

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA
Civil Division

HISTORIC ALEXANDRIA FOUNDATION)
YVONNE WEIGHT CALLAHAN)
and GAIL C. ROTHROCK)

Petitioners,)

v.)

CITY OF ALEXANDRIA)
SERVE:)
Joanna Anderson)
City Attorney)
301 King Street, Room 1300)
Alexandria, VA 22314)

ALEXANDRIA CITY COUNCIL)
SERVE:)
Joanna Anderson)
City Attorney)
301 King Street, Room 2300)
Alexandria, VA 22314)

VOWELL, LLC)
SERVE:)
Corporation Service Company)
Registered Agent)
100 Shockoe Slip, 2nd Floor)
Richmond, Virginia 23219)

&)

BOARD OF ARCHITECTURAL REVIEW,)
CITY OF ALEXANDRIA)
SERVE:)
Joanna Anderson)
City Attorney)
301 King Street, Room 2300)
Alexandria, VA 22314)

Defendants.)

Case No. CL19002249

BY
DEPUTY CLERK

EDWARD SEHONIAN, CLERK

2019 JUN 13 PM 3:33

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA

PETITION

COMES NOW the Petitioners, HISTORIC ALEXANDRIA FOUNDATION (“HAF”), YVONNE WEIGHT CALLAHAN (“Ms. Callahan”), and GAIL C. ROTHROCK (“Ms. Rothrock”), by counsel, and hereby petitions this honorable Court to review the decision of the Alexandria City Council (“City Council”) and states as follows in support.

INTRODUCTION

1. This appeal concerns an affirmation by the City Council of a decision of the Alexandria Board of Architectural Review (“BAR”) with respect to certain demolitions, alterations, and additions at 619 South Lee, Alexandria, Virginia 22314 (the “Black Home”). The Black Home was the long-time residence of United State Supreme Court Justice Hugo Black and his family from shortly after his appointment to the bench by President Franklin Roosevelt in 1939 until his death in 1971. According to the Historic American Buildings Survey, the Black Home is “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.”

2. The Black Home is subject to an easement per the Virginia Open Space Land Act; a certified Virginia historic landmark; and is within the City of Alexandria’s Historic District. The easement and Landmark designation included the open space around the house because, according to the Virginia Historic Landmark Commission “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.”

PARTIES AND JURISDICTION

3. Petitioner HAF is a 501(c)(3) non-profit corporation founded in 1954 to advocate for the preservation of Alexandria’s historic buildings, districts, and neighborhoods. HAF was a petitioner on the appeal to City Council from the BAR decision and is the owner of real property located within the Old and Historic District of the City of Alexandria—under 1,500 feet away from the Black Home. In furtherance of its mission, HAF has both granted an easement on its property pursuant to the provisions of the Open Space Land Act and is a co-grantee of easements that have been given pursuant to the Open Space Land Act, and is therefore vitally interested in the proper administration of the Open Space Land Act and the protections for historic properties provided by the Alexandria Zoning Ordinance.

4. Petitioner Ms. Callahan was a petitioner on the appeal to City Council from the BAR decision and is the owner of real property located at 735 S. Lee Street, Alexandria, Virginia 22314—which is less than 550 feet from the Black Home. Ms. Callahan first moved to Alexandria in 1964 and has lived at her present residence since 1998. She moved to the City of Alexandria, and purchased her home, in large part because of the historic nature of the city and the specific neighborhood in which she resides—which includes the Black Home. Ms. Callahan pays property taxes to the City of Alexandria.

5. Petitioner Ms. Rothrock was a petitioner on the appeal to City Council from the BAR decision and is the owner of real property located at 209 Duke Street, Alexandria, Virginia 22314—which is less than 1,550 feet from the Black Home. Ms. Rothrock moved to the City of Alexandria, and purchased her home, in large part because of the historic nature of the city and the specific neighborhood in which she resides—which includes the Black Home. Ms. Rothrock pays property taxes to the City of Alexandria.

6. Defendant City Council is a body established by Chapter 3 of the City Charter of Alexandria pursuant to the authority vested by Virginia Code § 15.2-1400.

7. Defendant BAR is a zoning ordinance board for the City of Alexandria created by the Zoning Ordinance of the City of Alexandria, Virginia (“Alex. Zon. Ord.”) § 10-105 and organized pursuant to Virginia Code § 15.2-2306.

8. Defendant City of Alexandria is an incorporated municipality within the Commonwealth of Virginia and organized under Virginia Code § 15.2-200, *et seq.*

9. Defendant Vowell, LLC (“Vowell”) is a Virginia limited liability company and is the owner of the Black Home and the applicant as described *infra*.

10. This petition is made pursuant to Alex. Zon. Ord. § 10-107(B) by aggrieved petitioners. Therefore jurisdiction, both personal and subject matter, exists and venue is proper.

STATEMENT OF FACTS
HISTORY OF THE PROPERTY AND EASEMENTS

11. In October of 1965, while still owned by Justice and Mrs. Black, the Back Home was awarded plaque 35-E-619 as part of the HAF’s Early Building Survey plaque

program. It was one of the first private residences to receive that important designation. 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.

12. Further, the Black Home and gardens is subject to an easement pursuant to the Virginia Open Space Land Act. See Va. Code §§ 10.1-1700, et seq. This easement was made on December 26, 1969 and is recorded in Book 705, Page 491 of the Land Records of the City of Alexandria (the "Open Space Easement"). A copy of the Open Space Easement is attached hereto as Exhibit 1. A "Deed of Correction" was subsequently filed in 1973 and recorded at Book 757, Page 867 which provided that all provisions of the original easement with the exception of paragraph 2 "shall remain in full force and effect and are hereby ratified and confirmed."

13. The Open Space Easement specifically recognizes that "the Grantors are the owners of a tract of land . . . on which there is situated a house constructed in the late Eighteenth Century and of architectural significance and historic value." Exh. 1 at 1.

14. The Open Space Easement expressly encompassed the entire property and was intended to preserve and maintain the unusual open space surrounding the House and other historic structures existing on the property. *See generally* Exh. 1.

15. The Open Space Easement additionally limited the owner's rights with respect to the property. Specifically stating that the "manor house will be maintained and preserved in its present state as nearly as practical" and that "[n]o building or

structure shall be built or maintained on the property other than” the existing structures and a garage. Exh. 1 at 3.

16. Pursuant to this Open Space Easement, the owners of the Black Home have received significant reductions in their property taxes from the time of granting to the present.

17. Additionally, on December 30, 1969, the Black Home, and all of the undeveloped open space included in the Deed of Easement, was designated as a certified historic landmark by the Virginia Historic Landmarks Commission as reflected in the Land Records for the City of Alexandria at Book 704, Pages 494-95. The certification of the property as a Landmark was made because of its association with Justice Black.

18. This designation was in furtherance of the Virginia Historic Landmarks Commission’s 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). *See Va. Code Ann. § 10-138 (1973 Repl. Vol.). Accord Va. Code § 10.1-2204(A)(1).*

2018 APPLICATIONS RELATING TO BLACK HOME

19. The Black Home is currently owned by Vowell, which seeks to make major structural alterations to the residence and, therefore, sought approval of the BAR, due to its location in the City’s Old and Historic District.

20. On December 19, 2018, the BAR held a public hearing regarding applications for: 1) a permit for partial demolition and capsulation (BAR2018-00410)

(“Demolition Application”) and 2) certificate of appropriateness for additions and alterations (BAR2018-00411) (“Addition Application”) (collectively, the “Applications”).

21. At the December 19, 2018 hearing before the BAR, the Applications were opposed by the Historic Alexandria Resource Commission, HAF, the Northern Virginia Conservation Council, the Alexandria Association, and the Old Town Civic Association, among others. A copy of the December 19, 2018 Action Docket for the Board of Architectural Review is attached hereto as Exhibit 2. The result of the December 19, 2018 hearing was a vote to defer the matter for restudy. Exh. 2 at 5.

22. At the second hearing on February 6, 2019, the Applications were approved over the objections of the Historic Alexandria Resource Commission, HAF, the Northern Virginia Conservation Council, the Alexandria Association, and the Old Town Civic Association, among others. A copy of the BAR Staff Report is attached hereto as Exhibit 3.

23. Following the BAR approval, HAF and 125 other owners of property located in the Old and Historic District timely filed an appeal to the City Council pursuant to Alexandria Alex. Zon. Ord. § 10-107(A). HAF supported its appeal with a letter filed with the City Clerk on April 2, 2019 and a letter filed with the City Clerk on May 10, 2019. Copies of these letters are attached hereto as Exhibits 4 and 5, respectively. Numerous other members of the public submitted written statements in opposition to the proposal

24. At a hearing that began on May 14—but did not conclude until the City Council voted after 1:00 am on May 15, 2019—the City Council affirmed the decision of

the BAR vis-à-vis the Applications for the reasons stated in the City Staff Report. The City Council Staff Report is attached hereto as Exhibit 6.¹ In affirming the BAR decision based on the City Staff Report, the City Council expressly disregarded the Landmark certification of the property which established the principal period of historical significance of the property to be protected as the years when Justice Black lived and worked at the Black Home.

25. The original approval of the applications—as well as the affirmation on appeal before the City Council—are contrary to the law, abuses of discretion, and were granted arbitrarily. Each of the Applications will be discussed in turn.

**APPROVAL OF
DEMOLITION APPLICATION**

26. The City's approval of the Demolition Permit was granted arbitrarily and counter to Virginia law, specifically the law governing the BAR.

27. The City Staff Report that was adopted by the City Council as the basis for its decision approving the demolition failed to acknowledge that the Black House and property had all been certified as an Historic Landmark by the Virginia Historic Landmark Commission.

¹ With respect to both Exhibits 3 and 6, only the body of the reports are attached. The full reports with their various attachments are available at:
http://alexandria.granicus.com/ViewPublisher.php?view_id=57

28. The staff reports state that any designations² as a Virginia (or national) historic landmark are “honorific designations that have no regulatory bearing” on the decision of the BAR. *See* Exh. 6 at 5.

29. This statement is counter to the express “Purpose and Intent” of Alexandria City’s zoning regulations, which, most relevantly, were “designed to:”

- i. “To protect against destruction of, or encroachment upon, historic areas”;
- ii. “Protect the established character of existing residential neighborhoods”;
- iii. “Promote, in the public interest, the utilization of land for the purposes for which it is best adapted in harmony with the established character of the city.”

See Alex. Zon. Ord. § 1-102.

30. The Staff Report’s assertion that a Landmark certification is not relevant, which was adopted by the City Council, is also directly contradicted by the “Purpose” of the Old and Historic District which expressly provides that by establishing the district “the City of Alexandria seeks to pursue the following specific purposes: (A) To enrich the

² The most recent staff report notes that the Black Home is not “individually listed on the Virginia Landmarks Register” before stating that even were it so designated, the designation is irrelevant. Exh. 6 at 5. This is a reversal of the BAR staff report which acknowledge that research by the HAF “has determined that this property is listed as a Virginia Landmark.” Exh. 3 at 6. Likewise, this factual assertion in the most recent staff report expressly runs counter to the Land Records of Alexandria City as described *supra*. This further shows how capricious and arbitrary the decision-making process of the City Council was—going so far as to reverse an open and obvious fact that is a matter of public record.

qualify of life for city residents by protecting the unique resource that is the historic district, **including familiar landmarks** and other treasured elements of the area.”

Alex. Zon. Ord. § 10-101(A)(emphasis added). *See also* Alex. Zon. Ord. § 10-101(C), (G).

31. Indeed, the Virginia Code expressly states that such a designation “**shall mean** an act of official recognition **designed . . . 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.**” Va. Code § 10.1-2204(B) (emphasis added).

32. Thus, it is clearly erroneous **as a matter of law** to state that such a designation has no bearing on the decision-making process. *See* Exh. 6 at 4. The failure to acknowledge it likewise makes any decisions arbitrary. It is also clearly erroneous **as a matter of law** to deny the landmark status of the property.

33. Additionally, the BAR staff report twice recommended that the permit of demolition regarding the Black Home be denied with respect to a certain “hyphen” curved brick wall. *See* Exh. 6 at 5 (“Staff recommended denial of the request to demolish this curved wall feature because it is over 150 years old and is an example of an unusual wall treatment.”).

34. Nonetheless, the BAR approved demolition because:

the existing curved hyphen was a later feature that was not well considered when it was originally constructed; that it has caused and will continue to create maintenance issues inherent in its design that will harm the primary historic resource; that there are other better examples of curved hyphens in the district; and that removal of this element will

not be detrimental to the public interest and removal will, in fact, help preserve the west wall of this important historic house.

Exh. 6 at 8.

35. Put simply, as described *infra*, the BAR refused to consider anything outside of the bare standards enunciated in Alex. Zon. Ord. § 10-105(A)(2)³ when it decided to approve the Addition Application. But when faced with the Demolition Application, the BAR (and subsequently the City Council) expressly relied upon factors **not** contained within Alex. Zon. Ord. § 10-105(B).⁴

36. Specifically, the following factors are not listed and, therefore, should not be considered:

- i. Whether or not the feature was “well considered when it was originally constructed”;
- ii. Whether or not retention of the feature will create maintenance issues;
- iii. Whether or not there are better examples of the feature;

Cf. Exh. 6 at 8 *with* Alex. Zon. Ord. § 10-105(B).

37. This inherent contradiction makes the decision of the BAR regarding demolition (and the City Council’s affirmation) arbitrary and contrary to law on its face.

38. Ironically, the same staff report outlined recommended findings **consistent** with the standards of Alex. Zon. Ord. § 10-105(B), which were apparently

³ The Zoning Ordinance listing the standards to be considered when approving a ‘certificate of appropriateness’ vis-à-vis additions and alterations.

⁴ The Zoning Ordinance listing the standards to be considered when approving a permit to demolish or capsulate.

not relied upon. Specifically, the staff report found that the wall feature was “over 150 years old and is an example of an unusual wall treatment.” Exh. 6 at 5.

39. The Zoning Ordinance specifically states that whether the structure is “of such old and unusual or uncommon design, texture and material that it could not be reproduced or reproduced only with great difficulty” is a standard to be considered. Alex. Zon. Ord. § 10-105(B)(3). Further, such an unusual and old structure would axiomatically be of “such architectural or historical interest that its [removal] would be to the detriment of the public interest.” Alex. Zon. Ord. § 10-105(B)(1).

40. These factors were considered, and listed, in two staff reports recommending the denial of the Demolition Application. The failure of the BAR to address or consider these factors as required by the Alexandria zoning ordinances makes the decision both arbitrary and counter to the law.

41. Additionally, the procedure applied by the City Council in affirming the decision was arbitrary and contrary to law. Days before the hearing before the City Council, on or about May 10, 2019, Vowell submitted to the City Council a letter from its mason, Vaughan Restoration Masonry, without providing it to any of the appellants or making the letter publicly available. A copy of this letter is attached hereto as Exhibit 7.

42. This letter was discussed at length by the City Council and was expressly relied upon as justification for demolishing the curved hyphen. This letter was not made available to the public until after the hearing was concluded and the Council’s vote was taken—despite repeated requests by HAF that all materials submitted to the council for consideration be made publicly available for review and comment by interested parties.

Consideration and reliance upon materials that are not made publicly available is inconsistent with the public hearing required for the issuance of the permits to Vowell.

43. Procedural due process is at the foundation of the American legal system. Permitting expert testimony from only one party—while intentionally keeping the contents of the expert’s testimony hidden—violates that notion so much so that it constitutes both a violation of Virginia law as well as rendering the decision arbitrary.

**APPROVAL
OF ADDITION APPLICATION**

44. The City’s approval of the Addition Application was an arbitrary and capricious act which is contrary to Virginia law.

45. In considering the Addition Application the City Council failed to recognize that the open space included in the Black Home property had all been certified as an Historic Landmark because of its association with Justice Hugo Black. Because the City Council adopted the legally erroneous position set forth in the City Staff Report that Black Home and open space was not a Landmark, its consideration of the Addition Application was arbitrary, capricious and contrary to law, and is entitled to no deference or presumption of regularity.

46. Further, in considering the Addition Application the City Council adopted the legally erroneous position set forth in the BAR and City Staff Reports that the Landmark certification of the open space had no regulatory impact. Because the City Council considered the Addition Application under an incorrect view of the legal implications of the Landmark designation, its decision was arbitrary, capricious and contrary to law, and is entitled to no deference or presumption of regularity. Any proper

consideration of the Addition Application under the legal standards required by the Alexandria Zoning Ordinance taking into proper account the Landmark status of the open space would necessarily result in a denial of the application.

47. Both staff reports acknowledge the existence of the Open Space Easement and expressly stated that they would not consider it. *See* Exh. 6 at 4. This purportedly is because “[t]he scope of the BAR’s review of the demolition/capsulation and the new construction is limited to the standards and criteria listed in Section 10 of the Alexandria Zoning Ordinance and the BAR does not have the authority to hold, interpret or enforce an easement.” *Id.*

48. Whether or not City of Alexandria has the authority to initiate a law suit to enforce the Open Space Easement, it is objectively counter to Virginia law that the restrictions imposed by the Open Space Land Act should not be considered by the very body charged with protecting the structural integrity of the Historic District. Nor is it permissible for the City of Alexandria to authorize construction on land that has been designated as open space under the authority of the Open Space Land Act without compliance with Va. Code § 10.1-1704.

49. Alex. Zon. Ord. § 1-200(F) states that “[w]henver any provision of any state or federal statute or other city ordinance or regulation imposes a greater requirement or a higher standard than is required by this ordinance, the provision of such state or federal statute or other city ordinance or regulation **shall** govern.” (emphasis added). Va. Code § 10.1-1705 provides that “Insofar as the provisions of this chapter [the Open Space Land Act] are inconsistent with the provisions of any other law,

the provisions of this chapter shall be controlling. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.”

50. It is uncontested that the Open Space Easement, and consequentially Virginia Code § 10.1-1704, impose a “greater requirement” and/or “higher standard” than what was considered. *Cf.* Va. Code § 10.1-1704 *with* Alex. Zon. Ord. § 10-105.

51. Virginia Code § 10.1-1704 mandates that no land acquired under the Open Space Land Act, as the Black Home was, may be diverted from such use unless such use:

- i. Is determined by a public body to be “essential to the orderly development and growth of the locality” and “in accordance with the official comprehensive plan; and
- ii. There is alternative real property substituted, i.e. made subject to the Open Space Land Act, of:
 - a. Equal fair market value;
 - b. 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 the land converted or diverted.


52. It is uncontested that neither the BAR nor the City Council even considered those “higher standards” imposed by the Open Space Land Act. Axiomatically, they made no findings that the requirements of Virginia Code § 10.1-1704 or its local equivalent had been complied with.

