

TENTATIVE MCPB AGENDA ITEM

SUBJECT:

Preservation Easement donation by the property owners, James Graham and Victoria Clarke, for 4728 Dorset Avenue, Chevy Chase, Somerset Historic District, to retain in unity the 0.746 acre parcel.

STAFF RECOMMENDATION:

Montgomery County should accept the easement donation.

Suggested Agenda Date: November 15, 2001

Suggested Time of Day: Consent Calendar

Estimated Length of Time: 0 hr.

Staff Member: Robin D. Ziek County-Wide Planning, Historic Preservation



November 5, 2001

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Robin D. Ziek, Historic Preservation Planner
Department of County-Wide Planning (301-563-3400)

SUBJECT: Donation of a Historic Preservation Easement on
4728 Dorset Avenue, Somerset (the Salmon/Stohlman House)

RECOMMENDATION

Transmit a letter to the Historic Preservation Commission and the County Executive which recommends acceptance of a donation of a historic preservation easement on a property at 4728 Dorset Avenue, Chevy Chase, in the Somerset Historic District.

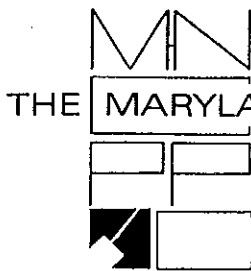
DISCUSSION

The property has been designated as an Primary Resource in the Somerset Historic District. It is one of the original homes in this early subdivision, and was built by one of the five founders of the Town of Somerset. In addition, the property is being nominated for listing in the National Register of Historic Places.

James Graham and Victoria Clarke, the owners of the property at 4728 Dorset Avenue, wish to donate a historic preservation easement on the property to retain and preserve the entire 0.75 acre lot as the environmental, cultural and historic setting for the structure located on it. The offered easement essentially provides that the property which is associated with the Salmon/Stohlman House will never be subdivided. The property is zoned R60. The owners are entering into this easement donation because of their desire to preserve the setting of their historic house, and preserve the existing open space in the historic district. They may also be able to take advantage of certain tax benefits, through provisions in the IRS Code.

Eileen Basamen of the County Attorney's Office has been working with the owner's attorney to draft an easement which is both legally and substantively accurate. This easement has been modeled after two previously donated preservation easements (completed in 1996, and in 2000) at properties in Montgomery County. A copy of the easement document is attached.

A draft letter transmitting the Board's formal recommendation is attached. It is hoped that the Board can approve transmittal of this letter as soon as possible so that the owners may proceed with the donation of their easement by the end of the year.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

(301) 495-4605

Montgomery County Planning Board
Office of the Chairman

November 15, 2001

Steven Spurlock, Chairman
Montgomery County Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, MD 20910

Dear Mr. Spurlock:

The Planning Board recommends that Montgomery County accept a historic preservation easement on a property at 4728 Dorset Avenue.

The Planning Board applauds the owners of this designated historic site for their interest in and desire to preserve the environmental setting of the historic property. They are excellent stewards of this Primary Resource in our Somerset Historic District.

Please transmit this recommendation to any appropriate governmental entities so that the donation of the easement may go forward.

Sincerely,

Arthur Holmes, Jr.
Chairman, MCPB

cc: Douglas M Duncan, County Executive
James Graham and Victoria Clarke, owners

DEED OF EASEMENT

THIS DEED OF EASEMENT, made as of this _____ day of _____ 2001, by and between JAMES BRIAN GRAHAM, TRUSTEE FOR THE J.B.G. REVOCABLE TRUST and VICTORIA CLARKE, TRUSTEE FOR THE V.C. REVOCABLE TRUST, (the "Grantors"), and MONTGOMERY COUNTY, MARYLAND, a body corporate and politic (the "Grantee").

WHEREAS, the Grantors are the owners of certain real property, known as 4728 Dorset Avenue, Town of Somerset, Chevy Chase, Maryland and as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "Real Estate") which consists of a parcel of land approximately 32,850 square feet in size (hereinafter referred to as the "Property"), upon which is situate a residence (hereinafter referred to as the "Structure"), the Real Estate meeting the definition of a certified historic structure under Internal Revenue Service Regulations and it is contemplated that it will be listed in the National Register of Historic Places; and

WHEREAS, Grantee is a body corporate and politic and has established laws whose purpose is generally to protect, preserve and enhance sites, structures with their appurtenances and environmental settings, and districts of historic, archeological, architectural or cultural value, all as is more particularly provided for by law; and

WHEREAS, the Structure has been designated as a historic resource in a historic district by Montgomery County and approved and adopted by the Maryland-National Capital Park and Planning Commission on the Montgomery County master plan for historic preservation, which designation will promote the conservation, preservation and protection of the exterior of such Structure but not preclude subdivision or development of the underlying Property pursuant to relevant portions of the Montgomery County Code; and

WHEREAS, the Real Estate has substantial historic, architectural, cultural and scenic character, and this Deed of Easement (this "Deed") will promote the protection and preservation of such Real Estate and its Property and its historic, architectural, cultural and scenic character, and will promote and protect the physical and environmental features of the Property which contribute to the historic integrity and setting of the historic Structure; and

WHEREAS, the Grantors hereby express their desire to retain and preserve the entire lot of the Property as the environmental, cultural and historic setting for the Structure located on it and to prohibit any residential subdivision on the Property; and

WHEREAS, Grantee is possessed with the power and duty to accept and hold this Deed; and

WHEREAS, the Historic Preservation Commission of Montgomery County, Maryland (the Historic Preservation Commission) is possessed with the power and duty to administer this Deed; and

WHEREAS, Grantee has determined that this Deed is exclusively for conservation purposes.

