

ORDINANCE NO. 3596

AN ORDINANCE authorizing the owner of the Landmark Shopping Center at 5801 Duke Street in the City of Alexandria, Virginia, and the owner's successors in title, to establish and maintain encroachments for two signs into the public right-of-way of 5801 Duke Street.

WHEREAS, U.S. Prime Property Inc. is the owner of the property located at 5801 Duke Street in the City of Alexandria, Virginia; and

WHEREAS, U.S. Prime Property Inc. desires to establish and maintain a freestanding directional sign and a freestanding "monument style" sign which will encroach into the public right-of-way at 5801 Duke Street; and

WHEREAS, the public right-of-way at that point on 5801 Duke Street will not be significantly impaired by these encroachments; and

WHEREAS, these encroachments have 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 these encroachments are not detrimental to the public interest; therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That U.S. Prime Property Inc. and its successors in title (hereafter collectively the "Owner") be, and the same hereby are, authorized to establish and maintain encroachments into the public right-of-way of 5801 Duke Street in the City of Alexandria, said encroachments consisting of (i) a freestanding directional sign measuring 20 feet 6 inches in height from the roadway to the top of the sign and approximately 18 feet in length by six feet in width, and containing an area of 108 square feet, and (ii) a freestanding "monument style" sign measuring eight feet in height and containing 72 square feet, with a sign face seven feet in length by three feet six inches in width, said encroachments continuing until removed or destroyed or until this authorization to maintain them is terminated by the city; provided, that this authorization to establish and maintain the encroachments shall not be construed to relieve Owner of any liability for any negligence on its part on account of or in connection with either of the encroachments and shall be subject to the provisions set forth below.

Section 2. That the authorization hereby granted to establish and maintain the encroachments shall at all times be subject to the following conditions:

1. Owner shall confer with the Director of the Department of Transportation and Environmental Services with respect to the design and location of both signs, and the signs' design and location shall be approved by the director prior to their placement in the public right-of-way.

2. Owner shall, prior to the placement of either sign in the public right-of-way, execute an agreement with the city requiring Owner to maintain the signs in a condition acceptable to the Director of the Department of Transportation and Environmental Services.

3. The construction of the signs shall comply with the current edition of the Uniform Statewide Building Code, including where applicable (i) the undertaking of the soil analysis required by section 1202.0 of the USBC, and (ii) the obtaining of a construction permit required by section 105.1 of the USBC and, in conjunction with the application for said permit, the submission of two sets of plans bearing the signature and seal of a design professional registered in the Commonwealth of Virginia.

Section 3. That the authorization hereby granted to establish and maintain said encroachments 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 \$2,000,000 aggregate
Property Damage:	\$1,000,000 each occurrence \$2,000,000 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 signs authorized by this ordinance to encroach into the public right-of-way. 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 encroachments 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 4. That by accepting the authorization hereby granted to establish and maintain the encroachments and by so establishing and/or maintaining the encroachments, 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 signs authorized by this ordinance to encroach into the public right-of-way.

Section 5. That the authorization herein granted to establish and maintain the encroachments shall be subject to Owner's maintaining the area of the encroachment at all times unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter.

Section 6. 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 7. That Owner shall timely pay to the City of Alexandria for the encroachments authorized herein the annual charge established in section 3-2-85 of The Code of the City of Alexandria, 1981, as amended.

Section 8. That the authorization herein granted to establish and maintain either or both of the encroachments 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 by the date specified in the notice 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 the time specified, 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 9. That this ordinance shall be effective upon the date and at the time of its final passage.

PATRICIA S. TICER  
Mayor

Final Passage: October 17, 1992