

ORDINANCE NO. 3660

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, ENTITLED "AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP REFERRED TO IN SECTION 25-1 OF THE CODE OF THE CITY OF CUMBERLAND (1991 EDITION) IN ORDER TO REZONE PROPERTY LOCATED AT 100 BEALL STREET, CUMBERLAND, ALLEGANY COUNTY, MARYLAND FROM R-U (URBAN RESIDENTIAL) TO B-L (LOCAL BUSINESS)."

WHEREAS, the property which is the subject of this Ordinance is presently owned by Merling Investments, LLC (the "Applicant") and is located at 100 Beall Street, Cumberland, Allegany County, Maryland, being more particularly depicted on the plat attached hereto and incorporated by reference herein as Exhibit 1, being a part of the real property and the improvements thereon described in the Confirmatory Deed from Cumberland Lodge No. 271 Loyal Order of Moose, Inc. to Merling Investments, LLC dated March 17, 2008 and recorded among the Land Records of Allegany County, Maryland in Book 1489, Page 75, the said property hereinafter being referred to as the "Subject Parcel."

WHEREAS, the Subject Parcel is presently zone R-U (Urban Residential).

WHEREAS, the Applicant made application to the Planning and Zoning Commission of the City of Cumberland (the "Planning Commission"), requesting that the Subject Parcel be rezoned to B-H (Highway Business);

WHEREAS, during the course of the proceedings before the Planning Commission both the Planning Commission and the Applicant agreed to amend his application and requested that the Subject Parcel be zoned B-L (Local Business) rather than B-H because the Planning Commission was of the opinion that the zoning designation would permit the Applicant to conduct the uses for the Subject Parcel he proposed and would be more compatible with the uses conducted in the adjoining properties, the said adjoining parcels being zoned R-U (Urban Residential).

WHEREAS, at the conclusion of the hearing before the Planning Commission held on November 9, 2009, it voted 2-0 to recommend that the Subject Parcel be rezoned B-L. The Planning Commission based its decision on its finding that there was a mistake in the original zoning classification in that the property has been used for commercial purposes since the construction of the Moose Lodge on the Subject Parcel in 1912, the Moose Lodge building being the structure which currently exists on the Subject Parcel, prior to the date the City enacted its first zoning

ordinance. It is presumed that the Planning Commission adopted the findings and recommendations set forth in the Cumberland Planning Commission Staff Report dated September 1, 2009 - Updated October 30, 2009 (the "Staff Report"), a copy of which is attached hereto as Exhibit 2,

WHEREAS, the Planning Commission conditioned its recommendation that the Mayor and City Council approve the rezoning upon the imposition of the following conditions which were intended by the Planning Commission to protect the historic integrity of the building on the Subject Parcel and mitigate any adverse impacts that might occur with respect to the neighboring residential uses. Those conditions were originally set forth in the Staff Report but were amended and adopted as part of the Planning Commission's recommendations as follows:

1. Approval of this rezoning by the Mayor and City Council does not relieve the owner and applicant from the responsibility of compliance with all applicable local, state and federal codes, ordinances, and regulations lawfully in effect at later stages of the approval and development process.
2. The owner shall erect an attractive opaque fence along all parking areas of the property that adjoin the existing residential uses in compliance with Section 13 (Buffer Strips) of the Zoning Ordinance prior to the issuance of any occupancy permit for a new use under the B-L zoning classification. Said fencing shall be sufficient to eliminate the potential of glare to the residential uses from cars parking and

circulating within the designated parking areas.

3. The historic façade, integrity, and appearance of the building shall be retained to the maximum extent feasible in any adaptive reuse of the building under the new B-L zoning designation. Adaptive reuse of the building shall maintain the existing consistency between the building's current architectural style and that of neighboring residential uses.
4. Any Restaurant, Bars and Nightclubs permitted on the subject property shall cease all operations between the hours of 10:00 p.m. and 8:00 a.m. on normal business weekdays and between the hours of 12:00 p.m. and 8:00 a.m. on weekends and legal holidays.
5. No change of use or occupancy permit shall be issued by the City for any dining or drinking establishments that will serve, allow, or sell alcoholic beverages on the premises without prior special exception approval by the Board of Zoning Appeals.

WHEREAS, as required by Section 15.04.05(1) of the City of Cumberland Zoning Ordinance and the applicable provisions of Article 66B of the Maryland Annotated Code, the Planning Commission forwarded its recommendations relative to the proposed rezoning to the Mayor and City Council for action.

WHEREAS, as required by Md. Code Ann., Art 66B §§ 4.05(c) and 4.04(b)(2) and Section 15.04.06(1) of the City of Cumberland Zoning Ordinance, the Mayor and City Council of Cumberland published notice of the time and place of the public hearing before it on the matter of the rezoning

which is the subject of this Ordinance together with a summary of the proposed rezoning in *The Cumberland Times News*, a newspaper of general circulation in Allegany County and the City of Cumberland, once each week for two successive weeks with the first notice being provided at least fourteen days before the hearing. The notices were published on February 2, 2010 and February 9, 2010.

