

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

Thursday, May 16, 2019 at 10:00 AM
100 Community Place
Crownsville, MD

Pursuant to notice, the regular meeting of the Board of Trustees of the Maryland Historical Trust (MHT) was held at 100 Community Place, Crownsville, Maryland.

Trustees present: Mmes. Filkins and Mears; Messrs. Feldstein, Edson, Parker, and Robinson.

Area Representatives present: Mme. Uunila; Messrs. Callan, Charlton, Stek, Spikes, and Reed.

Maryland Department of Planning: Robert McCord, Secretary.

Office of the Attorney General: Paul Cucuzzella, Rieyn DeLony.

MHT Staff: Elizabeth Hughes, Anne Raines, Kathy Monday, Rachele Green, Matt McKnight, Collin Ingraham, Kate Bolasky, Allison Luthern, and Charlotte Lake.

Guests: Tim Maloney, E. Steuart Chaney, Hamilton Chaney, Tim Perry, Liz Grosser, and Clarence Woods, Shelia Bashiri.

L1 CALL TO ORDER

Prior to the start of the meeting, Brien Poffenberger announced that he recently purchased a historic property restoration business that could potentially create a conflict with his service as a Trustee on the MHT Board and therefore was resigning from the Board effective immediately. Laura Mears, Vice Chair of the Board, called the meeting to order at 10:10 a.m. A quorum of Trustees was not present. A quorum of the Executive Committee was present.

Ms. Mears recognized Mr. Edson with a certificate of appreciation for his twenty-four years of service on the Board, six of which were in his service as chair.

Ms. Mears welcomed Senator Chris West to the Board. Senator West has been appointed to represent the President of the Senate on the MHT Board of Trustees as an ex officio non-voting member.

Ms. Mears congratulated Dr. Matt McKnight on his promotion to the position of Chief of the Office of Archeology and Collin Ingraham on his promotion to the position of Chief of the Office of Preservation Services.

L2 APPROVAL OF MINUTES

Mr. Feldstein made a motion, seconded by Mr. Charlton that the January 31, 2019 minutes be approved as submitted. The Board voted unanimously to approve the minutes.

L3 PUBLIC COMMENT

No members of the public were present to provide comment.

L4 COMMITTEE REPORTS

L100 Capital Programs

L101R Old Colony Cove Easement Modification Request

Ms. Anne Raines, Deputy Director, reported that the Old Colony Cove easement is a donated easement held jointly by the Maryland Historical Trust (MHT), the Maryland Environmental Trust (MET), and Scenic Rivers Land Trust (SRLT). Among other things, the Easement protects the exterior of the Manor House, the surrounding 310 acres of property, and any potential archeological resources on the subsurface of the property. It also includes restrictions and limited activities on the surrounding land to protect its natural, rural character. The easement is currently in breach due to the installation of unapproved vinyl windows and a new front door on the historic 1849 “Manor House” by a prior property owner.

Hamilton Chaney, the current property owner, has submitted two requests for a modification to the easement that would permit construction of a new home on the property. MHT staff find that neither of these modification proposals are permitted under the easement’s current terms. Ms. Raines presented staff’s findings, describing how the easement’s restrictive language prohibits approval of the property owner’s request.

Mr. Tim Maloney, attorney for the Chaney family, was then given an opportunity to present to the Board. He argued that the easement language did not prohibit approval of a modification to the easement as requested by the property owner. Mr. Hamilton Chaney and Mr. Stuart Chaney both addressed the Board, providing background information about the history of the property and their ongoing stewardship of the site.

The Board discussed the terms of the easement at length. The Board agreed that a teleconference to further discuss this item before the July meeting may be necessary. The Board will further consider the easement amendment request during the July meeting.

Chuck Edson left after discussion of this item at which point a quorum of the Executive Committee was no longer present.

