

ORDINANCE NO. 3945

AN ORDINANCE authorizing the owner of the real property bounded by Thompson's Alley, North Lee Street, Queen Street and North Union Street, and the owner's successors in title, to establish and maintain several encroachments into the public rights-of-way of North Lee, Queen and North Union Streets, in the City of Alexandria, Virginia.

WHEREAS, Queen Street, L.L.C., a Virginia limited liability company, is the owner of the above-ground portion of the real property bounded by Thompson's Alley, North Lee Street, Queen Street and North Union Street, in the City of Alexandria, Virginia, and Union Street, L.L.C., also a Virginia limited liability company, is the owner of the below-ground portion of this property; and

WHEREAS, Queen Street, L.L.C., through applicant Lawrence N. Brandt Inc., desires to establish and maintain (1) steps which will encroach into the public right-of-way in the 200 block of North Lee Street, (2) two bay windows which will encroach into the public right-of-way in the 100 block of Queen Street, and (3) planters which will encroach into the public right-of-way at the 200 block of North Union Street; and

WHEREAS, Union Street, L.L.C., through applicant Lawrence N. Brandt Inc., desires to establish and maintain a stormwater management structure which will encroach into the public right-of-way beneath the corner of Queen and North Union Streets; and

WHEREAS, these encroachments are shown on the plat prepared by Holland Engineering and dated March 27, 1997, ("Plat"); and

WHEREAS, the above-referenced public rights-of-way 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 Queen Street, L.L.C., and its successors in title (hereafter collectively the "Owner A") be, and the same hereby are, authorized to establish and maintain encroachments into the public right-of-way in the 200 block of North Lee Street, the 100 block of Queen Street and the 200 block of North Union Street, in the City of Alexandria, said encroachments consisting of: (i) a 16-foot wide, 87.75-foot long encroachment for steps abutting lots 1 through 5 in the 200 block of North Lee Street; (ii) a 2.5-foot wide, 33-foot long encroachment for bay windows abutting lots 10 and 11 in the 100 block of Queen Street; (iii) a 2.5-foot wide, 49.5-foot long encroachment for bay windows abutting lots 14 through 16 in the 100 block of Queen Street; and (iv) a 2.5-foot wide and 50-foot long encroachment for planters in the 200 block of North Union Street, all as shown on the Plat, until the encroachments 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 A 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 Union Street L.L.C., and its successors in title (hereafter collectively the "Owner B") be, and the same hereby is, authorized to establish and maintain an encroachment into the public right-of-way beneath the corner of Queen and North Union Streets, necessary for the construction of a storm water management structure for the underground parking garage at this location, the size of such encroachment to be determined by the director of transportation and environmental services, 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 B 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 3. That the authorization hereby granted by Section 1 to establish and maintain encroachments shall at all times be subject to the condition that a minimum 5-foot clear sidewalk shall be maintained at all times along on North Lee Street, Queen Street and North Union Street.

Section 4. That the authorization hereby granted by Section 1 and Section 2 to establish and maintain encroachments shall be subject to and conditioned upon Owner A and Owner B each 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

Each liability insurance policy shall identify the City of Alexandria and the appropriate Owner as named insureds, and shall provide for the indemnification of the City of Alexandria and such 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 A or Owner B, as the case may be, shall, upon notice from the city, remove the encroachments from the public rights-of-way, or the city, at its option, may remove the encroachments at the expense and risk of the Owner. Nothing in this section shall relieve Owner A or Owner B of its obligations and undertakings required under this ordinance.

Section 5. That by accepting the authorization hereby granted by Section 1 and Section 2 granted to establish and maintain the encroachments and by so establishing and/or maintaining the encroachments, Owner A and Owner B 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 6. That the authorization herein granted by Section 1 to establish and maintain encroachments shall be subject to Owner A maintaining the area of the encroachments at all times unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter.

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 Owner A 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, Virginia, 1981, as amended.

Section 9. That the authorization herein granted by Section 1 and Section 2 to establish and maintain 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 A or Owner B the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished such Owner without cost to the city. If such 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 the Owner, and shall not be liable to Owners for any loss or damage to the structure of the encroachment caused by the removal.

Section 10. 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: June 24, 1997