



## Historic Alexandria Foundation

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December 12, 2018

### By Email

Mr. Mark B. Jinks  
City Manager  
Alexandria, VA 22314

Re: 619 S. Lee Street (Vowell-Snowden-Black House)  
Enforcement of Open Space and Conservation Easement

Dear Mr. Jinks:

Historic Alexandria Foundation ("HAF") was formed "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 and the dwindling amount of open space remaining in Old Town.

We have been particularly alarmed to learn of the very extensive development plans to the historic property located at 619 S. Lee Street in Alexandria (the Vowell-Snowden-Black House) which is one of the most significant historic resources in private ownership in the City and the subject of one of the earliest open space easements in our City. The treatment of the easement and its proper enforcement is all the more important because it was created by the Honorable Hugo L. Black when he was a sitting Justice on the United States Supreme Court. He established the easement in 1969, three years after the state initiated the easement program.

We are writing to request that the City of Alexandria exercise its authority under the Virginia Conservation Easement Act (VCEA), VA. CODE ANN. Sec. 10.1-1009 – 10.1-1016, and the Virginia Open Space Land Act (OSLA), VA. CODE ANN. Sec. 10.1-1700-10.1-1705, to seek enforcement of the open space and conservation easement applicable to the referenced property. Preservation of the historic character of the house, and in particular the open space that is a character-defining feature of the property, is endangered by the development proposal currently under consideration by

the Alexandria Old and Historic Board of Architectural Review and the Virginia Department of Historic Resources (VDHR), which holds the open space and conservation easements.

According to the terms of the easement any proposed alterations, additions, or changes to the property must be determined to be in keeping with its historic character and approved by the VDHR (see attached Deed of Easement dated 12/26/69 and Deed of Correction dated 4/23/73). Without any consultation or notice to the public, on October 12, 2017 the Virginia Department of Historic Resources ("VDHR") gave its conceptual approval of a proposed rehabilitation plan for the property. HAF learned of this action earlier this year and after reviewing the information provided to us by VDHR we concluded that its approval of the plans was not consistent with the terms of the easement or applicable Virginia law. We submitted a detailed explanation of our position to VDHR on October 1, 2018 (see attached). Several other Alexandria organizations concerned with historic preservation have also written to VDHR objecting to their conclusion that the proposed additions and alterations to the property are allowable under the easement (see attached).

VDHR has not directly responded to our letter. Rather, it has indicated to us that it is unable to consider our objections or engage in any discussions with HAF about our concerns as we are not a party to the easement. On October 3, 2018, VDHR renewed its conceptual approval of the proposal. HAF believes that the City of Alexandria has both the right and the duty to enforce the Open Space Land and Conservation easement placed on the property by Justice Black. The City's authority to do so is specifically set forth as a matter of positive statutory law. Va. Code § 10.1-1013 ("An action affecting a conservation easement may be brought by ... [t]he local government in which the real property is located."). Nearly five decades of real estate tax relief have been provided by the citizens of Alexandria and the Commonwealth based on the promise that the open space would not be built upon absent a need "essential to the orderly development and growth" of the City and the provision of replacement open space in any event. Va. Code § 10.1-1704.

**Accordingly, we are requesting the City to intervene with the VDHR to seek enforcement of the terms of this easement and compliance with the requirements of the VCEA and OSLA.** Such action is necessary to ensure that the public interest in preservation of historic resources and open space as reflected in the VCEA and OSLA is adequately protected and the substantial benefits in the form of tax relief granted to owners of property subject to conservation and open space easements are justified.

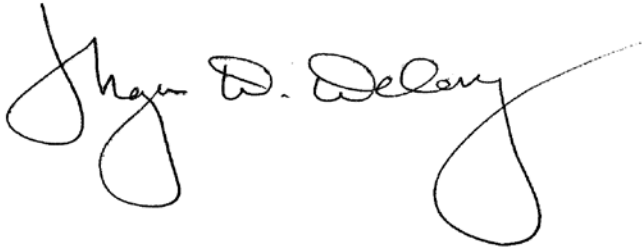
The property owners' request for approval of partial demolition/capsulation and a certificate of appropriateness for additions and alterations is scheduled to be considered by the Old and Historic BAR on December 19, 2018. According to the current practices of the BAR, we anticipate that the BAR may not consider the terms or requirements of the easement as part of its review, and limit its consideration to the powers and conditions set forth in the Zoning Ordinance. (See attached correspondence between HAF and the Office of the City Attorney.) HAF will, of course, present our views to the

Mr. Mark B. Jinks  
December 12, 2018  
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BAR on whether the proposal satisfies the requirements of Alexandria's preservation law. The objections we have raised concerning the terms of the easement and the conditions for approval of the project by VDHR should be considered separate and apart from the BAR review and brought directly to the VDHR or, if necessary, through appropriate enforcement action under the applicable state laws.

Thank you for your consideration of our request. We would be happy to discuss our concerns further with you or your staff at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Morgan D. Delaney". The signature is fluid and cursive, with a large loop at the end.

