

**TOWN OF BETHANY BEACH
TOWN COUNCIL PUBLIC HEARING REGARDING MARYLAND AVENUE
MARCH 18, 2016 – MINUTES**

The Bethany Beach Town Council held a public hearing at 1:00 p.m. on March 18, 2016 in the Town Meeting Room, 214 Garfield Parkway, Bethany Beach, DE 19930.

Members present for the meeting were: Jack Gordon, Mayor, who presided; Lew Killmer; Chuck Peterson; Rosemary Hardiman; and Joseph Healy. (Jerry Morris and Bruce Frye were excused.)

Also present were: Jim Liguori, Esquire, Town Attorney; Max Walton, Esquire; Special Counsel; Cliff Graviet, Town Manager; Lisa Kail, Administrative Assistant/Town Clerk; and interested members of the public.

Mayor Gordon read the following into the record:

At a special meeting on February 12, 2016, the council passed resolution 2016-2 which established a hearing date of March 18, 2016 at 1:00 PM to receive public comment on a Resolution to Close Access, as necessary, to the Maryland Ave Extension. Letters were sent to the affected property holders, the notice was posted in the five normal places in town, it was posted on our web site and published in the Coastal Point on February 19, 2016 and in the WAVE on February 16, 2016.

We scheduled this Public Hearing to hear public comments on Resolution 2016-3. The resolution reads as follows:

RESOLUTION No. 2016-3

**A RESOLUTION TO CLOSE ACCESS, AS NECESSARY,
TO THE MARYLAND AVENUE EXTENSION**

WHEREAS, the Town of Bethany Beach (“Town”) is the owner and holder of all right, title and interest to that certain land known as the Maryland Avenue Extension;

WHEREAS, although designated as a street, the Maryland Avenue Extension has not historically operated as a public street and, absent a short distance of pavement, the land is covered by trees and other landscaping;

WHEREAS, the Council does not desire to and will not relinquish any of its right, title and interest to the Maryland Avenue Extension;

WHEREAS, the Council further desires to close, to the extent necessary, any portion of the Maryland Avenue Extension that is currently open to vehicular traffic or passage including, but not limited to, any gravel or partially graveled area of such land and to locate a historic dwelling and attendant parking area for such dwelling on a portion of the Maryland Avenue Extension consistent with the drawing provided and attached hereto as Exhibit A;

WHEREAS, Section 18 of the Charter of the Town of Bethany Beach (“Charter”) provides the Council with the authority to make the proposed closure by resolution with attendant notice and public hearing;

WHEREAS, notice as required by Sections 18.3 and 18.4 of the Charter was timely provided and a public hearing was held on March 18, 2016, 2016 at which time Council heard comments and objections concerning the proposal.

WHEREAS, after hearing comments at the public hearing, the Council deems the proposed closure of the Maryland Avenue Extension to be an appropriate course of action.

WHEREAS, the Council does not believe that any person(s) will be deprived of property by virtue of the closure and, therefore, does not believe that the proposed course of action implicates Section 18.6 of the Charter requiring the payment of compensation under certain circumstances.

NOW THEREFORE, BE IT RESOLVED, THAT:

1. The Maryland Avenue Extension including, but not limited to, any paved or partially paved area of such land, is hereby closed and shall no longer be open to any vehicular traffic or passage for the purpose of locating a historic dwelling and attendant parking area for such dwelling on a portion of the Maryland Avenue Extension consistent with the drawing provided and attached hereto as Exhibit A, and the City Manager is hereby directed to any actions necessary and appropriate to facilitate such closure.
2. Compensation, as set forth in Section 18.6 of the Charter, is not required as a result of the approved closure of the Maryland Avenue Extension.
3. Nothing herein shall be deemed a relinquishment of any of the Town’s right, title and interest to the Maryland Avenue Extension or otherwise impact the ownership of such land by the Town.

This resolution is passed by the Town Council of the Town of Bethany Beach on this ____ day of _____, 2016.

