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**Re: Request for Review of Hugo Black House Easement Determination
and Administration of Open Space Land Act Easement Program at
September 19, 2019 Board Meeting.**

Dear Members of the Board of Historic Resources:

We write to follow-up on the message delivered to you by our Board Member, John Thorpe Richards, Jr., at your June 20, 2019 meeting at Sweet Briar College concerning the Open Space Land Act Easement on the Hugo Black House in Alexandria and the urgent need for your review of the administration of the easement program as it pertains to this property and others in the Commonwealth.

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."

In furtherance of its charitable mission, HAF is both a grantor as well as a co-grantee of several easements that have been given under the Open Space Land Act to your predecessors — the Virginia Historic Landmarks Commission (VHLC), and the Virginia Historic Landmarks Board (VHLB) as well as to the Virginia Department of Historic Resources (VDHR). Those include easements on the Alexandria Academy, Deed Book 1614 Page 67, accepted August 27, 1997), 210 Duke Street (the Craik House, Deed Book 1328 Page 1248, accepted May 17, 1991); 301 South St. Asaph Street (the Lafayette House, accepted Sept. 28, 1987); 711 Prince Street (Fowle-Pickens House, accepted June 11, 1987), and 207 Prince Street (the William Fairfax House, Deed Book 976, Page 664, accepted December 4, 1979).

HAF has long been an ardent supporter of the preservation easement program. We have provided legal assistance to property owners considering granting Open Space Land Act Easements to VDHR and other public bodies. For years we have actively promoted the easement program in our publications and our website. Our members have been generous donors of Open Space Land Act easements both in the City of Alexandria and elsewhere in the Commonwealth. We are therefore vitally concerned with the proper administration of the easement program, the precedents for enforcement of Open Space Land Act easements, and the continued repute of the program in furthering the goals of historic preservation.

At your June 20th meeting, we shared with you three letters, dated October 1, 2018, January 17, 2019, and April 15, 2019, we had sent to the VDHR staff concerning the administration of the Open Space Land Act Easement on the Hugo Black House in Alexandria. We also shared with you the letter from Professor A.E. "Dick" Howard documenting the historical importance of the Hugo Black property, the letter from W. Brown Morton III (the co-author of the *Secretary of the Interior's Standards*) documenting the VDHR Staff's erroneous application of those *Standards*, and the letter from Josephine Black Pesaresi (one of the donors of the easement), complaining about the Department's improvident approvals of the construction project at the property. Similar correspondence was sent to VDHR Staff by the Historic Alexandria Resources Commission ("HARC"), the Alexandria Association, and the Old Town Civic Association.

We never received any response or written explanation from VDHR addressing the serious concerns raised in this correspondence. And we have never seen any documentation of the Staff's Analysis of how the Hugo Black House development plans

comport with the *Secretary of the Interior's Standards*. Based on its response to HARC, the VDHR Staff apparently regards the easement as "an agreement solely between the property owners and the Board," and they refuse to "discuss the easement provisions, interpretation of the easement, or any proposal or review determination with outside parties." Letter from VDHR to HARC (11/30/2018). That position is contrary to the express provisions of Va. Code § 10.1-2202(11)(duty "[t]o provide technical advice and assistance to individuals, groups and governments conducting historic preservation programs and regularly to seek advice from the same on the effectiveness of Department programs"); and the formal published opinion of the Attorney General. See 2012 Op. Va. Att'y Gen. 31, 33 ("conservation easements are held and administered by the easement holders not for themselves, but on behalf of the public and in furtherance of state policy" "the holder of a conservation easement is 'not the sole party receiving the benefit of the easement.'").

No explanation has ever been provided for the unaccountable reversal of position by the VDHR staff to allow the demolition of the unique and noted "curve" feature of the property that was denied in 2014 only to be allowed in 2017. No explanation has ever been provided as to why the VDHR Staff determined that the extensive additions proposed for this landmark property were deemed appropriate. And no explanation has ever been offered for the failure of the VDHR to include this certified Landmark property on the Virginia Landmarks Register.