Morgan D. Delaney  
Chair  
Historic Alexandria Foundation

3919

✓✓

BOOK 705 PAGE 491

THIS DEED OF EASEMENT, MADE this 26<sup>th</sup> day of December, 1969, between Hugo L. Black and his wife, Elizabeth S. Black, herein called Grantors, and VIRGINIA HISTORIC LANDMARKS COMMISSION, an agency of the Commonwealth of Virginia, herein called the Grantee,

W I T N E S S E T H:

WHEREAS, Chapter 11 of Title 10 of the Code of Virginia entitled "Virginia Historic Landmarks Commission" (1966 c. 632) Sections 10-135 to 10-145 was enacted to preserve historical landmarks in the Commonwealth of Virginia, and created the Virginia Historic Landmarks Commission to receive properties and interests in properties for the purpose, among other things, of the preservation of such landmarks and their settings; and

WHEREAS, Chapter 13 of Title 10 of the Code of Virginia entitled "Open Space Land Act" (1966 c. 461) Sections 10-151 to 10-158 was enacted to preserve permanent open-space lands; and

WHEREAS, the Grantors are the owners of a tract of land hereinafter described, in the historic section of the City of Alexandria, Virginia, on which there is situated a house constructed in the late Eighteenth Century and of architectural significance and historic value;

NOW, THEREFORE, in recognition of the foregoing and in consideration of the sum of Ten Dollars (\$10) and other valuable considerations, the receipt of which are hereby acknowledged, the Grantors do hereby grant and convey to the Grantee an open-space easement in gross over, and right in perpetuity to restrict the use of, the following described real estate located in the City of Alexandria, Virginia, (herein called the property):

Horton  
Williams  
Gay  
Powell  
J. L. Loo

1819 H82

11 W

Wash &

1-19-76

See DB73

pg 86

7-16-76

All of that parcel of ground, with its improvements and appurtenances, located in the City of Alexandria, Virginia, upon which is erected No. 619 South Lee Street, and other improvements, being more particularly bounded and described as follows, to-wit:-

BEGINNING at a point on the west side of Lee Street at the middle of the square between Gibbon and Franklin Streets, said point being 176 feet 7 inches north of Franklin Street; and running thence south on Lee Street 176 feet 7 inches to the intersection of Lee and Franklin Streets; thence west along Franklin Street 124 feet 2 inches; thence north parallel to Lee Street 76 feet 7 inches; thence west parallel to Franklin Street to a point on the east side of Fairfax Street; thence north to Fairfax Street 100 feet, more or less, to a point equidistant from Gibbon and Franklin Streets; thence east in a direct line 246 feet 10 inches to the point of beginning. Being the same properties which were acquired by Josephine F. Black by deeds duly of record among the Alexandria City land records, from B. B. Cain, Jr., and wife, and from Julia A. Devine, widow, et al., and by Hugo L. Black under the will of Josephine F. Black duly probated in the Circuit Court of the City of Alexandria, and in which Hugo L. Black has by deed of record duly conveyed a one-fifth undivided interest to Elizabeth S. Black.

The restrictions hereby imposed on the use of the property are in accord with the Commonwealth of Virginia's policy, as set forth in Acts, 1966, c.632, to preserve historical properties in the Commonwealth of Virginia, and in Acts., 1966, c.461, §2, to preserve scenic areas, to conserve lands and other natural resources and to preserve permanent open-space land, and the

acts which the Grantors, their heirs, successors and assigns, so covenant to do and not to do upon the property, and the restrictions which the Grantee is hereby entitled to enforce shall be as follows:

1. The manor house will be maintained and preserved in its present state as nearly as practicable, though structural changes, alterations, additions or improvements as would not in the opinion of Grantee fundamentally alter the historic character of the house may be made thereto by the owner, provided that the prior written approval of Grantee to such change, alteration, addition or improvement shall have been obtained.

2. No building or structure shall be built or maintained on the property other than (i) the manor house, (ii) the old carriage house and adjoining servants' quarters and (iii) a garage; provided, however, that after the date of this Deed of Easement, no building or structure described in (ii) shall be altered, restored, renovated or extended and no structure described in (iii) constructed except in a way that would in opinion of Grantee be in keeping with the historic character of the house, and provided that the prior written approval of Grantee to such action shall have been obtained.

3. No industrial or commercial activities shall be carried on on the property except such as can be carried on from the buildings or structures described in 2 above without alteration of their external appearance.

4. The property shall not be subdivided.

5. No sign, billboards or outdoor advertising structure shall be displayed on the property other than one sign not exceeding two feet by three feet for each of the following purposes: (i) to state the name of the property and the name and address of the occupant, (ii) to advertise an activity permitted

BOOK 705 PAGE 494

under paragraph 3 above, and (iii) to advertise the property for sale or rental; provided, however, that this paragraph 5 shall not limit the Grantee's right, hereinafter described, to display on the property, at its discretion, a small marker or sign evidencing its ownership of the easement granted herein.

6. No dump of ashes, sawdust, bark, trash, rubbish or any other unsightly or offensive material shall be permitted on the property visible from the streets.

The Grantee and its representatives may enter the property (i) from time to time for the purpose only of inspection and enforcement of the terms of the easement granted herein, and (ii) in its discretion to erect a single marker or sign, not exceeding two feet by two feet, which states the name of the Grantee and advises that the Grantee owns the easement granted herein.

Although this open-space easement in gross will benefit the public in the ways recited above, nothing herein shall be construed to convey a right to the public of access or use of the property, and the Grantors, their heirs, successors and assigns shall retain exclusive right to such access and use, subject only to the provisions herein recited.

Acceptance by the Virginia Historic Landmarks Commission of this conveyance is authorized by Sections 10-138 and 10-142 of the Code of Virginia, and by such acceptance below the Commission designates the property described above as a certified landmark.

WITNESS the following signatures and seals:

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Hugo L. Black (SEAL)  
Hugo L. Black

Elizabeth S. Black (SEAL)  
Elizabeth S. Black

Accepted:

VIRGINIA HISTORIC LANDMARKS COMMISSION

By [Signature]  
Executive Director 12/30/69  
[SEAL]

STATE OF FLORIDA

          COUNTY           OF           DADE          

To-wit:

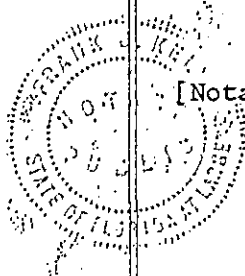
I, Frank J. Kelly, a Notary Public in and for the jurisdiction aforesaid, hereby certify that Hugo L. Black and Elizabeth S. Black, whose names are signed to the foregoing easement bearing date this 26th day of December, 1969, have acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand this 26th day of December, 1969.