Mayor Gordon stated that it is very important for your Town Council to hear your comments. Thus during today's hearing, we will provide time for such comments during which Council members will be carefully listening. Although we may interrupt to ask a question from time to time, we are most interested in listening to you. He reviewed the "ground rules" for today's hearing as follows:

Members of the public, who wish to address Council regarding this subject, will be heard in the order said requests are listed on the sign-in sheet. If you wish to address Council and have not yet signed in to do so, please do so at this time.

Speakers will be recognized by the Mayor

Speak from the podium in order that your comments may be recorded.

Please identify yourself by name and address.

Each speaker will have a three minute time period.

After all persons, desiring to speak have been heard, based on the number of speakers and the time, each speaker may have an opportunity to address Council more than once.

Each speaker is requested to be non-repetitive and may simply express that they agree with a previous speaker.

After being recognized by the Mayor, any member of the Council, or any member of the Town Staff may ask questions of any speaker. Interaction with the speaker should be limited to asking and answering questions for clarification rather than an ongoing dialogue.

Prior to hearing public comment, Mayor Gordon asked Mr. Walton to provide comments regarding the proposed Resolution.

Mr. Walton presented documents into the record as follows:

1. *Exhibit A – Copy of notice that was posted in 5 places in Town as required by the Town Charter and advertised in the WAVE Newspaper on February 16, 2016 and the Coastal Point Newspaper on February 19, 2016.*
2. *Exhibit B - Notice to property owners adjacent to Maryland Avenue Ext. (It was noted that notice to property owners was not required.)*

3. *Exhibit C - Copies of certified mail receipts that were mailed on February 26, 2016. (Again, it was noted that this was not a requirement.)*
4. *Exhibit D – Pictures of Maryland Avenue.*

Mr. Walton asked Mr. Graviet to confirm that Maryland Avenue Extended would be used the same way as it is currently being used and that the reason why Maryland Avenue is being closed is to relocate the Dinker Cottage to that area.

Mr. Graviet answered in the affirmative.

Mr. Walton asked Mr. Graviet if partitioning of the Edgar's property was contingent upon the donation of the Dinker Cottage.

Mr. Graviet said that it was not.

Mr. Walton reaffirmed that holding this public hearing today was not required. The Town Council chose to do so to offer the public due process.

Members of the public were then recognized.

Mr. John Schmidlein, property owner, referred to the second paragraph of the Resolution.

WHEREAS, although designated as a street, the Maryland Avenue Extension has not historically operated as a public street and, absent a short distance of pavement, the land is covered by trees and other landscaping;

Mr. Schmidlein was of the opinion that the street was open and that the term "short distance" was not accurate because there is 300 feet of pavement. He felt that closing the street would impact travel for the Fire Company in the event there was an emergency. He also asked the Town Council to check the deed. It is the lowest ranking deed that can be obtained.

Mr. Tim Willard, Esquire; representing Mr. and Mrs. Philip Feliciano and Mr. and Mrs. Joseph Tropea was recognized. He explained that, in his opinion, contrary to Mr. Walton's opinion, the public hearing being held today is required. Certified mail containing notice of the hearing to adjacent property owners is also required. He felt that this issue involves contract zoning and is not in the best interest of the Town.

Ms. Molly Feliciano, property owner, was recognized. She felt that closing the street would be denying property owners access to the area.

Ms. Jane Patch Richards, property owner, was recognized. She raised concerns about public hearings not being live streamed and that a recent hearing was not recorded. She was advised that Mr. Graviet determines what meetings are live-streamed and that

the Town Council should reconsider that decision. She explained that she was not notified of this hearing.

Mr. Schmidtlein, once again, asked the Town Council to look at the deed. Maryland Avenue extended is referred to as an “unnamed street”. He felt that a legal opinion regarding this should be obtained.

Ms. Feliciano stated that given the many questions and discrepancies regarding the procedures for today’s hearing, she asked the Town Council to table this item until a later date.

For the record, Mr. Walton reiterated that no hearing was required. He read the first sentence of Section 18.4 of the Charter into the record as follows: *“The Town Council shall cause to be sent, certified mail, return receipt requested, to the owner(s) of record of real estate, through or over which such street or alley shall run.”* He pointed out that the only owner of record through or over which street or alley shall run is the Town of Bethany Beach.

Hearing no additional comments, Mayor Gordon adjourned the meeting.