53. Therefore, the approval of the Addition Application expressly runs counter to the law and was decided arbitrarily and contrary to law on the basis of an incomplete record.

PRAYER FOR RELIEF

WHEREFORE, the Petitioners respectfully requests that this Court fully overturn the decisions of the Alexandria City Council and the City of Alexandria Board of Architectural Review with respect to BAR Case Numbers 2018-00410 and BAR2018-00411, and for such other relief as this Court deems necessary and proper.

HISTORIC ALEXANDRIA FOUNDATION

By:  _____
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Counsel for Petitioner

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):

Huntton
Williams
Gay
Powell
Sibson

12-19-69
N W
Wash. D.C.
1-19-70

Rec'd B75
Pg 86
7-16-7

EXHIBIT
1

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

[REDACTED] (SEAL)
Hugo L. Black

[REDACTED] (SEAL)
Elizabeth S. Black

Accepted:

VIRGINIA HISTORIC LANDMARKS COMMISSION

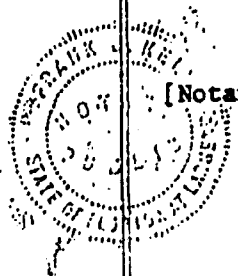
By [REDACTED] Executive Director 12/30/69
[SEAL]

STATE OF FLORIDA } To-wit:
COUNTY OF DADE }

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.

[REDACTED]
Notary Public



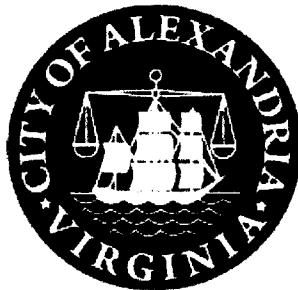
VIRGINIA:
[Notarial Seal] Clerk's Office of the Corporation Court of the City of Alexandria, this instrument was received and the Taxes imposed by Sec. 58-54, (a) and (b), of the Code have been paid and with the annexed certificate, admitted to record on 12/31/69 at 2:07 o'clock P. M.
Tests:

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

[REDACTED]

City of Alexandria

301 King St., Room 2400
Alexandria, VA 22314



Action Docket

Wednesday, December 19, 2018

7:30 PM

City Hall Council Chambers

Board of Architectural Review-Old and Historic

EXHIBIT

2

1 Call to Order

The Board of Architectural Review, Old and Historic Alexandria District, hearing was called to order at 7:30pm. Ms. Roberts was excused. All other members were present with Mr. Adams arriving at 8:05 p.m.

Minutes

- 2** Consideration of minutes from the December 5, 2018 meeting.

Attachments: December 5, 2018 Minutes

By unanimous consent, the OHAD Board of Architectural Review approved the minutes from the December 5, 2018 meeting, as submitted.

Previously Deferred

- 3** BAR #2018-00275
Request for alterations at 205 Strand Street
Applicant: IDI Strand, L.C.

Attachments: BAR #2018-00275 Staff Report

On a motion by Ms. Miller and seconded by Mr. Goebel, the OHAD Board of Architectural Review voted to approve BAR #2018-00275, as submitted. The motion carried on a vote of 5-0.

- 4** BAR #2018-00352
Request for new construction at 1101 North Washington Street
Applicant: Toll Mid-Atlantic LP Company, INC

Attachments: BAR #2018-00352 Staff Report

Additional Material

On a motion by Mr. Goebel and seconded by Ms. Miller, the OHAD Board of Architectural Review voted to approve BAR #2018-00352, as amended. The motion carried on a vote of 4-0-1, with Mr. Sprinkle recusing himself.

- 5 & 6** BAR #2018-00486
Request for partial demolition/ capsulation at 219 King Street
Applicant: Yupaporn Charoentra

BAR #2018-00487
Request for addition and alterations with signage at 219 King Street
Applicant: Yupaporn Charoentra

Attachments: BAR #2018-00486.00487 Staff Report
Additional Materials

On a motion by Ms. Miller and seconded by Mr. Goebel the OHAD Board of Architectural Review voted to defer BAR #2018-00486 & BAR #2018-00487, for restudy. The motion carried on a vote of 6-0.

New Business

7 & 8

BAR #2018-00499
Request for partial demolition/ capsulation at 919 South Lee Street
Applicants: Alastair & Stephanie Green

BAR #2018-00500
Request for addition and alterations at 919 South Lee Street
Applicants: Alastair & Stephanie Green

Attachments: BAR #2018-0499.0500 Staff Report

On a motion by Ms. Miller and seconded by Mr. Adams, the OHAD Board of Architectural Review voted to approve BAR #2018-00499 & BAR #2018-00500, as submitted. The motion carried on a vote of 6-0.

**9 &
10**

BAR #2018-00503
Request for partial demolition/ capsulation at 115 South Union Street
Applicant: 115 South Union Street, LLC

BAR #2018-00504
Request for addition with alterations at 115 South Union Street
Applicant: 115 South Union Street, LLC

Attachments: BAR #2018-00503.00504 Staff Report

On a motion by Mr. Sprinkle and seconded by Mr. Goebel, the OHAD Board of Architectural Review voted to approve BAR #2018-00503 & BAR #2018-00504, as submitted. The motion carried on a vote of 6-0.

**11 &
12**

BAR #2018-00505
Request for partial demolition/ capsulation at 507 Prince Street
Applicants: Carolyn J. & Ronald S. Cooper, TR, represented by Dimond Adams Design Architecture

BAR #2018-00506
Request for addition and alterations at 507 Prince Street
Applicants: Carolyn J. & Ronald S. Cooper, TR, represented by Dimond Adams Design Architecture

Attachments: BAR #2018-00505.00506 Staff Report

On a motion by Ms. Miller and seconded by Mr. Adams, the OHAD Board of Architectural Review voted to approve BAR #2018-00505 & BAR #2018-00506, as submitted. The motion carried on a vote of 6-0.

**13 &
14**

BAR #2018-00510

Request for partial demolition/ capsulation at 616 South Fairfax Street
Applicants: Suzanne Corcoran & Dennis Early

BAR #2018-00511

Request for addition and alterations at 616 South Fairfax Street
Applicants: Suzanne Corcoran & Dennis Early

Attachments: BAR #2018-00510.00511 Staff Report

On a motion by Ms. Miller and seconded by Mr. Goebel, the OHAD Board of Architectural Review voted to approve BAR #2018-00510 & BAR #2018-00511, as submitted. The motion carried on a vote of 6-0.

15

BAR #2018-00528

Request for partial demolition/ capsulation at 515 South Fairfax Street
Applicant: Kristin Frykman

Attachments: BAR #2018-00528 Staff Report

On a motion by Ms. Miller and seconded by Mr. Sprinkle, the OHAD Board of Architectural Review voted to approve BAR #2018-00528, as submitted. The motion carried on a vote of 5-0-1, with Mr. Adams recusing himself.

16

BAR #2018-00531

Request for revisions to previously approved BAR #2018-00223 & BAR #2018-00224 at 822 South Pitt Street
Applicants: Nicolas Magallanes & Downey Palmer

Attachments: BAR #2018-00531 Staff Report

On a motion by Mr. Elkins and seconded by Mr. Goebel, the OHAD Board of Architectural Review voted to approve BAR #2018-00531, as amended. The motion carried on a vote of 6-0.

**17 &
18**

BAR #2018-00532

Request for partial demolition/ capsulation for 6 Prince Street
Applicant: Six Prince Partners, LLC

BAR #2018-00533

Request for addition and alterations for 6 Prince Street
Applicant: Six Prince Partners, LLC

Attachments: BAR #2018-0532.00 533 Staff Report

On a motion by Mr. Sprinkle and seconded by Ms. Miller, the OHAD Board of

Architectural Review voted to approve BAR #2018-00532 & BAR #2018-00533, as submitted. The motion carried on a vote of 6-0.

19 &
20

BAR #2018-00512
Request for revisions to previously approved permit to demolish BAR #2018-00114 at 699 Prince Street
Applicant: J. River 699 Prince Street, LLC

BAR #2018-00513
Request for addition and alterations at 699 Prince Street
Applicant: J. River 699 Prince Street, LLC

Attachments: BAR #2018-00512.00513 Staff Report

On a motion by Ms. Miller and seconded by Mr. Goebel, the OHAD Board of Architectural Review voted to approve BAR #2018-00512 & BAR #2018-00513, as submitted. The motion carried on a vote of 5-0-1, with Mr. Sprinkle recusing himself.

21

BAR #0281-00516
Request for new construction at 114 South Washington Street
Applicant: J. River 699 Prince Street, LLC

Attachments: BAR #2018-00516 Staff Report

On a motion by Mr. Goebel and seconded by Ms. Miller, the OHAD Board of Architectural Review voted to approve BAR #2018-00516, as submitted. The motion carried on a vote of 5-0-1, with Mr. Sprinkle recusing himself.

22 &
23

BAR #2018-00410
Request for partial demolition/ capsulation at 619 South Lee Street
Applicant: Vowell, LLC c/o Michael Harrington

BAR #2018-00411
Request for additions and alterations at 619 South Lee Street
Applicant: Vowell, LLC c/o Michael Harrington

Attachments: BAR #2018-00410 & 00411 Staff Report
Additional Materials

On a motion by Mr. Adams, and seconded by Mr. Sprinkle, the OHAD Board of Architectural Review voted to defer BAR #2018-00410 & BAR #2018-00411, for restudy. The motion carried on a vote of 6-0.

24 Adjournment

The OHAD Board of Architectural Review hearing was adjourned at 12:43am.

Application withdrawn by applicant prior to final docket

BAR #2018-00518
Request for alterations at 917 King Street
Applicant: Alexandria Coffee Company, LLC - T/A Misha's Coffee

Administrative Approvals

25

BAR #2018-00539
Request for repair mortar at 418 South Lee Street
Applicant: Bridget Weaver

BAR #2018-00540
Request for replace light fixtures at 506 Cameron Street
Applicant: Martha Peterson

BAR #2018-00541
Request for 510 South Columbus Street
Applicant: Emma Feingold

BAR #2018-00542
Request for signage 326 South Washington Street
Applicant: Margaret Miller

BAR #2018-00543
Request for front door replacement at 415 Gibbon Street
Applicant: Nick Ruesch

BAR #2018-00545
Request for repointing at 1010 Cameron Street
Applicant: Casamo, LLC

BAR #2018-00547
Request for window replacement at 221 South West Street
Applicant: Scott Browne

BAR #2018-00548
Request for siding and trim replacement at 110 Waterford Place
Applicant: Kenneth Timmer

BAR #2018-00549
Request for roof replacement in-kind at 120 South Royal Street
Applicant: Springfield Roofing

BAR #2018-00550

Request for gas meter at 430 South Saint Asaph Street

Applicant: Kai Tong

BAR #2018-00551

Request for signage at 710 King Street

Applicant: Village Brayhaus

BAR #2018-00552

Request for antenna replacement at 312 South Washington Street

Applicant: Leo Foley

BAR #2018-00553

Request for window, roof and lantern replacement at 1303 Prince Street

Applicant: Daniel Buzby

BAR #2018-00555

Request for signage and awning at 300 King Street

Applicant: Kisso Bistro

BAR #2018-00556

Request for window replacement at 1204 Michigan Court

Applicant: David McCrea

BAR #2018-00557

Request for signage at 717 Pendleton Street

Applicant: Shiva Kermanshi

BAR #2018-00558

Request for signage at 715 Pendleton Street

Applicant: Shiva Kermanshi

BAR #2018-00559

Request for roof replacement at 102 Waterford Place

Applicant: Kaywell Construction Corporation

BAR #2018-00560

Request for window and lantern replacement at 130 North Payne Street

Applicant: Richard Grochmal

BAR #2018-00561

Request for window and French door replacement at 804 Bashford Lane

Applicant: Michael Zappone

BAR #2018-00562

Request for gas riser replacement at 1321 King Street

Applicant: Washington Gas

BAR #2018-00563

Request for siding replacement at 724 Gibbon Street

Applicant: Todd Hollis

BAR Meeting
February 6, 2019

ISSUE: Request for partial Demolition/ Capsulation and a Certificate of Appropriateness for additions and alterations

APPLICANT: Vowell LLC c/o Michael Harrington

LOCATION: 619 South Lee Street

ZONE: RM/Townhouse zone

STAFF RECOMMENDATION

Staff recommends approval of the application for a Permit to Demolish for partial demolition/ capsulation and a Certificate of Appropriateness for additions and alterations with the following conditions:

1. Denial of the demolition of the two-story curved portion of hyphen connecting the main block to rear ell;
2. All counterflashing in the brick of historic portions of the house and carriage house for additions and roofing should be hand cut only through mortar joints and not the brick;
3. All materials must comply with the BAR's adopted policies unless otherwise specifically approved;
4. Document the existing site and landscape conditions thru a dimensioned, annotated digital site plan and photography to HABS standards; and
5. The statements in archaeology conditions below shall appear in the General Notes of all site plans and on all site plan sheets that involve demolition or ground disturbance (including Demolition, Basement/Foundation Plans, Landscaping, Erosion and Sediment Control, Grading, Utilities and Sheeting and Shoring) so that on-site contractors are aware of the requirements:
 - a. The applicant/developer shall call Alexandria Archaeology immediately (703-746-4399) if any buried structural remains (wall foundations, wells, privies, cisterns, etc.) or concentrations of artifacts are discovered during development. Work must cease in the area of the discovery until a City archaeologist comes to the site and records the finds.
 - b. The applicant/developer shall call Alexandria Archaeology (703/746-4399) two weeks before the starting date of any ground disturbance so that an inspection schedule for city archaeologists can be arranged.
 - c. The applicant/developer shall not allow any metal detection to be conducted on the property, unless authorized by Alexandria Archaeology.

GENERAL NOTES TO THE APPLICANT

1. **ISSUANCE OF CERTIFICATES OF APPROPRIATENESS AND PERMITS TO DEMOLISH:** Applicants must obtain a stamped copy of the Certificate of Appropriateness or Permit to Demolish PRIOR to applying for a building permit. Contact BAR Staff, Room 2100, City Hall, 703-746-3833, or preservation@alexandriava.gov for further information.
2. **APPEAL OF DECISION:** In accordance with the Zoning Ordinance, if the Board of Architectural Review denies or approves an application in whole or in part, the applicant or opponent may appeal the Board's decision to City Council on or before 14 days after the decision of the Board.
3. **COMPLIANCE WITH BAR POLICIES:** All materials must comply with the BAR's adopted policies unless otherwise specifically approved.
4. **BUILDING PERMITS:** Most projects approved by the Board of Architectural Review require the issuance of one or more construction permits by Building and Fire Code Administration (including signs). The applicant is responsible for obtaining all necessary construction permits after receiving Board of Architectural Review approval. Contact Code Administration, Room 4200, City Hall, 703-746-4200 for further information.
5. **EXPIRATION OF APPROVALS NOTE:** In accordance with Sections 10-106(B) and 10-206(B) of the Zoning Ordinance, any official Board of Architectural Review approval will expire 12 months from the date of issuance if the work is not commenced and diligently and substantially pursued by the end of that 12-month period.
6. **HISTORIC PROPERTY TAX CREDITS:** Applicants performing extensive, certified rehabilitations of historic properties may separately be eligible for state and/or federal tax credits. Consult with the Virginia Department of Historic Resources (VDHR) prior to initiating any work to determine whether the proposed project may qualify for such credits.



BAR #2018-00410 & BAR #2018-00411^N
619 South Lee Street



UPDATE

At the December 19, 2018 hearing, The BAR deferred the case for restudy, with the Chair summarizing the Board's discussion as follows:

- 1. The historic house is being beautifully restored and preserved;*
- 2. The additions are subservient to the main historic house and easily removable, if anyone should care to do so in the future, without harming the historic property;*
- 3. No concerns with the height, mass, scale or project siting of the additions;*
- 4. Concerns with the hip roof style;*
- 5. Concern with demolition of the curve but generally supported by the Board;*
- 6. Concern that the fenestration on the South Lee Street elevation should reflect a more traditional solid void ratio; and*
- 7. Concern about the appearance and unclear about the locations of the decorative brick work, including the stack bond framing the windows.*

One Board member also suggested that the Lee Street appearance would be improved if the existing parking pad were screened with plantings and perhaps located behind a garden wall and gate.

Portions of the previous report are repeated below in order to respond to the BAR's comments above. The complete December 19, 2018 application materials, staff report and minutes are linked at the end of this report as Attachment #3.

Note: *Staff coupled the applications for a Permit to Demolish (BAR #2018-00410) and Certificate of Appropriateness (BAR #2018-00411) for clarity and brevity. The Permit to Demolish requires a roll call vote.*

I. ISSUE

The applicant is requesting a Permit to Demolish/Capsulate and a Certificate of Appropriateness for additions and alterations as follows.

Permit to Demolish

1. Demolish one-story kitchen structure at the southern end of the main dwelling, refer to attached Building Elements - Removals diagram, area 1. (313 square feet.)
2. Demolish one-story structure to the north of the flounders, refer to attached Building Elements - Removals diagram, area 2. (324 square feet.)
3. Demolish inside corner portion and curved wall of the existing two-story flounder west of the main dwelling, refer to attached Building Elements - Removals diagram, area 3. (126 square feet.)
4. Remove pre-fabricated wooden garden shed, refer to attached Building Elements - Removals diagram, area 4. (80 square feet.)
5. Remove portion of exterior wall at the west side of the one-story flounder, refer to West Elevation Removal, key note 1. (22.75 square feet.)
6. Remove (2) basement window areaways at east side of main house, refer to Site, Basement and First Floor Removal Plans, key note 3.
7. Remove curb at basement access at west side of main house, refer to Site and First Floor Removal Plans, key note 4.

8. Remove skylight at carriage house, refer to Carriage House Removal Plan and Elevations, key note 2. (68.75 square feet.)
9. Remove portion of exterior wall at the north side of the carriage house 1975 addition, refer to Carriage House Removal Plan, key note 1. (70.3 square feet.)

Certificate of Appropriateness

1. Two-story brick addition at the west end of the one-story flounder, refer to attached Building Elements - Additions diagram, area 1.
2. Two-story brick addition with one-story stucco hyphen connection to the south side of the main dwelling and one-story stucco addition to the south with second floor clerestory windows at stair, refer to attached Building Elements - Additions diagram, areas 2 and 3.
3. One-story brick addition connected to two-story south addition by painted wood trellis, refer to attached Building Elements - Additions diagram, areas 4 and 5.
4. Two wood garden structures at the west end of the site, refer to attached Building Elements - Additions diagram, area 6.
5. Installation of wood windows and doors at the south, east, and north elevations of the carriage house, refer to Proposed Carriage House Elevations.
6. Installation of new paving at existing parking pad north of main dwelling and brick piers and garden wall with wood gate at west end of parking pad, refer to Proposed Landscape Elements.
7. Replacements wood gates in existing openings in garden walls at S. Lee and Franklin streets, refer to Proposed Landscape Elements.

