
Forty Years of Preservation: Virginia's Easement Program

By Calder Loth

The year 2006 marks the 40th anniversary of passage of the legislation establishing the Commonwealth's official historic preservation easement program. With the program entering middle age, it's time to look at what we have accomplished during the past four decades. Before doing so, however, it may be helpful to consider some background on the program.

Our easement legislation was the brainchild of attorney George C. Freeman, who convinced key General Assembly members that the Commonwealth needed to encourage preservation of privately owned historic landmarks. Freeman's idea was for the state to obtain permanent legal protection of these historic resources while keeping them in private ownership and on the tax rolls. Moreover, as Freeman and others recognized, the best stewards of historic properties, particularly residential ones, were their owners—notwithstanding that the state could never afford to purchase and maintain all of the landmarks worth preserving.

The legislation drafted by Freeman and subsequently passed by the General Assembly enabled owners to donate voluntarily to the state specific rights to their properties, including the rights to demolish a landmark building, to make architectural alterations without the state's approval, and to undertake commercial development and subdivision of a landmark's historic setting. These donations of property rights took the form of deed restrictions, which we now call a *preservation easement*. An essential aspect of these easements was that they transfer and apply to all future owners of a property. Permanent legal protection of a property was thus ensured once an easement was recorded with the deed.

The program also was crafted so that an easement donation returned certain financial benefits to the donor. For instance, because easement restrictions generally reduce the fair market value of a property, the difference in value before and after application of an easement, as determined by a qualified real estate appraiser, could be taken by



Elsing Green, King William County: Carter Braxton, signer of the Declaration of Independence, built this prodigious U-shaped mansion after he purchased his Pamunkey River plantation in 1753. The easement includes 1,100 acres.

an owner as a charitable deduction on federal income taxes. Some years later, the General Assembly passed legislation offering state tax *credits*, an even more generous benefit, for easement donations. Another benefit the legislation offered owners was the requirement that easement restrictions be acknowledged by tax assessors in calculating local property tax assessments, since an easement prevented potentially lucrative subdivision and commercial development of a property. These combined financial incentives have proven to be significant factors in estate planning.



Waterford Historic District, Loudoun County: The quiet, shady streets of this picturesque village remain lined with regional vernacular styles, and are free of modern intrusions.

Although the easement legislation was enacted in 1966, the program officially started the following year, after a staff was assembled to fill the Virginia Historic Landmarks Commission, predecessor to the current Board of Historic Resources (of the Department of Historic Resources). The Commission, the state agency authorized to accept easements, received its first offer in 1969: a donation on Old Mansion, a venerable colonial manor house with 128 acres at the edge of Bowling Green in Caroline County. Governor Miles Godwin, Jr., on behalf of the Commission, formally accepted the easement from Miss Anne Maury White, whose family had owned Old Mansion for generations. Since then, Old Mansion has changed owners three times, and today the house is undergoing extensive restoration.

The Old Mansion easement marked the beginning of a remarkable demonstration of steward-

ship extending over the next 37 years. The Commonwealth, through the Board of Historic Resources, now holds easements on nearly 400 historic properties. The majority of these easements have been voluntary donations from private citizens. Particularly gratifying is the number received on National Historic Landmarks, the nation's highest category of landmark designation and a notch above the National Register of Historic Places. The Board now maintains easements on 23 National Historic Landmarks. It is reassuring that such outstanding, nationally significant landmarks of Virginia history and architecture have had their futures secured through easement donations; among these, the following: Westover, the circa 1730 Byrd family plantation manor in Charles City County; Tuckahoe, the Randolph family plantation where Thomas Jefferson attended classes as a boy; Mount Airy, perhaps the most architecturally sophisticated of Virginia's surviving colonial mansions; Sabine Hall, the Georgian plantation mansion of Landon Carter, son of Robert "King" Carter; and Berry Hill, a premier monument of American Greek Revival and the mansion of one of Virginia's most affluent antebellum planters. In addition, three other National Historic Landmarks under easement—Berkeley, Elsing Green, and Menokin—were homes of signers of the Declaration of Independence.

