



Historic Alexandria Foundation

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December 12, 2018

By Email

Al Cox, FAIA
Historic Preservation Manager
Department of Planning & Zoning
City of Alexandria

Re: BAR Case Number 2108-00410 –619 S. Lee Street (Vowell-Snowden-Black House)

Dear Al:

As you know, the Historic Alexandria Foundation (“HAF”) was formed “to preserve, protect and restore structures and sites of historic or architectural interest in and associated with the City of Alexandria, Virginia, to preserve antiquities, and generally to foster and promote interest in Alexandria’s historic heritage.” As such, we are vitally concerned with the preservation of the historic character of the Old and Historic District in Alexandria, Virginia and the dwindling amount of open space remaining in Old Town. We have been particularly alarmed to learn of the very extensive development plans to the historic property located at 619 S. Lee Street in Alexandria (the Vowell-Snowden-Black House).

I. Introduction

The property at 619 S. Lee Street enjoys an especially prominent place in the history of Alexandria. The period of its greatest historical significance, however, was undoubtedly the property’s long association with Justice Hugo L. Black, one of the most significant figures in the history of the United States Supreme Court and of the United

States. Describing Justice Black's place in American History, Justice William Brennan wrote:

The place of Hugo Lafayette Black in the pantheon of great Justices of the Supreme Court grows more and more secure with each passing year. His contributions to constitutional jurisprudence, particularly in the construction and application of the Bill of Rights, probably were as influential in shaping our freedoms as any.

William J. Brennan, Jr., *Forward to Mr. Justice and Mrs. Justice Black* (1986). It is therefore a matter of vital public interest to preserve 619 S. Lee Street as closely as possible to the way it was during Justice Black's lengthy residence here in Alexandria.

In October of 1965, while still owned by Justice and Mrs. Black, the property at 619 South Lee Street was awarded plaque 35-E-619 as part of the Historic Alexandria Foundation's Early Building Survey plaque program. It was one of the first houses to receive that important designation. The property has long been held out as a preeminent example of Federal architecture in Alexandria. See, e.g., D. Davis, S. Dorsey & R. Hall, *Alexandria Houses 1750-1830* at 112-14 (1946)(see attached); Gay Montague Moore, *Seaport in Virginia, George Washington's Alexandria*, Chapter 22 (1949)("The Vowell-Snowden House"). It was included in the Historic American Buildings Survey (HABS No. VA-709), first through photographic documentation and later in written form in 1966 based on work that was funded, in part, by the HAF. The HABS Report succinctly summarized the unique importance of the property in its "Statement of Significance" as follows:

The Vowell-Snowden-Black House, certainly one of the outstanding examples of the Federal 'row' type buildings in Alexandria, ***has fortunately been spared the fate of suffocation. By precept and example it stands flush with the street, but with its extensive grounds and breathing space preserved to this day.***

HABS No. VA-709 (emphasis added). The adjoining Carriage House that fronts on Franklin Street is of such historic significance that it has its own listing as HABS No. Va-711, which was also based on work partly funded by HAF.

On December 30, 1969 the Hugo Black House was designated by the Virginia Historic Landmarks Commission ("VHLC") as a certified landmark. Deed Book 704, Page 494-95 (attached). The VHLC designation was in furtherance of its mandate to "***designate as an historic landmark, the buildings, structures and sites*** which constitute ***the principal historical, architectural*** and archaeological sites ***which are of***

State-wide or national significance.” 1966 Va. Acts Ch. 632, § 4(a)(emphasis added); accord Va. Code § 10.1-2204(A)(1).

The designation of 619 S. Lee Street as a certified landmark property accompanied the gift to the people of Virginia by Justice Black and his wife of a perpetual Open Space Land Act and Conservation easement covering the property which prohibits its subdivision and restricts the future development of the property. Justice Black imposed that easement on the property to protect it from precisely the type of development proposed today. Indeed, Justice Black was a vocal and ardent preservationist who was especially concerned about ensuring that Alexandria gardens be preserved from the destruction of its precious open space:

Alexandria, I have always thought, is one of the nicest and most desirable residential areas in the vicinity of Washington. I regret to see those in charge of permitting the erection of buildings to follow a course which is bound, in the long run, to take away a lot of the Charm of living in Alexandria.

* * *

One of the main charms about Alexandria homes is that nearly all of them, like most continental homes, have gardens, even if small, in which the occupants can enjoy flowers, shrubs and green grass. A city without homes of this kind, one of blank walls that must rely on electric lights only, should not be the goal of Alexandria.

Letter from Hugo Black to Charles B. Moore, Chief of Current Planning, Alexandria, Va dated Feb. 25, 1969 (Lib. of Congress MS.).

Without any consultation or notice to the public, on October 12, 2017 the Virginia Department of Historic Resources (“VDHR”) gave its conceptual approval of a proposed rehabilitation plan for the Hugo Black House property. We were surprised that VDHR would give conceptual approval for the proposed project which shares many of the defects that led VDHR to properly reject a similar plan in 2014. See Letter to Michael Harrington from M. Melinat & E. Tune dated Sept. 14, 2014 (“Harrington Letter” attached). When we learned of that conceptual approval, we wrote to the VDHR to bring to their attention some of the numerous errors in the review they had undertaken without the benefit of public comment. See Letter to VDHR from HAF dated October 1, 2018 (attached). Unfortunately, the VDHR has refused to consider the information we provided. It has done so even though their “conceptual approval” was given based upon inaccurate information provided to it by the applicant’s consultants (see, e.g., the discussion of the distinctive “Curve”) below.

HAF believes that the City of Alexandria has both the right and the duty to enforce the Open Space Land and Conservation easement placed on the property by Justice Black and has called upon the City to do so. See attached letter to the City Manager dated December 12, 2018 (attached). The City's authority to do so is specifically set forth as a matter of positive statutory law. Va. Code § 10.1-1013 ("An action affecting a conservation easement may be brought by ... [t]he local government in which the real property is located."). Nearly five decades of real estate tax relief have been provided by the citizens of Alexandria and the Commonwealth based on the promise that the open space would not be built upon absent a need "essential to the orderly development and growth" of the City and the provision of replacement open space in any event. Va. Code § 10.1-1704.

The Alexandria Zoning Ordinance specifically requires the Board to consider "***the impact upon the historic setting,***" "***the height, mass and scale of buildings or structures,***" the "extent to which the building or structure ***will preserve or protect historic places and areas of historic interest in the city,***" before approving any planned construction like that proposed for the Hugo Black House. Zoning Ordinance § 10-105(a)(2)(emphasis added). We submit that the proposed construction will destroy the most noted distinguishing characteristic of this certified Landmark property: "***its extensive grounds and breathing space preserved to this day.***" HABS No. Va-709 (emphasis added).

Viewed from the street, the property would appear to have two large new buildings on Lee Street, totally changing the view shed of the property. Like the rejected proposal from 2014, the current development plan proposes demolition of the distinctive curve joining the ell to the main house, and an overall increase of the gross floor area of the structures on the property from 8,156 to 13,635 square feet. That increase in size is indistinguishable from the "increase in total square footage ... [that] nearly doubles that of the historic resource," and led the VDHR to deny a similar application for construction in August of 2014. Harrington Letter at 2 ("The cumulative effect of the proposed additions would significantly compromise the historic character and integrity of the property."). Moreover, the starkly modern additions proposed will result in construction that is "***incongruous to [the] existing building or structure, [and] area surroundings***" contrary to the requirements of the Zoning Ordinance. Zoning Ordinance § 10-105(A)(1)(emphasis added).

II. HAF Recognizes and Applauds Record of Important Conservation Work Performed by the Applicants on the Hugo Black House and Other Properties in Alexandria which Is in Stark Contrast to the Proposed Construction.

HAF wishes to acknowledge the beneficial work the applicants have performed to conserve both the existing structure at the Hugo Black House and other historic properties in Old Town. In our view the recently approved restoration work on the roof and repointing the bricks at the property demonstrates exemplary stewardship on the part of the owners. Bar Case #2018-00198. And in June of this year HAF awarded the applicants a 2018 Preservation Award for their conservation work at 405 Cameron Street.

It is with regret, therefore, that HAF must oppose the applicants' plans for development at 619 S. Lee Street which in this instance are so contrary to the principles of historic preservation, the precedent-setting gift of Hugo Black to the citizens of the Commonwealth and Alexandria, and the long-established guidelines for development in the Old and Historic District. Unfortunately, it appears that in their effort to secure approval for their development plans from the VDHR the applicant has agreed with that agency to impose upon the property three modern "Pavilions" that disregard the design imperatives for this Old Town property and misapply the basic principles of preservation necessary for this important Landmark property.

III. The Proposed Development of the Property is Contrary to the Requirements of the Zoning Ordinance and This Board's Published Guidelines

A. The Applicant Proposes to Demolish a Noted Historic Feature of the Hugo Black House.

HAF does not oppose the removal of the 1970 Kitchen addition (Removal Item 1); the flounder addition made in 2000 (Removal Item 2), the prefabricated garden shed (Removal Item 4), the skylight (Removal Item 8), or the portion of the 1975 addition to the Carriage House (Removal Item 9). The applicant's desire to remove these items serves to illustrate how often such non-historic additions do not withstand the test of time.

We do oppose Removal Item 3. We trust that before the scheduled hearing of December 19, 2018, the applicant will have corrected the mistaken representation contained in its application materials concerning the distinctive "Curve" which it has proposed to demolish. See HAF email to Cox and Blair dated December 7, 2018. The planned construction proposes to modify the hyphen joining the ell to the main block of the house to remove that distinctive curved treatment. Application at 2.

This highly distinctive and historic treatment of connecting the original kitchen outbuilding to the main block of the house is a well-documented and noted feature of this property. See, HABS No. VA-709 at 6 ("The hyphen where it was joined to the main house

was rounded so as not to interfere with the windows upstairs and down.”); D. Davis, S. Dorsey & R. Hall, *Alexandria Houses 1750-1830* at 114 (1946)(“The ell, originally a separate dependency, has been rounded where it joins the main structure in order not to obstruct a window.”). The feature was photographically documented as part of the original Historic American Buildings Survey.¹

The Board’s guidelines governing applications for demolition require that the “application must clearly spell out the reason for the demolition and describe alternatives to demolition and why such alternatives ***are not considered feasible***.” Design Guidelines, Demolition of Existing Structures - Page 4 (emphasis added). The application before the Board makes little effort to comply with this requirement. The sole justification for removing this noted feature of the house is as follows:

A portion of the two-story brick flounder at the inside northwest corner where the historic main house and flounder connect is proposed to be removed. This curved brick wall does not appear in the historic photos included in the HABS report on the property. The Virginia Department of Historic Resources (VDHR), which holds the historic easement for this property, has approved removal of this element which will rectify the current condition which inhibits air flow, thus allowing moisture damage and limits maintenance access to the portion of masonry wall and the 2 adjacent windows.

Application at 2. The main justification for the demolition is the applicant’s mistaken assertion that the feature is not historic, and the VDHR’s approval of its removal based on the same mistaken representation by the applicant. See HAF letter to VDHR dated October 1, 2018 at 7-8. The Application does not explain what alternatives to demolition were explored or why alternatives are not “feasible” as required by the published Guidelines. For this reason alone, the application to demolish this feature should be denied.

The balance of the proposed demolition (Removal Items 5-7) appear contingent upon the approval of the overall plan, which we oppose for the reasons stated below.

B. The Three Modern “Pavilions” Impose an Architectural Style That Is Incongruous to the Existing Building and the Area Surroundings.

The BAR is charged with preventing any construction that is “incongruous to [the] existing building or structure, [and] area surroundings.” Zoning Ordinance § 10-105(A)(1). The “***the impact upon the historic setting***,” *id.* at 105(A)(2)(c), the “extent to which the building or structure ***will preserve or protect historic places and areas of historic***

¹ Copies available at <https://www.loc.gov/resource/hhh.va0223.photos/?sp=2> and <https://www.loc.gov/resource/hhh.va0223.photos/?sp=8>. See also Davis, *Alexandria Houses at 114* (crediting Library of Congress for photograph in book published in 1946).

*interest in the city,” id. at 105(A)(2)(g), the height, mass and scale of buildings or structures, id. at 105(A)(2)(a), the extent to which **any new architectural features are historically appropriate to the existing structure and adjacent existing structures,** id. at 105(A)(2)(d), “the relation of the features in sections 10-105(A)(2)(a) through (d) **to similar features of the preexisting building or structure, if any, and to buildings and structures in the immediate surroundings**” id. at 105(A)(2)(e), all compel the conclusion that the proposed three new “Pavilions” are impermissibly incongruous at this location.*

By evident intention the three proposed “Pavilions” are modern and distinct from the architectural style of both the Hugo Black House and the neighborhood. While the VDHR may consider such starkly contrasting architecture to be in keeping with the Department of the Interior guidelines as a means of differentiating the additions from the original structure,² such jarringly incongruous additions are completely inconsistent with the Board’s published guidelines. See Design Guidelines, Residential Additions - Page 2. (“Singular buildings in the latest architectural vocabulary are generally discouraged.”); *id.* (“Additions must be designed so that they are compatible with both the architectural character of the existing house and the immediate neighborhood.”); *id.* at 5 (“Respectful additions make use of the design vocabulary of the existing historic structure.”).

The design of an addition should respect the heritage of the historic building to which it is attached as well as adjacent buildings. The Boards generally prefer addition designs that are respectful of the existing structure and **which seek to be background statements or which echo the design elements of the existing structure.**

Design Guidelines, Residential Additions - Page 5 (“Style”)(emphasis added). HAF respectfully submits that in seeking to secure approval from the VDHR through “differentiation” the applicant’s plans have violated the basic precept of the Zoning Ordinance and proposed construction that is incongruous by design.

C. The “Bike Garage” is Neither Necessary Nor an Appropriate Incursion on the Landmark Open Space.

The applicant originally proposed to add off-street parking and a multi-car garage as part of its plans, to which the VDHR gave its conceptual approval. Presumably the VDHR gave that conceptual approval based on its reading of the easement which includes the following language:

² We submit that the VDHR has incorrectly interpreted and applied the Department of the Interior guidelines. See HAF letter to VDHR dated October 1, 2018.

No building or structure shall be built or maintained on the property other than (i) the manor house, (ii) the old carriage houses and adjoining servant's quarters, (iii) a tennis court and other outbuildings and structures which are commonly or appropriately incidental to a single family dwelling including without limitation a swimming pool **and garage**.

Deed Book 757 Page 868 (emphasis added). Recognizing that the Zoning Ordinance prohibits this use, the applicant has renamed the third structure on the property a "WORKSHOP/BIKE GARAGE" — in an apparent effort to justify the structure as a "garage" when it will be no such thing. A "garage" is "[a] place in which motor vehicles are stored and cared for." Black's Law Dictionary (4th ed. 1968); see *also* Zoning Ordinance § 2-149 ("Garage, private. A building designed for the storage of not more than three motor-driven vehicles."). The Board should not countenance the relabeling of this structure to assist the applicant in avoiding the restrictions of the easement.

