

ORDINANCE NO. 3855

AN ORDINANCE authorizing the lessee of the property at 101 North Columbus Street to establish and maintain an encroachment into the public right-of-way of 101 North Columbus Street and 725-727 King Street, in the City of Alexandria, Virginia.

WHEREAS, the Virginia Tech Foundation ("Owner") is the owner of the property located at 101 North Columbus Street in the City of Alexandria, Virginia; and

WHEREAS, Bertucci's Restaurant Corporation leases the building located at 101 North Columbus Street from the Virginia Tech Foundation; and

WHEREAS, Bertucci's Restaurant Corporation desires to establish and maintain an awning which will encroach into the public right-of-way at 101 North Columbus Street and at 725-727 King Street; and

WHEREAS, the public right-of-way at that point on 101 North Columbus Street and 725-727 King Street 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 Bertucci's Restaurant Corporation (the "Applicant"), and only the Applicant, be, and the same hereby is, authorized to establish and maintain an encroachment into the public rights-of-way of 101 North Columbus Street and 725-727 King Street in the City of Alexandria, said encroachment consisting of two cornices and five canvas awnings, three of which awnings project approximately 18.64 inches in width over the public sidewalk at 725-727 King Street and extend nine feet, five feet nine inches and 12 feet in length, and two of which awnings project approximately 33.5 inches in width over the public sidewalk at 101 North Columbus Street and extend 12 feet and 16 feet in length, all of which awnings shall be erected to a height of approximately 10 feet above the sidewalk, 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 Applicant 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 Applicant 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 Applicant as named insureds and shall provide for the indemnification of the City of Alexandria and Applicant 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, Applicant 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 Applicant. Nothing in this section shall relieve Applicant 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, Applicant 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 Applicant'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 Applicant shall timely pay to the City of Alexandria for the encroachment authorized herein the annual charge established in § 3-2-85 of The Code of the City of Alexandria, 1981, as amended.

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 from Applicant the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Applicant without cost to the city. If Applicant 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 Applicant or Owner, and shall not be liable to Applicant or 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.

KERRY J. DONLEY  
Mayor

Final Passage: April 13, 1996