



Historic Alexandria Foundation

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January 17, 2019

By Email and Mail

julie.langan@dhr.virginia.gov

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

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

Dear Ms. Langan:

We are writing to follow-up on our letter of October 1, 2018 concerning the Hugo Black House and the proposed construction project on that property. We wish to bring to the Department's attention, and to the Board, additional information that has come to light after the issuance of the December 3, 2018 letter providing schematic approval of design drawings dated October 31, 2018. We believe this new and additional information should materially alter your analysis of the landowner's development plans.

A. New Information Concerning the Proposed Demolition of the "Curve" Section of the House Joining the Ell to the Main Block.

In 2014, VDHR specifically rejected the applicant's request to demolish a noted architectural feature of the Hugo Black House as follows:

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

Letter from Megan Melinat and Elizabeth Tune to Michael Harrington (8/5/2014).

In our October 1, 2018 letter we called your attention to the fact that the applicant's Sept. 21, 2017 submission to VDHR incorrectly suggested that the curve is not part of the historic fabric of the property. Pollard Memo. (9/21/2017)("The curved treatment does not appear in the historic photos included in the HABS report on the property."). And we had hoped that the applicant would correct that misstatement.

We now know that the distinctive curved attachment was noted in the reference materials presented to the Virginia Historic Landmarks Commission ("VHLC") when the gift of the easement was proposed in December of 1969. Memorandum from Moody to VHLC (12/11/1969)(LOV MSS, Virginia State Library & Archives Office of the State Librarian, Historic Landmark Commission Corresp. & Data Files 1966-1975, Box 1)(copy attached).

On December 19, 2018 we filed with the Alexandria BAR a copy of the original HABS photograph obtained from the Library of Congress which taken as part of the original HABS survey in 1936. It plainly shows the curve. See HABS VA-7, 170-2 (attached). That photograph is available to review on-line.¹ And a copy of that same photograph with a caption discussing the distinctive curve was published in 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.")(copy attached).

On December 13, 2018 — after HAF had raised this issue with the Alexandria BAR — Al Cox, FAIA, Historic Preservation Manager, Planning & Zoning for the City of Alexandria, performed an on-site inspection of the "curve" to assess the owner's claims that it was a non-historic feature of the property. Following that inspection, the Staff Report presented to the Alexandria BAR found that

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 2018-00410 at 9 ¶ 3 (emphasis added). The BAR Staff concluded that "[d]emolition of the two-story curved hyphen would result in the loss of a unique feature" and recommended *denial* of demolition of the curved wall of the hyphen." *Id.* at 11.

Notwithstanding this new information developed by the BAR Staff investigation, during discussion of the "curve" at the December 19, 2018 BAR hearing, a majority of the Board members present expressed their support for demolishing this historic feature of the property. Two of the members expressly cited VDHR's approval of the demolition as a basis for their own judgment on the question.

Because the new information that has come to light since VDHR gave its conceptual approval for demolition of the curve clearly shows it is a historically significant feature of

¹ See <https://www.loc.gov/resource/hhh.va0223.photos/?sp=2>.

the property, we submit that the decision made by VDHR in 2014 was the correct one, and that historic feature must be preserved as a straight-forward application of 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.”).

B. New Information Concerning the Inability of the Landowner to Utilize the Structure Originally Described as a “Garage” for the Purpose of Housing Motor Vehicles.

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

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). 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 has renamed the third structure on the property a “WORKSHOP/BIKE GARAGE” — in an apparent effort to justify the structure as a “garage” when it will be no such thing. A “garage” is “[a] place in which motor vehicles are stored and cared for.” Black’s Law Dictionary (4th ed. 1968); see also Alexandria Zoning Ordinance § 2-149 (“Garage, private. A building designed for the storage of not more than three motor-driven vehicles.”).

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

Because the “Garage” use presumably contributed to VDHR’s conceptual approval of the third structure being placed on the existing open space — and that use is not available to the applicant — VDHR should not allow that additional building on the property. The preservation of open space that would be accomplished by disallowing this additional building and the connecting structure would be substantial and keep the corner of S. Lee and Franklin Street as unobstructed open space.