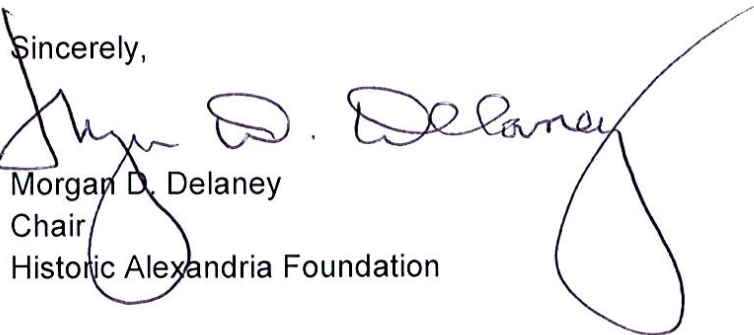
Nor should the Board approve this third "pavilion" to be constructed in the Landmark open space on the property for the reasons stated above. See Zoning Ordinance ¶ 10-105(A)(1), (2)(a)-(g), (i)-(j). The Board must preserve and protect this important historic resource.

The applicant has included a Sanborn Insurance map in its materials showing a that a frame house was located at the southeast corner of the lot in 1907. That structure, was demolished by Justice Black when he purchased the property in 1939 to restore the open space garden. See Ruth Lincoln Kaye, *The History of 619 S. Lee Street at 26* (May 1987). Thus, "by precept and example" HABS Report at 1, the southeast corner of the property has been open space throughout the most important period of its historical significance. Indeed, to the extent the Sanborn Insurance Map provides any support for the third proposed addition, it would be as a frame structure as depicted on the 1907 map.

D. The Applicant Could Add Additional Living Space to the Property Without Consuming Protected Open Space Or Destroying the Noted Historical Feature of the Property.

HAF can only applaud the applicant's desire to remove the flounder addition that was added in 2000. And given the applicant's desire to remove the 1970 kitchen addition, it appears that the applicant could properly utilize the freed up open space in a manner that would be far more in keeping with traditional additions in Old Town. Such an addition would continue west from the original ell toward Fairfax Street, preserving and enhancing the two side yards and preserving the open side-yard frontage on South Lee Street. We believe that the applicant could — without utilizing additional open space in contravention

to the easement – create an architecturally appropriate addition and satisfy their desire to expand their residence.

Sincerely,

Morgan D. Delaney
Chair
Historic Alexandria Foundation

Enclosures

- (1) D. Davis, S. Dorsey & R. Hall, *Alexandria Houses 1750-1830* at 112-14 (1946)
- (2) Deed Book 704 Page 491-95
- (3) 2014 Harrington Letter
- (4) Letter to VDHR from HAF dated October 1, 2018
- (5) Letter to City Manager dated December 12, 2018.
- (6) Deed Book 757 Page 867-71
- (7) Black's Law Dictionary, *Garage*, (4th Ed. 1969)

cc. Duncan Blair



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December 18, 2017

Board of Architectural Review, Old and Historic District
City of Alexandria

**Re: BAR Case Number 2108-00410 –619 S. Lee Street
(Vowell-Snowden-Black House)**

Dear Chair Kelley and Members of the Board:

In reviewing the Staff Report that was released yesterday afternoon we are concerned that the Staff has failed to appreciate the status of the Hugo Black House as a certified Landmark property and therefore given inadequate weight to the preservation interests at stake in this case.

It is perhaps understandable that in the press of business before the Board at the upcoming meeting that the staff has drafted its report to you looking to the Virginia Department of Historic Resources published register of landmark properties. It is entirely accurate for the Staff to tell you that "The property is not individually listed on the Virginia Landmarks Register or the National Register of Historic Places." Staff Report at 5. Why the Hugo Black House is not listed on the register by the VDHR as required by law is frankly a mystery to us, and perhaps their failure to recognize the landmark status of the property misled that agency in its own evaluation of the project.

But the certified landmark status of the property is a matter of public record and beyond question. As the Deed we submitted for your consideration clearly states:

Acceptance by the Virginia Historic Landmarks Commission of this conveyance is authorized by Sections 10-138 and 10-142 of the Code of Virginia, and by such acceptance below the Commission designates the property described above as a certified landmark.

WITNESS the following signatures and seals:

BOOK 705 PAGE 495

Hugo L. Black (SEAL)
Hugo L. Black

Elizabeth S. Black (SEAL)
Elizabeth S. Black

Accepted:

VIRGINIA HISTORIC LANDMARKS COMMISSION

By J. W. Moody
Executive Director 12/30/69
[SEAL]

To avoid any confusion about what was meant by the two former sections of the Virginia Code referenced by Justice Black and the Virginia Historic Landmarks Commission in the publicly recorded document, we are attaching for your reference a copy of former Virginia Code §§ 10-138 and 10-142. You will see that the act of certifying a property as a Landmark property is a distinct action and duty of the Commission (now VDHR) quite separate from its duty to publicize that designation in its register. Compare Former Va. Code § 10-138(a) with Former Va. Code 10-138(b); cf. VA Code § 10.1-10.1-2204(duty to designate historic landmarks and sites)(2018); VA. Code § 10.1-2202(6)-(7)(2018)(Director's duties of compile and publish lists).

§ 10-138. Powers and duties of Commission. - The Commission shall

- (a) Make a survey of, and designate as an historic landmark, **structures and sites** which constitute the principal historical, architectural and archaeological sites **which are of statewide or national significance**. No structure **or site** shall be deemed to be an historic one unless it has been prominently identified with, or best represents, some major aspect of the cultural, political, economic, military, or social history of the State of nation, or has had a major relationship with the life of an historic personage or event representing some major aspect of, or ideals related to, the history of the State or nation....

Former VA. Code Ann. § 10-138(a)(1973 Repl. Vol.)(emphasis added).

§ 1-142. Restrictions on use of property certified as being registered landmark. — Whenever the Commission, with the consent of the landowner, **certifies property as being a registered landmark**, it may seek and obtain from such landowner such restrictions **upon the use of the property** as the Commission finds are reasonable and **calculated to perpetuate and preserve the features which led it to designate such property as an historical landmark....**

Former Va. Code Ann. § 10-142 (1973 Repl. Vol.)(emphasis added).

In other words, when the Virginia Historic Landmarks Commission (“VHLC”) designated the property described above as a certified landmark,” Deed Book 704 Page 494, it designated both the “structures and sites” as a “principal historical ... site[] ... of statewide or national significance.” And the fact that the open space of the property’s gardens was included in that Landmark certification is confirmed by the fact that the VHLC took an Open Space Land Act easement on the use of the property “to perpetuate and preserve the features which led it to designate [the] property as an historical landmark.”

It is unfortunate that the staff report has failed to recognize the importance of the Landmark certification. Current state law expressly encourages you to take the designated property’s historic significance into account in your decision making. Va. Code § 10.1-2204(B)(ii)(2018). The Alexandria Zoning Ordinance requires the same. Zoning Ordinance § 10-105(a)(2).

Because the Hugo Black House and grounds is a certified historic landmark property it should properly be considered with heightened scrutiny and afforded greater protection than non-landmark property. For that reason, the staff report’s observation that, “In the past six years alone, the two BARs have approved over 100 additions, finding them appropriate and compatible” serves as no support for the recommended approval

of the current application. How many of those approvals were given on certified landmark properties of the prominence of the Hugo Black House, where the house ***and gardens*** were included in the landmark certification?

With all due respect to the dedicated work of the Staff, we submit that by overlooking the landmark designation of the property, it has applied an incomplete analysis of the project. The Hugo Black House and grounds deserve the highest degree of protection this Board can provide.

Respectfully,

Historic Alexandria Foundation

By: /s/

Elaine Johnston
Co-Chair, Advocacy Committee

cc. Duncan Blair

CODE OF VIRGINIA

1950

With Provision for Subsequent Pocket Parts

ANNOTATED

Prepared under the Supervision of
The Virginia Code Commission

BY

The Editorial Staff of the Publishers

Under the Direction of
W. M. WILLSON, SYLVIA FAULKNER AND PATRICIA H. QUILLEN

VOLUME 3

1973 REPLACEMENT VOLUME

*(Including Acts of the 1972 Session and annotations taken from
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their executive officers: Agriculture and Immigration, Conservation and Development, Education, Health, Highways, Labor and Industry, Unemployment Compensation, and the Virginia State Ports Authority. The Governor shall designate a chairman and a vice-chairman for the Council to serve during his term of office. (R. P. 1948, § 10-127; 1956, c. 491.)

§ 10-128. Rules for organization; Secretariat for Council. — The members of the Council may make rules for their own organization. The Division of Industrial Development and Planning shall serve as Secretariat to the Council. (R. P. 1948, § 10-128; 1958, c. 427; 1962, c. 355.)

§ 10-129. Expenses and compensation. — The members of the Council shall receive no salaries, but shall be paid for the necessary expenses incurred in the performance of their duties. (R. P. 1948, § 10-129.)

§ 10-130. Clerical and secretarial facilities; stationery and supplies; printing. — The Division of Industrial Development and Planning shall serve the Council as its Secretariat or central administrative office and shall furnish the Council with the necessary stationery and supplies and shall have done for the Council such printing as may be necessary. (R. P. 1948, § 10-130; 1958, c. 427; 1960, c. 164; 1962, c. 355.)

§ 10-131. Powers and duties of the Council. — The Council shall act in a capacity advisory to the Governor upon matters relating to the Virginia economy. When requested by the Governor the Council shall investigate and consider such questions and problems, so relating as may be submitted, and shall report its findings and conclusions. The Council may also make recommendations to the Governor upon its own initiative. The Council shall also endeavor to encourage research designed to further new and more extensive use of the resources of the Commonwealth, to review and initiate specific proposals, to place such proposals effectively in the hands of groups and organizations, State and local, to encourage and stimulate local governing bodies and private business initiative, and generally to arouse public interest in the economic resources of the Commonwealth. (R. P. 1948, § 10-131; 1962, c. 355.)

§ 10-132. Reports and recommendations. — All reports and recommendations made by the Council shall be made to the Governor. (R. P. 1948, § 10-132; 1962, c. 355.)

CHAPTER 10.

HISTORIC MONUMENTS AND MARKERS.

§§ 10-133, 10-134: Repealed by Acts 1950, p. 48.

CHAPTER 11.

VIRGINIA HISTORIC LANDMARKS COMMISSION; HISTORICAL MONUMENTS GENERALLY.

Sec.
10-135. Commission created.
10-136. Membership; appointment; terms; vacancies; compensation and expenses.
10-137. Executive director.
10-138. Powers and duties of Commission.

Sec.
10-138.1. Supervision of expenditure of appropriations made to nonstate agencies.
10-139. Notice to local tax-assessing official that structure or site has been designated a certified landmark.

- Sec.
10-140. Notice to local tax-assessing official of establishment of historic district.
- 10-141. Authority of Commission in counties and cities having power to establish historic districts.
- 10-142. Restrictions on use of property certified as being registered landmark.
- 10-143. Assistance of State agencies.
- 10-144. Transfer of powers, etc., of State Librarian and State Library Board relating to historical markers.
- 10-145. Construction of chapter.
- 10-145.1. Power of eminent domain vested in Attorney General to preserve historical monuments and memorials.

Sec.

- 10-145.2. Erection of markers, etc., without certificate of approval forbidden.
- 10-145.3. Determination of sites, etc., justifying markers; Department of Highways to erect and maintain.
- 10-145.4. Collection of replacement cost of marker damaged or destroyed.
- 10-145.5. State Library Board authorized to create Advisory Committee on Historical Markers; members; duties; expenses.
- 10-145.6. Erection of markers by local governing bodies.
- 10-145.7. Resolutions of General Assembly.
- 10-145.8. Penalty for violation; proceedings by Attorney General.

§ 10-135. Commission created. — There is hereby created in the Executive Department of the State government the Virginia Historic Landmarks Commission, hereinafter referred to as Commission. (1966, c. 632.)

Cross reference. — As to power of eminent domain of Attorney General with respect to historical monuments and memorials, see § 10-145.1.

The numbers of §§ 10-135 to 10-145 were assigned by the Virginia Code Commission, the 1966 act having assigned no numbers.

§ 10-136. Membership; appointment; terms; vacancies; compensation and expenses. — (a) The Commission shall consist of nine members. Seven shall be appointed by the Governor and the remaining two shall be the Director of the Department of Conservation and Economic Development and the State Librarian both as ex officio members, but with full voting rights.

(b) Of the seven members appointed by the Governor, one may be chosen from a list of three names submitted to him by the Association for the Preservation of Virginia Antiquities, one may be chosen from a list of three names submitted to him by the Virginia Historical Society, one may be taken from a list of three names submitted to him by Colonial Williamsburg, Incorporated, one may be chosen from a list of three names submitted to him by the Dean of the School of Architecture, University of Virginia, one may be chosen from a list of three names submitted to him by the Virginia Chapter of the American Institute of Architects and the remainder shall be appointed from the State at large.

(c) Of the appointive members, initially two shall be appointed for terms of four years, two shall be appointed for terms of three years, two shall be appointed for terms of two years and one shall be appointed for a term of one year. Thereafter, appointments shall be made for terms of four years, except appointments to fill vacancies occurring other than by expiration of term, which shall be filled for the unexpired term.

(d) No member of the Commission shall receive compensation for his services but they shall be reimbursed their necessary expenses incurred in the performance of their duties. (1966, c. 632; 1968, c. 612.)

Cross reference. — For provision that also be in charge of the Virginia Research Commissioner of Historic Archaeology shall Center for Historic Archaeology, see § 10-146.

§ 10-137. Executive director. — The Commission may employ an executive director and such other employees, assistants and technical personnel as may be required for the performance of its duties. (1966, c. 632.)

§ 10-138. Powers and duties of Commission. — The Commission shall

(a) Make a survey of, and designate as an historic landmark, the buildings, structures and sites which constitute the principal historical, architectural and archaeological sites which are of statewide or national significance. No structure or site shall be deemed to be an historic one unless it has been prominently identified with, or best represents, some major aspect of the cultural, political, economic, military, or social history of the State or nation, or has had a major relationship with the life of an historic personage or event, representing some major aspect of, or ideals related to, the history of the State or nation. In the case of structures which are to be so designated, they shall embody the principal or unique features of an architectural type or demonstrate the style of a period of our history or method of construction, or serve as an illustration of the work of a master builder, designer or architect whose genius influenced the period in which he worked or has significance in current times. In order for a site to qualify as an archaeological site, it shall be an area from which it is reasonable to expect that artifacts, materials and other specimens may be found which give insight to an understanding of aboriginal man or the Colonial and early history and architecture of the State or nation.

