²⁶

For strategic purposes, Attorney Harris highlights construction decisions that were

²⁴ The Maryland act applied to bank branches established after March 1, 1955. Md. Code 1957, art. 23, § 156. The March 24, 1955, *Post* article reports that Perpetual "is completing a large new branch." *Id.* Therefore, to obtain the grandfathered rights to operate the Bethesda building branch, Perpetual appears to have closed a branch at 6940 Wisconsin Avenue that it acquired in 1954 from the Bethesda Chevy Chase Building Association. See Traceries Report, p. 3.

²⁵ A past president of the Bar Association of Montgomery County indicated that in 1961, "[w]e expended much of our energy that year trying to get the legislature to pass a law prohibiting lawyers with their offices in the District of Columbia, where their main practice was concentrated, from practicing in Montgomery County without a bona fide office in Maryland. Carlin, *Bethesda Before the Boom*, *supra*, undated but observed on February 2, 2008 at Viewed at <http://www.montbar.org/archives/history.htm>

made more than twenty years following construction of the Silver Spring building. She proclaimed the planning board:

Four does not make a brand. Significantly, Perpetual constructed many other branches after 8700 that were not the same style, they were up to 76 branches in total...and in some cases Perpetual's branches were located in existing buildings."

Focusing on the proliferation of branch offices resulting from 1980's mergers, none of which could possibly have been "constructed" by Perpetual, served to direct the planning commission's attention away from recognizing that, in 1975, 100% of Maryland branches and 20% of DC branches were based on the Perpetual trademark design. *Supra*; also see generally Traceries Report, pp. 10-11. It seems likely that in the 1980's Perpetual's priorities would have focused on assimilating about sixty new bank branches, rather than getting diverted into the business of constructing dozens of Silver Spring-type financial buildings.

It is understandable that Perpetual's buildings acquired through the purchase of competing financial institutions would not reflect the Perpetual building design. Even two of the five original DC branches were buildings that Perpetual obtained through acquisitions. The locations of the two acquired branches were 808 Connecticut Avenue, NW, and 1340 Good Hope Road, SE, which currently is a SunTrust Anacostia branch. See Traceries Report, p. 3

Perpetual regularly utilized its signature buildings in its advertisements, contrary

²⁶ The documentation relating to Perpetual's attempt to obtain FHLBB approval of a Gaithersburg branch suggests that it might have been easier to obtain branches through purchasing failed thrifts than by obtaining government approval. See generally Letter, DC City Council, *supra*,

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to Harris' assertion to the planning commission that "there was no depiction of a signature building in the contemporary advertisements."²⁷ Harris certainly was aware or should have been aware of Perpetual advertisements depicting the Silver Spring Perpetual Building. At least one such advertisement was part of the nominator's power point presentation to the HPC. Additionally, a full-page Perpetual advertisement announcing the opening of the Silver Spring Perpetual Building utilized multiple images of the Silver Spring building's interior and exterior. See McCoy, *Fate of Perpetual Building Belies Name*, Silver Spring Voice, February 2007, depicting an advertisement from the Washington Post and Times Herald, January 12, 1958, Courtesy Washingtonia Division, DC Public Library.²⁸

Attorney Harris told the planning board that she finds it "amusing that their report [Traceris] equates it [the Perpetual Building] to a McDonald's, where there's 12,000 McDonald's. That's a brand." However, this view misconstrues the need to determine facts within a historical context, as emphasized by several HPC commissioners at the two Perpetual nomination meeting. The various levels of federal and state regulatory laws pertaining to savings and loans made it impossible for any savings and loan in the nation to have approached a thousand, let alone ten thousand, branches. Even in today's "global economy," the entire 1600-branch SunTrust multi-jurisdictional operation, covering about 24% of the country, falls short of Attorney Harris' very "amusing" 12,000 figure.²⁹

²⁷ It is ironic that Harris cites advertisements, since elsewhere she has criticized the nominator's reliance on Perpetual's "self-serving description[s]."

²⁸ Available at: http://www.silverspringvoice.com/archives/copy/2007/02/features_thenAgain0207.html.

²⁹ Available at: <https://www.suntrust.com/portal/server.pt> (observed on January 24, 2008.)

The McDonald's corporate branding analogy utilized by Traceries seems to have been first suggested by HPC Commissioner Jester, who commented that "there are many properties that are listed in the National Register that are examples of that kind of corporate design, commercial, whether it's McDonald's, Little Tavern's, I mean, I don't think it has to be an absolute one off] to be a significant building." HPC Transcript, June 27, 2007, p. 36.