The applicant is also in the process of performing a number of historically appropriate repairs that have been approved by staff administratively or will be approved as part of the permitting process in accordance with the adopted *BAR Policies for Administrative Approval*.

II. HISTORY

The two-and-a-half story, three-bay, side-gable brick residence with a slate roof and shed roofed rear ell is an excellent example of the Federal architectural style in Alexandria. The dwelling is a side-hall, urban townhouse form that is notably intact on the interior. Although a townhouse form building, it sits on a relatively large lot, rather than a detached building form like 711 Prince or Carlyle House. The present lot reflects a consolidation of several historic lots and there were a number of other independent structures and service outbuildings on the present lot at various times in the past. A more complete history of the property is described in the previous staff report.

There is an easement on this property prepared under previous owners that is administered by the Virginia Department of Historic Resources (VDHR). The BAR's review is limited to Section 10 of the Alexandria Zoning Ordinance, the BAR does not have the authority to interpret or enforce an easement. While the BAR application does ask whether there is an easement on a property and whether the easement holder has agreed to the proposed alterations, this is a procedural courtesy to avoid wasting the BAR's time reviewing and approving a proposal that could later be rejected by the easement holder but it is not a binding requirement for BAR approval. In the present case, staff strongly recommended that the applicant obtain confirmation that the proposed scope of work

complied with the easement prior to a hearing by the BAR. While not required by the Alexandria Zoning Ordinance, the applicant has done so and has provided the City with a copy of that letter from VDHR.

Additional research performed by the Historic Alexandria Foundation has determined that this property is listed as a Virginia Landmark. While the Alexandria Zoning Ordinance encourages that properties be listed on the National Register of Historic Places and the Virginia Landmarks Register, these honorific designations have no regulatory bearing on the BAR's consideration of the features and factors listed in the ordinance that must be considered in passing upon the appropriateness of the proposed construction and alterations.

On December 19, 2018, the BAR deferred the project for restudy and this application, staff report and associated minutes are found in Attachment 3.

III. ANALYSIS

The BAR's charge is first to identify and "protect historic and cultural resources" and second to ensure that additions, alterations and new construction are compatible with nearby buildings of historic merit. The first charge is discussed in the Permit to Move, Remove, Capsulate or Demolish analysis. The second charge is discussed in the Certificate of Appropriateness analysis and recognizes that what may be appropriate in one block may not be appropriate in another block, or even in different locations on the same block. The BAR's *Standards* and criteria in the Zoning Ordinance, as well as the BAR's adopted policies and *Design Guidelines*, have been used through the years as the basis for recognizing that the historic fabric of Old Town is not frozen in time but may be appropriately modified, altered and expanded to allow the historic buildings to continue to be used and cherished. The BAR's role has always been to strike a balance between preservation of the identified historic fabric and urban character while managing appropriate growth and change in a living city.

Permit to Demolish/Capsulate

In considering a Permit to Demolish/Capsulate, the Board must consider the following criteria set forth in the Zoning Ordinance, §10-105(B), which relate only to the subject property and not to neighboring properties. The Board has purview of the proposed demolition/capsulation of more than 25 square feet of exterior wall or roof area regardless of visibility.

Demolition refers to the permanent destruction and removal of the exterior wall or roof area, whereas, capsulation refers to the enclosure but not demolition of a specified exterior portion of the wall or roof. While that wall area may be shown to remain on the present proposal, once it is enclosed and becomes an interior feature, it is no longer within the BAR's purview. Typically, most additions involve some combination of both partial demolition and capsulation. In this case there is no demolition proposed on the 19th century portions of the building or carriage house. The applicant describes six areas proposed for demolition/capsulation on pages 7 thru 19 of the application drawings.

1. The existing kitchen on the south side of the primary building mass is a late 20th century (1981) frame structure that was constructed sometime after the HABS photographs of the one-story brick and frame structure in this location were taken in 1965. The existing

structure capsulates an 11' wide portion of the south wall. The proposed one-story hyphen to the new kitchen will be pulled from the southwest corner of the primary building mass by 1'-7", giving the brick corner more definition, and the roof peak will be approximately 2' taller but use the same entrance to the dining room as the present addition, so there is no demolition of the historic structure requested for this kitchen addition.

2. The second feature to be demolished is the late 20th century (ca 2008) shed roofed brick addition on the north side of the original kitchen. It is an undistinguished, utilitarian mud-room. Removal of this lean-to will permit a significant portion of the original north wall to be restored and exposed to South Lee Street.
3. The third feature proposed for removal is a convex curved corner hyphen between the original kitchen and the main house. Based on the 1817 real estate advertisement and site inspection of the masonry bonding in the north wall and capsulated stone lintel on a second floor window in the attic, the kitchen was always connected to the main house by a one story covered passage, though the material and dimensions are not known and cannot be determined from the limited access presently allowed in the crawl space below. At some point later, a curved brick one-story hyphen was constructed and by the mid-19th century, based on the machine saw marks and cut nails found in the rafters, a second floor was added to the hyphen.

The curve of the hyphen is constructed of pie shaped header brick and the form is very unusual in Alexandria because it abuts the west wall of the primary house in an acute angle that made future maintenance extremely difficult. The purpose of the curve was to allow light and ventilation to the windows in the middle bay of the rear of the three-bay wide house. However, on the majority of Alexandria houses the curve is either convex or has a short section of wall perpendicular to the main house from the curve so that the window can be maintained. (Figure 2) Why the curve met the plane of the wall on a tangent is impossible to say but most architects and contractors would strongly recommend an alternative today and staff concurs that the present condition of the curve requires repair and it would be very difficult to maintain in the future. (Figure 1)

The applicant has proposed removal of the south wall of this non-original curved hyphen and reconstruction of a straight wall section between the original kitchen and house, as is more commonly seen on Alexandria homes. This is a great deal of work on the part of the applicant that actually reduces the home's floor area and is only being proposed to gain future access to this window to keep it properly painted, to repoint the masonry walls and to repair the window heads and sills. However, staff believes that this early feature can be maintained, albeit with some difficulty, and that it is such a unique and character defining historic form that it should not be removed. Staff acknowledges that some dismantling of portions of the curve may be necessary to gain access to the stone lintel and sill.



Figure 1: Curved ell intersection with main house at 619 South Lee Street



Figure 2: Typical hyphen forms in Alexandria: concave, convex with offset and straight

4. The fourth feature to be demolished/capsulated is the west wall of the ca. 1974 west addition to the original kitchen. The proposed two-story pavilion will capsulate 100% of this late 20th century wall. A small portion of the wall will be demolished for a single pedestrian door.
5. A small wood frame garden shed ca. 1931 will be demolished near the northwest corner of the property.
6. There are several alterations proposed in the northeast corner of the carriage house, which is the portion that was filled-in between 1921 and 1931. However, the present construction in this area appears to be late 20th century. The applicant proposes to remove two pair of sliding glass doors on the east wall and a continuous ridge skylight on the roof of this infill.

In addition, a 9' wide portion of the masonry wall on the north elevation of this infill will be removed for a new door. (see page 8 of the application drawings)

While the BAR does not review paving not used for parking, removal of chain link fences or features below grade, the existing swimming pool and tennis court will be removed and a new swimming pool will be constructed on the west portion of the site. A summary of the Standards in §10-105(B) for the Board's consideration is below.

Standard	Description and Evaluation of the Standard
(1)	<p>Is the building or structure of such architectural or historical interest that its moving, removing, capsulating or razing would be to the detriment of the public interest?</p> <p>Demolition of the two-story curved hyphen would result in the loss of a unique feature, albeit a later element whose design relative to the intersection with the main house was not well considered when originally constructed and the second floor was added.</p> <p>Staff recommends <i>denial</i> of demolition of the curved wall of the hyphen.</p> <p>However, the remaining portions of the house or carriage house proposed for demolition/capsulation are very minor and on secondary elevations that have already been altered or were constructed in the late 20th century.</p> <p>Staff recommends a finding of <i>compliance</i> with this criteria for the remainder of the application with the exception of the curved hyphen wall.</p>
(2)	<p>Is the building or structure of such interest that it could be made into a historic shrine?</p> <p>Justice Hugo Black was a nationally significant figure who lived in the house for 32 years and ensured its preservation after his death. However, the proposed alterations are reversible and there is nothing proposed in this application would preclude future interpretation Justice Black or the original structure in the future. As example, there have been several independent dwellings and outbuildings on this site in the past that are now removed and minor garden features such as a tennis court or swimming pool could easily be recreated if these features were necessary to interpret the Justice's tenure in the house. Staff has recommended a condition that the site be surveyed and photographed to document its existing condition to assist future historians.</p> <p>Staff recommends a finding of <i>compliance</i> with this criteria.</p>
(3)	<p>Is the building or structure of such old and unusual or uncommon design, texture and material that it could not be reproduced or be reproduced only with great difficulty?</p> <p>With the exception of the curved hyphen wall, no portions of the dwelling or carriage house proposed for demolition/capsulation are of unusual or uncommon design, texture or material. As discussed above, the curved wall represents an old and unusual design to allow a rear ell to intersect with the main block while retaining the entire middle bay window openings to continue to provide light and air prior to electricity. However, as also noted, the curved hyphen is not an original feature and a strong case may be made that it is harming or preventing necessary maintenance on the primary resource.</p>

	Staff recommends a finding of <i>compliance</i> with this criteria with the exception of the curved hyphen wall.
(4)	<p>Would retention of the building or structure help preserve the memorial character of the George Washington Memorial Parkway?</p> <p>Not applicable.</p>
(5)	<p>Would retention of the building or structure help preserve and protect an historic place or area of historic interest in the city?</p> <p>The house is within the architectural period of significance of the Old and Historic Alexandria District and is an important resource to interpret architectural design and urban planning in the late 18th/early 19th century. However, nothing proposed in this application would preclude future interpretation of the structure or this portion of the historic district in the future. The proposed additions are diminutive and respectful of the original house and are set back from the streets, as were the original outbuildings.</p> <p>Staff recommends a finding of <i>compliance</i> with this criteria.</p>
(6)	<p>Would retention of the building or structure promote the general welfare by maintaining and increasing real estate values, generating business, creating new positions, attracting tourists, students, writers, historians, artists and artisans, attracting new residents, encouraging study and interest in American history, stimulating interest and study in architecture and design, educating citizens in American culture and heritage, and making the city a more attractive and desirable place in which to live?</p> <p>The age of the dwelling and carriage house, quality of the architecture and physical presence on the street combine with other historic buildings of the same era combine increase property values and make Alexandria a unique and desirable place to visit and to live. However, the proposed alterations will not have an adverse effect on the real estate value or ability to stimulate the interest of historians, architects or artists in this particular structure or diminish the desirability and quality of life of neighboring homes.</p> <p>Staff recommends a finding of <i>compliance</i> with this criteria.</p>

In summary, staff recommends approval of the proposed areas of demolition/capsulation with the exception of the curved hyphen wall.

Certificate of Appropriateness

The BAR's determination for a Certificate of Appropriateness must consider the *Standards* listed in Section 10-105(A) of the Zoning Ordinance. For reference, staff has included the *Standards* with a brief discussion with respect to this case. It should be noted that the BAR must "consider" the elements and features identified below but that there is not a "yes" or "no" response, as the BAR typically finds with the criteria for a Permit to Demolish. In the past six years alone, the two BARs have approved over 100 additions, finding them appropriate and compatible, though the approved designs are often very different than the initial submission as a result of the iterative design review process.

Review of a Certificate of Appropriateness for this case is broken into three separate but related components for discussion purposes:

1. Restoration, alterations and additions to the existing historic structures;
2. Preservation of the open space and setting of those structures on the parcel; and
3. Association with a significant person.

1. Restoration, alterations and additions to the existing historic structures.

Restoration of the exterior of the existing structure is proceeding under the BAR's administrative approval policy using very high-quality materials and craftsmanship. There have been numerous site visits by staff to review the progress of roofing, masonry and window restoration. City staff recently inspected the saw marks and nails in the attic framing to date portions of the ell.

2. Preservation of the open space and setting of those structures on the parcel.

The minimum amount of open space required for each zone is set forth in the zoning ordinance. The existing lot area is 35,502 square feet. The required open space in the RM zone for this lot is 35% of the lot area which is 18,638 square feet. The existing open space is 32,012 square feet. The proposed open space is 30,141 square feet, or 85% of the total lot area and a 6% reduction in open space from the existing. Staff notes that throughout much of the 19th century and into the 20th century, there was a dwelling of considerable size at the corner of Franklin and South Lee Street and several others on the South Fairfax Street frontage, so the current proposal may include as much or more contiguous open space than what historically existed for much of the period of the subject house.

The BAR's standards for review of open space are subjective and standard 10-105(A)(2)(d) requires the BAR to find that the "Design and arrangement of buildings and structures on the site; and the impact upon the historic setting or environs" is appropriate. The question before the BAR is whether removal of the existing additions and construction of the new additions have an adverse impact on the overall historic setting or environs. As an example, the open space in front of an Alexandria "Flounder" house is an essential character-defining feature. To fill in the open front yard would destroy the very thing that makes these incomplete dwellings a unique response to the 1752 requirement to build on one's lot within two years of purchase. A large back and side yard do not convey the same type of specific connotations and the lot configuration and the number of other structures on that lot have changed significantly over time. In addition, while the BAR does not consider landscape plant materials as screening, this lot has not had an open appearance that was visually accessible to the public for many decades. For instance, South Fairfax has a wall of evergreen shrubs and a tall tennis fence that has historically precluded public view of this open space from the west but nothing is being proposed in this application that would prevent visual access in the future.

3. Association with a significant person.

While the previous owners of this property were prominent businessmen in early Alexandria, the most notable owner in the past was Hugo Lafayette Black. Justice Black acquired the property in 1939 two years after his appointment as an Associate Justice to the United States Supreme Court and lived there until his death in 1971. His widow sold the property in 1973. His residence at this

property would theoretically extend the period of significance of this property through the third quarter of the 20th century if applying for an individual National Register listing but does not affect the status of the structure within the OHAD. Staff did not perform extensive research on the life and work of Justice Black because this already exists elsewhere and, as previously stated, nothing in the proposed application would preclude interpretation of the legal work of the Justice in the future, should this site be determined to be the most appropriate location to do that. https://en.wikipedia.org/wiki/Hugo_Black

Matters to be considered by the BAR in approving certificates and permits

In order to determine whether a proposed addition or alteration is appropriate, Section 10-105(A) of the Alexandria Zoning Ordinance states that the BAR “shall review such features and factors for the purpose of determining the compatibility of the proposed construction, reconstruction, alteration or restoration with the existing building or structure itself, if any, and with the Old and Historic Alexandria District area surroundings...”:

- a. Overall architectural design, form, style and structure, including, but not limited to, the height, mass and scale of buildings or structures;*

The BAR routinely approves appropriate additions to historic structures. The *Design Guidelines* state the Board’s preference for “contextual background buildings which allow historic structures to maintain the primary visual importance,” and for “designs that are respectful of the existing structure and...which echo the design elements of the existing structure.” The *Guidelines* also note that “It is not the intention of the Boards to dilute design creativity in residential additions. Rather, the Boards seek to promote compatible development that is, at once, both responsive to the needs and tastes of [modern times] while being compatible with the historic character of the districts.” (New Residential Construction – Page 2)

The applicant’s design approach has been to recall and expand upon key elements of the historic vernacular design, such as the footprint radiating to the south and west of the main block, load-bearing masonry construction and a slightly later window style showing the evolution of the property over time. The differentiation between the new and the old will primarily occur with the subtle change in materials and the pyramidal hip roof form which is visually smaller in scale and historically appropriate but differentiated from the primary historic gable roof form. The mass of the pavilions are all smaller than and subservient to the historic structure.

While the Secretary of the Interior’s Standards for Rehabilitation are not legally binding on the BAR, they have occasionally been used as a reference for nationally accepted preservation best practices. The Secretary’s Standards “acknowledge the need to alter or add to a historic building to meet continuing or new uses while retaining the building’s historic character” and that “New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.” Staff believes this is the case with the present application.

- b. Architectural details including, but not limited to, original materials and methods of construction, the pattern, design and style of fenestration, ornamentation, lighting,*

signage and like decorative or functional fixtures of buildings or structures; the degree to which the distinguishing original qualities or character of a building, structure or site (including historic materials) are retained;

All of the existing features of the historic portions of the existing building and carriage house are being retained and restored, except for the hyphen as discussed in the demolition section of this report. As noted above, staff's support of the project is contingent upon retaining the historic two-story curved hyphen wall. The applicant's design includes high quality materials (red brick, painted wood windows and standing seam roof) and details comparable in quality to that found at the historic house without being overly stylized or introducing a higher style.

c. Design and arrangement of buildings and structures on the site; and the impact upon the historic setting, streetscape or environs;

The two-story brick kitchen at 619 South Lee Street was originally connected to the main house by a one story "covered way pantry," according to Thomas Vowell's September 1, 1817 advertisement for sale of the property. Historically, a kitchen was often detached from the primary structure to minimize the risk of fire and, particularly in the south, to separate the heat of cooking and washing in the summer. In addition, there were separate brick pavilions on this site including "the coach house, stable, smoke house, etc." according to an advertisement for sale in 1829. Only the coach house remains today.

As noted in the History section of this report, there have been numerous freestanding domestic outbuildings, garden trellises, a tennis court fence and a number of two-story houses in various locations on this lot since 1877.

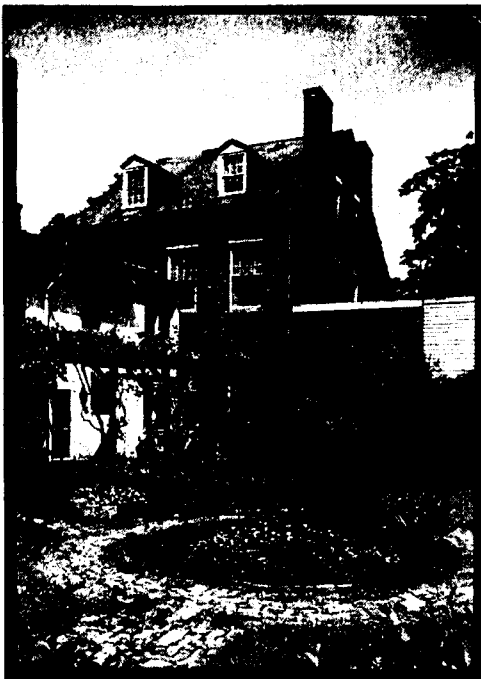


Figure 3: Garden view of 619 South Lee Street looking northeast, HABS photo ca. 1966

The proposed additions to the primary structure are designed as separate, hip-roofed brick pavilions connected by one-story breezeways and hyphens in order break down the overall mass and to have the least visual and physical impact on the historic dwelling. The architectural tradition of hyphens connecting dependent pavilions to the main structure goes back to ancient times but was first documented as a formal architectural conceit by the 16th century Venetian architect Andrea Palladio in the *Quattro Libri*, a publication that was referenced by architects throughout the Renaissance in Europe and in the American colonies through pattern books. These books were referenced by Thomas Jefferson for Monticello and by George Washington at Mt. Vernon, and John Carlyle in Alexandria, among many others. The proposed site layout of hyphens and telescoping ell has a long tradition in both local and classical building traditions.