The citizens of the tiny Loudoun County village of Waterford, a National Historic Landmark historic district, have made an impressive use of the easement program. Since 1972, Waterford homeowners as well as the Waterford Foundation have donated easements to the Board of Historic Resources on 57 properties in the district (in addition to several easements held by the National Trust for Historic Preservation and the Virginia Outdoors Foundation). Waterford's efforts to preserve the character of this unique village founded by Quakers illustrate the willingness of Virginians to make personal sacrifices and work together to preserve a common heritage.

Virginia law requires that a property be individually listed on the Virginia Landmarks Register, or be classified as a contributing property in a registered historic district before the Board can accept an easement donation. While most people might think that the easement program is aimed primarily at historic estates, easements have been placed on a wide variety of registered landmarks. The Board holds easements on a historic sheet metal shop, a canal lock keeper's house, tobacco factories, gristmills, historic taverns, Civil War earthworks, a general store, and an almshouse—again, all privately owned. The



Mount Moriah Baptist Church, Roanoke: This simple country church overlooking the bustle of suburban Roanoke was built in 1908 by a congregation organized in the mid 1800s as a Sunday school for slaves.

house types on which easements have been placed are diverse as well and include, in addition to colonial plantation houses, Jeffersonian dwellings, Victorian mansions, workers' houses, and Colonial Revival houses. Thirteen exceptionally fine townhouses in Old Town Alexandria are under easement protection. Virginia's African-American heritage is represented in several easement properties: noteworthy examples include Madden's Tavern in Culpeper County, Mount Moriah Baptist Church in Roanoke, and the Dover Slave Quarter Complex in Goochland County.

While most easements involve historic buildings, the Board has acquired easements on several highly significant archaeological sites. Among them are Cactus Hill in Sussex County, a site of human occupation extending back some 15,000 years, as well as four tracts in the Thunderbird Archaeological District in Warren County, protecting National Historic Landmark Paleo-Indian sites dating to 9500 B.C. Notable colonial-period archaeological sites under easement are Corotoman, the site of Robert "King" Carter's mansion in Lancaster County, and Fort Vause, a frontier fortification in Southwest Virginia, established in 1756. Shadwell, the birth site of Thomas Jefferson, is also under easement.

Throughout its existence, the Board has maintained a close working relationship with the Virginia Outdoors Foundation. The Foundation was established under the same 1966 legislative

package as the Historic Landmarks Commission, and it is authorized to accept gifts of easement on significant open space. In some cases, where a considerable amount of land is involved with an historic landmark, usually in excess of 200 acres, the Board and the Foundation have agreed to be co-grantees of the easement. At present, 14 of the Board's easements are co-held with the Foundation.

To be effective, long-term instruments for preservation, it is essential that easements remain flexible, meaning that they allow for the present-day use of a historic building to be different from that for which it was originally used. For that reason, nearly all the Board's easement deeds leave unrestricted a historic building's function and thus accommodate adaptive re-use when its original



Pleasant Hall, Virginia Beach: Although surrounded by modern sprawl, Pleasant Hall survives as an elegant, tangible reminder of the rich history of former Princess Anne County. The easement covers 1.1 acres.



Seaboard Passenger Station, Suffolk: The 1885 train depot served the city until 1968. After standing abandoned for several years it was restored as a railroad museum by the Suffolk-Nansemond Historical Society.

use is no longer viable. This is important because a change in function can instill new life into a historic property. For example, the Branch House, an enormous early 20th-century, Tudor-style Richmond mansion on historic Monument Avenue was recently converted from an insurance office to the Virginia Center for Architecture. The previously mentioned Berry Hill, in Halifax County, was unoccupied for nearly 50 years before conversion from a grand manor to a training center and later to a destination resort. Pleasant Hall, built in 1763, in Virginia Beach also was transformed from a residence to a funeral home, and is now a church-owned meeting facility. Rippon Lodge, a mid 18th-century dwelling, was sold from family ownership to Prince William County, and is now undergoing conversion into a house museum.

While most of the Board's preservation easements have been voluntary donations, a significant number of easements have been generated through other means. Legislation passed in 1992 requires that historic properties receiving a General Assembly matching grant of \$50,000 or more must be placed under easement. The purpose of this requirement is to protect not only the landmark, but also the public's investment in the property. This regulation has resulted in over 50 landmarks being placed under easement, making the department a permanent partner with their owners for the benefit of the resource. The

General Assembly limits its grants to properties owned by local governments or non-profit organizations. The easements brought about by the grants cover a broad assortment of property types, including courthouses, taverns, theaters, schools, railroad stations, churches, as well as four National Historic Landmarks. All of these properties were candidates for varying degrees of restoration, thus helping to generate jobs in historic rehabilitation. Additional grants made in the 2005 General Assembly session increased the number of easements obtained through this program.