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

It was not until the publication of the Alexandria BAR Staff report on December 17, 2018, that we came to realize that neither the BAR Staff, nor, apparently, the VDHR Staff appreciated that the Hugo Black House is a certified landmark property in its own right, separate and apart from its inclusion in the Old and Historic District of Alexandria.

On December 30, 1969 the Hugo Black House was designated by the Virginia Historic Landmarks Commission (“VHLC”) as a certified landmark. Deed Book 704, Page 494-95. The VHLC designation was in furtherance of its mandate to “**designate as an historic landmark, the buildings, structures and sites** which constitute **the principal historical, architectural** and archaeological sites **which are of State-wide or national significance.**” 1966 Va. Acts Ch. 632, § 4(a)(emphasis added); see 3 Former Va. Code Ann. § 10-138 (1973 Repl. Vol.); accord Va. Code § 10.1-2204(A)(1). That Landmark designation was a necessary predicate for the Commission to obtain the easement on this property. 1966 VA. Acts Ch. 632 § 8; Former Va. Code Ann. § 10-142 (1973 Repl. Vol.).

Having been designated as a certified Landmark property, current law provides that the designation is “**an act of official recognition designed to** (i) educate the public to the significance of the designated resource and (ii) encourage local governments and property owners to take the designated property’s historic, architectural, ... and cultural significance into account in their planning ... **and their decision making.**” Va. Code Ann. § 10.1-2204 (emphasis added).

Unfortunately, the fact that this certified Landmark property has not been included on the Virginia Landmark Register led the local BAR to overlook this designation because they have taken the position that the BAR is not allowed to consider the easement. During the BAR Hearing of December 19, 2018, the head of the BAR’s staff stated that he had never read the easement.

We understand that VDHR staff have also not previously recognized the independent Landmark status of the property in their administration of the easement program.

There has been some question raised as to whether the recital and the acceptance of the Easement satisfied the requirements for certification of the property as a Landmark (and the commensurate reduction of annual real estate tax assessments that the property has

enjoyed as a consequence.). A review of the publicly available records should put this question to rest. It also serves to highlight the clear intent that the easement was to protect the extensive gardens at the Hugo Black House.

Attached is the December 11, 1969 Memorandum from James W. Moody, Jr., the first Executive Director of the VHLC, seeking approval of the easement transaction from the members of the Commission.

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)(emphasis added). When referencing the “present, and future” of the property, Mr. Moody was clearly referencing the significant association with Justice Hugo Black.

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

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

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

VHLC Minutes (1/6/1970) at 2 (emphasis added)(LOV MSS, Virginia Historic Landmarks Commission: Minutes and Records, 1966-1973)(copy attached). Other easements

Julie V. Langan
January 17, 2019
Page 6

drafted by George Freeman contain the identical form of Landmark Certification. See, e.g., Memorandum from Junius R. Fishburne, Jr., Executive Director, to VHLC (3/8/1973)(attaching open-space easement in the village of Waterford, Loudon County drafted by George Freeman)(LOV MSS, Corresp. & Data Files, 1966-1975, Box 1).

In short, the Landmark designation incorporated into the Deed of Easement was standard operating procedure for the VHLC and fully in accord with Section 8 of the Act creating the VHLC. 1966 Va. Acts. Ch. 632, § 8; Former Va. Code Ann. § 10-142 (1973 Repl. Vol.).

In summary, we believe that a review of the Department's own description of the purpose of the easement, and the Landmark designation which was expressly based not just on the property's 18th century provenance, but its "present, and future" association with Justice Hugo Black, together with the identification of "the space around the house [as] an essential element" should lead the Department to reconsider its preliminary approvals of the owner's construction plans.

Along those lines, and as additional new information, we submit for your consideration the letter W. Brown Morton III dated December 16, 2018 submitted to the Alexandria BAR discussing his opinion of the proper application of the Secretary of the Interior's Standards to this project.

Respectfully submitted,

Historic Alexandria Foundation

By: 

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

cc. Catherine A. Shankles
Duncan Blair

Enclosures: As Stated