(b) Prepare a register of buildings and sites which meet the requirements of the preceding paragraph, publish lists of such properties and inspect such properties from time to time; publish a register thereof from time to time setting forth appropriate information concerning the registered buildings and sites.

(c) With the consent of the landowners, certify and mark, with appropriately designed markers, buildings and sites which it has registered.

(d) Establish standards for the care and management of certified landmarks and withdraw such certification for failure to maintain the standards so prescribed.

(e) Acquire by purchase, gift, or lease and administer registered landmarks, sites and easements and interests therein; such acquisition may be made from funds provided by law or otherwise.

(f) Lease or sell property so acquired under terms and conditions designed to ensure the proper preservation of the landmark or site in question.

(g) Establish historic districts for registered landmarks and designate the area thereof by appropriate markers provided the county or city in which the district or registered landmark is located fails or refuses to take such action as is necessary to establish and maintain such districts.

(h) Identify historical districts for registered landmarks and aid and encourage the county or city in which the district or landmark is located to adopt such rules and regulations as the Commission may develop and recommend for the preservation of historical, architectural, or archaeological values.

(i) Prepare and place, from funds provided by law, State historical markers on or along the highway or street closest to the location which is intended to be identified upon such marker.

(j) Seek the advice and assistance of individuals, groups and governments who or which are conducting historical preservation programs and coordinate the same insofar as possible.

(k) Seek and accept gifts, bequests, endowments and funds from any and all sources for the accomplishment of the function of the Commission. (1966, c. 632.)

§ 10-138.1. Supervision of expenditure of appropriations made to nonstate agencies. — In addition to the duties set out in § 10-138, it shall also be the responsibility of the Commission to oversee the expenditure of State appropriations made available to nonstate agencies, whether private or

municipal, for purposes related to the historical collections, historic landmarks, and sites of Virginia, and to assure itself that such purposes are consistent with the statewide plan for historic preservation as established by the Commission. The Commission shall establish and require adherence to sound professional standards of historical, architectural and archaeological research in the planning, preservation, restoration, interpretation and display of such collections, landmarks, and sites, in order that public funds are used in the most appropriate, effective, and correct manner. (1972, c. 119.)

§ 10-139. Notice to local tax-assessing official that structure or site has been designated a certified landmark. — In any case in which the Commission designates a structure or site as a certified landmark, it shall notify the official having the power to make assessments of properties for purposes of taxation within the county or city in which the structure or site is located and such designation and notification shall be, prima facie, evidence that the value of such property for commercial, residential or other purposes is reduced by reason of its designation. (1966, c. 632.)

§ 10-140. Notice to local tax-assessing official of establishment of historic district. — When the Commission establishes an historic district, it shall notify the official of the county or city whose duty it is to assess property for the purpose of taxation by the county or city in which such area is located of the fact of such establishment and the boundaries of the district, together with the restrictions which are applicable to properties located in such district and of the fact that commercial, industrial and certain other uses within such district are restricted. The tax-assessing official shall take such factors into consideration in assessing the properties therein and, based on the restrictions upon the uses of such property, place a lower valuation upon the same. (1966, c. 632.)

§ 10-141. Authority of Commission in counties and cities having power to establish historic districts. — In the establishment of historic districts, the Commission shall not act in any county or city in which local officials have established such districts. In any county or city having power to establish such districts and which has not done so, the Commission shall, in appropriate case, designate such districts and notify the proper officials of the county or city in which the same is located and request them to take such action as will enable the establishment and perpetuation through local action, of historic districts. (1966, c. 632.)

§ 10-142. Restrictions on use of property certified as being registered landmark. — Whenever the Commission, with the consent of the landowner, certifies property as being a registered landmark, it may seek and obtain from such landowner such restrictions upon the use of the property as the Commission finds are reasonable and calculated to perpetuate and preserve the features which led it to designate such property as an historical landmark. All such agreements between the Commission and the landowner shall be in writing, and, when duly signed, shall be recorded in the clerk's office of the county or city wherein deeds are admitted to record and when so recorded shall be notification to tax-assessing officials of the restrictions therein set forth. Such restrictions shall be observed by the tax-assessing officials of such county or city in placing a lower valuation upon such property in future assessments or reassessments of real estate. (1966, c. 632.)

§ 10-143. Assistance of State agencies. — All agencies of the State shall assist the Commission in the disposition of its duties and functions upon the request of the Commission or the executive director thereof. (1966, c. 632.)

216 Wolfe Street
Alexandria VA 22314
rpringle9@comcast.net


Mr. Mark Jinks
City Manager
Alexandria VA 22314

December 17, 2018

Dear Mr. Jinks:

I am writing to you about the BAR Meeting on this coming Wednesday, December 19, concerning the Hugo Black house at 619 Lee St. I deeply regret that I will be out of town at that time and cannot attend. I am writing to you directly, with a copy to the BAR. I am a long-time resident, tax payer, and occasional historian; a retired ambassador, member of the board of the Old Town Civic Association and resident of the neighborhood in question.

I have read recent appeals to you on this subject by the Historic Alexandria Foundation (HAF) and others protesting the new owners' proposal for radical development of this property in violation of the historic easement originated by Justice Hugo Black and his wife. I will not repeat the detailed arguments put forward by HAF and others. I believe it is as clear as it possibly could be that the proposed development is in clear violation of the easement and would nullify one of the most important tools we have in maintaining the historic ambience of this City. Indeed, that the attempted rejection of the easement should have reached such a late stage, on a property of such importance, strikes me as almost beyond belief. Should it succeed it would surely suggest that a major review of the manner in which the City defends its claim to be "Historic" is needed.


Robert M. Pringle

cc by hand
for BAR

Vowell-Snowden-Black House
619 S. Lee Street
Alexandria
Virginia



Historic American Buildings Survey
Jack E. Boucher, Photographer January 1972
VIEW OF REAR FROM SOUTHWEST

HABS No. VA-709

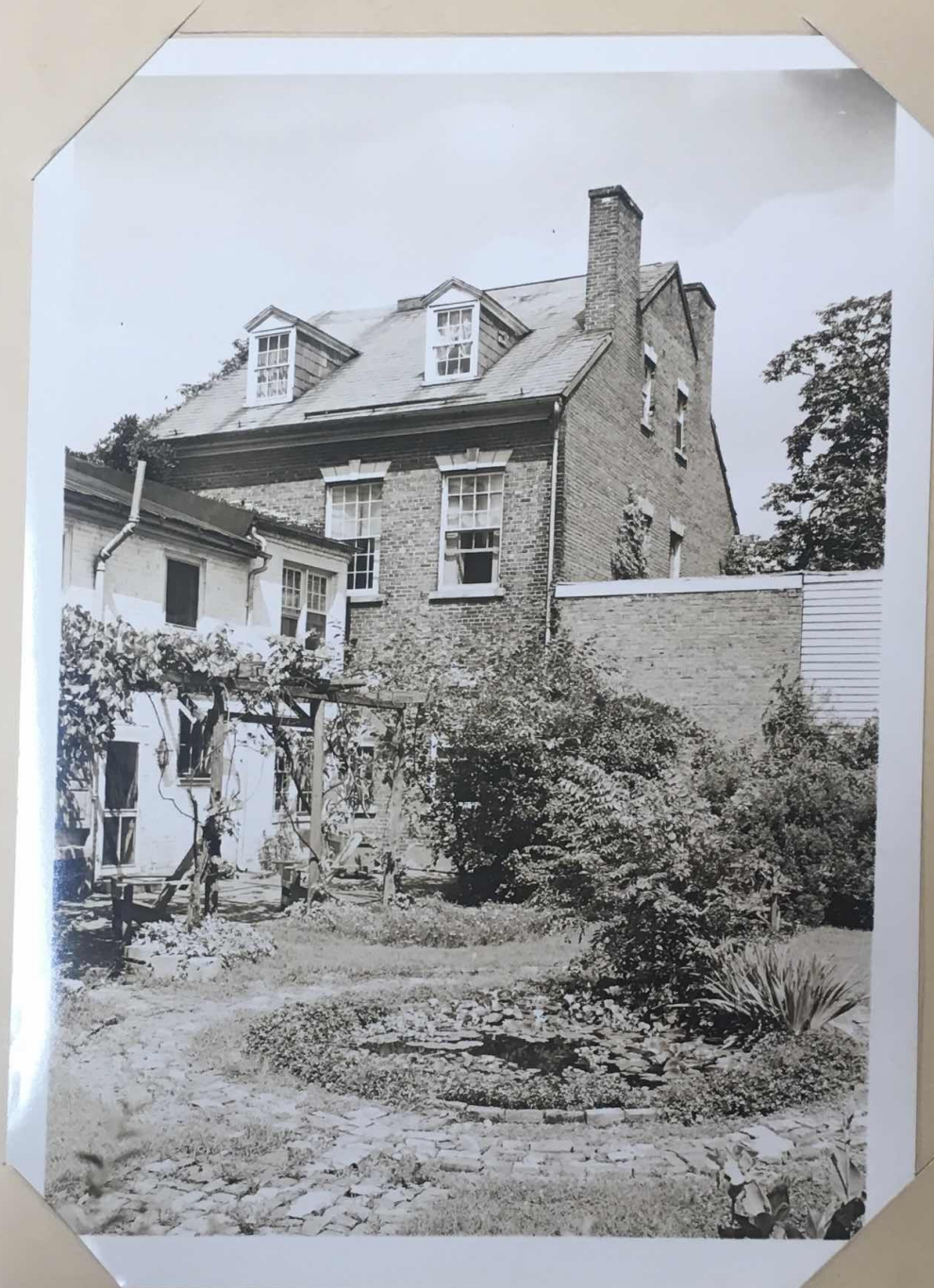
HABS
VA
7-ALEX
170-8

Snowden House
619 South Lee St.
Alexandria, Va.

HABS No.

HABS
VA
7-ALEX
170-2

315



Historic American Buildings Survey
John O. Brostrup

July 7, 1936
2:25 P.M.

VIEW FROM SOUTHWEST



Historic Alexandria Foundation

218 North Lee Street, Suite 310 • Alexandria, Virginia 22314
(703) 549-5811 • FAX (703) 548-4399

Email: h.a.f@erols.com • Website: HistoricAlexandriaFoundation.org

October 1, 2018

By Email and Mail

julie.langan@dhr.virginia.gov

Julie V. Langan, Director
Department of Historic Resources
2801 Kensington Avenue
Richmond, VA 23221

Re: *Vowell-Snowden-Black House* (DHR Easement File No. 100-0111) — Objection to Continued Approval of Construction Plans

Dear Ms. Langan:

Historic Alexandria Foundation (“HAF”) was formed “to preserve, protect and restore structures and sites of historic or architectural interest in and associated with the City of Alexandria, Virginia, to preserve antiquities, and generally to foster and promote interest in Alexandria’s historic heritage.” As such, we are vitally concerned with the preservation of the historic character of the Old and Historic District in Alexandria, Virginia and the dwindling amount of open space remaining in Old Town. We have been particularly alarmed to learn of the very extensive development plans to the historic property located at 619 S. Lee Street in Alexandria (the Vowell-Snowden-Black House) which is the subject of one of the earliest open space easements in our City. The treatment of the easement and its proper enforcement is all the more important because it was created by the Honorable Hugo L. Black when he was a sitting Justice on the United States Supreme Court. He established the easement in 1969, three years after the state initiated the easement program.

In October of 1965, while still owned by Justice and Mrs. Black, the property at 619 South Lee Street was awarded plaque 35-E-619 as part of the Historic Alexandria

Foundation's Early Building Survey. It was one of the first houses to receive that important designation. The property has long been held out as a preeminent example of Federal architecture in Alexandria. See, e.g., D. Davis, S. Dorsey & R. Hall, *Alexandria Houses 1750-1830* at 112-14 (1946); Gay Montague Moore, *Seaport in Virginia, George Washington's Alexandria*, Chapter 22 (1949) ("The Vowell-Snowden House"). It was included in the Historic American Buildings Survey (HABS No. VA-709) in 1966 based on work that was funded, in part, by the HAF. The HABS succinctly summarized the unique importance of the property in its "Statement of Significance" as follows:

The Vowell-Snowden-Black House, certainly one of the outstanding examples of the Federal 'row' type buildings in Alexandria, ***has fortunately been spared the fate of suffocation. By precept and example it stands flush with the street, but with its extensive grounds and breathing space preserved to this day.***

HABS No. VA-709 (emphasis added). The adjoining Carriage House that fronts on Franklin Street is of such historic significance that it has its own listing as HABS No. Va-711, which was also based on work partly funded by HAF.

We have recently become aware that by letter dated October 12, 2017 the Department of Historic Resources gave its conceptual approval of a proposed rehabilitation plan for the property which by its own terms is "valid for a year from" October 12, 2017. That sunset provision is expressly required by DHR Policy No. 5:

All written letters or correspondence approving proposed work on an easement property will include a sunset clause, or a timeframe within which the work must be completed. If the work is not done within the specified timeframe, the property owner must request re-approval of the work or seek new approvals if the project has changed in any way from the previously approved proposal.

DHR Policy No. 5. We were surprised that DHR would give conceptual approval for the proposed project which shares many of the defects that led DHR to properly reject a similar plan in 2014. See Letter to Michael Harrington from M. Melinat & E. Tune dated Sept. 14, 2014 ("Harrington Letter").

The proposed construction would destroy the character of the open space on this property. Viewed from the street, the property would appear to have two large new buildings on Lee Street, totally changing the view shed of the property. Like the rejected proposal from 2014, the current development plan proposes demolition of the "McVeigh Curve," alteration of the fabric and streetscape view of the historically significant carriage

house facing Franklin Street, and an overall increase of the gross floor area of the structures on the property from 8,156 to 14,371 square feet. That increase in size is indistinguishable from the “increase in total square footage ... [that] nearly doubles that of the historic resource,” and led to the denial of the application in August of 2014. Harrington Letter at 2. As succinctly stated in DHR’s denial of the similar proposal in 2014, “The cumulative effect of the proposed additions would significantly compromise the historic character and integrity of the property.” *Id.*

Because we believe this approval to have been improvidently given in the first instance, and contrary to the requirements of the Open Space Land Act, VA. Code §§ 10.1-1700, *et seq.*, as well as the Department’s published policies, we write to request that the approval be withdrawn, or at any rate not renewed. Fortunately, the proposed project has not yet begun and there is still time to withdraw the approval. Significantly, the City of Alexandria has not yet provided the local approvals that would be necessary to commence the construction that has been proposed.

A. The Easement on 619 S. Lee Street is Governed by the Open Space Land Act Which Precludes the Approval of the Proposed Construction Project.

