



Zoning Board of Appeals Meeting 6/2/21 Agenda

Wednesday, June 02, 2021 at 4:00 PM
WebEx

CALL TO ORDER

CHAIRMAN'S COMMENTS

ADOPTION OF MINUTES

1. Review and Adopt the Minutes from the March 3, 2021 Meeting

PUBLIC HEARINGS

2. ZA 21-01 - Cumberland Gateway - Request for setback variance to construct strip retail building with firewall divisions - Robert Barrick, Applicant

ROLL CALL

DISCUSSION ITEMS

3. ZA 21-01 - Cumberland Gateway - Discussion of Application among Board Members and Applicant

CITY PLANNER'S REPORT

None

ADJOURN

File Attachments for Item:

- 1. Review and Adopt the Minutes from the March 3, 2021 Meeting

CUMBERLAND ZONING BOARD OF APPEALS

Virtual Zoom Meeting

March 3, 2021

The Municipal Zoning Board of Appeals for the City of Cumberland, Maryland, created under Zoning Ordinance No. 3607, met on Wednesday, March 3, 2020 at 4:00 p.m., via a Virtual Zoom Meeting.

Chairman Phil Crippen, called the meeting to order, and a roll call of the members was conducted. Board Members present were Chairman Phil Crippen, Mr. Tom Farrell, Mr. Bernie Lechman, and Mr. Charles Taylor.

Other attending the meeting was Ms. Morgan Alban, GIS Specialist, Mrs. Debbie Helmstetter, Codes Technician, Mr. Jeffrey Rhodes, City Administrator and Ms. Rhiannon Brown, Queen City Creamery.

CHAIRMAN COMMENTS

No comments.

ADOPTION OF MINUTES

The minutes for December 2, 2020 were approved as read. *Mr. Bernie Lechman made the motion to accept the minutes and second by Mr. Tom Farrell. All members were in favor; motion approved. Vote was 4-0.*

PUBLIC HEARING

1. ZA21-000001 – Ms. Rhiannon Brown, Queen City Creamery is requesting a Conditional Use for a pull-up window and sliding door. Applicant stated it was denied by the City and she is requesting to install the sliding door on the right side and a curb-side pick-up window. Chairman Phil Crippen asked the applicant if she was able to answer the following seven (7) questions:
2.
 1. (a) How is the proposed use in accordance with the Cumberland Comprehensive Plan?
 - The 2013 Compressive Plan supports places to be a profitable business.
 - It’s a pick-up window not a drive through.

- (b) How is the proposed use consistent with the spirit, purpose, and intent of the Zoning Ordinance?
 - Ms. Brown wants to know how it is an issue the Zoning Ordinance. Ms. Brown said she is not aware how this pertains to the Zoning Ordinance, it is just a door and it is 2' outside of the building which is ADA approved.
 - It can also be used as a handicapped assessable entrance.

- 2. How is the proposed use in the best interest of the City, the convenience of the community, and the public welfare?
 - Easier access to and from the building.
 - It is easier for the public and will increase customers.
 - Make the path of delivery more convenient for the employees.
 - Food is made to order only.
 - To remove the guardrail which is applicant feels is horrendous.
 - To keep the downtown business viable, especially this past year.

- 3. How do you show that the proposed use is suitable for the property in question and will be designed, constructed, operated, and maintained so as to be in harmony with and appropriate in appearance with the existing or intended character of the general vicinity?
 - The Creamery will be taking out only one window in the back.
 - The guard rail will be removed.
 - Ms. Brown said they spend a lot of money on flowers to make the downtown pretty.
 - Door Company will be asked to match the same color as it is now.

- 4. Does the proposed use comply with all applicable requirements of this Ordinance?
 - Yes, it is with the license contractor as well as with the Door company.
 - Ms. Brown is asking the Door company to have the sliding door painted the same color that it is now.

- 5. How is the proposed use suitable in terms of permitting the logical, efficient, and economical extension of public services and facilities, such as public water, sewers, police and fire protection, and public schools?
 - Fire and Police is able to pass through the alley with ease.

