Record No. 200195

In the Supreme Court of Virginia

HISTORIC ALEXANDRIA FOUNDATION, Petitioner-Appellant

v.

CITY OF ALEXANDRIA, *et al.*, Respondents-Appellees

BRIEF OF APPELLEE, VOWELL, LLC

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Appellee, Vowell, LLC ("Vowell") submits this brief in response to the Opening Brief filed by the Appellant, Historic Alexandria Foundation ("HAF"), and the amicus briefs filed by Preservation Virginia, *et al.*, Hugo L. Black Law Clerks ("Law Clerks"), Roger K. Newman, and Josephine P. Hallam.

I. STATEMENT OF THE CASE

Vowell disagrees with HAF's statement of the case.

HAF, Yvonne Weight Callahan and Gail C. Rothrock, filed a petition in the Circuit Court of the City of Alexandria ("Circuit Court") on June 13, 2019 (the "Petition") challenging a decision by the Alexandria City Council (the "City Council") upholding Board of Architectural Review ("BAR") approval of Vowell's demolition and addition applications (collectively, the "Applications") for Vowell's property at 619 South Lee Street, Alexandria, Virginia 22314 (the "Vowell Property"). (JA 1-112).

The Vowell Property is located within a zoning ordinance district known as "The Old and Historic District". HAF seeks to overturn the October 23, 2019 Circuit Court ruling sustaining the demurrers of the Appellees Vowell and City Council. The Circuit Court found that: (1) HAF does not have standing because it has failed to demonstrate particularized harm to some personal or property right, legal or equitable, or imposition of

a burden or obligation upon it different from that which would be suffered by the public at large and (2) even if HAF had standing, the Petition fails to state a claim upon which relief can be granted. (JA 269-272). The Circuit Court reached its decision after having considered all the pleadings, oral and written arguments of counsel, and the relevant legal authority. (JA 274).

II. STATEMENT OF FACTS

HAF and others filed the Petition pursuant to Section 10-107(B) of the City of Alexandria Zoning Ordinance ("Zoning Ordinance"). (JA 1-112). HAF alleged that it has granted and received easements on separate properties and that it is "therefore vitally interested in the proper administration of the Open Space Land Act and the protections for historic properties provided by the City of Alexandria Zoning Ordinance." (JA 3). HAF also alleged that it awarded a plaque to the Vowell Property in October 1965 as part of a building survey and that it helped to fund work that resulted in the Vowell Property being included in another survey. (JA 4).

The open space easement at issue (the "Easement") was conveyed to the Virginia Historic Landmarks Commission in 1969 with a Deed of Correction in 1973 that allowed maintenance of a tennis court and

construction of other facilities. (JA 5, 17, 70-71 & n. 6). The Easement recites the Open-Space Land Act and explicitly provides that "structural changes, alterations, additions or improvements" may be made to the "manor house" with "prior written approval of Grantee". (JA 19). The Easement states the same with respect to renovation or construction of other structures. *Id*. The BAR is not a party to the Easement. The 1973 Deed of Correction preserved the option for structural changes, additions, or improvements with prior approval of the Grantee. (JA 5, 34-35).

City staff strongly recommended that Vowell obtain confirmation from the Grantee, prior to the BAR hearing, that the proposed scope of work complied with the terms of the Easement. (JA 34-35). Vowell did so and provided Staff with a copy of the written approval from the Virginia Department of Historic Resources ("VDHR").[1]

The BAR first conducted a public hearing on the Applications on December 19, 2018 and voted to defer the matter for restudy. (JA 6-7). The BAR heard and approved the Applications on February 6, 2019. (JA 7). The BAR staff report noted that the Easement is administered by VDHR,

[1] The Virginia Department of Historic Resources is the successor to the Virginia Historic Landmarks Commission, the Grantee of the Easement. *Archives & Library Frequently Asked Questions*, Virginia Department of Historic Resources, https://www.dhr.virginia.gov/archive/archives-library-frequently-asked-questions/ (last visited Dec. 8, 2020).

that BAR has no authority to interpret or enforce the Easement, and that Vowell had provided the City with the VDHR letter confirming that the proposed work is consistent with the terms of the Easement. (JA 34-35).

