

ORDINANCE NO. 3597

AN ORDINANCE authorizing the owners of 612 Malcolm Place in the City of Alexandria, Virginia, and the owners' successors in title, to establish and maintain an encroachment into the public right-of-way at the corner of their property, at 612 Malcolm Place, and West Braddock Road.

WHEREAS, James W. and Margo T. Heegeman are the owners of the property located at 612 Malcolm Place in the City of Alexandria, Virginia; and

WHEREAS, James W. and Margo T. Heegeman desire to establish and maintain a brick wall at the corner of their property which will encroach into the public right-of-way of 612 Malcolm Place and West Braddock Road; and

WHEREAS, the public right-of-way at that point on 612 Malcolm Place and West Braddock 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 James W. and Margo T. Heegeman and their 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 at the corner of their property at 612 Malcolm Place and West Braddock Road in the City of Alexandria, said encroachment consisting of a brick wall to be installed slightly beyond the west boundary of the Owner's property. The proposed brick wall measures 96 feet in length and will consist of 11 evenly spaced brick pillars. The brick wall varies in height from 1 foot 9 inches at a curved section to an overall height of 2 feet 6 inches along its straight axis. The brick pillars stand 2 feet 1 inch in height. A wrought iron chain will be installed on top between the brick pillars located along the curved section of the wall. The brick wall will encroach into the city right-of-way at its narrowest point by 1 foot 6 inches and at its furthest point by 8 feet. The encroachment area totals approximately 236 square feet. Said encroachment shall be maintained 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 herein granted to establish and maintain the encroachment 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 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 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 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 17, 1992