- Ms. Brown said there is a problem with cars that come down the alley in the opposite direction all the time even with one-way signs there.
 - Ms. Brown said even with a car parked while waiting on their food, two cars would have no trouble getting past each other even with the dumpsters there.
6. How is the proposed use suitable in terms of effects on street traffic and safety with adequate sidewalks and vehicular access arrangements to protect major streets from undue congestion and hazard?
- Ms. Brown said three cars can fit were the back door will go.
 - Ms. Brown has been in touch with the owner of Commercial Press to either rent or buy the lot, so she can put in an extra parking space in case the food was not ready for pick-up.
7. How do you show that the proposed use is in complete conformance with the performance standards contained in Section 25-138 of this Ordinance?
- Steep slope will extend 2' out from the building.
 - Two yellow polls will be installed to show the drivers where the entrance will be.
 - The food will be handed out to the driver side.

Question from the board were discussed, some of the concerns are:

- If this was a pick-up window or a drive through.
- Applicant said there will be room for three cars at a time without blocking the sidewalk or street.
- Issues concerning the need for a ramp so make it more convenient and safer for the workers. Concerns that a ten foot ramp will be needed.
- Why would the guard railing being removed.
- Concerns of how many cars will be in the alley while food is being picked up.
- The need for a drawing from the applicant to show where the ramp will be placed.
- Board is concerned the application is a little pre-mature. Ms. Brown said that the City makes exceptions for business all the time. Board feels there was an incomplete plan and the questions were hard to answer by the applicant.

Mr. Bernie Lechman made a motion to approve pending the understanding that the Creamery has to meet all zoning requirements for the proposed use from:

The following departments:

- *Engineering Department*
- *Historical Preservation Commission*
- *Cumberland Fire Department*
- *Cumberland Police Department*
- *Public Works*
- *The Mayor and City Council*
- *An encroachment agreement from the City for the use of using the public alleyway.*
- *Must be applicable with the local, state and federal codes, ordinances and regulations.*

Mr. Charles Taylor seconded the motion for approval with the condition that all requirements are completed and meet. The vote was 2-1 for approval.

Ms. Kathy McKenny, Historic Planner/Preservation Coordinator, wanted to express that the Historic Preservation Commission tabled the COA because they wanted to make sure all permits were obtained prior to their approval.

REVIEW OF ZONING APPEAL BYLAWS

- Ms. Morgan Alban stated they will be moving to Cisco WebEx for our next meeting.
- Any time it references Article 28 it was Article 66B – Annotated Code of Maryland; they have since updated it to “Land Use Articles of the Annotated Code of Maryland and the code reference are different. The last version of By-Laws the Commission had was Section 4.1 and now it is 4.301.
- Under Meeting Attendance Ms. Alban added a brief clause stating an attendance by a virtual platform is permissible like Zoom and encouraged this will most likely be the norm for a while.

Mr. Bernie Lechman made the motion to accept the new changes in the By-Laws and Mr. Tom Farrell seconded the motion; all members were in favor, motion approved.

PLANNERS REPORT

- There was no report available.

An Audio copy of tonight's meeting is available upon request.

ADJOURMENT

Chairman Phil Crippen adjourn the meeting with all members in favor; meeting adjourned.

Respectfully,

Mr. Bernard Lechman
Recording Secretary
June 2, 2021

:dlh

File Attachments for Item:

2. ZA 21-01 - Cumberland Gateway - Request for setback variance to construct strip retail building with firewall divisions - Robert Barrick, Applicant

CUMBERLAND ZONING BOARD OF APPEALS STAFF REPORT

ZA 21-02: Cumberland Gateway Variance

May 3, 2021

Overview:

