

Zoning Board of Appeals Meeting Agenda

Wednesday, March 03, 2021 at 4:00 PM Zoom

CALL TO ORDER

ROLL CALL

CHAIRMAN'S COMMENTS

ADOPTION OF MINUTES

<u>1.</u> Review of the meeting minutes from the December 2, 2020 Zoning Board of Appeals meeting

PUBLIC HEARINGS

2. ZA 21-01 - 108 W. Harrison St - Queen City Creamery - Request for a Conditional Use Permit to install a door to construct a curbside pick-up drive-thru service on right side of building - Rhiannon Brown, applicant

DISCUSSION ITEMS

- 3. ZA 21-01 108 W. Harrison Street Discussion of Application among Board Members and Applicant
- 4. Review updates to Cumberland Zoning Board of Appeals Bylaws

CITY PLANNER'S REPORT

None

ADJOURN

File Attachments for Item:

1. Review of the meeting minutes from the December 2, 2020 Zoning Board of Appeals meeting

MUNICIPAL ZONING BOARD OF APPEALS Virtual Zoom Meeting MINUTES

December 2, 2020

The Municipal Zoning Board of Appeals for the City of Cumberland, Maryland, created under Zoning Ordinance No. 3607, met on Wednesday, December 2, 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 Mr. Brandon Guest – Clayton Signs Inc., Ms. Morgan Alban, GIS Specialist, and Mrs. Debbie Helmstetter, Codes Technician.

CHAIRMAN COMMENTS

He received a nice package in the mail. He even rode out there today to visit the scene.

ADOPTION OF MINUTES

The minutes for November 4, 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. ZA20-00004- 221 Williams St. – The Chick-Fi-A Restaurant. Applicant Brandon Guess (Clayton Signs) is requesting a sign variance to construct a 144 square foot free standing business sign at the location. Mr. Brandon Guess would like to achieve some/better visibility on I-68. At 40' you have some sight, but mostly the visibility is hard to see it just looks like a red sign. The allowable 50' square feet of area would be inadequate for visibility and would seem very small. Mr. Guest is not asking for variance for height or placement they both are within code, but for the square footage of the actual cabinet.

Chairman Phil Crippen asked Mr. Guest to answer the following seven (7) specific criteria outlined in Section 25-175 (b)(1) of the Zoning Ordinance.

- *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?
 - The visibility from Interstate I-68 is difficult and would be improved with the approved signage.
 - The current allowable footage of 50 square feet is not enough visibility for I-68 it can be seen, but is not legible all they can see is a red box.
 - Corporate Standard for the sign of that height requires larger font.

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?

- Since sign is not legible from I-68; people won't realize it's a Chick-Fil-A, unless they already know it's there, giving them ample time to get off at the appropriate exit.
- 2. 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?
 - It makes sense to have a larger presence for travelers on highway.
 - b. Why is the variance necessary to enable the reasonable use of the property?
 - Visibility of stop from reasonable distance from highway enables travelers to maneuver to restaurant.
- **3.** How can you document that the unnecessary hardship or practical difficulty has not been created by the applicant?
 - Just recently completed reimaging project for building.
 - Traffic pattern or sign location is not changing; the difficulty already existed with visibility issues from highway.
- 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 or adjacent property, nor be detrimental to the public welfare?
 - Sign will be an upgrade itself, looks sleeker, will be in the same location as current sign.
 - Will add visibility underneath sign, as it will be slightly taller.

• Sign will not be blocking anything surround restaurant, hindering view or visibility to or for neighboring business.

- 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 with the same district?
 - There are no other quick-service restaurants in the areas adjacent.
 - Only other signage is for shopping center.
 - New sign will not hinder visibility of other business signs.
- 6. How do you document that the requested variance represents the minimum variation that will afford relief and will represent that least modification possible of the regulation in issue?
 - People with normal vision cannot read what the sign says from I-68.
 - Best visibility for Chick-Fil-A icon is 2100', which is about distance to highway, providing optimum visibility.
- 7. Is the justification for your variance based on a nonconforming use of neighboring lands, structures, or Building in other zoning districts?
 - No nonconforming uses in the area that are known.

Chairman Crippen asked Ms. Morgan if she received any additional comment from the public. Ms. Morgan said no she had not received any further comments. Chairman Crippen closed the public meeting so the Commission could have a discussion.

Ms. Morgan asked Mr. Brandon Guess how large was the current sign, so she can get a visual. Mr. Guess told her it was 25' high and either 70-75' square feet. The standard signage is 10'x 10' or 100 square feet. The interior lighting will be lit outside, and will have internally LED at night, which is no brighter than it is now.

Mr. Charles "Buck" Taylor made the motion to approve a 10' x 10' signage instead of the requested 15' x 15' signage. Mr. Tom Farrell seconds the motion. All members were in favor; motion approved. Vote was 4-0.

PLANNERS REPORT

There was no report available.

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

ADJOURMENT

Mr. Bernie Lechman made the motion to adjourn; seconded by *Mr.* Charles "Buck" Taylor. All members were in favor: meeting was adjourned.

Respectfully,

Mr. Bernard Lechman Recording Secretary December 2, 2020

:dlh

File Attachments for Item:

2. ZA 21-01 - 108 W. Harrison St - Queen City Creamery - Request for a Conditional Use Permit to install a door to construct a curbside pick-up drive-thru service on right side of building - Rhiannon Brown, applicant

CUMBERLAND ZONING BOARD OF APPEALS STAFF REPORT

ZA 21-01: 108 W. Harrison Street Conditional Use

February 16, 2021

Overview:

On February 2, 2021, applicant Rhiannon Brown filed an appeal to obtain a Conditional Use Permit to install an automatic sliding door on the right side of property located at 108 W. Harrison Street (Queen City Creamery) to establish a curb-side pickup service. A guardrail currently runs along the side of the building, which would be removed to accommodate the door installation. The applicant shows plans to install an ADA compliant concrete ramp that would extend approximately 2' from the building into the alley to bring the new door to ground level. The plans also reflect the installation of 2 safety bollards on either side of the ramp. This property is located at the intersection of West Harrison Street and Ash Alley. A letter from the applicant explaining the nature of this request is attached to this report. The property is currently zoned B-CBD (Central Business District), with which a drive-thru service may be allowed as Conditional Use only with approval by the Zoning Board of Appeals. As stated in the letter from the applicant, this is not a typical fast food drive-thru where customers order and wait for their food. Customers will call ahead and place their order ahead of time. Once at the restaurant, they will pull into the alley where an employee will bring the order out. While this is not a typical drive-thru scenario, there may likely still be some lag time where customers will remain idle in their vehicle while a restaurant employee brings their order out to them. Staff has worked with Engineering to draft a potential strategy for this operation, which will be addressed in this report. A sketch of which is also attached to the appendix of this report.

