

THE REGULATION OF SCENIC LANDMARKS: A PROCESS GONE ASTRAY

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INTRODUCTION AND STATEMENT OF THE PROBLEM, WITH EXAMPLES: Central Park Kinderberg, Prospect Park Vale of Cashmere, Riverside Park 105th Street Stair, and Prospect Park Sign Program.

For many years, going back to the late 1970s, the Landmarks Preservation Commission (LPC) had an important regulatory role in the stewardship of our city’s scenic landmarks. It had a close working relationship with other city agencies, notably the Parks Department and the Public Design Commission (PDC); with the Central Park Conservancy and Prospect Park Alliance and similar groups; and with the public. This relationship successfully advanced the cause of understanding, preserving, restoring, and protecting these extraordinary landmarks.

In recent years this once robust partnership has fallen short—in fact, fallen apart—and the stewardship of these landmarks has suffered as a result. Four recent examples are cases in point: the recently completed reconstruction of the Kinderberg and adjacent landscape in Central Park, the approval of the redesign of the landscape and the design for a new building at the Upper Vale in Prospect Park, the review of the staircase reconstruction at 105th Street in Riverside Park, and the review of a sign program for Prospect Park.

Kinderberg

At the December 7, 2021 public hearing for the Kinderberg, most Landmarks commissioners had objections to various parts of the landscape design, including the new ramp and reconstruction of the original staircase. These objections were stated in the Commission’s report. None of these objections were addressed in the as-built design. The dismal results demonstrate the insightfulness of the Commission’s objections.¹

¹ See photographs in the Appendix at the end of this report.

Upper Vale (Children's Playground/Rose Garden)

The proposed Vale reconstruction was heard at the February 28, 2023 public hearing. The Commissioners again had many objections and concerns about the design, both in its overall concept and its details. The Commission failed to issue its report within the mandated 45 days, and in fact, the report was so delayed (issued 5 months after the vote) that the Parks Department proceeded to PDC without waiting for it. As a result of this delay, PDC appears to have not had the benefit of Landmarks' expertise on this matter, nor of the public input which helped inform LPC's findings. Once again, the Parks Department and Prospect Park Alliance made no changes to the plan in response to the Commission's findings, and PDC approved the design essentially as submitted.

Riverside Park 105th Street Staircase

At Riverside Park, a staff-level advisory report on the stair reconstruction was issued by LPC on June 26, 2023, finding that the missing stair railing should be replaced with a replica of the original ornate bronze design, rather than the simple painted steel railing proposed. The inability of the staff to find the new railing design "appropriate" should have triggered a public hearing at LPC. The Public Design Commission, in this case apparently having the Commission's report, nonetheless approved the proposed design on a consent basis, meaning its commissioners didn't review it, and the public was unable to testify. Thus, there was no commissioner review or public testimony at either agency on a proposal that was not restorative and had substantial deficiencies in design and appropriateness.²

A second issue raised by the Riverside project is the way LPC has chosen to define "building" in scenic landmarks, which determines whether its review is binding or advisory. The structure to which the stair and railings are attached is a building as most people would define it. It has a roof and walls and interior rooms for the public and staff, and a loggia. Yet, it was determined by LPC to not be a building. We ask why the Commission would take such a narrow view of what a building is, thus ceding its binding review authority to PDC? This is an example of abdication of responsibility by LPC and of its failure to take a leadership role in the regulation of scenic landmarks.

Prospect Park Signs

At the September 26, 2023 review of a sign installation project in Prospect Park, it was revealed at the hearing that the Public Design Commission had already approved the signs on a city-wide basis. That left LPC in the rather useless position of providing critical comments on a proposal that had already received final approval. LPC was reduced to stating its hopes for a better design in the future.

These examples, and others like them, demonstrate that the review process for scenic landmarks is broken and needs to be fixed.³

² Only at the last minute was approval of the railing deferred at PDC, following intervention by private citizens who happened to be aware of the project and its appearance on PDC's "consent" agenda.

³ We acknowledge the Commission's letter of Feb. 16, 2021 responding to questions about the process. But when the end result of the process is the failure to successfully regulate scenic landmarks, additional discussion and change in procedures are necessary.

