

ORDINANCE NO. 3913

AN ORDINANCE authorizing encroachments into the public rights-of-way at 615 North St. Asaph Street and the 500 block of Wythe Street, in the City of Alexandria, Virginia.

WHEREAS, Madison Homes Inc. ("Applicant") is the developer of the property located at 615 North St. Asaph Street in the City of Alexandria, Virginia; and

WHEREAS, Applicant desires to establish and maintain several encroachments into the public right-of-way at 615 North St. Asaph Street and one encroachment into the public right-of-way at the 500 block of Wythe Street; and

WHEREAS, the public rights-of-way at those points in the 600 block of North St. Asaph Street and 500 block of Wythe Street will not be significantly impaired by these encroachments; and

WHEREAS, these encroachments have 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 these encroachments are not detrimental to the public interest; therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Applicant and the Applicant's successors (collectively, the "Owner") be, and the same hereby are, authorized to establish and maintain several encroachments into the public right-of-way at 615 North St. Asaph Street, and one encroachment into the public right-of-way at the 500 block of Wythe Street, which encroachments shall consist of: (1) a series of 10 projecting glass and steel canopies, each erected to a height of between eight and one-half feet to 10 feet above grade and measuring 13 feet, eight inches in width and projecting a maximum of four feet from the face of the building on North St. Asaph Street; (2) an entry canopy constructed of a metal frame and covered with canvas that will be erected to a height of approximately 10 feet above the sidewalk, will measure 14 feet in length across the front of the building and will project 11 feet from the building's front wall on North St. Asaph Street; (3) a balcony/bay window that will be erected a minimum of 10 feet above grade, will measure 20 feet in length across the front of the building, and will project one foot eight inches from the

building's front wall on North St. Asaph Street; and (4) a balcony/bay window that will be erected a minimum of 10 feet above grade, will measure 20 feet in length across the Wythe Street portion of the building, and will project one foot eight inches from the building's Wythe Street wall. Said encroachments may continue until they are removed or destroyed or the authorization to maintain them is terminated by the city; provided, that this authorization to establish and maintain the encroachments shall not be construed to relieve Owner of liability for any negligence on its part on account of or in connection with the encroachments and shall be subject to the provisions set forth below.

Section 2. That the authorization hereby granted to establish and maintain said encroachments 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 encroachments. 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 encroachments 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 encroachments from the public right-of-way, or the city, at its option, may remove the encroachments 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 encroachments and by so establishing and/or maintaining the encroachments, 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 encroachments.

Section 4. That the authorization herein granted to establish and maintain the encroachments shall be subject to Owner's maintaining the area of the encroachments 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 Owner shall timely pay to the City of Alexandria for the encroachments authorized herein the annual charge established in ' 3-2-85 of The Code of the City of Alexandria, Virginia, 1981, as amended.

Section 7. That the authorization herein granted to establish and maintain the encroachments 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 encroachments. 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 encroachments within the time specified, the city shall have the right to remove the encroachments, at the expense of Owner, and shall not be liable to Owner for any loss or damage to the structure of the encroachments caused by the removal.

Section 8. That this ordinance shall be effective upon the date and at the time of its final passage.

KERRY J. DONLEY
Mayor

ATTEST:

Beverly I. Jett, CMC, City Clerk

Final Passage: January 25, 1997