

10. Furthermore, the hands on the clock in the building's façade have not moved for decades.

11. In short, there is nothing left of the attractive subterfuge the Substation's façade once embodied.

12. The rest of the building besides the façade is no more than a brick box with a few windows not even visible from the street. THS concedes that the building "was subsequently enlarged twice -- once in 1943 and again in 1954."³ THS does not provide information in its application about what those changes entailed, however, so it is impossible to tell from the application how much the building changed from the period of significance. Nonetheless, Pepco's recent work has resulted in a good part of one of the back walls being ripped out (this is not mentioned in the application).

13. THS also claims the building should be an historic landmark because it was designed "in the Art Moderne style and is significant in the area of architecture."⁴

14. As detailed above, most of the distinguishing features of the building are long gone. Yet there are still other art moderne features that have disappeared. There was once a kind of art moderne filigree over the windows, now gone, replaced with bricks. Likewise, the façade originally featured ornamental aluminum frames, again long substituted by bricks.⁵

15. What remains, in essence, are some black tiles at the base and door of the building. The tiles are chipped and dirty. Again, to base a claim that the building retains historical integrity on what is left of it is – or should be viewed as – a *reductio ad absurdum*.⁶

The Community Should Not Be Forced to Endure the Substation Forever

16. For the foregoing reasons, this Board should view the application as fatally weak. The Board should also consider, in light of the application's infirmities, that the Substation's most salient connection to history among most residents of the community is as a monument to decay. For HPRB to landmark this structure would be to sentence the community to reminders of that history forever.

17. The paper of record at the local level in our neighborhood stated, accurately, that the Substation is "a squat windowless rectangle that helps deaden a block that could host transit-oriented development and neighborhood-serving retail."⁷

³ Application at 16.

⁴ Application at 8.

⁵ See images feature on pages 32-35 of Application.

⁶ See David Alpert, "Should this plain box Pepco substation in Tenleytown really be a landmark," *Greater Greater Washington*, last accessed on 11/8/17 at <https://ggwash.org/view/65215/should-this-plain-box-pepco-substation-in-tenleytown-really-be-a-landmark> ("[D]oes any building not embody characteristics of its method of construction? Every architectural period has a name; every building has a period; every construction has characteristics.").

⁷ "Staff Editorial: D.C. must balance historic preservation with the need to move forward," *The Northwest Current*, 10/25/17, last accessed on 11/8/17 at <https://currentnewspapers.com/staff-editorial-d-c-must-balance-historic-preservation-with-the-need-to-move-forward/>

18. *Washingtonian* has stated that the “bricked-over Pepco substation next to the Friendship Heights Metro station has been an eyesore for years[.]”⁸

19. As a community we can envision a much better future, one without reminders of the squat windowless eyesore that plagued us for decades.

20. To be sure, through the ANC’s intervention, Pepco has agreed to renovate the building so that there will be windows and displays behind them, and this should substantially mitigate the historic ugliness of the bricked over windows. We are pleased that Pepco has worked with the community and HPO – voluntarily – to do this renovation in a manner that respects the building’s brief, early history.

21. But what Pepco plans to do voluntarily in the future does not make the present building worthy of being a historic landmark.

22. Given the building’s history in the community of rot, the community should have the option to leave the building behind.

HPRB Should Not Reward the Timing of This Application

23. Although HPRB is not a court, it does serve a quasi-judicial function, and the functioning of courts can inform HPRB’s procedures.

24. Courts of equity deny relief to parties with “unclean hands,” or those who have acted unethically or in bad faith with respect to the subject of a lawsuit.

25. THS has existed for many years, and could have filed an application to designate the Substation at any time during that period. More specifically, THS has been on notice for several years that Pepco was going to renovate the Substation, and that the renovation would entail a great deal of expense.

26. Yet, THS chose to wait until shortly before Pepco would need to obtain a permit to continue its work to file an application.⁹

27. Pepco’s 11/7/17 letter to HPRB details the harm to the community and Pepco that the historic review process, initiated after it had begun work, could cause, noting among other things:

(1) the project is a critical infrastructure project intended to modernize the Harrison Street Substation in order to enhance system reliability for the service area;

⁸ “An Old Pepco Substation Will Host DC’s First JFK Murals,” *Washingtonian*, 7/5/16, last accessed on 11/8/17 at <https://www.washingtonian.com/2016/07/05/dcs-first-john-f-kennedy-murals-decorate-1940s-pepco-substation/>

⁹ Although THS would have known ahead of time of the harm an application could cause if filed after Pepco began work on the Substation, Pepco ultimately left no conceivable doubt in THS representatives’ minds. See “Pepco letter to HPRB,” 11/7/17, at 2.

Throughout our five months of engagement with THS, THS was made aware that a building permit had not been secured (it is expected in November). We expressed our concern, given there was no disagreement between THS and Pepco as to the restoration of the facade, that absent a building permit, a nomination would have the effect of shutting down the project, causing delays and adding costs as a result of the historic review process.

(2) the project has been ongoing for 6 years at significant costs; [and,]

(3) any delay in the project at this point will add cost and time to the project, putting at risk restoration efforts in the event of an equipment failure due to the configuration of the temporary equipment which does not have the same capacity or operational flexibility as a permanent substation[.]¹⁰

28. This Board should take into account the applicant's obviously strategic behavior in waiting to file this weak application until Pepco had little choice but to acquiesce.

29. The Board should likewise take note of Pepco's striking silence on whether it supports or opposes the application for designation in the context of what Pepco *does* say about the harm that the historic review process could occasion Pepco (and, by extension, the citizens it serves). The most reasonable inference to draw is that Pepco believes that freely speaking its mind about the landmark application could lead to adverse consequences at other points in the review process.

30. The Board should find this a chilling prospect, and should take this prospect into account in deciding upon this substantively-weak application. At a minimum, the Board should treat Pepco's letter as what it is, a politic indication that it opposes designation of the Substation.

NOW THEREFORE BE IT RESOLVED:

1. ANC 3E opposes the above-referenced application,

The resolution passed by a vote of ___ - ___ - ___ at a properly noticed meeting held on November 9, 2017, at which a quorum was present, with Commissioners Bender, Ehrhardt, Hall, McHugh, and Quinn in attendance.

ANC 3E

by Jonathan Bender
Chairperson

¹⁰ "Pepco letter to HPRB," 11/7/17, at 2