The BAR approved the certificate for demolition/capsulation on findings about the curved hyphen wall's lack of architectural significance, its propensity to continue to cause maintenance issues and the preservation of the structure its removal would promote. (JA 110). The BAR approved the certificate of appropriateness for new construction, finding that "the scale, mass, location and design of the proposed additions to be appropriate for the historic setting and streetscape for the reasons set forth in the staff report" and subject to "Conditions of Approval" on construction methods and materials and imposing reporting and documentation requirements. *Id.*

HAF and other property owners appealed the BAR's decision to the City Council. (JA 7). The staff report to City Council repeated advice to the BAR that compliance with the Easement is a separate process reviewed solely by VDHR and that Vowell had secured the VDHR letter of approval. (JA 106). City Council upheld the BAR's decision for the reasons in the staff report. (JA 7-8).

HAF and others then filed the Petition. (JA 1-112). Vowell and the City Council filed demurrers and the City defendants filed a motion craving *oyer*. The parties filed briefs in support and opposition to these responsive pleadings. (JA 113-184). The Circuit Court heard argument on the demurrers on October 23, 2019.[2] The Circuit Court sustained the demurrers and dismissed the Petition with prejudice. The Circuit Court entered its final order on November 7, 2019. HAF was the only petitioner to file a notice of appeal. It did so on November 25, 2019.

III. AUTHORITIES AND ARGUMENT

A. Summary of Argument.

Several of HAF's arguments, and many of those of the Amici Curiae, are outside the scope of the Assignments of Error and cannot be considered. HAF's argument for statutory standing is in defiance of the plain language of the Zoning Ordinance that employs the word "aggrieved", and HAF failed to allege particularized harm to a personal or property right, or even how approval of the Applications lessened or harmed a heightened interest in historical preservation. HAF's argument that it enjoys a particular burden because it shares that burden with every other owner in the zoning district is illogical and, therefore, self-defeating. There is no

[2] The Circuit Court did not reach the Motion Craving Oyer because it sustained the Demurrers.

inconsistency or conflict between the Zoning Ordinance and the Open-Space Land Act, rendering supremacy provisions inapposite. It was impossible for the BAR or City Council to convert or divert Open-Space Land because the very same work had already been approved under the terms of the Easement that defined Open-Space Land. Dillon's Rule of strict construction also prevented the BAR and City Council from considering the Open-Space Land Act under the enabling authority. The Law Clerks' claim that absence of judicial review would result in a loss of a historic resource is belied by VDHR approval of the same work as consistent with the historic character of the house, as was required by the terms of the Easement.

B. <u>The Standard of Review is *De Novo.*</u>

Whether the Circuit Court properly sustained the demurrers is a question of law reviewed *de novo*. *Harris v. Kreutzer*, 271 Va. 188, 196, 624 S.E.2d 24, 28 (2006). This Court, like the Circuit Court below, is confined to facts that are expressly alleged, impliedly alleged, and which can be inferred from the facts alleged. *Id.* (citing *Elliott v. Shore Stop, Inc.*, 238 Va. 237, 240, 384 S.E.2d 752, 753 (1989).

C. The Appellant's arguments beyond the scope of the Assignments of Error should not be considered by the Court.

The Appellant's Opening Brief sets forth four arguments outside the two assignments of error that cannot considered by the Court, pursuant to Rule 5:17(c)(1)(i). These are that: (1) the City refused to acknowledge the Vowell Property as an historic landmark; (2) the Circuit Court allowed demolition based on criteria not allowed by the Zoning Ordinance; (3) the Circuit Court failed to address the City Council's reliance on non-public material; and (4) the Circuit Court abused its discretion by not granting leave to amend. Opening Brief pp. 25-30. The briefs of the *Amici Curiae*, that must also comply with the Rule 5:17(c)(1)(i) requirements applicable to HAF's Opening Brief[3], additionally set forth arguments outside the assignments of error. The *Amici Curiae* brief by the Law Clerks ("Law Clerk Brief"), for example, asserts grievances that are unrelated to HAF's two assignments of error, namely that: (1) the Circuit Court erroneously dismissed the case without leave to amend; (2) the Circuit Court disregarded or misapplied requirements of the City Code, including misapplication of the fairly debatable standard; and (3) that dismissal would end meaningful review under historic-preservation statutes. (Law Clerk Brief, pp. 19-30).

[3] Virginia Supreme Circuit Court Rule 5:30(e).

