

ORDINANCE NO. 3759

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, ENTITLED "AN ORDINANCE TO PROVIDE FOR THE CLOSURE OF A PORTION OF BEDFORD STREET LOCATED ADJACENT TO AND TO THE NORTH OF CENTRE STREET, SAID PORTION OF BEDFORD STREET BEING CLOSED RUNNING FROM THE NORTHERN BOUNDARY OF CENTRE STREET 79.86 FEET ON THE WEST SIDE OF BEDFORD STREET AND 96.71 FEET ON THE EAST SIDE OF BEDFORD STREET, THE PORTION OF SAID STREET BEING CLOSED LYING BETWEEN THE LANDS OWNED BY DAVID MCCAGH (AS DESCRIBED IN THE DEED RECORDED AMONG THE LAND RECORDS OF ALLEGANY COUNTY, MARYLAND IN DEED LIBER 589, FOLIO 697) AT 107 N. CENTRE STREET TO THE WEST AND THE LANDS OWNED BY MAYOR AND CITY COUNCIL OF CUMBERLAND (AS DESCRIBED IN THE DEED RECORDED AMONG THE AFORESAID LAND RECORDS IN DEED LIBER 526, FOLIO 61) TO THE EAST, 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 David McCagh requesting the closure of the portion of Bedford 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 May 20, 2014;

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 alley be closed; and

WHEREAS, in that David McCagh and Mayor and City Council of Cumberland own the parcels of property adjacent to each side of the portion of Bedford Street being closed by this Ordinance, the western half of the portion of Bedford Street being closed for the entire length of that portion of Bedford Street will be conveyed to David McCagh and the eastern half of the portion of Bedford Street being closed for the entire length of that portion of Bedford Street will be conveyed to Mayor and City Council of Cumberland.

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

SECTION 1: The portion of Bedford Street described in the metes and bounds descriptions attached hereto as Exhibits A and B and depicted as "Area-North to McCagh" and "Area-South to City" in the plat attached hereto as Exhibit C 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 and public utility companies for the full length

and width of the western half of Bedford Street being closed by this Ordinance for the purpose of ingress, egress, construction, maintenance, operation, alteration, replacement and removal of existing and future utilities. No buildings, structures or other obstructions shall be permitted in the western half of Bedford Street being closed by this Ordinance. The language describing the aforesaid easement and restrictions and other matters is set forth in the Exhibit D attached hereto. Said language shall be incorporated into the deeds effecting the conveyance of the applicable portion of Bedford Street to David McCagh.

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 Bedford 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 alley 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 Bedford 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 Bedford Street particularly described in Section 1 hereof shall be closed and the Mayor shall be empowered to execute deeds effecting the conveyance of the property described in Exhibit A to David McCagh and the property described in Exhibit B to Mayor and City Council of Cumberland.

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

Passed, the 20 day of May, 2014.


Brian K. Grim, Mayor

ATTEST:


Marjorie A. Woodring, City Clerk

1st reading: 5/6/14
2nd reading: 5/20/14
3rd reading: 5/20/14
Passed 5-0

EXHIBIT A

Area – North To McCagh

BEGINNING for the same at a drill hole set on or near the Northwesterly right-of-way limits of Bedford Street and near said streets intersection with North Centre Street in Cumberland, Maryland, said line is found on MSHA Plat of John J. McMullen Memorial Bridge Plat 8 & 9 of 74 State of Maryland State Road Commission Contract No. A -539-001-670 dated and revised 1975; thence binding with the first line reversed of Parcel No. 1 of David McCagh found in Liber 589, Folio 697 among the Land Records of Allegany County, Maryland.

- 1) North 23 degrees 59 minutes 37 seconds East 79.86 feet to a pk nail set on said first line; thence creating a new division line crossing the right-of-way limits of said Bedford Street
- 2) South 66 degrees 00 minutes 23 seconds East 22.00 feet to a point in bituminous concrete at centerline of Bedford Street; thence with said centerline
- 3) South 23 degrees 59 minutes 37 seconds West 88.29 feet to a point set on or near right-of-way limits of North Centre Street; thence with said limits
- 4) North 45 degrees 02 minutes 48 seconds West 23.56 feet to the point of beginning

Containing 1849.58 square feet∇ or 0.04 acres∇ as surveyed by Coughenour Surveying August, 2013.

