

ORDINANCE NO. 4112

AN ORDINANCE authorizing Warwick Village Civic Association to establish and maintain an encroachment into the public right-of-way at the intersection of Kennedy Street and Mount Vernon Avenue, in the City of Alexandria, Virginia.

WHEREAS, Warwick Village Civic Association desires to establish and maintain, and has applied for, an encroachment into the right-of-way at 1 Kennedy Street and 2 Kennedy Street, which encroachment shall consist of two identical brick piers (one on each side of Kennedy Street) each of which is approximately (i) 2 feet deep, (ii) 2 feet wide, and (iii) 6 feet, 4 inches tall; and each of which is located in the public right-of-way approximately 5 feet at its closest point to the curb of Kennedy Street and approximately 17 feet at its closest point to the curb of Mount Vernon Avenue; and

WHEREAS, the requested encroachment will not obstruct or narrow the public sidewalk adjacent to it, and the public right-of-way in front of 1 Kennedy Street and 2 Kennedy Street will not be impaired significantly by the requested 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 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 Warwick Village Civic Association and its successors in interest (hereafter collectively the "Applicant") be, and the same hereby is, authorized to establish and maintain an encroachment into the public right-of-way at 1 Kennedy Street and 2 Kennedy Street in the City of Alexandria, said encroachment consisting of two identical brick piers (one on each side of Kennedy Street) each of which is approximately (i) 2 feet deep, (ii) 2 feet wide, and (iii) 6 feet, 4 inches tall; and each of which is located in the public right-of-way approximately 5 feet at its closest point to the curb of Kennedy Street and approximately 17 feet at its closest point to the curb of Mount Vernon Avenue, all as more particularly shown on the partial site plan and design and construction drawings attached hereto, 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 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 insurers and shall provide for the indemnification of the City of Alexandria and Applicant against any and all loss, liability and costs related thereto, including attorneys' 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 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 her obligations and undertakings required under this ordinance.

Section 3. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and 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 loss and liability (including attorneys' fees and litigation expenses) arising by reason of the establishment, construction, placement, existence, use or maintenance of the encroachment.

Section 4. 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 5. That the authorization herein granted to establish and maintain the encroachment shall be conditioned upon the Applicant (i) placing the piers so that neither one interferes with existing underground facilities, including but not limited to the storm sewer adjacent to the proposed pier location on the south side of Kennedy Street, and (ii) maintaining both piers.

Section 6. 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 that Applicant remove the encroachment. Said removal shall be completed within sixty days of the date of the notification 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 7. That this ordinance shall be effective upon the date and at the time of its final passage.

KERRY J. DONLEY
Mayor

Attachment: Site Plan and Drawings

Introduction: 3/14/00
First Reading: 3/14/00
Publication: 3/15/00; 3/16/00
Public Hearing: 3/18/00
Second Reading: 3/18/00
Final Passage: 3/18/00