



218 North Lee Street, Suite 310
Alexandria, Virginia 22314
(703) 549-5811

www.HistoricAlexandriaFoundation.org
HistoricAlexandriaFoundation@gmail.com

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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:

Pursuant to Va. Code § 10.1-2202(11), we are writing to you concerning the effectiveness of the historic easement program as it is been applied in the City of Alexandria, and to update our prior correspondence on the topic of the development plans for the Hugo Black House and property. This letter will therefore supplement our prior correspondence of dated October 1, 2018, and January 17, 2019.

A. Update on the Status of Local Approvals of Hugo Black Construction Project.

Since our last communication to you, on February 6, 2019, the City of Alexandria's Old and Historic District Board of Architectural review voted 5-1 to approve the demolition of the "curve" feature of the Black House. That decision was taken against the BAR Staff's advice.

At the same hearing, a divided BAR voted to approve the applicant's construction plans (which we understand to have been slightly modified from those previously reviewed by VDHR) on a 4-2 vote. These approvals were given over the objections of the Historic Alexandria Resources Commission ("HARC"), Historic Alexandria Foundation ("HAF), the Alexandria Association, the Old Town Civic Association, the Northern Virginia Conservation Council, and Preservation Virginia.

On February 19, 2019, HAF filed an appeal of the BAR's decision to the City Council. The appeal was joined by 126 neighbors of the property -- more than five times the number of objecting property owners as were necessary to prosecute the appeal. The hearing was scheduled for April 13, 2019 but has since been deferred to May 17, 2019.

B. New Information Concerning the Proposed Demolition of the “Curve” Section of the House Joining the Ell to the Main Block.

In our last letter we shared with you the information proving that the “curve” feature of the Hugo Black House was indeed an historic addition to the house, and the conclusion of the local BAR staff that the addition was placed on the house by the mid-19th Century. As they had in their written submissions to VDHR, the applicants had originally argued that the feature was not historic based on their incorrect reading of the HABS photographs. The recognition that the feature was indeed historic prompted the BAR Staff to recommend denying permission to demolish the curve.

A majority of the BAR members, however, decided nevertheless to allow the demolition permit on the grounds that it would facilitate the maintenance of the main block of the house. We regard this as an unsupportable decision that is contrary to the VDHR determination made in 2014 and contrary to VDHR policy. 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.”). While we and the rest of the local preservation community have appealed this decision to City Council, we continue to urge VDHR to exercise its own authority to prevent the irrevocable destruction of this historic feature of a landmark property.

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

As we informed you in our letter of January 17, 2019, during the local planning process the owner recognized that the 26 x 26 foot structure originally proposed as a multi-car garage is not a permitted use under the Alexandria Zoning Ordinance. Presumably to maintain whatever arguments they have made that the structure is permissible under the easement as a “garage,”¹ the owner then proceeded to describe the structure to the local BAR as a “WORKSHOP/BIKE GARAGE.” After HAF

¹ Although the easement does allow for the maintenance of certain outbuildings and structures (including a garage and tennis court), Deed Book 757 Page 868, 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). HAF maintains that it is a misreading and misapplication of the easement to construe it as authorizing the construction of additional garages on the protected open space.

demonstrated that a “garage” means a place in which motor vehicles are stored and cared for, at the February 6, 2019 BAR Hearing the owner finally abandoned the effort to justify the building as a “garage.” The applicant renamed the structure yet again, calling it a “Bike Workshop,” Hearing Video (2/6/2019) at 1:38, 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.”

Thus, this unnecessary structure — which cannot fulfill the originally conceived function as a “garage” — will disrupt the landmark open space. Approval of such unnecessary additions, based on no showing of need, this is contrary to the most basic of preservation principles. *E.g.*, 36 CFR 68.3(b)(2); 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)(“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.”)(emphasis added).

Since the owner has now publicly acknowledged that the structure is not a “garage”, there is no reasonable argument why VDHR should allow the construction of this proposed building on landmark open space.

