

ORDINANCE NO. 3865

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, ENTITLED "AN ORDINANCE TO PROVIDE FOR THE CLOSURE OF PORTIONS OF A STREET KNOWN AS PARK ALLEY, RUNNING FROM THE NORTHERN RIGHT OF WAY LINE OF WILLIAMS STREET TO THE SOUTHERN RIGHT OF WAY LINE OF CECELIA STREET ("AREA #1") AND THEN FROM THE NORTHERN RIGHT OF WAY LINE OF CECELIA STREET NORTH 90 +/- FEET ON THE WEST SIDE OF THE PORTION OF PARK ALLEY BEING CLOSED AND 84.02 +/- FEET ON THE EAST SIDE OF THE PORTION OF PARK ALLEY BEING CLOSED (AREA #2)", THE PORTION OF PARK ALLEY BEING CLOSED DESIGNATED AS AREA #1 LYING BETWEEN THE LANDS OWNED BY CUMBERLAND GATEWAY REAL ESTATE LLC (AS DESCRIBED IN THE DEED RECORDED AMONG THE LAND RECORDS OF ALLEGANY COUNTY, MARYLAND IN BOOK 2435, FOLIO 262)) AND THE LANDS OWNED BY ALTER/SCOTT ACQUISITIONS LLC (AS DESCRIBED IN THE DEED RECORDED AMONG THE LAND RECORDS OF ALLEGANY COUNTY, MARYLAND IN BOOK 2325, PAGE 240) AND THE PORTION OF PARK ALLEY BEING CLOSED DESIGNATED AS AREA #2 LYING BETWEEN LANDS OWNED BY CUMBERLAND GATEWAY REAL ESTATE LLC (AS DESCRIBED IN THE DEED PREVIOUSLY IDENTIFIED HEREIN THE PORTIONS OF PARK ALLEY BEING CLOSED BEING LOCATED IN THE CITY OF CUMBERLAND, MARYLAND."

WHEREAS, the Mayor and City Council of Cumberland received a petition from Cumberland Gateway Real Estate LLC, requesting the closure of two portions of Park Alley generally described in the titling of this Ordinance;

WHEREAS, the portion of Park Alley being closed which is identified as Area #1 in the titling of this Ordinance is abutted by property owned by Cumberland Gateway Real Estate LLC (which it acquired pursuant to the terms of the deed recorded among the Land Records of Allegany County, Maryland in Book 2435, Page 262) with the exception of the parcel on the northeast corner of Park Alley and Cecelia Street which is owned by Alter/Scott Acquisitions LLC (which it acquired pursuant to the terms of the deed recorded among the aforesaid Land Records in Book 2325, Page 240);

WHEREAS, by correspondence from Alter/Scott Acquisitions LLC to the City dated May 13, 2020, Alter/Scott Acquisitions LLC waived its right to have the portion of Park Alley in Area #1 that would have otherwise been granted to it under applicable law, and requested that the City convey the said portion of Park Alley directly to Cumberland Gateway Real Estate LLC;

WHEREAS, the portion of Park Alley being closed, which is identified as Area #2 in the titling of this Ordinance, is abutted exclusively by property owned by Cumberland Gateway Real Estate LLC (which it acquired pursuant to the terms of the

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deed recorded among the Land Records of Allegany County, Maryland in Book 2435, Page 262);

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 June 2, 2020;

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

WHEREAS, in that Cumberland Gateway Real Estate, LLC owns the parcels of land adjacent to each side of the portions of Park Alley being closed by this Ordinance with the exception of the aforesaid land owned by Alter/Scott Acquisitions LLC, which Alter/Scott Acquisitions waived its interest in and requested that the City convey to Cumberland Real Estate LLC, the portions of Park Alley being closed will be conveyed, in their entirety, to Cumberland Real Estate LLC.

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

SECTION 1: The portions of Park Alley identified as Area #1 and Area #2 described in the metes and bounds description attached hereto as Exhibit A and shown on the plat attached hereto as Exhibit B shall be closed and conveyed from the City to Cumberland Gateway LLC as provided for hereinafter. This conveyance is subject to the easements, reservations and restrictions set forth in the Exhibit C attached hereto, which easements, reservations and restrictions shall be incorporated into the deed effecting the conveyance described in this paragraph.

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 Park Alley, 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, if any, shall have been caused by the aforesaid closure of the portion of Locust Alley 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 report and shall make determinations regarding the subject matter of the 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 aforementioned 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.

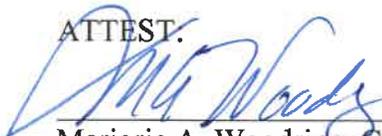
SECTION 6: Upon the collection of all benefits assessed and the payment of the damages ascertained, or the waiver of this provision by the parties interested, if applicable, the said portions of Park Alley particularly described in Section 1 hereof shall be closed and the Mayor shall be empowered to execute the deeds effecting the conveyances which are described in Section 1 hereof.