On April 28, 2021, Robert Barrick, Project Manager, on behalf of Applicant Cumberland Gateway Real Estate, LLC, filed a petition (ZA 21-01) for setback variances to construct a Strip Retail Site on property located between Emily Street and Cecelia Street. The property is located in the B-H (Business-Highway) zone. A variance from the side yard setback requirements is necessary for the applicant to construct the strip building under the Development Regulations Table in Section 25-133 (a) of the Zoning Ordinance. The setback requirements for the B-H zone established in the Zoning Ordinance require a thirty (30) foot front-yard setback and a ten (10) foot side-yard setback. This project involves 2 corner lots (one at the intersection of Emily Street and Park Street and one at the intersection of Cecelia Street and Park Street). Corner lots are a special case and consist of 2 fronts, 2 sides, and no rear. In this case, the structure would have a primary front-yard (requiring the full front-yard setback) and a secondary front-yard (requiring only half of the depth generally required for front yards). According to the submitted site plans, the applicant is able to meet a front yard setback of thirty (30) feet and the required fifteen (15) foot secondary front-yard setbacks at the corner lots. The applicant is also able to meet a forty-one (41) foot primary side-yard setback for the Phase 1 portion of the retail strip, a twenty-five (25) foot primary side-yard setback for the Phase 2 portion of the retail strip, and a zero (0) foot secondary side-yard setback for both phases. These sections involve the construction and installation of a firewall between the separate portions of the strip building that will eventually be leased to different tenants. This secondary side-yard setback of zero (0) feet is the setback the applicant is seeking variance from.

Procedural Status:

The applicant originally submitted Site Plans for approval in December of 2019, which was approved by the Planning Commission on December 18, 2019. Since then, the project developer has acquired additional properties and plans have been modified to include a retail strip rather than individual and separate buildings. The applicant submitted the revised site

plans on May 1, 2021 and the application was reviewed by City Staff. It was determined that prior to review by the Planning Commission, the applicant would need to obtain variance approval for the zero (0) foot second side-yard setback at the 4 building sides abutting the proposed firewalls. On April 28, 2021, City Staff referred the Variance Application and Site Plan to the Planning Commission for its review and recommendation in accordance with the provisions of Article VIII (Site Plan Review), per Section 25-174(i)(2)(b) of the Zoning Ordinance. Planning Commission Members held a brief virtual meeting on Tuesday, May 4, 2021. The comments from the May 4, 2021 discussion are included in the appendix of this report.

Staff Recommendation:

Staff reviewed the application and site plan filed by the applicant with the variance petition and confirmed that the proposed construction does not meet the side-yard setback requirement of the Zoning Ordinance.

According to Section 25-174(i) of the Zoning Ordinance, the applicant shall bear the “burden of proof” for any conditional use or variance application before the Zoning Board of Appeals. Under Maryland Law, this “burden of proof” requires the applicant to produce evidence to the Board in support of the request and to persuade the Board of the justification for the requested relief based on that evidence. Based on the materials submitted with the application, Staff can offer the following additional facts and determinations for the Board’s consideration with regard to the application:

1. The subject property is located in the B-H – Business Highway Zone.
2. The applicant has submitted a letter with a brief explanation of the variance request but may provide further verbal justification as part of their testimony at the June 2, 2021 public hearing.
3. The lot complies with the minimum lot area requirements for the B-H Zone.

In order to approve the requested variance, the Zoning Board of Appeals must find that the request satisfies the 7 specific criteria outlined in Section 25-175(b)(1) of the Zoning Ordinance. The following list indicates the *minimum* questions that must be asked of any applicant for a variance to address the aforementioned criteria. The Zoning Board may ask additional related or follow-up questions, but *must* make findings of fact for its decision that address the basic questions below.

1. a. **What unique physical circumstances or conditions (including, but not limited to, irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions) exist that are peculiar to your property?**

- b. What practical difficulties or unnecessary hardships are caused or created by these unique conditions or circumstances that are specific to your property and not imposed generally by the Zoning Ordinance upon the neighborhood or zoning district in which the property is located?**
 - 2. a. How do these unique physical circumstances or conditions prevent any reasonable possibility of accomplishing the proposed work on the property in strict conformity with the provisions of the Zoning Ordinance?**
 - b. Why is the variance necessary to enable the reasonable use of the property?**
- 3. How can you document that the unnecessary hardship or practical difficulty has not been created by the applicant?**
- 4. How do you justify that the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare?**
- 5. How do you justify that granting the requested variance will not give the applicant a special privilege that is otherwise denied by this Ordinance to other lands, structures, or buildings within the same district?**
- 6. How do you document that the requested variance represents the minimum variation that will afford relief and will represent the least modification possible of the regulation in issue?**
- 7. Is the justification for your variance based on a nonconforming use of neighboring lands, structures, or buildings in the same district, or the permitted use of lands, structures, or buildings in other zoning districts?**

