

**MARYLAND HISTORICAL TRUST  
BOARD OF TRUSTEES' MEETING**

Thursday, May 14, 2020 at 10:00 AM

Teleconference

Pursuant to notice, the regular meeting of the Board of Trustees of the Maryland Historical Trust was held by teleconference.

Trustees present: Mmes. Bashiri, Ernstein, Filkins, Mears, and Paca; Messrs. Alberg, Brown, Buchheit, Feldstein, Little, Parker, and Robinson

Area Representatives present: Mmes. Bailey and Uunila; Messrs. Azola, Camlin, Charlton, Reed, and Stek

Ex-Officio Members: Senator Chris West; Delegate Jim Gilchrist, Secretary Robert Neall

Maryland Department of Planning: Robert McCord, Secretary

Office of the Attorney General: Paul Cucuzzella, Rieyn DeLony

MHT Staff: Elizabeth Hughes, Anne Raines, Greg Pierce, Barbara Fisher, Charlotte Lake, and Jennifer Ruffner.

Guests: Sakinah Linder

AGENDA

P1 CALL TO ORDER

Ms. Mears called the meeting to order at 10:08 AM. A quorum of Trustees was present.

Ms. Mears reported that G. Bernard (Bernie) Callan, an Area Representative on the MHT Board since 1981, died on February 13, 2020. Bernie will be remembered for his tireless advocacy on behalf of historic preservation and for his many years of service to the Maryland Historical Trust.

Ms. Mears welcomed two new appointees to the MHT Board – Jeffrey Buchheit and J. Rodney Little.

P2 APPROVAL OF MINUTES

Mr. Reed made a motion, seconded by Mr. Alberg, that the December 5, 2019 Board meeting minutes be approved. The Board voted unanimously to approve the minutes as amended.

P3 COMMITTEE REPORTS

P100            Capital Programs

P101R           MHT Historic Preservation Easement Program: Delegation of Authority for Termination or Modification of Certain Easements

Ms. Raines reported that at its May 16, 2019 meeting, the Board passed a resolution delegating to the Director of the Maryland Historical Trust the authority to terminate or modify historic preservation easements currently within the Trust's easement portfolio, subject to certain conditions and restrictions. The resolution reads, in Section 2.c.:

2.        *Provided that the Director does not determine that the property is of a type not adequately represented in the Trust's easement portfolio, the Director may terminate an easement on property:[...]*

      c. *That has benefited from a loan funded under the Maryland Historical Trust Preservation Loan Program if the later of (i) five years have passed from the date that the loan was paid off or (ii) fifteen years have passed from the date that the easement was recorded.*

Ms. Raines further reported that Easement Program staff recently drafted a termination for an easement that was required as a condition of a MHT historic preservation loan. This loan was secured by a mortgage lien that was extinguished through foreclosure, and the property was sold at auction in 2010. The loan was not repaid since the debt was, by law, extinguished through foreclosure.

Ms. Raines explained that the May 2019 Delegation of Authority does not address loans that were not repaid due to foreclosure or, as might also be a possibility, forgiven by the Maryland Board of Public Works (BPW) (forgiveness of repayment of a state loan constitutes a disposition of a State asset that requires BPW approval under State Finance and Procurement Article, § 10-305). Without a date for full repayment of a loan, it is not possible to determine which is the "later of" the two measuring dates set out in Section 2.c of the Delegation of Authority. Ms. Raines recommended that this section be revised to address loans that are never paid off because (i) the mortgage on the property securing the loan is extinguished by operation of law or (ii) the loan is forgiven by the Board of Public Works and written off by MHT.

The language proposed below (italicized and underlined) will allow the Director to terminate or modify eligible loan easements in cases where the loans were foreclosed or extinguished.

The following motion was made by Mr. Reed, seconded by Mr. Robinson, and approved unanimously.

**RESOLVED**, that the Maryland Historical Trust Board of Trustees delegates to the Director of the Maryland Historical Trust the authority to terminate or modify historic preservation easements currently within the Trust's easement portfolio, subject to the following conditions and restrictions:

1. Without the approval of the Board, the Director may not terminate an easement:
  - a.        That the Trust obtained by gift;

- b. That the Trust obtained through review under either Section 106 of the National Historic Preservation Act or comparable State law;
- c. On property that has benefited from a grant funded under the Maryland Historical Trust Preservation Grant Program;
- d. On property that has benefited from a grant funded by the Maryland Heritage Areas Authority;
- e. On property that has benefited from a grant funded under the African American Heritage Preservation Program;
- f. On property that (i) has benefited from funding authorized under the annual Maryland Consolidated Capital Bond Loan (the “Bond Bill”) and (ii) is individually listed in or individually eligible for listing in the National Register of Historic Places; or
- g. On property that (i) has benefited from a grant funded by or through the National Park Service and (ii) is individually listed in or individually eligible for listing in the National Register of Historic Places.