Prior to the issuance of a building permit, the applicant will need to obtain approval for a conditional use permit from the Zoning Board of Appeals. Being located in the Central Business District, this project would also require approval from the Historic Preservation Commission. This topic was introduced at the HPC's February 10, 2021 meeting and has been tabled until action from the Zoning Board of Appeals. After action from the Board, this project may also require future approval by the Engineering Department to ensure ADA compliance and Mayor & City Council for encroachment into the Public Right of Way.

Procedural Status:

On January 25, 2021, the applicant applied for a Building Permit (BP 21-01) for the proposed project. Craig Adams, Zoning Officer, issued a denial to the applicant on January 28, 2021, advising them that the proposed use is classified by the Zoning Ordinance as a Restaurant with Drive-Thru service (Section 25-132), which requires Conditional Use approval by the Zoning Board of Appeals within the B-CBD Zone. The applicant submitted a Conditional Use Zoning Appeal (ZA 21-01) on February 2, 2021, a copy of which is attached to this report. Staff scheduled the petition for a March 3, 2021 public hearing before the Zoning Board of Appeals. Staff conducted a site visit on February 4, 2021. Staff also met with members of the Traffic Group to discuss the potential project on February 17, 2021.

Staff Findings:

During the site visit, Staff took measurements of the Alley and examined environmental and other factors that may have an impact on the proposed project. First, there is a guardrail that runs along the side of the building, which was in place at the time when the Applicant/Owner purchased the building. This guardrail would be removed to accommodate this project and the applicant states that an ADA compliant ramp would extend from the building, but currently details documenting the height and length of the proposed ramp have not been provided. Bollards are proposed to be placed on either side of that ramp as well. Ash Alley measures approximately 19.5' wide. In the potential strategy drafted by Matt Idleman, Senior Engineer, There is a maximum usable space of 24.5'x9.5', which would limit the use of one vehicle in a "stall" lane while waiting for their order, leaving approximately 10' for a driving lane (which is required by the Cumberland Fire Department). The term "stall" lane is used loosely, as parking would likely not be approved in this alley, but vehicles could idle briefly while waiting on their order. This "stall" lane would also need to be set at least 15' into the alley, as required by the Zoning Ordinance for alleys to provide enough room for vehicles making the sharp turn into the alley while avoiding the vehicle waiting for their curbside order, as depicted on page 13 of this report.

Ash Alley is legally a one-way alley, but during the site visit, Staff witnessed vehicles exiting the George Street Parking Garage and turning left, against traffic, onto Ash Alley to turn onto Harrison Street. This issue could be due to inadequate signage at the garage. There is only one "One-Way" sign at the exit of the parking garage that may be at a height drivers are unable to see. Installing additional directional signs in this alley and at the garage may aid in proper traffic flow in this alley.

There is also a Water Main Line that extends from W. Harrison St approximately 75' into the alley, reaching back parallel to the rear of the property. Additional approval from the Cumberland Water Department and/Engineering may be needed to reserve utility easements.

At the Traffic Meeting on February 17, 2021, input received from meeting members suggest that all of these factors would require approval from Public Works, Cumberland Fire Department, Cumberland Police Department, Cumberland Engineering, Historic Preservation Commission, and Mayor & City Council prior to the issuance of the first building permit.

Staff Recommendation:

In order to approve the requested Conditional Use, the Zoning Board of Appeals must find that the request satisfies the 7 general criteria outlined in Section 25-175(a) of the Zoning Ordinance. The following list indicates the *minimum* questions that must be asked of any applicant for a conditional use 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 each of the basic questions below.

- 1. a. How is the proposed use in accordance with the Cumberland Comprehensive Plan?
 - b. How is the proposed use consistent with the spirit, purpose, and intent of the Zoning Ordinance?
- 2. How is the proposed use in the best interests of the City, the convenience of the community, and the public welfare?
- 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?
- 4. Does the proposed use comply with all applicable requirements of this Ordinance?
- 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?
- 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?

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?

Based on a review of the applicable zoning requirements for the proposed use, staff recommends that the Zoning Board of Appeals consider applying the following conditions to any approval of the Conditional User petition:

- 1. Approval of this Conditional Use 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.
- Applicant's compliance with required approvals and submittals from Historic Preservation Commission, Engineering Department, Public Works, Cumberland Fire & Police, and Mayor and City Council prior to issuance of first building permit

Board of Appeals Action:

[]	Approve the requested Conditional Use in accordance with the findings of fact indicated on the Zoning Appeal form, and with the following additional conditions of approval, if deeme				
	necessary, by the Zoning Board of A	-			
[]	Deny the requested Conditional Use	e, based on the following	findings of fact:		
Motion	ı by:				
Second	led by:				
Vote:					
	In favor of motion:	Opposed:	Abstained:		
Numbe	er of voting members present:				
Signed					
			Date:		
Chair, E	Board of Appeals				
			Date:		
Secreta	ary, Board of Appeals				

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ZA #



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

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.

roject Location 108 W. HUNISON St. Tax 10 #47-5415981
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
Id several property account numbers are involved, properties must be combined under one property number. It will be necessary to contact the
ate of Maryland Assessment Office, 112 Baltimore Street, Gateway Center, 301-777-2113, prior to applying.
pplicant Name Rhighnon C Brown Contact Name Rhighnon Browsn
ddress 108 W. Harrison St
cumberland ND 21502
none-12/3-326-2444Fax 301-777-2828 Email info@ gveencitycreamerg.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: 1/29/2/

