

ORDINANCE NO. 3857

AN ORDINANCE authorizing the lessee of the property at 823 South Washington Street to maintain an encroachment into the public right-of-way adjacent to 823 South Washington Street, in the City of Alexandria, Virginia.

WHEREAS, Faccia Luna Pizzeria, L.L.C., is a restaurant leasing the property located at 823 South Washington Street in the City of Alexandria, Virginia; and

WHEREAS, Faccia Luna Pizzeria, L.L.C., plans to open a restaurant at 823 South Washington Street and desires to establish and maintain in front of the restaurant an outdoor seating area that measures approximately 9 by 20 feet and which will encroach into the public right-of-way approximately nine feet; and

WHEREAS, the public right-of-way adjacent to the front of 823 South Washington Street is 22 feet wide and 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 Faccia Luna Pizzeria, L.L.C. (the "Applicant"), be, and the same hereby is, authorized to maintain an encroachment into the public right-of-way adjacent to 823 South Washington Street in the City of Alexandria, said encroachment consisting of an outdoor seating area measuring approximately nine feet by 20 feet which projects approximately nine feet into the public right-of-way, 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 the encroachment shall at all times be subject to the following conditions:

1. The outdoor seating area shall be delineated with a wrought iron fence similar to the fence used around the outdoor seating area at Southside 815 Restaurant, located at 815 South Washington Street.

2. A minimum pedestrian pathway of five feet shall be maintained between the seating area and the curb.

Section 3. That the authorization hereby granted to establish and maintain the encroachment described in Section 1 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 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 Applicant as named insureds and shall provide for the indemnification of the City of Alexandria and Applicant against any and all loss, liability and 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 cancelled, is not renewed or otherwise ceases to be in force and effect, the authorization herein granted to 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 the Applicant. 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 maintain the encroachment and by so maintaining the encroachment, Applicant shall be deemed to have promised and agreed to indemnify and hold 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 5. 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 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 Applicant shall timely pay to the City of Alexandria for the encroachment authorized herein the annual charge established pursuant to § 3-2-85 of The Code of the City of Alexandria, 1981, as amended.

Section 8. That the authorization herein granted to 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 Applicant remove 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, and shall not be liable to Applicant 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