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grantors hereby grant and convey to Grantee with Special Warranty of Title an easement (the "Easement") in the Property which is all of that certain lot or parcel of land known as 4728 Dorset Avenue, Chevy Chase, Maryland 20815, and described as Lot 1, Block "5", in the subdivision known as Somerset Heights, together with all of the rights and interests thereto belonging, which is situate, lying and being in Montgomery County, State of Maryland, and which is more particularly set forth in Exhibit "A". The definitions of the words "Real Estate," "Property" and "Structure" set forth in the Recitals are incorporated herein by reference.

2. Exhibit B consists of _____ page(s) and includes as page 1 a schedule (which is recorded with this Deed) describing the documents, photographs of selected portions of the Property, and any other items that are not recorded herewith but are nonetheless as fully and completely incorporated by reference into this Deed as though recorded herewith.

3. The terms of the Easement are as follows:

(A) Duration and Nature of the Easement. The Easement shall be perpetual in duration. The parties agree that it is and shall be considered an easement in gross and as such is inheritable and assignable and runs with the land as an incorporeal property interest in the Property enforceable by Grantee and its successors, transferees and assigns with respect to the Property and against Grantors and Grantors' heirs, successors, transferees and assigns, all of whom are collectively referred to herein as "Grantee" and "Grantors", respectively. The Easement is subject to any and all presently existing valid encumbrances, easements and rights-of-way upon the Property.

(B) Subdivision Prohibited. Grantors agree that they shall not cause, permit or suffer any subdivision or resubdivision of the Property for any purpose whatsoever. Division of the Property into two or more parcels of land, for any purpose, is prohibited. The Property shall remain a single lot.

(C) Public Access. Grantors hereby agree to make the Property open to the public on two days per year, from 10:00 A.M. until 4:00 P.M., by prearrangement and appointment through the Grantee for inspection and viewing of the grounds and exterior structure; and to further permit the Grantee access to the grounds on such days or at other times by appointment as may be determined by the Grantor, to (1) photograph the grounds and exterior structure and to distribute such photographs to magazines, newsletters, or other publicly available publications, and (2) to arrange for educational organizations, professional architectural associations, and historic societies to study the Property and the exterior of the Structure.

(D) Maintenance and Administration. Grantors shall keep and maintain the Property in good, clean and safe condition.

(E) Inspection. Grantee shall have the right to enter the Property on reasonable notice to either of the Grantors for the purpose of inspecting the Property to determine whether there is compliance by the Grantors with the terms of the Easement. Grantors and Grantee agree that they shall be governed by Chapter 24A of the Montgomery County Code and that all renovations and alterations made to the Structure shall be reviewed and approved by the Historic Preservation Commission.

(F) Enforcement. Upon any breach of any of the material terms, conditions or restrictions contained in the Easement by either of the Grantors, their heirs, successors and assigns, the Grantee, its successors and assigns may exercise any or all of the following remedies, but only after fifteen (15) days prior written notice and opportunity to cure such breach:

(i) institute a suit to enjoin any breach or enforce any covenant by ex parte, temporary, and/or permanent injunction;

(ii) demand that the Property be restored promptly to the condition required by the Easement; and

(iii) correct any breach, and hold Grantor responsible for the resulting cost.

Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to Grantee at law or equity. If either of the Grantors, their heirs, successors and assigns, is found to have breached any of their obligations under the Easement, Grantors, their heirs, successors and assigns, shall jointly or severally reimburse Grantee for any reasonable costs or expenses incurred by Grantee, including court costs and reasonable attorneys' fees.

(G) Waiver. No failure on the part of Grantee to enforce any covenant or provision herein nor the waiver of any right thereunder by Grantee shall discharge or invalidate such covenant or provision of any other covenant, condition, or provision hereof, or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

(H) Notice. Any notice required to be given by the Easement shall be in writing and may be given by certified or registered mail, with postage prepaid and return receipt requested, if to the Grantors, addressed to the Grantors as follows:

James Brian Graham, Trustee
4728 Dorset Avenue
Chevy Chase, Maryland 20815

or to the Grantors at such other address as the Grantors may from time to time designate by notice to the Historic Preservation Commission, or, if to the Grantee, addressed to the Grantee as follows:

Chairperson
Historic Preservation Commission
8787 Georgia Avenue
Silver Spring, Maryland 20910-3760

or to the Grantee at such other address as the Chairperson of the Historic Preservation Commission may from time to time designate by notice to the Grantors. Any notice given in the foregoing manner shall be deemed to have been given upon receipt thereof, which shall be presumed to be two (2) days after the day notice has been deposited with the United States Post Office.