H/Community Development/Permit Apps 2017/ZA

Queen City Creamery 108 W Harrison St Cumberland, MD 21502

City of Cumberland Department of Community Development 57 N Liberty St Cumberland, MD 21502

To Whom It May Concern:

I am writing in regards to the denial of our commercial building permit for Queen City Creamery. We are needing to install an automatic door on the side of our building in efforts to keep our take-out and curbside service more efficient. Our request was denied because they referred to it as a "drive-thru". However, it is a service door that will allow us to deliver food to customers that have already pre-ordered and are there just to pick up. We have not opened our indoor dining as of yet and don't have any plans to in the immediate future. This door will allow for a more seamless way to get the product to the customer. Since the alley is a one-way, there is plenty of space for cars to pull in and pick up their food. It will not cause any backups into the street because this is not a typical drive-thru situation where they order and wait for the food to be prepared. The food is ready upon arrival and we just have to hand it out to the customers. In addition, this alley is a One-way and needs to be treated as such. Cars often exit the parking garage and turn down the one way in efforts to shave 10 seconds off of their drive time. We received grant money from the Governor's office as part of his Layoff-Aversion grant in attempts to keep our employees working and off of unemployment. By using our take-out and curbside service, this has allowed us to remain open.

Thank you for your time and consideration,

Rhiannon C Brown Owner, Queen City Creamery

STANDARD CONSTRUCTION PLAN ADDENDUM - 2018 BUILDING CODE (CONT'D)

GENERAL

- (1) All construction shall be completed in conformance with the City of Cumberland Building Code.
- (2) All applicable inspection shall be conducted in conformance with [X] City [] County and State Law.
- (3) The Addendum is not inclusive of all building regulations adopted by City of Cumberland, Allegany County, Maryland. In the event of conflict between this Addendum and the City of Cumberland Building Code, the Code shall prevail.

allow passage of an object 4" in diameter. Guardrails for stairs shall be at least 34" in height and not allow the passage of a 43/8" diameter sphere.

- One window in all sleeping rooms shall be 5.7sf minimum clear opening, minimum width of 20"; minimum height of 24", maximum sill height above floor is 44". If on grade, sleeping room egress window may be reduced to 5.0 sf. (min.)Rooms shall have glazing (i.e. windows) equal to 8% of floor area. These windows shall be "half-openable", unless the room is vented by other mechanical means and provided with artificial light per IRC R303.
- All stair headroom clearances shall be 6'8" minimum measured vertically from the sloped plane of the stair tread nosing.
- Attics with over 30" clear space to rafter shall have an access provided by a 22" x 30" (min.) scuttle hole.
- Smoke detectors are required within all sleeping rooms. Detectors shall be placed on each floor and within immediate vicinity of all sleeping rooms, if applicable. All detectors shall be electrically interconnected with battery back-up.
- Garages (1) cannot open into a sleeping room; (2) shall have minimum ½" drywall on walls and ceilings common to habitable space; (3) shall have 20 minute rated, steel door or 1-3/8" solid wood door separating habitable space; and (4) shall have GFI receptacles required at all accessible locations
- Fireblocking is required per IRC R602.8, R1001.12 & R1003.12
- Fireplace, chimney, flue clearance, dimension and materials shall be constructed per IRC Chapter 10.

In the event a discrepancy between the released construction plans and this Addendum, this Addendum shall prevail.

I have read pages 1 through 4. I hereby agree to comply with all regulations and codes, which are applicable hereto. I further agree that any misstatement or misrepresentation of facts presented as part of this application, or change to proposal without approval of the agencies concerned, shall constitute sufficient grounds for the disapproval or revocation of the subject permit. I hereby affirm that I own the property which is the subject of this application; or that I am the duly designated representative of the property owner, and that I possess the legal authority to make this Affidavit on behalf of myself or the owner for whom I am acting. I do solemnly declare and affirm under the penalties of perjury that the contents of this Application are true and correct to the best of my knowledge, information and belief.

APPLICANT'S SIGNATURE:

DATE: 1/22/21

View File

Item 2.



Permit Number: BP21-000002

Approval Date:

57 N. LIBERTY STREET, CLIMBERLAND, MD 2502 • FHONE 301-759-6442 • FAX 301-759-6432 • TDD 800-735-2258 www.cumberlandingl.gov

Commercial Building Permit

Permit issued as per plans and subject to all applicable codes and regulations.

Project Location: MD Prop. #: Owner:	108 HARRISON ST 22014234 LINNIE SUE LIMITED LLC	Date applied: Work expected to begin:	01/25/2021		
Applicent: Addrees: City/State/Zip: Phone: Emeil:	Queen City Creamery & Deli, LLC 108 W Harrison St. Cumberland,, MD 21502 (301) 777-0011 Info@queencitycreamery.com	Contractor: Addrees; City/State/Zip: Phone: Emeil: MD License #:	PO Box 3024 Lavale , MD 21502 3017770555 jack@jackabeli.com 4305	1	
Description of Structure: Zone: Use: Storm Water Management Approval: Appeal Action:	Brick 2 Story CBD Restaurant with drive-thru service No Yes	Estimated Cost of Project	:: 20000.00		
			nrefundable Filing Fee timated Construction Fee	Amount 30,00 120.00	Total Cost 30.00 120.00
Building Set Back - Front: 0	Left Side: 0	Right Side: 0	Rear; 0		

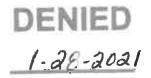
Work Description:

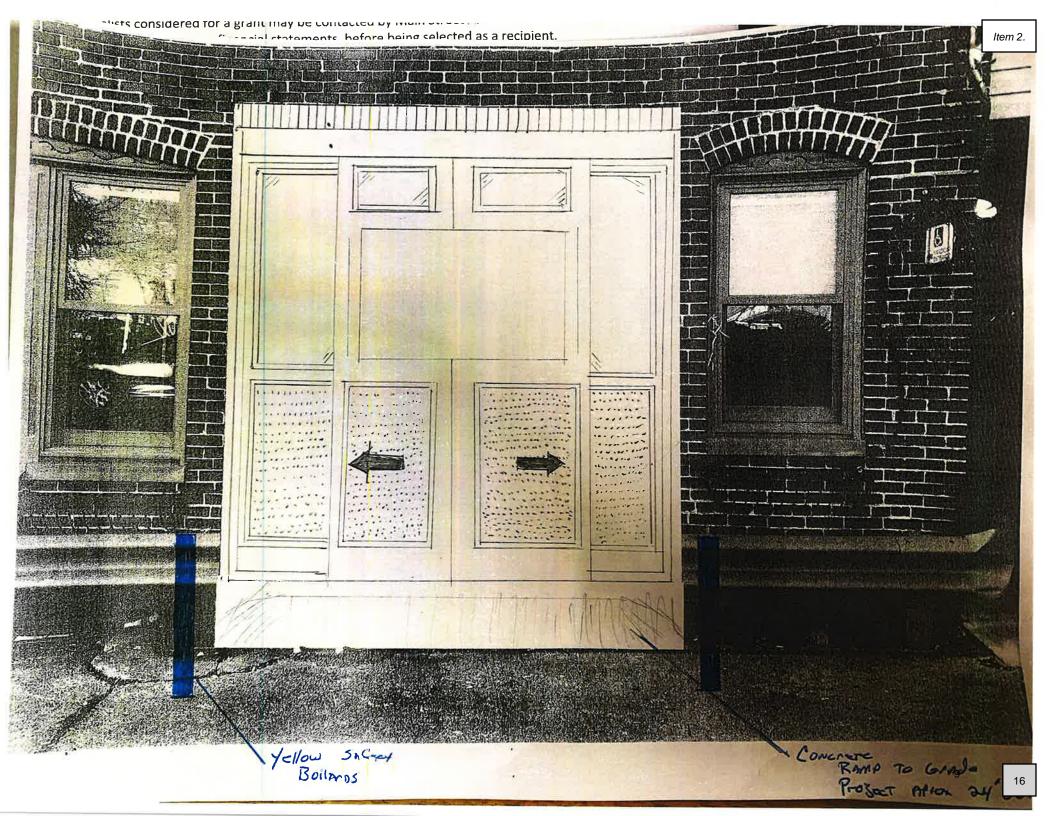
Adding a service sliding door on the side of our building that leads to the alley as a pick up window

Note(s): The issuance of this building permit is subject to appeal within 30 days from date of posting of the building permit on the property. An appeal could result in the rescission of the building permit. Any construction work undertaken by the applicant or his/her designee within the appeal period or prior to resolution of any appeal that may be filed within the appeal period is undertaken at the sole risk of the applicant.

SUBJECT: However to revocation by the Building Official if the construction is not in compliance with the requirements of the current applicable Chapter 25, Zoning, International Building Code and/or international Residential Code. Further, this permit is void if work is not started within six (6) months from issuance and expires two (2) years hence.	STATEMENT: I agree to comply with all regulations applicable, and that work will be carried out as described on the application and as show on the plans, that the provisions of the Laws and ordinances applying to the premises, and proposed work will be complied with, whether stated in the application and to plan or not; the buildings and structures affected by this application will not be used for any other purpose than stated.
Cammunity Development Menager Or Representative's Signature	Applicant's Signature

A final walk through is required, and must be acheduled when construction is complete and the property is in move-in condition.





Proudly serving the Tri-State	e area for ou	ESTIMATE				
MHIC #4305 & #48121 O.C. #00 32402		Date: January 19, 2021				
Queen City Creamery 108 W. Harrison Street Cumberland, MD 21502 PHONE: 443-326-2444 Rhiannon Morgret EMAIL: info@queencitycreamery.com	FROM	Jack Abell PO Box 3024 LaVale, MD 21504 301-777-0555				
 Remove bricks at right side of building to create a 84 ½" x 92 ¼" rough opening for future door installation. This price includes steel lintel and standing soldier course of brick. Furnish and install 3-side concrete ramp for easy and safe transition from alley to building. Furnish and install (2) steel bollards for traffic safety for employees. Remove drywall and all necessary framing at interior of new opening. Patch all disturbed drywall, ready for paint, by others. Furnish wire and dedicated 120 vac, for new door unit. NOTE: Wiring of unit to be performed by others. Clean up and remove associated debris. 						
	FOR THE	SUM OF: \$6,400.00				
NOTE: Price quoted shall include all labor, equipment, insurance, and materials to complete the project in a workmanlike manner. All debris and construction waste to be removed from premises. The project						

will be kept safe and clean at all times during construction.

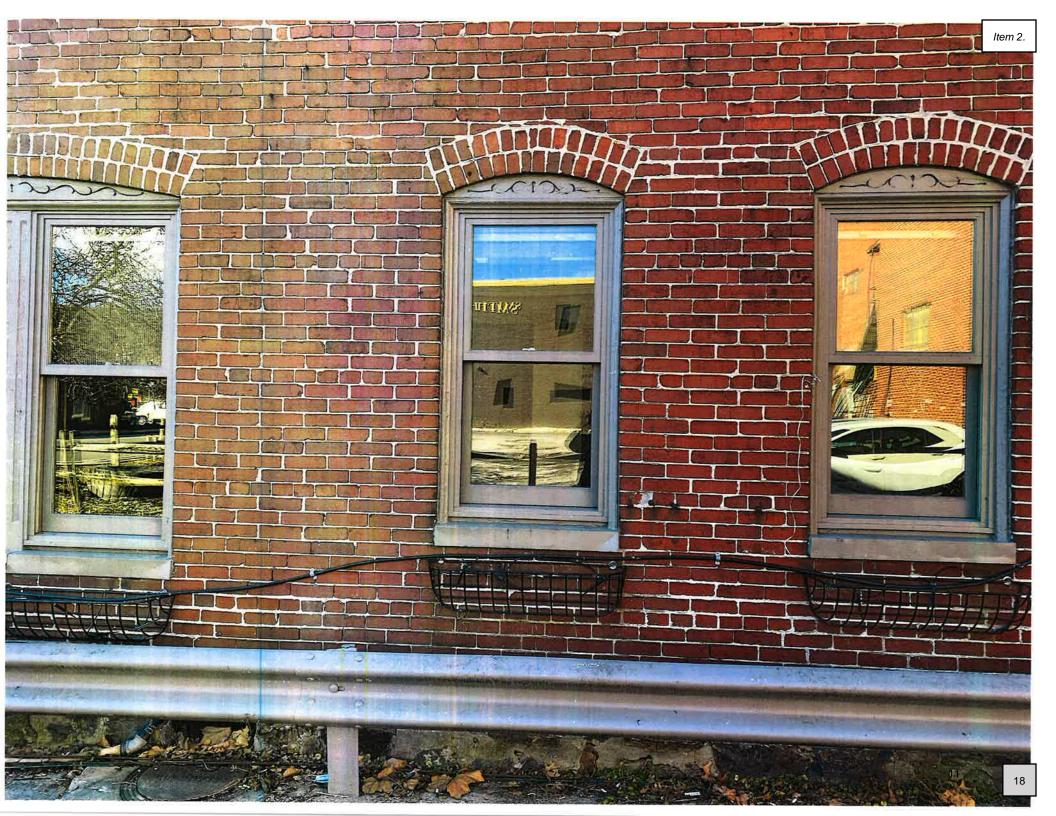
NOTE: Upon completion of any roof or siding work, Jack Abell, Inc. is not responsible for any nail pops in drywall.