Hyphens are often used to distinguish new work from the historic building mass and pavilions, or garden structures like trellises, have been approved in several cases by the BAR. Another advantage of the hyphen approach is that an addition may be more easily removed in the future without extensive damage to the primary historic resource.

Most recently, the BAR has approved a very similar two-story stucco freestanding pavilion with a contemporary design and a two-story brick addition to the rear ell for the ca. 1810 house at 211 South Saint Asaph Street (BAR Case #2017-00456/457, 12/20/2017). The project was praised by the BAR and had no public speakers in opposition.

d. Texture, material and color, and the extent to which any new architectural features are historically appropriate to the existing structure and adjacent existing structures;

The use of red brick, standing seam metal roofing, multi-pane painted wood windows and painted trim are all historically appropriate for additions to this Federal-style townhouse and adjacent buildings of historic merit.

e. 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;

As discussed, the form and arrangement of the additions on the site are based on historic building traditions and also allow the historic townhouse to remain visually and physically separate and prominent. The design approach is vernacular in style which is appropriate for this vernacular Federal townhouse and other nearby historic buildings.

f. The extent to which the building or structure would be harmonious with or incongruous to the old and historic aspect of the George Washington Memorial Parkway;

Not applicable.

g. The extent to which the building or structure will preserve or protect historic places and areas of historic interest in the city;

The applicant has undertaken a complete restoration of the exterior of the building and it will continue to preserve and protect historic places and areas of historic interest. The siting and design of the proposed additions will physically and visually distinguish themselves from the original structure, thereby allowing the historic dwelling to continue to interpret the architecture and town plan of early Alexandria and Justice Black's tenure here.

h. The extent to which the building or structure will preserve the memorial character of the George Washington Memorial Parkway;

Not applicable.

- i. *The extent to which the building or structure will promote the general welfare of the city and all citizens by the preservation and protection of historic interest in the city and the memorial character of the George Washington Memorial Parkway; and*

Any time that an owner undertakes a historically appropriate restoration and rehabilitation of a historic building, residents and visitors alike benefit by such thoughtful preservation which ensures that the building will continue to be enjoyed for another two hundred years.

- j. *The extent to which such preservation and protection will promote the general welfare by maintaining and increasing real estate values, generating business, creating new positions, attracting tourists, students, writers, historians, artists and artisans, attracting new residents, encouraging study and interest in American history, stimulating interest and study in architecture and design, educating citizens in American culture and heritage and making the city a more attractive and desirable place in which to live.*

The age of the dwelling and carriage house, quality of the architecture and physical presence on the street combine with other historic buildings of the same era combine increase property values and make Alexandria a unique and desirable place to visit and to live. The proposed alterations and additions will not have an adverse effect on the real estate value or ability to stimulate the interest of historians, architects or artists in this particular structure or diminish the desirability and quality of life of neighboring homes. The clear differentiation between the historic townhouse and later additions will allow visitors to “read” the building and understand what is historic and what is a more recent addition.

Applicant’s response to the BAR’s comments summarized at the end of the 12/19/19 hearing

1. *The historic house is being beautifully restored and preserved;*
No response required.
2. *The additions are subservient to the main historic house and easily removable, if anyone should care to do so in the future, without harming the historic property;*
No response required.
3. *No concerns with the height, mass, scale or project siting of the additions;*
No response required.
4. *Concerns with the hip roof style;*
The applicant has provided photographic images of hip roofs on historic structures and outbuildings in Northern Virginia on pages 3-5 of the restudy materials and studies of gable roof alternatives on pages 15-22. Staff provides a few additional images of early Alexandria outbuildings for comparison below but these are by no means representative of all early outbuildings, the vast majority of which have since been demolished.



Figure 4: 219 N Royal stable; Harpers Bazaar conjectural rendering of Carlyle House; Kitchen at 213 Ramsey Alley; 601 Duke carriage house.

As shown on the images provided by the applicant and by staff, outbuildings in this period in Alexandria were historically constructed with both hip and gable roof forms. In this case, staff believes the gable roofs in the applicant's studies to be somewhat ponderous, finding that they increase the height and mass of the new structures from South Lee Street and that these visually compete with the side gable roof on the historic house. For that reason, staff strongly prefers the originally proposed hip roofs on all of the additions. The applicant has also eliminated a small flat roof on the south side of the proposed kitchen and simplified the hip roof form, as recommended by the BAR at the previous hearing.

5. *Concern with demolition of the curve but generally supported by the Board;*
Staff concurs with the applicant and the BAR that present and future maintenance of the existing hyphen curve is problematic and potentially harmful to the primary resource. Staff would prefer to retain the curved ell wall in its present location purely as an example of historic construction techniques and materials but agrees with the BAR members that this may not be best for the original structure in the long term.

7. *Concern that the fenestration on the South Lee Street elevation should reflect a more traditional solid void ratio;*

The applicant has provided elevation studies of the South Lee Street façade of the proposed additions that are a more traditional, vertically proportioned openings in the masonry wall. While staff was comfortable with the previous fenestration in order to distinguish these as 21st century additions, the proposed revisions are still subtly distinguished from the windows on the original house by a soldier course brick header in lieu of stone, slightly different proportions for the openings, and by different muntin

patterns with larger panes of glass. The applicant has also proposed an alternative for the east wall of the bicycle workshop garage that eliminates the windows and substitutes a 2 3/4" recess in the masonry wall with a vertical trellis screen. Staff believes that this alternative is softer and relates better to the garden setting than the two punched windows.

8. *Concern about the appearance and unclear about the locations of the decorative brick work, including the stack bond framing the windows.*

The applicant has eliminated all of the previous stack bond masonry at the window openings and shows a simple running bond throughout.

Staff also notes that the applicant has responded to a BAR member suggestion at the previous meeting to move the existing parking pad farther from South Lee Street and to partially screen it from the street with planting, masonry garden walls and sliding gates.

Staff believes that the applicant has been fully responsive to the BAR's comments at the December 19, 2018 hearing. For the reasons discussed above, staff recommends approval of the application with the conditions noted on the first page of the report.

STAFF

Al Cox, FAIA, Historic Preservation Manager, Planning & Zoning

IV. CITY DEPARTMENT COMMENTS

Legend: C- code requirement R- recommendation S- suggestion F- finding

The following department comments are carried forward from the previous report:

Zoning

- C-1 Section 8-200(C)(5) requires all access to parking in the Old and Historic District to be provided from an alley or interior court. Until recently the double gate was blocked with trees and shrubbery. Until recently only a walkway from the sidewalk to the gate was present. There is no evidence that access to parking has been provide from Franklin in recent years. Any access to parking that may have existed in the past has been abandoned.
- C-2 Complies. Page 22 of revised drawings confirms only one kitchen is proposed.
- C-3 The west yard facing South Fairfax Street is a third front yard on the property, not a rear yard. (previously not labeled, but now labeled incorrectly as Franklin Street.) Please label with Fairfax Street on all site plans. Section 7-103(A) does not permit accessory structures to be located forward of the front building line, except those listed in 7-202(A). The pool and sheds are not permitted to be located forward of the front building line/wall and do not comply with zoning.
- C-4 Preliminary Review of FAR and open space complies. Final review will be done at time of the building permit review.

Code Administration

C-1 A building permit, plan review and inspections are required prior to the start of construction.

Transportation and Environmental Services

R-1 The building permit must be approved and issued prior to the issuance of any permit for demolition, if a separate demolition permit is required. (T&ES)

R-2 Applicant shall be responsible for repairs to the adjacent city right-of-way if damaged during construction activity. (T&ES)

R-3 No permanent structure may be constructed over any existing private and/or public utility easements. It is the responsibility of the applicant to identify any and all existing easements on the plan. (T&ES)

F-1 After review of the information provided, an approved grading plan is not required at this time. Please note that if any changes are made to the plan it is suggested that T&ES be included in the review. (T&ES)

C-1 The applicant shall comply with the City of Alexandria's Solid Waste Control, Title 5, Chapter 1, which sets forth the requirements for the recycling of materials (Sec. 5-1-99). (T&ES)

C-2 The applicant shall comply with the City of Alexandria's Noise Control Code, Title 11, Chapter 5, which sets the maximum permissible noise level as measured at the property line. (T&ES)

C-3 Roof, surface and sub-surface drains be connected to the public storm sewer system, if available, by continuous underground pipe. Where storm sewer is not available applicant must provide a design to mitigate impact of stormwater drainage onto adjacent properties and to the satisfaction of the Director of Transportation & Environmental Services. (Sec.5-6-224) (T&ES)

C-4 All secondary utilities serving this site shall be placed underground. (Sec. 5-3-3) (T&ES)

C-5 Any work within the right-of-way requires a separate permit from T&ES. (Sec. 5-2) (T&ES)

C-6 All improvements to the city right-of-way such as curbing, sidewalk, driveway aprons, etc. must be city standard design. (Sec. 5-2-1) (T&ES)

Alexandria Archaeology

F-1 According to *Historic Alexandria, Virginia, Street by Street* by Ethelyn Cox, the house on this lot was constructed around 1800 by Thomas Vowell, Jr., a prominent merchant. When it was advertised for sale in 1817, the lot included a covered way, pantry, large kitchen, smoke house, brick stable and carriage house. Edgar Snowden, editor and owner of the *Alexandria Gazette*, purchased the property in 1842. In the 20th century, it served as the

residence of Hugo Black, Justice of the U.S. Supreme Court. The property has the potential to yield archaeological resources into residential life in Alexandria during the late 18th and 19th centuries.

- F-2 Because of the historical significance of the property, the applicant has agreed to hire a professional historical/archaeological consultant to conduct a Documentary Study and provide guidance for any potential archaeological investigations that might follow. Alexandria Archaeology will be assisting the consultant as the project moves forward.
- R*1 The applicant/developer shall call Alexandria Archaeology immediately (703-746-4399) if any buried structural remains (wall foundations, wells, privies, cisterns, etc.) or concentrations of artifacts are discovered during development. Work must cease in the area of the discovery until a City archaeologist comes to the site and records the finds.
- R*2 The applicant/developer shall call Alexandria Archaeology (703/746-4399) two weeks before the starting date of any ground disturbance so that an inspection schedule for city archaeologists can be arranged.
- R*3 The applicant/developer shall not allow any metal detection to be conducted on the property, unless authorized by Alexandria Archaeology.
- R-4 The statements in archaeology conditions above marked with an asterisk "*" shall appear in the General Notes of all site plans and on all site plan sheets that involve demolition or ground disturbance (including Demolition, Basement/Foundation Plans, Landscaping, Erosion and Sediment Control, Grading, Utilities and Sheeting and Shoring) so that on-site contractors are aware of the requirements.

V. ATTACHMENTS

1 – Supplemental Materials

2 – Revised Application for BAR #2018-00410 & BAR #2018-00411 – 619 S. Lee St

3 – December 19, 2018 staff report and minutes



Historic Alexandria Foundation

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(703) 549-5811 • FAX (703) 548-4399
Email: h.a.f@erols.com • Website: HistoricAlexandriaFoundation.org

April 2, 2019

By Email

The Hon. Justin M. Wilson
The Hon. Elizabeth B. Bennett-Parker
The Hon. Canek Aguirre
The Hon. John Taylor Chapman
The Hon. Amy B. Jackson
The Hon. Redella S. "Del" Pepper
The Hon. Mohamed E. "Mo" Seifeldin
Alexandria City Hall
301 King Street
Alexandria, Virginia 22314

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

Dear Mayor Wilson and Members of the Council:

The Historic Alexandria Foundation (HAF) was formed in 1954 "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.

HAF, along with the Historic Alexandria Resources Commission (HARC), the preservation advisory commission created by City Council, the Alexandria Association, the Old Town Civic Association ("OTCA), the Northern Virginia Conservation Council, Preservation Virginia, as well as numerous concerned citizens, have been particularly alarmed to learn of the very extensive development plans for the historic property located

EXHIBIT

4

at 619 S. Lee Street in Alexandria, known as the Hugo Black House. That property, which is a certified landmark, is unique in the amount of its preserved open space in the City. The open space is the result of an historic act of leadership by United States Supreme Court Justice Hugo Black when, in 1969, he placed the property under the protection of the Open Space Land Act. His gift was the second ever in the history of Virginia, and the first such gift in Alexandria.

Because the property and the grounds are of unique historical and cultural importance to Alexandria, to Virginia, and to the United States, we appeal to the City Council to overturn the recent actions of the former Old and Historic District Board of Architectural Review ("BAR") for demolition and development on this property.

I. Summary of Reasons to Reject the Applications on Appeal

The former BAR's approval — on a 4-2 vote — of three extensive new additions and buildings in the protected open space betrays the intent of Justice Black's gift and is contrary to basic principles of ethical historic preservation. In our opinion, the BAR's decision would egregiously impair the City's public policy in favor of preserving the historic landmark and conserving the scarce resource of urban open space. *E.g.*, Alexandria City Council Resolution 1259 (6/24/1987). The approved plans are incongruous with the existing building, structures and area surroundings.

Moreover, contrary to the recommendations of the BAR staff, a divided BAR approved the demolition of a unique and noted architectural feature of the Hugo Black House.

To summarize, the many defects in the BAR's divided decision are as follows:

- The BAR failed to take into consideration the landmark designation of the property as the home of Justice Hugo Black from 1939 until his death in 1971.
- The BAR failed to preserve the property as it was during its period of national and statewide historical significance (1939-1971).
- The BAR failed to preserve the landmark Open Space.
- The plans approved by the BAR create an urban "campus" contrary to:
 - (i) the historic development patterns of Old Town;

- (ii) the recommendations of the United States Secretary of the Interior's Standards for the Treatment of Historic Properties (Standards); and
- (iii) the BAR's own Design Guidelines.

This results in plans that are incongruous to the existing building, structures and area surroundings and that maximize the adverse impact on the landmark open space.

- The BAR approved the construction of two new "Pavilions" which would double the footprint of the historic house and consume the landmark open space.
- The BAR approved the construction of an unnecessary 26 x 26 brick "Bicycle Workshop" which occupies landmark open space.
- The BAR approved the construction of an unnecessary 46 ½ Foot "Pergola" connecting the second proposed "Pavilion" with the "Bicycle Workshop" which obstructs the landmark open space.
- The BAR failed to preserve a unique architectural feature of the House that has been highlighted in studies of the property published during Hugo Black's lifetime.

For all these reasons, and because allowing construction in the protected open space would violate Va. Code § 10.1-1704 which provides that ***"No open space land [protected by an Open Space Land Act Easement] shall be diverted or converted from open space use"*** without a finding that it is "essential to the orderly development and growth of the community" and the provision of replacement open space, we request that the Council deny the application before you.

II. Historical Background

A. Historical Significance of Justice Hugo Black

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

history of the United States Supreme Court and of the United States. When Justice Black died in 1971 his lengthy obituary in the New York Times summarized his career as follows:

Perhaps no other man in the history of the Court so revered the Constitution as a source of the free and good life. Few articulated so lucidly, simply and forcefully a philosophy of the 18th-century document. Less than a handful had the impact on constitutional law and the quality of the nation as this self-described 'backward country fellow' from Clay County, Alabama.

N.Y. Times, Sep. 26, 1971, at 76.

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., *Foreword to Mr. Justice and Mrs. Justice Black* (1986).

Although Justice Black grew up in racially segregated Alabama, and was even a member of the Klu Klux Klan when a young politician, he renounced the Klan and his membership in it and became one of the leading forces in bringing racial equality and desegregation to the country. As a former Senator from Alabama his joinder in the decision of *Brown v. Board of Education* was a critical event in the history of the nation. And in 1964, after ten years of foot-dragging by the exponents of segregation, it was Justice Black who wrote the opinion that finally put an end to the denial of African American school children's right to an equal education in Virginia and the nation with the words:

"The time for mere 'deliberate speed' has run out, and that phrase can no longer justify denying these Prince Edward County school children their constitutional rights to an education equal to that afforded by the public schools in the other parts of Virginia."

Griffin v. Cty. Sch. Bd. of Prince Edward Cty., 377 U.S. 218, 234 (1964) (Black, J.).

Justice Black was also responsible for the decision of the Supreme Court that declared "the fundamental right of the accused to the aid of counsel in a criminal prosecution," and required court appointed counsel in all criminal cases brought in state court. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

Reviewing his contributions to the country for the *Harvard Law Review* after Justice Black's death, former Chief Justice Earl Warren wrote:

In addition to his long tenure, he sat at a time in our history when the greatest changes in the political, economic and social life of the Nation took place. Most of the great problems of that period reached the Supreme Court, as they invariably do over a period of years, and many of them appeared more than once in recurring cycles. In their solution, the reflection of his mind and the imprint of his hand can in every case be discerned.

His devotion to human rights for all people was the sheet anchor of his legal and political philosophy. In this respect, he believed that a man on the Supreme Court is the same man he was before he became a Justice. His adamant approach to human rights for the weak as well as the strong caused him great distress because he and his family for many years were subjected to much animosity in his home State [Alabama] as a result of that firm stand.

I will simply say that in his retirement and death, "A Titan has passed."

Earl Warren, *A Tribute to Hugo L. Black*, 85 Harv. L. Rev. 1 (1971).

As the fifth longest serving Justice of the Supreme Court, there are bound to be some of his decisions and opinions which remain controversial to this day, but the monumental contribution this resident of Alexandria made to the history of our country, and his championship of civil rights is unquestionable.

B. History of 619 S. Lee Street before Hugo Black's Residence.

In October of 1965, while it was 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"); Collection of Early American Architectural Details, 25 *The Brickbuilder* at 44-45 (No. 2, Feb. 1916)("Plate 16"); Collection of Early American Architectural Details, 25 *The Brickbuilder* at 67-68 (No. 3, Mar. 1916)("Plate 16")(each available at <https://archive.org/details/brickbuild25unse/page/n220>).