L102R Capital Historic Preservation Grant Awards

Dr. Charlotte Lake, Capital Grant and Loan Program Administrator, reported that the Historic Preservation Capital Grant Program was funded at \$600,000 in FY2019. Applications for the

FY2019 grant round included forty-six eligible and one ineligible grant application submitted by the March 22, 2019 deadline. The total funding request was \$3,353,500. The majority of the funding requested was for rehabilitation, with the remainder for predevelopment costs and acquisition. Applications received represented 18 counties and Baltimore City.

A committee of MHT staff has evaluated, ranked, and recommended funding levels for eligible applicants in accordance with the Program's project selection criteria. For this funding round, individual grant requests were capped at \$100,000. Projects currently proposed to receive grants were identified on a grant awards chart (distributed to the Board) 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.

Board members indicated their support for the funding recommendations.

L103R African American Heritage Preservation Grant – Emergency Request

Dr. Lake reported that the property seeking emergency grant funding, known as Bazel's Chapel, is a vernacular Gothic Revival-style church dating to the late-19th or early 20th century, either built on or moved to the current site in 1911. The church stands on the site of the original chapel that was constructed in 1876. Located in Bucktown, the Property is best known for its association with Harriet Tubman, whose family members reportedly worshipped at the original Bazel's Chapel. The original church was destroyed by fire.

In recent years, the church has fallen into disrepair and is in urgent need of stabilization. The community had been unable to obtain permission to undertake maintenance or repair on the building until the passing of property's steward in the fall of 2018. With the passing of the steward, local community members were able to obtain the property owner's consent for the project in April of 2019, allowing the emergency grant application to move forward. The structure is currently in a severe state of disrepair. Without immediate stabilization, it is extremely unlikely that it will survive until the upcoming FY2020 Program grant round, since funding for that round will not be available until early spring of 2020.

The grant, totaling \$55,121.92, will be used to stabilize the building and perform interior and exterior rehabilitation, including: the foundation, framing, roof, and window and door repair /replacement, carpentry and masonry repairs, and associated architectural, engineering, and consulting services

In accordance with the African American Heritage Preservation Grant Program's emergency grant procedures set out in COMAR 34.04.09.07. B, the Commission on African American History and Culture has recommended to MHT that the grant be made to the grantee to undertake emergency stabilization of the property. Once the MHT Board has taken action, its recommendation will be forwarded to the Secretary of the Maryland Department of Planning for final approval.

Board members indicated their support for the emergency grant award.

L104R Old Loughborough Easement Modification

Ms. Raines reported that Old Loughborough, also known as Milton, was constructed in two phases, one prior to 1820 and the other in 1847. Its current appearance is of a taller central block with two balanced wings, all of uncoursed granite. The property was individually listed on the National Register in 1975, and the Easement was donated to MHT in 1977. The Easement includes nine matter of right amenity exceptions which were negotiated with the original grantor and included in the Easement. These exceptions allow a number of both interior and exterior changes, as well as new construction, all of which are expressly permitted, although still require the consent of the Director.

The current owner wishes to build an addition to the house and originally approached MHT staff with a proposal to exchange the matter of right amenity exception allowing construction of a tennis court for the right to build the addition. MHT staff alternatively recommended exchanging the matter of right amenity exception for construction of the annex for the right to build the addition, which is more equivalent in scale, scope, and ground disturbance and is therefore a more appropriate exchange. Removing the right to construct the annex rather than removing the right to construct the tennis court provides greater protection to the property. The modification of the gift Easement requires the consent of MHT's Board of Trustees.

Some members of the Board expressed concern about the design of the proposed addition. While Board members indicated support for the modification generally, they recommended that staff work with the property owner to identify ways to screen or otherwise hide the addition from view using landscaping.