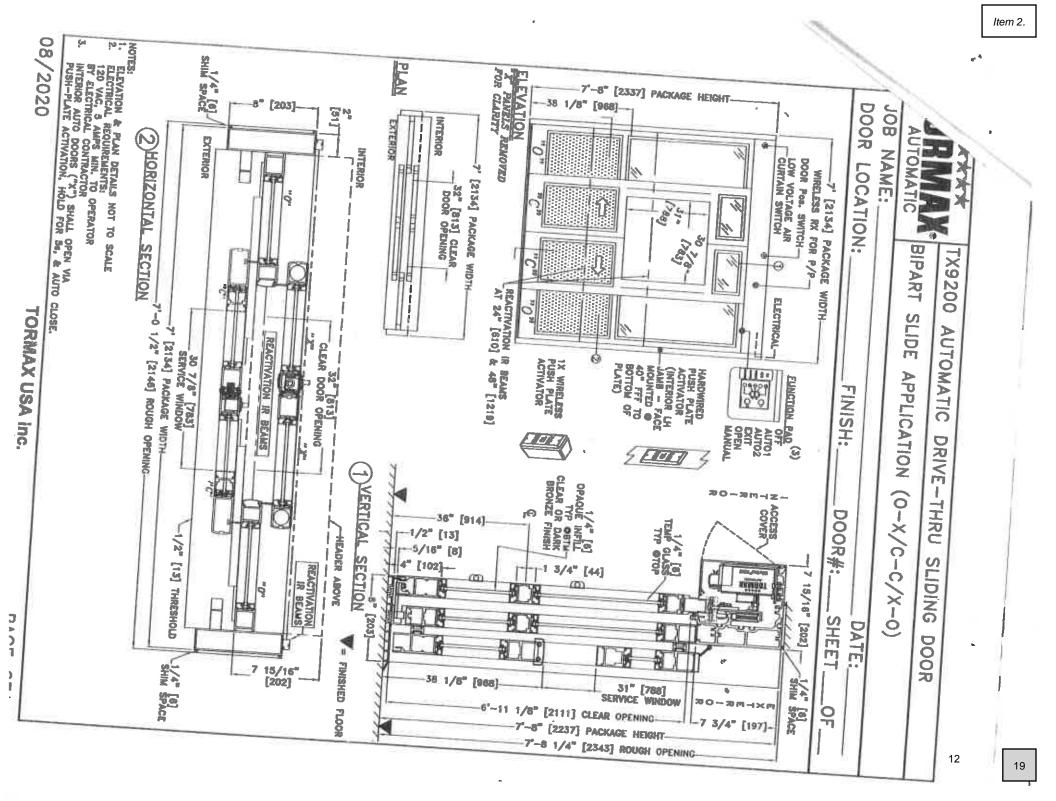
NOTE: The bid may be withdrawn if not accepted within (14) days of aforementioned date. NOTE: <u>Each CREDIT CARD payment will be charged an additional 4% to cover processing fees.</u>

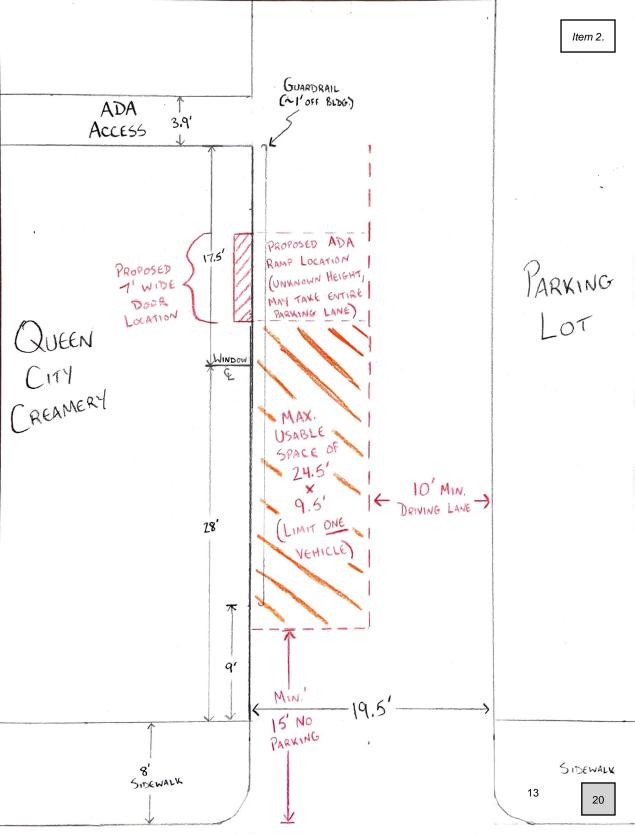
Western Maryland Office, P.O. Box 3024, LaVale, MD 21504-3024. 301-777-0555 (office) 301-777-1531 (fax)

Eastern Shore Office, 28 Pintail Drive, Berlin, MD 21811, 410-641-6412 (office) jack@jackabell.com

www.jackabell.com

















File Attachments for Item:

4. Review updates to Cumberland Zoning Board of Appeals Bylaws

CITY OF CUMBERLAND, MARYLAND

MUNICIPAL ZONING BOARD OF APPEALS BYLAWS

ARTICLE I PREAMBLE

<u>Section 1.1</u>. Creation. A Municipal Zoning Board of Appeals for the City of Cumberland shall be hereby established in accordance with Article 28, Section 4-301-4-306 of the Land Use Articles of the Annotated Code of Maryland, as amended, and vested with all of the powers and duties thereby conferred by Article 28 and the Cumberland Zoning Ordinance.

