

ORDINANCE NO. 3371

AN ORDINANCE authorizing the owners of certain property bounded by Reinekers Lane, Duke Street and Diagonal Road to establish and maintain an encroachment into the public right-of-way of Diagonal Road in the City of Alexandria, Virginia.

WHEREAS, Oliver T. Carr, Jr., et al., Trustees, the Oliver Carr Company and King Street III Associates ("Owners") are the record owners of the property located at 1840-1922 Diagonal Road in the City of Alexandria, Virginia, real estate assessment map 73.02, block 01, lots 03 through 12; and

WHEREAS, these owners desire to establish and maintain an underground electrical transformer vault which will encroach into the public right-of-way of Diagonal Road; and

WHEREAS, the public right-of-way at that point on Diagonal Road will not be significantly impaired by this encroachment; and

WHEREAS, this encroachment has been approved by the Planning Commission of the City of Alexandria at one of its regular meetings subject to certain conditions; and

WHEREAS, it has been determined by the Council of the City of Alexandria that this encroachment is not detrimental to the public interest; therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the owners and their successors in title (hereafter collectively "Owners") be, and the same hereby are, authorized to establish and maintain an encroachment into the public right-of-way of Diagonal Road in the City of Alexandria, said encroachment consisting of an underground electrical transformer vault, 50 feet by 10 feet, to be located under the public sidewalk adjacent to Diagonal Road, as shown on the plat attached hereto marked Exhibit A, until the encroachment is removed or destroyed or the authorization to maintain it is terminated by the city; provided, that this authorization to establish and maintain the encroachment shall not be construed to relieve Owners of liability for any negligence on their part on account of or in connection with the encroachment, and shall be subject to the provisions set forth below.

Section 2. That the authorization hereby granted to establish and maintain said encroachment shall be subject to and conditioned upon Owners maintaining, at all times and at their own expense, liability insurance, covering both bodily injury and property damage, with a company authorized to transact business in the Commonwealth of Virginia and with minimum limits as follows:

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

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

This liability insurance policy shall identify the City of Alexandria and Owners as named insureds and shall provide for the indemnification of the City of Alexandria and Owners against any and all loss occasioned by the establishment, construction, placement, existence, use or maintenance of the encroachment. Evidence of the policy and any renewal thereof shall be filed with the city attorney's office. Any other provision herein to the contrary notwithstanding, in the event this policy of insurance lapses, is canceled, is not renewed or otherwise ceases to be in force and effect, the authorization herein granted to establish and maintain the encroachment shall, at the option of the city, forthwith and without notice or demand by the city terminate. In that event, Owners shall, upon notice from the city, remove the encroachment from the public right-of-way, or the city, at its option, may remove the encroachment at the expense and risk of Owners. Nothing in this section shall relieve Owners of their obligations and undertakings required under this ordinance.

Section 3. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, Owners shall be deemed to have promised and agreed to save harmless the City of Alexandria from any and all liability (including attorneys' fees and litigation expenses) by reason of the establishment, construction, placement, existence, use or maintenance of the encroachment.

Section 4. That the authorization herein granted to establish and maintain the encroachment shall be subject to Owners' maintaining the area of the encroachment at all times unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter.

Section 5. That nothing in this ordinance is intended to constitute, or shall be deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria.

Section 6. That Owners shall timely pay to the City of Alexandria for the encroachment authorized herein the annual charge established in § 3-2-85 of The Code of the City of Alexandria, 1981, as amended.