L105R Easement Modification Delegation to the Director

Ms. Raines reported that MHT's form easement document has evolved since MHT recorded its first easement in 1969. For a period of time the form document for easements taken by MHT as required by budget bills authorizing State legislative funding of "bond bill" grants to assist historic properties included the following provision (or language similar thereto):

The Grantor shall reimburse to BPW the amount of the BPW Grant or that portion which has been disbursed by BPW if the Easement is determined by court finding or otherwise not to be legally enforceable by Grantee for any reason.

Easement property owners are finding this provision to be an impediment to the sale of these easement properties because of the concern of potential buyers over liability for repayment of the grant if the easement is ever found to be legally unenforceable. Consultation with MHT easement staff and legal counsel sometimes can allay these concerns, but some buyers will not purchase such properties unless this provision is modified or removed. Recently, a potential buyer for the property located at 401 High Street in Cambridge halted settlement on the property until this issue was addressed. See the 4/15/2019 Executive Committee meeting minutes. The buyer proposed modifying the provision to keep the burden of repaying the grant on the original grantee/seller,

rather than having the provision bind the buyer. The seller, however, did not agree to the buyer's proposal, and alternatively proposed that the provision be deleted in its entirety. In this case, the Executive Committee resolved to modify the easement to strike the provision from the easement in its entirety.

This provision is no longer included in MHT's standard easement form approved by the Board. As explained to the Board by Counsel, the provision provides no practical benefit or right to MHT because there is no basis in law that gives rise to concerns that a court would conclude that a MHT easement is not legally enforceable. Granting the Director authority to remove this provision will help facilitate the conveyance of easement properties, which can be challenging. This resolution will delegate to the Director the ability to remove this provision from existing easements without requiring further action by the Board.

Board members indicated their support for this easement modification delegation to the Director.

L106R Historic Preservation Easement Retention Policy

Ms. Raines reminded the Board of the 2018 Joint Chairmen's Report on the FY2019 State Operating and Capital Budgets which directed MHT to identify a sustainable strategy for the long-term administration of the MHT historic preservation easement program. The resulting JCR report, delivered in December of 2018, provided heavily researched background on the history of the easement program, portfolio, and staffing. In addition, a working group of MHT's Board, consisting of Josh Brown, Bernie Callan, Julie Ernstein, Sarah Filkins, Brien Poffenberger, and Kirsti Uunila, met with MHT staff numerous times in the summer and fall of 2018 to discuss recommendations for policies on taking easements in the future which were approved by the Board at the October 2018 board meeting. These policies raised the threshold for taking easements to only those that are individually listed or individually eligible for the National Register, and changed easement taking policy for extracted easements for financial assistance to be term rather than perpetual easements, with the term based on funding received.

The JCR report also asked MHT to investigate the potential for terminating easements already in the MHT easement portfolio. While staff were unable to give this issue the attention it deserved in the short timeframe of the JCR report, MHT pledged to "seek to fine tune its easement holdings in a manner that is lawful, fair, reasonable, and consistent with MHT's historic preservation mission". Since that time, staff conducted research in the easement files and land records, compiled data on funding and significance, and evaluated a number of different scenarios for terminating easements. Staff met with the Board working group on April 25th and finalized the following proposal which would delegate 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 the loan was paid off 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.

Following discussion, Board members indicated their support for this approach to streamlining the existing easement portfolio.

L200 Survey, Registration, Community Education & Museums
 L201R Heritage Preservation Fund Project Selection for FY20

Ms. Raines reminded the Board that at its December 7, 2006 meeting, the Board approved the Maryland Heritage Preservation Fund Disposition Policy and directed MHT staff to prepare specific project proposals, in accordance with that Policy, for funding from the Fund. Under the Policy, eligible projects include those representing significant “targets of opportunity” or high

priority projects or programs to be initiated and conducted by the Trust which are not funded by the Trust's appropriated state budget.

Based on the Maryland Heritage Preservation Fund Disposition Policy, total approvals for expenditures from the Fund for FY2020 shall 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.

