



Historic Alexandria Foundation

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February 1, 2019

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:

We are writing to follow-up on our prior submissions both to bring additional information to the attention to the Board regarding the Hugo Black House development and to respond to the proposed changes suggested by the applicant.

A. New Information Concerning the Landmark Status of the Property.

It was not until the publication of the Alexandria BAR Staff report on December 17, 2018, that we came to realize that neither the BAR Staff, nor, apparently, the VDHR Staff appreciated that the Hugo Black House is a certified landmark property in its own right, separate and apart from its inclusion in the Old and Historic District of Alexandria. Although we stressed this point at the December 19-20, 2018 hearing, we wish to bring to the Board's attention additional information concerning this important fact, and stress why this separate designation by the Virginia Historic Landmark Commission ("VHLC" now the Department of Historic Resources "VDHR") needs to be recognized and incorporated into the Board's decision. This would include the recognition that the period of Hugo Black's residence is the primary period of historical significance the BAR is charged with preserving.

Under current state law:

B. For the purposes of this chapter, **designation by the Board of Historic Resources** shall mean an act of official recognition designed (i) to educate the public to the significance of the designated resource and (ii) **to encourage local governments and property owners to take the designated property's historic, architectural, archaeological, and cultural significance into account in their planning, the local government comprehensive plan, and their decision making.** Such designation, itself, shall not regulate the action of local governments or property owners with regard to the designated property.

Va. Code Ann. § 10.1-2204 (emphasis added). Consistent with the requirements of the Certified Local Government law and regulations, 54 U.S.C. § 3025, et seq.; 36 C.F.R., Part 61, the City of Alexandria requires the BAR to take this designation into account in its decision making. See Alex. Zoning Ord. § 10-105(A)(2)(c) (“the impact on the historic setting”), (g) (“The extent to which the building or structure will preserve or protect historic places and areas of historic interest in the city.”).

On December 30, 1969 the Hugo Black House was designated by the VHLC as a certified landmark. Deed Book 704, Page 494-95. The VHLC designation was in furtherance of its statutory 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); see 3 Former Va. Code Ann. § 10-138 (1973 Repl. Vol.); accord Va. Code § 10.1-2204(A)(1). **That Landmark designation was a necessary predicate for the Commission to obtain the easement on this property.** 1966 VA. Acts Ch. 632 § 8; Former Va. Code Ann. § 10-142 (1973 Repl. Vol.). Such a designation is separate and apart from the VDHR’s duty to prepare and publish a register of landmark property. 1966 Va. Acts. Ch. 632, § 4(b); Former Va. Code § 10-138(b); Va. Code § 10.1-2202(7)(current).

The Landmark designation was also a necessary predicate for the substantial tax relief the property has enjoyed for nearly 50 years, and its recognition by the tax assessment office confirms the City’s recognition of the landmark status. In 1969 when the Black easement was recorded, the statute provided that

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 ... 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 Va. Acts Ch. 632 § 5 (emphasis added); Former Va. Code § 10-139 (1973 Repl. Vol.); see Va. Code § 10.1-2207 & 58.1-3205 (current Code). Similarly, Section 8 of the statute creating the VHLC provided that:

§ 8. 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 ... shall be in writing, and when duly signed, shall be recorded in the clerk's office of the ... city wherein deeds are admitted to record and when so recorded shall be notification to tax assessing officials of the restrictions set forth. Such restrictions shall be observed by the tax assessing officials of such ... city in placing a lower valuation upon such property in future assessments or reassessments of real estate.

1966 Va. Acts. Ch. 632, § 8 (emphasis added); Former Va. Code § 10-142 (1973 Repl. Vol.); see Va. Code § 10.1-2207 (current law).

Because of these provisions, the tax assessors office has recognized the Landmark designation since 1970 when the assessment was reduced from a calculation based on 12 buildable lots to a single lot subject to an Open Space Land Act easement. Former Va. Code Ann. § 10-142 (1973 Repl. Vol.); see Va. Code § 10.1-2207 (“Where the Commonwealth has obtained from a landowner an easement ... so as to preserve those features which lead to the designation of that property as an historic landmark” assessments shall reflect change in market value as prescribed by Va. Code § 58.1-3205). The original reduction in the tax assessment for the Hugo Black House and property was nearly 60%. That reduction was expected to increase as the value and scarcity of the vacant land in Old Town has increased.

Lest there be any question whether the recital and the acceptance of the Easement satisfied the requirements for certification of the property as a Landmark (and the commensurate reduction of annual real estate tax assessments that the property has enjoyed as a consequence.), a review of the publicly available records should put this question to rest. It also serves to highlight the clear intent that the landmark designation — and the easement that was taken to protect that landmark resource — included the extensive gardens at the Hugo Black House.