We assume that the Department’s approval process overlooked the fact that the easement in question in this case was put in place under the Open Space Land Act, because the letter does not reflect any consideration of the requirements of that law. Perhaps during the review process the Department looked only to certain amendments to the original easement and overlooked that the easement created by Justice Black expressly invoked the Open Space Land Act.¹

We draw your attention to the following language of the Deed of Easement dated December 26, 1969, which is recorded at Deed Book 705, Page 491 in the Land Records of Alexandria. “WHEREAS, Chapter 13 of Title 10 of the Code of Virginia entitled “Open Space Land Act” (1966 c. 461) Sections 10-151 to 10-158 was enacted to preserve permanent open-space lands.” See *also id.* (“the Grantors do hereby grant and convey to the Grantee an open space easement in gross over, and right in perpetuity to restrict the use of, the following described real estate”); *id.* at 492 (“The restrictions hereby imposed on the use of the property are in accord with the Commonwealth of Virginia’s

¹ In April of 1973 a Deed of Correction to the easement was agreed to and recorded at Deed Book 757 Page 867, and that document does not repeat the express invocation of the Open Space Land Act. So it might be understandable that if one looked only at the language of the Deed of Correction the application of the Act could be overlooked. But the Deed of Correction specifically states that “With the exception of the forgoing correction, all of the other terms and conditions of the Deed of Easement shall remain in full force and effect and are hereby ratified and confirmed.” Deed Book 705 Page 868.

policy, as set forth in ... Acts., 1966, c. 461, § 2 [Open Space Land Act], to preserve scenic areas, to conserve lands and other natural resources and to preserve permanent open-space land”).

Because the easement on 619 S. Lee Street is an on open space easement governed by the Act, it is not sufficient for the Department to grant waivers of the easement based on its interpretation of the easement language and the *Standards for Rehabilitation* as described in the October 12th letter. The open space easement is also governed by VA. Code Ann. § 10.1-1704, which provides that:

No open-space land, the title to or interest or right in which has been acquired under this chapter and which has been designated as open-space land under the authority of this chapter, ***shall be converted or diverted from open-space land use unless*** (i) the conversion or diversion is determined by the public body to be (a) ***essential to the orderly development and growth of the locality and*** (b) in accordance with the official comprehensive plan for the locality in effect at the time of conversion or diversion ***and*** (ii) ***there is substituted other real property which is (a) of at least equal fair market value, (b) of greater value as permanent open-space land than the land converted or diverted and (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted. The public body shall assure that the property substituted will be subject to the provisions of this chapter.***

Va. Code Ann. § 10.1-1704 (emphasis added).

It is clear from the October 12, 2017 letter of approval that the required analysis was not performed, and the proposed additional construction on the 619 S. Lee Street property could not possibly satisfy the requirement of being “***essential to the orderly development and growth of the locality.***” *Id.* To the contrary, the construction project runs directly contrary to the avowed legislative purpose “to preserve ... historic and scenic areas.” 1966 Va. Acts. Ch. 461, Section 2. For this reason alone we urge the Department to withdraw its approval as having been extended contrary to the positive commands of the Open Space Land Act which the Department of Historic Resources is charged with administering.

B. The Proposed Project Is Contrary to the Express Provisions of the Easement.

The Department's October 12, 2017 letter expresses the opinion that "the proposed rehabilitative scope of work ... appears consistent with the easement provisions...." We do not believe this assessment is correct, and respectfully draw your attention to the following provisions of the Deed of Easement.

The restrictions hereby imposed on the use of the property are in accord with the Commonwealth of Virginia's policy, as set forth in Acts, 1966, c. 632, to preserve historical properties in the Commonwealth of Virginia, and in Acts., 1966, c. 461, § 2, to preserve scenic areas, to conserve lands and other natural resources and to preserve permanent open-space land, and the acts with the Grantors, their heirs, successors and assigns, so covenant to do and not to do upon the property, and the restrictions which the Grantee is hereby entitled to enforce shall be as follows:

1. ***The manor house will be maintained and preserved in its present state as nearly as practicable***, though structural changes, alternations, additions or improvements ***as would not*** in the opinion of the Grantee ***fundamentally alter the historic character of the house*** may be made thereto by the owner, provided that the prior written approval of Grantee to such change, alteration, addition or improvement shall have been obtained. [Deed Book 705 Page 493](emphasis added)
2. ***No building or structure shall be built or maintained on the property other than (i) the manor house, (ii) the old carriage houses and adjoining servant's quarters, (iii) a tennis court and other outbuildings and structures which are commonly or appropriately incidental to a single family dwelling including without limitation a swimming pool and garage; provided; however,*** that after the date of this Deed of Easement, ***no building or structure described herein shall be altered, restored, renovated or extended and no structure described herein constructed*** except at such place and in such a way that would in opinion of Grantee ***be in keeping with the historic character of the house***, and provided that the prior written approval of Grantee to such action shall have been obtained. [Deed Book 757 Page 868](emphasis added)

3. No industrial or commercial activities shall be carried on on the property except such as can be carried on from the buildings or structures described in 2 above ***without alteration of their external appearance***.... [Deed Book 705 Page 493](emphasis added).

The Virginia Supreme Court has recently stressed that “construing a deed [of conservation easement] is to give effect to the parties’ intention as expressed by them in the words they have used.” *Wetlands Am. Trust, Inc. v. White Cloud Nine Ventures, L.P.*, 291 Va. 153, 160, 782 S.E.2d 131, 135 (2016). “[E]ffect should be given to every part of [a conservation easement], if possible, and no part thereof should be discarded as superfluous or meaningless.” *Id.* at 161, 782 S.E.2d at 136.

We do not believe that any fair reading of the Deeds creating the conservation and open space easements governing 619 S. Lee Street could be consistent with the expansive additions that are being planned for the property. They do not “maintain[] and preserve [the Manor House] in its [1969] present state as nearly as practicable.” Deed Book 705 Page 493. The dramatic expansion of the dwelling “fundamentally alter[s] the historic character of the house.” *Id.* The proposal will remove features of the property expressly set forth in the easement for protection (e.g., the tennis court). Instead of honoring the injunction that “no building or structure described herein shall be altered, restored, renovated or extended and no structure described herein constructed” the proposal relies upon the limited grant of discretion to allow approval of changes “in keeping with the historic character of the house” to justify a wholesale redevelopment of the property.

The purpose of the easement given to the Commonwealth by Justice Black can only be read in context of the grantor’s desire to ensure for posterity the home that he lived in and treasured throughout his lengthy public career as an Associate Justice of the Supreme Court. The manifest purpose of the easement was to ensure that future generations would be able to see the property as the Justice lived and worked in it — gardens, tennis court, outbuildings and all. While the 1973 amendment was agreed to in order to allow for the “maintenance of the existing tennis court” and permit the “erection and maintenance of certain other facilities,” Deed Book Page 757 Page 867, the additional authority granted was intentionally quite limited. It certainly did not authorize the removal of the tennis court that was expressly called out in the easement as something requiring “maintenance.”

In short, if the DHR is to “give effect to the parties’ intention as expressed by them in the words they have used.” *Wetlands*, 291 Va. at 160, 782 S.E.2d at 135, the objective should be to maintain the property as closely as possible in its condition in 1973. We

respectfully submit that the current plans for development of the site run contrary to the express intent of the easement.

C. The Proposed Project Is Contrary to the Department's Published Standards for Implementing the Historic Preservation Easement Program.

1) DHR Policy No. 6 Should Properly be Applied to Such an Extensive Alteration in the Open Space of the Property Under Easement.

Given the dramatic encroachment on and use of the existing open space proposed for the 619 S. Lee Street property, it is apparent the applicant's request for permission to engage in this extensive building project should properly be considered as tantamount to a full-blown amendment to the existing easement. As such it should be considered under the standards set forth in the Department's Historic Preservation Easement Program Policy No. 6, which requires that "An amendment should strengthen the protection afforded by the original easement to the resource(s) on the property.... An amendment should not compromise the historic, architectural, archaeological, open space, cultural, or other environmental resources which the easement was intended to protect." Far from complying with this policy, the proposed construction project will dramatically encroach upon the existing open space and significantly alter the historic landscape of the property. The proposed additions are purely matters of convenience and personal taste of the current owners seeking to dramatically increase the size of this historic urban residence.

2) The Planned Construction Is Incompatible with DHR Policy No. 5

Moreover, the details of the proposed construction do not comply with the relevant *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes* (National Park Service, as amended) which the Easement Program Staff are charged to employ when reviewing applications for work on easement properties under the DHR Policy No. 5.

One example of the failure to comply with Policy No. 5 is found in the proposed treatment of one of the noted historical features of the house at 619 S. Lee Street. The planned construction proposes to modify the hyphen joining the ell to the main block of the house to remove the distinctive curved treatment. The Pollard Memorandum dated Sept. 21, 2017 at 2 suggests, incorrectly, that this is not part of the historic fabric of the property. *Id.* ("The curved treatment does not appear in the historic photos included in the HABS report on the property."). But this highly distinctive and historic treatment of connecting the original kitchen outbuilding to the main block of the house is a well-

documented and noted feature of this property. See, HABS No. VA-709 at 6 (“The hyphen where it was joined to the main house was rounded so as not to interfere with the windows upstairs and down.”); D. Davis, S. Dorsey & R. Hall, *Alexandria Houses 1750-1830* at 114 (1946)(“The ell, originally a separate dependency, has been rounded where it joins the main structure in order not to obstruct a window.”). Whether this was original to the 1798 structure is not the question. “Changes to a property that have acquired historic significance in their own right will be retained and preserved.” 36 C.F.R. § 68.3(b)(4). We submit it is not consistent the Department of Interior *Standards for Preservation* 3-6 to destroy this distinctive historical feature. 36 C.F.R. § 68.3(a)(3)-(6), (b)(4)(2017). When DHR reviewed a similar proposal to demolish this feature in 2014, the request was properly denied.

Similarly, the current construction plans seek to alter the historically significant Carriage House. HABS No. Va-711. A similar plan to alter the exterior facing Franklin Street with the addition of windows was properly rejected in 2014 as being inconsistent with *Standards* 1, 2, 3. Harrington Letter at 3 (“New window openings are not permitted on the façade (south elevation) of the structure.”); see 36 C.F.R. § 68.3(b)(1)-(3). The same ruling should be enforced under the present construction plan. The fact that the proposed new windows are smaller than proposed in prior plans does nothing to address the principles set forth in *Standards* 1, 2 & 3.

The new opening at the rear end of the existing one-story flounder wing, and the basement is similarly contrary to *Standards* 1-3, 9 and the prior treatment of similar requests. Harrington Letter at 2 (“no new openings are permitted on the historic house”).

Unfortunately, the proposed extensive additions to the 619 S. Lee Street property, which include the three separate and substantial additional structures does not comply with the policies set forth in 36 C.F.R. § 68.3(b)(9)(“requiring that “New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property.”). In this case, the extensive in-fill of the open space, which will dominate every portion and view-point of the property will dramatically change what has appropriately been noted as the properties defining characteristic: “***its extensive grounds and breathing space preserved to this day.***” HABS No. Va-709 (emphasis added).

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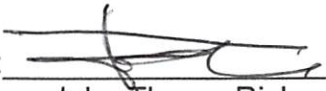
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Julie V. Langan
October 1, 2018
Page 9

For the forgoing reasons, we respectfully submit that upon reconsideration of the applicant's request for work on the Easement Property for 619 S. Lee Street in Alexandria, Virginia, that the Department will deny the application. The proposed project does not satisfy the requirements of the Open Space Act, the express requirements of the easement the Department is entrusted to enforce, or the Department's policies for consideration of such requests.

Respectfully submitted,

Historic Alexandria Foundation

By: 
John Thorpe Richards, Jr.
(Member of the Board)

cc. Megan Melinat (Megan.Melinat@dhr.virginia.gov)
Lori & Nigel Morris (lmorris@311cameron.com)



COMMONWEALTH of VIRGINIA

Department of Historic Resources

Molly Joseph Ward
Secretary of Natural Resources

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Julie V. Langan
Acting Director

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August 5, 2014

Michael Harrington
Vowell LLC
311 Cameron Street
Alexandria, Virginia 22314

Re: Vowell Snowden Black House (Justice Black House)
619 S. Lee Street, City of Alexandria
DHR #2014-115 and 100-0111_ep

Dear Mr. Harrington,

Thank you for submitting the State Rehabilitation Tax Credit Application, Part 2, "Description of Rehabilitation," for the Justice Black House located at 619 S. Lee Street in Alexandria. As you know, the property is also protected by a historic preservation easement held by the Virginia Board of Historic Resources. This letter responds to the proposed scope of work on behalf of both the historic rehabilitation tax credit and easement programs.

The deed of easement requires that changes, alterations, additions or improvements should not alter the historic character of the house. So too, regulations for the state tax credit program stipulate that all aspects of a project must be consistent with the Secretary of the Interior's *Standards for Rehabilitation (Standards)*. This set of nationally accepted and applied standards require retention of historic fabric and character. Unfortunately, the majority of the work proposed for the Justice Black House is inconsistent with the terms of the easement and the *Standards*, specifically *Standards 2, 3 and 9*:

Standard 2 ~ The historic character of a property shall be retained and preserved. The removal of historic materials or alterations of features and spaces that characterize a property shall be avoided

Standard 3~ Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

Standard 9 ~ New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the

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old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

In our review, we have determined that the proposed work is not consistent with the *Standards* for the following reasons and therefore cannot be approved.

The Proposed Addition ~ The new additions to the historic property are not sufficiently subordinate in size, scale, massing and design. The increase in total square footage from 5194 square feet to 9836 square feet nearly doubles that of the historic resource. The cumulative effect of the proposed additions would significantly compromise the historic character and integrity of the property. In addition, the individual elements are too similar to the existing characteristics and must be clearly differentiated as modern alterations. (*Standards 2, 3 and 9*) Specific items that require modification include:

- The kitchen addition cannot be two stories without documentation to substantiate this precedent.
- The flounder addition should not attach to the historic main portion of the house, and must be shifted west to avoid this condition.
- The turret element is not compatible with the character of this historic property and cannot be approved.
- The secondary glass bay at the kitchen is overly formal and not consistent with the character of this historic property and cannot be approved.
- The pergola and glass office on the east elevation detract from the historic façade and are not consistent with the character of the historic property and cannot be approved.
- The design of the porch columns must be simplified.
- New window designs cannot include stone sills and brick jack arches.
- The entablature surround on the flounder entry door must be simplified.
- All new woodwork, including trim, must be clearly differentiated from the existing historic woodwork.