HISTORY OF LPC'S ROLE IN DESIGNATING AND REGULATING SCENIC LANDMARKS

It's important to understand the history of the Commission's regulatory role in scenic landmarks. Until the Landmarks Law was amended in 1973, there was no scenic landmark designation category. The Commission could and did include historic parks within historic district designations, and it designated buildings within parks as individual landmarks.

A renewed appreciation of the importance of the park designs of Frederick Law Olmsted and Calvert Vaux as unique and complete works of art (they designed most New York City designated scenic landmarks) began to be recognized beginning in the late 1960s. Within the city, both the Landmarks Commission and the Parks Department joined in this recognition and took the lead in advocating for the preservation, restoration, and proper maintenance of these parks. This took the form, at the Commission, of the amendment to the Landmarks Law providing for designation of scenic landmarks, a separate and distinct category from other designations. At the Parks Department, curators of Central and Prospect Parks were appointed, and early master plans and individual projects for restoration took shape.

While the Commission proceeded, slowly, to designate scenic landmarks, beginning with Central Park in 1974, the city's fiscal crisis and its aftermath resulted in a decade or more of little capital construction and reduced maintenance. By the end of the 1970s, conditions in these historic parks had reached their nadir. When city funds finally started to become available in the late 1970s, and as private funds began to be raised by the new Central Park Conservancy, Prospect Park Alliance, and others, projects began to be submitted to LPC for review. The Commission realized it had no history, procedures, or protocols in place for regulating work in scenic landmarks. This affected the Commission's ability to undertake that regulation and interact successfully with the Parks Department, Public Design Commission, and the public at large. The Landmarks Law itself offered little guidance.

At the same time as the Commission recognized the need to develop its internal expertise and procedures for regulation of scenic landmarks, it endeavored to make a significant contribution to celebrating the importance of these long-neglected parks to the city, state, and nation. It accomplished these objectives through its undertaking of The Olmsted Project. This multi-year, grant-funded effort culminated in an exhibition and catalog, "The Art of the Olmsted Landscape," on the work of Olmsted and Vaux, focusing on their New York parks. The exhibit was staged in the American Wing Courtyard at the Metropolitan Museum of Art. The research and records of this project remain at the Commission.

HOW THE REGULATORY PROCESS WORKED

The Commission decided that, since scenic landmark designation was specific to the Landmarks Law, and the agency was clearly given the mandate to undertake the regulation of scenic landmarks, it would devise the procedures and policies under which it would do this work. The Commission did not defer to the Parks Department in determining the process. Robust regulatory procedures were developed to implement its role in the stewardship of scenic landmarks and for its interactions with the Parks Department and the Public Design Commission, which has a joint role in the review process. These procedures were successful and remained in effect for many years.

The Landmarks Law has few details in its description of the procedure to be followed in reviewing work on city-owned landmarks, including scenic landmarks (Administrative Code Sec. 25-318). Essentially, the law requires only that the agency responsible for work submit an application and that the Commission issue a “report” to that agency within 45 days. This gives the Commission both a great deal of flexibility and a great deal of responsibility to devise procedures that are transparent, fair, and most importantly, benefit the preservation of scenic landmarks and the public good that preservation delivers.

The procedures that the Commission devised provided guidance on what types of work required application to LPC and how ordinary maintenance is defined. They described what types of projects would require public hearings as opposed to staff level reviews. They outlined application procedures, materials required, timing for submissions, and, in consultation with the Design Commission, the timing and relationship between reviews by the two agencies. These procedures were put in writing and widely distributed.⁴ The Landmarks Commission’s forceful role in this working relationship among the Parks Department, the Conservancy and Alliance, and the Public Design Commission was accepted by these entities and the resulting interactions were amicable and productive.

While the purpose of this present critique is to address the regulatory *process* it’s important to keep in mind the *design and preservation objectives* for scenic landmarks that the process was put in place to support. The objectives of the Commission’s regulatory regime were clear, and they coincided, for the most part, with those of the Parks Department, Central Park Conservancy, and Prospect Park Alliance at the time:

- Restore and maintain extant historic landscapes, buildings, structures, and other features.
- Reconstruct missing historic landscapes, buildings, structures, and other features when possible.
- Remove intrusive features when possible, or if not possible, reduce the degree of their intrusiveness.
- Make certain that any new features required in a scenic landmark—buildings, structures, signs, lighting, drinking fountains, and other details—follow the design precepts of the historic park. In the case of the Olmsted and Vaux parks, these precepts were clearly articulated by Olmsted

⁴ This was prior to adoption of the City Administrative Procedures Act, which encouraged or required such policies to be the subject of formal rulemaking.

and are evident in historic visual documentation. The easiest way to understand this is to consider that these parks have a *style* and an *aesthetic purpose*, and every original component, from the largest sweep of landscape to the smallest architectural detail was designed to support that style and purpose.