An enlightened use of the easement program has been made in the Oregon Hill Historic District in Richmond. Oregon Hill, originally a working-class neighborhood, is made up mostly of modest late 19th- and early 20th-century wooden town houses. Numerous Oregon Hill houses became derelict in recent decades. The city condemned many as health and safety hazards and subsequently demolished them. Concern for the loss of cohesiveness in the neighborhood spurred the formation of the Oregon Hill Home Improvement Council (OHHIC). Loans and grants enabled the council to purchase remaining abandoned dwellings slated for demolition and undertake their rehabilitation. OHHIC then placed the properties under easement with the Board before selling them for owner occupancy. Through this program some 22 historic houses, that otherwise

would have been razed, have become neighborhood assets. OHHIC's efforts have stabilized an urban historic district that was very much at risk. Consequently, real estate values in Oregon Hill have since increased substantially, and private developers as well as OHHIC are now building architecturally compatible infill houses on many of the area's vacant lots.

The Commonwealth of Virginia, spurred by the encouragement of DHR, is increasingly recognizing the importance of its own stewardship of state-owned historic properties. Until recently, the state generally demolished historic structures for which it had no use and then sold the land unencumbered. A significant precedent, however, was set in 2000 with the state-owned Parsons House in the Oregon Hill Historic District; Samuel P. Parsons, superintendent of the state penitentiary once located nearby, built the house in 1817–19. The penitentiary was razed in the early 1990s, and in 2000 the badly vandalized dwelling was sold for rehabilitation to developers with the stipulation that the property be placed under easement at time of transfer. The house has since been handsomely restored, and today it accommodates several apartments.

Most recently, a similar transaction occurred with the former Western State mental hospital complex in Staunton. Originally begun as a “lunatic” hospital in 1828, the antebellum complex, consisting of five architecturally outstanding



Parsons House, Oregon Hill, Richmond: *In recent years the Parsons House had stood abandoned and in serious disrepair (left), until developer Robin Miller purchased the property from the state and undertook its rehabilitation (right). It is now one of the architectural highlights of the historic Oregon Hill neighborhood.*

structures, had been used as a state correctional facility for the past two decades. When the site was vacated by the Department of Corrections, the General Assembly allowed the property to be transferred to the city of Staunton, with the requirement that the historic property be placed under easement. The transfer took place in October 2005, and the easement is now in place. The property will be transferred to developers for rehabilitation of the buildings for mixed use. The easement has secured this unique site and ensures that the rehabilitations respect the architectural integrity of the structures.



Western State Hospital, Staunton: *The 1828 main building at the former Western State Hospital is one of the Commonwealth's outstanding works of institutional architecture.*



Western State: The vaulted chapel is on the top floor of the chapel/refectory building. The 1851 Henry Erben organ was donated to the hospital by William Wilson Corchran.

It is important to remember that each easement acquired by the Board imposes a permanent legal obligation on the Commonwealth to administer the easement and to protect the state's interest in the historic resource involved. Ongoing administration of the program by the Department of Historic Resources' staff entails regular inspections of the properties, providing technical assistance to the property owners, and educating new owners when title to an easement property transfers. Ownership of nearly 50 percent of the Board's easement properties has changed since the easements were originally recorded.

Virginia has been fortunate to secure at minimal expense the permanent legal protection of approximately 400 historic resources to date representing the full spectrum of Virginia's history and culture. The easement program is an impressive demonstration of vision and choice. It took vision to recognize the importance of preserving the state's outstanding legacy of historic resources and to provide the legal vehicle to accomplish this task. The success of the program is due largely to its respect for property rights since it offers owners a choice—the choice to preserve a place important to everybody, rather than exploit it. The Commonwealth takes great pride in its many citizens who have voluntarily elected to preserve important historic resources through the easement program, properties with a combined fair market



The south annex building at Western State was built by master mason William B. Phillips, who had worked for Thomas Jefferson at the University of Virginia.

value of hundreds of millions of dollars that otherwise would have been vulnerable. These tangible acts of stewardship will enable a rich and irreplaceable legacy to be passed intact to future generations.

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