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

Passed the 2nd day of June, 2020.


Raymond M. Morriss, Mayor

ATTEST:


Marjorie A. Woodring, City Clerk

1st reading: May 19, 2020
2nd reading: June 2, 2020
3rd reading: June 2, 2020
Passed: 5-0

EXHIBIT A

LEGAL DESCRIPTION MAYOR AND CITY COUNCIL OF CUMBERLAND TO CUMBERLAND GATEWAY REAL ESTATE LLC

Being two portions of Park Alley, a 15'-wide public right-of-way (15' RW) owned by and within the City of Cumberland, Maryland, as referenced and partially described in the following deeds:

- A deed from Ronald L. Davis and Barbara Jean Davis to Alter/Scott Acquisitions, LLC dated August 31, 2017 and recorded on September 12, 2017 among the Land Records of Allegheny County, Maryland in Deed Book 2325, Page 240; and
- A deed from Cumberland Economic Development Corporation to Cumberland Gateway Real Estate, LLC dated December 20, 2018, and recorded on December 21, 2018 among the aforesaid Land Records in Deed Book 2435, Page 262;

Said portions of Park Alley are bearings referenced to the Maryland Coordinate System North Zone (NAD83/11) based on a railroad spike found (PDG survey control point #1445) at the northwest corner of Spring Street (50' RW) and Locust Alley at the end of the "S 65° 43' 11" E 97.62'" line on a plat entitled "*FINAL PLAT OF SUBDIVISION CUMBERLAND SHOPPING CENTER*" recorded in the aforementioned Land Records as Plat 1438, said control point #1445 being coordinate North 725,976.0385 East 817,637.3732 as now surveyed by Piedmont Design Group, LLC (PDG).

PARK ALLEY PARTIAL CLOSURE AREA #1

Beginning at a point #329 (a to-be set #4 rebar and cap #21084) N 3° 18' 27" E 480.71' from the aforementioned survey control point #1145, said point #329 situated at the intersection of the northern RW line of Williams Street (50' RW) and the eastern RW of Park Alley (15' RW) at the southwest corner of and the beginning of the "*South 82-2/3 East 50 feet*" line of item 9, "TAX ACCOUNT NO. 22-008676 226 Williams Street, Cumberland, MD 21502 PLACE TWO" parcel described in the aforementioned Deed Book 2435 Page 262, thence with the northern RW line of Williams Street (50' RW) coincident with the southern RW line of Park Alley (15' RW):

1. **N 85° 33' 40" W 15.03'** to point #320 at the northwest corner of Park Alley (15' RW) and Williams Street (50' RW) at the southeast corner of and beginning of the "*North 8 degrees 20 minutes and East 71 feet*" line of item 8, "TAX ACCOUNT NO.: 22-015354 218-220 Williams Street, Cumberland, MD 21502 PARCEL ONE" parcel described in the aforementioned Deed Book 2435 Page 262, thence leaving Williams Street (50' RW) and with the western line of Park Alley (15' RW):
2. **N 8° 10' 31" E 129.99'** to point #319 at the northwest corner of Park Alley (15' RW) and Cecelia Street (50' RW) at the northeast corner of and the end

of the "South 79- $\frac{1}{4}$ degrees East 40 feet" line of item 24, "TAX ACCOUNT NO.: 22-011715 207 Cecelia Street Cumberland, MD 21502" parcel described in the aforementioned Deed Book 2435 Page 262; thence with the southern line of Cecelia Street (50' RW) and crossing Park Alley (15' RW):

3. **S 81° 49' 29" E 12.61'** to point #400 (a to-be set # rebar and cap #21084) at an angle point in the southern RW line of Cecelia Street (50' RW), thence continuing with the southern RW line of Cecelia Street (50' RW):
4. **N 73° 33' 00" E 2.63'** to point #322 (a to-be set # rebar and cap #21084) at the northeast corner of Park Alley (15' RW) and Cecelia Street (50' RW) at the northwest corner of and the beginning of the "North 75- $\frac{1}{2}$ degrees East 30 feet" line of item 24, "TAX ACCOUNT NO.: 22-011715 207 Cecelia Street Cumberland, MD 21502" parcel described in the aforementioned Deed Book 2325 Page 240, thence leaving Cecelia Street (50' RW) and with the eastern line of Park Alley (15' RW):
5. **S 8° 10' 31" E 130.11'** to the point of beginning.

Containing 1,944 square feet of land, more or less, subject to all easements or rights-of-way.

