

ORDINANCE NO. 3703

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, ENTITLED "AN ORDINANCE TO PROVIDE FOR THE CLOSURE OF THE PORTION OF SCHRIVER'S ALLEY RUNNING FROM THE EASTERN RIGHT OF WAY LIMITS OF SPRINGDALE STREET EAST APPROXIMATELY 102 FEET EASTWARD, SAID PORTION OF SCHRIVER'S ALLEY BEING CLOSED LYING BETWEEN THE LANDS OWNED BY B/BURN TRUCKING, INC. (AS DESCRIBED IN THE DEED RECORDED AMONG THE LAND RECORDS OF ALLEGANY COUNTY, MARYLAND IN DEED LIBER 652, FOLIO 348) ON THE NORTH AND SOUTH SIDES OF SCHRIVER'S ALLEY FOR THE FIRST APPROXIMATELY 96 FEET RUNNING EASTWARD FROM SPRINGDALE STREET, WITH THE BALANCE OF THE PORTION OF SCHRIVER'S ALLEY BEING CLOSED LYING BETWEEN THE LANDS OWNED BY STANTON R. SHEETZ ON THE NORTH (AS DESCRIBED IN THE DEED RECORDED AMONG THE LAND RECORDS OF ALLEGANY COUNTY, MARYLAND IN BOOK 1706, PAGE 450) AND THE LANDS OWNED BY STANTON R. SHEETZ ON THE SOUTH (AS DESCRIBED IN THE DEED RECORDED AMONG THE LAND RECORDS AFORESAID IN BOOK 1706, PAGE 458), THE ALLEY BEING CLOSED BEING A PORTION OF SCHRIVER'S ALLEY AS SHOWN ON THE PLAT OF SCHRIVER'S ADDITION TO THE CITY OF CUMBERLAND RECORDED AMONG THE AFORESAID LAND RECORDS AS PLAT NO. 224, THE PORTION OF SAID ALLEY BEING CLOSED BEING ADJACENT AND TO THE WEST OF THE PORTION OF SCHRIVER'S ALLEY CLOSED BY ORDINANCE NO. 3683, THE PORTION OF SAID ALLEY BEING CLOSED BEING LOCATED IN THE CITY OF CUMBERLAND, MARYLAND."

WHEREAS, the Mayor and City Council of Cumberland received a petition from B/Burn Trucking, Inc. requesting the closure of the portion of Schriver's Alley 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 November 22, 2011;

WHEREAS, in the opinion of the Mayor and City Council of Cumberland, the public welfare and convenience require that the aforesaid portion of Schriver's Alley be closed; and

WHEREAS, in that B/Burn Trucking, Inc. and Stanton R. Sheetz own the parcels of property adjacent to each side of the portion of Schriver's Alley being closed by this Ordinance, the entire length and width of the approximately 96 feet of Schriver's Alley which is closest to Springdale Street will be conveyed to B/Burn Trucking, Inc. and the entire length and width of the approximately 6 feet of Schriver's Alley which is adjacent and to the east of the portion of Schriver's Alley to be conveyed to B/Burn Trucking, Inc., will be conveyed to Stanton R. Sheetz.

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

SECTION 1: The portion of Schriver's Alley described in the metes and bounds descriptions attached hereto as Exhibits A and B and depicted as Parcel A and Parcel B 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 portion of Schriver's Alley being closed by this Ordinance for the purpose of ingress, egress, construction, maintenance, operation, alteration, replacement or removal of existing and future utilities. No buildings, structures or other obstructions shall be permitted in the said portion of Schriver's Alley 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 conveyances of the applicable portions of Shiver's Alley to B/Burn Trucking, Inc. and Stanton R. Sheetz.

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 said 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 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 alley closure, 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.

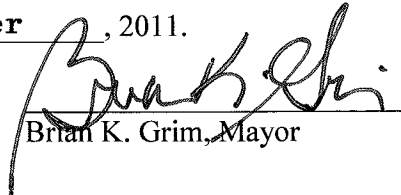
SECTION 4: Any person feeling aggrieved or injured by the decision of said Mayor and City Council of Cumberland regarding the subject matter of the aforementioned report shall have the right of an appeal to the Circuit Court at a trial by jury, as provided in Section 128 of the Charter of the City of 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 alley 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 B/Burn Trucking, Inc. and the property described in Exhibit B to Stanton R. Sheetz.

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

Passed, the **6th** day of **December**, 2011.


