

ORDINANCE NO. 3255

AN ORDINANCE authorizing the owners of 516 East Bellefonte Avenue, and their successors in title, to construct and maintain an encroachment into the public right-of-way of East Bellefonte Avenue, consisting of a retaining wall which will cover an area of the dimensions one foot by 3.4 feet near an existing driveway on the premises, and will cover another area of the dimensions 1.7 feet by 38 feet across the front of the property along East Bellefonte Avenue, in the City of Alexandria, Virginia.

WHEREAS, Joel Kaplan and David R. Cullen are the owners of the premises located at 516 East Bellefonte Avenue in the City of Alexandria, Virginia; and

WHEREAS, Joel Kaplan and David R. Cullen desire to construct and maintain a retaining wall which will support a sidewalk, both of which will encroach into the public right-of-way of 516 East Bellefonte Avenue; and

WHEREAS, the public right-of-way at this point on 516 East Bellefonte Avenue will not be significantly impaired by this encroachment, and Joel Kaplan and David Cullen have agreed to design and construct the retaining wall and sidewalk, and to place a railing at least 3 feet high alongside the retaining wall, to be approved by the Director of Transportation and Environmental Services; and

WHEREAS, the said encroachment has been approved by the Planning Commission of the City of Alexandria, Virginia, and it is determined that this encroachment is not detrimental to the public interest; therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Joel Kaplan and David Cullen, and their successors in title, be and the same hereby are authorized to construct and maintain an encroachment consisting of a retaining wall which will cover an area of the dimensions one foot by 3.4 feet near the driveway of 516 East Bellefonte Avenue and an area of the dimensions 1.7 feet by 38 feet across the front of the property at 516 East Bellefonte Avenue, which will encroach into the public right-of-way from the premises known as 516 East Bellefonte Avenue, in the City of Alexandria, Virginia, until such encroachment is removed or destroyed; provided, that this authority shall not be construed to relieve such owner of liability for any negligence on its part on account of or in connection with such encroachment and shall be subject to the hereinafter contained provisions.

Section 2. That the privilege hereby granted to construct and maintain this encroachment shall at all times be subject to Joel Kaplan and David Cullen and their successors in title providing a railing at least 36 inches high alongside the retaining wall for pedestrian safety, and at all times maintaining the said encroachment in conformity with the requirements of the Director of Transportation and Environmental Services.

Section 3. That the privilege hereby granted to construct and maintain this encroachment shall be subject to Joel Kaplan and David Cullen and their successors in title, at their own expense, maintaining at all times in full force and effect public liability and property damage insurance, with a company authorized to transact business in the Commonwealth of Virginia with minimum limits as follows:

Bodily Injury: \$1,000,000 each occurrence
\$1,000,000 aggregate

All Risk Property Damage: \$1,000,000 each occurrence
\$1,000,000 aggregate

said policy or policies of insurance to identify the City of Alexandria and the owners as named insureds, and to provide for the indemnification of the City of Alexandria and the owners against all loss occasioned by the construction, existence, placement, use or maintenance of said encroachment; said policy or policies and evidence of the renewal thereof to be presented to the city attorney for approval; provided, that any other provision herein to the contrary notwithstanding, in the event such policy or policies of insurance shall lapse, be canceled, be not renewed or otherwise cease to be in force and effect, then the privilege herein granted shall, at the option of the city, forthwith and without notice or demand by the city cease, and the owners shall remove said encroachment from the public right-of-way, or the city at its option may remove same at the expense and risk of the owners; and provided further, that nothing in this Section 3 shall relieve the owners of their obligations and undertakings required under this ordinance.

Section 4. That the privilege hereby granted to construct and maintain an encroachment shall be subject to the owners of the encroachment maintaining the area of the encroachment, including the sidewalk, at all times unobstructed and free from accumulation of litter, snow, ice and other hazardous accumulations.

Section 5. That the construction, existence, placement, use and maintenance of said encroachment, pursuant to the authority hereby granted, shall be considered a promise and agreement by the owners and their successors and assigns to save

harmless the City of Alexandria from any and all claims, damages, loss, harm, expenses and liability by reason of the construction, existence, placement, use and maintenance of the said encroachment.

Section 6. That nothing herein contained shall be deemed a waiver of sovereign immunity by or on behalf of the City of Alexandria.

Section 7. That the owners of the encroachment shall pay to the city the annual charge established in section 3-2-85 of the Code of the City of Alexandria for the said encroachment.

Section 8. That the privilege hereby granted shall be terminated whenever the City of Alexandria shall desire to use the public right-of-way for any purpose whatsoever and shall by written notification demand from the owners the removal of such encroachment, which removal shall be completed promptly, within no more than 30 days from the date of such notice, without cost to the City of Alexandria; provided, however, that if the owners cannot be found, or shall fail or neglect to remove the encroachment when required to do so, the city shall have the right to remove same at the expense of the owners, and shall not be liable for any loss or damage to the structure of the encroachment whatsoever.

Section 9. That the title of and an informal memorandum explaining this ordinance shall be published in a newspaper of general circulation published in the city not later than five days following its introduction together with a notice containing the time and place for a public hearing. The city clerk shall have the full text of this ordinance printed in sufficient numbers to supply copies to meet request. The city clerk shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage.

JAMES P. MORAN, JR.
Mayor

Final Passage: November 14, 1987