Staff recommends that the Zoning Board of Appeals apply the following conditions to any approval of the petition:

- 1. Approval of this Variance petition by the City 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.**

Board of Appeals Action:

[] Approve the requested Variance petition in accordance with the findings of fact indicated on the ZA 21-01 Zoning Appeal form and the attached May 3, 2021 Staff Report, and with the following additional conditions of approval, if deemed necessary, by the Zoning Board of Appeals:

[] Deny the requested Variance, based on the following findings of fact:

Motion by: _____

Seconded by: _____

Vote:

In favor of motion: _____ Opposed: _____ Abstained: _____

Number of voting members present: _____

Signed:

Chair, Zoning Board of Appeals

Date: _____

Secretary, Zoning Board of Appeals

Date: _____

Appendix

Permit Applications & Documentation



City of Cumberland

Department of Community Development • 57 N. Liberty Street • Cumberland, MD 21502 • www.cumberlandmd.gov
301-759-6442 • Fax 301-759-6432 • debbie.helmstetter@cumberlandmd.gov

ZA # _____

ZONING APPEAL REVIEW APPLICATION

- Variance Petition - *public hearing required*
- Conditional Use or Special Exception - *public hearing required*
- Appeal from an Administrative Decision - *public hearing required*
- Approval Extension Request (*no fee*)

Requirements vary depending on the type of appeal

All appeals must be applied for in writing, accompanied by a written explanation of the rationale or justification for the extension.

Project Location _____ Tax ID # 81-4676429

The Tax ID# can be found on your deed or by visiting www.dat.state.md.us/Real Property/Real Property Search. When construction is being done and several property account numbers are involved, properties must be combined under one property number. It will be necessary to contact the State of Maryland Assessment Office, 112 Baltimore Street, Gateway Center, 301-777-2113, prior to applying.

Applicant Name Cumberland Gateway Real Estate LLC Contact Name Edward D Scott

Address 117 W Patrick St, Suite 200
Fredenick, MD 21701

Phone 3016943444 Fax 3016946592 Email EDS@AHasRealEstateCo.com

- Attach a site plan drawn to scale and bearing the dimensional requirements for which the variance is being sought. All boundaries of the property must be shown and all buildings located correctly to scale within them. This may include minimum yard setbacks, maximum building coverage, height requirements and size requirements for signs
- Provide written justification addressing the variance legal requirements from the Zoning Ordinance 3607, Section 7.05.021.
- The basic submission requirements for Conditional Use or Special Exception application are specified in the Zoning Ordinance 3607, Section 7.04.09 (2).
- Certain uses (listed in Zoning Ordinance 3607, Section 8.06) will have additional special requirements that the applicant must satisfy in writing for approval by the Board.
- An Appeal from an Administrative Decision should include a copy of the denial (or reasons stated for the denial) and a statement of the applicant's rationale or reasons why the decision should be overturned.
- All appeals require a public hearing.
- There is a non-refundable \$300 Zoning Appeal review fee payable at time of application.
- There is no fee for an approval extension request.

Applicant's signature: Date: 4/27/21



5283 Corporate Drive, Suite 300
Frederick · Maryland 21701
301.695.6614
piedmontdesigngroup.com

April 9, 2021

Morgan Alban
GIS Specialist
City of Cumberland
Engineering Division
57 Liberty Street
Cumberland, MD 21502

Re: Cumberland Gateway
Phase 1, 2, and 3 Site Plan
Request for Setback Variance

Dear Ms. Alban:

On behalf of Cumberland Gateway Real Estate, LLC (“Owner”), Piedmont Design Group, LLC (“PDG”) is pleased to submit the following written justification to accompany the Zoning Appeal Review Application, and accompanying exhibit, submitted to your office electronically on April 9, 2021 by PDG.