My commission expires September 21, 1972.

[Signature]  
Notary Public

Notary Public, State of Florida at Large  
My Commission Expires Sept. 21, 1972  
Bonded by American Fire & Casualty Co.



VIRGINIA:  
[Notarial Seal] Clerk's Office of the Corporation Court of the City of Alexandria, this instrument was received and the Taxes imposed by Sec. 52-54, (a) and (b), of the Code have been paid and with the annexed certificate, admitted to record on Dec 31, 1969 at 2:07 o'clock P. M.  
Teste:

Alvin W. Smith



2/13

THIS DEED OF CORRECTION, made this 23rd day of April, 1973, between ELIZABETH S. BLACK and HUGO L. BLACK, JR., as Co-Executors under the Last Will and Testament of Hugo L. Black, deceased, and his heirs and devisees, Elizabeth S. Black, Widow, and HUGO L. BLACK, JR., BESSIE GRAHAM HOBSON BLACK, STERLING FOSTER BLACK, NANCY LEE BLACK, MARTHA JOSEPHINE BLACK PESARESI and MARIO PESARESI, herein called Grantors; and VIRGINIA HISTORIC LANDMARKS COMMISSION, an agency of the Commonwealth of Virginia, herein called the Grantee.

W I T N E S S E T H :

WHEREAS, Hugo L. Black and Elizabeth S. Black, granted to Grantee an easement in gross on that parcel of ground in the City of Alexandria upon which is erected No. 619 South Lee Street for the preservation of the historic landmark and its environs through Deed dated December 26, 1969, recorded on December 31, 1969, in Deed Book 705, page 491, in the Clerk's Office of the Corporation Court of the City of Alexandria (the "Deed of Easement"); and

WHEREAS, through oversight the Deed of Easement did not include provision therein for continued maintenance of the existing tennis court and did not permit the erection and maintenance of certain other facilities; and

WHEREAS, Hugo L. Black died on September 25, 1971, leaving Elizabeth S. Black, Widow, and Hugo L. Black, Jr., Sterling Foster Black and Martha Josephine Black Pesaresi as his heirs and devisees of the above-described real property under a will duly probated and recorded among the land records of the Clerk's Office of the Corporation Court of the City of Alexandria in Will Book 91 at page 736; and

BOOTHE, PRICHARD & DUDLEY  
4085 UNIVERSITY DRIVE  
FAIRFAX, VIRGINIA 22030

True

WHEREAS, Bessie Graham Hobson Black, Nancy Lee Black and Mario Pesaresi are the spouses respectively of Hugo L. Black, Jr., Sterling Foster Black and Martha Josephone Black Pesaresi; and

WHEREAS, Hugo L. Black, Jr. and Elizabeth S. Black have qualified in the Corporation Court of the City of Alexandria as Co-Executors of the Estate of Hugo L. Black, deceased; and

WHEREAS, Grantors and Grantee wish to correct the Deed of Easement to make such provision and to reflect the original intent with regard thereto;

NOW, THEREFORE, in recognition of the foregoing and in consideration of the premises and the sum of \$1.00, receipt of which is hereby acknowledged, the parties agree that the Deed of Easement is hereby corrected by deleting paragraph Number 2 in its entirety and substituting the following paragraph Number 2 therefore:

2. 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 including without limitation a swimming pool and garage; provided, however, that after the date of this Deed of Easement, no building or structure described herein shall be altered, restored, renovated or extended and no structure described herein constructed except at such place and in such a way that would in opinion of Grantee be in keeping with the historic character of the house, and provided that the prior written approval of Grantee to such action shall have been obtained.

With the exception of the foregoing correction, all of the other terms and conditions of the Deed of Easement shall remain in full force and effect and are hereby ratified and confirmed.

Bessie Graham Hobson Black, Nancy Lee Black and Mario Pesaresi join in this deed for the purpose only of releasing their dower and curtesy interests respectively with respect to this Deed of Correction.

WITNESS the following signatures and seals:

Elizabeth S. Black (SEAL)  
Elizabeth S. Black, Co-Executor  
under the Last Will and Testament  
of Hugo L. Black, deceased

Hugo L. Black, Jr. (SEAL)  
Hugo L. Black, Jr., Co-Executor under  
the Last Will and Testament of Hugo L.  
Black, deceased

Elizabeth S. Black (SEAL)  
Elizabeth S. Black

Hugo L. Black, Jr. (SEAL)  
Hugo L. Black, Jr.

Bessie Graham Hobson Black (SEAL)  
Bessie Graham Hobson Black

Sterling Foster Black (SEAL)  
Sterling Foster Black

Nancy Lee Black (SEAL)  
Nancy Lee Black.

Martha Josephine Black Pesaresi (SEAL)  
Martha Josephine Black Pesaresi

Mario Pesaresi (SEAL)  
Mario Pesaresi

VIRGINIA HISTORIC LANDMARKS COMMISSION

By Junius R. Fishburne, Jr.  
Junius R. Fishburne, Jr.  
Executive Director

STATE OF Virginia  
City  
COUNTY OF Albemarle, to-wit:

The foregoing instrument was acknowledged before me  
this 30 day of April, 1973, by Elizabeth S. Black, as  
Co-Executor and individually.

Annaly G. Kendrick  
Notary Public

My commission expires: 2/2/77

STATE OF FLORIDA

County of Dade, to-wit:

The foregoing instrument was acknowledged before me  
this 23 day of April, 1973, by Hugo L. Black, Jr.,  
as Co-Executor and individually.