2. Provided that the Director does not determine that the property is of a type not adequately represented in the Trust’s easement portfolio, the Director may terminate an easement on property:

- a. That (i) has benefited from funding authorized under the Bond Bill and (ii) is *not* individually listed in or individually eligible for listing in the National Register of Historic Places;
- b. That (i) has benefited from a grant funded by or through the National Park Service and (ii) is *not* individually listed in or individually eligible for listing in the National Register of Historic Places, and if the easement has existed for a period of time that exceeds the term that the National Park Service required at the time the easement was executed; or
- c. That has benefited from a loan funded under the Maryland Historical Trust Preservation Loan Program if the later of:
  - i. five years have passed from the date that (a) the loan was paid off, (b) the loan was forgiven by the Maryland Board of Public Works, or (c) the mortgage securing the loan was extinguished by operation of law; or
  - ii. fifteen years have passed from the date that the easement was recorded.

3. If an easement described in either 2.b or 2.c above has not yet reached the date upon which the Director may terminate the easement, the Director may modify the easement such that it will terminate on that date.

4. The Director shall not terminate or allow for a termination of an easement until such time as any and all breaches of the easement have been mitigated, cured, or resolved to the Director’s satisfaction.

P102R            Capital Historic Preservation Grant Awards

Messrs. Parker, Brown, and Charlton recused themselves from the discussion and vote on this agenda item.

Ms. Fisher reminded the Board that the objective of the Capital Historic Preservation Grant Program is to provide funding to assist and encourage efforts to acquire and preserve historic properties. MHT received a \$600,000 appropriation to support the program in FY2020. For this funding round, individual grant requests were capped at \$100,000.

This year, forty-one eligible applications and one ineligible grant application were received by the extended April 6th, 2020 deadline. The total funding request was \$2,765,000. The majority of the funding requested was for rehabilitation, with the remainder for predevelopment costs. Applications received represented 15 counties and Baltimore City.

Ms. Fisher reported that a committee of MHT staff has evaluated, ranked, and recommended funding levels for eligible applicants in accordance with the Program's project selection criteria. Ms. Fisher then presented staff's funding recommendations for the Board's consideration.

The following motion was made by Mr. Reed, seconded by Ms. Bashiri. Dr. Ernstein abstained from the vote. The remainder of the Board approved the motion unanimously.

**RESOLVED**, that the Maryland Historical Trust Board of Trustees recommends to the Secretary of Planning the award of MHT Capital Historic Preservation Grants to those projects described in **Exhibit A** (MHT Capital Program Approved Grant Chart for Fiscal Year 2020 (the "**Chart**"). Projects currently proposed to receive grants appear on the attached Chart with the designation "A". If other funding should become available (potentially through cancellation of other MHT Capital Grants), (i) additional funding up to the amounts shown in the "Requested Grant Amount" column on the Chart will first be awarded to partially funded projects listed as eligible for additional funding on the "A" list; and then (ii) any remaining additional funding shall be awarded to projects on the "A-Reserve" list in the order in which they appear on the Chart.

Mr. Feldstein thanked staff for their work and asked that the grant chart for FY2021 include a column indicating the amount of funds that applicant projects have received from MHT grant programs in prior years.

P103 Monument Relocation Working Group - Report

Mr. Robinson reported on the February 20, 2020 meeting of the Monument Relocation Working Group which took place in Baltimore City and included a tour of the former sites of the Confederate monument statues as well as the location where the statues are being stored presently.

Mr. Reed commented that MHT should continue to push the City to identify a new location for these monuments. He expressed disappointment that the City had not followed up on some of the suggestions made by MHT. Messrs. Feldstein and Charlton concurred.

Ms. Bashiri remarked that she had followed up with individuals in Montgomery County who were responsible for relocating the Confederate monument from the Rockville Courthouse to the White's Ferry location and has information to share with the City regarding relocation costs, etc.

