

ORDINANCE NO. 3729

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, ENTITLED "AN ORDINANCE TO AUTHORIZE THE EXECUTION OF A DEED FOR THE PURPOSE OF CONVEYING TO WESTERN MARYLAND HEALTH SYSTEM CORP. CERTAIN SURPLUS PROPERTY LOCATED ON THE SOUTH SIDE OF WILLOWBROOK ROAD IN THE CITY OF CUMBERLAND, ALLEGANY COUNTY, MARYLAND."

WHEREAS, the City is the fee simple owner of a certain unimproved parcel of real property located on the south side of Willowbrook Road consisting of 26.76 +/- acres, in the City of Cumberland, Allegany County, Maryland;

WHEREAS, the City agreed to transfer the aforesaid property to Western Maryland Health System Corp. pursuant to the terms of and subject to the conditions and contingencies set forth in the Memorandum of Understanding entered into by and between the City, Western Maryland Health System Corp. and the Board of Education of Allegany County, Maryland on or about December 23, 2011;

WHEREAS, under the terms of the aforesaid Memorandum of Understanding, in exchange for the transfer of the property which is the subject of this Ordinance, Western Maryland Health System Corp. agreed to transfer the site of its Braddock Hospital Campus to the Board of Education of Allegany County, Maryland for the purpose of building a new Allegany High School at that location;

WHEREAS, the property which is the subject of this Ordinance was declared to be surplus property under the terms of Order No. 25,449, passed by the Mayor and City Council on September 11, 2012; and

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WHEREAS, the Mayor and City Council of Cumberland deem it to be in the interest of the City to grant the said conveyance.

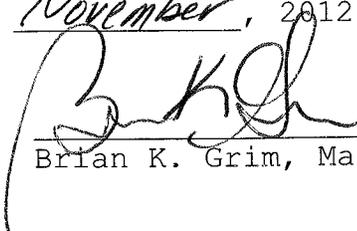
NOW, THEREFORE

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, that the Mayor be and he is hereby authorized to execute a deed in the form attached hereto as Exhibit A or in a similar form in order to effect the conveyance of the real property described therein to Western Maryland Health System Corp.; provided, however, that the deed shall be held by the City Solicitor and shall not be delivered to Western Maryland Health System Corp. until such time as the City Solicitor is presented with the executed deed effecting the conveyance of the Braddock Hospital Campus property from Western Maryland Health System Corp. to the Board of Education of Allegany County, Maryland, it being understood that the City Solicitor shall record both deeds among the Land Records of Allegany County, Maryland at the same time and that the delivery of the deed for the property described in the Exhibit A attached hereto shall be deemed to be completed upon its recordation.

SECTION 3: AND BE IT FURTHER ORDAINED, that the City Solicitor be and he is hereby authorized to execute any such documents as may be required to be executed as an incident to the transfer of the property to Western Maryland Health System Corp.; and

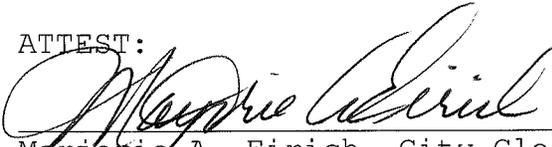
SECTION 4: AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect from the date of its passage.

Passed this 20th day of November, 2012.



Brian K. Grim, Mayor

ATTEST:



Marjorie A. Eirich, City Clerk

DEED AND AGREEMENTS RUNNING WITH THE LAND

THIS DEED AND AGREEMENTS RUNNING WITH THE LAND, made this 20th day of November, 2012, by and between **MAYOR AND CITY COUNCIL OF CUMBERLAND**, a Maryland municipal corporation, party of the first part, and **WESTERN MARYLAND HEALTH SYSTEM CORP.**, a Maryland corporation, party of the second part.

