

ORDINANCE NO. 3844

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, ENTITLED "AN ORDINANCE TO PROVIDE FOR THE CLOSURE OF A PORTION OF A STREET KNOWN AS PEAR STREET, RUNNING FROM THE SOUTH SIDE OF HENDERSON AVENUE SOUTH FOR A LENGTH OF 125 FEET ON THE EASTERN BOUNDARY OF PEAR STREET AND 125.5 FEET ON THE WESTERN BOUNDARY OF PEAR STREET, THE PORTION OF THE STREET BEING CLOSED LYING ON BOTH SIDES BETWEEN THE LANDS OWNED BY CSX TRANSPORTATION, INC. (AS DESCRIBED IN THE DEED RECORDED AMONG THE LAND RECORDS OF ALLEGANY COUNTY, MARYLAND IN DEED LIBER 1, FOLIO 605), THE PORTION OF SAID STREET BEING CLOSED BEING LOCATED IN THE CITY OF CUMBERLAND, MARYLAND."

WHEREAS, the Mayor and City Council of Cumberland received a petition from CSX Transportation, Inc., as required by the terms of Section 11.1 of the Construction Agreement between the Mayor and City Council of Cumberland and CSX Transportation, Inc. dated December 1, 2015, requesting the closure of the portion of Pear Street generally described in the titling of this Ordinance;

WHEREAS, the City Clerk served a personal notice in writing upon each property owner to be affected by the passage of the proposed Ordinance more than ten (10) days before December 4, 2018;

WHEREAS, in the opinion of the Mayor and City Council of Cumberland, the public welfare and convenience require that the aforesaid portion of the aforesaid street be closed; and

WHEREAS, in that CSX Transportation, Inc. owns the parcels of property adjacent to each side of the portion of Pear Street being closed by this Ordinance, the entire portion of Pear Street being closed shall be conveyed to it.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND AS FOLLOWS:

SECTION 1: The portion of the Pear Street described in the metes and bounds description attached hereto as Exhibit A and as shown on the plat attached hereto as Exhibit B is closed. The said closure is subject to the reservation/granting of a perpetual easement in favor of the Mayor and City Council of Cumberland for the full length and width of the portion of Pear Street being closed by this Ordinance for the purpose of ingress, egress, construction, maintenance, operation, alteration, replacement and removal of existing and future utilities. The language describing the aforesaid easement and restrictions and other matters is set forth in the Exhibit C attached hereto. Said language shall be incorporated into the deed effecting the conveyance of the portion of Pear Street closed by this Ordinance to CSX Transportation, Inc.

SECTION 2: The said Mayor and City Council of Cumberland shall ascertain whether any and what amount in value of damage shall be caused by the aforesaid closure for which the owners or possessors of any property located along Pear Street, or portions thereof, should be compensated, and shall assess and levy generally on the property of the persons benefitted by the closure of the street the whole or any part of the expense which shall be incurred in closing the same.

SECTION 3: The City Administrator or his designee shall, within fifteen (15) days of the passage of this Ordinance, submit a report to the City Clerk setting forth his findings regarding what amount of damages shall have been caused by the aforesaid closure of the portion of Pear Street described herein, and the names of the owners or possessors of such property along which said streets now pass, and the amount of damages for which they shall be compensated or benefits for which they shall be assessed, and whether said damages arising from the closure shall be assessed generally on the whole assessable property within the City of Cumberland or specially on the property of the person benefitted by the closure; and, in the event of any of said damages being assessed and levied in whole or in part on any property of the persons benefitted, the names of the owners of the property specially benefitted, with a description of said property by reference to the Land Records of Allegany County, and the amount so levied and assessed. The Mayor and City Council shall consider the matter of the City Administrator's/designee' report and shall make determinations regarding the subject matter of the said report at a meeting held no sooner than fifteen (15) days after the date of the passage of this Ordinance.

SECTION 4: Any person feeling aggrieved or injured by the decision of said Mayor and City Council of Cumberland regarding the subject matter of the aforereferenced report shall have the right of an appeal to the Circuit Court at a trial by jury, as provided in Section 128 of the Charter of the City of Cumberland (1991 Edition), upon filing a written notice of appeal with the City Clerk within thirty (30) days after the Mayor and City Council of Cumberland shall have made their return.

SECTION 5: The benefits assessed by said Mayor and City Council of Cumberland shall be liens upon the property of the persons benefitted to the extent of such assessment, and shall be payable within sixty (60) days after the date of the meeting at which the Mayor and City Council of Cumberland makes its determinations regarding the subject matter set forth in the City Administrator's report, and the collection of the same shall be enforced by *scire facias* in the same manner as paving liens are collected by the Mayor and City Council; and a written record of the said Mayor and City Council's determinations shall be filed for record and reported in the Mechanics' Lien Record in the Clerk's Office in the Circuit Court for Allegany County, and the assessment therein shall be liens upon the properties respectively assessed from the time of such recording, such recording to be effected no sooner than the expiration of the aforesaid sixty (60) day period.