The Owner (the Applicant, for purposes of the Zoning Appeal Review Application) wishes to construct a single retail strip on the north side of Cecelia Street along Park Street. However, the Applicant desires to allow for phased construction of the retail buildings, and also wishes to implement subdivision of a portion of the proposed retail strip for a second owner (Sean B. D’Atri) in the future. Hence, two firewalls with zero foot side lot line setbacks are proposed, as shown in the accompanying exhibit. All other setbacks requirements of the Highway Business zone are met for the combined retail building.

If you have any questions on the enclosed, please call me at (301) 695-6614 x124 or email robert.barrick@wormald.com, and thank you for your time and consideration in this matter.

Very truly yours,
PIEDMONT DESIGN GROUP, LLC

Robert Barrick, PE
Project Manager



City of Cumberland
Cumberland Gateway
Request for Setback Variance
April 9, 2021
Page 2 of 2

Owner/Applicant Certification:

CUMBERLAND GATEWAY REAL ESTATE, LLC

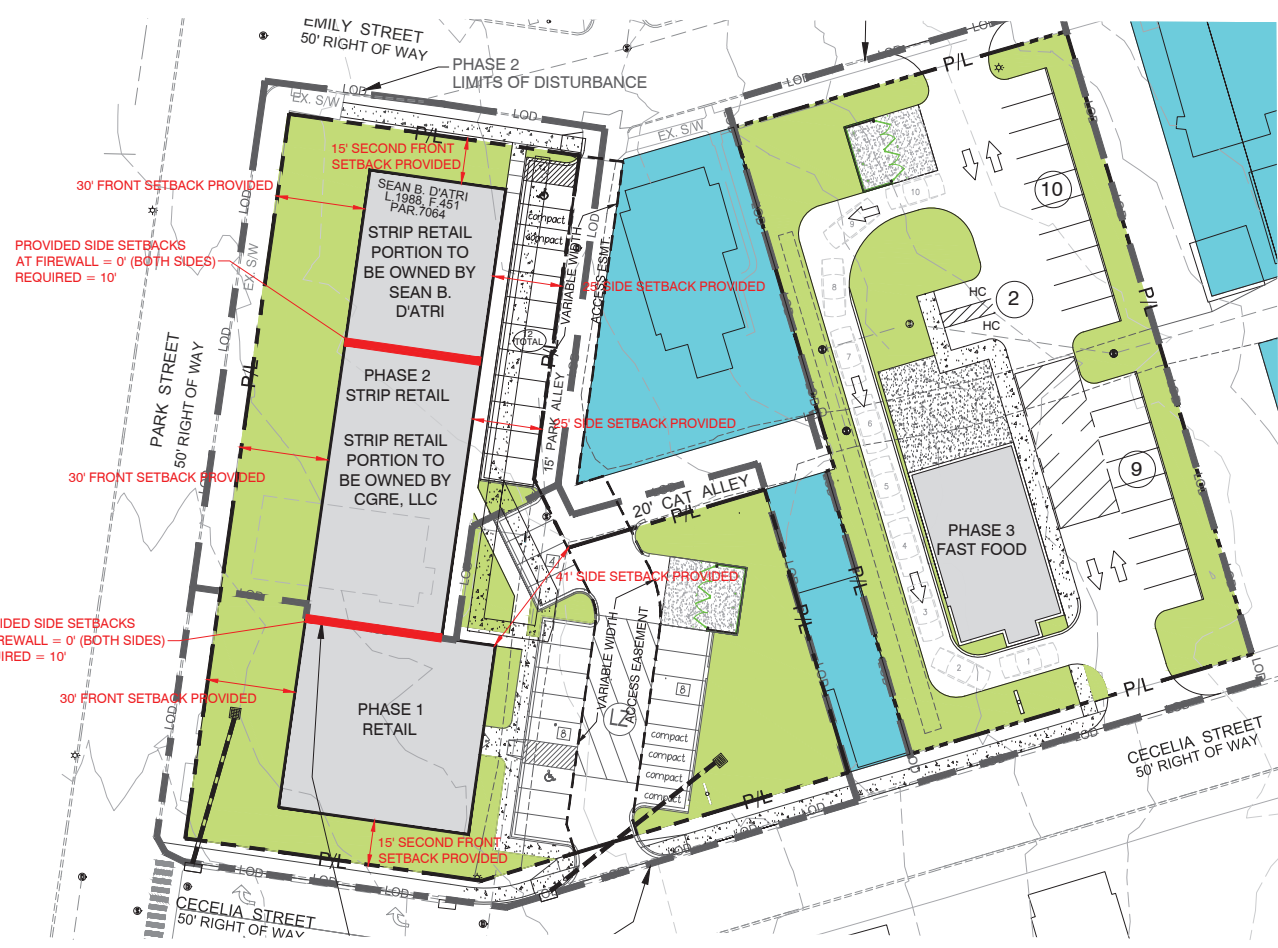
**Edward Scott
General Manager**

Enclosures

**cc: Ed Scott - Cumberland Gateway Real Estate, LLC
Kevin Thacker – City of Cumberland
Matt Idleman, P.E. – City of Cumberland
Mike Wiley, PE, Prof LS
Todd Abe**

RFB/mih/S:\CIVIL\CUMBERLAND\PROJECT MANAGEMENT\CORRESPONDENCE\Variance Request.doc

SETBACKS VARIANCE EXHIBIT CUMBERLAND GATEWAY PHASE 2



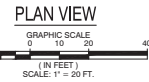
LEGEND

- GRASS/LANDSCAPE AREA
- PROPOSED BUILDING
- ESD AREA
- ADJOINING PROPERTY
- CONCRETE PAD / S/W

REQUIRED SETBACKS BY CODE:
 FRONT = 30'
 SIDE = 10' (LANDSCAPE SCREENING REQUIRED @ ADJOINING RESIDENTIAL P/L)
 REAR = 10'

CORNER LOTS
 2 FRONTS and 2 SIDES