WITNESSETH:

That for and in consideration of the covenants and agreements set forth in a certain Memorandum of Understanding dated December 23, 2011 entered into by and between the party of the first part, the party of the second part and the Board of Education of Allegany County, Maryland (the "MOU") and for other good and valuable considerations, the receipt of all of which is hereby acknowledged, the party of the first part does hereby quitclaim to the party of the second part, its successors and assigns, the following described property, to-wit:

ALL that piece or parcel of land situated in the City of Cumberland, on the southerly side of Maryland 639, Willowbrook Road, Election District No. 22, Allegany County, Maryland, and being more particularly described as follows (Maryland State Grid Meridian and Horizontal Distances used throughout) to wit:

BEGINNING for the same at a concrete monument found at the point of beginning of Parcel 2, of a deed recorded December 29, 1961 from Frederick L. Wempe and Betty P. Wempe to The Mayor and City Council of Cumberland in Deed Liber 342, Folio 554, thence running with the 1st line thereof, as corrected;

1. North 72 degrees 18 minutes 42 seconds West for a distance of 265.55 feet to a 5/8" iron pin with cap set, thence leaving the lines of the aforesaid deed and running with a new division line through the whole tract of which this is a part;
2. North 29 degrees 56 minutes 17 seconds East for a distance of 508.46 feet to a 5/8" iron pin with cap set at the end of the 3rd line of the aforesaid Parcel 2, of deed Liber 342, Folio 554, and running thence with the entire 4th, 5th, 6th and 7th, lines thereof;
3. North 78 degrees 34 minutes 22 seconds East for a distance of 59.51 feet to a point, thence;
4. South 78 degrees 25 minutes 38 seconds East for a distance of 49.51 feet to a point, thence;

5. North 87 degrees 59 minutes 22 seconds East for a distance of 88.53 feet to a point, thence;
6. South 86 degrees 30 minutes 38 seconds East for a distance of 70.33 feet to a 5/8" iron pin with cap set on the 1st line of Parcel 1, of the aforesaid deed recorded in Liber 342, Folio 554, and running thence with a portion of said 1st line reversed;
7. North 27 degrees 01 minutes 34 seconds East for a distance of 635.15 feet to a 5/8" iron pin with cap set on the southerly right of way margin of Maryland 639, Willowbrook Road, thence running with and binding on said right of way for the next 7 courses and distances;
8. South 70 degrees 55 minutes 23 seconds East for a distance of 76.62 feet to a point, thence;
9. South 55 degrees 47 minutes 56 seconds East for a distance of 300.67 feet to a point, thence;
10. South 78 degrees 54 minutes 11 seconds East for a distance of 105.95 feet to a point, thence;
11. South 59 degrees 36 minutes 47 seconds East for a distance of 225.00 feet to a point, thence;
12. South 18 degrees 41 minutes 55 seconds East for a distance of 99.25 feet to a point, thence;
13. North 89 degrees 25 minutes 23 seconds East for a distance of 116.62 feet to a point, thence;
14. South 59 degrees 42 minutes 10 seconds East for a distance of 96.79 feet to a 5/8" iron pin with cap set on the 6th line of the 1st parcel of a deed recorded December 29, 1961 from Frederick L. Wempe and Betty P. Wempe to The Mayor and City Council of Cumberland in Deed Liber 342, Folio 554, thence running with part of said 6th line, reversed, as corrected;
15. South 11 degrees 15 minutes 20 seconds West for a distance of 335.09 feet to a 5/8" iron pin with cap found at the end of the 1st line of a deed recorded September 13, 1977 from The County Commissioners of Allegany County, Maryland to The State of Maryland to the use of the Department of Health and Mental Hygiene in Deed Liber 496, Folio 092, thence running with the 2nd and 3rd lines thereof, as corrected;
16. North 78 degrees 55 minutes 08 seconds West for a distance of 200.00 feet to a 5/8" iron pin with cap set, thence;
17. South 11 degrees 04 minutes 08 seconds West for a distance of 500.47 feet to a 5/8" iron pin with cap set in the 4th line of the 1st parcel of the aforesaid deed recorded in Deed Liber 342, Folio 554, thence running with part of the 4th, the entire 3rd, and the entire 2nd lines of said parcel, reversed, as corrected;
18. North 79 degrees 41 minutes 03 seconds West for a distance of 421.16 feet to a point in a creek, thence;
19. South 84 degrees 47 minutes 27 seconds West for a distance of 280.46 feet to a point in a creek, thence;

20. North 72 degrees 14 minutes 33 seconds West for a distance of 372.35 feet the place of beginning containing 26.76 acres, more or less, all of which is shown on a plat by Bennett, Brewer, & Brewer & Associates, LLC entitled *Lot Line Adjustment Plat prepared for the Mayor and City Council of Cumberland*, dated August 20, 2012, and intended to be made a part hereof.

ALL OF THE ABOVE described parcel being part of Parcel 1 and part of Parcel 2, of the same property conveyed by deed recorded December 29, 1961 from Frederick L. Wempe and Betty P. Wempe to The Mayor and City Council of Cumberland in Deed Liber 342, Folio 554, among the Land Records of Allegany County, Maryland.