WHEREAS, as required by Md. Code Ann., Art 66B §4.05(c) and City of Cumberland Zoning Ordinance Section 15.04.07, a public hearing on the proposed rezoning was held before the Mayor and City Council on the 16th day of February, 2010, at which public hearing all parties in interest and citizens of the City of Cumberland were permitted to be heard concerning the proposed rezoning.

WHEREAS, having considered the evidence presented, the Mayor and City Council made the following findings:

1. The Mayor and City Council adopt the findings set forth on pages 3 and 4 of the Staff Report relative to population change, the availability of public facilities, present and future transportation patterns, compatibility with existing and proposed development for the area and the relationship of the proposed amendment to the local jurisdiction's plan.

2. For the reasons articulated in the Staff Report, there was a mistake in the original zoning classification for the Subject Parcel, which mistake has persisted to the present day. The Subject Parcel has been used as a social club for the greater part of the past one hundred years and more recently as an outlet store for a textile manufacturer, Beiderlack Corporation. Its use for commercial purposes predates any zoning regulations and the legislature has not taken these facts into account during the course of its comprehensive rezonings. The finding of mistake justifies a change in the zoning of the Subject Parcel from R-U to B-L
3. Conditions 1, 4, and 5, as set forth in the Staff Report, are rejected as they are contrary to applicable law in that they do not relate to preserving, improving or protecting the general character and design of the improvements or to the design of buildings, construction, landscaping or other improvements, alterations, and changes made or to be made on the subject land to assure conformity with the intent and purpose of this authority and the City of Cumberland Zoning

Ordinance. See City of Cumberland Zoning Ordinance § 15.07(1), Md. Code Ann., Art 66B § 4.01(c).

4. Conditions 2 and 3 of the aforesaid Staff Report are approved subject to the modifications set forth below.

NOW, THEREFORE:

SECTION 1: BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, that the Official Zoning Map referred to in Section 25-1 of the Code of the City of Cumberland (1991 Edition) be and is hereby amended to rezone the property depicted in the Exhibit 1 attached hereto from R-U (Urban Residential) to B-L (Local Business). In accordance with Section 15.07 of the City of Cumberland Zoning Ordinance, said rezoning is subject to the following conditions:

1. The owner of the Subject Parcel shall erect an attractive opaque fence, no less than six feet in height, along all parking areas of the Subject Parcel that adjoin the existing residential uses in compliance with Section 13 (Buffer Strips) of the Zoning Ordinance prior to the issuance of any occupancy permit for a new use under the B-L zoning classification. Said fencing shall be sufficient to

eliminate the potential of glare to the residential uses from cars parking and circulating within the designated parking areas. The owner and subsequent owners of the Subject Parcel shall maintain the opaque fence in good repair and condition. The occupancy permit shall be subject to revocation in the event the fence is not maintained in the manner prescribed by this condition.

2. The historic façade, integrity, and appearance of the building shall be retained to the maximum extent feasible in any adaptive reuse of the building under the new B-L zoning designation. Adaptive reuse of the building shall maintain the existing consistency between the building's current architectural style and that of neighboring residential uses. The issuance of any building permits shall be contingent upon the property owner meeting these conditions.

3. The City Planner in conjunction with the City departments responsible for the issuance of occupancy and building permits shall be responsible for the enforcement of the two foregoing conditions.

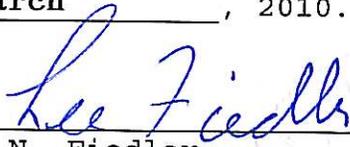
SECTION 2: BE IT FURTHER ORDAINED, that the said change shall be made on the Official Zoning Map immediately by inserting an entry on said Map stating: On March 13 ,

2010, by official action of the Mayor and City Council of Cumberland, the following changes were made on the Official Zoning Map:

1. That the property depicted in the Exhibit 1 attached hereto shall be zoned B-L.
2. That certain terms and conditions on the approval exist as can be found in Attachment A attached hereto.

SECTION 3: AND BE IT FURTHER ORDAINED, That this Ordinance shall take effect on the eleventh day following the passage of this Ordinance.

PASSED this 2nd day of March, 2010.



Lee N. Fiedler
Mayor

ATTEST:



Marjorie A. Eirich
City Clerk

1st Reading: January 19, 2010
2nd Reading: March 2, 2010
3rd Reading: March 2, 2010
Effective Date: March 13, 2010

ATTACHMENT A

RESTRICTIONS APPLICABLE TO 100 BEAL STREET AS A RESULT OF REZONING

1. The owner of the Subject Parcel shall erect an attractive opaque fence, no less than six feet in height, along all parking areas of the Subject Parcel that adjoin the existing residential uses in compliance with Section 13 (Buffer Strips) of the Zoning Ordinance prior to the issuance of any occupancy permit for a new use under the B-L zoning classification. Said fencing shall be sufficient to eliminate the potential of glare to the residential uses from cars parking and circulating within the designated parking areas. The owner and subsequent owners of the Subject Parcel shall maintain the opaque fence in good repair and condition. The occupancy permit shall be subject to revocation in the event the fence is not maintained in the manner prescribed by this condition.
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3. The City Planner in conjunction with the City departments responsible for the issuance of occupancy and building permits shall be responsible for the enforcement of the two foregoing conditions.