<u>Section 1.2</u>. Short title. The City of Cumberland Municipal Zoning Board of Appeals also shall be known and referred to as the **Cumberland Board of Appeals**.

Section 1.3. Composition. The Board of Appeals shall be comprised of at least three (3) voting members, appointed by the Mayor and confirmed by the City Council. All regular members of the Board of Appeals shall be residents of the City of Cumberland. The local legislative body may not serve as the Board of Appeals.

<u>Section 1.4</u>. Term of membership. In accordance with Article 28, Section 4-302 (c) of the Land Use Articles of the Annotated Code of Maryland, as amended, the term of each member shall be three (3) years. All member terms shall be staggered such that no more than two (2) members' terms will expire within the same year.

<u>Section 1.5</u>. Removal from membership. In accordance with Article 28, Section 4-302 (d) of the Land Use Articles of the Annotated Code of Maryland, as amended, members of the Board of Appeals may, after a public hearing, be removed by the Mayor and Council for cause or on written charges. Once a decision to remove a member has been made, the Mayor and City Council, shall file a written statement of the reasons for said removal, which shall be made a part of the official minutes of the meeting.

<u>Section 1.6</u>. Vacancies. Vacancies occurring other than through the expiration of term shall be filled for the unexpired term by the appointing authority specified in Article I, Section 1.3 of these Bylaws.

<u>Section 1.7</u>. Alternate Members. In accordance with Article 28, Section 4-302 (f) of the Land Use Articles of the Annotated Code of Maryland, as amended, the Mayor and Council, shall appoint one (1) alternate member of the Board of Appeals, who may sit on the Board in the absence of any regular member. The alternate member shall be a resident of the City of Cumberland. When the alternate member is unable to attend meetings for an extended period of time, the Mayor and Council may designate a temporary alternate to sit on the Board.

<u>Section 1.8</u>. Recusal. In accordance with Article 28, Section 4-304 (b) of the Land Use Articles of The Annotated Code of Maryland, as amended, any member of the Board of Appeals who may have a conflict of interest or the appearance of a conflict of interest with regards to a matter before the Board shall recuse

Item 4

him/herself from participating in the matter. If there is any question as to whether a member has a real or perceived conflict of interest, the remaining members of the Board may, by affirmative vote, decide whether or not the member in question may participate in the matter.

<u>Section 1.9</u>. Duties and Responsibilities of the Board of Appeals. The Board of Appeals shall exercise all of the powers and duties specified in Article 28, Section 4-305 (d) of the Maryland Annotated Code, as amended, which shall be exercised in accordance with the specific terms, conditions, and procedures specified for each duty in Section 25-172 of the City of Cumberland Zoning Ordinance, as amended. The specific responsibilities of the Board shall be to:

- a. Hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative officer in the enforcement of the Cumberland Zoning Ordinance or any Ordinance adopted under the authority of Article 66B;
- b. Hear and decide special exceptions (conditional uses) to the terms of the Cumberland Zoning Ordinance, and
- c. Authorize on appeal in specific cases a variance from the terms of the Cumberland Zoning Ordinance.

<u>Section 1.10</u>. Consistency with Article 28. Whenever a conflict or discrepancy is determined to exist between the wording in these Bylaws and the applicable governing Section of Article 28 of the Land Use Articles of the Annotated Code of Maryland, as may be amended, is found to exist, then the effective provisions of the Maryland Annotated Code shall govern and supersede the specific wording of these Bylaws, until such time as the conflict or discrepancy is eliminated. Where such conflicts are discovered to exist, the Board of Appeals shall proceed to update and amend the Bylaws to eliminate said conflict or discrepancy at its earliest convenience.

ARTICLE II OFFICERS

The officers of the Board of Appeals shall consist of a Chairman, a Vice-Chairman, and a Secretary. All officers shall be members of the Board of Appeals.

<u>Section 2.1</u>. Chairman. The Chairman shall preside at all meetings of the Board of Appeals and at other meetings and public hearings called by the Board of Appeals.

- a. The Chairman shall decide all points of order or procedure and perform any duties required by law, ordinances, these rules, or the Board of Appeals.
- b. The Chairman shall call meetings of the Board of Appeals when required and shall sign reports, orders, and recommendations of the Board of Appeals, and, in general, shall act as spokesman for the Board of Appeals.

- c. The Chairman shall be one of the five (5) appointed voting members of the Board of Appeals. The Chairman shall have the privilege of discussing all matters before the Board of Appeals, but shall vote only when necessary to break a tie-vote or when a vote of all members is required by these Bylaws or Article 66B of the Maryland Annotated Code.
- d. The Chairman may, at his/her discretion, establish any special committee consisting of members of the Board of Appeals and (if deemed necessary) City support staff to fulfill a responsibility or charge of the Board of Appeals.
- e. The Chairman may administer oaths and compel the attendance of witnesses.

<u>Section 2.2</u>. Vice-Chairman. The Vice-Chairman shall serve as Chairman in the absence or the disability of the Chairman and shall exercise all of the duties of the Chairman when acting in his/her capacity. In the event of the death, removal, or resignation of the Chairman, the Vice-Chairman shall perform the Chairman's duties until such time as the Board of Appeals shall elect a new Chairman and/or Vice-Chairman, as the case may be.

Section 2.3. Secretary. The Board of Appeals shall designate one of its members to act as Secretary of the Board.