Brian K. Grim, Mayor

ATTEST:


Marjorie A. Eirich, City Clerk

1st reading: 11/22/2011

2nd & 3rd readings: 12/6/2011

EXHIBIT A

...all that certain tract, piece or parcel of lands and premises situate, lying and being in the City of Cumberland, Allegany County, Maryland, which is more particularly described as follows:

Beginning for the same at a ½" rebar with cap found marking a common corner of lands of Stanton R. Sheetz (Liber 1706, page 458) and lands of B/Burn Trucking, Inc. (Liber 652, page 348 Parcel First), said ½" rebar stands on the western limits of Schriver's Alley (Plat No. 224 varying width right of way), thence with said limits and said lands of B/Burn Trucking, Inc.

North 49°53'35" West 95.97 feet to a calculated point on the southern limits of Springdale Street (a 40' right of way), thence with said limits

North 30°59'17" East 12.00 feet to a calculated point on the eastern limits of said Schriver's Alley, said point marks the most western corner of other lands of B/Burn Trucking, Inc. (Liber 652, page 348 Parcel Third), thence with said lands and with said limits

South 50°49'14" East 96.44 feet to a calculated corner being a common corner of said lands of B/Burn Trucking, Inc. and other lands of Stanton R. Sheetz (Liber 1706, page 450) thence crossing said alley

South 33°56'40" West, passing through a ½" rebar with cap set at 6.74 feet, in all 13.49 feet to the beginning, containing 1216.2 square feet, more or less, as shown as Parcel A of the Plat of Partial Abandonment of Schriver's Alley surveyed for B/Burn Trucking, Inc. dated May 2011 attached hereto and made a part of this description.

Being a portion of Schriver's Alley as shown on the Plat of Schriver's Addition to the City of Cumberland recorded among the Land Records of Allegany County, Maryland as Plat No. 224.

EXHIBIT B

...all that certain tract, piece or parcel of lands and premises situate, lying and being in the City of Cumberland. Allegany County, Maryland, which is more particularly described as follows:

Beginning for the same at a ½" rebar with cap found marking a common corner of lands of Stanton R. Sheetz (Liber 1706, page 458) and lands of B/Burn Trucking, Inc. (Liber 652, page 348 Parcel First), said ½" rebar stands on the western limits of Schriver's Alley (Plat No. 224 varying width right of way), thence crossing said Alley

North 33°56'40" East, passing through a ½" rebar with cap set at 6.74 feet, in all 13.49 feet to a calculated point being a common corner of lands of B/Burn Trucking, Inc. (Liber 652, page 348 Parcel Third) and other lands of Stanton R. Sheetz (Liber 1706, page 450) said point being on the eastern limits of said Alley, thence with said limits and said lands of Sheetz

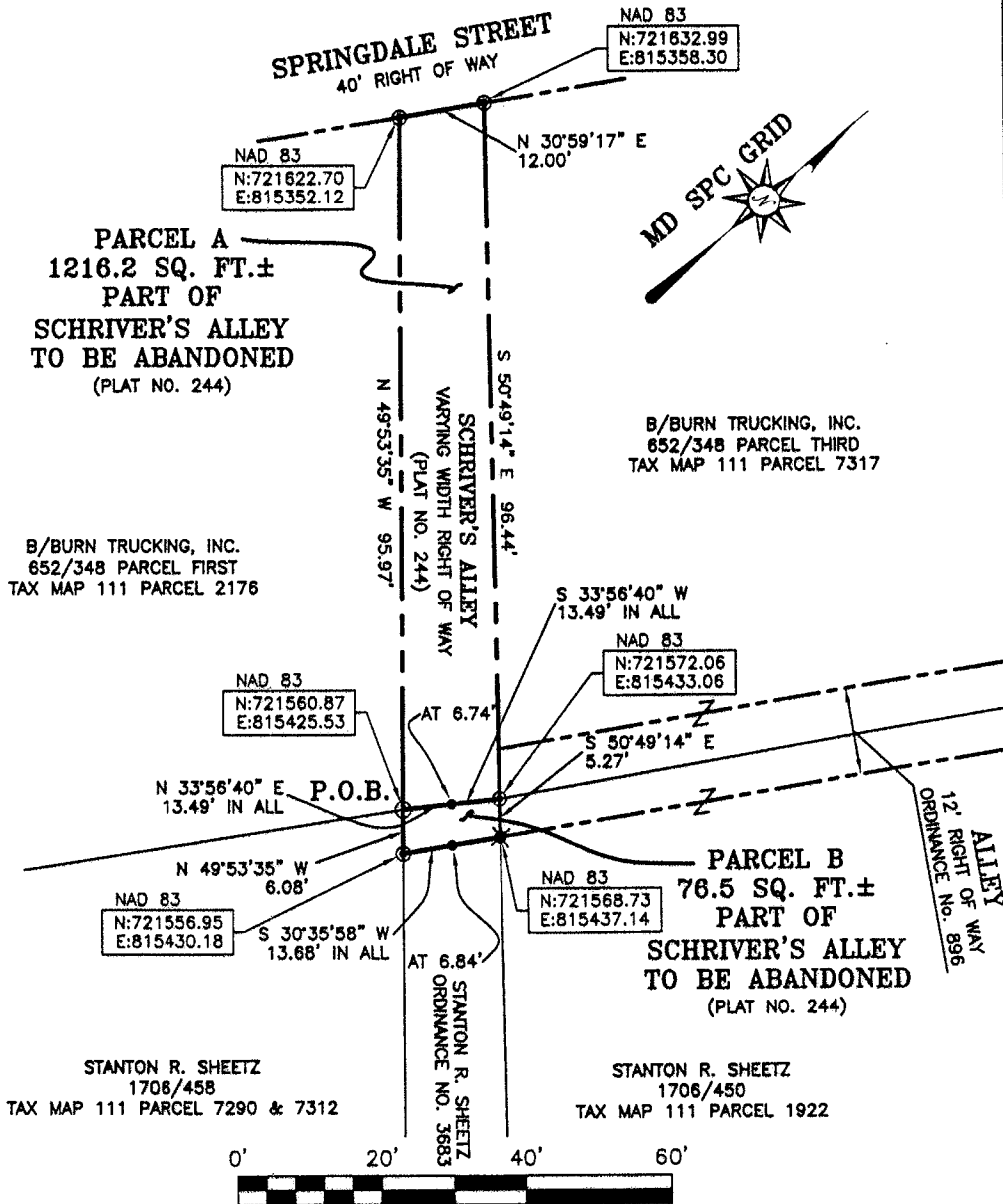
South 50°49'14" East 5.27 feet to a MAG nail with washer set, thence crossing said Alley

