

ORDINANCE NO. 3846

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 SECOND STREET, RUNNING FROM THE WESTERN RIGHT OF WAY LINE OF SOMERVILLE AVENUE WEST (APPROXIMATELY 499 FEET ON THE NORTHERN SIDE OF SECOND STREET AND 495 FEET ON ITS SOUTHERN SIDE) TO THE EASTERN RIGHT OF WAY LINE OF MEMORIAL AVENUE, THE PORTION OF THE STREET BEING CLOSED LYING ON BOTH SIDES BETWEEN THE LANDS OWNED BY THE HOUSING AUTHORITY OF THE CITY OF CUMBERLAND, 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 the Housing Authority of the City of Cumberland, requesting the closure of the portion of Second 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 the Housing Authority of the City of Cumberland owns the parcels of property adjacent to each side of the portion of Second Street being closed by this Ordinance, the entire portion of Second 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 Second 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 Second 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 Second Street closed by this Ordinance to the Housing Authority of the City of Cumberland.

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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 Second 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 Second 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.

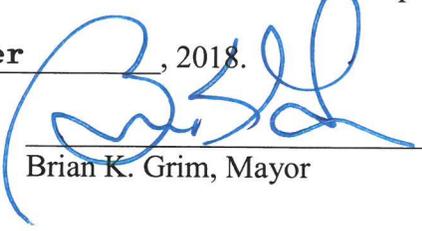
SECTION 5: The benefits assessed by said Mayor and City Council of Cumberland shall be liens upon the property of the persons benefitted to the extent of such assessment, and shall be payable within sixty (60) days after the date of the meeting at which the Mayor and City Council of Cumberland makes 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 Second 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 the Housing Authority of the City of Cumberland.

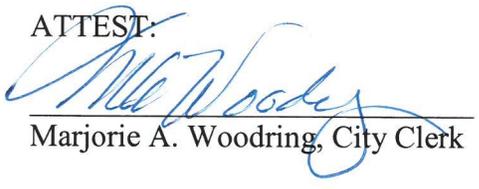
SECTION 7: This Ordinance shall take effect from the date of its passage.

Passed, the 18th day of December, 2018.



Brian K. Grim, Mayor

ATTEST:



Marjorie A. Woodring, City Clerk

1st reading - 11/20/18 Tabled
1st reading - 12/4/18 Passed
2nd and 3rd readings - 12/15/18 - Passed

EXHIBIT A

ALL that portion of Second Street situated between Somerville Avenue and Memorial Avenue in the City of Cumberland, Election District No. 4, Allegany County, Maryland, and being more particularly described as follows (Maryland State Plane Meridian courses and horizontal measurements being used thru out) to wit:

BEGINNING for the same at a point in the westerly right of way margin of Somerville Avenue, thence leaving the lines of said avenue and running with the southerly right of way margin of Second Street;

1. North 73 degrees 41 minutes 17 seconds West, 494.62 feet to a point in the easterly margin of a Memorial Avenue, thence crossing Second Street and running with Memorial Avenue;
2. North 16 degrees 17 minutes 53 seconds East, 40.00 feet to a point in the northerly right of way margin of Second Street, thence with a line thereof;
3. South 73 degrees 41 minutes 17 seconds East, 498.56 feet to a point in the westerly right of way margin of Somerville Avenue, thence crossing Second Street and running with Somerville Avenue;
4. South 21 degrees 55 minutes 50 seconds West, 40.19 feet to the place of beginning, containing 0.456 acres, more or less, all of which is shown on "Plan Of Survey" Prepared For Housing Authority of the City of Cumberland, dated October 22, 2018, and intended to be recorded among the Plat Records of Allegany County, Maryland.