In 1934, as part of the New Deal, the Congress enacted the Historic Sites Act of 1935 which created the Historic American Buildings Survey (“HABS”) as a permanent program of the National Park Service. HABS was the nation’s first federal preservation program to document America’s architectural heritage. Under the newly created HABS program, on July 7, 1936, John O. Brostrup conducted a photographic survey of what was then known as the Snowden House. Those photographs were included in the Historic American Buildings Survey (HABS VA,7-ALEX, 170-2).

In 1966 based on work that was funded, in part, by HAF, noted architectural historian Worth Bailey updated the HABS materials with a written report that 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).¹ 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 (available at <https://www.loc.gov/item/va0224/>). The HABS survey was subsequently updated with additional photographs in 1972.

While the historic house itself has always had substantial architectural interest in its own right, like many houses in Old Town it has experienced a checkered history from the point of view of its preservation. As the BAR staff report documented, at various points in its history, outbuildings and other structures have been placed on what is currently the open space grounds of the Hugo Black house. In the late 19th Century this even included a wood-frame house located at the corner of S. Lee and Franklin Streets.² This is shown, for example, on the map of the city of Alexandria published in 1912 by the Sandborn Insurance Company. And at some point prior to 1912, as shown on the same map, a “long one story frame addition to the western end of the brick house” had been added, but removed by 1921. Ruth Lincoln Kay, *The History of 619 S. Lee Street* (May 1987)(Alex. Pub. Lib.) at 27.

¹ Available at <https://cdn.loc.gov/master/pnp/habshaer/va/va0200/va0223/data/va0223data.pdf>.

² The frame house was built c. 1877. See Kay at 43, *supra*; Chataigne’s Alexandria City Directory at 141 (1876-77); Chataigne’s Alexandria City Directory at 139 (1881-82); G.M. Hopkins, *City Atlas of Alexandria* (1877).

By 1919 the house had been converted into a Hotel, known as the Hotel Vowell. Alex. Gazette, Mar. 19, 1919; id. Sep. 20, 1919; see Kay, Preface, *supra* (“619 South Lee became a boarding house for shipyard workers”). It caught fire in January of 1922 and was struck twice by lightning in June 1924. Alex. Gazette, Jun. 9, 1924. Thus, notwithstanding the historic bones of the property, it was not included in the original edition of Mary Lindsey’s *Historic Homes and Landmarks of Alexandria, Virginia* which was published in 1931.

C. Recognition of the Hugo Black House and Property as a Landmark

1) Hugo Black Restored the House and Property and Made It a Landmark

Extensive restoration of the House began in 1932, 2 *Alexandria Chronicle* No. 3/4 at 44 (Fall/Winter 1994), and continued when Justice Black and his wife purchased the property and the neighboring frame house on the corner of S. Lee and Franklin Streets in 1939. “The property then assumed the dimensions which it has today.” Kay, at 42, *supra*. “The old frame house on the corner ... had become so dilapidated that the Blacks immediately had a wrecking crew knock it down. In its place, the Justice planted a vegetable garden, fruit trees, and flowers.” *Id.* at 43. This extensive garden immediately became a defining characteristic of the property as noted in the HABS Report. HABS No. VA-709.

After Justice Black and his wife restored the house and gardens, the property was added to those included in the 1947 revised edition of Mary Lindsey’s *Historic Homes and Landmarks of Alexandria, Virginia*, which was one of the bibliographical references that provided the basis for the designation of the Alexandria Historic District as part of the National Survey of Historic Site and Buildings.

2) Creation of the Virginia Historic Landmarks Commission

In 1966, the Virginia General Assembly enacted into law two pieces of legislation that were intended to have a dramatic effect on conservation and preservation in Commonwealth. The first was the Open Space Land Act, 1966 VA. Acts Ch. 461, which was designed to protect and preserve urban open space. See discussion below.

Second was the Act creating the Virginia Historic Landmarks Commission (“VHLC”), which was charged with, among other things, “mak[ing] a survey of, and designat[ing] 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). The VHLC

was also authorized to “[a]cquire by ... gift ... and administer registered landmarks, sites and easements and interests therein.” 1966 VA Acts Ch. 632, § 4(e). One of Hugo Black’s former law clerks, George Freeman, who was then a partner at Hunton, Williams, Gay, Powell & Gibson, is widely acknowledged as one of the drafters of this groundbreaking legislation. It is therefore not surprising that Hugo Black became thoroughly familiar with the legislation and the opportunities it provided for preservation.

3) Certification of the Black House and Grounds as a Landmark

On December 30, 1969 the Hugo Black House was designated by the Virginia Historic Landmarks Commission as a certified landmark. Deed Book 704, Page 494-95 (attached). 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.). The certification accompanied the gift to the people of Virginia of a perpetual Open Space Land Act and Conservation easement by Justice Black and his wife. It was the first such easement given to VHLC in Alexandria and only the second in the entire State. The easement prohibits subdivision of the property and restricts its future development. It was an extremely valuable gift which at the time was calculated to represent 60% of the total property value.

Justice Black imposed the Open Space Land Act 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.).

The landmark certification by the VHLC 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); see 3 Former Va. Code Ann. § 10-138 (1973 Repl. Vol.); accord Va. Code § 10.1-2204(A)(1).

4) Records of the VHLC’s Deliberation and Certification of the Landmark Status of the House and Grounds.

The certification of the Hugo Black property as a landmark was made in the Deed of Easement and recorded in the City of Alexandria Land Records. Deed Book 704, Page 494-95. 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, 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.

In a December 11, 1969 Memorandum, James W. Moody, Jr., the first Executive Director of the VHLC, sought approval of the easement transaction from the members of the Commission. Mr. Moody described the genesis of the easement transaction and 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 previously filed with the BAR)(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.

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, one of the authors 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 previously filed with the BAR). 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.**

5) Recognition by the City of Alexandria of the Landmark Designation

The Landmark designation was 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.

D. History of the “Curve” that the Owners Propose to Demolish

One of the noted features of the Hugo Black House is a distinctive “curve” in the brick wall joining the main block of the house with the rear “ell.” When the house was first built in 1798, the kitchen was a dependency located at the back of the house, which was later joined to the main house in an early addition. Unlike a more typical federal row house, “The ell, originally a separate dependency, has been rounded where it joins the main structure in order not to obstruct a window.” D. Davis, S. Dorsey & R. Hall, *Alexandria Houses 1750-1830* at 114 (1946).

Similar curved treatments are found on other historic Alexandria Houses and are sometimes referred to as “McVeigh Curves” after a noted 19th Century Alexandria Architect and Builder. See R. Kay, *McVeigh Houses Have Unique Features*, 3 The Plaque, No. 1 (Autumn 1988). But according to the BAR Staff Report, the “curve” employed at the Hugo Black House is “very unusual”. Bar Staff Report. at 7 (Feb. 6, 2019).

Based on the 1817 real estate advertisement and site inspection of the masonry bonding in the north wall and capsulated stone lintel on a second floor window in the attic, the kitchen was always connected to the main house by a one story covered passage, though the material and dimensions are not known and cannot be determined from the limited access presently allowed in the crawl space below. At some point later, a curved brick one-story hyphen was constructed and by the mid-19th century, based on the machine saw marks and cut nails found in the rafters, a second floor was added to the hyphen.

BAR Staff Report at 7 (Feb. 6, 2019). The quality and forethought embodied in this “curve” feature is indicated by the fact that the builders employed “pie shaped header brick” to construct the curve. *Id.* In other words, the builders used specialty materials to build that part of the house.

The distinctive feature of the curved ell was noted in the HABS Survey Report, and in publications throughout Justice Black’s tenure at the House. *E.g.*, Davis, *Alexandria Homes* at 114; *Old Homes Tour 1960* (“One of its most unusual features is the rounded ell between the kitchen and the main house. Initially the kitchen was a separate unit, and when the ell was built one corner of it was rounded to avoid the obstruction of an existing window.”); HABS No. VA-709 at 6 (“The hyphen where it was joined to the main house was rounded so as to not interfere with the windows upstairs and down.”).

In 2014 the current owners sought approval from the Virginia Department of Historic Resources (“VDHR”) to demolish what they described in their materials as “a non-original McVeigh Curve which may be causing damage to the rear wall of the main house.” At that time the VDHR properly rejected the request opining 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.”).

In subsequent applications to both the VDHR and the BAR, the applicant sought approval to demolish what they referred to as “the curved treatment similar in style to a McVeigh Curve.” In order to satisfy the VDHR’s requirement that they provide “documentation to substantiate it as a non-historic feature,” the applicant’s consultant incorrectly asserted that “The curved treatment does not appear in the historic photos included in the HABS report on the property.”³ Unfortunately, this mistaken assertion was repeated by the applicant’s architect in its submissions to the BAR.

After HAF proved that the curve was in fact documented in the 1936 HABS photographs, the BAR Staff conducted an on-site inspection of the feature on December 13, 2018. On December 17, 2018, the BAR staff published their finding that the “curve” was indeed an historic feature of the house. They based that conclusion on their examination of the physical evidence proving that the “curve” had been added to the building no later than the mid-19th Century — over 150 years ago. As a result, the BAR Staff recommended denial of the application to demolish the curved portion of the ell.

E. The Open Space Land Act

The Open Space Land Act was enacted in 1966 to “preserve permanent open-space land in urban areas.” 1966 VA Acts Ch. 461, § 1. It is of crucial importance to recognize that the General Assembly in sweeping language provided that “***Insofar as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.***” 1966 VA Acts Ch. 461, § 8 (emphasis added); Va. Code § 10.1-1705.

³ HAF repeatedly documented this error, showing that the HABS photos clearly show the curve feature of the house. HAF letter to VDHR dated 10/1/2018; HAF letter to Al Cox dated 12/12/2018, citing copies of photographs 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); HABS VA, 7 Alex 170-2 (Lib. Cong.)(filed with BAR on 12/19/2018).

Based on extensive legislative findings concerning the importance of urban open space, the act authorized “public bodies” to purchase or receive gifts of easements on urban property to protect it as “**permanent open-space**.” 1966 VA Acts Ch. 461, § 3 (emphasis added). The VHLC (now known as the Virginia Department of Historic Resources “VDHR”) was subsequently created as one of the numerous “public bodies” that was authorized to acquire Open Space Land Act easements; but in the case of the VHLC it could only do so on certified landmark property.

Because the Open Space Land Act requires that its easements be “permanent,” the law provides as follows:

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 § 10.1-1704 (emphasis added). No one has ever suggested that the applicant’s development plans for 619 South Lee Street are “essential to the orderly development of Alexandria,” and certainly the VDHR has never made that determination. Nor have the applicants offered the replacement open space that would be required by the Statute in the event it had made such a determination.

Since the applicants have never provided the City with any evidence that the provisions of Va. Code § 10.1-1704 have been complied with, and since the statute controls over the provisions of “any other law,” the City should not permit the applicants to build in the open space protected by the easement given to the people of the Commonwealth by Justice Black.

Incorrectly believing that the BAR could not consider the existence or the content of the easement in its deliberations, the Chair of the former BAR instructed its members

to disregard the easement. Hearing Video at 3:56-3:57 (12/19/2018); Hearing Video at 27:41-28:02 (2/6/2019). See also BAR Staff Report at 5 (“The BAR’s review is limited to Section 10 of the Alexandria Zoning Ordinance; the BAR does not have the authority to interpret or enforce an easement.”). In keeping with that pronouncement, the Director of the BAR’s Staff stated on the record that he had not read the easement, Hearing Video at 3:57 (12/19/2018). This may explain why

- (i) the Staff failed to identify the Hugo Black property as a certified Landmark in its first Report published on December 17, 2018,
- (ii) the Staff reported to the BAR that the period of protectable historic significance for the property pre-dated Hugo Black’s residence, and
- (iii) the Staff Report indicated that the Zoning Ordinance permitted the planned construction in the protected open space without considering the easement and the requirements of Va. Code § 10.1-1704. BAR Staff Report (2/6/19) at 11.

Although the former BAR Chair ruled that the Board could not even consider the Open Space Land Act easement, the applicant argued before the BAR that the easement permits the building of the structures they propose. But that argument is based on a misreading of the easement. While the easement does allow for the maintenance, of certain outbuildings and structures (including a garage and tennis court), that is because those structures (the garage and tennis court) already existed. See HABS No. VA-709 at 7; HABS No. 711 at 2 (Justice Black used the carriage house as a garage and had built a tennis court). Properly read, the easement allows for the VDHR to approve historically appropriate structures or additions **that do not convert or divert the permanent open space**. Va. Code § 10.1-1704.

In other words, the VDHR can approve of the modification of, or additions to, the existing structure (if historically appropriate) that replace an existing structure (for example if a garden shed deteriorated and needed replacement, or if part of the building were to suffer a loss due to fire, or storm damage, etc.). If, however unlikely, the VDHR found it to be historically appropriate, it could authorize adding an additional floor to an existing structure. But what they cannot do — without following the requirements of Va. Code § 10.1-1704 — is grant the right to unfettered construction on protected open space. Doing so would defy the purpose of the Open Space Land Act, and rob the taxpayers of Alexandria of the “permanent-open space” they have every right to expect in exchange for the reduced property taxes that have been assessed for the past 49 years.

III. HAF Recognizes and Applauds the 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.

As it has done before, 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 excellent 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. It is also deeply troubling that VDHR has so far ignored its obligations under Va. Code § 10.101704, a failure which renders any purported approval of the new construction *ultra vires*, i.e., beyond the powers conferred on them by law.

IV. Reasons why the Development Plans for the Landmark Hugo Black House Should Be Denied.

A. The Hugo Black Property's Landmark Status Requires Heightened Protection

One of the consequences of the Hugo Black property being a certified landmark separate and apart from its contribution to the Old and Historic District, is that under 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).

Unfortunately, the former chair of the BAR instructed that body that it was improper to consider the content of the easement containing the landmark certification. Hearing Video at 3:56-3:57 (12/19/2018); Hearing Video at 27:41-28:02 (2/6/2019). Because the BAR staff had never read the easement, Hearing Video at 3:57 (12/19/2018), its initial report prepared in connection with the December 19, 2018 hearing failed to recognize the Landmark designation whatsoever. See BAR Staff Report issued 12/17/18.

Even after the BAR Staff acknowledged that the property was a certified landmark, the Board was erroneously advised that “these honorific designations have no regulatory bearing on the BAR’s consideration of the features and factors listed in the ordinance that must be considered in passing upon the appropriateness of the proposed construction and alterations.” Staff Report (2/6/2019) at 5. This was in error, and invited the members of the BAR to disregard the landmark designation in its decision making.

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 Alexandria Zoning Ordinance requires the BAR — and the City Council on review — to take the landmark designation into account in your decision making. See Alex. Zon. Ord. § 10-401(B)(4)(BAR “responsible for making effective the provisions of Article X”); Alex. Zoning Ord. § 10-101(A)(charged with “protecting the unique ... ***familiar landmarks ... of the area***”)(emphasis added); *Id.* § 10-101(C)(charged with “***conservation ... the city's historic resources in their setting.***”)(emphasis added); *Id.* § 10-101 (G)(“assure that new structures, additions, landscaping, and related elements be in harmony with their historical setting and environs”); *Id.* § 10-105(A)(1)(“assure that new structures, additions, landscaping, and related elements be in harmony with their historical setting and environs”); *Id.* 10-105(A)(2)(a)(“ the height, mass and scale of buildings or structures”); *Id.* § 10-105(A)(2)(b)(“the degree to which the distinguishing original qualities or character of a ... ***site*** ... are retained.”)(emphasis added); *Id.* § 10-105(A)(2)(c)(“the impact on the historic setting”), *Id.* § 10-105(A)(2)(g)(“The extent to which the building or structure will preserve or protect historic places and areas of historic interest in the city.”).

In sum, the importance of the Landmark designation evidences itself in a statute that encourages its consideration and an ordinance that mandates its consideration.

The failure to recognize the full significance of the landmark certification of the Hugo Black House and Gardens led the BAR Staff and the Board to misjudge the historic resource they are charged with protecting. This was a fundamental error that pervaded all of the BAR's decision making in this case. Properly understood and applied, the landmark designation requires heightened protection of all of the landmark property. Not just the house, not just the carriage house, but the gardens as well. That is because the Open Space was part and parcel of the landmark designation. Since the unnecessary additions to the property will severely impact the landmark open space and house, the Council should deny the pending applications.

B. The Period of Primary Historical Significance of the Hugo Black House is During the Residence of Justice Black (1939-1971) and Historical Values to Be Given the Highest Preservation Value Are Those Existing During His Residence.

Proper recognition of the period of historic significance is the first step in any determination of appropriateness for preservation, rehabilitation or restoration of historic properties. See, e.g., Letter from W. Brown Morton III to BAR dated Dec. 16, 2018. One of the consequences of its failure to properly recognize the Landmark status of the Hugo Black property was the resulting error by the BAR in failing to properly recognize the period of principal historical significance of the landmark and accurately identify just what history needs protection.

In its Staff Report, the Board was told that the house is located within the National Register's Alexandria Historic District and that, "The period of significance of the Register district is 1749-1934." Staff Report at 76; see also Staff Report at 10 (2/6/2019) ("The house is within the architectural period of significance of the Old and Historic Alexandria District and is an important resource to interpret architectural design and urban planning in the late 18th/early 19th century."). In short, the Staff advised the Board that the period of historical significance of the property was when the 18th/early 19th Century house was built — not the period when the property was owned and occupied by Justice Black.

Unfortunately, those members of the BAR who voted in favor of the plans appear to have adopted that assessment of the period of principal historical interest. As a result, the BAR approved demolition of a noted historical feature of the house (discussed below), and failed to utilize its authority to protect the historically significant open space created by Justice Black.

C. The BAR Failed to Protect and Preserve the Landmark Open Space.

The BAR — and City Council on review — clearly has the authority to protect open space if it is of sufficient historical significance. Alex Zon. Ord. § 10-105. The City’s right and duty to protect the historically significant open space is independent of any determination that might be made by the holder of the easement. Once it is recognized that the urban open space created by Justice Black is a landmark of “State wide or National significance” as declared by the VHLC, the application of the Zoning Ordinance to deny the propose construction should be obvious.

D. The Plans for the Hugo Black Property Are Inappropriate and Incongruous for the existing building, structures and area surroundings.

The BAR — and City Council on review — is charged with preventing any construction that is “incongruous to [the] existing building or structure, [and] area surroundings.” Zoning Ordinance § 10-105(A)(1). Thus,

- 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 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),
- “[T]he 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,⁴ such jarringly incongruous additions are completely inconsistent with the City’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.

Moreover, the entire conception of the development of the property seeks to occupy the entire frontage of the property on both South Lee and Franklin Streets. As the current Chair of the reconstituted BAR so aptly observed: “it sort of feels like it’s a campus, it feels like a campus surrounding a Quad.” Hearing Video at 1:21 (2/6/2019). As Ms. Roberts correctly pointed out, the more traditional form of expansion utilized on Old Town homes has been to extend additions off of the rear of the house, much like the frame addition shown on the 1912 Sandborn Insurance Company Map of this property. “Dependencies” of the type proposed by the applicant are not characteristic of Old Town architecture or development.

