

Review and Comment on Historic Preservation Easement- Riley House Covenant

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Completed: 12/21/12

Description

- 11420 Old Georgetown Road, Rockville
- 44,350 sq ft
- North Bethesda/Garrett Park Master Plan (1992)
- Applicant: Montgomery County Department of Parks

Summary/Analysis

Summary:

Pursuant to section 24A-13 of the County Code, the Planning Board is to review and comment on an application to donate a preservation easement to the County. Staff recommends approval to transmit comments to the Montgomery County Historic Preservation Commission (HPC).

Recommendation:

Staff recommends approval of the proposed covenant donation.

Site Description:

The subject property is 11420 Old Georgetown Road, Rockville (consisting of Lot numbered Thirteen (13) in Block Lettered "A" in a subdivision known as "Lots 13-16, Block A, LUXMANOR", as per plat recorded in Plat Book 72 at Plat 6943, among the Land Records of Montgomery County, Maryland, SAVING AND EXCEPTING that portion conveyed to the State Roads Commission by Deed recorded in Liber 3558 at Folio 342). The subject property, known as the Riley House, is a historic site designated in the Master Plan for Historic Preservation (#30/6) and a County park. The property is zoned R-200.



Analysis:

Establishment of a County Easement Program

The county is authorized to accept historic preservation easements, administered by the Historic Preservation Commission (*section 24A-13 of the County Code*). Upon receipt of an application for a preservation easement, the HPC is required to forward the application to the Planning Board for review and comment.

In making its comments, the Planning Board should focus on:

1. The relative significance of the historic resource;
2. The structural condition;
3. The owner's planning or completed preservation efforts;
4. The existing zoning and nature of the surrounding neighborhood;
5. Whether an easement will promote long-term survival of the historic resource; and
6. Identification of competing or supporting land use priorities or other relevant factors or issues.

The Historic Preservation Commission will consider the recommendation of the Planning Board and evaluate the application using the criteria above to formulate a recommendation for the County Executive. Upon positive recommendation of the Historic Preservation Commission, the County Executive may accept the donation of the easement (covenant).

Under the provisions of section 24A-13, the County is able to accept preservation easements from property owners. In this case, however, the County *is* the property owner and therefore cannot legally be both the grantor and grantee of the easement. The parties to the Covenant are satisfied that a covenant tied to the deed would serve the same purpose as an easement, and the National Park Service, which awarded the \$100,000 grant and which required the signing of an easement as a condition for receipt of the funding, has agreed to allow a covenant in place of an easement for the purpose of the grant award.

The Easement (Covenant)

The Commission is the recipient of a National Park Service "Save America's Treasures" Grant in the amount of \$100,000 to help fund architectural and engineering services to complete a facility plan for

the Riley property, a County park. The Department of Parks has prepared this covenant to satisfy a requirement of the grant.

The covenant subjects the property to certain conditions, including a requirement for the Commission to maintain, repair, and administer the property “in a manner satisfactory to the Secretary of the Interior” and consistent with the Montgomery County Historic Preservation Ordinance (*section 24A of the County Code*). As a Master Plan for Historic Preservation-designated historic site, the property is currently subject to the Historic Preservation Ordinance.

Factors for Consideration

Staff has evaluated the application and makes the following findings:

1. The subject property is listed in the National Register of Historic Places and the Montgomery County Master Plan for Historic Preservation. The property, part of the former Riley plantation, is improved by the Isaac Riley House (c 1800-15), with an attached log kitchen (c1850-1851), and was the plantation on which Josiah Henson was enslaved.
2. The property is well maintained and in good condition.
3. The Department of Parks is undertaking a facility plan for the property to implement additional improvements.
4. The subject property is zoned R-200. The R-200-zoned neighborhood west of Old Georgetown Road and adjacent to the subject property is characterized by single family houses; the neighborhood east of Old Georgetown Road, zoned PD-9, is characterized by townhomes. The use under the terms of the covenant is consistent both with current use and with the R-200 zone.
5. The covenant promotes the long-term survival of the property. The covenant is necessary under the terms of the Save America’s Treasures Grant.
6. Historic Preservation staff referred this covenant application to Area 2 staff for comment. No competing land use priorities or other relevant factors were identified.

Conclusion

Based on information provided by the applicants and the analysis contained in this report, staff concludes that the proposed Covenant is consistent with criteria established for the Historic Preservation Easement Program in section 24A-13 of the County Code and furthers the county’s historic preservation goals. Staff recommends approval of the application for covenant.

