



## Historic Alexandria Foundation

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### By Email and Mail

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

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

Dear Ms. Langan:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

Historic Alexandria Foundation

By:   
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