For many years, most projects proposed for scenic landmarks substantially met these objectives; where they did not, or would benefit from improvement, LPC required revisions to the design. LPC's reports were then issued, and PDC typically deferred to LPC's expertise in these fully vetted proposals. Where PDC and LPC had differences, they were amicably resolved among the participants.

THE COMMISSION'S ROLE: ADVISORY VS. BINDING

Until Local Law 77 of 1995 was enacted, the process described above was used successfully for all city-owned landmarks, as LPC and PDC had joint review responsibility. Following the change, joint jurisdiction, for the most part, only applied to scenic landmarks. Long-standing procedures had LPC review projects first and issue reports prior to submission to PDC. PDC had the final say under the Charter but does not generally have specific expertise in historic preservation, so its review followed LPC's, giving PDC the benefit of LPC's findings to inform its review. More importantly, however, LPC **did not issue** reports for projects it found to be inappropriate or seriously flawed. The staff and commissioners worked with applicants from city agencies, as with private applicants, to revise designs until they could be found appropriate. No city agency wanted to be seen as defying LPC and undertaking work the Commission found inappropriate.⁵

It was only following the 1995 change to the law that LPC began differentiating between "advisory" and "binding" reports⁶. Although the terminology is technically correct, it exaggerates the difference between the two types of reports and has led to a minimization of LPC's regulatory role for scenic landmarks. Despite its being the expert agency, tasked by the law with designating and regulating scenic landmarks, it now defers to PDC with a series of "recommendations" and discussions that substitute for meaningful findings and for the hard work of having the applicants revise designs to make them appropriate. The agency with historic preservation expertise (LPC) is deferring to an agency without a historic preservation mandate. While PDC has other areas of expertise that can be very useful to reviews of scenic landmarks, it does not typically have staff or commissioners expert in this area.⁷ The result of this change has been to seriously diminish the effectiveness and value of the Commission's reviews of work in scenic landmarks. The stewardship of these historic resources has suffered as a result. The four examples cited at the beginning of the document attest to this.

⁵ Former Commission chairs are clear about this use of the report process in oral histories recorded by New York Preservation Archive Project.

⁶ Previously, the Commission issued "reports." The modifier "advisory" was not used.

⁷ At the time of the 1995 law change, the president of PDC (then called the Art Commission) was a landscape architect with expertise in historic preservation and historic landscapes. We believe that his desire to maintain a role for PDC in scenic landmark reviews led to the carving out of scenic landmarks from the change that eliminated PDC review for work on city-owned landmarks.

SHORTCOMINGS OF THE CURRENT PROCESS

From the perspective of those of us outside of the agencies but watching the results of regulation as it eventually appears in our scenic landmarks, the current procedural shortcomings are these:

- There is no clear definition of work that is “ordinary maintenance” specific to scenic landmarks and therefore not submitted to LPC and PDC for review.
- It appears that work exceeding any possible definition of “ordinary maintenance” is sometimes undertaken in scenic landmarks without LPC review. There doesn’t appear to be any mechanism or effort to bring this work forward for review and/or to correct it.
- The definition of “building,” critical to the determination of whether LPC’s review is binding or advisory, is obscure, appears to vary project to project, and appears not to conform to the generally recognized definition of a building.
- There is no clear guideline for how the determination is made to bring a proposal to public hearing or review it at staff level. The determination of what has an effect on a scenic landmark must be made very differently from the determination of what has an effect on a building.
- There can be long delays in issuing reports after applications are voted on at public hearings. This means that the design agencies and the Public Design Commission don’t have the benefit of LPC’s findings as they proceed with design and PDC review. When the report includes objections, concerns, and recommendations, it’s critical for this information to be immediately available.
- The Commission doesn’t require the Parks Dept. to revise inappropriate or questionable proposals prior to voting on the proposals and issuing reports. This eliminates all incentives for the Department to revise its designs to make them more appropriate or to resolve objections. Applicants will not make changes when they know the Commission will vote to issue a report, even for a severely flawed project, and they can proceed to PDC, where historic preservation is not a mandated consideration. The result has been to severely weaken LPC’s once robust role in the regulation of scenic landmarks.
- The Commission has included certain work items in scenic landmarks in its rules designed for buildings in historic districts. Scenic landmarks are not historic districts and have very different criteria for appropriateness.
- There is a lack of coordination between LPC and PDC on scenic landmark reviews.