ALSO RESERVING unto the party of the first part a 20 foot wide easement for a walking trail, as shown on the aforementioned plat. Said easement shall be retained in perpetuity by the party of the first part, its successors and assigns, for the benefit of the public, for ingress, egress, and maintenance of said trail.

TOGETHER WITH AND SUBJECT TO any restrictions, reservations, covenants, right of ways, et cetera as of record, and as shown on the aforementioned plat.

TOGETHER with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above-described property unto the party of the second part, its successors and assigns, in fee simple forever.

AND the said parties of the first part for itself, its successors and assigns does hereby warrant that it will execute such other and further assurances of the same as may be requisite or necessary.

The foregoing conveyance is made subject to the following covenants, restrictions and agreements:

1. Reverter Clause Provisions. This deed is executed as an incident to the MOU, subject to the terms, covenants, conditions and contingencies set forth therein, whereby the party of the first part agreed to convey the hereinbefore-described property (hereinafter referred to as the "City Parcel") to the party of the second part in exchange for the party of the second part conveying the site of its Braddock Hospital Campus (the "Braddock Campus") to the Board of Education of Allegany County, Maryland (the "Board") for the purpose of constructing a new Allegany High School (the "New High School") at that location. Consistent with the MOU, the following terms shall apply:

A. In the event the New High School is not constructed at the site of the Braddock Campus before December 23, 2016, title to the City Parcel shall, immediately and without the necessity of further action on the part of the party of the first part, revert and revest in the party of the first part, the party of the second part shall lose and forfeit all of its rights, title and interest in and to the said City Parcel and to the improvements, fixtures, rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining, and the party of the first part shall have the right of re-entry to the said City Parcel.

- B. In the event title to the City Parcel reverts to and reverts in the party of the first part, the party of the second part or the then holder of the title to the City Parcel shall execute such deeds or instruments of conveyance transferring title back to the party of the first part as may be necessary to accomplish that purpose.
- C. In the event the New High School is not constructed at the site of the Braddock Campus before December 23, 2016 and if, for any reason, the aforesaid reverter provisions are deemed to be unenforceable, the party of the second part shall pay the party of the first part a sum equal to the appraised value of the City Parcel as determined by a Maryland licensed real estate appraiser chosen by agreement of the party of the first part and party of the second part, the costs of said appraisal to be borne equally by the aforesaid parties. In the event the aforesaid parties are unable to agree upon an appraiser, each of them may procure an appraisal from a Maryland licensed real estate appraiser, each bearing the expense of their own appraisal, and the payment from the party of the second part to the party of the first part shall be the average of the two appraisals. All appraisals required under the terms of this paragraph shall be performed in an expeditious manner.

2. **Annual Contract Payment.** The party of the second part and its successors in title to the City Parcel shall be required to make annual payments to the party of the first part as follows.

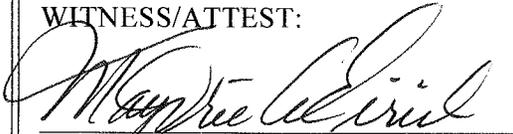
- A. **Tax Status of the City Parcel.** The party of the second part acknowledges that the City Parcel is currently unimproved. In its current state and for its current uses, upon the effective date of this Deed, the City Parcel shall be subject to the payment of real and personal property taxes (hereinafter referred to collectively as "Property Taxes" or "Property Taxation")¹ in accordance with the Md. Code Ann. Tax Property Article. The party of the second part shall pay Property Taxes on the City Parcel in accordance with all applicable statutes, rules and regulations. If, subsequent to the transfer of the City Parcel to the party of the second part, the City Parcel is used for a charitable purpose or any other purpose such that it would be entitled to an exemption from the payment of Property Taxes under the then applicable statutes, rules and regulations, the party of the second part and its successors in title shall make a payment to the party of the first part on an annual basis in an amount that would have been paid to the party of the first part as Property Taxes but for said exemption. Said amounts, as to the real property, shall be calculated based upon the assessed value of the City Parcel. In the event structures or other improvements are erected on the City Parcel subsequent to the date it is transferred to the party of the second part, the value of the property (land and improvements for purposes of determining the payment in lieu of taxes) shall be its assessed value.
- B. **Taxable Entity.** In the event the City Parcel is transferred to a third party that is not exempt from Property Taxation, that third party shall pay the Property Taxes due on the City Parcel in the manner required by law and the covenants set forth herein shall not apply to it so long as it is subject to such taxation. However, in the event the City Parcel is subsequently transferred to another third party that is exempt from Property Taxation, the terms and provisions of Section 2 herein shall apply.