EXHIBIT B

Area - South to City

BEGINNING for the same at a pk nail set at the end of a reference line South 45 degrees 02 minutes 48 seconds East 23.56 feet from a drill hole set on or near the Northwesterly right-of-way limits of Bedford Street and near said street's intersection with North Centre Street in Cumberland, Maryland, said line is found on MSHA Plat of John J. McMullen Memorial Bridge Plat 8 & 9 of 74 State of Maryland State Road Commission Contract No. A -539-001-670 dated and revised 1975; thence creating a new division line on or near the centerline of said Bedford Street

- 1) North 23 degrees 59 minutes 37 seconds East 88.29 feet to a point; thence
- 2) South 66 degrees 00 minutes 23 seconds East 22.00 feet to a point; thence with the former right-of-way limits of Bedford Street
- 3) South 23 degrees 59 minutes 37 seconds West 96.71 feet to a point on or near new right-of-way limits of North Centre Street; thence with said limits
- 4) North 45 degrees 02 minutes 48 seconds West 23.56 feet to the point of beginning

Containing 2034.98 square feet∇ or 0.05 acres∇ as surveyed by Coughenour Surveying August, 2013.

EXHIBIT D

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 (including, but not limited to, drainage from Bedford Street) 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.

FURTHER SUBJECT, HOWEVER, to the reservation of an easement for the benefit of the public over, across and through the sidewalk abutting the east side of the building located at 107 N. Centre Street, running from its northeast corner south to N. Centre Street. As required by Article III of Chapter 22 of the City of Cumberland Code, the party of the second part shall be responsible for all repairs and maintenance of the aforesaid sidewalk. In the event the sidewalk is repaired or replaced, all work relative thereto shall be performed in accordance with applicable law, including, but not limited to, the Americans with Disabilities Act.

FURTHERMORE, it is a condition of the conveyance effected by this deed that the party of the second part, its successors, and assigns, or other to whom this and the adjacent property shall be conveyed, shall be allowed to use the surface of the land hereby conveyed; however, he shall not be permitted to place or erect structures 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 aforesaid utilities and improvements related thereto. Furthermore, no such structures 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 enclosure or buildings 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 he be permitted to alter the surface of the land hereby conveyed, aside from filling potholes, except upon the written consent of the party of the first part, said consent not to be unreasonably withheld.

FURTHERMORE, the party of the second part shall not be permitted to use the property hereby conveyed for the purpose of constructing or creating an entrance from N. Centre Street into the parcel of land and the improvements thereon commonly known as 107 N. Centre Street. The party of the second part shall be responsible for keeping the parking area closed off from traffic on N. Centre Street by means of concrete curbing on the property hereby conveyed, such as that which presently exists at the property, or by such other barriers as may be approved by the party of the first part. The party of the second part shall maintain the concrete curbing or other barriers and keep them in good repair.

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 improvements related thereto, the party of the second part shall be liable for all costs associated with the relocation.

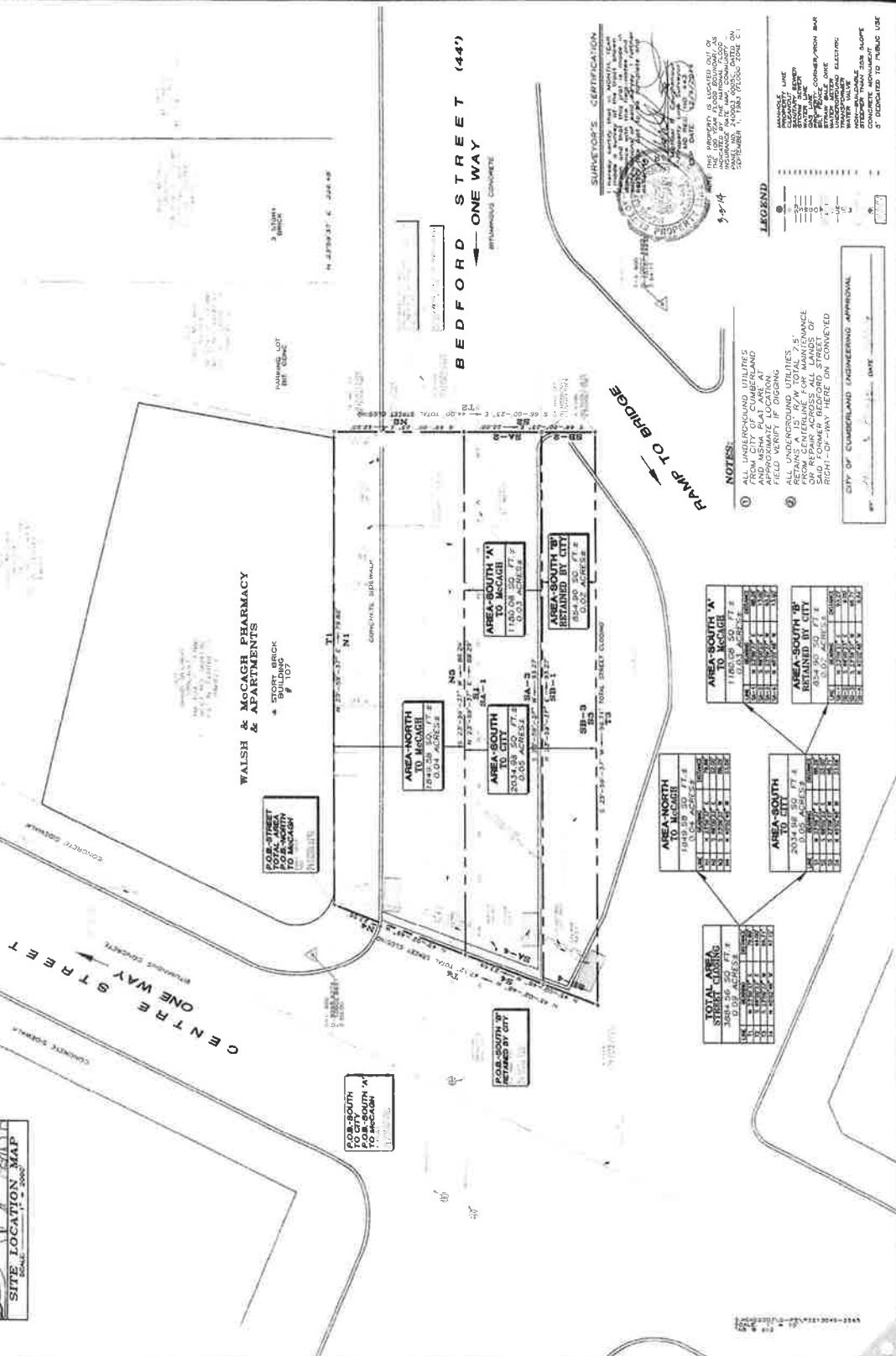
FURTHERMORE, the party of the first part, and public and private utilities, shall also have the right to remove, where necessary, such trees and other growths as may be required for the installation, inspection, operation, maintenance, repair, replacement and/or relocation of the aforesaid utility lines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

