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May 6, 2019

Honorable Justin Wilson  
Mayor  
City Hall  
Alexandria, Virginia 22314

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

Dear Mr. Mayor:

I recently learned that on April 8, 2019, you published through the Facebook system a response to a portion of my submission to the Council filed April 5, 2019, in the above noted matter. You wrote:

“because the property around such places is bound to decrease in value.”

Not the worst opinion Hugo Black authored (eg., *Korematsu*), but certainly a humorous one.

Justice Black’s letter to my predecessors 50 years ago about parking policy:

#itsALWAYSAboutParking

You attached Justice Black’s two-page letter to an Alexandria official dated February 26, 1969, that was quoted in my submission. Your comments invite these observations:

1. The fragment of the Justice’s letter that you characterize as “humorous” was part of a plea late in his life not to ruin Old Town with excessive construction, particularly by building over open spaces and gardens. He and Mrs. Black a few months later executed a conservation and open space easement to prohibit future construction on the open yard next to their home at 619 South Lee Street. He said:

And we do hope that hereafter the construction of houses will be required to be done in such a way that it is not an inducement to put multitudes of houses in small areas. It is true that the City might be able to look forward to a temporary increase in taxes in such vicinities but it is likewise true that such construction will, in the long run, reduce the amount of taxes because the property around such places is bound to decrease in value.

He urged that “One of the main charms of Alexandria homes” is that so many “have gardens, even if small, in which the occupants can enjoy flowers, shrubs and green grass.” I do not believe that he was joking. Indeed, many residents of Old Town think that because words like his have been ignored by some past City Councils, parking in Alexandria has become a disaster. When we try to park our cars in the evening, we fail to find any humor.

2. You single out as Justice Black’s “worst” opinion the wartime decision in Korematsu v. United States (1944) — even though it also established for the first time that “all legal restrictions which curtail the civil rights of a single racial group are immediately suspect” and “courts must subject them to the most rigid scrutiny.” It would be good to know which of his 783 opinions you consider his best. Some candidates are collected in Irving Dilliard’s One Man’s Stand for Freedom: Mr. Justice Black and the Bill of Rights (1963).

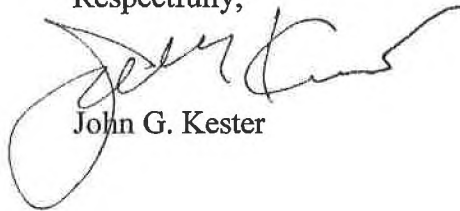
It is for such lasting contributions that Justice Black has been honored as a “Great American.” It was he whose eloquence persuaded the Supreme Court in 1940 that an African-American defendant could not be convicted based on a confession obtained by brutal police beating. Chambers v. Florida (1940). And two decades later he wrote for the Court that an unemployed man, “Shufflin’ Sam,” could not be arrested and jailed simply for dancing while waiting for a bus. Thompson v. Louisville (1960). It was Hugo Black who argued in dissent in 1942 that an indigent defendant had a Constitutional right to counsel; his dissent was adopted as the law twenty years later in the famous case Gideon v. Wainwright (1962) (overruling Betts v. Brady (1942)). Besides the many landmark opinions he authored, he also joined in many milestones of freedom and equality whose outcome he influenced — such as Brown v. Board of Education (overruling Plessy v. Ferguson (1896)); Loving v. Virginia (1967) (striking down prohibition of interracial marriage); and Graham v. Richardson (1971) (welfare laws may not discriminate against noncitizens, declaring that “an alien as well as a citizen is a ‘person’ for equal protection purposes”). In his very last opinion, the Pentagon Papers case, Justice Black wrote that under the Bill of Rights “no branch of government could abridge the people’s freedoms of press, speech, religion, and assembly” and that “Only a free and unrestrained press can effectively expose deception in government.” New York Times Co. v. United States (1971). In selecting his best, you have those and many more to choose from.

3. But of course applying the City Code to the present case does not require the Council to analyze each of Justice Black’s opinions. The legal standard set for you by the Code is simply whether the Alexandria property he lived and worked in and improved for nearly half a century, and which Virginia already has declared a landmark, and which he did all he could to preserve, fits the explicit tests the Code enumerates: Does the property have “special historical, cultural, artistic and architectural significance” as part of “the city’s cultural and historic heritage”? City Code § 10-101 and § 10-101(D). Is it among Alexandria’s “historical and cultural resources” that need “keeping with their historical, cultural and traditional setting”? City Code § 10-101(B), (E), (H). Under the Code you are to examine, for example, whether “height, mass and scale of buildings or structures” would harm “the historic setting, streetscape or environs.” City Code § 10-105(A)(2)(a), (c). You are to reject proposals “incongruous to . . . [an] existing building or structure.” City Code § 10-105(A)(1). You are instructed to seek particularly to “preserve or protect historic places,” and to safeguard “preservation and protection of historic interest in the city,” “encouraging study and interest in American history.”

City Code § 10-105(A)(2)(g), (i), (j). All those tests are quite straightforward. All would be violated by the pending proposal.

I am told that your statement was furnished to — and endorsed with “like” confirmations by — the applicant’s attorney and the spouse of the applicant corporation’s owner. If you should circulate further comments relating to my submission, I shall be grateful if you will provide me also with a copy.

Respectfully,

A handwritten signature in dark ink, appearing to read "John G. Kester", written over the printed name.

John G. Kester

cc: Members of Council