- a. The Secretary shall assist the Chairman in the preparation of an agenda for Board of Appeals meetings, shall prepare and send out notices for regular and special meetings, shall prepare and distribute minutes of Board meetings, and shall establish and maintain the Board of Appeals' files.
- b. The Secretary shall also arrange for proper and legal notice of public hearings, attend to correspondence of the Board of Appeals, and shall carry out such other duties as are normally the responsibility of a Secretary.
- c. The Secretary may direct the services of the City Planner or his/her designee to perform the routine administrative responsibilities of the Secretary's office.

ARTICLE III ELECTION OF OFFICERS

Annually, at a regular meeting of the Board of Appeals held in the month of January, the Board shall elect a Chairman, a Vice-Chairman and a Secretary. The officers may succeed themselves. However, the maximum number of consecutive terms that may be served by an officer shall not exceed two for the Chairman or Vice-Chairman or three for the Secretary.

<u>Section 3.1</u>. Nomination of officers. Nomination of officers shall be made from the floor, and the election shall follow immediately thereafter.

<u>Section 3.2</u>. Election vote. A candidate receiving a majority vote of the entire membership (including the sitting Chairman) of the Board of Appeals shall be declared elected and shall serve for one year or until a successor shall take office.

<u>Section 3.3.</u> Vacancies. Vacancies in offices shall be filled immediately by the regular election procedures specified in this Article.

ARTICLE IV MEETINGS

<u>Section 4.1</u>. Regular meetings. Regular meetings of the Board of Appeals shall be scheduled at 4:00 **p.m. on the first and third Wednesday of each month in the Mayor and Council Chambers on the second floor of City Hall in Cumberland**. If a regular meeting date falls on a Holiday observed by the City, the regular meeting may be rescheduled to a another date and time as may be determined by the Board. A regular meeting may be canceled due to a lack of substantive agenda items to be addressed, meeting location scheduling conflicts, emergency conditions, inclement weather, or other acts of nature beyond the City's control. In the event that a scheduled meeting is canceled, the Chairman may schedule a special meeting following the procedures specified in Section 4.6 of these Bylaws or the items scheduled to be conducted at the canceled meeting shall be deferred until the next regular meeting.

Section 4.2. Attendance. Each member of the Board is obligated to attend every meeting. At the request of a member of the Board of Appeals, the Chairman may make provisions for not more than one (1) member of the Board to **participate in a meeting via a conference call or other telecommunication device.** Attendance via teleconference shall not be considered an absence, and the participating member shall be considered part of the quorum for the matter at hand. However, any subsequent consecutive request for meeting participation by telecommunication shall be counted as an "absence" solely for determining meeting attendance and participation under this Section. However, **attendance via virtual video platform is permissible, as it is far more interactive than participation via a conference call or audio-only device.** Should any voting or alternate member appointed by the Mayor and Council fail to attend three or more consecutive meetings without cause acceptable to the Board of Appeals, the membership of the Board of Appeals may, by majority vote, petition the Mayor and Council for removal of a voting or alternate member, the Mayor and Council shall consider the petition in accordance with the procedures specified in Section 1.5 of these Bylaws.

Section 4.3. Quorum. A quorum necessary for the transaction of business shall consist of three (3) voting members of the Board of Appeals (including the Chairman, even though he/she will vote only in the event of a tie). Unless specifically provided otherwise by Maryland Law, ordinance, or these Bylaws, the business of the Board of Appeals shall be transacted by a majority vote of members present, after a quorum has been established. Members abstaining from voting on a motion before the Board of Appeals shall be counted in the determination of a quorum, but shall not be counted as a vote in favor of or in opposition on the specific motion at hand.

<u>Section 4.4</u>. Actions (voting) by the Board of Appeals. An official action or decision by the Board of Appeals shall require an affirmative majority vote of the members present, as specified above in Section 4.3 of these Bylaws. The Chairman shall request a **roll call vote** on any motion to determine an accurate accounting of the votes and the vote of each member on the motion shall be recorded in the official minutes of the meeting. Each action by the Board of Appeals shall be **initiated by a motion**, followed by

a second of the motion by different voting members of the Board. Discussion of the motion shall be undertaken only after it has been seconded. If a motion fails to receive a second upon the call of the Chairman, the motion shall be rejected without a vote. **A motion may be** *revised* <u>during</u> the discussion session and <u>prior to</u> the official vote only with the <u>consent of both</u> the member who made the motion and the member who seconded it. A voting member of the Board of Appeals also may move for an *amendment* to the original motion during the discussion session, which must receive a second by another voting member prior to discussion and action by the Board of Appeals. When a motion has been amended in this manner, the Board of Appeals shall first vote on the amendment or amendments in reverse order of motion, prior to voting on the original motion. No motions shall be made to take **final** *action on an issue subject to a public hearing until after* the hearing has been closed by the Chairman *and* any extended open record approved by the Board of Appeals during the open public hearing has expired. Voting procedures and issues not otherwise addressed in this section shall be governed by **Robert's Rules Of Order**.

Section 4.5. Order of business. The order of business at regular meetings shall be:

- 1. <u>call to order and roll call</u>,
- 2. <u>chairman's comments</u> (or announcements),
- 3. <u>reading and approval of minutes of previous meeting(s)</u>,
- 4. <u>public hearings</u> (continued hearings shall be conducted first),
- 5. <u>discussion items</u> (discussions continued from previous meetings shall be coonducted first),
- 6. <u>briefings</u> (including Committee reports and special presentations),
- 7. <u>City Planner's report</u>
- 8. <u>communications and miscellaneous new business</u>, and
- 9. <u>adjournment</u>.

<u>Section 4.6</u>. Special meetings. Special meetings of the Board of Appeals shall be held upon call of the Chairman, and at such other times as the Board of Appeals may determine by majority vote, provided that at least five (5) days advance notice is given in writing (which shall include e-mail) to each member. The Board of Appeals may, by majority vote conducted at a regular meeting, establish a special meeting date, time, and location that will require no advance written notice to the members of the Board of Appeals. No formal vote or public hearing shall be conducted at a special meeting which has not been subject to the public notification procedures specified in Section 4.8 of these Bylaws.