 ONE FRONT PERMITTED @ 15'
 NO REAR

LOTS WITH DOUBLE FRONTAGE
 2 FRONTS and 2 SIDES
 NO REAR



SETBACK VARIANCE EXHIBIT

CUMBERLAND GATEWAY PHASES 1-3
 CITY OF CUMBERLAND
 LEGISLATIVE DISTRICT 01C
 ELECTION DISTRICT 22, ELECTION PRECINCT 22-001
 TAX ACCOUNT DISTRICT 22
 ALLEGANY COUNTY, MARYLAND
 TAX MAP 105, PARCELS 223 - 226, 228 - 230, 232 - 237, 239 - 242
 ZONED S-H HIGHWAY BUSINESS

ROBERT C. BARRELL, PE
 FOR PIEDMONT DESIGN GROUP, LLC

DATE

I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A FULLY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND. LICENSE NO. 2018-12084 (EXPIRES 12/31/2025)

SCALE: AS SHOWN

REVISIONS BY: PDG RFB MTW

SHEET

DATE: March 2021

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Printed: April 01, 2021 at 8:28am
 2021 CUMBERLAND GATEWAY PHASES 1-3 - SETBACK VARIANCE EXHIBIT

APPROVED	
CITY OF CUMBERLAND MUNICIPAL COMMISSION PLANNING CHAIRMAN	DATE

<p>OWNER #1 Cumberland Gateway Real Estate, LLC 117 W. Patrick Street, #200 Frederick, MD 21701 ATT: Edward Scott (301) 694-8444</p>	<p>OWNER #2 Sean B. D'Atri 7 Wilson Place Cumberland, MD 21502 ATT: Sean D'Atri (301) 694-8444</p>	<p>DEVELOPER Cumberland Gateway Real Estate, LLC 117 W. Patrick Street Frederick, MD 21701 ATT: Edward Scott (301) 694-8444</p>
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DATE	REVISION DESCRIPTION
03/04/2021	Retail Revision

May 4, 2021 – Planning Commission Discussion of ZA 21-01

- Ordinance requires 10 foot space in-between buildings. (Side-Yard Setback)
- This will be one building with several tenants that needs a firewall between each business which falls on a lot line.
- Planning Commission members agree that this acceptable because it is one building versus several.