Consultant Lebovich responded that he was "not impressed by the fact that one company did four buildings or five buildings that look very much alike." HPC Transcript, June 27, 2007, p. 36.³⁰ His undocumented, unapologetically partisan³¹ reasoning was taken to task by HPC Commissioner David Rotenstein who criticized Lebovich for "not providing us with any explanation for why they did that particular number [of buildings]. What was perhaps the economic or other circumstances driving them to either cap it at that number, or whatever. I mean, you're not giving us any basis for determining why that might be a limiting number." *Id.* Attorney Harris interjected, "I think that's a little difficult, because that's like proving a negative. I mean, if in fact there are only four [buildings], there may not be evidence to substantiate why there isn't more than that." *Id.*

The building owner failed to provide the requested documentation to either the HPC or the planning commission. In contrast, supporters of the nomination have presented considerable evidence regarding the regulatory and competitive context of the

³⁰ Attorney Harris also told the planning board "Four does not make a brand...."

³¹ Lebovich's assessment of the Perpetual Building nomination displays his partisan bent., "I think the arguments made for the style and the classical modernism and the relationship, the triangular windows, is crap." HPC Transcript, June 27, 2007, p. 34. Although, Lebovich did not attend the planning commission hearing of January 10, 2008, Attorney Harris repeated the substance of his HPC testimony.

savings and loan business during the relevant periods.

Landmarking the Downtown Perpetual

Attorney Harris' concern about being asked to prove negatives³² did not restrain her from observing that "[i]f Perpetual as a bank was significant why wasn't the DC headquarters landmarked, or why wasn't the President's(sic) Eddie Baltz's home landmarked? We don't even know if he stepped foot in this building." Comments to Planning Board, January 10, 2008.

Additionally, as it happens, newspaper accounts chronicle that Perpetual President Edward C. Baltz was present at the pre-opening party celebrating the Silver Spring Perpetual Building.

"EDWARD C. BALTZ, right, president of the Perpetual Building Association, congratulates Thomas B. Thatcher, assistant vice-president, who has been appointed manager of the Association's new branch at Georgia Avenue and Cameron Street in Silver Spring. The occasion was last Saturday's pre-opening showing of the new \$1.5 [million] building to civic and business leaders and members of the press. A buffet supper was served to the large crowd in attendance."

Suburban Record, *New Home Opens*, Wheaton-Kensington, Montgomery County, Md., January 16, 1958 (text underscoring front page picture of Baltz shaking hands with Thatcher); *see also* Suburban Record, *Perpetual Opens Door to \$1.5 Million Office*, January 8, 1958 (with front-page picture of building).

Representatives of the DC Preservation League and the DC Historic Preservation

³² "I think that's a little difficult, because that's like proving a negative. I mean, if in fact there are only four [buildings], there may not be evidence to substantiate why there isn't more than that." *Id.* HPC Transcript, June 27, 2007, p. 34.

Office recall a preservation effort to save the building. Although the age of a building should not arbitrarily determine the outcome, several witnesses testified to the planning board that the downtown Perpetual Building would be more likely landmarked today than in 1990, when the downtown building was on 37 years old. An inventory prepared by Thurlow Tibbs for Don't Tear It Down, predecessor to the DC Preservation League states "I feel that of all of the buildings on the square, this is the most architecturally significant." Thurlow Tibbs, Don't Tear It Down, Inventory of Square 321.

It is very likely that the downtown Perpetual flagship building would be designated for preservation today. Kim Prothro Williams testified to the planning board that the DC Historic Preservation Review Board recently designated the southern end of 16th Street, NW, from Scott Circle South to the White House, as an historic district, thus protecting from future demolition a dense group of mid-century buildings, including the World Center Building, designed by Robert O. Scholtz, who collaborated in the design of the Perpetual Building. She encouraged the planning board to evaluate the Perpetual Building in the context of this fast disappearing group of mid-century DC modernist buildings that are characteristically clean and modern, despite retaining the monumentality of traditional DC buildings.

The Timing of the Nomination

The suggestion of Attorney Harris, that the historic preservation application is a mere tactic to defeat a development project is based on nothing more than the mere observation that the master plan nomination took place after the development plan was

introduced. The planning commission should avoid this diversion from the merits of the nomination. Harris' argument is an invitation for the planning commission to take into account the nominator's motive, which is clearly not part of the criteria set forth in the Montgomery County Historic Protection Ordinance found at Chapter 24A of the Montgomery County Code.

Harris seems to believe that a developer should be inoculated from a preservation application by virtue of winning a race to announce first. However, in truth, regardless of the timing of the nomination, it is likely that her clients would have been equally dissatisfied with the nomination. Moreover, it appears that the meeting with the community was intended to announce the developer's plans, not to solicit inconvenient community input regarding alternative development directions.

