



Historic Alexandria Foundation

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December 18, 2017

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

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

Dear Chair Kelley and Members of the Board:

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

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

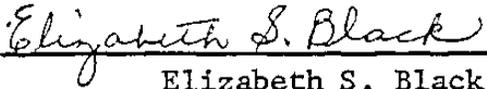
But the certified landmark status of the property is a matter of public record and beyond question. As the Deed we submitted for your consideration clearly states:

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

WITNESS the following signatures and seals:

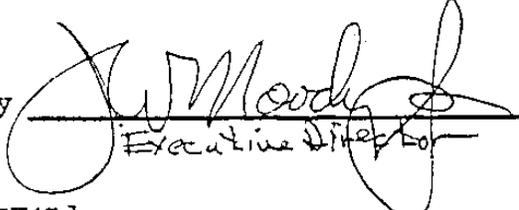
BOOK 705 PAGE 495

 (SEAL)
Hugo L. Black

 (SEAL)
Elizabeth S. Black

Accepted:

VIRGINIA HISTORIC LANDMARKS COMMISSION

By  (SEAL)
Executive Director 12/30/69

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.

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§ 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 the or has had a major relationship with the life of an historic personage or nation, 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.)