

ORDINANCE NO. 3992

AN ORDINANCE authorizing the owner of the property at 1623 Fern Street to establish and maintain an encroachment into the public right-of-way of 1623 Fern Street, in the City of Alexandria, Virginia.

WHEREAS, Sung Jin Kim ("Owner") is the owner of the property located at 1623 Fern Street in the City of Alexandria, Virginia; and

WHEREAS, the Owner desires to establish and maintain a space for outdoor restaurant seating, which space will encroach into the public sidewalk right-of-way at 1623 Fern Street; and

WHEREAS, the public right-of-way at 1623 Fern 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 city council of Alexandria that this encroachment is not detrimental to the public interest; therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Owner, and only Owner, be, and the same hereby is, authorized to establish and maintain an encroachment into the public right-of-way of 1623 Fern Street in the City of Alexandria for outdoor restaurant seating, which encroachment shall extend approximately two feet in width and 35.3 feet in length into the public sidewalk right-of-way at 1623 Fern Street, 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 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 Owner complying with all applicable requirements imposed by city and state law, including the Virginia Uniform Statewide Building Code and chapter 2 (food handling establishments), chapter 5 (noise) and chapter 10 (smoking) of title XI of the city code, and with the following specific conditions:

- (a) a minimum pedestrian pathway of five feet be maintained at all times within the public street right-of-way along Fern Street adjacent to Owner's property; and
- (b) no music or other form of entertainment may take place within, or be piped (e.g., through loudspeakers) into, the encroachment area.

Section 3. That the authorization hereby granted to establish and maintain said encroachment 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 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, Owner 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 Owner. 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 establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, 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 encroachment.

Section 5. That the authorization herein granted to establish and maintain the encroachment shall be subject to Owner 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 Owner 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 Owner the removal of the encroachment. 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 encroachment within the time specified, the city shall have the right to remove the encroachment, at the expense of Owner, and shall not be liable to 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

Introduction:	4/14/98
First Reading:	4/14/98
Publication:	4/15/98; 4/16/98
Public Hearing:	4/18/98
Second Reading:	4/18/98
Final Passage:	4/18/98