

ORDINANCE NO. 3538

AN ORDINANCE authorizing the owner of 417 South Lee Street, and the owner's successors in title, to establish and maintain an encroachment two feet-four inches into the public right-of-way of South Lee Street, in the City of Alexandria, Virginia.

WHEREAS, Susan L. Rogers is the owner of the property located at 417 South Lee Street in the City of Alexandria, Virginia;

WHEREAS, Ms. Rogers desires to establish and maintain a planter box along the front building wall of 417 South Lee Street which will encroach two feet-four inches into the public sidewalk right-of-way of South Lee Street for a length of approximately 17 feet;

WHEREAS, the public right-of-way at that point on South Lee Street will not be significantly impaired by this encroachment;

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; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Susan L. Rogers and her successors in title (hereafter collectively the "Owner") be, and the same hereby are, authorized to establish and maintain an encroachment into the public right-of-way of South Lee Street in the City of Alexandria, said encroachment consisting of a planter box along the front building wall of 417 South Lee Street which will encroach two feet-four inches into the public sidewalk right-of-way of South Lee Street for a length of approximately 17 feet, and will be two feet, six inches high, 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 Owner 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 said encroachment shall be subject to and conditioned upon Owner 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 Owner as named insureds and shall provide for the indemnification of the City of Alexandria and Owner 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, Owner 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 Owner. Nothing in this section shall relieve Owner of its 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, Owner 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) arising by reason of the establishment, construction, placement, existence, use or maintenance of the encroachment.

Section 4. That the authorization hereby granted to establish and maintain the encroachment shall be subject to and conditioned upon the Owner maintaining a minimum of four feet of pedestrian passage between the face of the planter box and the closest restriction.

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 or any of its officers or employees.

Section 6. 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 Owner the removal of the encroachment. Said removal shall be completed within 60 days of the date of notification and shall be accomplished by Owner without cost to

the city. If Owner cannot be found, or shall fail or neglect to remove the encroachment within 60 days, the city shall have the right to remove the encroachment, at the expense of Owner, and shall not be liable to Owner for any loss or damage to the structure of the encroachment caused by the removal.

Section 7. That this ordinance shall be effective upon the date and at the time of its final passage.

PATRICIA S. TICER
Mayor

Final Passage: October 12, 1991