PARK ALLEY
PARTIAL CLOSURE AREA #2

Beginning at a point #313 (a to-be set #4 rebar and cap #21084) N 4° 39' 38" E 665.34' from the aforementioned survey control point #1145, said point #313 situated at the northern RW line of Cecelia Street (50' RW) and the eastern RW line of Park Alley (15' RW) at the southwest corner of and the beginning of the "North 75.5 degrees East 46.25 feet" line of item 25, "TAX ACCOUNT NO. 22-002457 210 Cecelia Street, Cumberland, MD 21502" parcel described in the aforementioned Deed Book 2435 Page 262, thence with the northern RW line of Cecelia Street (50' RW) coincident with the southern RW line of Park Alley (15' RW):

1. **S 73° 48' 04" W 14.50'** to point #401 (a to-be set #4 rebar and cap #21084) on the northern RW line of Cecelia Street (50' RW) at an angle point in the northern RW line of Cecelia Street (50' RW) and the southern line of Park Alley (15' RW); thence continuing with the northern RW line of Cecelia Street (50' RW) coincident with the southern RW line of Park Alley (15' RW):
2. **N 81° 49' 29" W 1.80'** to point #304 at the southwest corner of Park Alley (15' RW) and Cecelia Street (50' RW) at the southeast corner of and the end of the "South 10 $\frac{3}{4}$ degrees West 30 feet" line of item 15, "TAX ACCOUNT NO.: 22-0013254 416 Park Street Cumberland, MD 21502" parcel described in the aforementioned Deed Book 2435 Page 262; thence leaving Cecelia Street (50' RW) and continuing with the western RW line of Park Alley (15' RW):
3. **N 8° 10' 31" E 90.00'** to a point on the western RW line of Park Alley (15' RW) at the northeast corner of and the end of the "South 79.25 degrees East 100 feet" line of item 14, "TAX ACCOUNT NO.: 22-013246 412 Park Street

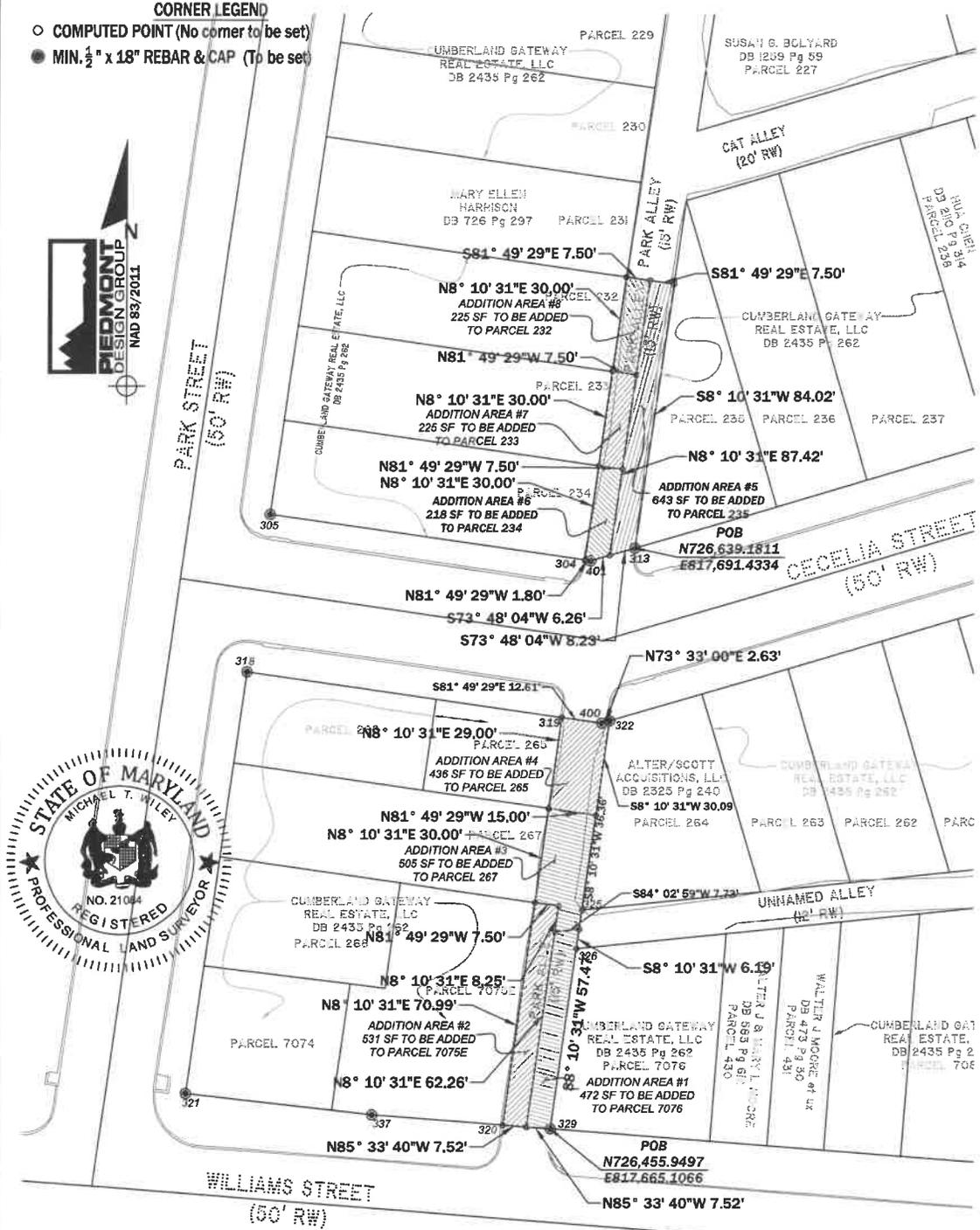
Cumberland, MD 21502" parcel described in the aforementioned Deed Book 2435 Page 262; thence crossing Park Alley (15' RW):

