

JOHN G. KESTER
313 North Saint Asaph Street
Alexandria, Virginia 22314

April 5, 2019

Honorable Justin Wilson, Mayor,
and Members of the City Council
City Hall
Alexandria, Virginia 22314

Re: 619 South Lee Street
Appeal of BAR nos. 2018-00410 and 2018-00411

Dear Mr. Mayor and Council Members:

In this appeal the previous Board of Architectural Review (several of whose members have since been replaced) by the margin of a single vote authorized the destructive redevelopment of a landmark Old Town property, the Hugo L. Black house. Not only are this very old dwelling and garden a treasure in their own right, but also as a Virginia Historic Landmark they memorialize the life and work of an immensely important figure in American law and history.

The former Board's mistaken ruling would demolish part of the historic home of the late Associate Justice Hugo L. Black of the Supreme Court of the United States, and obliterate much of its unique garden, tacking onto the original home massive structures entirely incongruous to the heart of Old Town. The Board also gave no attention to the famous American who made this landmark what it is. The decision on appeal failed to apply the legal standards mandated in the Zoning Code, violated provisions of state law, and was entirely out of keeping with the traditions of our historic city.

History of 619 South Lee Street

The property at 619 South Lee is one of the oldest treasures of Alexandria's Eighteenth-Century seaport city. It was purchased and restored by Justice Black in 1939, and under his direction and with his hands its adjoining half-acre was made into a unique garden and tennis court. This creation was his home and workplace for nearly forty years, until his death in 1971.

Justice Black and Mrs. Black in 1969 preserved the house and space by granting one of the very first perpetual historic preservation easements in the Commonwealth of Virginia. (Ex. 1.) When state authorities approved that gift in 1969, it was their "unanimous and unreserved opinion" that the Hugo Black house manifested not only "architectural distinction" but also "ample historical quality." (Ex. 2.) Their judgment was approved by Virginia's

Attorney General and by the Governor as meeting the statutory standards, and was further recognized by the City of Alexandria, which ever afterwards has applied the easement in substantially reducing the real estate taxes paid by subsequent owners of 619 South Lee, including the present one. To prevent anyone's missing the point, in 1973 the Justice's widow and heirs recorded a reiteration of the easement that emphasized that "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 servants' quarters, (iii) a tennis court and other outbuildings and structures which are commonly or appropriately incidental to a single family dwelling" (Ex. 3; emphasis supplied.)

In 1973 Justice Black's widow and heirs conveyed the property to the late David Ginsburg. Mr. and Mrs. Ginsburg assured the Judge's family that they would honor the commitments expressed in the easement, and maintain the property in a way that preserved the tennis court and gardens. The Ginsburgs faithfully did so. I attended at least one gathering at 619 South Lee to which the Ginsburgs invited former law clerks and members of the Black family. We were impressed by the scrupulous care with which the Ginsburgs had preserved Justice Black's house and gardens.

After thirteen years the Ginsburgs in 2006 conveyed the property to another owner, and then in April 2013 it was conveyed to Vowell LLC, applicant in this case, again subject to the 1969 restrictions, for stated consideration of \$6,250,000.00—a value of course reduced because of the prohibitions on demolition and construction. I am informed that the present owner of the property made no attempt to notify Justice Black's living children, grandchildren, or any other family members of the proposal to tear down part of the house and to erect a huge modern-style addition spread across the garden.

The Proposed Redevelopment of 619 South Lee Street

The new owner's proposal would erect a very large extension nearly as large as the house, destroy a large part of the garden, obliterate the tennis court, and demolish a historic portion of the house itself.

1. The proposal that the Board majority allowed would permit construction nearly doubling the size of the historic house, from 8,156 square feet to 14,371 square feet. Multistory new wings would be erected extending all over the garden, and in configurations and styles not conforming to old Alexandria.

2. The Board also—rejecting its own staff's warning to the contrary—would demolish a unique historical feature, the "historic curve" at the juncture of two wings of the house, that is at least 150 years old, and could readily be repaired (as normally are other features in protected Old Town houses, which of course are not permitted to be destroyed simply if they need repairs). The curve is even discussed and pictured in architectural histories of Alexandria. (Ex. 3.) All that the wreckers need do, the Board ruled, is to measure and take pictures so that someone someday might have an idea of what used to be there.