Donna L. Cline  
Notary Public

SEAL

My commission expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES FEB. 12, 1974  
BONDED FROM FRED W. DIESELHORST

STATE OF FLORIDA

County of Dade, to-wit:

The foregoing instrument was acknowledged before me  
this 23 day of April, 1973, by Bessie Graham-Hobson  
Black.

Donna L. Cline  
Notary Public

Seal

My commission expires:

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE  
MY COMMISSION EXPIRES FEB. 12, 1974  
BONDED FROM FRED W. DIESELHORST

STATE OF ~~ARIZONA~~ *New Mexico*County of *Valencia*, to-wit:

The foregoing instrument was acknowledged before me  
this 27<sup>th</sup> day of April, 1973, by Sterling Foster Black  
and Nancy Lee Black, his wife.

*Ray S. Arriaga*  
Notary Public

SEAL

My commission expires: 3.2.77

STATE OF NEW JERSEY

County of *Bergen*, to-wit:

The foregoing instrument was acknowledged before me  
this 10<sup>th</sup> day of May, 1973, by Martha Josephine  
Black Pesaresi and Mario Pesaresi, her husband.

*Ronald J. Jarama*  
Notary Public

SEAL

My commission expires:

NOTARY PUBLIC OF NEW JERSEY

My Commission Expires Nov. 12, 1973

STATE OF VIRGINIA

City of *Richmond*, to-wit:

The foregoing instrument was acknowledged before me  
this 25<sup>th</sup> day of May, 1973, by Junius R. Fishburne,  
Jr.

*William D. Deen*  
Notary Public

My commission expires: 2-3-76

SEAL

VIRGINIA

In the Clerk's office of the Corporation  
Court of the City of Alexandria, Va. this  
instrument was received and the taxes  
imposed by Sec. 50-54 1 of the Code in  
the amount of \$ have been paid  
and with the annexed certificate admitted  
to record on 5/27/73



## Historic Alexandria Foundation

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October 1, 2018

### By Email and Mail

[julie.langan@dhr.virginia.gov](mailto: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:

Historic Alexandria Foundation (“HAF”) was formed “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. We have been particularly alarmed to learn of the very extensive development plans to the historic property located at 619 S. Lee Street in Alexandria (the Vowell-Snowden-Black House) which is the subject of one of the earliest open space easements in our City. The treatment of the easement and its proper enforcement is all the more important because it was created by the Honorable Hugo L. Black when he was a sitting Justice on the United States Supreme Court. He established the easement in 1969, three years after the state initiated the easement program.

In October of 1965, while still 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. 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); Gay Montague Moore, *Seaport in Virginia, George Washington's Alexandria*, Chapter 22 (1949) ("The Vowell-Snowden House"). It was included in the Historic American Buildings Survey (HABS No. VA-709) in 1966 based on work that was funded, in part, by the HAF. The HABS 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). 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, which was also based on work partly funded by HAF.

We have recently become aware that by letter dated October 12, 2017 the Department of Historic Resources gave its conceptual approval of a proposed rehabilitation plan for the property which by its own terms is "valid for a year from" October 12, 2017. That sunset provision is expressly required by DHR Policy No. 5:

All written letters or correspondence approving proposed work on an easement property will include a sunset clause, or a timeframe within which the work must be completed. If the work is not done within the specified timeframe, the property owner must request re-approval of the work or seek new approvals if the project has changed in any way from the previously approved proposal.

DHR Policy No. 5. We were surprised that DHR would give conceptual approval for the proposed project which shares many of the defects that led DHR to properly reject a similar plan in 2014. See Letter to Michael Harrington from M. Melinat & E. Tune dated Sept. 14, 2014 ("Harrington Letter").

The proposed construction would destroy the character of the open space on this property. Viewed from the street, the property would appear to have two large new buildings on Lee Street, totally changing the view shed of the property. Like the rejected proposal from 2014, the current development plan proposes demolition of the "McVeigh Curve," alteration of the fabric and streetscape view of the historically significant carriage

house facing Franklin Street, and an overall increase of the gross floor area of the structures on the property from 8,156 to 14,371 square feet. That increase in size is indistinguishable from the “increase in total square footage ... [that] nearly doubles that of the historic resource,” and led to the denial of the application in August of 2014. Harrington Letter at 2. As succinctly stated in DHR’s denial of the similar proposal in 2014, “The cumulative effect of the proposed additions would significantly compromise the historic character and integrity of the property.” *Id.*

Because we believe this approval to have been improvidently given in the first instance, and contrary to the requirements of the Open Space Land Act, VA. Code §§ 10.1-1700, *et seq.*, as well as the Department’s published policies, we write to request that the approval be withdrawn, or at any rate not renewed. Fortunately, the proposed project has not yet begun and there is still time to withdraw the approval. Significantly, the City of Alexandria has not yet provided the local approvals that would be necessary to commence the construction that has been proposed.

**A. The Easement on 619 S. Lee Street is Governed by the Open Space Land Act Which Precludes the Approval of the Proposed Construction Project.**

We assume that the Department’s approval process overlooked the fact that the easement in question in this case was put in place under the Open Space Land Act, because the letter does not reflect any consideration of the requirements of that law. Perhaps during the review process the Department looked only to certain amendments to the original easement and overlooked that the easement created by Justice Black expressly invoked the Open Space Land Act.<sup>1</sup>

We draw your attention to the following language of the Deed of Easement dated December 26, 1969, which is recorded at Deed Book 705, Page 491 in the Land Records of Alexandria. “WHEREAS, Chapter 13 of Title 10 of the Code of Virginia entitled “Open Space Land Act” (1966 c. 461) Sections 10-151 to 10-158 was enacted to preserve permanent open-space lands.” See *also id.* (“the Grantors do hereby grant and convey to the Grantee an open space easement in gross over, and right in perpetuity to restrict the use of, the following described real estate”); *id.* at 492 (“The restrictions hereby imposed on the use of the property are in accord with the Commonwealth of Virginia’s

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<sup>1</sup> In April of 1973 a Deed of Correction to the easement was agreed to and recorded at Deed Book 757 Page 867, and that document does not repeat the express invocation of the Open Space Land Act. So it might be understandable that if one looked only at the language of the Deed of Correction the application of the Act could be overlooked. But the Deed of Correction specifically states that “With the exception of the forgoing correction, all of the other terms and conditions of the Deed of Easement shall remain in full force and effect and are hereby ratified and confirmed.” Deed Book 705 Page 868.



policy, as set forth in ... Acts., 1966, c. 461, § 2 [Open Space Land Act], to preserve scenic areas, to conserve lands and other natural resources and to preserve permanent open-space land”).