PROPOSALS FOR REVISED PROCEDURES

A wide range of changes is required to reform the scenic landmark review process. The objectives of these reforms should be transparency, clarity, improved coordination among agencies, and enhanced public participation, all in service of the goal of significantly improving the stewardship of scenic landmarks. The Landmarks Commission needs to take the lead in this, as the City's preservation agency. We suggest that LPC and PDC undertake the following, coordinating as necessary with Parks and the individual park administrators:

- Propose and adopt rules describing the regulatory process for scenic landmarks and include definitions unique to scenic landmarks. These should include descriptions of work considered “ordinary maintenance” and not requiring review; the application process and scheduling; how public hearing vs. staff level review is determined specific to the kinds of work undertaken in scenic landmarks; and the relationship between the LPC and PDC in reviewing scenic landmark applications.
 - Clarify and expand the definition of “building” within a scenic landmark in order to extend LPC's binding jurisdiction as far as possible.
 - Provide for the timely issuance of reports. Unlike permits for private work, whose issuance awaits detailed submissions that are required to be revised according to the staff or vote of the commissioners, the recommendations made in reports need to be available as soon as possible to inform design development and PDC review. Amendments or additional reports can be issued upon receipt of final drawings.
 - Clarify the scheduling of LPC and PDC reviews, especially concerning issuance of LPC reports and their use by PDC in informing that agency's reviews. Provide for staff presence at PDC meetings and hearings as needed to explain LPC's position on matters of historic preservation in scenic landmarks.
 - Ensure that any city-wide PDC approvals that affect scenic landmarks (or any other landmarks for that matter) have been either fully reviewed and approved by LPC or include exceptions for landmark sites.
 - Return to the practice of requiring revisions to proposals for work in scenic landmarks as necessary to make the proposals not only appropriate, but also exemplary examples of stewardship of these important landmarks that are in the public trust. These revisions should be made prior to issuing reports, and PDC reviews should not occur until the reports are issued. Only in this way will the Commission restore its role as a meaningful regulator and steward of scenic landmarks, a role clearly intended for it in the Landmarks Law and expected of it by the public. There is nothing in the law that prevents LPC from requiring design revisions for scenic landmark applications.
 - Eliminate the references to scenic landmarks in the Commission's rules for alterations in historic districts. Rules for work in scenic landmarks may be possible to devise, but they should be separate and geared specifically to this category of designation.
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None of these suggested changes require revisions to the Administrative Code; the changes are entirely at the discretion of the Commission. In fact, the 1995 Administrative Code changes actually increased the authority of LPC by removing PDC from the review process for existing buildings within scenic landmarks. Yet, discretionary changes to policies and procedures made by LPC since that time have significantly weakened its role in the regulation and stewardship of scenic landmarks.

APPENDIX

Kinderberg

At the hearing, the commissioners had extensive concerns about the materiality of the ramp and its lack of rusticity and about its placement directly abutting and obscuring the historic rock-faced wall of the original staircase. These concerns were minimized in the text of the Commission's report to the following: *"the recommendation that the applicants explore alternative treatments to the ramp retaining walls to help them to better harmonize with the surrounding naturalistic setting, and that the applicants explore moving the proposed ramp away from the stair."* The Parks Dept. made no changes to the design to accommodate the Commission's concerns, and this is the result. The ramp walls are raw concrete, painted gray, and the free-standing, rock-faced, rustic side wall of the stair has been lost. We would call this work late Robert Moses in character, but that probably does his designers an injustice.





Vale of Cashmere

The Commission's report cited extensive commissioner commentary about many aspects of the proposed design, which varying individual or groups of commissioners found inappropriate or problematic and in need of revision:

"...concerns about specific aspects of the landscape design, including that the division of the proposed design into three zones may overly divide the areas and be inconsistent with the historically unified designs for this section of the park, and recommended that that design be refined to work as a single entity, maintaining a dialogue between the present and the past designs."