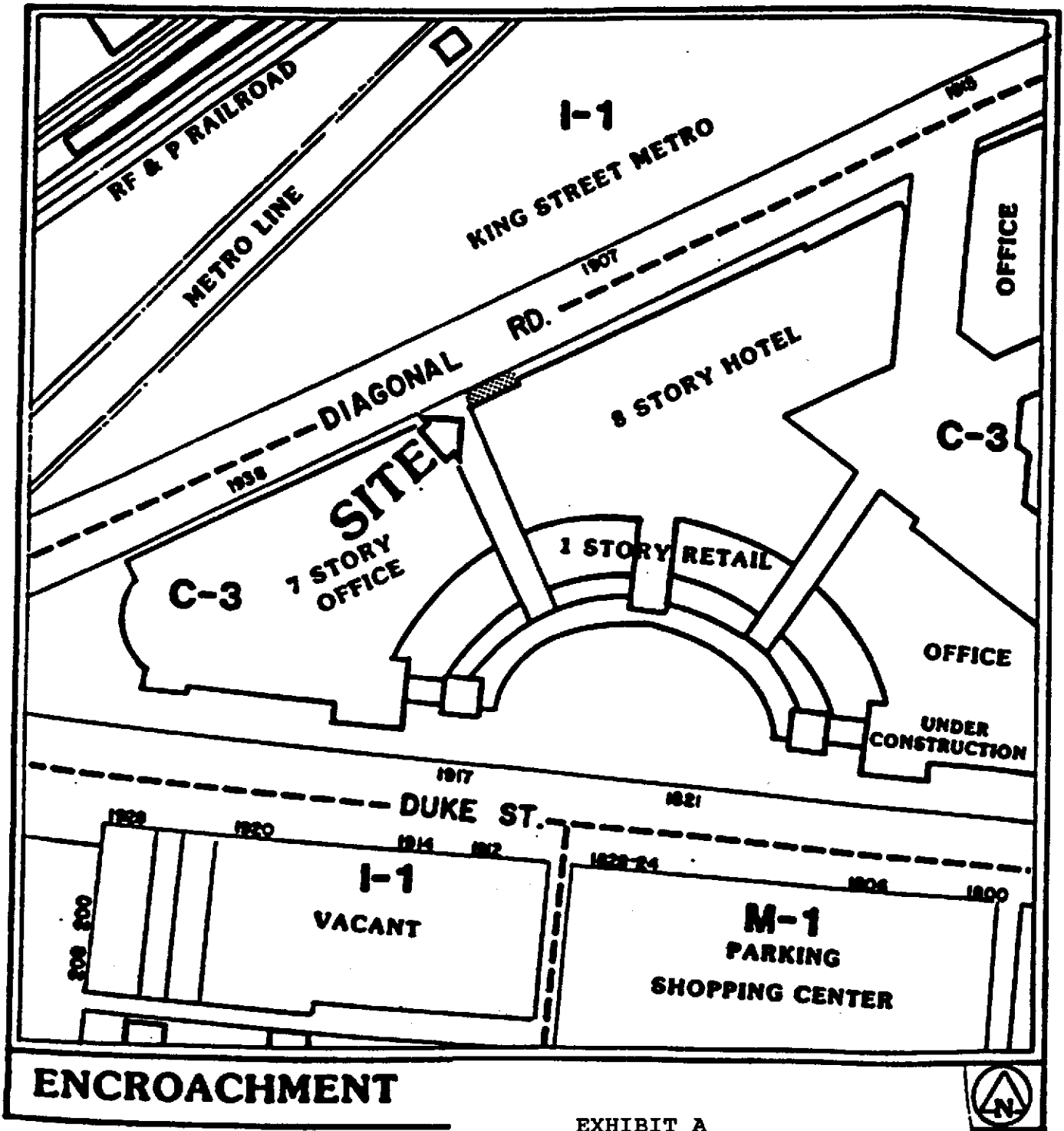
Section 7. That the authorization herein granted to establish and maintain the encroachment shall be terminated

whenever the City of Alexandria desires to use the affected public right-of-way for any purpose whatsoever and, by written notification, demands from Owners the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Owners without cost to the city. If Owners cannot be found, or shall fail or neglect to remove the encroachment within the time specified, the city shall have the right to remove the encroachment, at the expense of Owners, and shall not be liable to Owners for any loss or damage to the structure of the encroachment caused by the removal.

Section 8. That this ordinance shall be effective upon the date and at the time of its final passage.

JAMES P. MORAN, JR.
Mayor

Final Passage: April 15, 1989



ENCROACHMENT

EXHIBIT A

