

ORDINANCE NO. 3756

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, ENTITLED "AN ORDINANCE TO ENACT SECTION 11.07.05 OF THE CITY OF CUMBERLAND ZONING ORDINANCE (ORDINANCE NO. 3607, PASSED MARCH 18, 2008), FOR THE PURPOSE OF IMPLEMENTING REGULATIONS PERTAINING TO CLAIMS OF ECONOMIC HARDSHIP WITH RESPECT TO THE HISTORIC PRESERVATION COMMISSION'S DENIAL OF REQUESTS FOR THE ISSUANCE OF CERTIFICATES OF APPROPRIATENESS AND AMEND SECTIONS 11.04.08 AND 11.07.02(6) OF THE AFORESAID ZONING ORDINANCE FOR THE PURPOSE OF REPLACING REFERENCES TO THE DIRECTOR OF ADMINISTRATIVE SERVICES WITH REFERENCES TO THE COMMUNITY DEVELOPMENT MANAGER."

WHEREAS, the Land Use Article of the Annotated Code of Maryland empowers municipalities with the authority to enact and amend zoning ordinances and to provide for their administration and enforcement;

WHEREAS, in accordance with the foregoing, the Mayor and City Council deem it necessary for the purpose of promoting the health, safety, morals and/or general welfare of the City of Cumberland to occasionally amend its Zoning Ordinance as local needs and changes in State or Federal laws may warrant;

WHEREAS, the Historic Preservation Commission proposed changing the text of Section 11 of the City's Zoning Ordinance (i.e., the Historic Preservation Regulations) for the purpose of incorporating a new procedure for the consideration of economic hardship claims with respect to denials of requests for the issuance of Certificates of Appropriateness for the construction, restoration, rehabilitation, alteration, reconstruction, relocation of a designated landmarks, sites or structures, or sites or structures within a designated historic preservation district;

WHEREAS, there are no provisions in the Historic Preservation Regulations which presently allow for claims of economic hardship;

WHEREAS, incorporating regulations relative to economic hardship into the Historic Preservation Regulations will enable property owners subject to such regulations to potentially obtain relief in circumstances where the Historic Preservation Commission's denial of a Certificate of Appropriateness effects the property owner's deprivation of all reasonable use or return on the property;

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WHEREAS, in that the position of Director of Administrative Services has been removed from the City's table of organization and in that the Community Development Manager has assumed the role formerly filled by the Director of Administrative Services with respect to the implementation of the Historic Preservation Regulations, it is appropriate to amend Sections 11.04.08 and 11.07.02(6) of the same to reflect the foregoing;

WHEREAS, at the public hearing on the subject matter of this Ordinance conducted by the City of Cumberland Municipal Planning and Zoning Commission on September 9, 2013, it determined that it should recommend that the Mayor and City Council amend the City of Cumberland Zoning Ordinance in the manner set forth in this Ordinance, said recommendation being set forth in the Planning Commission Action dated September 9, 2013 which was submitted to the Mayor and City Council;

WHEREAS, the Mayor and City Council held a public hearing regarding the subject matter of this Ordinance on the **19th** day of **November**, 2013, having published notice of the time and place of the hearing together with a summary of this Ordinance in the Cumberland Times-News, a newspaper of general circulation in the City of Cumberland, once each week for two (2) successive weeks, with the first such notice having been published on **November 05**, 2013, said first notice being published at least fourteen (14) days before the hearing as required by Section 4-203(b) of the Land Use Article of the Annotated Code of Maryland and Section 15.04.02 of the Zoning Ordinance;

WHEREAS, consistent with the recommendation of the Municipal Planning and Zoning Commission, the Mayor and City Council determined that the amendments to the Zoning Ordinance will promote the health, safety and general welfare of the City of Cumberland and its inhabitants.

NOW, THEREFORE:

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, that Section 11.07.05 of the City of Cumberland Zoning Ordinance, is hereby enacted, to read as follows:

11.07.05 Economic Hardship

In acting upon an application for a Certificate of Economic Hardship, the Historic Preservation Commission is required to determine whether the economic impact of the historic preservation law, as applied to the property owner, has risen to the level of economic hardship. An applicant seeking a

Certificate of Appropriateness may apply for a “Certificate of Economic Hardship” after the Preservation Commission has denied his or her request to alter or demolish a historic property protected under the preservation ordinance. In support of an application for relief on economic hardship grounds, the applicant must submit evidence sufficient to enable the Historic Preservation Commission to render a decision. The burden of proof is on the applicant.