Flounder Roof ~ The roof material on the addition must be differentiated from that of the historic flounder. (*Standard 9*)

McVeigh Curve ~ This element cannot be removed without documentation to substantiate it as a non-historic feature. (*Standard 4*)

Doors ~ The existing historic doors and door openings (interior and exterior) are character-defining features of the house and thus cannot be altered or removed. (*Standard 2*) In addition, all new doors should be clearly differentiated from the historic doors. (*Standards 3 and 9*)

Windows ~ The existing windows and window openings are character-defining features of the house and thus cannot be altered or removed. Similarly, no new openings are permitted on the historic house. All new windows must be clearly differentiated from the historic windows. (*Standards 2, 3 and 9*) Specifically:

- The addition of keystones and sills to the two historic windows on the north elevation is not approved.
- No new windows may be added on the south elevation of the main historic block of the house.
- A tripartite window may not be added at the second floor of the north elevation.
- The third floor window on the north elevation may not be modified.

- The existing openings on the flounder may not be realigned or widened.
- A window may not be added at the rear of the existing flounder.
- The divided light pattern in all new windows should be simplified to clearly differentiate these windows from the historic windows.
- The southeast window in the dining room cannot be modified into a second kitchen door.

Basement ~ The existing basement and foundation cannot be irreversibly altered. (*Standard 10*) Thus, neither lowering the floor under the historic main block of the house nor expanding the existing basement under the existing flounder can be approved. Basements are allowed only under newly constructed additions.

Floor Plan ~ The interior arrangement of spaces is indicative of the historic purpose and use of the building. (*Standards 2 and 3*) Significant modifications to this arrangement are not consistent with the *Standards*. This includes:

- The existing door opening between the dining room and living room cannot be widened.
- New openings are not permitted in the north wall of the existing flounder.
- A new opening cannot be created between the master bedroom and adjacent master bathroom. Further, all existing finishes in the existing second floor southwest bedroom must remain in its conversion to the master bathroom.
- Revision is necessary to simplify the design of the vestibule space immediately west of the main stair hall in order to avoid a false sense of historicism.

Flooring ~ All floors in the new additions must be clearly differentiated from the historic floors. (*Standards 3 and 9*)

Carriage House ~ This structure is also an historically significant; thus, all proposed work must meet the *Standards*. As presented, several aspects of the scope of work are inconsistent with these guidelines, specifically *Standards 1, 2 and 3*:

- New window openings are not permitted on the façade (south elevation) of the structure.
- Alteration of the roofing material from wood shingle to slate is not approved without supporting documentation that this material is historically accurate.
- Reconfiguration of the roof from a shed roof to a gable substantially impacts the overall historic character of the structure and cannot be approved.

Proposed Garage ~ This new structure is an allowed structure under the provisions of the easement agreement. However, modifications to the proposed design are necessary to ensure the building is consistent with the *Standards*. This includes:

- The placement of the building shall not substantially impact the existing brick perimeter wall on the property. Therefore, the proposed cutting of the wall along S. Lee Street is not approved. (*Standard 1 and 2*)
- The proposed roofing material must be clearly differentiated from the existing historic roofing on the main resources. Traditional slate roofing cannot be approved. (*Standard 3*)
- The design of the overhead garage doors must be simplified. (*Standard 3*)
- The window design and light pattern cannot match the existing historic windows and must be modified such that they are clearly differentiated. (*Standard 9*)

It is unfortunate that the work described in the Part 2 application, “Description of Rehabilitation,” is not consistent with the guidance provided by DHR staff on the appropriate treatment of the property. However, as proposed, the work would not be consistent with the terms of the easement and

Standards and therefore cannot be approved for the purposes of the rehabilitation tax credit or easement program. In order to proceed with rehabilitation work on this property, please substantially revise the proposed work as noted and resubmit at your convenience.

You have the right to an appeal of this decision for the purposes of the rehabilitation tax credit program under the Virginia Administrative Code (17 VAC 10-30-70). A request for an appeal shall be made in writing to the Director of the Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia 23221, within 60 days of the receipt of the decision which is the subject of the appeal. For your information, the regulations for the appeal are as follows:

17 VAC 10-30-70. Appeals.

A. A project applicant may appeal any denial of certification. A request for an appeal shall be made in writing to the Director of the Department of Historic Resources, 2801 Kensington Avenue, Richmond, Virginia 23221, within 60 days of receipt of the decision that is the subject of the appeal. It is not necessary for the applicant to present arguments for overturning a decision within this 60-day period. The applicant may request an opportunity to meet with the director, but all information that the applicant wishes the director to consider shall be in writing. The director shall consider the record of the decision in question, any further written submissions by the applicant, and other available information, and may consult with experts or others as appropriate. The director shall provide the applicant a written decision as promptly as circumstances permit. The appeal process is an administrative review of decisions made by the department; it is not an adjudicative proceeding.

B. In considering appeals, the director may take into account new information not previously available or submitted; alleged errors in professional judgment; or alleged prejudicial procedural errors. The director's decision may:

- 1. Reverse the appealed decision;*
- 2. Affirm the appealed decision; or*
- 3. Resubmit the matter to the department program staff for further consideration.*

C. The decision of the director shall be the final administrative decision on the appeal. No person shall be considered to have exhausted his administrative remedies with respect to the certifications or decisions described in this part until the director has issued a final administrative decision in response to this section.

If you have any questions please feel free to contact me at megan.melinat@dhr.virginia.gov.

Sincerely,



Megan Melinat
Historical Architect
Division of Preservation Incentives



Elizabeth Tune
Director
Division of Preservation Incentives



Historic Alexandria Foundation

218 North Lee Street, Suite 310 • Alexandria, Virginia 22314
(703) 549-5811 • FAX (703) 548-4399

Email: h.a.f@erols.com • Website: HistoricAlexandriaFoundation.org

December 12, 2018

By Email

Mr. Mark B. Jinks
City Manager
Alexandria, VA 22314

Re: 619 S. Lee Street (Vowell-Snowden-Black House)
Enforcement of Open Space and Conservation Easement

Dear Mr. Jinks:

Historic Alexandria Foundation ("HAF") was formed "to preserve, protect and restore structures and sites of historic or architectural interest in and associated with the City of Alexandria, Virginia, to preserve antiquities, and generally to foster and promote interest in Alexandria's historic heritage." As such, we are vitally concerned with the preservation of the historic character of the Old and Historic District and the dwindling amount of open space remaining in Old Town.

We have been particularly alarmed to learn of the very extensive development plans to the historic property located at 619 S. Lee Street in Alexandria (the Vowell-Snowden-Black House) which is one of the most significant historic resources in private ownership in the City and the subject of one of the earliest open space easements in our City. The treatment of the easement and its proper enforcement is all the more important because it was created by the Honorable Hugo L. Black when he was a sitting Justice on the United States Supreme Court. He established the easement in 1969, three years after the state initiated the easement program.

We are writing to request that the City of Alexandria exercise its authority under the Virginia Conservation Easement Act (VCEA), VA. CODE ANN. Sec. 10.1-1009 – 10.1-1016, and the Virginia Open Space Land Act (OSLA), VA. CODE ANN. Sec. 10.1-1700-10.1-1705, to seek enforcement of the open space and conservation easement applicable to the referenced property. Preservation of the historic character of the house, and in particular the open space that is a character-defining feature of the property, is endangered by the development proposal currently under consideration by

the Alexandria Old and Historic Board of Architectural Review and the Virginia Department of Historic Resources (VDHR), which holds the open space and conservation easements.

According to the terms of the easement any proposed alterations, additions, or changes to the property must be determined to be in keeping with its historic character and approved by the VDHR (see attached Deed of Easement dated 12/26/69 and Deed of Correction dated 4/23/73). Without any consultation or notice to the public, on October 12, 2017 the Virginia Department of Historic Resources ("VDHR") gave its conceptual approval of a proposed rehabilitation plan for the property. HAF learned of this action earlier this year and after reviewing the information provided to us by VDHR we concluded that its approval of the plans was not consistent with the terms of the easement or applicable Virginia law. We submitted a detailed explanation of our position to VDHR on October 1, 2018 (see attached). Several other Alexandria organizations concerned with historic preservation have also written to VDHR objecting to their conclusion that the proposed additions and alterations to the property are allowable under the easement (see attached).

VDHR has not directly responded to our letter. Rather, it has indicated to us that it is unable to consider our objections or engage in any discussions with HAF about our concerns as we are not a party to the easement. On October 3, 2018, VDHR renewed its conceptual approval of the proposal. HAF believes that the City of Alexandria has both the right and the duty to enforce the Open Space Land and Conservation easement placed on the property by Justice Black. The City's authority to do so is specifically set forth as a matter of positive statutory law. Va. Code § 10.1-1013 ("An action affecting a conservation easement may be brought by ... [t]he local government in which the real property is located."). Nearly five decades of real estate tax relief have been provided by the citizens of Alexandria and the Commonwealth based on the promise that the open space would not be built upon absent a need "essential to the orderly development and growth" of the City and the provision of replacement open space in any event. Va. Code § 10.1-1704.

Accordingly, we are requesting the City to intervene with the VDHR to seek enforcement of the terms of this easement and compliance with the requirements of the VCEA and OSLA. Such action is necessary to ensure that the public interest in preservation of historic resources and open space as reflected in the VCEA and OSLA is adequately protected and the substantial benefits in the form of tax relief granted to owners of property subject to conservation and open space easements are justified.

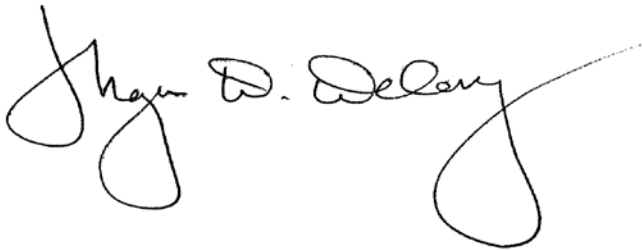
The property owners' request for approval of partial demolition/capsulation and a certificate of appropriateness for additions and alterations is scheduled to be considered by the Old and Historic BAR on December 19, 2018. According to the current practices of the BAR, we anticipate that the BAR may not consider the terms or requirements of the easement as part of its review, and limit its consideration to the powers and conditions set forth in the Zoning Ordinance. (See attached correspondence between HAF and the Office of the City Attorney.) HAF will, of course, present our views to the

Mr. Mark B. Jinks
December 12, 2018
Page 3

BAR on whether the proposal satisfies the requirements of Alexandria's preservation law. The objections we have raised concerning the terms of the easement and the conditions for approval of the project by VDHR should be considered separate and apart from the BAR review and brought directly to the VDHR or, if necessary, through appropriate enforcement action under the applicable state laws.

Thank you for your consideration of our request. We would be happy to discuss our concerns further with you or your staff at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Morgan D. Delaney". The signature is fluid and cursive, with a large loop at the end.

Morgan D. Delaney
Chair
Historic Alexandria Foundation

3919

✓✓

BOOK 705 PAGE 491

THIS DEED OF EASEMENT, MADE this 26th day of December, 1969, between Hugo L. Black and his wife, Elizabeth S. Black, herein called Grantors, and VIRGINIA HISTORIC LANDMARKS COMMISSION, an agency of the Commonwealth of Virginia, herein called the Grantee,

W I T N E S S E T H:

WHEREAS, Chapter 11 of Title 10 of the Code of Virginia entitled "Virginia Historic Landmarks Commission" (1966 c. 632) Sections 10-135 to 10-145 was enacted to preserve historical landmarks in the Commonwealth of Virginia, and created the Virginia Historic Landmarks Commission to receive properties and interests in properties for the purpose, among other things, of the preservation of such landmarks and their settings; and

WHEREAS, Chapter 13 of Title 10 of the Code of Virginia entitled "Open Space Land Act" (1966 c. 461) Sections 10-151 to 10-158 was enacted to preserve permanent open-space lands; and

WHEREAS, the Grantors are the owners of a tract of land hereinafter described, in the historic section of the City of Alexandria, Virginia, on which there is situated a house constructed in the late Eighteenth Century and of architectural significance and historic value;

NOW, THEREFORE, in recognition of the foregoing and in consideration of the sum of Ten Dollars (\$10) and other valuable considerations, the receipt of which are hereby acknowledged, the Grantors do hereby grant and convey to the Grantee an open-space easement in gross over, and right in perpetuity to restrict the use of, the following described real estate located in the City of Alexandria, Virginia, (herein called the property):

Horton
Williams
Gay
Powell
J. L. Loo

1819 H82

W W

Wash &

1-19-76

See DB73

pg 86

7-16-76

All of that parcel of ground, with its improvements and appurtenances, located in the City of Alexandria, Virginia, upon which is erected No. 619 South Lee Street, and other improvements, being more particularly bounded and described as follows, to-wit:-

BEGINNING at a point on the west side of Lee Street at the middle of the square between Gibbon and Franklin Streets, said point being 176 feet 7 inches north of Franklin Street; and running thence south on Lee Street 176 feet 7 inches to the intersection of Lee and Franklin Streets; thence west along Franklin Street 124 feet 2 inches; thence north parallel to Lee Street 76 feet 7 inches; thence west parallel to Franklin Street to a point on the east side of Fairfax Street; thence north to Fairfax Street 100 feet, more or less, to a point equidistant from Gibbon and Franklin Streets; thence east in a direct line 246 feet 10 inches to the point of beginning. Being the same properties which were acquired by Josephine F. Black by deeds duly of record among the Alexandria City land records, from B. B. Cain, Jr., and wife, and from Julia A. Devine, widow, et al., and by Hugo L. Black under the will of Josephine F. Black duly probated in the Circuit Court of the City of Alexandria, and in which Hugo L. Black has by deed of record duly conveyed a one-fifth undivided interest to Elizabeth S. Black.

The restrictions hereby imposed on the use of the property are in accord with the Commonwealth of Virginia's policy, as set forth in Acts, 1966, c.632, to preserve historical properties in the Commonwealth of Virginia, and in Acts., 1966, c.461, §2, to preserve scenic areas, to conserve lands and other natural resources and to preserve permanent open-space land, and the

acts which the Grantors, their heirs, successors and assigns, so covenant to do and not to do upon the property, and the restrictions which the Grantee is hereby entitled to enforce shall be as follows:

1. The manor house will be maintained and preserved in its present state as nearly as practicable, though structural changes, alterations, additions or improvements as would not in the opinion of Grantee fundamentally alter the historic character of the house may be made thereto by the owner, provided that the prior written approval of Grantee to such change, alteration, addition or improvement shall have been obtained.

2. No building or structure shall be built or maintained on the property other than (i) the manor house, (ii) the old carriage house and adjoining servants' quarters and (iii) a garage; provided, however, that after the date of this Deed of Easement, no building or structure described in (ii) shall be altered, restored, renovated or extended and no structure described in (iii) constructed except in a way that would in opinion of Grantee be in keeping with the historic character of the house, and provided that the prior written approval of Grantee to such action shall have been obtained.

3. No industrial or commercial activities shall be carried on on the property except such as can be carried on from the buildings or structures described in 2 above without alteration of their external appearance.

