

ORDINANCE NO. 3959

AN ORDINANCE authorizing the contract purchaser of the parcel of property at the corner of Cameron Street and Commonwealth Avenue to establish and maintain an encroachment into the public right-of-way of Cameron Street, in the City of Alexandria, Virginia.

WHEREAS, Flaut, Inc., is the contract purchaser of Lot 900, as shown on the plat dated June 12, 1997, and prepared by Holland Engineering ("Plat") (attached hereto), which lot is located at the corner of Cameron Street and Commonwealth Avenue, in the City of Alexandria; and

WHEREAS, in connection with the development of the above-referenced property, Flaut, Inc., desires to establish and maintain outdoor seating for a restaurant which will encroach into the public right-of-way at the corner of Cameron Street and Commonwealth Avenue, as shown on the Plat; and

WHEREAS, the public right-of-way at that point at the corner of Cameron Street and Commonwealth Avenue 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; 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 Flaut, Inc. (the "Applicant"), and only the Applicant, be, and the same hereby is, authorized to establish and maintain an encroachment into the public right-of-way at the corner of Cameron Street and Commonwealth Avenue in the City of Alexandria, as shown on the Plat, said encroachment consisting of approximately 485 square feet, 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 4. 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 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 in ' 3-2-85 of The Code of the City of Alexandria, Virginia, 1981, as amended.

Section 8. 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, 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

Attachment: Plat

Introduction: 10/14/97  
First Reading: 10/14/97  
Publication: 10/16/97  
Public Hearing: 10/25/97  
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