This Court has viewed Rule 5:17(c)(1)(i) as mandatory for the good reason that the purpose of assignments of error is to point out the errors with reasonable certainty to direct the Court and opposing counsel to the points on which appellant intends to ask for a reversal of the judgment, and to limit discussion to these points. *Yeatts v. Murray*, 249 Va. 285, 290 (1995) (citing *Harlow v. Commonwealth*, 195 Va. 269, 271-72 (1953)). "Without such assignments, appellee would be unable to prepare an effective brief in opposition to the granting of an appeal, to determine the material portions of the record to designate for printing, to assure himself of the correctness of the record while it is in the clerk's office, or to file, in civil cases, assignments of cross-error."[4] Neither this Court nor opposing counsel should have to respond to arguments by HAF and the Amici that are unrelated to the two assignments of error (i.e., standing and failure to consider the Open-Space Land Act).

D. <u>The Circuit Court was correct that the Petitioners lacked standing to bring the Petition.</u>

1. Clear legislative intent defeats statutory standing.

HAF is wrong that the provisions of the City of Alexandria Zoning Ordinance establish statutory standing in Virginia to challenge a land use

[4] *Id.* Vowell did not object to HAF's failure to include full copies of the staff reports, with all attachments, in the Joint Appendix because the issue was not relevant to the Assignments of Error.

decision regardless of proximity or particularized harm. The plain language of those provisions undercut HAF's argument that any citizen who appealed to the City Council from the BAR automatically has standing to petition the Circuit Court. One only has to compare the provisions of City of Alexandria Zoning Ordinance § 10-107(A) (appeal from BAR to the City Council) to those of § 10-107(B) (appeal from the City Council to Circuit Court). Section 10-107(A) only requires a petition signed by the city manager or at least 25 persons owning real estate within the Old and Historic Alexandria District. It does not use the term "aggrieved". Section 10-107(B), by contrast, requires that an applicant or any of the petitioners be aggrieved.

A Circuit Court must assume that the legislative body chose the words it used with care and is bound by those words in interpreting the statute or ordinance. *Barr v. Town & Country Properties*, Inc., 240 Va. 292, 295, 396 S.E. 2d 672, 674 (1990). "Courts are not permitted to rewrite statutes. This is a legislative function. The manifest intention of the legislature, clearly disclosed by its language, must be applied. There can be no departure from the words used where the intention is clear." *Id.* (citing *Anderson v. Commonwealth*, 182 Va. 560, 566, 29 S.E. 2d 838, 841 (1944). *See also Reston Hosp. Center, LLC v. Remley*, 59 Va. App. 96,

107-109 (Va. Ct. App. 2011). (Circuit Courts presume that the legislature is aware of, and acquiesces to, our cases interpreting its enactments). HAF's argument for statutory standing fails because it requires one to ignore the legislature's careful choice to insert the word "aggrieved" in § 10-107(B).

2. HAF's ownership in a zoning district is the anthesis of particularized harm or unique burden.

The legislative choice of the word "aggrieved" was thus based on jurisprudence of this Court, most recently applied by this Court in *Friends of the Rappahannock v. Caroline County Bd. of Supervisors*, 286 Va. 38, 48 (2013). HAF concedes the importance of *Friends* in arguing that it met the two prong-test set forth by this precedent. HAF Brief, pp. 16-19. There, the circuit court sustained a demurrer to a suit brought pursuant to Virginia Code § 15.2-2285(F) by neighbors of a proposed sand and gravel mining operation, and by a conservation group, challenging the issuance of a special use permit for that operation. In upholding the demurrer, this Court set forth a two-step test to establish standing for third parties challenging a land use decision. First, plaintiffs must own or occupy real property within or close to the property that is the subject of the land use decision. *Id.* Second, plaintiffs must "allege facts demonstrating a particularized harm to some personal or property right, legal or equitable, or imposition of a

burden or obligation upon the Plaintiffs different from that suffered by the public generally." *Id.* Even if the Petitioners can meet the first prong of this test – which Vowell does not concede – they cannot satisfy the second part of the test.

HAF argues mere ownership in the same "Old and Historic" zoning district as the Vowell Property is a unique burden sufficient to meet part two of *Friends*. HAF Brief at p. 18. HAF states an oxymoron in arguing that it enjoys a unique burden because it shares burdens of a zoning district with all other owners therein. The argument is at least self-contradictory because to share burdens of a zoning district with every other owner in the district is the anthesis of a unique burden. *Friends* requires a harm different in kind from other owners in the area.