Attached is the December 11, 1969 Memorandum from James W. Moody, Jr., the first Executive Director of the VHLC, seeking approval of the easement transaction from the members of the Commission. Mr. Moody described the genesis of the easement transaction the landmark designation as follows:

The staff has visited the house and has made an assessment of the situation. In this I was assisted by Messrs. Fishburne and Loth of our Staff, and of special help was Mr. Elbert Cox, Director of the Commission of Outdoor Recreation, whom we invited along. George Freeman, the attorney who is so skilled in matters relating to easements, was also with us.

It is the unanimous and unreserved opinion of the group that Justice Black's house has ample historical quality — past, present, and future — as well as architectural distinction. Furthermore, the space around the house is an essential element in a neighborhood where every scrap of available land supports a new townhouse, some only eighteen feet wide, with a garden to match.

Moody to VHLC (12/11/1969)(LOV MSS, Virginia State Library & Archives Office of the State Librarian, Historic Landmark Commission Corresp. & Data Files 1966-1975, Box 1)(copy attached)(emphasis added). When referencing the “present, and future” of the property, Mr. Moody was clearly referencing the significant association with Justice Hugo Black and the prominent place Justice Black already held in the History of the United States. The “future” reference was clearly to the fact that in 1969 Justice Black was still alive and serving as a Justice of the United States Supreme Court.

The record documents that Mr. Moody, provided the full Commission with the draft easement — including the Landmark certification — along with a written ballot for the Commission’s decision. The Easement was drafted by George Freeman of Hunton & Williams (who is still noted in VDHR materials as the author of the Open Space Land Act). The easement was noted as being “similar in all respects to the one the Commission holds on the Old Mansion at Bowling Green ***and its purpose is identical: to help save a fine house in an appropriate setting that contributes much to the environment.***”
Id.

The Minutes of the January 6, 1970 Meeting of the Virginia Historic Landmarks Commission show that:

Mr. Moody reported that the easement from Justice Hugo L. Black on his property at 619 South Lee Street in Alexandria was recorded on December 31, 1969. ***Permission was granted by the State Attorney General's office for Mr. Moody to sign the easement for the Commission and the transaction was approved by the Governor's office.***

VHLC Minutes (1/6/1970) at 2 (emphasis added)(LOV MSS, Virginia Historic Landmarks Commission: Minutes and Records, 1966-1973)(copy attached). As we have already pointed out, the Open Space Land Act only allowed the Virginia Historic Landmarks Commission to take such an easement on property that was a designated landmark, ***and the fact that the easement covered the entire lot — gardens as well as the house — confirms that the landmark designation was not limited to the Vowell-Snowden-***

Black House, but also included the grounds that Justice Black had assembled as open space.

B. Undue Reliance on Supposed Determinations of the VDHR

Based upon the presentations that have been made to date, we are greatly concerned that the members of the Board are under the mistaken view that the VDHR has approved the plans that are currently before the Board — including the proposed “WORKSHOP/BIKE GARAGE.” But in the absence of additional guidance from the VDHR addressing the plans that are under consideration by the BAR, they have done no such thing. That is because the December 3, 2018 letter from VDHR you provided to us before the last hearing only addresses the Cunningham Quill plans dated **October 31, 2018**. Since that predates the plans considered by the BAR, and presumably does not take into account the abandonment of the originally proposed multiple-car garage, we do not believe the BAR should assume that the workshop/bike garage with its connecting structure was necessarily approved as a matter of easement interpretation by the VDHR.

Nor do we believe the Board can or should properly rely upon the easement enforcement decisions by the VDHR to bolster the arguments in favor of the applicant’s plan as was extensively advocated during the prior hearing. The VDHR’s easement considerations are expressly different from the preservation tasks assigned to the BAR by the City Charter and the Zoning Ordinance. Indeed, we believe that the staff of the VDHR would be shocked to learn that their easement decisions formed any basis for an approval of demolition or certificate of appropriateness by the BAR. To the contrary, under the regime established under the National Historic Preservation Act, 54 U.S.C. § 3025, et seq.; 36 C.F.R., Part 61, the BAR is the historic preservation review commission charged with the protection of historic properties. Nowhere in the Zoning Ordinance or the Board’s Design Guidelines is a VDHR easement approval identified as a consideration to be given any weight whatsoever. This is especially so when there is nothing in the record before the BAR to determine what analysis was indeed undertaken by the VDHR and the reasons for their preliminary decisions.

Contrary to the argument that the VDHR easement approval should be taken as that agency’s blessing of the project, the BAR should assume that the VDHR is counting on the local BAR to exercise independent judgment and control in preserving this historic Landmark within the City.

