

ORDINANCE NO. 3831

AN ORDINANCE authorizing the owner of the property located at 819 Church Street, and the owner's successors in title, to establish and maintain an encroachment into the public right-of-way at 819 Church Street, in the City of Alexandria, Virginia.

WHEREAS, Gregory M. Nau is the owner of the residential property located at 819 Church Street in the City of Alexandria, Virginia (the "Property"); and

WHEREAS, the public right-of-way at this location on Church Street is 11.2 feet wide, consisting of a 4-foot wide concrete sidewalk and a 7.2-foot wide green strip lying between the sidewalk and the front property line of 819 Church Street; and

WHEREAS, Gregory M. Nau has applied for an encroachment into the public right-of-way at 819 Church Street, which encroachment shall consist of brick and flagstone steps that will provide access from the public sidewalk to the walkway in front of his property and shall encroach approximately 5.2 feet into the green strip of the public right-of-way, leaving approximately two feet between the stairs and the sidewalk; and

WHEREAS, the sidewalk portion of the public right-of-way at this point at 819 Church Street will not be impaired by the requested 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 City 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 Gregory M. Nau and his successors in title (hereafter collectively the "Owner") be, and the same hereby is, authorized to establish and maintain an encroachment into the public right-of-way at 819 Church Street in the City of Alexandria, said encroachment consisting of steps of the standard width that will provide access from the public sidewalk to the walkway in front of the Property's residential dwelling and will encroach approximately 5.2 feet into the green strip portion of the public right-of-way, all as shown on the plat, entitled, "Plat Showing House Location on Lot 28, Block 2, Hunting Creek Homes, Inc.," and dated August 31, 1993, 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 his 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 condition that the proposed steps shall be constructed so as not to damage the existing tree located in the public right-of-way adjacent to the site where the steps will be constructed.

Section 3. That the authorization hereby granted to establish and maintain the encroachment described in Section 1 shall at all times be subject to and conditioned upon Owner maintaining, at all times and at his 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 million each occurrence |
| | \$1 million aggregate |
| Property Damage: | \$1 million each occurrence |
| | \$1 million 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, liability and all costs related thereto, including attorney fees, occasioned by the establishment, construction, placement, existence, use or maintenance of the encroachment. Evidence of the policy and any renewal thereof shall be filed annually with the city attorney's office. Any other provision herein to the contrary notwithstanding, in the event that 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 his obligations and undertakings required under this ordinance.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and maintaining the encroachment, Owner shall be deemed to have promised and agreed to indemnify and hold harmless the City of Alexandria from any and all liability (including attorney fees and litigation expenses) arising by reason of the establishment, construction, placement, existence, use or maintenance of the encroachment.

Section 5. 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 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 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 that Owner remove the encroachment. Said removal shall be completed within 60 days of the date of 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 8. That this ordinance shall be effective upon the date and at the time of its final passage.

PATRICIA S. TICER
Mayor

Final Passage: October 14, 1995