Because the easement on 619 S. Lee Street is an on open space easement governed by the Act, it is not sufficient for the Department to grant waivers of the easement based on its interpretation of the easement language and the *Standards for Rehabilitation* as described in the October 12<sup>th</sup> letter. The open space easement is also governed by VA. Code Ann. § 10.1-1704, which provides that:

***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 Ann. § 10.1-1704 (emphasis added).

It is clear from the October 12, 2017 letter of approval that the required analysis was not performed, and the proposed additional construction on the 619 S. Lee Street property could not possibly satisfy the requirement of being “***essential to the orderly development and growth of the locality.***” *Id.* To the contrary, the construction project runs directly contrary to the avowed legislative purpose “to preserve ... historic and scenic areas.” 1966 Va. Acts. Ch. 461, Section 2. For this reason alone we urge the Department to withdraw its approval as having been extended contrary to the positive commands of the Open Space Land Act which the Department of Historic Resources is charged with administering.

**B. The Proposed Project Is Contrary to the Express Provisions of the Easement.**

The Department's October 12, 2017 letter expresses the opinion that "the proposed rehabilitative scope of work ... appears consistent with the easement provisions...." We do not believe this assessment is correct, and respectfully draw your attention to the following provisions of the Deed of Easement.

The restrictions hereby imposed on the use of the property are in accord with the Commonwealth of Virginia's policy, as set forth in Acts, 1966, c. 632, to preserve historical properties in the Commonwealth of Virginia, and in Acts., 1966, c. 461, § 2, to preserve scenic areas, to conserve lands and other natural resources and to preserve permanent open-space land, and the acts with the Grantors, their heirs, successors and assigns, so covenant to do and not to do upon the property, and the restrictions which the Grantee is hereby entitled to enforce shall be as follows:

1. ***The manor house will be maintained and preserved in its present state as nearly as practicable***, though structural changes, alternations, additions or improvements ***as would not*** in the opinion of the Grantee ***fundamentally alter the historic character of the house*** may be made thereto by the owner, provided that the prior written approval of Grantee to such change, alteration, addition or improvement shall have been obtained. [Deed Book 705 Page 493](emphasis added)
2. ***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; provided; however,*** that after the date of this Deed of Easement, ***no building or structure described herein shall be altered, restored, renovated or extended and no structure described herein constructed*** except at such place and in such a way that would in opinion of Grantee ***be in keeping with the historic character of the house***, and provided that the prior written approval of Grantee to such action shall have been obtained. [Deed Book 757 Page 868](emphasis added)

3. No industrial or commercial activities shall be carried on on the property except such as can be carried on from the buildings or structures described in 2 above ***without alteration of their external appearance***.... [Deed Book 705 Page 493](emphasis added).

The Virginia Supreme Court has recently stressed that “construing a deed [of conservation easement] is to give effect to the parties’ intention as expressed by them in the words they have used.” *Wetlands Am. Trust, Inc. v. White Cloud Nine Ventures, L.P.*, 291 Va. 153, 160, 782 S.E.2d 131, 135 (2016). “[E]ffect should be given to every part of [a conservation easement], if possible, and no part thereof should be discarded as superfluous or meaningless.” *Id.* at 161, 782 S.E.2d at 136.

We do not believe that any fair reading of the Deeds creating the conservation and open space easements governing 619 S. Lee Street could be consistent with the expansive additions that are being planned for the property. They do not “maintain[] and preserve [the Manor House] in its [1969] present state as nearly as practicable.” Deed Book 705 Page 493. The dramatic expansion of the dwelling “fundamentally alter[s] the historic character of the house.” *Id.* The proposal will remove features of the property expressly set forth in the easement for protection (e.g., the tennis court). Instead of honoring the injunction that “no building or structure described herein shall be altered, restored, renovated or extended and no structure described herein constructed” the proposal relies upon the limited grant of discretion to allow approval of changes “in keeping with the historic character of the house” to justify a wholesale redevelopment of the property.

The purpose of the easement given to the Commonwealth by Justice Black can only be read in context of the grantor’s desire to ensure for posterity the home that he lived in and treasured throughout his lengthy public career as an Associate Justice of the Supreme Court. The manifest purpose of the easement was to ensure that future generations would be able to see the property as the Justice lived and worked in it — gardens, tennis court, outbuildings and all. While the 1973 amendment was agreed to in order 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, the additional authority granted was intentionally quite limited. It certainly did not authorize the removal of the tennis court that was expressly called out in the easement as something requiring “maintenance.”

In short, if the DHR is to “give effect to the parties’ intention as expressed by them in the words they have used.” *Wetlands*, 291 Va. at 160, 782 S.E.2d at 135, the objective should be to maintain the property as closely as possible in its condition in 1973. We

respectfully submit that the current plans for development of the site run contrary to the express intent of the easement.