The facts in *Friends* show how far afield mere ownership in a zoning district is to particularized harm or unique burdens. Complainants owned property close to a sand and gravel mining operation approved by the County Board of Supervisors. They brought a declaratory judgment action alleging that the operation would increase noise, dust, and traffic in a manner that would alter quiet enjoyment, harm recreational use of the river, and produce dust and particulate pollution that would impact the long-term health and well-being of their children, one of whom was asthmatic. *Id.* at

43. The circuit court dismissed the complaint for lack of standing, finding that the complainants were not aggrieved parties.

This Court evaluated the facts pled by the complainants against the requirement of the second part of the test and concluded that "conclusory allegations as to possible harms" and the "general objections pled by the individual complainants present no factual background upon which an inference can be drawn that [the permit holder]'s particular use of the property would produce such harms and thus impact the complainants." *Id.* at 49. (Emphasis in original). The Court noted that there were conditions associated with the permit that were designed to mitigate the impacts of the use, and the "individual complainants do not allege any facts to indicate that the conditions imposed by the permit would be inadequate to protect their property rights." *Id.* at 50. The Court found that it was insufficient to simply speculate that a harm will manifest, without pleading specific facts to support that claim. The Court affirmed the dismissal of the complaint for lack of standing, holding that the complainants had "failed to meet their burden of alleging the particularized harms required to survive a demurrer." *Id.*

HAF fails to allege even the conclusory allegations in *Friends*. Aside from stating shared burdens within the zoning district, HAF only alleges that

it has granted and received Open-Space Land Act easements on other properties "and is therefore vitally interested in the proper administration of the Open Space Land Act and the protections for historic properties provided by the Alexandria Zoning Ordinance." (JA 3). That HAF is a grantor of Open- Space Land Act easements on *other properties* does not demonstrate how it is harmed by the approval of the Applications for *the Vowell Property* and HAF's alleged vital interest in proper administration of the Open-Space Land Act is the epitome of lack of standing as articulated by this Court in *Virginia Beach Beautification Comm'n v. Board of Zoning Appeals*, 231 Va. 415, 344 S.E. 899 (1986).

This Court there held that "it is not sufficient that the sole interest of the petitioner is to advance some perceived public right or to redress some anticipated public injury when the only wrong he has suffered is in common with other persons similarly situated." *Id.* at 419-20, 344 S.E. 2d at 902-03. While true that the Virginia Beach Beautification Commission did not allege ownership of property in Virginia Beach, HAF's alleged ownership of property and Open-Space Land Act easements elsewhere in the City of Alexandria does not state a personal property right that was harmed by approval of the Applications for the Vowell Property.

HAF also argues that it has a heightened interest in proper enforcement of the Open-Space Land Act because it made a direct investment in the preservation of the Vowell Property by sponsoring research and awarding a plaque to the Vowell Property in 1965. Like the complainants in *Friends*, however, HAF failed to allege any facts that the conditions the BAR imposed on the certificate of appropriateness[5] would be inadequate to protect these interests or how its heightened interest in historic preservation would be harmed by approval of the Applications. (JA 111).

HAF's failure to allege particularized harm is not saved by the cases cited by the Law Clerks. This Court found that the Plaintiffs in *Riverview Farms Assocs. Va. Gen. P'ship v. Board of Supervisors* stated a cause of action by alleging negative impact of off-site truck traffic on property owned by them independent of the impact on other owners. 259 Va. 419, 427, 528 S.E. 2d 99, 103-04. HAF alleges no impact on its property. This Court found standing in *Howell v. McAuliffe* in "the voting context" without further proof of particularized injury. 292 Va. 320, 332-33, 788 S.E.2d 706, 713. No such "voting context" is present in this case. And in *Westlake Properties, Inc. v. Westlake Property Owners Ass'n,* this Court found

[5] JA 111.

standing based on the association's obligation to maintain and repair the entire septic system distinct from the responsibility of individual owners to maintain individual sewer lines. 273 Va. 107, 120-21, 639 S.E.2d 257, 264-65 (2007). HAF alleges no responsibility to maintain any component of the Vowell Property.

This Court relied on the reasoning in *Cupp v. Board of* Supervisors in all of these cases that:

> [t]he concept of standing concerns itself with the characteristics of the person or entity who files suit. The point of standing is to ensure that the person who asserts a position has a substantial legal right to do so and that his rights will be affected by the disposition of the case.