South 30°35'58" West, passing through a ½" rebar with cap set at 6.84 feet, in all 13.68 feet to a calculated point on the western limits of said Alley and on a line of the aforementioned lands of Stanton R. Sheetz (Liber 1706, page 458), thence with said limits and said lands

North 49°53'35" West 6.08 feet to the beginning, containing 76.2 square feet, more or less, as shown as Parcel B of the Plat of Partial Abandonment of Schriver's Alley surveyed for B/Burn Trucking, Inc. dated May 2011 attached hereto and made a part of this description.

Being a portion of Schriver's Alley as shown on the Plat of Schriver's Addition to the City of Cumberland recorded among the Land Records of Allegany County, Maryland as Plat No. 224.

EXHIBIT C



PLAT OF ABANDONMENT OF SCHRIVER'S ALLEY
SURVEYED FOR

B/BURN TRUCKING, INC.
CITY OF CUMBERLAND, ALLEGANY COUNTY, MARYLAND
SCALE: 1" = 20' DATE: MAY 2011

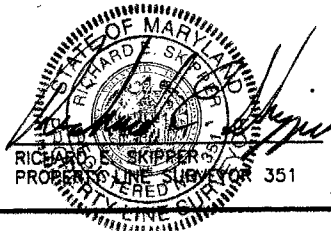
SURVEYOR'S CERTIFICATE

To all parties interested in the title to the property surveyed; I hereby certify that the property corners marked thus: ○ have been 1/2" rebar with cap found and that property corners marked thus: ✕ have been MAG nail with washer set and that property corners marked thus: ● have been 1/2" rebar with cap set and that property corners marked thus: ⊙ are calculated points according to field survey in conjunction with the land records of said county and are correct to the best of my knowledge and belief, said locations are subject to change upon discovery of new and superior evidence.

**HIGHLAND
ENGINEERING &
SURVEYING, INC.**

Telephone: 301-334-6185
Facsimile: 301-334-8317

1426 Memorial Drive
Oakland, Maryland 21550



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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 drainage and for the installation, repair, replacement and/or maintenance of any needed utility lines and stormwater management and sediment and erosion control devices and improvements.

FURTHERMORE, it is a condition of conveyance effected by this deed that the party of the second part, his/her/its heirs, personal representatives, 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 and may enclose it from unauthorized entry, and may locate thereon light structures having no basement and no under-surface footings deeper than one (1) foot below the surface; provided that such use, enclosure or light structures 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 inspection, operation, maintenance or repairs of the aforesaid public improvements and utilities. Furthermore, no such enclosure or light structures shall be located or constructed upon the land conveyed by this deed until plans therefore have been submitted to and approved by the part 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 improvements or in any way interfere with or adversely impact their operation or maintenance.

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 construction, installation, repair, replacements and/or maintenance of aforesaid utility lines and stormwater management and sediment and erosion control devices and improvements provided for herein.