**C. The Proposed Project Is Contrary to the Department's Published Standards for Implementing the Historic Preservation Easement Program.**

***1) DHR Policy No. 6 Should Properly be Applied to Such an Extensive Alteration in the Open Space of the Property Under Easement.***

Given the dramatic encroachment on and use of the existing open space proposed for the 619 S. Lee Street property, it is apparent the applicant's request for permission to engage in this extensive building project should properly be considered as tantamount to a full-blown amendment to the existing easement. As such it should be considered under the standards set forth in the Department's Historic Preservation Easement Program Policy No. 6, which requires that "An amendment should strengthen the protection afforded by the original easement to the resource(s) on the property.... An amendment should not compromise the historic, architectural, archaeological, open space, cultural, or other environmental resources which the easement was intended to protect." Far from complying with this policy, the proposed construction project will dramatically encroach upon the existing open space and significantly alter the historic landscape of the property. The proposed additions are purely matters of convenience and personal taste of the current owners seeking to dramatically increase the size of this historic urban residence.

***2) The Planned Construction Is Incompatible with DHR Policy No. 5***

Moreover, the details of the proposed construction do not comply with the relevant *Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes* (National Park Service, as amended) which the Easement Program Staff are charged to employ when reviewing applications for work on easement properties under the DHR Policy No. 5.

One example of the failure to comply with Policy No. 5 is found in the proposed treatment of one of the noted historical features of the house at 619 S. Lee Street. The planned construction proposes to modify the hyphen joining the ell to the main block of the house to remove the distinctive curved treatment. The Pollard Memorandum dated Sept. 21, 2017 at 2 suggests, incorrectly, that this is not part of the historic fabric of the property. *Id.* ("The curved treatment does not appear in the historic photos included in the HABS report on the property."). But this highly distinctive and historic treatment of connecting the original kitchen outbuilding to the main block of the house is a well-

documented and noted feature of this property. See, HABS No. VA-709 at 6 (“The hyphen where it was joined to the main house was rounded so as not to interfere with the windows upstairs and down.”); D. Davis, S. Dorsey & R. Hall, *Alexandria Houses 1750-1830* at 114 (1946)(“The ell, originally a separate dependency, has been rounded where it joins the main structure in order not to obstruct a window.”). Whether this was original to the 1798 structure is not the question. “Changes to a property that have acquired historic significance in their own right will be retained and preserved.” 36 C.F.R. § 68.3(b)(4). We submit it is not consistent the Department of Interior *Standards for Preservation* 3-6 to destroy this distinctive historical feature. 36 C.F.R. § 68.3(a)(3)-(6), (b)(4)(2017). When DHR reviewed a similar proposal to demolish this feature in 2014, the request was properly denied.

Similarly, the current construction plans seek to alter the historically significant Carriage House. HABS No. Va-711. A similar plan to alter the exterior facing Franklin Street with the addition of windows was properly rejected in 2014 as being inconsistent with *Standards* 1, 2, 3. Harrington Letter at 3 (“New window openings are not permitted on the façade (south elevation) of the structure.”); see 36 C.F.R. § 68.3(b)(1)-(3). The same ruling should be enforced under the present construction plan. The fact that the proposed new windows are smaller than proposed in prior plans does nothing to address the principles set forth in *Standards* 1, 2 & 3.

The new opening at the rear end of the existing one-story flounder wing, and the basement is similarly contrary to *Standards* 1-3, 9 and the prior treatment of similar requests. Harrington Letter at 2 (“no new openings are permitted on the historic house”).

Unfortunately, the proposed extensive additions to the 619 S. Lee Street property, which include the three separate and substantial additional structures does not comply with the policies set forth in 36 C.F.R. § 68.3(b)(9)(“requiring that “New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property.”). In this case, the extensive in-fill of the open space, which will dominate every portion and view-point of the property will dramatically change what has appropriately been noted as the properties defining characteristic: “***its extensive grounds and breathing space preserved to this day.***” HABS No. Va-709 (emphasis added).

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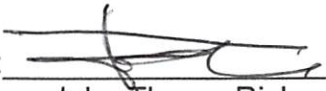
\*

Julie V. Langan  
October 1, 2018  
Page 9

For the forgoing reasons, we respectfully submit that upon reconsideration of the applicant's request for work on the Easement Property for 619 S. Lee Street in Alexandria, Virginia, that the Department will deny the application. The proposed project does not satisfy the requirements of the Open Space Act, the express requirements of the easement the Department is entrusted to enforce, or the Department's policies for consideration of such requests.

Respectfully submitted,

Historic Alexandria Foundation

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

cc. Megan Melinat ([Megan.Melinat@dhr.virginia.gov](mailto:Megan.Melinat@dhr.virginia.gov))  
Lori & Nigel Morris ([lmorris@311cameron.com](mailto:lmorris@311cameron.com))

**From:** "Paul, Karen (Secretary)" <[Karen\\_Paul@sec.senate.gov](mailto:Karen_Paul@sec.senate.gov)>  
**Subject:** DHR Easement File No. 100-0111  
**Date:** October 10, 2018 at 9:46:12 AM EDT  
**To:** "[julie.langan@dhr.virginia.gov](mailto:julie.langan@dhr.virginia.gov)" <[julie.langan@dhr.virginia.gov](mailto:julie.langan@dhr.virginia.gov)>



October 5, 2018

By email to: [julie.langan@dhr.virginia.gov](mailto: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,

This letter is written to support the Historic Alexandria Foundation's letter of objection to continued approval of construction plans for the Vowell-Snowden-Black property at 619 South Lee Street, Alexandria, VA 22314. As spelled out in the HAF carefully researched and reasoned presentation of all facts relevant to the request, it appears that current plans for development do indeed run contrary to the express intent of the original easement. As easements are an important vehicle for Alexandria to maintain its historic houses and streetscapes, it is vital that the Department of Historic Resources perform all due diligence when granting any divergence from the requirements of an easement. Further, as all of

Alexandria's open spaces seem to be either under development or protected by easements or Open Space Act, it is crucial that all decisions to bend or interpret these legal protective vehicles to other purposes not be undertaken lightly.