227 Va. 580, 589, 318 S.E. 2d 407, 411 (1984). After noting that the Cupps owned the Wolf Trap Nursery and the land on which that business operated, this Court concluded that the Cupps "were directly affected by any condition that would require them to turn over a portion of their property to the County. In terms of personal stake, it is plain that if any party were in a position to challenge governmental activity affecting Wolf Trap Nursery and the Cupp property on Route 7, it would be the Cupps." 227 Va. 590, 318 S.E.2d at 412.

The circuit court cases cited by the Law Clerks are no different in finding standing based on alleged harm to pecuniary interests. As stated by

the Law Clerks, the recent Richmond Circuit Court case of *Taylor v. Northam*, Case No. CL 20-3339 (August 3, 2020) cited *Cupp* in finding that "Plaintiff's interest in property values and the structuring of their neighborhood provide them with direct and pecuniary interests in the outcome of this litigation separate from those of the general public."

HAF has no standing to litigate in this case on public concerns about historical significance of the Vowell Property because it fails to allege impact upon a property right owned by it, or even how its heightened historical interest will be harmed by approval of the Applications. In the latter regard, HAF's Petition is very different from the allegations in *Phillip Morris USA v. Chesapeake Bay Found., Inc.* where this Court found that "plaintiffs adequately allege injury in fact when they aver that they used the affected area and are persons 'for whom the aesthetic and recreation values of the area will be lessened' by the challenged activity." 273 Va. 564, 643 S.E. 2d 219, 226 (2007). In the unpublished opinion of *Payne v. City of Charlottesville*, the court likewise emphasized that interest in aesthetic or recreational values is sufficient to demonstrate standing only if accompanied by allegations of individual harm and not just disagreement with the action of the governing body. 2017 WL 11462042 at *7 (2017). HAF makes no such allegations of individual harm to its heightened interest

in historic preservation that will result from the Applications, rendering its alleged interest in historic preservation no different than the attempted advancement of some perceived public right or to redress some anticipated public injury this Court found to be lacking in *Virginia Beach Beautification.* The Circuit Court was, therefore, correct in dismissing the Petition for lack of standing.

E. The Circuit Court was correct in finding that the Open-Space Land Act was not relevant to the decisions of BAR and City Council.

1. There was no conflict or inconsistency between State and local law.

HAF offers principles of supremacy in support of its argument that the Circuit Court erred in ruling that the Open-Space Land Act was applicable to decisions of the BAR on the Applications. Supremacy of state law over local law has no application where there is no conflict or inconsistency. *See City Council of Alexandria v. Potomac Greens Assocs. P'ship*, 245 Va. 371, 378, 345 S.E.2d 225, 228 (1993). There was no inconsistency or conflict between BAR approval and written approval of the grantee under the terms of the Easement — the embodiment of Open-Space Land in this case — because both had to occur before any work could begin. As it turned out,

written approval of the grantee VDHR was secured before the BAR acted on the Applications. (JA 34-35, 87, 106).

Vowell's successful efforts to secure the separate permission needed from VDHR pursuant to the terms of the open space deed corroborates what is manifest under the Open-Space Land Act: that BAR approval of the Applications was distinct from the VDHR approval such that there was no conflict or inconsistency between the two. The supremacy provision at Virginia Code § 10.1-1705 simply had no application in the absence of conflict. Nor did the Virginia Supremacy Clause at Virginia Code § 1-248 or the Zoning Ordinance conflict of laws provision codified at § 1-200(F).

Vowell's need to secure multiple approvals before work could commence is not unique. Vowel's predicament was not unlike the ordinary requirement that a landowner secure both zoning approval from a local government and the release of conflicting restrictive covenants from a homeowner's association before it may commence development. Each is a separate approval granted or denied according to different considerations.

In its May 10, 2019 letter to the City Council, HAF agreed that BAR's review of the Applications, on the one hand, and VDHR's approval of the work according to the Easement, on the other, are based on different considerations. (JA 87). HAF contradicts itself in arguing here that the BAR

should have considered the Open-Space Land Act. The contradiction is unavoidable because it is the Easement that defined the scope of Open-Space Land under the Open Space Land Act.[6]

2. There could be no diversion or conversion of open-space land because the grantee previously approved the renovation according to the terms of the Easement that defined open-space land.

HAF contends that BAR and City Council were subject to the terms of Virginia Code Section 10.1-1704 that prohibits the conversion or diversion of Open-Space Land unless certain findings are made. That prohibition cannot logically apply to work that is approved in accordance with the terms of the deed that designated the "Open-Space Land".