SECTION 6: Upon the collection of all benefits assessed and the payment of the damages ascertained, or the waiver of this provision by the parties interested, if applicable the said portion of Pear Street particularly described in Section 1 hereof shall be closed and the Mayor shall be empowered to execute a deed effecting the conveyance of the property described in Exhibit A to CSX Transportation, Inc.

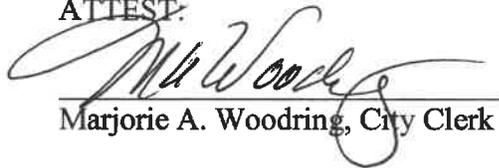
SECTION 7: This Ordinance shall take effect from the date of its passage.

Passed, the 4th day of December, 2018.



Brian K. Grim, Mayor

ATTEST:



Marjorie A. Woodring, City Clerk

1st reading: November 20, 2018
2nd reading: December 4, 2018
3rd reading: December 4, 2018
Passed: 4-0

EXHIBIT A

ALL that land, a portion of Pear Street (formerly Pear Alley) located between Henderson Avenue (formerly Maddison Street) and North Centre Street situate in Cumberland, Allegheny County, Maryland more particularly described as follows;

BEGINNING at the intersection of the southerly limit of said Henderson Avenue with the westerly limit of said Pear Street being the most easterly corner of Lot 53 of Beall's First Addition to the Town of Cumberland as shown on the Copy of the Map of the City of Cumberland recorded in Plat Case Box 37 (MSA-S1531-190 also MSA-C1741-2367) dated 1806 also being the eastern most corner of the seventh parcel described in an instrument between Samuel M. Seemes et al and The Maryland and New York Iron & Coal Company (MNYICC), recorded April 4, 1846 in Liber H.B. No. 1, Folio 605 in the Allegany County Circuit Court, Allegheny County, Maryland

Thence South 65 degrees East, contiguous with the projection of the southerly limit of said Henderson Avenue, a distance of 20 feet, more or less, to the easterly limit of said Pear Street being the northern most corner of the ninth parcel described in the said MNYICC instrument;

Thence South 25 degrees West, contiguous with the easterly limit of Pear Street and the westerly line of said MNYICC ninth parcel, a distance of 125 feet, more or less, to the westerly most corner of said MNYICC parcel;

Thence North 66 degrees 30 minutes West, departing the easterly limit and through said Pear Street, a distance of 20 feet, more or less, to a point in the easterly line of said Lot 53 being the southerly most corner of the seventh parcel described in the said MNYICC instrument;

Thence North 25 degrees East, contiguous with the westerly limit of said Pear Street and the easterly line of the said MNYICC seventh parcel, a distance of 125.5 feet, more or less, to the most easterly corner of said Lot 53 being the herein described Point of Beginning.

Containing 0.06 acres, more or less, calculated.

