

ORDINANCE NO. 3734

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, ENTITLED "AN ORDINANCE TO PROVIDE FOR THE CLOSURE OF A PORTION OF AN ALLEY LOCATED BETWEEN 117 HANOVER STREET AND 119 HANOVER STREET, SAID PORTION OF THE ALLEY BEING CLOSEED RUNNING FROM THE SOUTHEASTERN BOUNDARY OF HANOVER STREET SOUTHEAST 105 FEET TO THE NORTHWESTERN BOUNDARY OF ANOTHER ALLEY, THE PORTION OF SAID ALLEY BEING CLOSED LYING BETWEEN THE LANDS OWNED BY THE BERGEN TRUST (AS DESCRIBED IN THE DEED RECORDED AMONG THE LAND RECORDS OF ALLEGANY COUNTY, MARYLAND IN BOOK 1435, PAGE 177) AT 117 HANOVER STREET ON THE SOUTHWESTERN SIDE OF THE PORTION OF SAID ALLEY BEING CLOSED AND THE LANDS OWNED BY THE BELLA STRADA TRUST (AS DESCRIBED IN THE DEED RECORDED AMONG THE AFORESAID LAND RECORDS IN BOOK1346, PAGE 440) AT 119 HANOVER STREET ON THE NORTHEASTERN SIDE OF THE PORTION OF SAID ALLEY BEING CLOSED, THE PORTION OF THE ALLEY BEING CLOSED BEING SHOWN ON THE PLAT OF PIATT'S ADDITION TO THE CITY OF CUMBERLAND (RECORDED AMONG THE PLAT RECORDS OF ALLEGANY COUNTY, MARYLAND IN DEED LIBER 31, FOLIO 31C), 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 the Trustee of the Bergen Trust and Bella Strada Trust requesting the closure of the portion of the 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 February 12, 2012;

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 the Bergen Trust and Bella Strada Trust own the parcels of property adjacent to each side of the portion of the alley being closed by this Ordinance, the southwestern half of the portion of the alley being closed for the entire length of that portion of the alley will be conveyed to the Bergen Trust and the northeastern half of the portion of the alley being closed for the entire length of that portion of the alley will be conveyed to the Bella Strada Trust.

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

FEB 12 2013

SECTION 1: The portion of the alley described in the metes and bounds descriptions attached hereto as Exhibits A and B and depicted as Parcel 1 and Parcel 2 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 the alley 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 said portion of the alley being closed by this Ordinance with the exception of that portion of the building located at 119 Hanover Street which encroaches into the alley as of the date of 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 the alley to the Bergen Trust and the Bella Strada Trust.

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's 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.

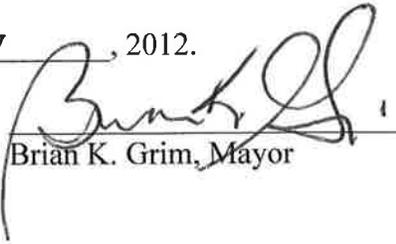
SECTION 4: Any person feeling aggrieved or injured by the decision of said Mayor and City Council of Cumberland regarding the subject matter of the aforereferenced report shall have the right of an appeal to the Circuit Court at a trial by jury, as provided in Section 128 of the Charter of the City of 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.

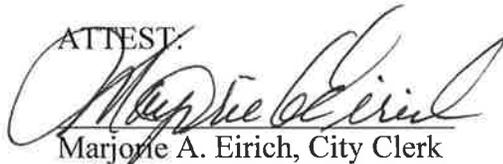
SECTION 5: The benefits assessed by said Mayor and City Council of Cumberland shall be liens upon the property of the persons benefitted to the extent of such assessment, and shall be payable within sixty (60) days after the date of the meeting at which the Mayor and City Council of Cumberland makes 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 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 the Bergen Trust and the property described in Exhibit B to the Bella Strada Trust.

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

Passed, the 12th day of February, 2012.


Brian K. Grim, Mayor

ATTEST.