3. The garden of the Black house is one of the largest private open spaces in this City. Justice Black created much of it with his own labor, including the tennis court that was

his delight and source of recreation. The proposal would build over the garden with large modern-style extensions of the house and tear out Justice Black's beloved tennis court.

4. The proposal attempts to deceive by word games. It refers to the massive modern extensions to the house as "pavilions." It rechristened what it first admitted was a large garage as instead a "workshop/bike garage." Then this was renamed again as a "bicycle workshop"—plainly a subterfuge to mask a new structure intended to become a large car garage as soon as the owners can wangle a curb-cut onto Franklin Street.

If all this enormous construction and demolition were allowed to take place, the property conserved and created by Hugo L. Black will have disappeared.

I. The Board's Errors

This Council is required by the City Code to review this case with a fresh eye, applying very specific legal standards. It must not commit the multiple errors of the majority of the Board.

A. Legal Mandates of the Zoning Code

The Alexandria Zoning Ordinance that establishes the Old and Historic District requires the Board of Architectural Review—and equally this Council on appeal—to give weight whether any proposed alteration "will preserve or protect historic places" and "areas of historic interest." City Code § 10-105(A)(2)(g). It further mandates that you consider "the impact on the historic setting." Code § 10-105(A)(2)(c). It demands that any "new structures, additions, landscaping" be "in harmony with their historical and architectural setting and environs," Code § 10-101(G), and requires that you preserve "familiar landmarks and other treasured elements of the area" that "educate about the city's cultural and historic heritage," including "Virginia Landmarks." Code § 10-105(A), (D), (F). The former majority of the Board failed to do any of that.

Moreover, in spite of the significance of the easement demonstrating Justice Black's and his family's clear intentions, and Virginia's confirmation of the historic importance, and in spite of the rare Historic Landmark designation, and in spite of the repeated plain directives in City Code §§ 10-101 and 10-105 to consider and preserve historic aspects, the Board of Architectural Review explicitly disregarded the restrictions Justice Black with State concurrence had placed on the property to save it. The Board's principal staff adviser even admitted on the record that "I have not read the easement." And the then-Chair of the Board, contrary to the Code provisions, directed the Board members that the existence of the approved historic-preservation easement was a fact that they should not consider, and forbade speakers even to mention it. That ruling, which cited no authority, was plainly incorrect and contrary to the City Code and State law. The Virginia Supreme Court, on the contrary, has cautioned that "effect should be given to every part of [a conservation easement] if possible." Wetlands Am. Trust, Inc. (Va. S. Ct. 2016). Virginia's modern Constitution—drafted by Professor A.E. Dick Howard of the University of Virginia, a former law clerk of Justice Black—specifically enacts "the policy of the Commonwealth . . . to conserve . . . its historical sites and buildings." Va. Const. art. XI, § 1. As one of the dissenting Board members observed, the very existence of the

easement, approved by both State and City, is evidence of the historic importance of the property.

Further, members of the Board scarcely mentioned the massive size of the construction proposed, nor that it was of a style and location entirely out of place with the architecture of the Old Town neighborhood—even though the Code lists as its very first requirement careful attention to “design, form, style and structure” and in particular “height, mass and scale of buildings or structures.” Code § 10-105(2)(a). The Board also failed to consider “impact upon the historic setting, streetscape or environs.” Code § 10-105(2)(c). The streetscape of Lee Street is houses that are erected along the street—not, as in the proposal, linked structures spread twenty-five feet back from it across the former garden. Two Board members conceded that the proposal looked less like an Old Town streetscape than a quadrangle of structures on some college campus.

One Board member argued that the new construction nearly doubling the size of the Eighteenth-Century house could be tolerated because if it turned out to be ill-considered, it “could be torn down.” The BAR staff asserted that “the proposed alterations are reversible.” Report, p. 9. But brick and mortar are about as permanent as buildings can get, without resort to wrecking balls or dynamite. And the option to undo new buildings that have already destroyed a historic setting is not the Code measure you are to apply.