We therefore respectfully request that upon reconsideration of the applicant's request for work on the Easement Property for 619 S. Lee Street in Alexandria, that the application be denied. We agree with John Thorpe Richards's conclusion that "the proposed project does not satisfy the requirements of the Open Space Act, the express requirements of the easement the Department is entrusted to enforce, or the Department's policies for consideration of such requests.

Respectfully,

Karen D. Paul, President  
The Alexandria Association  
P.O. Box 320711  
Alexandria, VA 22320-4711  
[Alexandriaassociation.org](http://Alexandriaassociation.org)





Alexandria, Virginia

# *Historic Alexandria Resources Commission*

*220 North Washington Street  
Alexandria, Virginia 22314-2521  
(703) 746-4554*



October 31, 2018

By Email and U.S. Mail

[Julie.langan@dhr.virginia.gov](mailto: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:

The Historic Alexandria Resources Commission (HARC) was established to advise the City of Alexandria on the preservation of historic sites and buildings, artifacts, and records from loss or deterioration; and promotes citizen and tourist use of historic sites such as the Torpedo Factory Art Center. Commission members are appointed by City Council and must be citizens of Alexandria.

We have recently learned of the extensive development plans to the historic property located at 619 South Lee Street in Alexandria (the Vowell-Snowden-Black House). An open space easement was granted to the Commonwealth of Virginia on the property by prominent Supreme Court Justice Hugo Black and his wife Elizabeth on 26 December 1969 just three years after the Open Space Land Act was created in Virginia. The easement was granted in perpetuity and allowed for no additional building or structures on the site to be built.

The current proposal for 619 South Lee Street would remove modern additions to the house that cover approximately 422 square feet of land and replace them with new additions that cover approximately 3174 square feet of land, or 750 percent more land coverage than the removals. Further, four of the proposed structures (two buildings and two connectors) will extend to the south of the historic house along the entire street front of the property obscuring the open space from public view. This expansive proposal clearly violates the spirit of the original easement granted by Justice Black and his wife, and the requirements of the Virginia Code.

The open space easement is governed by VA. Code Ann. § 10.1-1704, which provides that:

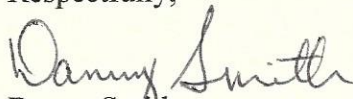
No open-space land, the title to or interest or right in which has been acquired under this chapter and which has been designated as open-space land under the authority of this chapter, shall be converted or diverted from open-space land use unless (i) the conversion or diversion is determined by the 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.

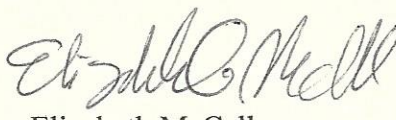
The further development of the property at 619 South Lee Street is not included in any official comprehensive plan for Alexandria, and no other real property of equal or greater market value in nearly equivalent location has been designated as permanent open space.

Open space within Alexandria's Old and Historic District is limited. Your approval of changes to the open space easement on the property at 619 South Lee Street will set a dangerous precedent that opens the way for future development on other properties held in easements throughout Virginia.

The Commission will advise the City of Alexandria to reject the proposed plans for expansion at 619 South Lee Street, and we respectfully request that you reconsider the decision you made to approve the preliminary plans for development at 619 South Lee Street and reject the final proposal and any future proposals for development of this property that are in clear violation of the easement and Open Space Land Act.

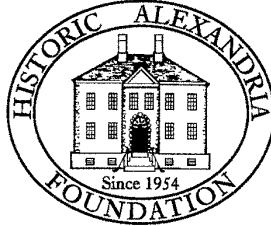
Respectfully,

  
Danny Smith

  
Elizabeth McCall

Co-Chairs  
Alexandria Historic Resources Commission





## Historic Alexandria Foundation

218 North Lee Street, Suite 310 • Alexandria, Virginia 22314  
(703) 549-5811 • FAX (703) 548-4399

Email: [h.a.f@erols.com](mailto:h.a.f@erols.com) • Website: [HistoricAlexandriaFoundation.org](http://HistoricAlexandriaFoundation.org)

August 11, 2016

Joanna Anderson, Esq.  
Deputy City Attorney  
Alexandria, Virginia

Dear Ms. Anderson,

I am writing on behalf of the Historic Alexandria Foundation (HAF) to express our concern and disagreement with recent staff statements and procedures followed in connection with applications to the Old and Historic District Board of Architectural Review that involve properties subject to preservation easements.

The most recent case that raised these concerns is BAR #2016-00160. The staff statement with which we disagree is found at page 4 of the Staff Report:

**Staff notes that the Alexandria Historical Restoration and Preservation Commission (AHRPC) holds a scenic and exterior architectural easement on this property. All alterations to the buildings, new construction and changes to the landscape must separately be reviewed and approved by the AHRPC. However, an easement is a private contract between the property owner and the easement holder and these are not regulated by the City.**

In addition, at its meeting on July 6, 2016, the Chair of the BAR read a preliminary statement provided by staff that included similar language regarding the status of a preservation easement as a "private contract", and further stated that **"in the past the BAR has advised applicants that easement holders should approve any proposal to be reviewed by the BAR as a courtesy. However, the BAR is not able to legally require that."**

We believe these statements are incorrect, both as a matter of law and policy, for the reasons noted below. We urge the City to continue to require the consent of a preservation easement holder before an application is deemed complete and subject to review by the BAR. We request that you provide us with the legal reasoning that led to the statements quoted above and the proposed change in the existing procedure that requires evidence of the consent of an easement holder before presenting an application to the BAR. We would like to meet with you at your convenience to discuss these issues.