P104R            Delegation of Authority for Certain Easement Modifications

Ms. Raines reported that MHT's Easement boilerplate has evolved over many years since the agency recorded its first easement in 1969. For a limited period of time, at least from 1975 to 1979, some easements that were taken by MHT, including gift easements and those conveyed as a requirement of federal grants, included the following provision (the "ROFR"):

Grantor agrees that before Grantor shall sell or transfer other than by gift through a testamentary instrument the Property, Grantor shall first offer in writing to Grantee the right to purchase such property on the same terms and conditions as those proposed to be offered to others. If Grantee does not accept this offer for itself or its assigns within forty-five (45) days after receipt of notice of such offer, the Property may be sold or transferred on such terms and conditions to some other person or entity within six (6) months after the offer was made to Grantee. Thereafter, before the Property may be sold, leased or transferred, it must first be reoffered to the Grantee as if the first offer had never been made.

Ms. Raines explained that title companies typically contact MHT at the time of settlement to inquire about the ROFR provision if one appears in an easement on the property being sold. The concerns of the parties to the settlement are usually satisfied with MHT's execution of a waiver of the ROFR. The waiver is a form document prepared by MHT's AAGs, which the Director executes pursuant to the delegation of authority from the Board of Trustees to "waive any right of first refusal provided for under a preservation easement to MHT, and to grant extensions of waivers." This delegation of authority was given to the Director by Resolution H105R approved by the Board on March 17, 2005.

However, as further explained by Ms. Raines and Mr. Cucuzzella, certain federal institutional mortgage loan insurers, including the Federal Housing Administration (FHA), interpret the ROFR as a legal restriction on the assumability of the mortgaged property, which is barred under Code of Federal Regulation (CFR) § 203.512 . CFR § 203.41 defines "legal restrictions" on conveyance as "any provision in any legal instrument, law or regulation applicable to the mortgagor or the mortgaged property, including but not limited to a lease, deed, sales contract, declaration of covenants, declaration of condominium, option, right of first refusal." The easement's ROFR provision does not fall under any of the exceptions listed in the regulation.

The unintended consequences of the ROFR provision is the inability of buyers with certain types of federally-insured loans made by FHA-approved lenders to purchase property subject to a ROFR easement, and the hampering of the easement property owner's ability to sell the property. The pending sale of the historic Layton House illustrates the consequences of the ROFR provision. The Layton House (M:14-37) is an early 19th century, 2-story brick Federal-style house with a three-bay Flemish bond main facade and a gable roof. Located in Laytonsville in Montgomery County, the property was listed individually on the National Register in 1975. MHT's easement was recorded in 1978 and was a requirement of a grant from the National Park Service. The building is a private residence. The pending settlement on

this property has been delayed twice while the parties attempt to work around the issue, such as modifying the ROFR provision to provide that it would automatically terminate if title to the mortgaged property was transferred by foreclosure or deed-in-lieu of foreclosure. However, the sale is in danger of falling through, because the attorney for the FHA lender would not accept the proposed modification, and the FHA lender refuses to approve the buyer's loan unless the ROFR is removed from the easement.

To facilitate the transaction, the buyer and seller propose a modification of the easement to remove the ROFR in its entirety. This provision is no longer included in MHT's standard easement as approved by the Board. The provision also provides no practical benefit to MHT, as MHT has moved away from acquiring historic properties as a preservation tool and lacks funds to purchase properties under ROFR easements. Ms. Raines recommended that the Board delegate to the Director the ability to remove a ROFR provision from an easement without requiring further action by the Board.

The following motion was made by Mr. Robinson, seconded by Mr. Reed, and approved unanimously.

**RESOLVED**, that the Maryland Historical Trust Board of Trustees delegates to the Director the authority to modify all existing easements containing a right of first refusal provision by removing the provision in its entirety from all easements containing the provision.

P200            Survey, Registration, Community Education & Museums

P201R          Heritage Preservation Fund Project Selection – FY21

Ms. Raines reported that, based on the Maryland Heritage Preservation Fund Disposition Policy, total approvals for expenditures from the Fund for FY2021 must not exceed six percent of the value of the Fund (contributions to the Fund, income, and appreciation) based on a four year rolling average of the Fund's market value minus any prior commitments not yet expended and by any restricted funds and interest earned on these funds that are included in the Fund. Based on this calculation, the Board may expend up to \$238,080.58 in FY2021.

Ms. Raines reported that the Heritage Preservation Fund Disposition Committee met on May 8<sup>th</sup> to consider funding proposals submitted by MHT staff. This year, the Committee is inclined to be conservative in making funding awards since the impact of future reductions on the MHT operating budget remain unknown.

The following motion was made by Ms. Bailey, seconded by Mr. Parker, and approved unanimously.