Economic hardship is defined as consistent with the legal standard for an unconstitutional regulatory taking, which requires a property owner to establish that he or she has been denied all reasonable beneficial use or return on the property as a result of the commission’s denial of a permit for alteration or demolition.

Evidentiary Checklist

The following checklist, as applicable, will be utilized by the Historic Preservation Commission when considering economic hardship claims:

1. Current level of economic return:

- Amount paid for the property, date of purchase, party from whom purchased, and relationship between the owner of record, the applicant, and person from whom property was purchased;
- Annual gross and net income from the property for the previous three years, itemized operating and maintenance expenses for the previous three years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period;
- Remaining balance on the mortgage or other financing secured by the property and annual debt-service, if any, during the prior three years;
- Real estate taxes for the previous four years and assessed value of the property according to the two most recent assessed valuations;
- All appraisals obtained within the last two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
- Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other; and
- Any state or federal income tax returns relating to the property for the last two years.

2. Any listing of property for sale or rent, price asked, and offers received, if any, within the previous two years, including testimony and relevant documents regarding:

- Any real estate broker or firm engaged to sell or lease the property;
- Reasonableness of price or rent sought by the applicant; and
- Any advertisements placed for the sale or rent of the property.

3. Feasibility of alternative uses for the property that could earn a reasonable economic return:
 - Report from a licensed engineer or architect with experience in rehabilitation as to (1) the structural soundness of the building, (2) a condition assessment for the building envelope (roof, walls, windows and doors, foundation), and (3) the urgency of repairs to these features;
 - Expert testimony from an architect, developer, real estate consultant, appraiser, and/or other real estate professional experienced in historic properties as to the treatments of the property, including demolition (including site clearing), stabilization, and rehabilitation;
 - Cost estimates for (1) the proposed construction, alteration, or demolition, (2) the costs of complying with the Certificate of Appropriateness, and 3) the cost of a total rehabilitation; and
 - Estimated market value of the property (1) in its current condition, (2) after completion of the proposed alteration or demolition and (3) after total rehabilitation of the existing property for its current or alternate uses --a list of any designations, easements, or publicly instituted ordinances that affect development such as zoning, building codes, conservation districts, or enterprise zones.
4. Any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property.
5. Knowledge of landmark designation or potential designation at time of acquisition.
6. A list of economic incentives and/or funding available to the applicant through federal, state, city, or private programs, which of these were considered and pursued, and why these were not used to improve the property.

SECTION 2: AND BE IT FURTHER ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, that Section 11.04.08 of the City of Cumberland Zoning Ordinance is hereby amended as follows:

11.04.08 Compensation

Commission members shall serve without compensation, but may be reimbursed for actual expenses incurred in the performance of their duties, provided said expenses are permitted by the budget and approved in advance by the ~~Director of Administrative Services~~ **COMMUNITY DEVELOPMENT MANAGER.**¹

SECTION 3: AND BE IT FURTHER ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, that Section 11.07.02(6) of the City of Cumberland Zoning Ordinance is hereby amended as follows:

¹ Bold print text denotes language added to the text of the Zoning Ordinance. Stricken through text has been deleted.

- (6) In specific cases, such as where the proposed work involves substantially identical replacement "in kind," or as delegated by the Commission, the staff of the Department, in consultation with the ~~Director of Administrative Services~~ **COMMUNITY DEVELOPMENT MANAGER**, may determine that an application meets all requirements of these regulations, in which case a historic area work permit may be issued at the administrative level and Commission review and approval shall not be required

SECTION 4: AND BE IT FURTHER ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, that this Ordinance shall take effect ten (10) days from the date of its passage.

Passed this 3rd day of December, 2013.



Brian K. Grim, Mayor

ATTEST:



Marjorie A. Eirich, City Clerk

Publication Dates: **November 5, November 12, 2013**

1st Reading: **10/22/13**

2nd Reading: **12/03/13**

3rd Reading: **12/03/13**

Effective Date: **12/13/13**