## **Legal Status of Conservation and Open Space Easements**

Under Virginia law a conservation easement is a non-possessory interest in real property. VA. CODE ANN. § 10.1-1009. It is not simply a “contract between the property owner and the easement holder”, as stated in the recent staff reports. Accordingly, the BAR should not take action that could impair the property interests of the easement holder without its consent. The BAR should continue to require evidence that an application has the consent of all parties holding an interest in the property under review, whether that interest is in the fee simple or the interest of an easement holder.

Moreover, historic preservation and open space easements are governed by the Virginia Conservation Easement Act (VCEA), VA. CODE ANN. §§ 10.1-1009 through 10.1-1016 and the Virginia Open Space Land Act (OSLA), VA. CODE ANN. §§ 10.1-1700 through 10.1-1705. These laws “were intended to encourage the acquisition by certain public bodies of fee simple title or ‘easements in gross or such other interests in real estate’ that are designed to maintain the preservation or provision of open-space land.” *United States v. Blackman*, 270 Va. 68, 613 S.E.2d 442 (2005). The public policy in favor of land conservation and preservation of historic sites and buildings is also reflected in Article XI of the Constitution of Virginia.

These laws make clear that, in contrast with conventional private easements, conservation easements serve a public function and such easements are “held and administered by the easement holders not for themselves, but on behalf of the public and in furtherance of state policy”. *See* 2012 Va. Op. Atty. Gen 31. Not only are conservation easements held on behalf of the public, but the owners of property subject to conservation easements are granted substantial benefits in the form of tax relief to reflect the value that preservation provides to the public interest. Accordingly, VCEA expressly provides standing to the local government to take action to enforce conservation and open space easements on real property within their jurisdictions. VA. CODE ANN. § 10.1-1013.

The recent statements in the BAR staff reports that conservation easements “are not regulated by the City” fail to take this Virginia Code provision into account. The City does, indeed, have standing to take action to enforce a conservation easement. It should not abrogate this responsibility by allowing, or requiring, the BAR to take action

without regard to the interests of the holder of a conservation easement or the public interest in favor of preservation easements. As a City body, the BAR should take these interests into account in its decisions. Failure to do so could result in a diminution of the value of the easement, lead to inconsistent requirements for the property owner, and limit the City's ability to ensure compliance with an easement as provided in the VCEA.

The BAR should continue the established policy to require evidence of the consent of the holder of a conservation easement before an application can be heard. We were puzzled by the statement read by the BAR Chair at the recent meeting, as quoted above, that "in the past the BAR has advised applicants that easement holders should approve any proposal to be reviewed by the BAR as a courtesy." In fact, the application procedures clearly state that documentation of an easement holder's consent to an application is **required**, not a "courtesy", before an application will be considered complete. Section 8 of the application instructions provides as follows:

**REVIEW BY OTHER AGENCIES:** It is the policy of the Boards not to review applications which do not meet other applicable city regulations. This policy ensures that the project approved by the Board can, in fact, be undertaken. In cases where there is an historic preservation easement on the property or the property is under a homeowner's association, a copy of the letter approving the project must accompany the application at the time of submission. Applications without approval letters will not be accepted and will be deferred until the letter is received and the application is complete.

This practice and procedure should be continued as it is the only way to ensure that the easement holder's interest in the property will not be impaired by actions taken by the BAR without its consent. We do not know of any reason why the BAR Chair's statement claimed that "the BAR is not able to legally require that". Section 10-104 (B)(3) of the City Code allows the BAR to adopt administrative procedures, pursuant to which the BAR has set forth numerous requirements for documentation that must be submitted before an application will be considered complete. The existing BAR policy is a reasonable requirement, consistent with its authority under City law, and a best practice to ensure that the BAR time and resources are well spent. It should be continued.

We believe that the apparent change in the BAR procedure for handling applications for properties subject to conservation easements is unwise and not supported by law or policy. If there are other factors we have not considered that you think justify such a change we would be most interested in your thoughts on these issues.

Thank you for considering our views on this matter. We look forward to meeting with you at your earliest convenience to discuss these issues. I can be reached at [elj831@gmail.com](mailto:elj831@gmail.com) or 703-615-9529.

Sincerely,

Elaine Johnston  
Co-Chair, Advocacy Committee

Cc: Al Cox  
Lance Mallamo



OFFICE OF THE CITY ATTORNEY

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ASSISTANT CITY ATTORNEYS  
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DORI E. MARTIN  
TRAVIS S. MacRAE  
GEORGE McANDREWS  
MARY ELLIOTT O'DONNELL  
MEGHAN S. ROBERTS  
KAREN S. SNOW

September 1, 2016

Elaine Johnston  
Historic Alexandria Foundation  
218 North Lee Street, Suite 310  
Alexandria, Virginia 22314

Re: Applications to the Old and Historic District Board of Architectural Review

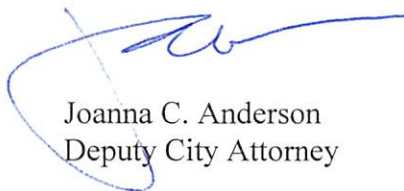
Dear Ms. Johnston:

Thank you for your letter dated August 11, 2016.

It has been and will continue to be the City of Alexandria's practice to request that an applicant to its Boards of Architectural Review ("BAR") obtain the consent of an easement holder before a matter is considered by the BAR. The purpose of doing so is to make the process more efficient, in that the applicant would not have to make two applications to the BAR if the easement holder's consent was not obtained in advance of an application being made.

Although, the City will continue to seek the consent of an easement holder, the BAR cannot refuse to consider an application if it does not include an easement holder's consent. This is because the BAR is not empowered to enforce easements on behalf of easement holders. The BAR's power is limited to those conferred upon it by the City's Zoning Ordinance.

Very truly yours,



Joanna C. Anderson  
Deputy City Attorney

cc: Al Cox, Historic Preservation Manager