**RESOLVED**, by the Board of Trustees of the Maryland Historical Trust, that an expenditure of up to \$94,810 from the MHT Heritage Preservation Fund in fiscal year 2021 to support the following projects is approved.

- Up to \$10,000 for MHT Staff Training;

- Up to \$500 for the MHT Maryland History Day Prize;
- Up to \$3,000 for MHT Staff Recognition Awards;
- Up to \$6,000 for the MHT Preservation Awards Ceremony;
- Up to \$24,000 for the Easement Processor Position;
- Up to \$6,000 for the 2021 Summer Internship in Archeology;
- Up to \$17,000 for Maryland Military Monuments conservation;
- Up to \$810 for the JPPM Forge;
- Up to \$2,500 for Preservation Maryland – Old Line State Summit Plenary Sponsorship.
- Up to \$25,000 for the Architectural Survey Data Gap Analysis and Needs Assessment Position.

In addition, up to \$50,656.41 in prior year commitments to support the contractual Easement Inspector position shall instead be used to support the permanent Easement Administrator position.

P202            JPPM Report

Greg Pierce, Executive Director of Jefferson Patterson Park and Museum (JPPM), reported on new and ongoing initiatives at JPPM.

P300            Management & Planning

P301R          Election of Area Representative

Ms. Filkins, Chair of the MHT Board Nominating Committee, reported that the Bylaws of the MHT Board state that the Trustees may at any time elect up to 10 persons to serve as Area Representatives to the Trust. Currently, there are two vacant Area Representative slots on the Board.

Sakinah Linder, who resigned from the Board effective December 10, 2019, has expressed an interest in filling the vacant Area Representative slot. The MHT Nominating Committee met on March 2, 2020 to review Ms. Linder’s Appointee Exemption Form and recommends her for election by the Board to one of the two vacant Area Representative slots.

The following motion was made by Ms. Bashiri, seconded by Ms. Uunila, and approved unanimously.

**RESOLVED**, that the Maryland Historical Trust Board of Trustees approves the appointment of Sakinah Linder to fill a vacant Area Representative slot which will conclude on August 31, 2020.

P302R          Election of Elected Trustee

Mr. Feldstein recused himself from the discussion and action on this item.

Ms. Filkins reported that the MHT Board Executive Committee consists of the officers, the immediate past Chairman (if still a Trustee) or the current Chairman's designee, and one other

Trustee elected by the Trustees. Sakinah Linder served as the Elected Trustee until her resignation from the Board in December 2019.

The MHT Nominating Committee met on March 2, 2020 to consider filling the vacancy on the Executive Committee resulting from Ms. Linder's resignation and recommends that Al Feldstein be considered by the Board for election as the Elected Trustee on the Executive Committee.

The following motion was made by Ms. Bailey, seconded by Mr. Parker, and approved unanimously.

**RESOLVED**, that the Maryland Historical Trust Board of Trustees approves the Nominating Committee's recommendation to appoint Al Feldstein to serve as the Elected Trustee on the Executive Committee.

P303 Interim Actions of the Executive Committee

Ms. Hughes reported that the Executive Committee met on January 29, 2020 and took action to approve a resolution of appreciation to Edward E. Chaney for 27 years of service to the Maryland Historical Trust.

P304 Investment Committee Report

Mr. Parker, Treasurer of the MHT Board and Chairman of the Investment Committee, reported that while the S&P 500 was down almost 20% in the first quarter, the Board's investments were only down about 13%. As of March 31, returns over the trailing 12 months totaled only 4%. This performance is good when considered within the context of the volatile environment we are currently experiencing.

Mr. Parker reported that the Committee had considered seeking a third party evaluation of the Board's investment advisor. However, the Committee feels confident about the advisor and does not feel that there is sufficient cost/benefit to seeking an evaluation at this time.

Mr. Parker indicated that the Committee is being mindful of keeping sufficient cash on hand in liquid form to ensure that, if it is needed, it will not be necessary to to sell equities.

Mr. Charlton remarked that these funds should only be used to assist MHT to replace operating reductions in cases of emergency.

Mr. Feldstein thanked the Committee for its diligence as stewards of these funds.

P305 Budget and Legislation

Ms. Hughes reported that the budget for FY21 includes funding of grant programs that is level with FY20 appropriation amounts as follows:

African American Heritage Preservation Grant Program - \$1M  
Capital Historic Preservation Grant Program - \$600,000  
Non-Capital Historic Preservation Grant Program - \$300,000  
Maryland Heritage Areas Grant Program - \$5.1M  
State Historic Revitalization Tax Credit Program - \$9M

In addition, MHT received funding in the capital budget to support rehabilitation of the Patterson House (\$4,590,000) and development of design documents to support expansion of the Maryland Archeological Conservation Lab (\$215,000).