SW/MD/am

ATTACHMENTS

1. Henson House Covenants

COVENANT

THIS COVENANT is made this _____ day of _____, 20____ in accordance with the terms and conditions set forth herein.

WHEREAS, MONTGOMERY COUNTY, MARYLAND (hereinafter referred to as the “**COUNTY**”) is the fee simple owner of the land as is more particularly described in Exhibit A attached hereto and made a part hereof (“**Land**”) and the improvements thereon; and

WHEREAS, the Land is improved with historic structures as more particularly described in the recitals below (collectively, the “**Structures**”),

WHEREAS, the Land and the Structures together are referred to herein as the “**Property**”; and

WHEREAS, the COUNTY acquired the Property for a park; and

WHEREAS, pursuant to a management agreement dated May 24, 1972 (“**Agreement**”) between the COUNTY and the MARYLAND-NATIONAL PARK AND PLANNING COMMISSION (“**COMMISSION**”), the COMMISSION has the authority to, among other things, “acquire, develop, maintain and control parklands” throughout Montgomery County; and

WHEREAS, the Property is part of the former Riley plantation and the improvements thereon include the Isaac Riley House (c. 1800-1815) with an attached log kitchen (c. 1850-1851); and

WHEREAS, Josiah Henson was enslaved on the Riley Plantation for many years and, later wrote his autobiography, which served as a source for Harriet Beecher Stowe’s novel *Uncle Tom’s Cabin*; and

WHEREAS, the Property meets the definition of a certified historic structure under Internal Revenue Service regulations and is listed in the National Register of Historic Places; and

WHEREAS, the Structures have been designated as a historic site by the COUNTY; and

WHEREAS, the Structures were also approved and adopted by the COMMISSION on the Montgomery County Master Plan for Historic Preservation, which designation will promote the conservation, preservation and protection of the exterior of such Structures and the Land; and

WHEREAS, in its capacity as manager under the Agreement, the COMMISSION is the recipient of a National Park Service (U.S. Department of the Interior) Save America’s Treasures Grant, Grant Number 24-09-ML-0919 (“**Grant**”) in the amount of \$100,000, to help fund architectural and engineering services to complete a facility plan for the Property; and

WHEREAS, the purpose of the Grant is to preserve highly significant historic properties for future generations; and

WHEREAS, the COMMISSION, in its capacity as manager of the Property under the Agreement and in its capacity as grantee under the Grant agrees to meet the requirements of the Grant, including among other things, the requirements of Section 102(a)(5) of the National Historic Preservation Act; and

WHEREAS, as required by the Grant, a preservation organization acceptable to the National Park Service must agree to administer this Covenant; and

WHEREAS, the Historic Preservation Commission of Montgomery County, Maryland (“**Historic Preservation Commission**”) is possessed with the authority to administer this Covenant and is acceptable to the National Park Service as the administrator of this Covenant; and

WHEREAS, this Covenant is for preservation purposes and to comply with the requirements of the Grant.

NOW THEREFORE, in consideration of the Grant and the premises and covenants contained herein, the COMMISSION and its successors and assigns hereby covenant and agree to comply with the following restrictions which shall be covenants running with the land and the Historic Preservation Commission and its successors and assigns hereby covenant and agree to enforce the following restrictions which shall be covenants running with the land.

1. *Recitals.* The recitals are incorporated herein.
2. *Term.* The term of this Covenant is 50 (fifty) years and shall expire by its own terms without the necessity of recording a notice of termination on June 30, 2063.
3. *Land Records.* This Covenant shall be recorded among the land records of Montgomery County, Maryland and is subject to any and all presently existing valid encumbrances, easements and rights-of-way upon the Property, if any.
4. *Public Access.* The Property will be open to the public on at least two days per year, from 12:00 PM until 4:00 PM, for a minimum of 8 (eight) hours per year.
5. *Maintenance and Administration.* The Commission assumes the total cost of continued maintenance, repair and administration of the Property in a manner satisfactory to the Secretary of the Interior and shall keep and maintain the Property, including the exterior of the improvements thereon, in good, clean and safe condition. The Commission shall maintain, repair, and administer the Property and the exterior of the improvements thereon in a manner to preserve the historic aesthetic and cultural character and appearance of the Property and the improvements thereon in compliance with Chapter 24A, “Historic Resources Preservation”, of the Montgomery County Code and as otherwise required by the Secretary of the Interior; however, this covenant does not require the reconstruction of any improvements which are destroyed in whole or in part by casualty loss unless insurance proceeds are available for such purposes.
6. *Inspection.* The Historic Preservation Commission as administrator of this Covenant, shall have the right to enter the Property upon reasonable notice to the Commission for the purpose of inspecting the Property to determine whether the Property is being maintained as required under the provisions of this Covenant and to enforce the terms of this Covenant as provided herein. The rights and duties of the Historic Preservation Commission under this Covenant are in addition to, and do not impair, the rights of the County to enforce the provisions of this Covenant.
7. *Breach by Commission.* If the Commission fails to maintain the Property as required by this Covenant, the Historic Preservation Commission may take any or all of the following actions to obtain the Commission’s compliance with the provisions of this Covenant:

- i. Institute a suit to enjoin any breach or enforce any covenant.
 - ii. Demand that the Property be restored promptly to the condition required by the Covenant; and
 - iii. Correct any breach, and hold the Commission responsible for the resulting expenses, by, if necessary, instituting a suit to recover the expenses and all costs of collection in connection with the suit, including but not limited to reasonable attorneys fees.
8. *Subsequent Conveyance.* During the term of this Covenant, the provisions herein will be inserted, verbatim or by express reference, in any subsequent deed or other legal restriction by which fee simple title to the Property or any other possessory interest in the Property or any part thereof, is divested or conveyed.
9. *Signatories.* This Covenant is executed by the Commission in its capacity as manager of the Property, grantee under the Grant and obligee under this Covenant and by the Historic Preservation Commission to acknowledge its acceptance as administrator of the provisions of this Covenant. The COUNTY signs solely in its capacity as owner to permit the recordation of the Covenants among the land records but not as a party hereto.

IN WITNESS WHEREOF, this instrument has been executed by the authorized representatives of the MARYLAND-NATIONAL PARK AND PLANNING COMMISSION and the HISTORIC PRESERVATION COMMISSION OF MONTGOMERY COUNTY, MARYLAND on the day and year hereinbefore written.

ATTEST:

**MARYLAND-NATIONAL PARK
AND PLANNING COMMISSION**

Joseph C. Zimmerman
Secretary – Treasurer

By: _____
Name: Patricia Colihan Barney
Title: Executive Director

WITNESS

**HISTORIC PRESERVATION COMMISSION OF
MONTGOMERY COUNTY, MARYLAND**

Name: _____
Title: _____

STATE OF MARYLAND)
) ss:
COUNTY OF MONTGOMERY)

On this ____ day of _____, 20____, before me, the undersigned officer, personally appeared PATRICIA COLIHAN BARNEY, known to me (or satisfactorily proven) to be the Executive Director of the Maryland-National Capital Park and Planning Commission whose name is subscribed to the within instrument and acknowledged that (s)he is the authorized representative for the Maryland-National Capital Park and Planning Commission and that (s)he executed the same for the purposes therein contained on behalf of the Maryland-National Capital Park and Planning Commission. In witness whereof, I hereunto set my hand and official seal.

NOTARY PUBLIC

My Commission Expires:

STATE OF MARYLAND)
) ss:
COUNTY OF MONTGOMERY)

On this ____ day of _____, 20____, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the _____ of the Historic Preservation Commission of Montgomery County, Maryland whose name is subscribed to the within instrument and acknowledged that (s)he is the authorized representative for the Historic Preservation Commission of Montgomery County, Maryland and that (s)he executed the same for the purposes therein contained on behalf of the Historic Preservation Commission of Montgomery County, Maryland. In witness whereof, I hereunto set my hand and official seal.

NOTARY PUBLIC

My Commission Expires:

Acknowledged and agreed to solely in its capacity as fee simple owner of the Property:

By: _____
 Ramona Bell-Pearson
 Assistant Chief Administrative Officer
 Montgomery County, Maryland

This instrument was prepared under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Exhibit "A"

Lot numbered Thirteen (13) in Block Lettered "A" in a subdivision known as "Lots 13-16, Block A, LUXMANOR" , as per plat recorded in Plat Book 72 at Plat 6943, among the Land Records of Montgomery County, Maryland, SAVING AND EXCEPTING that portion conveyed to the State Roads Commission by Deed recorded in Liber 3558 at Folio 342.

Subject to covenants and restrictions of record

Being part of the property conveyed by Deed dated June 11, 1963 and recorded June 17, 1963 in Liber 3096 at Folio 135 among the Land Records of Montgomery County, Maryland.