

ORDINANCE NO. 3524

AN ORDINANCE authorizing the owner of Alexandria Seafood House, Inc., trading as Que Sara, a restaurant located at 811-815 South Washington Street, to establish and maintain an encroachment into the right-of-way of the public sidewalk in front of the properties at 811-815 South Washington Street, in the City of Alexandria, Virginia, for restaurant seating, said encroachment measuring approximately 47 feet in length across the frontage of the properties and 9 feet in width from the front property lines of said properties, and containing approximately 423 square feet.

WHEREAS, the owner of Alexandria Seafood House, Inc., trading as Que Sara, is the current occupant of the properties located at 811-815 South Washington Street in the City of Alexandria, Virginia; and

WHEREAS, the owner of Alexandria Seafood House, Inc., trading as Que Sara, desires to maintain restaurant seating in an outdoor sidewalk cafe which will encroach into the right-of-way of the public sidewalk area in front of the properties at 811-815 South Washington Street approximately 47 feet in length across the frontage of the properties and extending 9 feet from the front of property lines, and containing approximately 423 square feet; and

WHEREAS, the public right-of-way at that point on Washington Street 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 owner of Alexandria Seafood House, Inc., trading as Que Sara (hereafter the "Restaurant"), be, and the same hereby is, authorized to establish and maintain an encroachment into the right-of-way of the public sidewalk in front of the properties at 811-815 South Washington Street, in the City of Alexandria, Virginia, for restaurant seating, said encroachment measuring approximately 47 feet in length across the frontage of the properties and 9 feet in width from the front property lines of said properties, and containing approximately 423 square feet, until the encroachment is removed 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 the Restaurant of

liability for any negligence on its 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 the encroachment shall at all times be subject to the following conditions:

(a) That a minimum width of 13 feet be reserved and always maintained for pedestrian traffic along the public sidewalk in front of the properties at 811-815 South Washington Street;

(b) That no signs or displays shall at any time be placed within the public sidewalk in front of these properties;

(c) That no more than 30 seats be placed within the area of the encroachment, as specified by Special Use Permit No. 2449-A; and

(d) That the area of the encroachment shall at all times be maintained unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter.

Section 3. That the authorization hereby granted to establish and maintain said encroachment shall be subject to and conditioned upon the Restaurant maintaining, at all times and at its 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 the Restaurant as named insureds and shall provide for the indemnification of the City of Alexandria and the Restaurant 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, the Restaurant 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 the Restaurant. Nothing in this section shall relieve the Restaurant of its obligations and undertakings required of it under this ordinance.

Section 4. That, by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, the Restaurant 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 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 the Restaurant shall timely pay to the City of Alexandria for the encroachment authorized herein the annual charge established in section 3-2-85 of The Code of the City of Alexandria, Virginia, 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 the Restaurant the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by the Restaurant without cost to the city. If the Restaurant 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 the Restaurant, and shall not be liable to the Restaurant for any loss or damage sustained by the Restaurant that is caused by the removal.

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

PATRICIA S. TICER
Mayor

Final Passage: June 15, 1991