It is important to note that the development plans proposed for the Hugo Black Property run counter to the most basic advice promulgated by the Secretary of the Interior in both the formal regulatory Standards, 36 C.F.R. Part 68, and the Guidelines issued by the Secretary. Moreover, the “campus” approach put forward by the applicant ignores the nationally accepted advice on how to conduct such a project.

⁴ 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; Letter from W. Brown Morton III dated Dec. 16, 2018.

In the first place, the Secretary of the Interior's Standards provide that "The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided." 36 CFR 68.3(b)(2). In other words,

A new exterior addition to a historic building should be considered in a rehabilitation project only after determining that requirements for a new or continuing use cannot be successfully met by altering non-significant interior spaces. If the existing building cannot accommodate such requirements in this way, then an exterior addition or, in some instances, separate new construction on a site may be acceptable alternatives.

Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings (2017) at 162 (Recommended).⁵ Here, the applicant proposes a major development plan with no showing of necessity to justify the alteration of the historic landmark. After all, the current structure provides 4,498 square feet of above grade living area, with a guest house providing an additional 1,316 square feet of above grade living space for a total of 5,800 square feet of above grade living space. But even those numbers understate the size of the existing improvements of the magnitude of the proposed additions. The structures already on the property provide 8,156 square feet of gross floor area which the applicant seeks to nearly double to 14,371 square feet.

If a new addition is deemed necessary for the continued use of an historic structure, then the Secretary's Guidelines have recommended a number of preferred alternatives for the design of additions. As long-standing recommendation, which is fully in keeping with the historic patterns in Old Town, the guidelines suggest that "Placing an addition on the rear or on another secondary elevation helps to ensure that it will be subordinate to the historic building." Secretary's Guidelines at 26; see Letter from W. Brown Morton III dated 12/16/2018. In short, the Guidelines expressly **discourage** exactly the type of development proposed for the Hugo Black Property.

Numerous items of detail have been criticized by both members of the public, HARC, and members of the former BAR. Those include the use of hipped-roofs in Old Town, the industrial feel of the architecture employed on this residential street, lack of windows on the "Bicycle Workshop," the use of brick on the additions instead of frame

⁵ Available at <https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf>.

wood construction, the windows on “Pavillion I” and “Pavilion II,” — all the features suggest that the plans before the Council on review are not appropriate for the property, and the neighborhood, and produce an incongruous development on this landmark property.

E. The Two New “Pavilions” Would Double the Footprint of the Historic House.

The sheer size and extent of the landmark open space has tended to minimize the proposed impact of the development project. Percentages of the overall amount of open space consumed tend to obscure the dramatic increase in the amount of space being built-on relative to the existing structure. In fact, as set forth in the HARC submission to the BAR, the proposed additions will cover approximately 3,174 square feet of land, and virtually double the footprint of the existing House. These are not de minimis incursions of the permanent open space created by Justice Black’s gift of the Open Space Land Act Easement, “especially 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).

Significantly, both the BAR Staff Report and the Zoning Department comments conveyed to the Board erroneously suggested that the additional construction on the Open Space was permissible without any consideration of the requirements of Va. Code § 10.1-1704. But the Open Space Land Act is just as much the law in Alexandria as in the rest of Virginia, and it expressly supersedes any law to the contrary. Va. Code § 10.1-1705. It is therefore inappropriate to assume — as did the Staff and the BAR — that building on the permanent open space is permitted by the Zoning Ordinance.

F. The 26 x 26 “Bicycle Workshop” Is an Unnecessary Structure Occupying Landmark Open Space.

The applicant’s development plans 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:

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).⁶ (As previously noted, Justice Black used the existing Carriage House as a Garage. HABS No. VA 711.) But the current development plan no longer includes a “Garage,” because that use is precluded by the Alexandria Zoning Ordinance. Alexandria Zoning Ordinance § 8-200(C)(5)(a); *City of Alexandria v. Byrne*, CL18002042 (Cir Ct. Alexandria, Dec. 14, 2018).

Recognizing that the Alexandria Zoning Ordinance prohibits access to the proposed structure for parking, the applicant sought to rename the third structure on the property, as “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 Alexandria Zoning Ordinance § 2-149 (“Garage, private. A building designed for the storage of not more than three motor-driven vehicles.”).

At the February 6, 2019 BAR hearing, the applicant renamed the structure yet again, calling it a “Bicycle Workshop” in apparent recognition that it is not a “garage.” The development plans still show the extensive paving proposed when this 26 x 26 foot structure was conceived as a “garage.”

This unnecessary structure — which cannot fulfill the originally conceived function as a “garage” — will disrupt the landmark open space. And the Council is clearly empowered by Article X of the Zoning Ordinance to deny the request to build this unnecessary structure in the landmark open space. Alex. Zoning Ord. § 10-101(A)(charged with “protecting the unique ... **familiar landmarks ... of the area**”) (emphasis added); *Id.* § 10-101(C)(charged with “**conservation ... the city's historic resources in their setting.**”)(emphasis added); *Id.* 10-105(A)(2)(a)(“ the height, mass and scale of buildings or structures”); *Id.* § 10-105(A)(2)(b)(“the degree to which the distinguishing original qualities or character of a ... **site** ... are retained.”)(emphasis added); *Id.* § 10-105(A)(2)(c)(“the impact on the historic setting”), *Id.* § 10-105(A)(2)(g)(“The extent to which the building or structure will preserve or protect historic places and areas of historic interest in the city.”).

Moreover, because the Open Space Land Act controls over the provisions of any other law, it would be illegal for the City to authorize construction on the permanent open

⁶ The original Deed of Easement was amended in 1973 and included this language 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, which was a reference to the swimming pool.

space unless and until the “Public Body,” which in this case is the VDHR, complies with Va. Code § 10.1-1704.

Even if the “non-garage” were legally permissible, there is no reason why it should be located so prominently on the open corner of Franklin and Lee Streets, or why it should be constructed in brick. As the BAR Staff Report documented, to the extent additional structures were ever built on that property, they were constructed of wood-frame, and that is the character of historical development in the southeast quadrant of Old Town. Allowing the relatively industrially designed, windowless brick “non-garage” structure, with an out-of-place “hipped roof” only accentuates the needless impact on the landmark open space, and is incongruous with the site and neighborhood.

G. The 46 ½ Foot “Pergola” Connecting the Second Proposed “Pavilion” with the “Bicycle Workshop” Which Obstructs 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.

H. The BAR Failed to Preserve the Unique “Curve.”

Contrary to the BAR Staff recommendation, the former BAR voted 5-1 to approve the demolition of the historic “curve” where the rear ell joins the main block of the house. While the applicant originally sought to justify demolition of this feature on the grounds that it was not an historic feature of the house, the physical evidence demonstrated that it has been a feature of the house for over 150 years.

The curve and the rest of the house has apparently suffered from deferred maintenance for several years, and the photographs submitted by the applicant and included in the Staff report show peeling paint and brickwork in need of repointing. Such ordinary maintenance of an historic building is both required by the Alexandria Zoning Ordinance, Alex. Zon. Ord. § 10-110, and the Easement given to the people of Virginia. Deed Book 705, Page 493 (“The manor house will be maintained and preserved in its present state as nearly as practicable”). While the applicant has complained that “the current condition ... inhibits air flow, thus allowing moisture damage and limits maintenance access to the portion of masonry wall and the 2 adjacent windows” that does not appear to have presented an insurmountable problem for the 150 plus years that the curve has been in place. Nor is this maintenance “problem” substantially different than

most brick structures in the historic districts. Certainly it would not be acceptable to allow demolition of every rear brick addition in town that requires periodic maintenance.

We are 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 the BAR 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 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”).

Several members of the BAR expressed their belief that by demolishing the curve they believed they would be protecting the more important historical resource in the form of that portion of the house that was originally built in 1798. That reasoning was flawed for at least three reasons:

1) Preservation doctrine seeks to protect historically significant architectural additions that have become important in their own right. See 36 C.F.R. § 68.3(a)(4), (b)(4)(“Changes to a property that have acquired historic significance in their own right will be retained and preserved.”). The curve is just such a feature.

2) It violates the principle underlying the entire Historic Zoning Ordinance that historic structures and fabric are to be treasured and preserved. See, e.g., 36 C.F.R. § 68.3 (“The replacement of intact or repairable historic materials or alterations of features, spaces and spatial relationships that characterize a property will be avoided.”); Alex. Zon. Ord. § 10-103(B), 10-105(B).

3) It elevates the importance of facilitating supposed ease of maintenance over protecting the historic structure as it was during its period of principal historic significance: i.e., as it was during Justice Black’s residence.

It was 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

Mayor & City Council
April 2, 2019
Page 26

building. Indeed, many "mistakes" become defining elements of an historical site, and even if it could rightly be described as a "mistake," the curve at the Black House is one of those signature features of the property.

V. Conclusion

In light of all of the forgoing, we hope you will recognize the seriousness and importance of the preservation case before you. Your decision in this case will determine the fate of one of the principal landmark properties in Alexandria which is of State-wide and national importance. Because of its importance HAF has devoted an unusual amount of time and attention to this case as evidenced by our numerous submissions to the BAR, and this submission to you. We respectfully request that you deny the two applications that are before you on this appeal.

Sincerely



Morgan D. Delaney
Chair

Historic Alexandria Foundation

cc. Duncan Blair
Joanna Anderson
Mark Jinks

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):

Henton
Williams
Gay
Powell
Gibson

12/19/69
TW
Wash &
1-19-70

Doc. D B 75
Pg 86
7-16-70

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:

[Redacted] (SEAL)
Hugo L. Black

[Redacted] (SEAL)
Elizabeth S. Black

Accepted:

VIRGINIA HISTORIC LANDMARKS COMMISSION

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

STATE OF FLORIDA }
COUNTY OF DADE } To-wit:

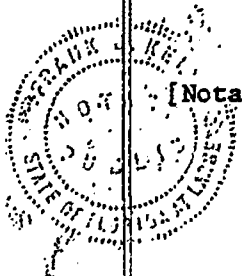
I, Frank J. Kelly, a Notary Public in and for the jurisdiction aforesaid, hereby certify that Hugo L. Black and Elizabeth S. Black, whose names are signed to the foregoing easement bearing date this 26th day of December, 1969, have acknowledged the same before me in my jurisdiction aforesaid.

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

My commission expires September 21, 1972.

[Redacted 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. 58-54, (a) and (b), of the Code have been paid and with the annexed certificate, admitted to record on 12/31/1969 at 12:07 o'clock P.M.
Teste: [Redacted]

ALEXANDRIA HOUSES

1750~1830

By • DEERING • DAVIS • A • I • D •
STEPHEN • P • DORSEY • *✍*
RALPH • COLE • HALL

Special article by
NANCY • McCLELLAND • A • I • D •

BONANZA BOOKS • NEW YORK

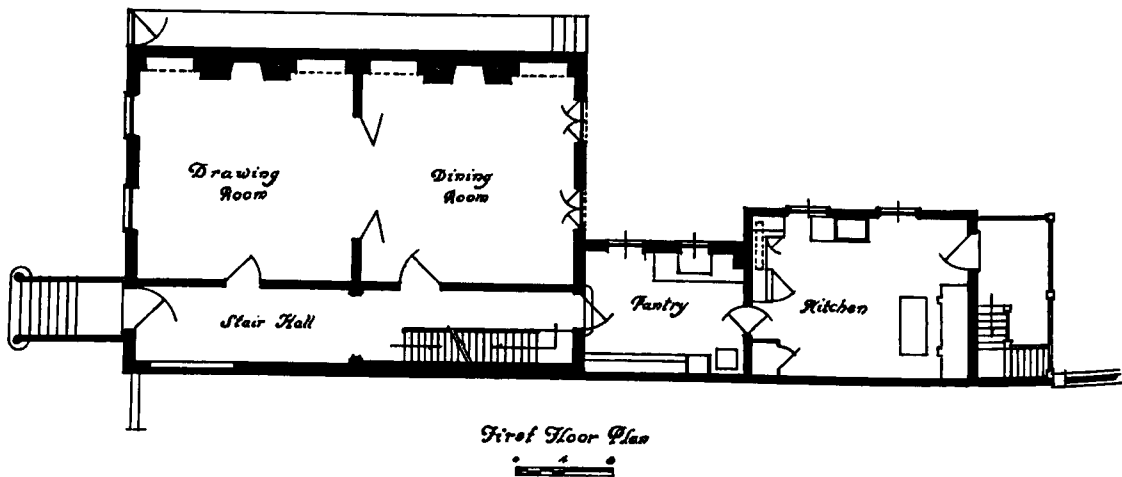
THE SNOWDEN HOUSE

Circa 1790

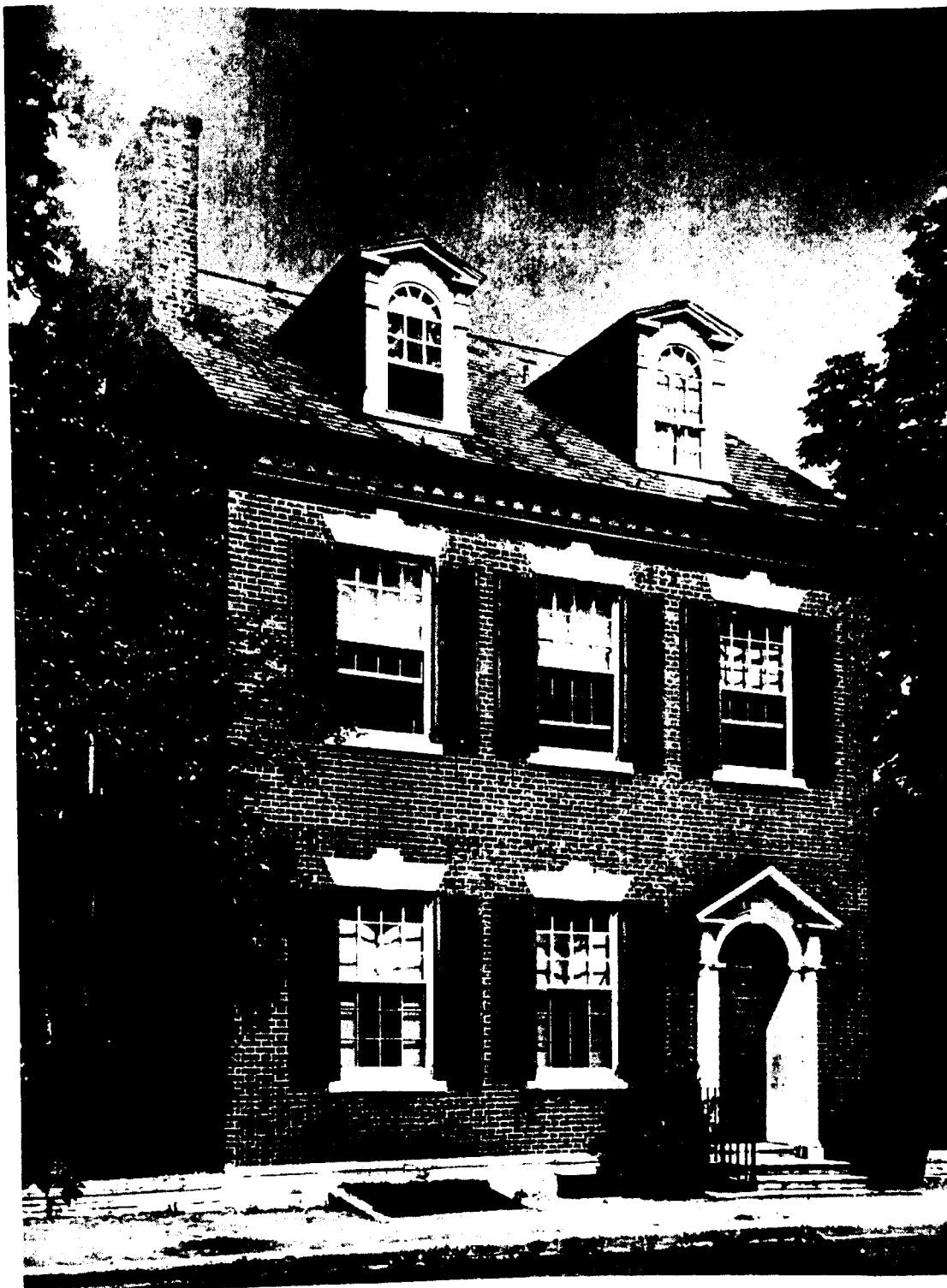
611 South Lee Street

Known as the Snowden House after the family which occupied it for ninety-seven years of its long existence, this fine Georgian structure was built long before their ownership. It is not known which of the Alexanders built the house, but John Alexander gave the property to his son, William Thornton Alexander, who sold it to Thomas Vowell on August 29, 1798. It later came into the possession of the Snowdens.

The massive and dignified doorway is surmounted by a pediment, and the facade cornice is unusual and of fine workmanship. Although the original mantels have been replaced, the other details of the interior trim attest to the original elegance of the structure. The kitchen was once completely separated from the house and was later joined by a brick "bridge" between the two buildings, as illustrated on page 114. That the kitchens were very frequently separate outbuildings is indicated by the fact that often when this dependency was joined to the main house the ell fell directly behind the dining room or parlor, rather than to the rear of the hall—thus forcing a servant going from the rear of the house to pass through the dining room, or parlor, in order to reach the front door. The garden of the Snowden House is lovely and it once had an unusually fine view up and down the Potomac.



Typical first floor plan of the ell type house



Photograph: Library of Congress

Early builders paid much attention to fenestration and detail as is beautifully indicated in this residence of Justice and Mrs. Hugo Black.



Photograph: Library of Congress

The Garden Side

The ell, originally a separate dependency, has been rounded where it joins the main structure in order not to obstruct a window.



218 North Lee Street, Suite 310
Alexandria, Virginia 22314
(703) 549-5811
www.HistoricAlexandriaFoundation.org
HistoricAlexandriaFoundation@gmail.com

May 10, 2019

By Email

The Hon. Justin M. Wilson
The Hon. Elizabeth B. Bennett-Parker
The Hon. Canek Aguirre
The Hon. John Taylor Chapman
The Hon. Amy B. Jackson
The Hon. Redella S. "Del" Pepper
The Hon. Mohamed E. "Mo" Seifeldin
Alexandria City Hall
301 King Street
Alexandria, Virginia 22314

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

Dear Mayor Wilson and Members of the Council:

We write to you in response to the City Staff Report which was published yesterday afternoon to address some serious deficiencies in the report and recommendation which, if left uncorrected, will leave you with improper guidance on the task before you in this appeal.