"...found that the proposed fencing of the meadow would diminish the historic axial experience, while ... maintaining the meadow may not be feasible without fencing..."

"... recommended not planting any new trees in locations which would further divide the spaces, thereby preserving views and vistas."

"...the proposed arbor was not fully designed and had questions about its height and materials palette and recommended that the design of the arbor be lighter and not feature a mix of materials..."

"All of the Commissioners had concerns about aspects of the proposed building's design, with a few of the Commissioners also recommending restudying its placement. Most of the Commissioners found the design of the building to be too heavy, with some specifically finding the building's design intrusive and suggesting that the building have a more picturesque and simpler design, that the angularity of the canopy be redesigned to feature a gentle arc, and that the orange color be toned down, helping the design to relate better to the surrounding landscaping and to soften the presence of the structure."

"...the design should more closely follow one of the two common design approaches of existing structures in the park by either blending more into the landscape as a discreet element or by featuring a more timely, contemporary design, which would strongly contrast with the landscape."

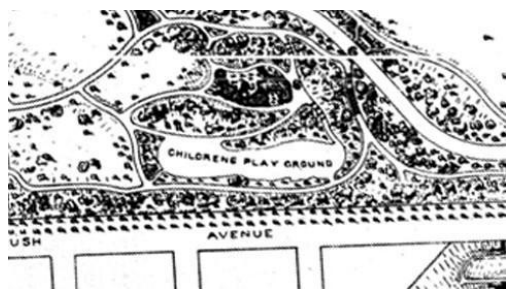
"...the upper and lower halves of the structure stylistically divergent and rigidly stacked and recommended a looser approach, with a more artistic and integrated design."

"...the canopy feature all timber, rather than a mix of materials."

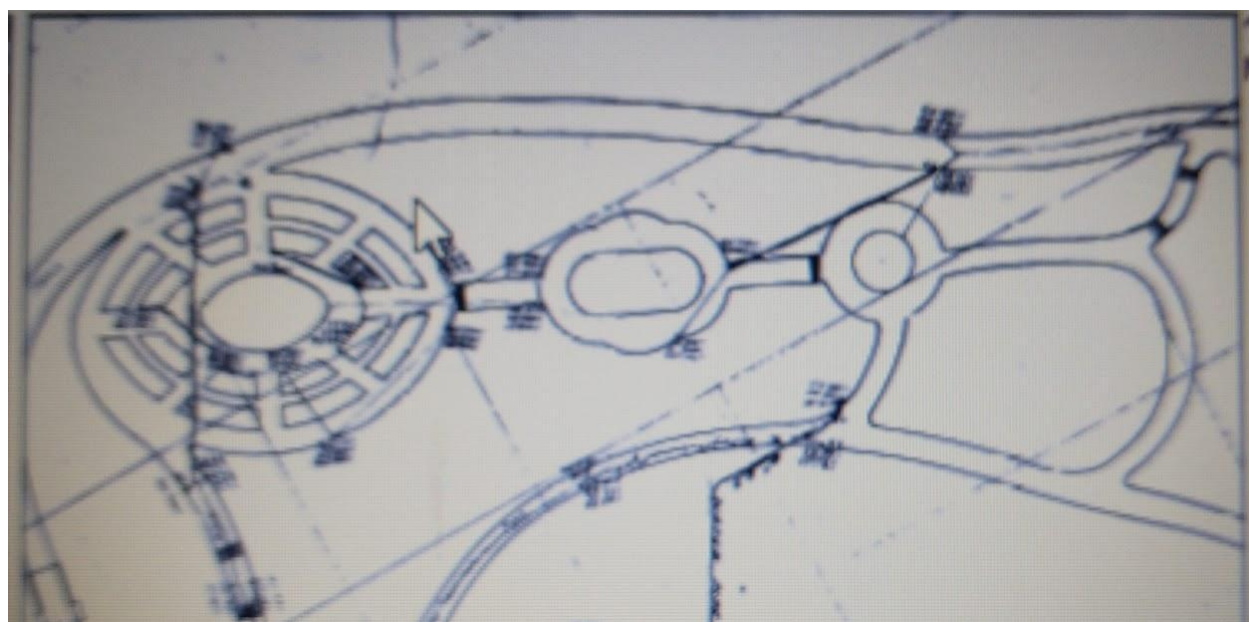
"... the building be set further back into the landscaping and/or that alternative nearby locations for the building be considered...."