Marjorie A. Eirich, City Clerk

1st reading: January 29, 2013
2nd reading: January 29, 2013
3rd reading: February 12, 2013

Effective: February 12, 2013

EXHIBIT A

**PARCEL 1
DESCRIPTION FOR ALLEY CLOSING BETWEEN
117 AND 119 HANOVER STREET, CUMBERLAND, MARYLAND**

ALL that piece or parcel of land formerly being Southerly one half of an Alley located between 117 and 119 Hanover Street, Cumberland, Allegany County, Maryland, said description written for the closing of said Alley

BEGINNING for the same at a pk nail set along the Southeasterly right-of-way limits of Hanover Street at the center of said Alley; thence leaving the said right-of-way limits of Hanover Street and binding with the centerline of said Alley

- 1) South 61 degrees 50 minutes 00 seconds East 105.00 feet to a 5/8 inch iron bar with cap set along the Northwesterly right-of-way limits of an Kornoff Alley at the centerline of said Alley found between 117 and 119 Hanover Street; thence leaving the said centerline of said Alley and binding with the said Northwesterly right-of-way limits of said Kornoff Alley
- 2) South 28 degrees 07 minutes 00 seconds West 5.65 feet to a 60D nail set at the Southeasterly corner with said 117 Hanover Street lands found as now or formerly James E. Walsh and Richard Screib, Trustees of the Bergen Trust found in Liber 1435, Folio 177 among the Land Records of Allegany County, Maryland; thence leaving said Northwesterly right-of-way limits of Kornoff Alley and binding with the common line of 117 Hanover Street, found in said Liber 1435, Folio 177 and the Southerly limits of said Alley between 117 and 119 Hanover Street
- 3) North 61 degrees 50 minutes 00 seconds West 105.00 feet to a pk nail set along the said Southeasterly right-of-way limits of Hanover Street at the Northeasterly corner with said 117 Hanover Street found in Liber 1435, Folio 177; thence leaving said common lines with said Liber 1435, Folio 177 and binding with the said Southeasterly right-of-way limits of Hanover Street
- 4) North 28 degrees 07 minutes 00 seconds East 5.65 feet to the point of beginning

Containing 593.63 square feet \surd or 0.01 acres \surd as surveyed by Coughenour Surveying March, 2010.

EXHIBIT B

**PARCEL 2
DESCRIPTION FOR ALLEY CLOSING BETWEEN
117 AND 119 HANOVER STREET, CUMBERLAND, MARYLAND**

ALL that piece or parcel of land formerly being Northerly one half of an Alley located between 117 and 119 Hanover Street, Cumberland, Allegany County, Maryland, said description written for the closing of said Alley

BEGINNING for the same at a pk nail set along the Southeasterly right-of-way limits of Hanover Street at the center of said Alley; thence binding with the said right-of-way limits of Hanover Street

- 1) North 28 degrees 07 minutes 00 seconds East 5.65 feet to a point at the Northwestern corner of 119 Hanover Street found as lands now or formerly James E. Walsh and Carl T. Miltenberger, Trustees of the Bella Strada Trust found in Liber 1346, Folio 440 among the Land Records of Allegany County, Maryland and the Northeasterly corner of said Alley between 117 and 119 Hanover Street; thence leaving said right-of-way limits of Hanover Street and binding with the common line with said 119 Hanover Street, found in Liber 1346, Folio 440
- 2) South 61 degrees 50 minutes 00 seconds East 105.00 feet to a 60D nail set along the Northwestern right-of-way limits of said Kornoff Alley at a common corner with the Southwesterly corner of said Liber 1346, Folio 440; thence leaving said 119 Hanover Street and binding with the said limits of said Kornoff Alley
- 3) South 28 degrees 07 minutes 48 seconds West 5.65 feet to a 5/8 inch iron bar with cap set at the centerline of said Alley between 117 and 119 Hanover Street; thence binding with the said centerline of said Alley
- 4) North 61 degrees 50 minutes 00 seconds West 105.00 feet to the point of beginning

Containing 593.63 square feet∇ or 0.01 acres∇ as surveyed by Coughenour Surveying March, 2010.

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 and 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. **(THE FOLLOWING SENTENCE IS FOR INCLUSION IN THE DEED FOR PARCEL 2 AS SHOWN ON THE PLAT)** Notwithstanding the foregoing, the portion of the building located at 119 Hanover Street which, as of the date

of this deed, encroaches into the lands conveyed by this deed is permitted by the party of the first part.

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.