I. The Staff Report's Refusal to Acknowledge the Landmark Status of the Hugo Black Property is Plain Legal Error

Historic Alexandria Foundation (HAF) has extensively documented the certified landmark status of the Hugo Black property. See HAF Letter to Council (4/2/2019), Section II(C) at 7-11 (Attach. C. to Staff Report-pdf pages 243-47); HAF Letter to BAR (2/1/2019), at 1-5 (Section A)(Attach. A to Staff Report-pdf pages 55-59; Memorandum

from James W. Moody, Jr (Attach. A to Staff Report-pdf 63); Minutes of Historic Landmarks Commission (1/6/1970)(Attach A to Staff Report at pdf-72); Deed Book 705 Page 491, at 494-95 (Attach. B to Staff Report-pdf 197-98).

One of the errors clearly spelled out in this appeal is that: “The BAR failed to give proper weight to the landmark designation of the property under Va. Code Ann . § 1 0.1-2204; the provisions of Article X; Sections 10-101 (A), (C),(G); 10-1 05(A)(2)(a)-(c), (g), 10-105(8)(1)-(3), (5)-(6), the overall purpose of Ord. § 1-102(g).” Record of Appeal (Staff Report-pdf-263).

We had thought that, after we brought this matter to the Staff’s attention, they had acknowledged that the property was a landmark. See Staff Report at 19 “Additional research performed by the Historic Alexandria Foundation has determined that this property is listed as a Virginia Landmark.” (Feb. 6, 2019 BAR Staff Report).¹ But the newly issued Staff Report (pdf-5) appears to retract that concession. Staff Report at 5.

Despite extensive briefing on precisely this point, see HAF Letter (12/18/2019), the Staff report fails to recognize the fact that the act of certifying the property as a landmark “of statewide or national importance” was and is a separate and distinct function and duty of the Virginia Historic Landmarks Commission (now VDHR) 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 to compile and publish lists).

For purposes of the City Council’s deliberations, it is irrelevant – but somewhat telling – that VDHR has never complied with its statutory duty to include the Hugo Black House on the Virginia Landmarks Register. What is important is that the House and Grounds is a landmark certified in accordance with Va. Code 10.1-2204(A)(1).

II. The Staff Report’s Insistence that the Landmark Designation No Has Regulatory Bearing on Council’s Decision is Plain Legal Error.

Despite extensive briefing to the contrary, see HAF Letter (4/2/2019), Section IV.A (Attach C, pdf-252-54), the Staff Report adheres to its unsupported assertion that certification as a landmark has “no regulatory bearing on the criteria and standards listed in the Zoning Ordinance that the BAR must consider in acting on the appropriateness of demolition, new construction or alterations to any property in the historic district.” Given

¹ In point of fact, HAF never suggested that the property was “listed as a Virginia Landmark,” and had assumed that the Staff’s failure to recognize the Landmark was the VDHR’s failure to properly list it. HAF made that point expressly in its letter of December 18, 2019 (copy attached), which has strangely been omitted from the record on this appeal.

the extensive citations of the statutory and regulatory provisions contradicting this statement, you might have expected the staff report to address those legal authorities — but it does not. Not only does this assertion defy the language of the Statute and the Ordinance, Va. Code Ann. § 10.1-2204, See Alex. Zon. Ord. § 10-401(B)(4); § 10-101(A), § 10-101(C); § 10-101 (G), § 10-105(A)(1), § 10-105(A)(2)(a); § 10-105(A)(2)(b); § 10-105(A)(2)(c), § 10-105(A)(2)(g), it defies common sense. But of course the City's Zoning Ordinance provides the Council with a rich tool kit to protect historic landmarks, and the citizens of this town have every right to expect that Landmark properties will receive heightened protection.

While it is true that the Virginia statute encouraging you to take the landmark designation into account in your decision making says that the “designation, itself, shall not regulate the action of local governments,” Va. Code § 10.1-2204, that just means that jurisdictions which have not enacted the type of zoning ordinance Alexandria has are not controlled by the designation.

The Staff's position that the Landmark designation is irrelevant led the BAR to misapply the appropriate standards and criteria in its review and invites the Council to make the same mistake. It is a legal assertion with no basis in law and no attempt to justify it as a legal proposition. HAF respectfully submits that you must reject this portion of the staff report.

III. The Staff Report Confuses Easement Enforcement with What Is Necessary to Comply with the Open Space Land Act.

It is unfortunate that the Staff Report, and apparently the VDHR, have confused the question of who is entitled to sue to enforce the Hugo Black easement and simple compliance with the dictates of Va. Code § 10.1-1704. The VDHR is not the arbiter or judge of whether Section 1704 applies to an easement or not. The Open Space Land Act applies to all public bodies who have taken an interest in open space pursuant to the Act – not just VDHR. And the restrictions set forth in the Act are intended to govern, in part, the conduct of VDHR. That Department does not get to decide whether or not it will comply with the Statute. Nor are they the only ones who are entitled to read the easement. Doing so is necessary for a multitude of reasons, including a determination of what open space is protected by statute from diversion or conversion.

Because the Hugo Black easement subjected the property to the provisions of the Open Space Land Act, Va. Code § 10.1-1704 prohibits the removal of the open space without compliance with its terms.

And the City Zoning Ordinance expressly requires you to apply any restriction of state law that is more restrictive than the City Ordinance. Alex. Zon. Ord. § 1-200 (*“Whenever any provision of any state or federal statute or other city ordinance or regulation imposes a greater requirement or a higher standard than is required by this ordinance, the provision of such state or federal statute or other city ordinance or regulation shall govern.”*)(emphasis added).

IV. The April 30, 2019 Letter from the VDHR Confirms the Impropriety of Granting BAR Approval in Reliance on Approvals from the VDHR

At the December 19, 2019 BAR hearing, several members of the BAR who ultimately voted to approve the plans explained that their positive views were based in part on the fact that VDHR had approved the plans. Both HAF and Preservation Virginia directly challenged the propriety of relying on a VDHR easement approval as the basis for a BAR decision. See HAF Letter (2/1/2019)(Staff Report pdf-59); Preservation Virginia Letter (2/5/2019).²

The letter from VDHR to Mark Jinks confirms the accuracy of the statements made by HAF and Preservation Virginia and expressly advises you that the VDHR’s easement review is based on different considerations. It should not be taken as an opinion or endorsement that the plans they have approved under the easement review meet the City standards. “Any approvals or disapprovals made by DHR ... should have no determinative bearing on decisions made by the BAR....”

Notably, the VDHR letter makes no mention of the Open Space Land Act or the Landmark designation of the property.

V. Staff Reversal of Position on Demolition of Historic Curve

After inspecting the historic “curve” at the Hugo Black House, the BAR Staff twice recommended against the demolition of that distinctive feature. Without explanation as to why Staff has changed its position — other than that the former BAR disagreed with it — the Staff now recommends approval of the demolition.

² The letter from Preservation Virginia is inexplicably missing from the Record on Appeal. It is available here, along with two letters from HARC that are also missing from the staff report.

http://legistar.granicus.com/alexandria/meetings/2019/2/1976_M_Board_of_Architecture_I_Review-Old_and_Historic_19-02-06_Action_Docket.pdf

John Dumsick is a HAF Board Member and licensed structural engineer who specializes in historic preservation. He has submitted a letter to the council which has not been included in the Staff report or addressed in any way. That letter shows that the claims of difficulty in maintenance and repair are overblown.

While Mr. Dumsick is fully confident in his statement, HAF did seek permission for him to perform an in-person site visit prior to the originally scheduled April 13th hearing. The owners did not provide the necessary permission. To alleviate any concern that might be raised questioning Mr. Dumsick's opinion based on a lack of the physical inspection allowed to members of the Council, HAF repeated the request this week. The owners refused permission. (See attached email correspondence). Apparently, the owners prefer to shield their claims of damage being caused by the curve from independent inspection by competent and qualified experts.

VI. Missing Materials

As noted in the body of this letter, the Staff Report has inexplicably omitted important materials that were presented to the BAR that contradict the current Staff Report. Nor does the Staff Report even indicate that substantial amounts of information has been submitted in connection with this appeal. HAF does not yet have a list of all the materials that have been submitted by others, but is aware of at least the following:

- 1) Letter from Historic Alexandria Resources Commission dated March 31, 2019, available at http://www.historicalexandriafoundation.org/downloads/harc_black.pdf.
- 2) Letter from Professor A.E "Dick" Howard dated April 1, 2019, available at http://www.historicalexandriafoundation.org/downloads/aed_howard.pdf.
- 3) Letter from Professor W. Brown Morton III dated April 3, 2019, available at http://www.historicalexandriafoundation.org/downloads/arch_cons_black.pdf.
- 4) Email from Harry Butowsky (NPSNHL Historian Retired) dated April 5, 2011, available at <http://www.historicalexandriafoundation.org/downloads/butowsky.pdf>
- 5) Letter from John Dumsick (Structural Engineer) dated April 8, 2019, available at <http://www.historicalexandriafoundation.org/downloads/dumsick.pdf>.
- 6) Preservation Virginia Letter dated April 8, 2019.

Mayor & City Council
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Page 6

7) Letter from Josephine Black Pesaresi dated April 15, 2019, available at <http://www.historicalexandriafoundation.org/downloads/Pesaresi.pdf>.

It is inconceivable that the public could properly evaluate the merits of this appeal without access to these critically important materials in advance of the hearing. And it is surprising to say the least, that the Staff Report fails to mention any of these materials or address the issues they raise.

VII. Conclusion

For the reasons set forth extensively in the submissions previously made to you, HAF Letter (4/3/2019), HAF Letter (12/12/2018), HAF Letter 12/18/2019); HAF Letter (2/1/2019), as well as the well-reasoned letters of HARC, and the materials submitted in support of this appeal, we submit that any consideration of the proposed plans under the Alexandria Zoning Ordinance and the Design Guidelines should lead you to deny the two applications before you.

To further assist you in reviewing the issues raised by the appeal, we also attach for your consideration several power point slides.

Very truly yours,

A black rectangular redaction box covering the signature of John Thorpe Richards, Jr.

John Thorpe Richards, Jr.
(Member of the Board)
Historic Alexandria Foundation

cc. Duncan Blair
Joanna Anderson
Mark Jinks



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 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

[REDACTED] (SEAL)

Hugo L. Black

[REDACTED] (SEAL)

Elizabeth S. Black

Accepted:

VIRGINIA HISTORIC LANDMARKS COMMISSION

By

[REDACTED]

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
Virginia Reports through Volume 212, p. 652)*



THE MICHIE COMPANY, LAW PUBLISHERS
CHARLOTTESVILLE, VA.

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.

- | | |
|---|--|
| <p>Sec.
10-140. Notice to local tax-assessing official of establishment of historic district.</p> <p>10-141. Authority of Commission in counties and cities having power to establish historic districts.</p> <p>10-142. Restrictions on use of property certified as being registered landmark.</p> <p>10-143. Assistance of State agencies.</p> <p>10-144. Transfer of powers, etc., of State Librarian and State Library Board relating to historical markers.</p> <p>10-145. Construction of chapter.</p> <p>10-145.1. Power of eminent domain vested in Attorney General to preserve historical monuments and memorials.</p> | <p>Sec.
10-145.2. Erection of markers, etc., without certificate of approval forbidden.</p> <p>10-145.3. Determination of sites, etc., justifying markers; Department of Highways to erect and maintain.</p> <p>10-145.4. Collection of replacement cost of marker damaged or destroyed.</p> <p>10-145.5. State Library Board authorized to create Advisory Committee on Historical Markers; members; duties; expenses.</p> <p>10-145.6. Erection of markers by local governing bodies.</p> <p>10-145.7. Resolutions of General Assembly.</p> <p>10-145.8. Penalty for violation; proceedings by Attorney General.</p> |
|---|--|

§ 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.)

From: [John Thorpe Richards](mailto:John.Thorpe.Richards)
To: [Duncan Blair](mailto:Duncan.Blair)
Subject: Site visit request.
Date: Wednesday, May 8, 2019 11:48:00 AM

I guess I shouldn't try to answer from my phone. It was supposed to say: "To alleviate any concern that a physical inspection is necessary to validate his opinion."

Given that we are asking John to give his time on a volunteer basis, and the shortness of time remaining, I would appreciate your client's decision in time for John to arrange his schedule if an inspection will be allowed. Thank you. jtr

-----Original Message-----

From: Duncan Blair <dblair@landcarroll.com>
Sent: Wednesday, May 8, 2019 11:27 AM
To: John Thorpe Richards <jtr@bogoradrichards.com>
Subject: RE: Would you be available to do a site visit at Black House between now and the hearing?

How is that germane to the appeal?

-----Original Message-----

From: John Thorpe Richards <jtr@bogoradrichards.com>
Sent: Wednesday, May 08, 2019 11:22 AM
To: Duncan Blair <dblair@landcarroll.com>
Cc: dumsick@gmail.com
Subject: Re: Would you be available to do a site visit at Black House between now and the hearing?

To alleviate any Cicero that a physical inspection is necessary to validate his opinion.

John Thorpe Richards, Jr.
(703) 457-7823
(703) 346-6455
Sent from my iPhone

> On May 8, 2019, at 10:47 AM, Duncan Blair <dblair@landcarroll.com> wrote:

>

> John: I will ask my client. Mr. Dumsick has an extensive conversation with Al Cox and has already submitted a letter to the City with his observations. What is the purpose for a site visit?

>

>

>

> -----Original Message-----

> From: John Thorpe Richards <jtr@bogoradrichards.com>
> Sent: Wednesday, May 08, 2019 9:25 AM
> To: Duncan Blair <dblair@landcarroll.com>
> Cc: John Dumsick <dumsick@gmail.com>
> Subject: FW: Would you be available to do a site visit at Black House between now and the hearing?

>

> Dear Duncan.

>

> I know you conveyed my letter requesting the opportunity for John Dumsick to visit the Hugo Black House and inspect the "curve" that is under consideration for demolition, but they did not give him permission to perform an

on-site inspection of the "Curve" prior to the Scheduled April 13th hearing. As I mentioned in my original letter, John works full time for the State Department on structural engineering for its Historic Buildings around the world. Notwithstanding the demands of his work schedule, he has provided me with the following times when would still be able to perform that inspection if the owners will allow it:

>

> -This afternoon after 4 pm

> - Friday morning or afternoon is an opportunity but not preferred -Saturday late afternoon

> - Tuesday after 4 (albeit an inspection a few hours before the hearing begins is hardly optimal for anyone)

>

> I do hope your clients will reconsider this request to allow Mr. Dumsick to personally inspect the "curve" and associated structural issues.

>

> Thank you. Jtr

>

>

> John Thorpe Richards, Jr.

>

> Bogorad & Richards PLLC

> 209 Madison Street

> Suite 501

> Alexandria, Virginia 22314-1764

> (703) 457-7820 (Main)

> (703) 457-7823 (Direct)

> (703) 457-7824 (Fax)

> jtr@bogoradrichards.com

>

> WWW.BOGORADRICHARDS.COM

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>

From: [Duncan Blair](#)
To: [John Thorpe Richards](#)
Cc: [Duncan Blair](#)
Subject: RE: Would you be available to do a site visit at Black House between now and the hearing?
Date: Thursday, May 9, 2019 3:56:15 PM

John: Good afternoon. I am a bit confused by the request. In his April 8, 2019 letter to the Mayor and Council members Mr Dumsick states: "Neither the photographs, nor the report, reference any condition where an on-site investigation would be necessary in order for me to express the opinion I am sharing with you in this letter." He then opines as to a means and method to making repairs to the damage to the west elevation of the original core building. It seems his letter stands on own and an inspection is not required. Additionally, the Mr. and Mrs. Morris have left on their long planned trip and are not comfortable with people coming to the property without being present. For these reasons, they respectfully decline your request. Best, Duncan

-----Original Message-----

From: John Thorpe Richards <jtr@bogoradrichards.com>
Sent: Wednesday, May 08, 2019 11:22 AM
To: Duncan Blair <dblair@landcarroll.com>
Cc: dumsick@gmail.com
Subject: Re: Would you be available to do a site visit at Black House between now and the hearing?

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> Sent: Wednesday, May 08, 2019 9:25 AM
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> Dear Duncan.

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- > -This afternoon after 4 pm
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- > I do hope your clients will reconsider this request to allow Mr. Dumsick to personally inspect the "curve" and associated structural issues.

> Thank you. Jtr

> John Thorpe Richards, Jr.

> Bogorad & Richards PLLC
> 209 Madison Street
> Suite 501
> Alexandria, Virginia 22314-1764
> (703) 457-7820 (Main)
> (703) 457-7823 (Direct)
> (703) 457-7824 (Fax)
> jtr@bogoradrichards.com

> WWW.BOGORADRICHARDS.COM

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BAR #2018-00410 & 2018-00411

City Council
May 14, 2019

ISSUE: Appeal of a decision of the Board of Architectural Review approving partial Demolition/Capsulation and a Certificate of Appropriateness for additions and alterations in the Old & Historic Alexandria District

APPLICANT: Vowell LLC c/o Michael Harrington

APPELLANT: Historic Alexandria Foundation

LOCATION: 619 South Lee Street

ZONE: RM/Townhouse zone

EXHIBIT
6



BAR #2018-00410 & BAR #2018-00411 N
619 South Lee Street



I. ISSUE

The Historic Alexandria Foundation, Inc. is appealing the February 6, 2019 decision of the Old & Historic Alexandria District Board of Architectural Review (BAR) to approve a Permit to Demolish for partial demolition and capsulation (BAR2018-00410) and for a Certificate of Appropriateness for additions and alterations (BAR2018-00411). The property at 619 South Lee Street is unquestionably an architecturally and culturally significant resource in Alexandria and was discussed at length by the BAR at public hearings on December 19, 2018 and February 6, 2019. A brief overview of the primary issues considered by the BAR is described below while a more complete discussion of the applicant's proposal and the criteria and standards applied by the BAR in making its decision is included in the attached BAR staff reports and is incorporated here by reference.

Separate from the BAR hearing, the exterior of the main house recently underwent a very careful but limited program of restoration and repair to address deferred maintenance of the slate roof, mortar and windows under a BAR administrative approval (BAR #2018-00198) and with the separate oversight of both the Virginia Department of Historic Resources staff and BAR staff.

II. HISTORY

The two-and-a-half story, three-bay, side-gable brick residence with a slate roof and shed roofed rear ell was constructed around 1800 by Thomas Vowell, Jr., a prominent Alexandria merchant and, while by no means unique in its style or quality, is an excellent example of the Federal architectural style in Alexandria. The house was purchased by Edgar Snowden, editor and owner of the Alexandria Gazette, in 1842 and it remained in the Snowden family for 70 years. Justice Hugo Black, of the United States Supreme Court, purchased the property two years after his appointment to the court in 1939 and lived here until his death in 1971. His widow sold the property in 1973. The house has been owned by several families since then and changes were made to the house, carriage house and garden.