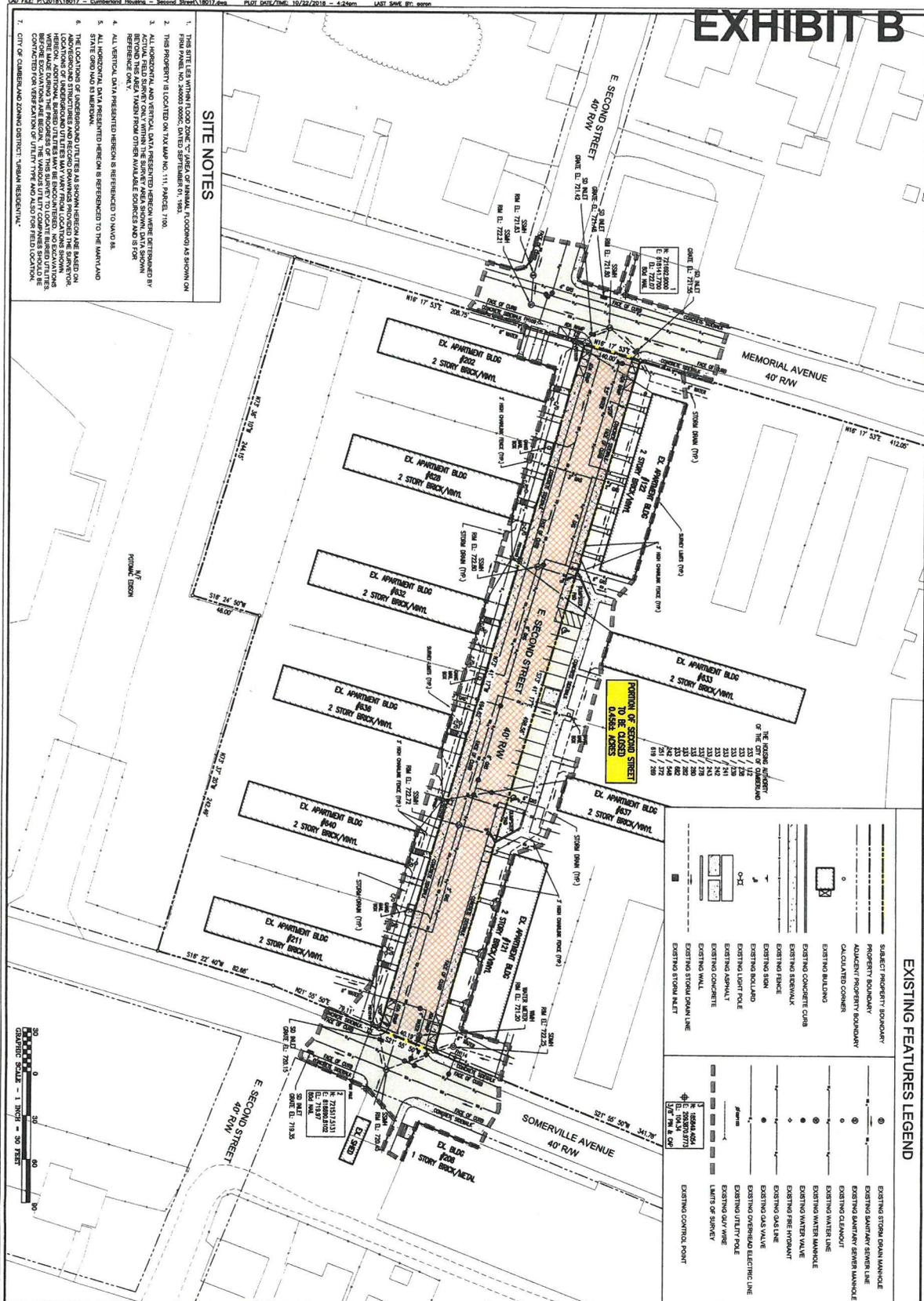
ALL OF THE ABOVE described parcel being part of the same property known as Second Street in the City of Cumberland, Maryland.

TOGETHER WITH AND SUBJECT TO any restrictions, reservations, covenants, right of ways, et cetera as of record.