There is scarcely a one of the ten specific standards mandated in the City Code that this ill-considered proposal does not violate. See Code § 10-101 and § 10-105(A)(2)(a)-(j). (Ex. 4.) The extraordinary development proposed here, that flies in the face of the Code protections of the Old and Historic District, is exactly the sort of nightmare that Justice Black made such an effort to prevent.

B. Status as a Virginia Historic Landmark

Conferring of Landmark status is by law an “official recognition” requiring local governments “to take the designated property’s historic, architectural, archaeological, and cultural significance into account in . . . their decision making.” Va. Code § 10.1-2204. The City Code also specifically encourages and protects official “Virginia Landmarks.” City Code § 10-101(F). Landmark status allows the granting landowner to impose restrictions on the property that are “reasonable and calculated to perpetuate and preserve the features which led it to designate the property as a historical landmark.” Va. Code § 10.1-2207. The restrictions that Justice Black and Mrs. Black attached to the property have been confirmed to be in compliance with that standard by the Attorney General of Virginia and the Governor in 1969. Yet the BAR was told that “these honorific designations have no regulatory bearing.” Staff report, p. 6.

C. Violation of the Virginia Open-Space Land Act

The proposed massive construction in the Hugo Black home and garden is barred also for another, entirely independent, reason. The garden has been legally designated as protected open-space land since 1969. Therefore under the Virginia Open-Space Land Act, Va. Code § 10.1-1704, it cannot be built upon unless a number of exacting requirements are met. The law provides:

“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 local 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 the land converted or diverted. The public body shall assure that the property substituted will be subject to the provisions of this chapter.” (Emphasis supplied.)

None of those statutory prerequisites has been remotely satisfied here. Nor could they be. To call this unrestrained new building “essential to the orderly development” of Alexandria, for instance, would be ludicrous. Unless all those statutory requirements are met, a proposal on its face is illegal and cannot be considered.

D. Demolition of a Historic Feature That Could Be Repaired

Some members of the BAR commented that the historic curve connecting the wings of 619 South Lee was in their modern opinion a “mistake,” “flawed,” “a historic blunder” that reflected the lack of skill of the early builders and therefore deserved to be demolished rather than preserved. That is not the standard of the City Code. Nor is it the opinion of architectural books that call attention to this particular feature of the house, one devoting an entire page to it. (Ex. 5.) Nor are members of the BAR authorized to superimpose their own architectural taste on the craftsmen of past centuries. Old Town is full of “mistakes,” including a few other examples of such “curves”—which are exactly among the unusual features that contribute to the Old and Historic District’s unique charm. The Code does not authorize city officials at their whim to redesign Alexandria’s historic houses to eliminate authentic features they disparage as “mistakes.” The Tower of Pisa might also be called a mistake; it has been reinforced, not torn down.

II. Historic Significance

The staff report presented to the Board unfortunately ignored almost totally the historic American whose association with this house makes it a landmark of our history. In fact, the report remarkably concedes that “Staff did not perform extensive research on the life and work of Justice Black.” Report, p. 12.

A. Justice Black’s Impact in History

The house and garden at 619 South Lee are preserved not only because of the classic Eighteenth-Century architecture they share with Alexandria’s other great houses.

Entirely separately, this house and garden are preserved for the independent reason that they were for four decades the residence of one of the greatest Justices ever to sit on the Supreme Court of the United States. In the same way, Mount Vernon is revered and preserved, not simply as an example of Eighteenth-Century plantation architecture, but also because George Washington lived there. The Gerald Ford house in Alexandria likewise is a Virginia Historic Landmark, not because of architectural importance, but because a President for many years made it his home.