Ms. Hughes also reported that a number of bills passed during the 2020 session of the Maryland General Assembly that will impact MHT programs as follows:

HB21 – Abandoned Property in the Possession of a Museum: Maryland is among a small handful of states that has not adopted unclaimed property laws that pertain to abandoned tangible property (i.e. non-real estate property items) held by libraries, archives and museums. This legislation permits Maryland's cultural institutions with a method by which they may acquire ownership of abandoned tangible property in their possession so that they may catalog, exhibit and otherwise care for or dispose of the property.

HB759 - Historic Revitalization Tax Credit -Expansion - Rehabilitations of Common Elements of Condominiums and Cooperative Projects: HB759 alters the definition of "small commercial project" under the historic revitalization tax credit program to include rehabilitation of common elements of condominiums. With passage of this bill, the governing bodies of condominiums may now apply for historic tax credits under the "small commercial" component of the program when rehabilitating condominium common areas.

HB862 - Historic Revitalization Tax Credit -Transferability (Historic Revitalization Tax Credit Improvement Act of 2020): This bill permits state historic revitalization tax credits to be transferred to a third party. In such cases, the amount of the transferred tax credit may be used by the transferee either against the total tax otherwise payable by the transferee in that taxable year or, if the credit exceeds the state income tax of the transferee, the transferee may claim a refund in the amount of the excess or transfer the remainder of the tax credit to any individual or business entity. Transferable tax credits are beneficial to developers of historic properties because it is a method by which they can raise capital.

HB1539 - Grant Applications and Reporting - Uniform Forms and Requirements: This bill establishes the "Maryland Efficient Grant Application Council" to be chaired by the Director of the Governor's Grants Office. Following consultation with stakeholders, the Council is to make recommendations to the Governor's Grants Office and the Department of Budget and Management by July 1, 2024 on the creation of the following materials to be used by all grant making agencies in the state: 1.) a uniform grant application; 2.) uniform financial controls and reporting requirements; and 3.) uniform progress reporting requirements. The results of the Council's work will have a significant impact on MHT's many grants programs.

In addition to these bills, two pieces of legislation of interest to MHT did not pass in 2020 but

may be resubmitted during the 2021 session of the General Assembly:

HB640 - Historic Revitalization Tax Credit -Certified Historic Structure and Single Family, Owner-Occupied Residence – Definitions: Currently, state owned properties may not qualify for the state historic tax credit. HB640 would have removed that prohibition, so that structures located on property that is owned by the Department of Natural Resources (DNR) and occupied by a person under an agreement with DNR by which the person pays for rehabilitation of the structure as a condition of occupancy could access the historic tax credit program.

HB1512 - Historic African American Cemeteries Preservation Fund: HB1512 would have established an Historic African American Cemeteries Preservation Fund and required the Maryland Department of Planning to administer the Fund for the purpose of assisting non-profit organizations, local governments, and individuals that own historic African American cemeteries with maintenance costs.

P306            Litigation and Legal Issues

Mr. Cucuzzella reported that in August of 2017, a tenant at the Asbury House property located on the grounds of Jefferson Patterson Park and Museum sustained injuries in the house and subsequently submitted a claim to the Treasurer’s Office for damages which remains unresolved. The tenant has now filed suit against MHT seeking damages of \$75,000. If successful, payment of this claim will be made from a state trust fund that exists to absorb costs associated with tort litigation against the State. The suit will not impact MHT assets.

Mr. Cucuzzella also reported that the Secretary of MDP has suspended the legal time requirements under which a state historic tax credit project must begin for certain projects. Ordinarily, state historic tax credit projects must begin within 18 months of issuance of an initial tax credit certificate. Projects whose 18 month time limit would have expired during the state of emergency declared by Governor Hogan on March 5, 2020 now have until 30 days after the suspension of the State of Emergency to begin.

Announcements

Ms. Mears made the following announcements:

- The next MHT Board of Trustees meeting is scheduled for July 16, 2020
- The deadline for FY21 African American Heritage Preservation Grants is July 1, 2020
- The Non Capital Historic Preservation Grant round opens on May 11 with Intention to Apply forms due by July 17 and full applications due on August 28, 2020

Meeting adjourned at 12:15 PM