EXHIBIT B

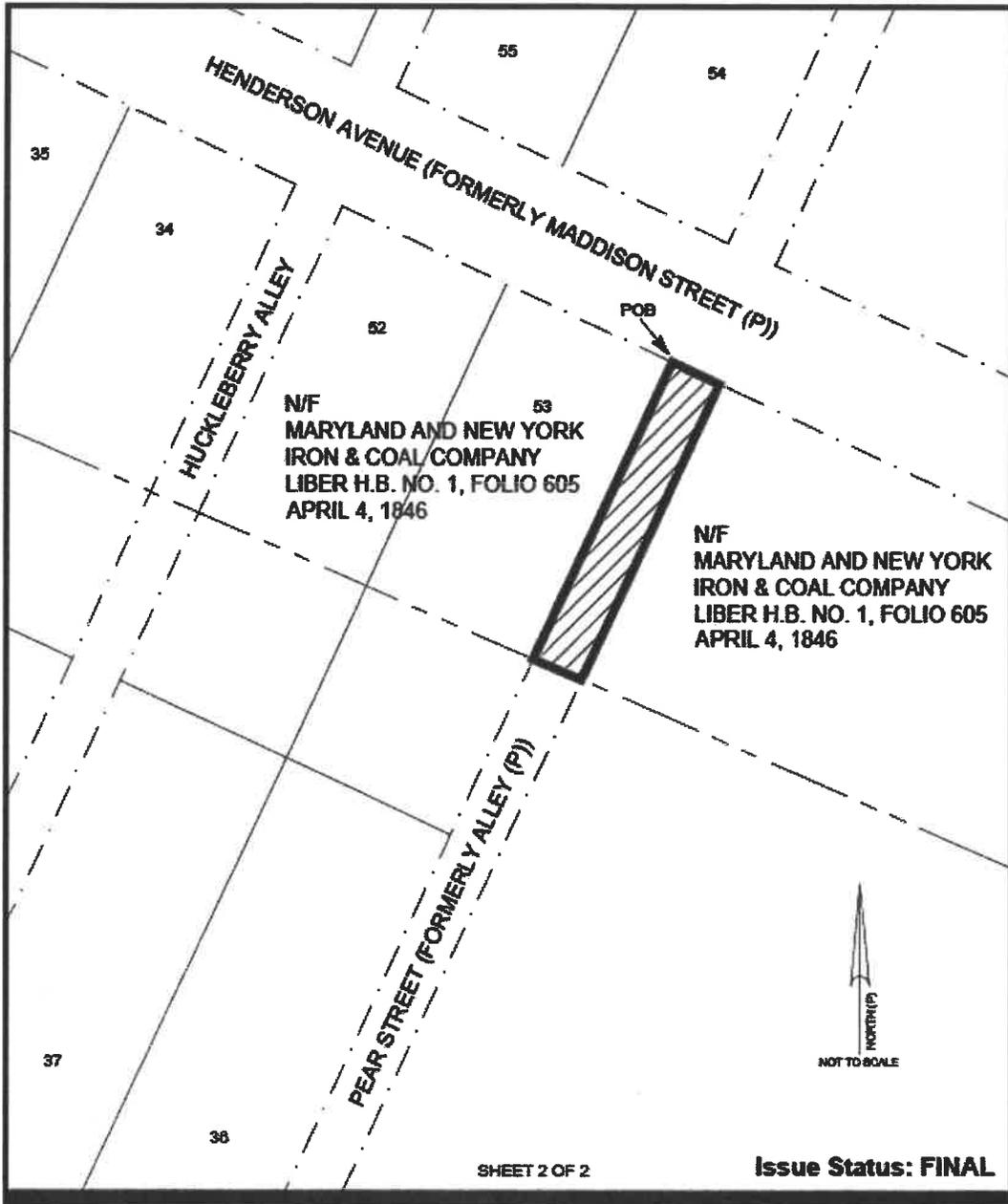


EXHIBIT C

SUBJECT, HOWEVER, to an easement in favor of the party of the first part for the full length and width of the right-of-way being closed for any existing utility lines, for stormwater and surface drainage and for the installation, inspection, operation, maintenance, repair, replacement and/or relocation of any needed utility lines and stormwater management and sediment and erosion control devices and improvements (collectively, hereinafter referred to as “utilities”).

FURTHERMORE, it is a condition of the conveyance effected by this deed that the party of the second part, its successors, and assigns, shall be allowed to use the surface of the land hereby conveyed; however, it shall not be permitted to place or erect structures or enclosures thereon without the written consent of the party of the first part, which consent may be granted or denied for any reason or no reason at all. The party of the second part’s use of the property conveyed by this deed shall not interfere with the ingress, egress or other actions of the party of the first part as necessary for the installation, inspection, operation, maintenance, repair, replacement and/or relocation of the utilities and appurtenances and improvements related thereto. Furthermore, no such structures or enclosures shall be located or constructed upon the land conveyed by this deed until plans therefore have been submitted to and approved by the party of the first part’s Engineering Division, and no work in the construction of such structures or enclosures or in the use of the surface shall injure or disturb the aforesaid utilities and improvements related thereto or in any way interfere with or adversely impact their operation or maintenance.

FURTHERMORE, the party of the second part shall not be permitted to grade the property conveyed under the terms of this deed nor shall it be permitted to alter the surface of the land hereby conveyed, except upon the written consent of the party of the first part, said consent not to be unreasonably withheld.

FURTHERMORE, in the event the party of the second part alters the surface of the land hereby conveyed or the subsurface thereof and said alterations result in the need to relocate utility lines and/or other appurtenances or improvements related thereto, the party of the second part shall be liable for all costs associated with the relocation.

FURTHERMORE, the party of the first part shall also have the right to enter upon the property hereby conveyed from time to time to remove, where necessary, such trees and other growths as may be required for the installation, inspection, operation, maintenance, repair, replacement and/or relocation of the aforesaid utility lines and stormwater management and sediment and erosion control devices and improvements related to the foregoing.

IT IS UNDERSTOOD, that the foregoing easements, covenants and restrictions shall be deemed to touch and concern the land, shall run with the title to the land, shall inure to the benefit of the party of the first part and the other parties thereby benefited, and shall be binding upon the party of the second part and all future owners or possessors of all or any of the land hereby conveyed as well as their personal representatives, heirs, successors and assigns, and any and all persons and entities claiming through them.