That the Hugo Black house merited this rare distinction was settled by the Virginia Governor and officials in 1969. Their decision was an easy one. The house itself is so historically and architecturally important that an entire book-length study has been written about it. Ruth Lincoln Kaye, The History of 619 South Lee Street (1987). And Hugo L. Black appears as one of the ten greatest on nearly every list of the 114 Supreme Court Justices who have served, along with John Marshall and Oliver Wendell Holmes, Jr. He wrote landmark opinions protecting free speech, freedom of the press, and protection of racial minorities, and the right to vote. For example, Chambers v. Florida (1940) (due process excludes coerced confessions); Wesberry v. Sanders (1964) (Constitution requires congressional districts with equal population—adopting an earlier Black dissent); Gideon v. Wainwright (1963) (indigent defendant is entitled to counsel—adopting an earlier Black dissent); New York Times Co. v. Sullivan (1964) (concurring—Constitution bars punishing “seditious libel”). He joined the landmark desegregation decisions, Brown v. Board of Education (1954), and Cooper v. Aaron (1958), and wrote the opinion desegregating the Prince Edward County schools in Griffin v. School Board (1964).

Over the course of thirty-five terms he authored 783 opinions, of which 442 became law as opinions of the Court. He influenced many others. More than two dozen books about his life and writings have been published, and countless articles in law reviews. On February 27, 1986, on the occasion of the one hundredth anniversary of his birth, the United States issued a postage stamp in its “Great Americans” series bearing his picture. (Ex. 6.) On his passing the Washington Post wrote that

“Hugo Lafayette Black has long been recognized as one of the authentic giants in the history of the United States Supreme Court. He shaped the course of American constitutional law as powerfully, perhaps, as any other single jurist of the 20th century.” (Ex. 7.)

Alongside George Washington and George Mason, who lived nearby, he is probably Alexandria’s most distinguished longtime resident.

B. The Man and His Home

From 1963 to 1965 I served as one of two law clerks to Justice Black (who preferred to be addressed as “Judge”), and worked closely with him on a daily basis both in his chambers at the Supreme Court Building and at his home on Lee Street. I also was well acquainted with his wife, the late Elizabeth Seay Black, and his grown children, Hugo Jr., Sterling and Josephine, who regularly visited Alexandria. Along with many of the Judge’s

former clerks I attended reunions celebrating the Judge's birthdays, all taking place in the house and garden at 619 South Lee Street. In fact, it was the Judge's introducing me to Alexandria that led to my permanently settling in Old Town.

I also shared many meals at 619 South Lee, from formal dinners to brunches or sandwiches in the kitchen. Most of our work there was done in the Judge's upstairs study, but time also was spent in the large garden area beside the house. Included in the open space was an excellent tennis court, where the Judge played almost daily, with Elizabeth, clerks, family, friends and visitors. The Judge took tennis very seriously. Two courts shaped his life: one a great building in Washington, D.C., the other at 619 South Lee.

When I worked for the Judge, the Supreme Court when in session heard arguments four days per week with four hour-long oral arguments per day. During argument weeks, when the Court rose at 3:00 p.m., momentarily the Judge's distinctive walk and whistling would be heard coming down the marble corridor, beckoning his messenger Spencer Campbell to drive him home, often for a set or two of tennis with Elizabeth or a guest before dark. He would whisk from Capitol Hill down to the new Wilson Bridge, then a quick turn to Lee Street. In the weeks when the Court was not hearing arguments, the Judge often worked at home, often with his law clerks joining him there.

One can scarcely say enough about the importance of his tennis court in the Judge's life. It was as much a part of it as his house and garden and his books. He designed and built the court himself soon after moving in, in 1939, and rolled and cared for it along with Spencer. The two of them took care of his bushes and plantings, also. It was understood that he made sure that of the two law clerks he hired each year, at least one was also a tennis player. In fact, Elizabeth, who became his bride in 1957 when he was a widower, confided that along with the usual vows, she agreed to learn to play tennis—which she did, and came to enjoy the game nearly as much as he did. Usually they played many times each week.

The Judge loved the architecture, gardens and arrangement of Old Town. An Alexandria historian pointed out that

“One of the first to become enchanted with the history and ambience of Old Alexandria was Supreme Court Justice Hugo Black who bought and restored the old Snowden homestead at 619 South Lee Street.” (Ex. 8.)