Submission of the historic preservation application was an appropriate response to a development application that threatened a *status quo* that the historic preservation ordinance is designed to maintain. It would be an unsound public policy to encourage preservationists and developers to engage in a race to file documents with the planning commission. The timing of such filings should be irrelevant to public officials charged with the responsibility of utilizing the criteria set forth in Chapter 24A of the county code.

It obviously took more than five months for the research supporting the Perpetual nomination to be pulled together and synthesized. Even as members of the HPC voted to recommend the nomination, Commissioner Jester noted that with regard to the significance of the building to the community, the nomination effort's "research hasn't

really been synthesized yet and pulled together in a way that makes that compelling case,” but he said that he thought the building met other criteria. HPC Transcript, August 15, 2007, p. 132.³³ Moreover, Caroline Alderson testified to the planning board, on behalf of the HPC, that the Traceries Report “synthesized” material that had been presented to the HPC.

Attorney Harris told the planning board that representatives of the Silver Spring Historical Society failed to mention the need to preserve the Perpetual Building when development plans were first presented to the Silver Spring community. However, when redevelopment plans were first announced at a January 17, 2007 meeting of the Silver Spring Commercial and Economic Development Committee (CED), Marcie Stickle, a SSHS board member who attended the meeting as an individual resident, recollects specifically confining her remarks to commenting on the exceptional value of the Perpetual Building. Further, she reports that Henry Dourian, a board member of the South Silver Spring Neighborhood Association, who also attended the CED meeting in an as a individual Silver Spring resident, voiced agreement with her complements about the building.

The overwhelming weight of testimony favoring the nomination is indicative of the authenticity of the preservation effort. In contrast, only the building owner testified before the planning commission in opposition to the Perpetual Building nomination.

The Perpetual Building was not included in the 2005 "Historic Silver Spring"

³³ Traceries has found that the building meets five nomination criteria The building need only meet one of the criteria specified in Chapter 24A, HPC Commissioner Caroline Alderson, testified to the planning

book written by SSHS President Jerry McCoy. The book, which is into its third printing, and the author is writing a second book surveying other historical Silver Spring properties, including the Perpetual Building.

This is a master plan designation hearing, all participants should stay focused on how the master plan meets the nomination criteria, rather than diversionary discussion about motives.

SunTrust Wishes to Remain a Tenant

According to a reliable source, SunTrust wishes to remain in the Perpetual Building, and the bank recently signed a five-year lease extension. The execution of the lease demonstrates SunTrust's continued interest in occupying the Perpetual Building. Therefore, contrary to the suggestion of the building owners and despite the alleged "evolution" of banking technology, SunTrust continues to find the Perpetual Building an attractive location and an appropriate building.

The building owner's answer to a question may have created the misimpression that SunTrust has no interest in remaining in the building. Building owner Bert Foer testified to the planning board that "[n]one of these banks [Perpetual and its successors] have talked at all about preserving it [the building] in one way or another." He was precisely responding to a question from Commissioner Bryant inquiring whether SunTrust was asked "whether or not they wanted to preserve the bank because of the openness of the floor plan and all of

the unique characteristics that has come out?” Unfortunately, although the question was directed to “anybody in the room” a member of the audience, associated with the nominator, was not afforded the opportunity to correct the misimpression created by Foer that SunTrust was not interested in occupying the building.

Role of the Bethesda Perpetual

The Bethesda Perpetual Building, like its Silver Spring sibling, was a pioneering effort that contributed to a subsequent proliferation of office construction. An account of the effect of the Bethesda building is contributed by E. Austin Carlin, a past President of the Bar Association of Montgomery County and co-developer, along with a law partner, of the Title Building, which is located adjacent to the Bethesda Perpetual location.

Bethesda, believe it or not, had very few commercial buildings of any size until the Perpetual Building was constructed at the corner of Wisconsin and Montgomery avenues. ...

After the success of the Perpetual building the first Air Right Building was constructed over the B&O right-of-way on Wisconsin Avenue (1963).

See E. Austin Carlin, Bethesda Before the Boom, Bar Association of Montgomery County, undated.³⁴

Ironically, Warren Browning, the sponsor of the Maryland legislation limiting Perpetual’s ability to expand into Maryland,³⁵ ended up locating his legal practice in the

³⁴ Viewed at <http://www.montbar.org/archives/history.htm>

³⁵ The Bethesda Crescent building complex that incorporates the Bethesda Perpetual building is presently occupied by the Monument Bank, a Maryland state chartered bank and trust, which opened its doors on September 6, 2005. Information viewed on February 2, 2008 at <http://www.monumentbank.com/>.