The Open-Space Land Act defines "Open-Space Land" as "any land which is provided or preserved for (i) park or recreational purposes, (ii) conservation of land or other natural resources, (iii) historic or scenic purposes", (iv) assisting in shaping of the character, direction and timing of community development, (v) wetlands as defined in § 28.2-1300, or (vi) agricultural and forestal production." Va. Code § 10.1-1700. The act allows a public body to carry out the interests of the act to "acquire by purchase,

[6] (JA 17, 57). The Law Clerks agree that it is the Easement that designated the Vowell Property as Open-Space Land under the Open Space Land Act. (Black Law Clerks Brief, pp. 5, 35).

gift, devise, bequest, grant or otherwise title to or any interests or rights not less than five years in duration in real property that will provide a means for the preservation of Open-Space Land." Virginia Code § 10.1-1701.

The prohibition in § 10.1-1704 against conversion or diversion applies only to "open-space land, the title or interest to which has been acquired under the authority of this chapter and which has been designated as open space under the authority of this chapter". *See* Va. Code Ann. §10.1-1704. Here, the Easement provided the "means for preservation of open-space land" and "designated" the Property as open space under the authority of the act. (JA 17, 57). HAF's argument that the BAR converted or diverted open space is eviscerated, therefore, by the terms of the Easement that allowed the grantee to approve, in writing, work it might find to be consistent with the historic character of the house. (JA 19). VDHR, the grantee, provided its written approval of the same work proposed in the Applications prior to the BAR hearing. (JA 34-35, 106). Once VDHR did so, the work so approved became part of the Open-Space Land authorized and protected by the Easement. The BAR's subsequent approval of the same work could not be a conversion or diversion of Open-Space Land in violation of Va. Code § 10.1-1704 because that work had already been approved as part of the designated Open Space Land.

3. Under Dillon's Rule of strict construction, BAR and City Council were not empowered to consider the Open-Space Land Act or the Easement.

Review of the Applications by the BAR and City Council was limited to the standards and criteria listed in Section 10-105 of the Zoning Ordinance entitled "Matters to be considered in approving certificates and permits", and other matters that can be necessarily or fairly implied therefrom. Alex. Zon. Ord. §§ 10-105, 107(A)(3). Enabling authority for the Zoning Ordinance provisions is found in Title 15.2 of the Code of Virginia. *See* Va. Code § 15.2-2306(A).

In determining the legislative powers of local governing bodies, Virginia follows the Dillon Rule of strict construction. It provides that municipal corporations possess and can exercise only those powers expressly granted by the General Assembly, those necessarily or fairly implied therefrom, and those essential and indispensable. *City of Richmond v. Confrere Club of Richmond, Virginia, Inc,* 239 Va. 77, 79, 387 S.E. 2d 471, 473 (1990). Not only is there silence about the Open-Space Land Act in Va. Code § 15.2-2306, but power to consider the entirely separate statutory scheme in Title 10.1 of the Code, or the terms of the Easement to which neither the BAR nor the City Council were parties, cannot be necessarily or fairly implied. Even if silence about the Open Space Land

Act in in § 15.2-2306(A) could be construed to create doubt about the power to consider it, Dillon's Rule of strict construction requires any doubt to be resolved against the existence of the power. *Commonwealth v. County Board of Arlington County*, 217 Va. 558,577, 232 S.E.2d 30, 42 (1977).

4. VDHR approval of the same work authorized by the BAR undercuts the claim that judicial review is necessary to prevent loss of historic significance.

The Law Clerks conclude their brief with the assertion that denying HAF a trial will cause irrevocable loss of a historic resource without meaningful judicial review. This assertion is undercut by VDHR approval of the same work because, in granting the approval, VDHR was required to find that the work to the manor house "would not fundamentally alter the historic character of the house" and similarly, that renovation of other buildings "shall be in keeping with the historic character of the house." (JA 19). The Law Clerks are, therefore, incorrect in asserting that judicial review is required to prevent loss of historic significance.

IV. CONCLUSION

For the reasons stated herein, Appellee, Vowell, LLC, respectfully requests that this Court deny the appeal filed by the Historic Alexandria Foundation.

Date: December 10, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December 2020, a true copy of the foregoing Brief of Appellee, Vowell, LLC, was mailed, first-class mail, postage pre-paid, and sent by email to:

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