EXHIBIT B

SITE NOTES

1. THIS SITE LIES WITHIN FLOOD ZONE "C" AREA OF ANNUAL FLOODING AS SHOWN ON THIS PANEL NO. 20000 20000, DATED SEPTEMBER 01, 1983.
2. THIS PROPERTY IS LOCATED ON TAX MAP NO. 111, PARCEL 7100.
3. ALL HORIZONTAL AND VERTICAL DATA PRESENTED HEREON WERE PERFORMED BY REFERENCE TO THE AREA TIES FROM OTHER AVAILABLE RECORDS AND BY CLOSE REFERENCE ONLY.
4. ALL VERTICAL DATA PRESENTED HEREON IS REFERENCED TO NAVD 83.
5. THE LOCATION OF UNDERGROUND UTILITIES AS SHOWN HEREON ARE BASED ON THE LOCATION OF UNDERGROUND UTILITIES AS SHOWN ON THE LOCATION OF UNDERGROUND UTILITIES MAP WHICH MAY VARY FROM LOCATIONS SHOWN ON RECORDS AND THE LOCATION OF THE UTILITIES SHOULD BE VERIFIED BY THE CONTRACTOR PRIOR TO CONSTRUCTION.
6. CITY OF GUMBERLAND ZONING DISTRICT: URBAN RESIDENTIAL.



EXISTING FEATURES LEGEND

- | | | | |
|--|----------------------------|--|---------------------------------|
| | SUBJECT PROPERTY BOUNDARY | | EXISTING STORM DRAIN MANHOLE |
| | PROPERTY BOUNDARY | | EXISTING SANITARY SEWER LINE |
| | ADJACENT PROPERTY BOUNDARY | | EXISTING SANITARY SEWER MANHOLE |
| | CALCULATED CORNER | | EXISTING CATCHMENT |
| | EXISTING BUILDING | | EXISTING WATER VALVE |
| | EXISTING CONCRETE CURB | | EXISTING WATER MANHOLE |
| | EXISTING FENCE | | EXISTING FIRE HYDRANT |
| | EXISTING SIGN | | EXISTING GAS LINE |
| | EXISTING LIGHT POLE | | EXISTING GAS VALVE |
| | EXISTING ASPHALT | | EXISTING OVERHEAD ELECTRIC LINE |
| | EXISTING CONCRETE | | EXISTING UTILITY POLE |
| | EXISTING STORM DRAIN LINE | | EXISTING UTILITY POLE |
| | EXISTING STORM INLET | | LIMITS OF SURVEY |
| | EXISTING WALL | | EXISTING CONTROL POINT |

PLAN OF SURVEY

DATE: 10/22/2018

SCALE: 1" = 30'

SHEET TITLE: BBA# 2018017

1 OF 1

CLIENT: JANE FRAZIER VILLAGE EAST SECOND STREET CITY OF GUMBERLAND ZONING - URBAN RESIDENTIAL ELECTION DISTRICT 04-008 ALLEGANY COUNTY MARYLAND

PROJECT: STREET CLOSURE

DATE: 10/22/2018

BY: [Signature]

CHECKED: [Signature]

DATE: 10/22/2018

SCALE: 1" = 30'

SHEET TITLE: BBA# 2018017

1 OF 1

EXHIBIT C

SUBJECT, HOWEVER, to an easement in favor of the party of the first part and public and private utilities, including, but not limited to, gas, electric and telephone service providers, 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 and public and private utilities 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 public or private utilities’ 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 and public and private utilities 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.

FURTHERMORE, the parties covenant and agree that: (i) The property hereby conveyed shall continue to be surfaced and used as a roadway, albeit a roadway in the private ownership of the party of the second part; (ii) The party of the second part shall be responsible for repairing and maintaining the said roadway in accordance with City of Cumberland standards applicable to City-owned streets; (iii) Any modifications to the roadway, other than the filling of potholes, will require the approval of the City Fire and Police Departments as well as the City Engineer; (iv) Public safety vehicles shall have the right to traverse across the property hereby conveyed at all times and for all purposes; (v) No fencing or obstructions blocking access to or usage of the property hereby conveyed by public safety vehicles shall be permitted; and (vi) The party of the second will place signage on the property hereby conveyed for the purpose of notifying the public that it is private property owned by the party of the second part.

IT IS UNDERSTOOD AND AGREED, 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.