Bethesda Perpetual Building. Attorney Carlin's account provides a flavor of the diverse legal community that maintained offices at the Bethesda branch building.

This was in 1955. Many early lawyers were located in this building. The characters in the Perpetual Building all had their own flairs and styles. The leader without a doubt was Bob Beall. There was only one of his kind at the Bar. He was a great toastmaster, a great entertainer, a man who spoke his mind, never bending his views on any question--usually taking the minority view. He was Examiner in Chancery, whose duty was to evaluate the testimony in equity cases--mostly uncontested divorces. Jim Christopher maintained his office in the Perpetual Building and was also a Trial Magistrate. Jim McAuliffe had his office there when Assistant State's Attorney; this was when Assistant State's Attorney could also have a private practice. John McNerney and his group had their offices in the Perpetual Building. Included in this group was a very young man named Richard Latham. His is now retired from our Circuit Court. Some of his training was as a clerk for Walter Moorman, who was serving as a Trial Magistrate at the time. As I recall, Ed Layne and Paul McCormick were associates. John was one of the best trial lawyers of his day, a great person outside the Court, but when the trial started, he was a tenacious and vicious opponent. He would not even remember your name once the trial began. John Keating, one of our Court Auditors, also maintained offices in Perpetual.

Id.

Perpetual Building Recognized by MNCPPC

Attorney Harris contended to the planning board that "there is absolutely no information that this particular branch was significant." However, the Silver Spring Perpetual Building was among a select group of two existing buildings and three prospective office buildings celebrated by an aerial photograph of downtown Silver Spring prominently located in the 1964 MNCPPC annual report. The photograph suggests that the Perpetual and Guardian buildings helped to attract commercial office

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construction, an important goal of the Silver Spring master plan.

The annual report identifies five office buildings, three of which are financial institutions, with numbered arrows that are superimposed onto an aerial photograph of the Silver Spring office district. The caption next to the picture states:

New construction in the Silver Spring Business District in recent years has been primarily of the office building type. This two-year old photo shows the **Perpetual Building** (1), the Guardian Federal Building (2), and proposed building sites for the Bank of Silver Spring (3), a Medical office building now nearing completion (4), and a proposed eight-story office building at Spring Street and Colesville Road (5). **Encouragement of commercial office building was one of the major proposals contained in the Commission's master plan for the Silver Spring Business District adopted in 1957.** One of the factors attracting this type of development is the large number of public parking spaces provided in the business district. (emphasis added)

At left is a [photograph of a] rendering of the proposed Bank of Silver Spring Building to be located at the northeast corner of Georgia Avenue and Cameron Street. Ground will be broken for the building this year.

MNCPPC Annual Report, 1964.

Smart Growth

Considerable development is planned for the area immediately surrounding the Silver Spring metro stop. Harris has testified that the Perpetual building is presently surrounded by buildings having an average FAR of 4. Since county smart growth objectives obviously are being met in this area, the planning board should turn its attention other important county objectives, particularly historic preservation, which requires the planning board's stewardship.

Not a single Silver Spring commercial office building has ever been landmarked. In turn, Silver Spring treasures that have been demolished include the 1927 Maryland

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National Guard Armory, 1950 Blair Station Post Office, part of the 1946 Canada dry building, and 1922 Bungalows, The planning board must turn the tide toward preservation and continued use of our remaining community assets.

Considerable testimony has been introduced that the Perpetual Building is an excellent candidate for designation. Retention of the Perpetual Building will provide the Silver Spring community an important sense of place and will contribute to the retention and enhancement of the Silver Spring financial area. Silver Spring residents have recently expressed a strong preference for elected officials who recognize the value of preserving our historic resources. This expression of public sentiment should motivate the planning board to favor the Perpetual Building nomination.

In Conclusion

Voices from both the community and recognized experts have overwhelmingly asserted that the Perpetual Building warrants protection from demolition because the 1950's structure contributes an important sense of place and history to Silver Spring. Exacting documentation has demonstrated that 8700 Georgia Avenue meets a number of designation criteria, each of which is individually capable of sustaining a nomination. The recognized success of Silver Spring redevelopment should decrease the commercial risk associated with a preservation effort and increase the willingness of developers to consider preservation options. On balance, the Perpetual Building's value as a historical, cultural, and architectural resource exemplifying the recent past outweighs the need for yet another smart growth, higher FAR, mixed use, development project.

Thank you for your consideration.