4. The property shall not be subdivided.

5. No sign, billboards or outdoor advertising structure shall be displayed on the property other than one sign not exceeding two feet by three feet for each of the following purposes: (i) to state the name of the property and the name and address of the occupant, (ii) to advertise an activity permitted

BOOK 705 PAGE 494

under paragraph 3 above, and (iii) to advertise the property for sale or rental; provided, however, that this paragraph 5 shall not limit the Grantee's right, hereinafter described, to display on the property, at its discretion, a small marker or sign evidencing its ownership of the easement granted herein.

6. No dump of ashes, sawdust, bark, trash, rubbish or any other unsightly or offensive material shall be permitted on the property visible from the streets.

The Grantee and its representatives may enter the property (i) from time to time for the purpose only of inspection and enforcement of the terms of the easement granted herein, and (ii) in its discretion to erect a single marker or sign, not exceeding two feet by two feet, which states the name of the Grantee and advises that the Grantee owns the easement granted herein.

Although this open-space easement in gross will benefit the public in the ways recited above, nothing herein shall be construed to convey a right to the public of access or use of the property, and the Grantors, their heirs, successors and assigns shall retain exclusive right to such access and use, subject only to the provisions herein recited.

Acceptance by the Virginia Historic Landmarks Commission of this conveyance is authorized by Sections 10-138 and 10-142 of the Code of Virginia, and by such acceptance below the Commission designates the property described above as a certified landmark.

WITNESS the following signatures and seals:

BOOK 705 PAGE 495

Hugo L. Black (SEAL)
Hugo L. Black

Elizabeth S. Black (SEAL)
Elizabeth S. Black

Accepted:

VIRGINIA HISTORIC LANDMARKS COMMISSION

By [Signature]
Executive Director 12/30/69
[SEAL]

STATE OF FLORIDA

 COUNTY OF DADE

To-wit:

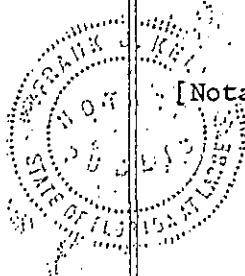
I, Frank J. Kelly, a Notary Public in and for the jurisdiction aforesaid, hereby certify that Hugo L. Black and Elizabeth S. Black, whose names are signed to the foregoing easement bearing date this 26th day of December, 1969, have acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand this 26th day of December, 1969.

My commission expires September 21, 1972.

[Signature]
Notary Public

Notary Public, State of Florida at Large
My Commission Expires Sept. 21, 1972
Bonded by American Fire & Casualty Co.



VIRGINIA:
[Notarial Seal] Clerk's Office of the Corporation Court of the City of Alexandria, this instrument was received and the Taxes imposed by Sec. 52-54, (a) and (b), of the Code have been paid and with the annexed certificate, admitted to record on Dec 31, 1969 at 2:07 o'clock P. M.
Teste:

Alvin W. Smith

2/13

THIS DEED OF CORRECTION, made this 23rd day of April, 1973, between ELIZABETH S. BLACK and HUGO L. BLACK, JR., as Co-Executors under the Last Will and Testament of Hugo L. Black, deceased, and his heirs and devisees, Elizabeth S. Black, Widow, and HUGO L. BLACK, JR., BESSIE GRAHAM HOBSON BLACK, STERLING FOSTER BLACK, NANCY LEE BLACK, MARTHA JOSEPHINE BLACK PESARESI and MARIO PESARESI, herein called Grantors; and VIRGINIA HISTORIC LANDMARKS COMMISSION, an agency of the Commonwealth of Virginia, herein called the Grantee.

W I T N E S S E T H :

WHEREAS, Hugo L. Black and Elizabeth S. Black, granted to Grantee an easement in gross on that parcel of ground in the City of Alexandria upon which is erected No. 619 South Lee Street for the preservation of the historic landmark and its environs through Deed dated December 26, 1969, recorded on December 31, 1969, in Deed Book 705, page 491, in the Clerk's Office of the Corporation Court of the City of Alexandria (the "Deed of Easement"); and

WHEREAS, through oversight the Deed of Easement did not include provision therein for continued maintenance of the existing tennis court and did not permit the erection and maintenance of certain other facilities; and

WHEREAS, Hugo L. Black died on September 25, 1971, leaving Elizabeth S. Black, Widow, and Hugo L. Black, Jr., Sterling Foster Black and Martha Josephine Black Pesaresi as his heirs and devisees of the above-described real property under a will duly probated and recorded among the land records of the Clerk's Office of the Corporation Court of the City of Alexandria in Will Book 91 at page 736; and

BOOTHE, PRICHARD & DUDLEY
4085 UNIVERSITY DRIVE
FAIRFAX, VIRGINIA 22030

True

WHEREAS, Bessie Graham Hobson Black, Nancy Lee Black and Mario Pesaresi are the spouses respectively of Hugo L. Black, Jr., Sterling Foster Black and Martha Josephone Black Pesaresi; and

WHEREAS, Hugo L. Black, Jr. and Elizabeth S. Black have qualified in the Corporation Court of the City of Alexandria as Co-Executors of the Estate of Hugo L. Black, deceased; and

WHEREAS, Grantors and Grantee wish to correct the Deed of Easement to make such provision and to reflect the original intent with regard thereto;

NOW, THEREFORE, in recognition of the foregoing and in consideration of the premises and the sum of \$1.00, receipt of which is hereby acknowledged, the parties agree that the Deed of Easement is hereby corrected by deleting paragraph Number 2 in its entirety and substituting the following paragraph Number 2 therefore:

2. No building or structure shall be built or maintained on the property other than (i) the manor house, (ii) the old carriage houses and adjoining servants' quarters, (iii) a tennis court and other outbuildings and structures which are commonly or appropriately incidental to a single family dwelling including without limitation a swimming pool and garage; provided, however, that after the date of this Deed of Easement, no building or structure described herein shall be altered, restored, renovated or extended and no structure described herein constructed except at such place and in such a way that would in opinion of Grantee be in keeping with the historic character of the house, and provided that the prior written approval of Grantee to such action shall have been obtained.

With the exception of the foregoing correction, all of the other terms and conditions of the Deed of Easement shall remain in full force and effect and are hereby ratified and confirmed.

Bessie Graham Hobson Black, Nancy Lee Black and Mario
Pesaresi join in this deed for the purpose only of releasing
their dower and curtesy interests respectively with respect to
this Deed of Correction.

WITNESS the following signatures and seals:

Elizabeth S. Black (SEAL)
Elizabeth S. Black, Co-Executor
under the Last Will and Testament
of Hugo L. Black, deceased

Hugo L. Black, Jr. (SEAL)
Hugo L. Black, Jr., Co-Executor under
the Last Will and Testament of Hugo L.
Black, deceased

Elizabeth S. Black (SEAL)
Elizabeth S. Black

Hugo L. Black, Jr. (SEAL)
Hugo L. Black, Jr.

Bessie Graham Hobson Black (SEAL)
Bessie Graham Hobson Black

Sterling Foster Black (SEAL)
Sterling Foster Black

Nancy Lee Black (SEAL)
Nancy Lee Black

Martha Josephine Black Pesaresi (SEAL)
Martha Josephine Black Pesaresi

Mario Pesaresi (SEAL)
Mario Pesaresi

VIRGINIA HISTORIC LANDMARKS COMMISSION

By Junius R. Fishburne, Jr.
Junius R. Fishburne, Jr.
Executive Director

STATE OF Virginia
 CITY OF Richmond, to-wit:

The foregoing instrument was acknowledged before me
 this 30 day of April, 1973, by Elizabeth S. Black, as
 Co-Executor and individually.

Annaly G. Kendrick
 Notary Public

My commission expires: 2/2/77

STATE OF FLORIDA

County of Dade, to-wit:

The foregoing instrument was acknowledged before me
 this 23 day of April, 1973, by Hugo L. Black, Jr.,
 as Co-Executor and individually.

Donna L. Cline
 Notary Public

SEAL

My commission expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
 MY COMMISSION EXPIRES FEB. 12, 1974
 BONDED FROM FRED W. DIESELHORST

STATE OF FLORIDA

County of Dade, to-wit:

The foregoing instrument was acknowledged before me
 this 23 day of April, 1973, by Bessie Graham-Hobson
 Black.

Donna L. Cline
 Notary Public

Seal

My commission expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
 MY COMMISSION EXPIRES FEB. 12, 1974
 BONDED FROM FRED W. DIESELHORST

STATE OF ~~ARIZONA~~ *New Mexico*County of *Valencia*, to-wit:

The foregoing instrument was acknowledged before me
this 27th day of April, 1973, by Sterling Foster Black
and Nancy Lee Black, his wife.

Ray S. Arriaga
Notary Public

SEAL

My commission expires: 3.2.77

STATE OF NEW JERSEY

County of *Bergen*, to-wit:

The foregoing instrument was acknowledged before me
this 10th day of May, 1973, by Martha Josephine
Black Pesaresi and Mario Pesaresi, her husband.

Ronald J. Jarama
Notary Public

SEAL

My commission expires:

NOTARY PUBLIC OF NEW JERSEY

My Commission Expires Nov. 12, 1973

STATE OF VIRGINIA

City of *Richmond*, to-wit:

The foregoing instrument was acknowledged before me
this 25th day of May, 1973, by Junius R. Fishburne,
Jr.

William D. Deen
Notary Public

My commission expires: 2-3-76

SEAL

VIRGINIA

In the Clerk's office of the Corporation
Court of the City of Alexandria, Va. this
instrument was received and the taxes
imposed by Sec. 50-54 1 of the Code in
the amount of \$ have been paid
and with the annexed certificate admitted
to record on 5/27/73



Historic Alexandria Foundation

218 North Lee Street, Suite 310 • Alexandria, Virginia 22314
(703) 549-5811 • FAX (703) 548-4399

Email: h.a.f@erols.com • Website: HistoricAlexandriaFoundation.org

October 1, 2018

By Email and Mail

julie.langan@dhr.virginia.gov

Julie V. Langan, Director
Department of Historic Resources
2801 Kensington Avenue
Richmond, VA 23221

Re: *Vowell-Snowden-Black House* (DHR Easement File No. 100-0111) — Objection to Continued Approval of Construction Plans

Dear Ms. Langan:

Historic Alexandria Foundation (“HAF”) was formed “to preserve, protect and restore structures and sites of historic or architectural interest in and associated with the City of Alexandria, Virginia, to preserve antiquities, and generally to foster and promote interest in Alexandria’s historic heritage.” As such, we are vitally concerned with the preservation of the historic character of the Old and Historic District in Alexandria, Virginia and the dwindling amount of open space remaining in Old Town. We have been particularly alarmed to learn of the very extensive development plans to the historic property located at 619 S. Lee Street in Alexandria (the Vowell-Snowden-Black House) which is the subject of one of the earliest open space easements in our City. The treatment of the easement and its proper enforcement is all the more important because it was created by the Honorable Hugo L. Black when he was a sitting Justice on the United States Supreme Court. He established the easement in 1969, three years after the state initiated the easement program.

In October of 1965, while still owned by Justice and Mrs. Black, the property at 619 South Lee Street was awarded plaque 35-E-619 as part of the Historic Alexandria

Foundation's Early Building Survey. It was one of the first houses to receive that important designation. The property has long been held out as a preeminent example of Federal architecture in Alexandria. See, e.g., D. Davis, S. Dorsey & R. Hall, *Alexandria Houses 1750-1830* at 112-14 (1946); Gay Montague Moore, *Seaport in Virginia, George Washington's Alexandria*, Chapter 22 (1949) ("The Vowell-Snowden House"). It was included in the Historic American Buildings Survey (HABS No. VA-709) in 1966 based on work that was funded, in part, by the HAF. The HABS succinctly summarized the unique importance of the property in its "Statement of Significance" as follows:

The Vowell-Snowden-Black House, certainly one of the outstanding examples of the Federal 'row' type buildings in Alexandria, ***has fortunately been spared the fate of suffocation. By precept and example it stands flush with the street, but with its extensive grounds and breathing space preserved to this day.***

HABS No. VA-709 (emphasis added). The adjoining Carriage House that fronts on Franklin Street is of such historic significance that it has its own listing as HABS No. Va-711, which was also based on work partly funded by HAF.

We have recently become aware that by letter dated October 12, 2017 the Department of Historic Resources gave its conceptual approval of a proposed rehabilitation plan for the property which by its own terms is "valid for a year from" October 12, 2017. That sunset provision is expressly required by DHR Policy No. 5:

All written letters or correspondence approving proposed work on an easement property will include a sunset clause, or a timeframe within which the work must be completed. If the work is not done within the specified timeframe, the property owner must request re-approval of the work or seek new approvals if the project has changed in any way from the previously approved proposal.

DHR Policy No. 5. We were surprised that DHR would give conceptual approval for the proposed project which shares many of the defects that led DHR to properly reject a similar plan in 2014. See Letter to Michael Harrington from M. Melinat & E. Tune dated Sept. 14, 2014 ("Harrington Letter").

The proposed construction would destroy the character of the open space on this property. Viewed from the street, the property would appear to have two large new buildings on Lee Street, totally changing the view shed of the property. Like the rejected proposal from 2014, the current development plan proposes demolition of the "McVeigh Curve," alteration of the fabric and streetscape view of the historically significant carriage

house facing Franklin Street, and an overall increase of the gross floor area of the structures on the property from 8,156 to 14,371 square feet. That increase in size is indistinguishable from the “increase in total square footage ... [that] nearly doubles that of the historic resource,” and led to the denial of the application in August of 2014. Harrington Letter at 2. As succinctly stated in DHR’s denial of the similar proposal in 2014, “The cumulative effect of the proposed additions would significantly compromise the historic character and integrity of the property.” *Id.*

Because we believe this approval to have been improvidently given in the first instance, and contrary to the requirements of the Open Space Land Act, VA. Code §§ 10.1-1700, *et seq.*, as well as the Department’s published policies, we write to request that the approval be withdrawn, or at any rate not renewed. Fortunately, the proposed project has not yet begun and there is still time to withdraw the approval. Significantly, the City of Alexandria has not yet provided the local approvals that would be necessary to commence the construction that has been proposed.

A. The Easement on 619 S. Lee Street is Governed by the Open Space Land Act Which Precludes the Approval of the Proposed Construction Project.