FURTHERMORE, the property conveyed under the terms of this deed shall be used solely as a vehicular parking area. Any other use shall be subject to the written consent of the party of the first part.

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.

EXHIBIT C



SURVEYOR'S CERTIFICATION

THIS SURVEY WAS MADE BY ME OR UNDER MY SUPERVISION AND I AM A LICENSED SURVEYOR IN THE STATE OF MARYLAND. I HEREBY CERTIFY THAT THIS SURVEY WAS MADE IN ACCORDANCE WITH THE MARYLAND PROFESSIONAL SURVEYING ACT, TITLE 18, SUBTITLE 2, OF THE MARYLAND CODE, AND THAT I AM A LICENSED SURVEYOR IN THE STATE OF MARYLAND.

DATE: 10/23/2013

3/3/14

- NOTES**
1. ALL UNDERGROUND UTILITIES AND MSHA PLAT ARE AT FIELD VERIFY IF DIGGING.
 2. ALL UNDERGROUND UTILITIES FROM CENTRELINE FOR MAINTENANCE SHALL BE MARKED. BEDFORD STREET RIGHT-OF-WAY HERE ON CONVEYED.
- LEGEND**
- MANHOLE (LINE)
 - CONCRETE (LINE)
 - WATER MAIN (LINE)
 - SEWER (LINE)
 - UTILITY (LINE)
 - PROPERTY LINE (LINE)
 - ADJACENT PROPERTY (LINE)
 - EXISTING CONCRETE (LINE)
 - PROPOSED CONCRETE (LINE)
 - PROPOSED ASPHALT (LINE)
 - PROPOSED GRAVEL (LINE)
 - PROPOSED DRIVEWAY (LINE)
 - PROPOSED SIDEWALK (LINE)
 - PROPOSED CURB (LINE)
 - PROPOSED CONC. MONUMENT (LINE)
 - 5' DEGRADED TO PUBLIC USE

DATE: _____

REVISIONS:

COUGHENOUR SURVEYING
115 SOUTH CENTRE STREET, SUITE III • CUMBERLAND, MD
TELEPHONE NO. 531-717-1222 • FAX NO. 531-717-5409

PREPARED FOR:
DAVID MCCAGH SCOTTESTREET
CUMBERLAND, MARYLAND 20502
TELEPHONE:

PROPERTY SURVEY FOR DAVID MCCAGH
LOCATED AT
101 N. CENTRE STREET
ALLEGANY COUNTY, MARYLAND

DRAWING NUMBER:
1 of 1

PROJECT NUMBER:
213049-2545

DATE: OCTOBER, 2013
SCALE: 1" = 10'
FIELD BOOK: 2545.CRD

DRAWN BY: D.L.C.
CHECKED BY: G. KERR
APPROVED BY: M.R. COUGHENOUR