The Judge deplored construction that did not conform to the neighborhood's Eighteenth- and early-Nineteenth-Century style or destroyed open spaces. He wrote that “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 houses is that nearly all of them, like most continental homes, have gardens” (Ex. 9.)

C. Published Comments

Justice Black cannot be here to speak on behalf of the house and gardens that he created and loved. But there are many published recollections (not presented to the BAR) that mention how much he cared about the landmark whose fate is in your hands. Enclosed for your consideration are several published references and recollections that leave no doubt as to why this property was designated a Virginia landmark, and how it formed a part of the Judge's life for nearly forty years:

Ex. 10—The Judge's niece Hazel Black Davis wrote of a "love affair" with the house on Lee Street, where the Judge's daughter Josephine was married.

Ex. 11—University of Virginia law professor Daniel J. Meador recalled that

"Flush with the sidewalks, in the style of the period, the house is set in a walled garden of over half an acre extending to its side and rear, affording an unusual amount of outdoor privacy in a tightly packed neighborhood. Within this house and garden, with a tennis court which he built, Justice Black created a largely self-sufficient world which changed relatively little for over thirty years,"

with "vigorous doses of tennis and gardening," "countless stimulating conversations," and "small, informal dinner parties."

Ex. 12—The memoir of the Judge's late son Hugo, Jr., remembered how his father personally designed and built the tennis court, and planted grapes from his native Alabama, and tended a variety of trees and shrubs. Far from wanting to add huge new buildings, the Judge once remarked, "Man, who needs any more than this?"

Ex. 13—The Judge's earliest biographer in 1949 pointed out that "The Blacks live in one of the oldest and handsomest houses in Alexandria," where he "plays tennis with everyone he can find, from his messenger to a recent vice-president of the United States."

Ex. 14—In 1970 the New York Times published a lengthy feature article on "Justice Black and the Venerable House That He Presides Over," interviewing Justice Black on what the house meant to him.

Ex. 15—When the United States postage stamp was issued in his honor, an article pointed out that "many of Black's dissents were transformed into the law of the land," and that his "series of key decisions broadened the impact of the Bill of Rights."

Ex. 16—The late Chief Justice Earl Warren wrote on Justice Black's death that "A Titan has passed."

Ex. 17—A very different Chief Justice, Warren E. Burger, agreed that his career "will rank with those of great justices."

Ex. 18—Justice William J. Brennan, Jr., recognized that “His place is secure in the pantheon of America’s great public men.”

Ex. 19—Prominent New York Times columnist Anthony Lewis wrote in 1986 that “No judge in modern American history has had so great an influence. In his 34 years on the bench the Supreme Court moved far toward his views on applying the Bill of Rights to the states, on enforcing equality in voting districts, on protecting freedom of speech and press.”

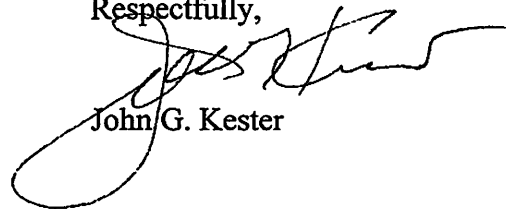
Ex. 20—Upon his death both Houses of Congress assembled for tributes to Justice Black from the leading Senators and Representatives of the day. House Doc. No. 92-236 (1972). The Supreme Court halted its work to hold a memorial session.

* * *

The margin by which the previous Board, acting on an erroneous direction, allowed this proposal was a single vote. Had the vote been 3-3, instead of 4-2, the application would have failed. One member did not participate, and of the four then-members who voted in favor, three no longer sit on the Board; the two who voted against the proposal remain as members. A majority of the current Board, four out of seven, have never considered these issues. This Council should not affirm a ruling of such vast future impact on Old Town that rests on so shaky a foundation.

This is likely the most important historic-preservation issue that will come before you during the term you sit on the City Council. Please reflect on it with attention to your obligations as trustees of the history preserved in the Old and Historic District.

Respectfully,



John G. Kester

Encls