We acknowledge that it would be difficult for the Public Design Commission to know what to do with this tangle of recommendations, some conflicting, from what is supposed to be the city's historic preservation authority. But in fact, PDC apparently never saw the recommendations, and it approved the project a month prior to LPC's report being issued. The project design was not modified by Parks in response to LPC's review and was presented to PDC unchanged. This is not meaningful regulation in the public interest.

Below: the original Olmsted and Vaux design for the Upper Vale (referred to as a “children’s playground”), its 125 years as the Rose Garden, and the proposal viewed by the Landmarks Commission, unchanged and approved at the Public Design Commission.



The Upper Vale, or “Children’s Playground” was designed as a typical, small and intimate open space, but set aside for children.



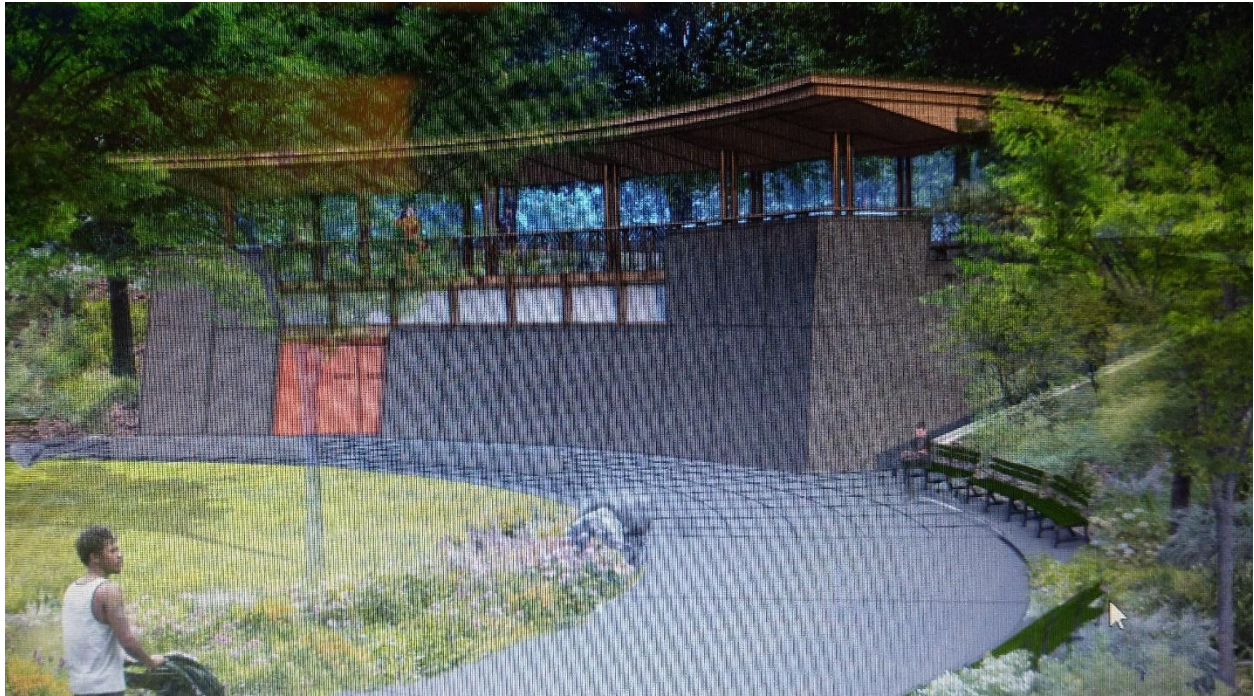
The 1895 Rose Garden maintained the sense of the space, adding three pools and ornamental plantings. This design reflected both the character of some of the more formal original Olmsted and Vaux landscapes and the neo-Classical overlay features introduced into the park at the turn of the 20th century.



The Rose Garden at the turn of the 20th century. It was modified in the 1960s, but with a similar design, which remains today.



The plan as presented to LPC, and, despite commissioners' many objections, presented without change to and approved by PDC. The plan destroys without a trace both the original Olmsted plan and the historic Rose Garden designs.



The new building as approved by PDC, unchanged despite LPC's objections, perhaps can be described as "neo-bunker" style, completely inappropriate in design and placement for an Olmsted park, as many of the LPC commissioners understood and commented on.