(I) Construction. The Easement is for the purpose of promoting and shall be construed to promote the purposes of Chapter 24A of the Montgomery County Code and of Section 2-118 of the Real Property Article of the Annotated Code of Maryland and to preserve the historic, architectural, cultural and scenic character of the Real Estate.

(J) Subsequent Conveyance. Grantors agree that the restrictions of the Easement will be inserted, verbatim or by express reference, in any subsequent deed or other legal instrument by which the Grantors' fee simple title to the Real Estate or any other possessory interest in the Real Estate, or any part thereof, is divested or conveyed.

(K) Transfer of Ownership. The Grantors agree for themselves, their personal representatives, heirs, successors, transferees and assigns, to notify the Grantee in writing of the names and addresses of any party to whom the Real Estate, or any part thereof, is being transferred before or within thirty (30) days of the time the transfer is consummated.

(L) Conservation Purposes. Grantee agrees that it will hold this Deed exclusively for conservation purposes, i.e., that it will not transfer this Deed whether or not for consideration. However, subject to the provisions of any applicable federal law, Grantee may assign or transfer its interest in this Deed to a governmental unit or organization which qualifies at the time of the transfer as an eligible donee of this Deed under any pertinent provisions of federal law, including but not limited to the Maryland Historical Trust, which will continue to hold this Deed exclusively for conservation purposes.

(M) Property Right. Grantors agree that the donation of this Deed gives rise to a property right, immediately vested in the Grantee, with a fair market value equal to the proportionate value that this Deed at the time of the donation bears to the value of the Property as a whole.

(N) Extinguishment. This Easement may be extinguished by a judicial proceeding if an unexpected change in the conditions applicable to the Real Estate, such as but not limited to a casualty which substantially destroys the Structure, makes it impossible or impractical to continue the use of the Easement for conservation purposes. In the event of such judicial extinguishment of this Easement, and upon a subsequent sale, exchange or involuntary conversion of the Real Estate, or any portion thereof, Grantee shall be entitled to a portion of the proceeds of the sale, exchange or involuntary conversion which are allocated to the Property (as defined herein and which does not include the value of any improvements) equal to the proportionate value that the Easement, at the time of its donation, bore to the value of the Property as a whole at that time, but which in no event shall be less than five percent (5%) of the value allocated to the Property at the time of such sale, exchange or involuntary conversion, and any and all compensation so received by the Grantee shall be used by the Grantee in a manner for conservation purposes consistent with this Easement.

(O) Interpretation. This Deed shall be interpreted under the laws of the State of Maryland and Montgomery County, Maryland resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its historic preservation purpose.

(P) Perpetual Duration. The Easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to the Grantors or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors in interest.

(Q) Responsibilities of Grantors Not Affected. Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any existing obligation of the Grantors as owners of the Real Estate.

To have and To Hold, this Deed of Easement unto the Grantee, its successors and assigns, forever.

In Witness Whereof, the Grantors and Grantee intending to legally bind themselves, have set their hands and seals on the date first written above.

Witness:

J.B.G. REVOCABLE TRUST

By: _____
James Brian Graham, Trustee

V.C. REVOCABLE TRUST

By: _____
Victoria Clarke, Trustee

Douglas M. Duncan, County Executive
Montgomery County, Maryland

APPROVED AS TO FORM AND LEGALITY

Office of the County Attorney

ACKNOWLEDGMENTS

STATE OF MARYLAND)
)SS:
COUNTY OF MONTGOMERY)

I hereby certify that on this _____ day of, 2001, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me, James Brian Graham, Trustee, and acknowledged the foregoing instrument to be his act and deed and that he executed the same for the purposes therein contained.

IN TESTIMONY WHEREOF, I have affixed my official seal.

Notary Public

My Commission expires:

STATE OF MARYLAND)
)SS:
COUNTY OF MONTGOMERY)

I hereby certify that on this _____ day of _____, 2001, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me, Victoria Clarke, Trustee, and acknowledged the foregoing instrument to be her act and deed and that she executed the same for the purposes therein contained.

IN TESTIMONY WHEREOF, I have affixed my official seal.

Notary Public

My Commission expires:

STATE OF MARYLAND)
)SS:
COUNTY OF MONTGOMERY)

I hereby certify that on this _____ day of _____, 2001, before the subscriber, a Notary Public of the State of Maryland, personally appeared before me Douglas M. Duncan and acknowledged that he is the County Executive of Montgomery County, Maryland and that the execution of the foregoing instrument is his free act as County Executive.

IN TESTIMONY WHEREOF, I have affixed my official seal.

Notary Public

My Commission expires:

THE UNDERSIGNED, a member in good standing of the Bar of the Court of Appeals of Maryland, hereby certifies that the within instrument was prepared by him.

Daniel P. Hodin, Esquire

Exhibit A

EXHIBIT B

Approved and Adopted Amendment to the Master Plan for Historic Preservation:
Daranestown/Travilah Historic Resources

Photographs of the Property as contained in the files of the Historic Preservation
Office

Deed of Easement.wpd