<u>Section 4.7</u>. Open to the public. All meetings and hearings of the Board of Appeals (with the sole exception of an Executive Session) shall be open to the public. All Executive Sessions shall be conducted in accordance with the Maryland Open Meetings Act (Maryland Annotated Code, State Government Article, Title 10 Subtitle 5, as amended).

<u>Section 4.8</u>. Notification. Public notice of all meetings of the Board of Appeals shall be provided through the posting of a notice in a public place within Cumberland City Hall at least five (5) days prior to the scheduled date of the meeting. Such notice shall state the date, time, and location of the meeting and the actions to be taken by the Board of Appeals. Public notices for all **public hearings** before the Board of Appeals shall be provided in the form and manner prescribed by the applicable governing statute or local code and shall be in addition to the public notice for the regular meeting at which the hearing(s) will

be conducted. If no specific public notification procedures are prescribed for a matter that that Board of Appeals determines to conduct a public hearing, then the hearing shall be notified by the one-time publication of a legal ad in a newspaper of local circulation within the City not less than fifteen (15) nor more than thirty (30) days prior to the date of the hearing. Such legal ad shall specify the time, date, and location of the meeting and provide a general description of the matter to be heard.

Section 4.9. Special rules for Public Hearings. All persons wishing to testify at a public hearing before the Board of Appeals shall place their names on an **attendance list** provided by the City at the hearing site, which shall be maintained as part of the official record of the hearing. Oral public testimonies shall not be received before the public hearing has been opened by the Chairman or after the Chairman has closed the public hearing. The Chairman may require and administer oaths for any and all testimonies at a public hearing. The Chairman also may, at his/her discretion, establish time limitations on personal comments and such other special rules on public conduct as may be necessary to ensure adequate opportunity for complete and balanced public input on issues before the Board of Appeals. Time limitations on individual testimonies may be imposed when the total number of persons wishing to speak exceeds ten (10) and may be restricted to three (3) or five (5) minutes, at the Chairman's discretion, depending upon the total number of potential testimonies. Whenever a time limit for oral testimonies at a public hearing is established by the Chairman, then the Board of Appeals shall provide an extended open record for written comments prior to closing the hearing and participants at the hearing shall be informed at the hearing of their opportunity to submit written comments to the record in addition to or in lieu of their oral testimonies at the hearing. An extended open record for written comments shall be an option for the Board of Appeals at any public hearing where no time limits on oral testimonies are needed. Any extended open record shall be established by the Board of Appeals prior to the close of the hearing, along with a time-and date-specific deadline for the receipt of written comments and directions on where and how (e-mail, parcel post, and/or hand-delivery) they may be submitted. The Chairman also may, at his/her discretion and after providing a verbal warning, request the removal of any citizen who repeatedly disrupts the proceeding by interrupting speakers who have the floor (speaking out of turn), makes offensive remarks (such as insults, catcalls, or actively incites support or opposition from other citizens at the hearing), or acts in a hostile, combative, confrontational, or potentially threatening manner.

ARTICLE V RECORDS

<u>Section 5.1</u>. Duty of the Secretary. The Secretary shall take or arrange for the taking of minutes covering the proceedings of each meeting of the Board of Appeals, documenting the actual vote on each question.

<u>Section 5.2</u>. Official minutes. The minutes of a Board of Appeals meeting shall not become an official record of the Board of Appeals until they have been adopted by majority vote of the Board of Appeals. The official minutes and all records of the Board of Appeals shall constitute public records, and the Board of Appeals shall arrange with the Mayor and City Council to provide for the safe keeping of those records.

<u>Section 5.3</u>. Permanent files. In addition to the minutes of the Board of Appeals, the Secretary shall keep a permanent file of all official minutes, plats, maps, charts, reports, notices, resolutions, correspondence and applications filed with and issued by the Board of Appeals.

ARTICLE VI EMPLOYEES, CONTRACTS, AND FINANCES

<u>Section 6.1</u>. Employees of the Board of Appeals. The Board of Appeals may request the Mayor and Council to designate municipal employees to assist in the work of the Board of Appeals; and the Board of Appeals may also recommend that the City contract with consulting and regional planners, engineers, architects and other professionals for such services as may be required.

<u>Section 6.2</u>. Expenditures. The expenditures of the Board of Appeals shall be within the amounts appropriated for the purpose by the Mayor and Council.

<u>Section 6.3</u>. Custody of funds. The Secretary shall take custody of any and all funds coming into the possession of the Board of Appeals, shall deposit those funds in a manner approved by the Board of Appeals, and shall establish and maintain the Board of Appeals's books of account. Under the Board of Appeals's direction and upon its authorization, the Secretary shall sign all orders, invoices, and purchase orders for the payment of money and shall pay out and disburse Board funds.

ARTICLE VII COMMUNICATIONS WITH THE PUBLIC

Until such time as the Board of Appeals has adopted official minutes of a meeting, the Chairman shall serve as the **official and exclusive spokesperson for all communications** with the public and the media regarding the actions taken at a meeting. If a meeting was chaired by the Vice-Chairman, then the Vice-Chairman shall serve as the official and exclusive spokesperson for all communications with the public and the media regarding the actions taken at the meeting, until such time as the Board of Appeals has adopted official minutes for said meeting. The Chairman or Vice-Chairman, serving in this capacity, may (at his/her discretion) refer or defer specific questions or inquiries from the public or media regarding meeting issues to the City's Attorney or the City Planner, in accordance with applicable City policies and procedures. All **official written letters and recommendations** from the Board of Appeals (representing the Board of Appeals as a body) shall be issued only after approval of the Board of Appeals.

ARTICLE VIII AMENDMENTS TO THE BYLAWS

The Board of Appeals may from time to time amend any part or parts of these rules and regulations so long as such amendments are in accordance with the laws of the State and ordinances of the City of Cumberland; such amendments shall require the affirmative majority vote of Board of Appeals members present.

Adopted this _____ day of _____, 2008 by an affirmative vote of _____ to ____, with _____ members abstaining or absent.

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ATTEST:

Chairman

Secretary