



Historic Alexandria Foundation

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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" Seifeldein
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

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 accessors' 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.

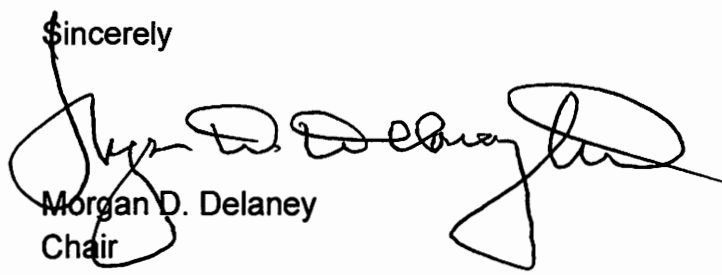
It was noted by some that to a modern architectural eye the curve is an unsuccessful treatment of the problem of attaching the original kitchen dependency to the main house. But architectural “mistakes” are important components of the history of a

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