- C. **Contract Payment Due Date.** In the event the City Parcel is not subject to Property Taxation, the annual payments previously referenced herein shall be paid in advance for the entire year and shall be due on or before August 31 of each of the party of the first part's fiscal years. Interest and penalties shall accrue on late payments in the same manner they would accrue with respect to the Property Taxation that would be due on the City Parcel but for the application of any exemption.
- D. **Contract Provisions.** Any contract for the sale of the City Parcel from the party of the second part or a successor in title to a third party shall include a specific reference to the provisions set forth in Section 2 herein and the prospective purchaser(s)' obligations to make the payments referenced therein.
3. **Covenants Run with the Land.** The covenants, restrictions and agreements set forth in Sections 1 and 2 above shall be deemed to touch and concern the land. In that regard they shall run with the title to the land and shall be binding upon the party of the second part and its successors in title.

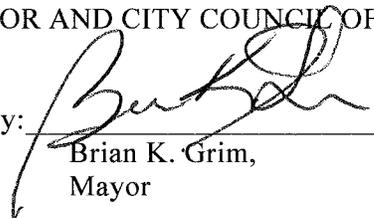
1 It is understood that, in its state as of the date of this Memorandum, there are no personal property taxes attributable to the City Parcel.

WITNESS the hand and seal of the party of the first part the day and year first above written.

WITNESS/ATTEST:

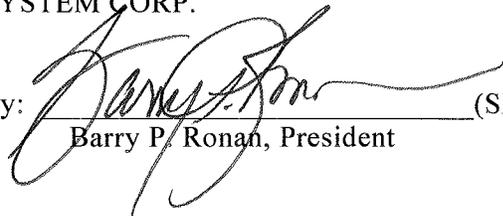

 Marjorie A. Eirich,
 City Clerk

MAYOR AND CITY COUNCIL OF CUMBERLAND

By:  (SEAL)
 Brian K. Grim,
 Mayor

WESTERN MARYLAND HEALTH
 SYSTEM CORP.

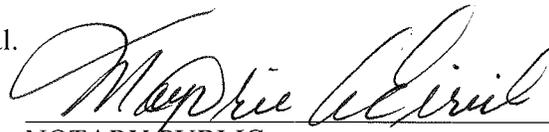


By:  (SEAL)
 Barry P. Ronan, President

STATE OF MARYLAND, ALLEGANY COUNTY, TO WIT:

I HEREBY CERTIFY, that on this 20th day of November, 2012, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **Brian K. Grim**, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, the Mayor of the Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland, and acknowledged the foregoing to be the act and deed of the said Mayor and City Council of Cumberland; and at the same time made oath he is duly authorized by it to make this acknowledgment; and he further certified under the penalties of perjury that the actual consideration for the foregoing conveyance is \$0.00 and that the total payment made to the grantor was \$0.00 and he further made oath in due form of law that this transaction is not subject to the provisions of Section 10-912 of the Tax General Article of the Maryland Annotated Code as the grantor is a resident of the State of Maryland.

WITNESS my hand and Notarial Seal.


NOTARY PUBLIC

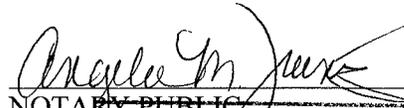
My Commission Expires:

6/10/16

STATE OF MARYLAND, COUNTY OF ALLEGANY, TO WIT:

I HEREBY CERTIFY that on this 6 day of November, 2012, before me, the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared Barry P. Ronan, who acknowledged himself to be the President and CEO of Western Maryland Health System Corporation and that the foregoing instrument to be his act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

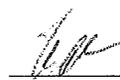

NOTARY PUBLIC

My Commission Expires:

5/2/2015

ANGELA M. FRANCIOSI
NOTARY PUBLIC
ALLEGANY COUNTY
MARYLAND
MY COMMISSION EXPIRES MAY 2, 2015

I HEREBY CERTIFY that the within and foregoing document was prepared by, or under the supervision of, the undersigned, a Maryland attorney. The undersigned did not perform a title search for the property which is the subject of this deed and he makes no representations or warranties of any kind relative to its title.