We assume that the Department’s approval process overlooked the fact that the easement in question in this case was put in place under the Open Space Land Act, because the letter does not reflect any consideration of the requirements of that law. Perhaps during the review process the Department looked only to certain amendments to the original easement and overlooked that the easement created by Justice Black expressly invoked the Open Space Land Act.¹

We draw your attention to the following language of the Deed of Easement dated December 26, 1969, which is recorded at Deed Book 705, Page 491 in the Land Records of Alexandria. “WHEREAS, Chapter 13 of Title 10 of the Code of Virginia entitled “Open Space Land Act” (1966 c. 461) Sections 10-151 to 10-158 was enacted to preserve permanent open-space lands.” See *also id.* (“the Grantors do hereby grant and convey to the Grantee an open space easement in gross over, and right in perpetuity to restrict the use of, the following described real estate”); *id.* at 492 (“The restrictions hereby imposed on the use of the property are in accord with the Commonwealth of Virginia’s

¹ In April of 1973 a Deed of Correction to the easement was agreed to and recorded at Deed Book 757 Page 867, and that document does not repeat the express invocation of the Open Space Land Act. So it might be understandable that if one looked only at the language of the Deed of Correction the application of the Act could be overlooked. But the Deed of Correction specifically states that “With the exception of the forgoing correction, all of the other terms and conditions of the Deed of Easement shall remain in full force and effect and are hereby ratified and confirmed.” Deed Book 705 Page 868.

policy, as set forth in ... Acts., 1966, c. 461, § 2 [Open Space Land Act], to preserve scenic areas, to conserve lands and other natural resources and to preserve permanent open-space land”).

Because the easement on 619 S. Lee Street is an on open space easement governed by the Act, it is not sufficient for the Department to grant waivers of the easement based on its interpretation of the easement language and the *Standards for Rehabilitation* as described in the October 12th letter. The open space easement is also governed by VA. Code Ann. § 10.1-1704, which provides that:

No open-space land, the title to or interest or right in which has been acquired under this chapter and which has been designated as open-space land under the authority of this chapter, ***shall be converted or diverted from open-space land use unless*** (i) the conversion or diversion is determined by the public body to be (a) ***essential to the orderly development and growth of the locality and*** (b) in accordance with the official comprehensive plan for the locality in effect at the time of conversion or diversion ***and*** (ii) ***there is substituted other real property which is (a) of at least equal fair market value, (b) of greater value as permanent open-space land than the land converted or diverted and (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted. The public body shall assure that the property substituted will be subject to the provisions of this chapter.***

Va. Code Ann. § 10.1-1704 (emphasis added).

It is clear from the October 12, 2017 letter of approval that the required analysis was not performed, and the proposed additional construction on the 619 S. Lee Street property could not possibly satisfy the requirement of being “***essential to the orderly development and growth of the locality.***” *Id.* To the contrary, the construction project runs directly contrary to the avowed legislative purpose “to preserve ... historic and scenic areas.” 1966 Va. Acts. Ch. 461, Section 2. For this reason alone we urge the Department to withdraw its approval as having been extended contrary to the positive commands of the Open Space Land Act which the Department of Historic Resources is charged with administering.

B. The Proposed Project Is Contrary to the Express Provisions of the Easement.

The Department's October 12, 2017 letter expresses the opinion that "the proposed rehabilitative scope of work ... appears consistent with the easement provisions...." We do not believe this assessment is correct, and respectfully draw your attention to the following provisions of the Deed of Easement.

The restrictions hereby imposed on the use of the property are in accord with the Commonwealth of Virginia's policy, as set forth in Acts, 1966, c. 632, to preserve historical properties in the Commonwealth of Virginia, and in Acts., 1966, c. 461, § 2, to preserve scenic areas, to conserve lands and other natural resources and to preserve permanent open-space land, and the acts with the Grantors, their heirs, successors and assigns, so covenant to do and not to do upon the property, and the restrictions which the Grantee is hereby entitled to enforce shall be as follows:

1. ***The manor house will be maintained and preserved in its present state as nearly as practicable***, though structural changes, alternations, additions or improvements ***as would not*** in the opinion of the Grantee ***fundamentally alter the historic character of the house*** may be made thereto by the owner, provided that the prior written approval of Grantee to such change, alteration, addition or improvement shall have been obtained. [Deed Book 705 Page 493](emphasis added)
2. ***No building or structure shall be built or maintained on the property other than (i) the manor house, (ii) the old carriage houses and adjoining servant's quarters, (iii) a tennis court and other outbuildings and structures which are commonly or appropriately incidental to a single family dwelling including without limitation a swimming pool and garage; provided; however,*** that after the date of this Deed of Easement, ***no building or structure described herein shall be altered, restored, renovated or extended and no structure described herein constructed*** except at such place and in such a way that would in opinion of Grantee ***be in keeping with the historic character of the house***, and provided that the prior written approval of Grantee to such action shall have been obtained. [Deed Book 757 Page 868](emphasis added)

3. No industrial or commercial activities shall be carried on on the property except such as can be carried on from the buildings or structures described in 2 above ***without alteration of their external appearance***.... [Deed Book 705 Page 493](emphasis added).

The Virginia Supreme Court has recently stressed that “construing a deed [of conservation easement] is to give effect to the parties’ intention as expressed by them in the words they have used.” *Wetlands Am. Trust, Inc. v. White Cloud Nine Ventures, L.P.*, 291 Va. 153, 160, 782 S.E.2d 131, 135 (2016). “[E]ffect should be given to every part of [a conservation easement], if possible, and no part thereof should be discarded as superfluous or meaningless.” *Id.* at 161, 782 S.E.2d at 136.

We do not believe that any fair reading of the Deeds creating the conservation and open space easements governing 619 S. Lee Street could be consistent with the expansive additions that are being planned for the property. They do not “maintain[] and preserve [the Manor House] in its [1969] present state as nearly as practicable.” Deed Book 705 Page 493. The dramatic expansion of the dwelling “fundamentally alter[s] the historic character of the house.” *Id.* The proposal will remove features of the property expressly set forth in the easement for protection (e.g., the tennis court). Instead of honoring the injunction that “no building or structure described herein shall be altered, restored, renovated or extended and no structure described herein constructed” the proposal relies upon the limited grant of discretion to allow approval of changes “in keeping with the historic character of the house” to justify a wholesale redevelopment of the property.

The purpose of the easement given to the Commonwealth by Justice Black can only be read in context of the grantor’s desire to ensure for posterity the home that he lived in and treasured throughout his lengthy public career as an Associate Justice of the Supreme Court. The manifest purpose of the easement was to ensure that future generations would be able to see the property as the Justice lived and worked in it — gardens, tennis court, outbuildings and all. While the 1973 amendment was agreed to in order to allow for the “maintenance of the existing tennis court” and permit the “erection and maintenance of certain other facilities,” Deed Book Page 757 Page 867, the additional authority granted was intentionally quite limited. It certainly did not authorize the removal of the tennis court that was expressly called out in the easement as something requiring “maintenance.”

In short, if the DHR is to “give effect to the parties’ intention as expressed by them in the words they have used.” *Wetlands*, 291 Va. at 160, 782 S.E.2d at 135, the objective should be to maintain the property as closely as possible in its condition in 1973. We

respectfully submit that the current plans for development of the site run contrary to the express intent of the easement.

C. The Proposed Project Is Contrary to the Department's Published Standards for Implementing the Historic Preservation Easement Program.

1) DHR Policy No. 6 Should Properly be Applied to Such an Extensive Alteration in the Open Space of the Property Under Easement.

Given the dramatic encroachment on and use of the existing open space proposed for the 619 S. Lee Street property, it is apparent the applicant's request for permission to engage in this extensive building project should properly be considered as tantamount to a full-blown amendment to the existing easement. As such it should be considered under the standards set forth in the Department's Historic Preservation Easement Program Policy No. 6, which requires that "An amendment should strengthen the protection afforded by the original easement to the resource(s) on the property.... An amendment should not compromise the historic, architectural, archaeological, open space, cultural, or other environmental resources which the easement was intended to protect." Far from complying with this policy, the proposed construction project will dramatically encroach upon the existing open space and significantly alter the historic landscape of the property. The proposed additions are purely matters of convenience and personal taste of the current owners seeking to dramatically increase the size of this historic urban residence.

2) The Planned Construction Is Incompatible with DHR Policy No. 5

Moreover, the details of the proposed construction do not comply with the relevant *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes* (National Park Service, as amended) which the Easement Program Staff are charged to employ when reviewing applications for work on easement properties under the DHR Policy No. 5.

One example of the failure to comply with Policy No. 5 is found in the proposed treatment of one of the noted historical features of the house at 619 S. Lee Street. The planned construction proposes to modify the hyphen joining the ell to the main block of the house to remove the distinctive curved treatment. The Pollard Memorandum dated Sept. 21, 2017 at 2 suggests, incorrectly, that this is not part of the historic fabric of the property. *Id.* ("The curved treatment does not appear in the historic photos included in the HABS report on the property."). But this highly distinctive and historic treatment of connecting the original kitchen outbuilding to the main block of the house is a well-

documented and noted feature of this property. See, HABS No. VA-709 at 6 (“The hyphen where it was joined to the main house was rounded so as not to interfere with the windows upstairs and down.”); D. Davis, S. Dorsey & R. Hall, *Alexandria Houses 1750-1830* at 114 (1946)(“The ell, originally a separate dependency, has been rounded where it joins the main structure in order not to obstruct a window.”). Whether this was original to the 1798 structure is not the question. “Changes to a property that have acquired historic significance in their own right will be retained and preserved.” 36 C.F.R. § 68.3(b)(4). We submit it is not consistent the Department of Interior *Standards for Preservation* 3-6 to destroy this distinctive historical feature. 36 C.F.R. § 68.3(a)(3)-(6), (b)(4)(2017). When DHR reviewed a similar proposal to demolish this feature in 2014, the request was properly denied.

Similarly, the current construction plans seek to alter the historically significant Carriage House. HABS No. Va-711. A similar plan to alter the exterior facing Franklin Street with the addition of windows was properly rejected in 2014 as being inconsistent with *Standards* 1, 2, 3. Harrington Letter at 3 (“New window openings are not permitted on the façade (south elevation) of the structure.”); see 36 C.F.R. § 68.3(b)(1)-(3). The same ruling should be enforced under the present construction plan. The fact that the proposed new windows are smaller than proposed in prior plans does nothing to address the principles set forth in *Standards* 1, 2 & 3.

The new opening at the rear end of the existing one-story flounder wing, and the basement is similarly contrary to *Standards* 1-3, 9 and the prior treatment of similar requests. Harrington Letter at 2 (“no new openings are permitted on the historic house”).

Unfortunately, the proposed extensive additions to the 619 S. Lee Street property, which include the three separate and substantial additional structures does not comply with the policies set forth in 36 C.F.R. § 68.3(b)(9)(“requiring that “New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property.”). In this case, the extensive in-fill of the open space, which will dominate every portion and view-point of the property will dramatically change what has appropriately been noted as the properties defining characteristic: “***its extensive grounds and breathing space preserved to this day.***” HABS No. Va-709 (emphasis added).

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Julie V. Langan
October 1, 2018
Page 9

For the forgoing reasons, we respectfully submit that upon reconsideration of the applicant's request for work on the Easement Property for 619 S. Lee Street in Alexandria, Virginia, that the Department will deny the application. The proposed project does not satisfy the requirements of the Open Space Act, the express requirements of the easement the Department is entrusted to enforce, or the Department's policies for consideration of such requests.

Respectfully submitted,

Historic Alexandria Foundation

By: 
John Thorpe Richards, Jr.
(Member of the Board)

cc. Megan Melinat (Megan.Melinat@dhr.virginia.gov)
Lori & Nigel Morris (lmorris@311cameron.com)

From: "Paul, Karen (Secretary)" <Karen_Paul@sec.senate.gov>
Subject: DHR Easement File No. 100-0111
Date: October 10, 2018 at 9:46:12 AM EDT
To: "julie.langan@dhr.virginia.gov" <julie.langan@dhr.virginia.gov>



October 5, 2018

By email to: julie.langan@dhr.virginia.gov

Julie. V. Langan, Director
Department of Historic Resources
2801 Kensington Avenue
Richmond, VA 23221

Re: *Vowell-Snowden-Black House* (DHR Easement File No. 100-0111)
— Objection to Continued Approval of Construction Plans

Dear Ms. Langan,

This letter is written to support the Historic Alexandria Foundation's letter of objection to continued approval of construction plans for the Vowell-Snowden-Black property at 619 South Lee Street, Alexandria, VA 22314. As spelled out in the HAF carefully researched and reasoned presentation of all facts relevant to the request, it appears that current plans for development do indeed run contrary to the express intent of the original easement. As easements are an important vehicle for Alexandria to maintain its historic houses and streetscapes, it is vital that the Department of Historic Resources perform all due diligence when granting any divergence from the requirements of an easement. Further, as all of

Alexandria's open spaces seem to be either under development or protected by easements or Open Space Act, it is crucial that all decisions to bend or interpret these legal protective vehicles to other purposes not be undertaken lightly.

We therefore respectfully request that upon reconsideration of the applicant's request for work on the Easement Property for 619 S. Lee Street in Alexandria, that the application be denied. We agree with John Thorpe Richards's conclusion that "the proposed project does not satisfy the requirements of the Open Space Act, the express requirements of the easement the Department is entrusted to enforce, or the Department's policies for consideration of such requests.

Respectfully,

Karen D. Paul, President
The Alexandria Association
P.O. Box 320711
Alexandria, VA 22320-4711
Alexandriaassociation.org



Alexandria, Virginia

Historic Alexandria Resources Commission

*220 North Washington Street
Alexandria, Virginia 22314-2521
(703) 746-4554*



October 31, 2018

By Email and U.S. Mail

Julie.langan@dhr.virginia.gov

Julie V. Langan, Director
Department of Historic Resources
2801 Kensington Avenue
Richmond, VA 23221

**Re: Vowell-Snowden-Black House (DHR Easement File No. 100-0111)
Objection to Continued Approval of Construction Plans**

Dear Ms. Langan:

The Historic Alexandria Resources Commission (HARC) was established to advise the City of Alexandria on the preservation of historic sites and buildings, artifacts, and records from loss or deterioration; and promotes citizen and tourist use of historic sites such as the Torpedo Factory Art Center. Commission members are appointed by City Council and must be citizens of Alexandria.

We have recently learned of the extensive development plans to the historic property located at 619 South Lee Street in Alexandria (the Vowell-Snowden-Black House). An open space easement was granted to the Commonwealth of Virginia on the property by prominent Supreme Court Justice Hugo Black and his wife Elizabeth on 26 December 1969 just three years after the Open Space Land Act was created in Virginia. The easement was granted in perpetuity and allowed for no additional building or structures on the site to be built.

The current proposal for 619 South Lee Street would remove modern additions to the house that cover approximately 422 square feet of land and replace them with new additions that cover approximately 3174 square feet of land, or 750 percent more land coverage than the removals. Further, four of the proposed structures (two buildings and two connectors) will extend to the south of the historic house along the entire street front of the property obscuring the open space from public view. This expansive proposal clearly violates the spirit of the original easement granted by Justice Black and his wife, and the requirements of the Virginia Code.

