

ORDINANCE NO. 3779

AN ORDINANCE authorizing the owners of the single family residence at 305 Charles Alexander Court, and their successors in interest, to establish and maintain an encroachment into the public sidewalk right-of-way at 305 Charles Alexander Court, in the City of Alexandria, Virginia.

WHEREAS, Paul and Diane Mahefky are the owners of the single family residence at 305 Charles Alexander Court in the City of Alexandria, Virginia; and

WHEREAS, such owners desire to establish and maintain two stone retaining walls which will encroach into the public sidewalk right-of-way at 305 Charles Alexander Court in the City of Alexandria, Virginia; and

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

WHEREAS, this encroachment has been approved, subject to certain conditions, by the Planning Commission of the City of Alexandria at one of its regular meetings; 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 the owners of 305 Charles Alexander Court, and their successors in interest (hereafter "owners"), be, and the same hereby are, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 305 Charles Alexander Court in the City of Alexandria, Virginia, said encroachment consisting of two stone retaining walls as herein after described, 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 the owners of liability for any negligence on their part or on account of or in connection with the encroachment and shall be subject to the provisions set forth below.

Section 2. That the retaining walls hereby authorized shall be constructed as follows, all as shown more particularly on the plat attached hereto and incorporated herein by reference:

1. The first stone retaining wall, to be located on the existing east side of the driveway entrance to subject property, shall be 3.5 feet tall, approximately 17 feet in length, and two feet wide. The wall shall project a

maximum of nine feet into the public right-of-way of Charles Alexander Court.

2. The second stone retaining wall, to be located on the west side of the existing driveway entrance to the subject property, shall be approximately four feet tall, approximately 40 feet in length, and two feet wide. A maximum of five feet of the retaining wall shall extend onto the public right-of-way of Charles Alexander Court.

Section 3. That the authorization hereby granted to establish and maintain the encroachment shall at all times be subject to the condition that, in the event the city shall, in the future, have need for the area of the proposed encroachment, the owners shall remove any structure or projection that encroaches into the sidewalk right-of-way, within 60 days, upon notification by the city.

Section 4. That the authorization hereby granted to establish and maintain the encroachment shall be subject to and conditioned upon the 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 the owners as named insureds and shall provide for the indemnification of the City of Alexandria and the 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, the 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 the owners. Nothing in this section shall relieve the owners of their obligation and undertakings required under this ordinance.

Section 5. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, the 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) arising by reason of the establishment, construction, placement, existence, use or maintenance of the encroachment.

Section 6. That the authorization herein granted to establish and maintain the encroachment shall be subject to the owners maintaining the area of the encroachment at all times unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter, and shall further be subject to the owners, as long as the wall encroachment shall stand, being responsible for all costs for the maintenance, removal and or reconstruction of the retaining walls hereby approved on or off the public right-of-way.

Section 7. 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 8. 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 the owners without cost to the city. If the 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 the owners, and shall not be liable to the owners 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: February 25, 1995

N/F COLONIAL PARK ZONE R-12

LOT 9
N/F ROBERT J OR
BARBARA FOX MASON

LOT 7
N/F JOHN T OR
LYNN W. BRENNAN

N70°47'00"E
4380'

N59°40'00"E - 10080'

610
36,725±

LOT 607

LOT 608

N05°04'22"E - 17489'

25662'

S06°57'51"E

R. 50.00'
A. 18.45'

R. 25.00'
A. 34.45'

1-STORY GARAGE
ADDITION

EX 2-STORY
BRICK &
FRAME

EX PORCH

R. 260.00' A. 10752'

PROF WALK
EX DRIVE

PROF WALK

EX TREE

CHARLES ALEXANDER COURT
(50' R/W)

LOT 610
FIRST ADDITION TO

ENC. 94-0010