The Heritage Preservation Fund Disposition Committee, composed of MHT Board members Bernie Callan, Dick Charlton, Sara Filkins, Sakinah Linder, and Kirsti Uunila, met on May 2nd to review project proposals. The Committee recommends the following projects totaling \$204,459.81 for funding:

- Up to \$20,000 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 \$22,000 for the Easement Processor Position;
- Up to \$47,000 for the Easement Inspector Position;
- Up to \$6,000 for the 2020 Summer Internship in Archeology;
- Up to \$50,000 for JPPM Personnel Retention;
- Up to \$16,959.81 (partial funding) for the Capital Grants Administrator Position;
- Up to \$29,000 for the Architectural Survey Data Gap Analysis and Needs Assessment Position;
- Up to \$4,000 for Preservation Maryland – Old Line State Summit Plenary Sponsorship.

In addition, the Committee recommends that as additional funds become available due to cost under-runs on any of the above projects, those funds should be directed first to fully fund the request for the Capital Grants Administrator Position (full request was \$27,000) and thereafter to fund the request for the MAC Lab Intern (full request was \$6,000).

In addition, the Committee recommends approval of the request to allow FY2019 funds awarded for the *H2O Today* exhibit to be used to pay staff salaries to staff the exhibit during opening hours.

Board members indicated their support for the Committee's funding recommendations.

Board members discussed their concerns about how much of this funding was being used to pay for staff salaries – an expense that should be carried by the State rather than the MHT Board. Board members expressed an interest in scheduling a meeting with the Administration to discuss the MHT budget and associated staffing needs. Sara Filkins and Laura Mears will explore scheduling such a meeting.

L300 Management & Planning
L301 Interim Actions of the Executive Committee

MHT Board Executive Committee Teleconference
Monday, April 15, 2019

MHT Board Executive Committee: Margo Bailey, Laura Mears, Sam Parker, Brien Poffenberger

MHT Staff: Elizabeth Hughes, Anne Raines, Kate Bolasky, Collin Ingraham

Office of the Attorney General: Paul Cucuzzella, Rieyn DeLony

Brien Poffenberger, Chair, called the meeting to order at 11:02 a.m.

I. Request for Easement Modification: 401 High Street, Cambridge, Dorchester County

Anne Raines reported that in 1995, The James B. Richardson Foundation, Inc. granted a Deed of Easement and Conditional Security Agreement (the "Easement") to MHT on 401 High Street, Cambridge, Dorchester County (the Richardson Maritime Museum) as a condition of State legislative grant (bond bill) funding in the amount of \$300,000. The Foundation now plans to sell the building. A buyer has been identified, but the buyer is concerned about a specific provision in the Easement.

Reference Paragraph 2. (page 2): "The Grantor shall reimburse to BPW the amount of the BPW Grant or that portion which has been disbursed by BPW if the Easement is determined by court finding or otherwise not to be legally enforceable by Grantee for any reason."

If the property transfers with this provision remaining in the Easement document, the buyer would be responsible for reimbursing to BPW the funds that were received by The James B. Richardson Foundation, Inc. in the 1990s if, at some future point in time, the Easement is ever found to be legally unenforceable. The buyer does not wish to take ownership of the property with this provision in the Easement. To facilitate the transaction, the buyer proposes a modification of the Easement to allow the burden of this provision to remain with the Foundation rather than transferring to the buyer. The seller, however, does not agree with the buyer's proposal, and alternatively proposes that the provision be amended out of the Easement in its entirety.

Since this provision is no longer included in MHT's standard easement as approved by the Board, staff recommends that the Board approve a modification of the Easement. The provision provides no practical benefit or right to MHT inasmuch as there is no basis in law to be concerned that a court would ever conclude that an MHT easement is not legally enforceable.

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

RESOLVED, that the Executive Committee of Maryland Historical Trust Board of Trustees approves the modification of the Easement to strike Paragraph 2 of the Easement that states:

The Grantor shall reimburse to the BPW the amount of the BPW Grant or that portion which has been disbursed by BPW if the Easement is determined by court finding or otherwise not to be legally enforceable by Grantee for any reason.