The open space easement is governed by VA. Code Ann. § 10.1-1704, which provides that:

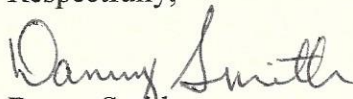
No open-space land, the title to or interest or right in which has been acquired under this chapter and which has been designated as open-space land under the authority of this chapter, shall be converted or diverted from open-space land use unless (i) the conversion or diversion is determined by the public body to be (a) essential to the orderly development and growth of the locality and (b) in accordance with the official comprehensive plan for the locality in effect at the time of conversion or diversion and (ii) there is substituted other real property which is (a) of at least equal fair market value, (b) of greater value as permanent open-space land than the land converted or diverted and (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted. The public body shall assure that the property substituted will be subject to the provisions of this chapter.

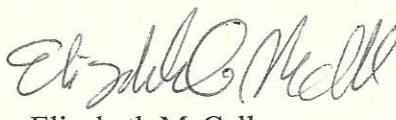
The further development of the property at 619 South Lee Street is not included in any official comprehensive plan for Alexandria, and no other real property of equal or greater market value in nearly equivalent location has been designated as permanent open space.

Open space within Alexandria's Old and Historic District is limited. Your approval of changes to the open space easement on the property at 619 South Lee Street will set a dangerous precedent that opens the way for future development on other properties held in easements throughout Virginia.

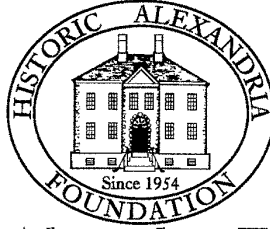
The Commission will advise the City of Alexandria to reject the proposed plans for expansion at 619 South Lee Street, and we respectfully request that you reconsider the decision you made to approve the preliminary plans for development at 619 South Lee Street and reject the final proposal and any future proposals for development of this property that are in clear violation of the easement and Open Space Land Act.

Respectfully,


Danny Smith


Elizabeth McCall

Co-Chairs
Alexandria Historic Resources Commission



Historic Alexandria Foundation

218 North Lee Street, Suite 310 • Alexandria, Virginia 22314
(703) 549-5811 • FAX (703) 548-4399

Email: h.a.f@erols.com • Website: HistoricAlexandriaFoundation.org

August 11, 2016

Joanna Anderson, Esq.
Deputy City Attorney
Alexandria, Virginia

Dear Ms. Anderson,

I am writing on behalf of the Historic Alexandria Foundation (HAF) to express our concern and disagreement with recent staff statements and procedures followed in connection with applications to the Old and Historic District Board of Architectural Review that involve properties subject to preservation easements.

The most recent case that raised these concerns is BAR #2016-00160. The staff statement with which we disagree is found at page 4 of the Staff Report:

Staff notes that the Alexandria Historical Restoration and Preservation Commission (AHRPC) holds a scenic and exterior architectural easement on this property. All alterations to the buildings, new construction and changes to the landscape must separately be reviewed and approved by the AHRPC. However, an easement is a private contract between the property owner and the easement holder and these are not regulated by the City.

In addition, at its meeting on July 6, 2016, the Chair of the BAR read a preliminary statement provided by staff that included similar language regarding the status of a preservation easement as a “private contract”, and further stated that **“in the past the BAR has advised applicants that easement holders should approve any proposal to be reviewed by the BAR as a courtesy. However, the BAR is not able to legally require that.”**

We believe these statements are incorrect, both as a matter of law and policy, for the reasons noted below. We urge the City to continue to require the consent of a preservation easement holder before an application is deemed complete and subject to review by the BAR. We request that you provide us with the legal reasoning that led to the statements quoted above and the proposed change in the existing procedure that requires evidence of the consent of an easement holder before presenting an application to the BAR. We would like to meet with you at your convenience to discuss these issues.

Legal Status of Conservation and Open Space Easements

Under Virginia law a conservation easement is a non-possessory interest in real property. VA. CODE ANN. § 10.1-1009. It is not simply a “contract between the property owner and the easement holder”, as stated in the recent staff reports. Accordingly, the BAR should not take action that could impair the property interests of the easement holder without its consent. The BAR should continue to require evidence that an application has the consent of all parties holding an interest in the property under review, whether that interest is in the fee simple or the interest of an easement holder.

Moreover, historic preservation and open space easements are governed by the Virginia Conservation Easement Act (VCEA), VA. CODE ANN. §§ 10.1-1009 through 10.1-1016 and the Virginia Open Space Land Act (OSLA), VA. CODE ANN. §§ 10.1-1700 through 10.1-1705. These laws “were intended to encourage the acquisition by certain public bodies of fee simple title or ‘easements in gross or such other interests in real estate’ that are designed to maintain the preservation or provision of open-space land.” *United States v. Blackman*, 270 Va. 68, 613 S.E.2d 442 (2005). The public policy in favor of land conservation and preservation of historic sites and buildings is also reflected in Article XI of the Constitution of Virginia.

These laws make clear that, in contrast with conventional private easements, conservation easements serve a public function and such easements are “held and administered by the easement holders not for themselves, but on behalf of the public and in furtherance of state policy”. *See* 2012 Va. Op. Atty. Gen 31. Not only are conservation easements held on behalf of the public, but the owners of property subject to conservation easements are granted substantial benefits in the form of tax relief to reflect the value that preservation provides to the public interest. Accordingly, VCEA expressly provides standing to the local government to take action to enforce conservation and open space easements on real property within their jurisdictions. VA. CODE ANN. § 10.1-1013.

The recent statements in the BAR staff reports that conservation easements “are not regulated by the City” fail to take this Virginia Code provision into account. The City does, indeed, have standing to take action to enforce a conservation easement. It should not abrogate this responsibility by allowing, or requiring, the BAR to take action

without regard to the interests of the holder of a conservation easement or the public interest in favor of preservation easements. As a City body, the BAR should take these interests into account in its decisions. Failure to do so could result in a diminution of the value of the easement, lead to inconsistent requirements for the property owner, and limit the City's ability to ensure compliance with an easement as provided in the VCEA.

The BAR should continue the established policy to require evidence of the consent of the holder of a conservation easement before an application can be heard. We were puzzled by the statement read by the BAR Chair at the recent meeting, as quoted above, that "in the past the BAR has advised applicants that easement holders should approve any proposal to be reviewed by the BAR as a courtesy." In fact, the application procedures clearly state that documentation of an easement holder's consent to an application is **required**, not a "courtesy", before an application will be considered complete. Section 8 of the application instructions provides as follows:

REVIEW BY OTHER AGENCIES: It is the policy of the Boards not to review applications which do not meet other applicable city regulations. This policy ensures that the project approved by the Board can, in fact, be undertaken. In cases where there is an historic preservation easement on the property or the property is under a homeowner's association, a copy of the letter approving the project must accompany the application at the time of submission. Applications without approval letters will not be accepted and will be deferred until the letter is received and the application is complete.

This practice and procedure should be continued as it is the only way to ensure that the easement holder's interest in the property will not be impaired by actions taken by the BAR without its consent. We do not know of any reason why the BAR Chair's statement claimed that "the BAR is not able to legally require that". Section 10-104 (B)(3) of the City Code allows the BAR to adopt administrative procedures, pursuant to which the BAR has set forth numerous requirements for documentation that must be submitted before an application will be considered complete. The existing BAR policy is a reasonable requirement, consistent with its authority under City law, and a best practice to ensure that the BAR time and resources are well spent. It should be continued.

We believe that the apparent change in the BAR procedure for handling applications for properties subject to conservation easements is unwise and not supported by law or policy. If there are other factors we have not considered that you think justify such a change we would be most interested in your thoughts on these issues.

Thank you for considering our views on this matter. We look forward to meeting with you at your earliest convenience to discuss these issues. I can be reached at elj831@gmail.com or 703-615-9529.

Sincerely,

Elaine Johnston
Co-Chair, Advocacy Committee

Cc: Al Cox
Lance Mallamo



OFFICE OF THE CITY ATTORNEY

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MARY ELLIOTT O'DONNELL
MEGHAN S. ROBERTS
KAREN S. SNOW

September 1, 2016

Elaine Johnston
Historic Alexandria Foundation
218 North Lee Street, Suite 310
Alexandria, Virginia 22314

Re: Applications to the Old and Historic District Board of Architectural Review

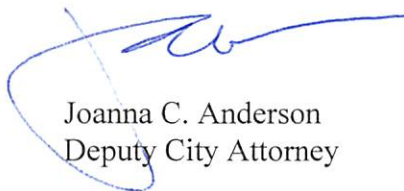
Dear Ms. Johnston:

Thank you for your letter dated August 11, 2016.

It has been and will continue to be the City of Alexandria's practice to request that an applicant to its Boards of Architectural Review ("BAR") obtain the consent of an easement holder before a matter is considered by the BAR. The purpose of doing so is to make the process more efficient, in that the applicant would not have to make two applications to the BAR if the easement holder's consent was not obtained in advance of an application being made.

Although, the City will continue to seek the consent of an easement holder, the BAR cannot refuse to consider an application if it does not include an easement holder's consent. This is because the BAR is not empowered to enforce easements on behalf of easement holders. The BAR's power is limited to those conferred upon it by the City's Zoning Ordinance.

Very truly yours,



Joanna C. Anderson
Deputy City Attorney

cc: Al Cox, Historic Preservation Manager

BLACK'S LAW DICTIONARY

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

Author of Treatises on Judgments, Tax Titles, Intoxicating Liquors,
Bankruptcy, Mortgages, Constitutional Law, Interpretation
of Laws, Rescission and Cancellation of Contracts, Etc.

REVISED FOURTH EDITION

By

THE PUBLISHER'S EDITORIAL STAFF

ST. PAUL, MINN.
WEST PUBLISHING CO.
1968

"Gaming" is properly the act or engagement of the players. If by-standers or other third persons put up a stake or wager among themselves, to go to one or the other according to the result of the game, this is more correctly termed "betting."

GAMING CONTRACTS. See Wager.

GAMING HOUSE. A building, place, or room kept for use as a place to gamble, or to keep or exhibit for the purpose of gaming, any bank, table, alley, machine, wheel, or device, *Davis v. State, Tex.Civ. App.*, 165 S.W.2d 757, 758; as the business of the occupants. 1 *Russ.Crimes*, 299; *Rosc.Crim.Ev.* 663; *People v. Jackson*, 3 *Denio, N.Y.*, 101, 45 *Am. Dec.* 449.

GAMING TABLE. Any table that may be used for playing games of chance for money or property. *State v. Leaver*, 171 *Mo.App.* 371, 157 S.W. 821, 822; *Everhart v. People*, 54 *Colo.* 272, 130 P. 1076, 1080.

GANANCIAL PROPERTY. In Spanish law, a species of community in property enjoyed by husband and wife, the property being divisible between them equally on a dissolution of the marriage. 1 *Burge, Confl.Law*, 418. *Cartwright v. Cartwright*, 18 *Tex.* 634; *Cutter v. Waddingham*, 22 *Mo.* 254. See Community.

GANANCIALES. A Spanish term, used as either a noun or adjective, and applied to property acquired during marriage. Discussed in *Sanchez v. Bowers, C.C.A.N.Y.*, 70 *F.2d* 715, 716. See Ganancial Property, *supra*.

GANANCIAS. In Spanish law, gains or profits.

GANG. Any company of persons who go about together or act in concert, in modern use mainly for criminal purposes. *State v. Gaynor*, 119 *N.J.L.* 582, 197 A. 360, 362.

GANG-WEEK. The time when the bounds of the parish are lustrated or gone over by the parish officers,—rogation week. *Enc.Lond.*

GANGIATORI. Officers in ancient times whose business it was to examine weights and measures. *Skene*.

GANGSTER. A member of a gang of roughs, hireling criminals, thieves, or the like. *State v. Gaynor*, 119 *N.J.L.* 582, 197 A. 360, 362.

GANSER SYNDROME. A state in which questions are given nonsensical answers from which a hidden relevancy may be inferred. This is observed in prisoners who wish to gain leniency by simulating mental clouding.

GANTELOPE (pronounced "gauntlett.") A military punishment, in which the criminal running between the ranks receives a lash from each man. *Enc.Lond.* This was called "running the gauntlett."

GAOL. A prison for temporary confinement; a jail; a place for the confinement of offenders against the law.

As distinguished from "prison," it is said to be a place for temporary or provisional confinement, or for the punishment of the lighter offenses and misdemeanors. See, also, Jail.

GAOL DELIVERY. In criminal law, the delivery or clearing of a gaol of the prisoners confined therein, by trying them.

In popular speech, the clearing of a gaol by the escape of the prisoners.

General Gaol Delivery. In English law, at the assizes (*q. v.*) the judges sit by virtue of five several authorities, one of which is the commission of "general gaol delivery." This empowers them to try and deliverance make of every prisoner who shall be in the gaol when the judges arrive at the circuit town, whether an indictment has been preferred at any previous assize or not. 4 *Bl.Comm.* 270. This is also a part of the title of some American criminal courts, as, in Pennsylvania, the "court of oyer and terminer and general jail delivery."

GAOL LIBERTIES, GAOL LIMITS. A district around a gaol, defined by limits, within which prisoners are allowed to go at large on giving security to return. It is considered a part of the gaol. *Singer v. Knott*, 237 *N.Y.* 110, 142 *N.E.* 435, 436.

GAOLER. A variant of "jailer" (*q. v.*).

GARAGE. A place in which motor vehicles are stored and cared for. *Legum v. Carlin*, 168 *Md.* 191, 177 A. 287, 290, 99 *A.L.R.* 536.

GARANDIA, or GARANTIA. A warranty. *Spelman*.

GARANTIE. In French law, this word corresponds to warranty or covenants for title in English law. In the case of a sale this *garantie* extends to two things: (1) Peaceful possession of the thing sold; and (2) absence of undisclosed defects, (*défauts cachés.*) *Brown*.

GARATHINX. In old Lombardic law, a gift; a free or absolute gift; a gift of the whole of a thing. *Spelman*.

GARAUNTOR. L. Fr. In old English law, a warrantor of land; a vouchee; one bound by a warranty to defend the title and seisin of his alienee, or, on default thereof, and on eviction of the tenant, to give him other lands of equal value. *Britt. c.* 75.

GARBA. In old English law, a bundle or sheaf. *Blada in garbis*, corn or grain in sheaves. *Reg. Orig.* 96; *Bract. fol.* 209.

GARBA SAGITTARUM. A sheaf of arrows, containing twenty-four. Otherwise called "*schaffa sagittarum.*" *Skene*.

GARBALES DECIMÆ. In Scotch law, tithes of corn, (grain.) *Bell*.

GARBLE. In English statutes, to sort or cull out the good from the bad in spices, drugs, etc. *Cowell*.

GARBLER OF SPICES. An ancient officer in the city of London, who might enter into any shop, warehouse, etc., to view and search drugs and spices, and garble and make clean the same, or see that it be done. *Mozley & Whiteley*.