MICHAEL SCOTT COHEN

- ORDER -
of the
Mayor and City Council of Cumberland
MARYLAND

ORDER NO. 25,449

DATE: September 11, 2012

ORDERED, By the Mayor and City Council of Cumberland, Maryland:

WHEREAS, the Mayor and City Council is the record owner of a certain parcel of real property located on the south side of Willowbrook Road, in the City of Cumberland, Allegany County, Maryland consisting of 26.76 +/- acres of land which is more particularly described hereinafter;

WHEREAS, Western Maryland Health System Corporation desires to acquire the said property in accordance with the terms of the Memorandum of Understanding dated December 23, 2011 entered into by and between Mayor and City Council of Cumberland, Western Maryland Health System Corporation and the Board of Education of Allegany County, Maryland; and

WHEREAS, said property has been determined to be surplus property by the Mayor and City Council.

IT IS THEREFORE ORDERED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, THAT:

1. The following described property be and is hereby declared to be surplus property by the Mayor and City Council for future disposition, in accordance with the provisions of Section 1 of the Charter of the City of Cumberland:

ALL that piece or parcel of land situated in the City of Cumberland, on the southerly side of Maryland 639, Willowbrook Road, Election District No. 22, Allegany County, Maryland, and being more particularly described as follows (Maryland State Grid Meridian and Horizontal Distances used throughout) to wit:

BEGINNING for the same at a concrete monument found at the point of beginning of Parcel 2, of a deed recorded December 29, 1961 from Frederick L. Wempe and Betty P. Wempe to The Mayor and City Council of Cumberland in Deed Liber 342, Folio 554, thence running with the 1st line thereof, as corrected;

1. North 72 degrees 18 minutes 42 seconds West for a distance of 265.55 feet to a 5/8" iron pin with cap set, thence leaving the lines of the aforesaid deed and running with a new division line through the whole tract of which this is a part;
2. North 29 degrees 56 minutes 17 seconds East for a distance of 508.46 feet to a 5/8" iron pin with cap set at the end of the 3rd line of the aforesaid Parcel 2, of deed Liber 342, Folio 554, and running thence with the entire 4th, 5th, 6th, and 7th lines thereof;

SEP 11 2012

3. North 78 degrees 34 minutes 22 seconds East for a distance of 59.51 feet to a point, thence;
4. South 78 degrees 25 minutes 38 seconds East for a distance of 49.51 feet to a point, thence;
5. North 87 degrees 59 minutes 22 seconds East for a distance of 88.53 feet to a point, thence;
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17. South 11 degrees 04 minutes 08 seconds West for a distance of 500.47 feet to a 5/8" iron pin with cap set in the 4th line of the 1st parcel of the aforesaid deed recorded in Deed Liber 342, Folio 554, thence running with part of the 4th, the entire 3rd, and the entire 2nd lines of said parcel, reversed, as corrected;
18. North 79 degrees 41 minutes 03 seconds West for a distance of 421.16 feet to a point in a creek, thence;
19. South 84 degrees 47 minutes 27 seconds West for a distance of 280.46 feet to a point in a creek, thence;
20. North 72 degrees 14 minutes 33 seconds West for a distance of 372.35 feet the place of beginning containing 26.76 acres, more or less, all of which is shown on a plat by Bennett, Brewer, & Associates, LLC entitled *Lot Line Adjustment Plat prepared for the Mayor and City Council of Cumberland*, dated August 20, 2012, and intended to be made a part hereof.

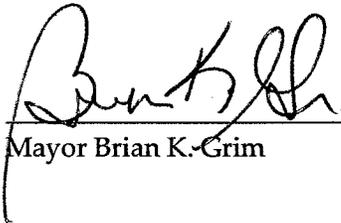
ALL OF THE ABOVE described parcel being part of Parcel 1 and part of Parcel 2, of the same property conveyed by deed recorded December 29, 1961 from Frederick L. Wempe and Betty P. Wempe to The Mayor and City Council of Cumberland in Deed Liber 342, Folio 554, among the Land Records of Allegany County, Maryland.

ALSO RESERVING unto the Mayor and City Council of Cumberland a 20 foot wide easement for a walking trail, as shown on the aforementioned plat. Said easement shall be retained in perpetuity by the City of Cumberland, for the benefit of the public, for ingress, egress, and maintenance of said trail.