Although an urban townhouse form building, the primary structure sits detached from other dwellings on what today may be considered an unusually large corner lot. The present lot reflects the consolidation by the Blacks of several historic lots which historically contained several independent dwellings and service outbuildings. The house has been located within the Old and Historic Alexandria District since creation of the local district in 1946. It is also included within the National Register's Alexandria Historic District, created in 1966 and updated in 1984. A more complete history of the property is described in the History section of the BAR staff report of December 19, 2018.

III. DISCUSSION

The BAR's primary charge in the Zoning Ordinance is to identify and protect historic and cultural resources throughout the city. A second purpose of the BAR is to ensure that new construction, additions and alterations are in harmony with their historical and architectural setting and environs. The BAR's standards and criteria for review listed in the Zoning Ordinance, as well as their adopted policies and *Design Guidelines*, recognize that the historic buildings of Old Town are not museum objects frozen in time but may be appropriately modified, altered and expanded to allow them to continue to be used and cherished, recognizing that what may be appropriate in one block

may not be appropriate in another block, or even in different locations on the same block. The BAR's role has always been to strike a balance between preservation of the identified historic fabric and urban character while managing appropriate growth and change in a vibrant living city. In the past six years alone, the two BARs approved over 100 additions, finding them appropriate and compatible.

The BAR's determination for a Certificate of Appropriateness must consider the Standards listed in Section 10-105(A) of the Zoning Ordinance and these are reviewed in detail in the Analysis section of the attached February 6, 2019 BAR staff report. It should be noted that the BAR must "consider" the elements and features identified in that analysis but that there is not a "yes" or "no" response and each site has its own context and challenges. In addition, as was the case at 619 South Lee Street, the approved design often represents an iterative evolution of an applicant's original scheme based on the community's and the BAR's feedback.

The BAR's discussion and public comments for 619 South Lee Street are noted in the minutes of the two hearings that are included at the beginning of the attached BAR staff reports. While many issues were raised by both the community and BAR, a brief summary of the primary topics of discussion at the two BAR hearings are listed below.

1. The preservation easement
2. Virginia Landmark designation
3. Demolition of the hyphen curve
4. A shrine to Justice Black
5. Open space
6. South Lee Street streetscape

1. *The Preservation Easement*

The Virginia Department of Historic Resources (VDHR) administers a preservation easement on 619 South Lee Street that was granted by the Black family to the Virginia Historic Landmarks Commission in 1969 and amended by them in 1973 for the preservation of the historic landmark and its environs. Compliance with the easement is the responsibility of the property owner through a separate process established and reviewed solely by VDHR. The scope of the BAR's review of the demolition/capsulation and the new construction is limited to the standards and criteria listed in Section 10 of the Alexandria Zoning Ordinance and the BAR does not have the authority to hold, interpret or enforce an easement.

While the BAR application form does ask whether there is an easement on a property and whether the easement holder has agreed to the proposed alterations, this information is requested as a procedural courtesy and for efficiency in an attempt to avoid a situation in which an easement holder would reject the applicant's proposed changes after the BAR's decision. However, the applicant would be permitted to proceed with his BAR application even without the easement holder's approval since the easement is not relevant to the BAR's decision. In the present case, staff recommended that the applicant obtain confirmation that the proposed scope of work complied with the easement prior to a hearing by the BAR. The applicant did so and provided the City with a courtesy copy of that letter from VDHR.

2. Virginia Landmark designation

According to the Virginia Department of Historic Resources, 619 South Lee Street is not individually listed on the Virginia Landmarks Register and, even if it were, that designation affords no special consideration for BAR review. While the BAR encourages that properties be listed on both the National Register of Historic Places and the Virginia Landmarks Register, and there are 54 Alexandria buildings and sites that are presently listed on these registers, these are honorific designations that have no regulatory bearing on the criteria and standards listed in the Zoning Ordinance that the BAR must consider in acting on the appropriateness of demolition, new construction or alterations to any property in the historic district. The BAR carefully evaluates all applications based on their own merits using the Zoning Ordinance and the BAR's Design Guidelines and policies.

3. Demolition of the hyphen curve

While the BAR's purview of new construction and alterations is limited to what is visible from a public way, the BAR has purview of any demolition/capsulation of more than 25 square feet of exterior wall or roof area, regardless of visibility, in order to prevent the loss of historic fabric. Demolition refers to the permanent destruction and removal of the exterior wall or roof area, whereas, capsulation refers to the enclosure but not demolition of a specified exterior portion of the wall or roof, thereby removing the now interior feature from the BAR's purview. Typically, most additions involve some combination of both partial demolition and capsulation. A complete description of the features to be demolished/capsulated with images and an analysis of the standards considered by the BAR is found in the Permit to Demolish/Capsulate section of the attached February 6, 2019 BAR staff report.

The primary historic feature proposed for demolition that was discussed at the two BAR hearings was the curved wall of the hyphen (the architectural term for the connector between the body of the main house and what was once a detached, or semi-detached, kitchen outbuilding). The present two-story hyphen wall is not original to the first period of construction of the dwelling but expanded upon earlier and smaller one-story hyphens in the mid-19th century, based on staff's field examination of the framing in the basement and attic with the applicant. Because of the acute angle created by the shape and location of the curved wall adjacent to a historic wood window, it is very difficult to repair this section of the masonry wall or the stone sill and lintel of the adjacent window, requiring partial demolition and replacement to perform the repairs.

Staff recommended denial of the request to demolish this curved wall feature because it is over 150 years old and is an example of an unusual wall treatment. However, upon additional consideration, staff now agrees that the present repairs and future maintenance of this odd feature are very problematic, has no constructive solutions to these challenges and supports the BAR's decision. At the February 6, 2019 hearing, the BAR found: 1) that existing curved hyphen was a later feature that was not well considered when it was originally constructed; 2) that it has caused and will continue to create maintenance issues inherent in its design that will harm the primary historic resource; 3) that there are other better examples of curved hyphens in the district; and 4) that removal of this element will not be detrimental to the public interest and removal will, in fact, help preserve the west wall of this important historic house.

4. *A Shrine to Justice Black*

One of the Permit to Demolish criteria that must be considered by the BAR in Zoning Ordinance section 10-105(B) asks: “Is the building or structure of such interest that it could be made into an historic shrine?” This criterion requires that the property be a place of pilgrimage associated with a person of extraordinary significance, such as George Washington’s Mount Vernon or Thomas Jefferson’s Monticello. While the previous owners of this property were prominent businessmen in early Alexandria, the most notable previous owner was Hugo Lafayette Black. Justice Black acquired the property in 1939 two years after his appointment as an Associate Justice to the United States Supreme Court and lived there until his death in 1971. His widow sold the property in 1973. While the BAR did not make a specific finding as to whether this property qualified as a shrine, the majority of the BAR did not believe that the proposed physical alterations to the property would preclude interpretation of this site as a shrine to Justice Black now or in the future, should this site be determined to be the most appropriate location to do that.

Despite the many changes have taken place on the site since its occupancy by the Blacks, the BAR found that all of the proposed work could similarly be reversed in the future, as had already occurred on this property over time. The BAR nevertheless agreed that complete documentation of the site, including the curved wall and the open space, prior to undertaking any of the proposed alterations would help future historians identify any remaining portions of the private garden created by the Blacks during their tenure and would allow the physical property to be returned to that condition by others in the future, should it be determined that site features such as the swimming pool and tennis court were essential interpreting this landscape as a shrine to the legal career of Justice Black.

Therefore, in order to document the existing landscape before any work is done, the BAR required that the existing site and landscape conditions be documented through a dimensioned, annotated digital site plan and photography to Historic American Landscape Survey (HALS) standards; and that the curved hyphen wall to be demolished be documented with drawings and photographs to the Historic American Building Survey’s (HABS) current standards before and during its careful deconstruction, and that historic material be marked and reused on the site wherever appropriate.

5. *Open space*

The minimum amount of open space required for each zone is set forth in the Zoning Ordinance and zoning staff reviews all BAR applications to determine zoning compliance prior to a case being docketed for a public hearing. The existing lot area is 35,502 square feet. The required open space in the RM zone for this lot is 35% of the lot area which is 18,638 square feet. The existing open space is 32,012 square feet. The proposed open space is 30,141 square feet, or 85% of the total lot area and only a 6% reduction in open space from the existing. Staff notes that throughout much of the 19th century and into the 20th century, the present, consolidated lot contained a substantial two-story dwelling at the corner of Franklin and South Lee Street and several others on the South Fairfax Street frontage, as shown in Figures 1 & 2 of the December 19, 2018 BAR report, so the current proposal may actually include as much or more contiguous open space than what existed during much of the history of the subject house.

The BAR's standards for review of open space are subjective and standard 10-105(A)(2)(d) requires the BAR to find that the "Design and arrangement of buildings and structures on the site; and the impact upon the historic setting or environs" is appropriate. The question before the BAR was whether removal of the existing additions and construction of the new additions will have an adverse impact on the overall historic setting or environs. The BAR found that the "pavilion" style additions successfully recalled historic service outbuildings and had no concerns with the height, mass, scale or project siting of the additions. The majority of the BAR also found that this site would still retain a significant amount of open space after construction.

6. South Lee Street Streetscape

There was some discussion at the BAR hearings that it is not traditional to construct additions on the side of a townhouse because the majority of additions are constructed on the rear and that to have additions constructed behind the front lot line is disruptive to the historic pattern of development on South Lee Street. While the irregular size, spacing and setback of buildings is what gives Old Town its unique organic character, staff concurs that the majority of the parcels in the historic district are narrow urban townhouse lots and that the only logical place to construct an addition is on the rear of the primary building mass. However, based on a review of historic Sanborn Fire Insurance maps, it was just as common on large lots to construct additions to the side and this area was commonly filled with utilitarian outbuildings.

While the BAR does not consider landscape plant materials as screening because they are subject to change, the open interior of this lot has not been visually accessible to the public for many decades. As the applicant's photos show, the South Fairfax Street frontage has a solid wall of evergreen shrubs and a tall tennis fence that has historically precluded public view of this open space from the west, though nothing is being proposed in this application that would prevent additional visual access in the future.

Another concern was that the proposed pavilions to the south of the townhouse were not being constructed at the front lot line, as buildings were required to be under Alexandria's 1752 ordinance. However, service outbuildings were very seldom constructed at the front lot line and the setbacks of the other townhouses in the 600 block of South Lee Street have a great deal of variety. There is a large historic house at 609 South Lee Street that is set back 30' from the front lot line and the uniformity of the west side of this block is disrupted by three driveways. All but four of the fourteen townhouses on the east side of this block are set back from the front lot line and nine of them have off street parking in front of the house.

At 619 South Lee Street, the architect's design intent was to create the visual impression of related service outbuildings to the south of the main structure in order to allow the historic townhouse to remain independent and visually prominent. The kitchen addition and the garage to the south of the historic townhouse were both set a minimum of 24' behind the front plane of the house on South Lee Street and are subservient to the primary resource with respect to height and massing. A very similar example to the present proposal is shown in Figure 6 of the December 19, 2018 BAR staff report. This L-shaped rear addition and two-story outbuilding with pergolas that are now under construction on the early 19th century townhouse at 211 South Saint Asaph Street were unanimously approved in December 2017 with no public comment.

The BAR, therefore, found the scale, mass, location and design of the proposed additions to be appropriate for the historic setting of this lot and that the streetscape of South Lee Street would retain its historic character.

IV. BOARD ACTION

At the December 19, 2018 hearing, the BAR deferred the case for restudy, with the Chair summarizing the Board's discussion as follows:

1. *The historic house is being beautifully restored and preserved;*
2. *The additions are subservient to the main historic house and easily removable, if anyone should care to do so in the future, without harming the historic property;*
3. *No concerns with the height, mass, scale or project siting of the additions;*
4. *Concerns with the hip roof style;*
5. *Concern with demolition of the curve but generally supported by the Board;*
6. *Concern that the fenestration on the South Lee Street elevation should reflect a more traditional solid void ratio; and*
7. *Concern about the appearance and unclear about the locations of the decorative brick work, including the stack bond framing the windows.*

One Board member also suggested that the Lee Street appearance would be improved if the existing parking pad were screened with plantings and perhaps located behind a garden wall and gate, and the applicant has complied. The applicant returned to the BAR on February 6, 2019 where the BAR made the following determinations.

FEBRUARY 6, 2019 – BAR2018-00410 Demolition/Capsulation: Approved as Amended, 5-1

On a motion by Mr. Elkins and seconded by Ms. Miller, the OHAD Board of Architectural Review voted to approve BAR #2018-00410, as amended. The motion carried on a vote of 5-1 with Mr. Sprinkle voting against.

REASON

The BAR found that the existing curved hyphen was a later feature that was not well considered when it was originally constructed; that it has caused and will continue to create maintenance issues inherent in its design that will harm the primary historic resource; that there are other better examples of curved hyphens in the district; and that removal of this element will not be detrimental to the public interest and removal will, in fact, help preserve the west wall of this important historic house.

FEBRUARY 6, 2019 – BAR2018-00411 Certificate of Appropriateness: Approved as Amended, 4-2

On a motion by Mr. Elkins and seconded by Mr. Adams the OHAD Board of Architectural Review voted to approve BAR #2018-00411, as amended. The motion carried on a vote of 4-2 with Mr. Sprinkle and Ms. Roberts voting against.

REASON

The BAR found the scale, mass, location and design of the proposed additions to be

appropriate for the historic setting and streetscape for the reasons described in the staff report.

CONDITIONS OF APPROVAL

- ~~1. Denial of the demolition of the two-story curved portion of hyphen connecting the main block to rear ell; (staff recommendation deleted by the BAR)~~
2. All counterflashing in the brick of historic portions of the house and carriage house for additions and roofing should be hand cut only through mortar joints and not the brick;
3. All materials must comply with the BAR's adopted policies unless otherwise specifically approved;
4. Document the existing site and landscape conditions thru a dimensioned, annotated digital site plan and photography to HABS HALS standards; and
5. The statements in archaeology conditions below shall appear in the General Notes of all site plans and on all site plan sheets that involve demolition or ground disturbance (including Demolition, Basement/Foundation Plans, Landscaping, Erosion and Sediment Control, Grading, Utilities and Sheeting and Shoring) so that on-site contractors are aware of the requirements:
 - a. The applicant/developer shall call Alexandria Archaeology immediately (703-746-4399) if any buried structural remains (wall foundations, wells, privies, cisterns, etc.) or concentrations of artifacts are discovered during development. Work must cease in the area of the discovery until a City archaeologist comes to the site and records the finds.
 - b. The applicant/developer shall call Alexandria Archaeology (703/746-4399) two weeks before the starting date of any ground disturbance so that an inspection schedule for city archaeologists can be arranged.
 - c. The applicant/developer shall not allow any metal detection to be conducted on the property, unless authorized by Alexandria Archaeology.

V. STANDARD OF REVIEW ON APPEAL TO CITY COUNCIL

Upon appeal, City Council must determine whether to affirm, reverse or modify, in whole or in part, the decision of the BAR. The City Council's review is not a determination regarding whether the BAR's decision was correct or incorrect but whether the Permit to Demolish/Capsulate and Certificate of Appropriateness should be granted based upon City Council's review of the standards in Zoning Ordinance Sections 10-105(A)(2) and 10-105(B). While City Council may review and consider the BAR's previous actions, City Council must make its own decision based on its evaluation of the material presented. Section 10-107(A)(3) of the Zoning Ordinance requires that the City Council apply the same criteria and standards as are established for the Board of Architectural Review and these are listed in the attached BAR staff report of February 6, 2019.

VI. RECOMMENDATION

Staff recommends that City Council **affirm** the decisions of the Board for approval of the Permit to Demolish/Capsulate and Certificate of Appropriateness.

STAFF

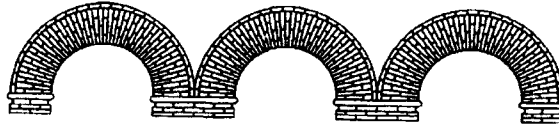
Karl Moritz, Director, Department of Planning & Zoning
Al Cox, FAIA, Historic Preservation Manager, Planning & Zoning

VII. ATTACHMENTS

Attachment A: February 6, 2019 BAR staff report and minutes

Attachment B: December 19, 2018 BAR staff report and minutes

Attachment C: April 2, 2019 letter from the Historic Alexandria Foundation



VAUGHAN RESTORATION MASONRY, INC.

3917 WHEELER AVENUE
ALEXANDRIA, VIRGINIA 22304
703-823-5944 • Fax 703-823-5946

May 10, 2019

The Honorable Mayor Justin Wilson and Members of City Council
City of Alexandria – City Hall
301 King Street
Alexandria, Virginia 22314

Re: 619 South Lee Street
Masonry Repairs

Dear Mayor Wilson and Members of City Council,

Vaughan Restoration Masonry was established in 1987 by President and Owner Mark Vaughan and has been involved in restoration projects of repointing and structural repairs to historic masonry buildings in Alexandria. VRM surveys the conditions of the masonry, evaluating the current issues, propose the solutions to the problems and utilized the proper procedures, methods and materials, to restore the historic masonry building, to be seamless as the conditions will allow. We have had the opportunity to work on the Lee Boyhood Home, The Fairfax House, 311 Cameron, 115 N Fairfax and other residences in Alexandria.

VRM was involved the renovation and rehabilitation work on the Vowell Snowden Black main house, where we repointed significant area of the four elevations. The repointing was done to preserve as much of the original mortar. The stone keystone window lintels and sills where patched where conditions allowed and we replace the units that where too deteriorated to repair with matching stone.

The intersection of the rear hyphen and the main house could not be repaired or repointed due to the curved hyphen wall interfering with the access to the masonry of the main house. The brick curved wall is against the lintel, sill and the brick jam of the window, causing deterioration. The intersection of the hyphen and main house stays wet. We have studied the existing condition and believe there is no physical way to access the area to do the needed repairs to the stone lintel, sill, window frame and the brick work of the main house.

The limited demolition of the curve will allow the work on the repairs to the main house and will also eliminate the moisture that is causing the deterioration of the building. I support the proposed straight wall hyphen design to allow access to the needed repairs and to avoid the moisture problems in the intersection of the hyphen and main house.

I hope this letter clarifies the issues and explains the existing conditions and their constraints to be able to do the repairs and rehabilitation of the historic 1800 main house.

Sincerely,


Mark S. Vaughan, President

EXHIBIT

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