At the June 20, 2019 Board Meeting, we at HAF were shocked to learn about a similar failure in the administration of the easement program at the Weblin House located at 5588 Moore's Pond Road in Virginia Beach. That case, where the VDHR Staff has apparently provided approval of a 16 unit multi-family development on a Landmark property protected by an Open Space Land Act easement shows, to our dismay, that the failures evidenced in the Hugo Black House easement enforcement are not an isolated event. Instead there appears to be a systemic problem with the enforcement of easements that threatens the continued credibility of the entire program.

We have seen that directly from our own experience. There have already been numerous public warnings by important supporters of the easement program that the high-profile approvals given in the Hugo Black House matter are causing donors and citizens to reevaluate the value and integrity of the program. See R. L. Montague III, *Uphold the Black House Easement*, Alexandria Times (Mar. 28, 2019)("Allowing this proposal to go forward would jeopardize the future of the easement program in Alexandria and the rest of Virginia."); D. Smith & E. McCall, *Dangerous Precedent?* Alexandria Gazette (Apr. 8, 2019). Many are openly questioning why the taxpayers

should continue to provide reduced tax assessments for easement properties if the perpetual Open Space restrictions are not going to be enforced by the Commonwealth.

At the June 20, 2019 Board Meeting, we asked you to place this matter on the agenda for your next meeting to review and reconsider the staff approvals of the Hugo Black House project. We also asked that you adopt a procedure to provide for prior notice to local preservation groups and an opportunity to be heard before such easement approvals are given. (We note that these requests are unfortunately not reflected in the draft minutes published on the Board's website.)

Your September 19, 2019 hearing is the most appropriate time to conduct the public review we have requested. The Staff's approval of the Hugo Black House project, originally given on October 12, 2017 and renewed on October 3, 2018 is — in accordance with the Board's published policies — only valid for a term of one year, and **expires by its own terms on October 3, 2019**. There is therefore no reason for that approval to be continued without a thoroughgoing review. At a minimum, that review should determine:

- 1) Why the Hugo Black House was not included on the Virginia Landmarks Register after it was certified as a Landmark in 1969 by the Virginia Historic Landmarks Commission.
- 2) Why the Staff changed its 2014 position on the demolition of the unique and historic "curve" feature of the rear ell of the property and whether the applicant's misrepresentations about the feature being "non-historic" influenced that decision.
- 3) Whether, in light of the subsequent information demonstrating the historic character of the curve and its documentation as a defining feature of the property, the demolition of the feature is consistent with the *Secretary of the Interior's Standards* as required by VDHR Easement Program Policy #5.
- 4) Whether the addition of a 26 x 26 foot bicycle workshop on the Landmark Open Space is consistent with the restrictions of the easement or should properly be approved by the Board under the *Secretary of the Interior's Standards*.
- 5) Whether either or both of the two other "pavilion" additions on the Landmark Open Space are consistent with the restrictions of the easement or should

properly be approved by the Board under the *Secretary of the Interior's Standards*.

- 6) Whether the proposed additions comply with the prohibition on development on Open Space Land set forth in Va. Code § 10.1-1704 and whether any of the provisions of Section 10.1-1704 have been met.

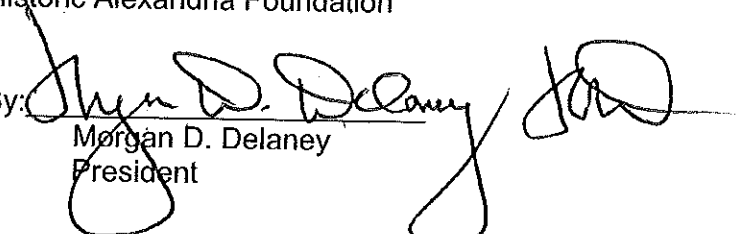
We submit that when you review the plans that were conceptually approved by the VDHR staff without any outside review or commentary, you will agree with us that the *Secretary of the Interior's Standards* have not been properly applied, and that a treasured Virginia historic asset is being destroyed unnecessarily to the great discredit of the easement program.

In addition, in order to avoid a repetition of the types of ill-advised approvals that have been rendered in the cases of the Hugo Black House and the Weblin House, we believe the Board should exercise its supervisory authority (1) to formally reject the staff's position that easements are only private matters between the Board and the landowner, and (2) to provide for affirmative outreach to local preservation organizations before granting the types of approvals extended in those cases.

Respectfully submitted,

Historic Alexandria Foundation

By:


Morgan D. Delaney
President