Mr. Poffenberger directed that an action item be prepared for the May 16th full Board meeting that would address modification of all easements that contain this language.

Meeting adjourned at 11:35 a.m.

L302 Investment Committee - Report

Mr. Parker, Treasurer and Chair of the Investment Committee, reported that the Investment Committee had scheduled a teleconference on May 9th but did not meet due to the lack of a quorum. He indicated a need for additional Board members to volunteer to serve on the Committee. Laura Mears appointed Doug Reed to join the Committee and offered to participate in Investment Committee meetings as well.

L303 Litigation & Legal Issues

Ms. Hughes reviewed the history of correspondence between MHT and the City of Baltimore regarding the three Confederate Monuments on which MHT holds an historic preservation easement that were removed by the City in August 2017. She noted that the Maryland Division of the Sons of Confederate Veterans has retained the law firm of Gordon & Simmons LLC to assist the organization in its efforts to seek restoration of the Baltimore City monuments to their original location or, at minimum, some other publicly accessible space in Maryland. At this time, it remains unclear what sort of legal action Gordon & Simmons LLC and their client might pursue.

By acclamation, the Board agreed to go into closed session as permitted by the Open Meetings Act, Annotated Code of Maryland, State Government Article § 3-305(b)(7), in order to consult with counsel to obtain legal advice on a legal matter.

The Board returned to open session.

Mr. Stek recommended that MHT send a letter to the Mayor of Baltimore City, asking that we meet to discuss how we can work together to expedite the process of relocating the monuments to a location that is publicly accessible.

L304 Budget & Legislation

Ms. Hughes reported on three bills passed during the 2019 session of the Maryland General Assembly that are of particular interest to the Maryland Historical Trust.

1. HB307: Maryland Lynching Truth and Reconciliation Commission: This bill creates a Maryland Lynching Truth and Reconciliation Commission. Among the 19 members of the

Commission is the Director of MHT or her designee.

2. HB 1260/SB581: Economic, Housing and Community Development - Opportunity Zone Incentives: This bill includes significant changes to the Maryland Heritage Structure Rehabilitation Tax Credit.

3. HB1403/SB741: Adaptive Reuse of Historic Properties – Study: This bill directs the Secretary of MDP to contract with a consultant to undertake a study of obstacles to and opportunities for redevelopment of historic complexes or campuses consisting of multiple buildings that are or were owned by the federal government or the State. MHT is staffing the Steering Committee that will oversee the study. The study is to provide recommendations for a historic resource package to be considered by the Secretary of Planning and the General Assembly for the 2020 legislative session.

Ms. Hughes reported that the FY2020 budget includes funding for the following MHT Grant and Historic Tax Credit Programs:

Program	Program Type	FY18	FY19	FY20
African American Heritage Preservation Grant Program	Grant	\$1M	\$1M	\$1M
Capital Historic Preservation Grant Program	Grant	\$600,000	\$600,000	\$600,000
Non-Capital Historic Preservation Grant Program	Grant	\$200,000	\$300,000	\$300,000
Historical and Cultural Museum Advancement Grant Program	Grant	\$0	\$0	\$0
Maryland Heritage Areas Program	Grant	\$3M	\$5.7M*	\$5.7M*
Historic Tax Credit Program (Competitive Commercial)	Tax Credit	\$9M	\$9M	\$9M

*Language in the Budget Reconciliation and Financing Act funded the Maryland Heritage Areas Program at \$6 million but stipulated that the Maryland Historical Trust could use up to \$300,000 from that program to support the Non-Capital Historic Preservation Grant Program.

L305 Board Member Recognition

[This item was addressed at the start of the meeting as Mr. Edson was required to depart the meeting early.]

Meeting adjourned at 2:10 PM.

Ms. Laura Mears, Vice Chair

Elizabeth Hughes, Director