D. Additional Information Regarding the Historical Importance of the Resource Under VDHR’s Protection.

The process of appealing the BAR decision to the Alexandria City Council has generated substantial and important new information that VDHR should take into account in its determinations of the proper stewardship of the easement on the Hugo Black House. We therefore submit for your review and consideration the following:

- 1) Letter from the Historic Alexandria Resources Commission (“HARC”) dated March 31, 2019.
- 2) Letter from A.E. “Dick” Howard (White Burkett Miller Professor of Law and Public Affairs at the University of Virginia Law School) dated April 1, 2019.
- 3) Letter from W. Brown Morton III (Professor Emeritus, Department of Historic Preservation, University of Mary Washington, Virginia), dated April 3, 2019.
- 4) Letter from Roger K. Newman (Hugo Black Biographer) dated April 5, 2019.
- 5) Email from Harry Butowsky to Alexandria City Council (NHS/NHL Historian Retired) dated April 5, 2019.

- 6) Letter from Josephine Black Persaresi (last surviving child of Hugo Black and signatory of easement given to VDHR) dated April 6, 2019.
- 7) Letter from John E. Dumsick, P.E. (VA)(structural engineer) dated April 8, 2019.

In addition, the lengthy HAF letter to the City Council dated April 2, 2019, is available on the HAF website here:

http://www.historicalexandriafoundation.org/downloads/HAF_LettertoCityCouncil.pdf.

We urge you to consider these materials in any further consideration of the Hugo Black House easement.

E. Open Space Land Act Easements Are Not Private Matters Between the Landowner and the VDHR.

We know that some have argued that the enforcement of Open Space Land Act easements such as the one in place on the Hugo Black House property is a private matter between the Department and the current landowner. But there is no basis for that position, and it is contrary to the formal opinion of the Attorney General provided to the Honorable Thomas D. Rust, 2012 Op. Va. Att’y. Gen. 31, Op. No. 11-140 (Aug. 31, 2012)(attached).

“As the statutory framework of OSLA and VCEA demonstrate, conservation easements serve a much more public function than conventional easements.” *Id.* at 32. “[C]onservation easements are held and administered by the easement holders not for themselves, but on behalf of the public and in furtherance of state policy.” *Id.* at 33. “[T]he holder of a conservation easement is ‘not the sole party receiving the benefit of the easement.’” *Id.* (quoting *Piedmont Env’tl Council v Malawer*, 80 Va. Cir. 116, 118 (Jan. 28, 2010)). And, “holders of easements authorized under OSLA **are prohibited from releasing the easement unless certain statutory criteria are met** and upon the substitution of like-kind land for the released easement-encumbered land.” 2012 Op. Va. Att’y. Gen. at 32 (emphasis added).

Moreover, the Department is duty bound to seek advice from groups such as HAF that conduct historic preservation programs. Va. Code § 10.1-2202(11). We therefore continue to urge the VDHR to use its easement authority to deny the request of the owner of the Hugo Black House and property to develop the protected urban open space. We believe that is required both the by the terms of the easement, and by Va. Code § 10.1-1704, which is incorporated into the easement.

F. Request for Updated Information on Actions Taken by VDHR

In the owner's applications to the BAR they represented that VDHR had approved the plans that were submitted to the City for approval. We do not know whether they have submitted the BAR versions of the plans to VDHR for approval, or what the status of VDHR's review of those plans has been. For those reasons, and to better enable us to prepare for the upcoming hearing before the Alexandria City Council, we request that you provide us with whatever correspondence your office has had with the owner or its representatives since the December 3, 2018 letter from Ms. Melinat we were provided by the Alexandria BAR staff. We believe that would be consistent with the duties set forth under Va. Code § 10.1-2202(11).

Respectfully submitted,

Historic Alexandria Foundation

By: 

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

cc. Catherine A. Shankles
Duncan Blair

Enclosures: As Stated