TOGETHER WITH AND SUBJECT TO any restrictions, reservations, covenants, right of ways, et cetera as of record, and as shown on the aforementioned plat.

2. **IT IS FURTHER HEREBY ORDERED**, that said parcel, being the subject of the aforesaid Memorandum of Understanding, shall be transferred to Western Maryland Health System Corp. in accordance with the terms of the Memorandum of Understanding provided all contingencies relative to the transfer have been met.

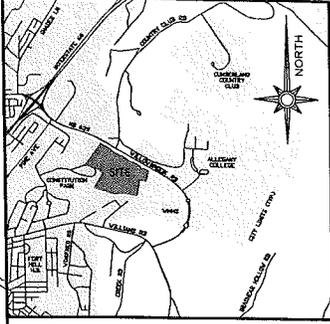
3. **IT IS FURTHER HEREBY ORDERED**, that after the provision of twenty (20) days' public notice of the proposed transfer of the said parcel, the process for formal transfer of the property to Western Maryland Health System Corp. shall proceed.



Mayor Brian K. Grim

LEGEND

- OUTER PROPERTY BOUNDARY
- INTERIOR LOT LINES
- ADJACENT PROPERTY BOUNDARY
- C/L OF DRAINWAY
- CORNER FOUND
- CONCRETE MONUMENT FOUND
- SURVEYOR WOOD SET
- CALCULATED POINT
- UTILITY POLE
- LIGHT POLE
- SIGN POST
- CURBLINE
- SIDEWALK
- TRAIL LINE
- AERIAL UTILITY LINE
- FENCE LINE



Approved by the City of Cumberland Zoning Administrator, on the _____ day of _____, 20____
Signed: _____
Zoning Administrator

PRELIMINARY

TOTAL AREA BY SURVEY
26.76 ± ACRES
TO BE ADDED TO L:
1275 F: 125

| Line # | Direction | Length |
|--------|---------------|---------|
| L3 | S82° 21' 38"E | 137.53' |
| L4 | N76° 34' 22"E | 59.51' |
| L5 | S76° 25' 38"E | 49.51' |
| L6 | N87° 59' 22"E | 88.53' |
| L7 | S88° 30' 38"E | 70.33' |

SURVEYOR'S CERTIFICATION
I HEREBY CERTIFY THAT I PERSONALLY PREPARED THIS BOUNDARY SURVEY OR WAS IN RESPONSIBLE CHARGE OVER ITS PREPARATION AND THE SURVEYING WORKS REFLECTED HEREIN, IN COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN REGULATION 12.06, ARTICLE 4 § 14-304 (b) (1) ANNOTATED CODE OF MARYLAND.
I HEREBY CERTIFY THAT THIS BOUNDARY SURVEY, TO THE BEST OF MY KNOWLEDGE, WAS MADE IN ACCORDANCE WITH THE TECHNICAL STANDARDS OF PRACTICE AS SET FORTH IN § 14-204B ANNOTATED CODE OF MARYLAND.
THIS SURVEYOR HAS EXAMINED ONLY THE DEEDS IDENTIFIED HEREON AND AS SUCH CANNOT WARRANT THE EXISTENCE OR NON-EXISTENCE OF ANY EASEMENTS, ENCUMBRANCES, RESTRICTIVE COVENANTS, OR OTHER INTERESTS IN THE SUBJECT PROPERTY THAT MAY AFFECT THE SURVEY OR BE DISCOVERED BY A REASONABLE SEARCH OF THE PUBLIC RECORDS.

PROJECT NO.: 2011060
DRAWN: SM
DATE: 09-22-12
CRD FILE: 11050
DWG FILE: BBA-BS

bba
Surveyors | Engineers | Planners
Barnett Brewer & Associates, LLC
23 East Main Street, Suite 700
Frostburg, MD 21732
Phone: 301-582-0424



LOT LINE ADJUSTMENT PLAT
PREPARED FOR
MAYOR AND CITY COUNCIL OF CUMBERLAND
SITUATED ALONG THE SOUTHERLY SIDE OF MARYLAND 638 WILLOWBROOK ROAD
CITY OF CUMBERLAND, ELECTION DISTRICT 22, ALLEGANY COUNTY, MARYLAND

SHEET NO.
1
OF
1

CADD FILE: P:\2011\11060 - City of Cumberland - WMS\Production_Drawing\BBA-BS.dwg PLOT DATE/TIME: 9/20/2012 - 1:32pm LAST SAVE BY: SM