

ORDINANCE NO. 3286

AN ORDINANCE authorizing Peter M. DeArcangelis and his successors in interest, to construct and maintain an encroachment consisting of a retaining wall and fence in the public right-of-way at the northwest corner of the intersection of Jefferson Street and South Alfred Street in the City of Alexandria, Virginia.

WHEREAS, Peter M. DeArcangelis desires to construct and maintain a retaining wall and fence which will encroach 4.8 feet into the public right-of-way along South Alfred Street, and 4.7 feet into the public right-of-way along Jefferson Street, at the northwest corner of the intersection of such streets; and

WHEREAS, the public right-of-way at these points will not be significantly impaired by this encroachment; and

WHEREAS, this 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 Peter M. DeArcangelis, and his successors in interest, be and the same hereby are authorized to construct and maintain an encroachment consisting of a retaining wall and fence which will encroach into the public right-of-way at the northwest corner of the intersection of South Alfred Street and Jefferson Street in the City of Alexandria, Virginia, 4.7 feet along the right-of-way of Jefferson Street for a distance of 72.08 feet, and 4.8 feet into the public right-of-way of South Alfred Street for a distance of 41.12 feet, until such encroachment is removed or destroyed; provided, however, that this authority shall not be construed to relieve such owner of liability for any negligence on his part on account of such encroachment and shall be subject to the hereinafter contained provisions.

Section 2. That the privilege hereby granted to construct and maintain the encroachment shall be subject to the following terms and conditions:

(1) that the design of the fence be submitted to the director of planning and community development and the Board of Architectural Review -- Old and Historic Alexandria District Panel, for approval, and

(2) that the design of the fence allow plenty of visibility and not be a barrier for observation or lighting at night.

Section 3. That the privilege hereby granted to construct and maintain the encroachment shall be subject to the owner of the encroachment, at his own expense, maintaining at all times and 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 indemnify the City of Alexandria and the owner, as named insureds, against all loss occasioned by the existence, placement, use or maintenance of said encroachment, said policy or policies and evidence of renewal 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, and without notice or demand by the city, cease and determine, and the owner 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 owner; and provided further, that nothing in this section 3 shall relieve the owner of his obligations and undertakings required under this ordinance.

Section 4. That the privilege hereby granted to construct and maintain the encroachment shall be subject to the owner of the encroachment maintaining the area subject to the encroachment in good order, in a litter-free fashion and landscaped with live plantings, and removing snow, ice, and other hazardous accumulations therefrom, so long as the encroachment shall exist in the public right-of-way.

Section 5. That the construction, existence, placement, use and maintenance of said encroachment, pursuant to the authority hereby granted, shall be considered an agreement by the owner and his successors and assigns to save harmless the City of Alexandria from any and all 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 owner 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.

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 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 owner cannot be found, or shall fail and neglect to remove the encroachment when required to do so, then the city shall have the right to remove same at the expense of the owner, and shall not be liable for any loss or damage to the structure of the encroachment.

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 requests. 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. That this ordinance shall be effective upon the date of its final passage.

JAMES P. MORAN, JR.
Mayor

Final Passage: April 16, 1988