4. **S 81° 49' 29" E 15.00'** to a point on the eastern side of Park Alley (15' RW) on the "South 10.25 degrees East 110 feet" line of item 25, "TAX ACCOUNT NO. 22-002457 210 Cecelia Street, Cumberland, MD 21502" parcel described in the aforementioned Deed Book 2435 Page 262; thence with the eastern line of Park Alley (15' RW) and the "South 10.25 degrees East 110 feet" line as now surveyed:
5. **S 8° 10' 31" E 84.02'** to the point of beginning.

Containing 1,311 square feet of land, more or less, subject to all easements or rights-of-way.

EXHIBIT B

- CORNER LEGEND**
- COMPUTED POINT (No corner to be set)
 - MIN. 1/2" x 18" REBAR & CAP (To be set)



SURVEYOR'S CERTIFICATION

I HEREBY CERTIFY TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION, AND BELIEF, THAT THE EXHIBIT SHOWN HEREON IS CORRECT, AND THAT THE LICENSEE BELOW PERSONALLY PREPARED THE METES AND BOUNDS DESCRIPTION OR WAS IN RESPONSIBLE CHARGE OVER ITS PREPARATION AND THE SURVEYING WORK REFLECTED IN IT, AND THE FOREGOING IS IN COMPLIANCE WITH REQUIREMENTS SET FORTH IN THE CODE OF MARYLAND REGULATIONS, TITLE 09, SECTION 09.13.06.12.

Michael T. Wiley
 MICHAEL T. WILEY, PE, PROF., L.S.
 MARYLAND PROFESSIONAL LAND SURVEYOR NO. 21084, EXP. 2/13/2021
 FOR PIEDMONT DESIGN GROUP, LLC.
 MARYLAND CORPORATE LAND SURVEYORS LICENSE NO. 21315, EXP. 09/07/2020.



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PLANS AND DETAILS ARE EXCLUSIVE PROPERTY OF PIEDMONT DESIGN GROUP, LLC. UNAUTHORIZED USE OF THESE PLANS IS STRICTLY PROHIBITED. © COPYRIGHT 2020

OWNER
 CITY OF CUMBERLAND, MARYLAND
 57 N. LIBERTY STREET
 CUMBERLAND, MARYLAND 21502

EXHIBIT 'A'
PUBLIC RIGHT OF WAY CLOSURE PLAT
FOR A PORTION OF PARK ALLEY
BETWEEN WILLIAM STREET AND CECELIA STREET
AND
CECELIA STREET AND CAT ALLEY
CUMBERLAND, MARYLAND

FEBRUARY 2020 1"=40' SHEET 1 OF 1
 REVISED MAY 2020

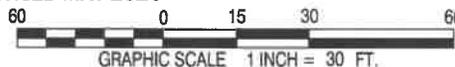


EXHIBIT C
EASEMENTS, RESERVATIONS & RESTRICTIONS

SUBJECT, HOWEVER, to an easement in favor of the City 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.

FURTHERMORE, it is a condition of the conveyance effected by this deed that the Grantee, its successors, and assigns, or other(s) to whom this and the other portions of this right-of-way being closed shall be conveyed 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 City, which consent may be granted or denied for any reason or no reason at all. The Grantee's use of the property conveyed by this deed shall not interfere with the ingress, egress or other actions of the City and public and private utilities, as necessary for the installation, inspection, operation, maintenance, repair, replacement and/or relocation of the aforesaid 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 City'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 Grantee 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, aside from filling potholes, except upon the written consent of the City, said consent not to be unreasonably withheld.

FURTHERMORE, in the event the Grantee 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 and improvements related thereto, the Grantee shall be liable for all costs associated with the relocation.

FURTHERMORE, the City, 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.

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 City and the other parties thereby benefited, and shall be binding upon the Grantee 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.