C. Preservation of the Historic Curve.

We recognize that at the December 19-20, 2018 hearing, several Board members indicated that they were leaning toward approval of demolition of the historic curve on the property. But the full Board was not present at that meeting. And in some member’s remarks it appeared that significant weight was being given to the prior approval of the demolition of the curve by VDHR, notwithstanding the new information that was

developed by the BAR staff review of the site, and the additional information provided by HAF.

But in giving deference to the VDHR assessment of the proposed demolition, the Board is losing sight of the fact that VDHR did not have the new information showing that the curve is an historic feature of the property. In fact, the VDHR approval was based on the uncorrected representation that the curve was not historic. Previously VDHR has opined that the curve “**cannot be removed without documentation to substantiate it as a non-historic feature.**” Letter from Megan Melinat and Elizabeth Tune to Michael Harrington (8/5/2014)(emphasis added), *citing* Department of the Interior Standard 4. 36 C.F.R. § 68.3(b)(4)(“Changes to a property that have acquired historic significance in their own right will be retained and preserved.”).

Because whatever indications of approval that have been given by VDHR preceded the Alexandria BAR Staff’s documentation in its report — first published on December 17, 2018 based on field work performed on December 13, 2018 — that the curve is indeed a historic feature of the property dating back well into the 19th Century, the Board should not base its own approval of the demolition on the assumption that VDHR staff have given the matter full consideration based on complete information.

In short, the VDHR approvals, such as they are, were provided without the benefit of Mr. Cox’s on-site inspection and verification of the historic nature of the curve. It was provided without the benefit of the Staff recommendation to deny the demolition. And it should provide no basis for justifying the demolition of this distinctive historic feature of the Hugo Black House.

We are, moreover, extremely concerned about the precedent being set by the Board with such a prominent decision to allow the demolition of this historic structure in large part because it has been inadequately maintained or because of the supposed difficulty in maintaining it. Those are neither criteria established in the Zoning Ordinance or your design guidelines and run counter to local, national and international standards for historic preservation. Design Guidelines, Demolition of Existing Structures at 1 (“It is the policy of the Boards that absolute minimum demolition of an existing structure should take place.”); 36 C.F.R. § 68.3(a)(1)-(6), (b)(1)-(6), (9)-(10)(Secretary of the Department of Interior Standards); International Charter for the Conservation and restoration of Monuments, “Venice Charter” Art. 11 (1964)(“The valid contributions of all periods to the building of a monument must be respected”).

It has been noted by some that to a modern architectural eye the curve is an unsuccessful treatment of the problem of attaching the original kitchen dependency to the main house. But architectural “mistakes” are important components of the history of a building. Indeed, many “mistakes” become defining elements of a site.

D. Comments on the Proposed Revisions.

Unfortunately, the proposed revisions do not address any of the overarching concerns with the plans that HAF, HARC, Old Town Civic Association, the Alexandria Association, the Northern Virginia Conservation Council, and others concerning the scale, mass and design of these extensive additions to the property.

We do not regard the examples of hipped roof treatments to be found in old town either representative or helpful to the Board's consideration because the presentation appears to demonstrate more the unusual occurrence of this treatment in Old Town than otherwise. The examples from Williamsburg or the country estate of Mount Vernon are, of course, irrelevant in this context.

While the addition of windows to the east front of the "WORKSHOP/BIKE GARAGE" (no elevation is provided for the southern front of this building) do at least break up the blank wall previously proposed, it does not change the fact that this unnecessary structure, which cannot fulfill the originally conceived function as a "garage" will disrupt the Landmark open space. Nor is there any necessity or architectural desirability for the one story "Pergola" connecting the kitchen "pavilion" to what is no longer a "garage". Retention of this feature only emphasizes the obstruction to the Landmark open space to no purpose.

The montages of the 600 Block of South Lee Street simply reinforce the point that was expressed by some members of the Board that the proposed plans are not in keeping with the street scape and neighborhood of Old Town in general and the 600 Block on South Lee Street in particular. Even the revised window treatments proposed are out of keeping with the neighborhood.

Given the prominence of this proposed project the Board should be careful and conscious of the precedents it will be setting in this approval process. No doubt we will see the extensive additions being made to this landmark property cited over and over again in the future to justify the replication of each feature approved here as being suitable everywhere in the historic district.

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For the foregoing reasons, we continue to urge the BAR to deny the application to demolish the "curve" and deny the application for the proposed additions to the Landmark Hugo Black House and grounds.

Respectfully submitted,

Historic Alexandria Foundation



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

cc. Duncan Blair

Enclosures: As Stated