

ORDINANCE NO. 4270

AN ORDINANCE authorizing the owner of the property at 300 South Lee Street to establish and maintain an encroachment for two window wells and a front stoop into the public sidewalk right-of-way at 300 South Lee Street, in the City of Alexandria, Virginia.

WHEREAS, Brian and/or Elizabeth Gibney (AOwner@) are the owners of the residential property located at 300 South Lee Street, in the City of Alexandria, Virginia; and

WHEREAS, Owner desires to establish and maintain two window wells and a front stoop which will encroach into the public sidewalk right-of-way at 300 South Lee Street; and

WHEREAS, the public right-of-way at that point on 300 South Lee 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 Council of the City of Alexandria that this encroachment is not detrimental to the public interest; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Owner be, and the same hereby is, authorized to establish and maintain an encroachment into the public sidewalk right-of-way of 300 South Lee Street, in the City of Alexandria, said encroachment consisting of two window wells and a front stoop, as generally shown on the Encroachment Plan 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 Owner of liability for any negligence on his 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 Owner maintaining, at all times and at his 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 his 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/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 4. That the authorization herein granted to establish and maintain the encroachment shall be subject to Owner's maintaining the area of the encroachment at all times unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter, and maintaining at all times covers or guards over the window wells sufficient to prevent pedestrians or animals from falling into the wells.

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 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 7. That no structure shall be constructed within the encroachment area unless and until the Owner has: (1) caused a licensed structural engineer to perform a pre-construction survey of the adjacent property at 302 South Lee Street, but only if reasonable access to such adjacent property is afforded by the owner thereof, said survey to be provided to the owner of the adjacent property for review, and to the Director of Code Enforcement for review and approval, (2) caused a licensed structural engineer to perform a full and detailed engineering study of the proposed construction, and construction methods and techniques designed to minimize the impact thereof on the adjacent property, said study to be provided to the owner of the adjacent property for review, and to the Director of Code Enforcement for review and approval, prior to construction, and (3) posted with the

City Attorney a bond with surety from a licensed company, or such other form of security, approved by the City Attorney, in such reasonable amount as determined by the Director of Code Enforcement, and conditioned to secure the adjacent owner against any and all loss or damage to the adjacent property proximately caused by any construction work at 300 South Lee Street, such security to remain in force and effect during the period of construction and for a period of one year after the date of final completion of construction, as determined by the Director of Code Enforcement.

Section 8. That in the event any buried structural remains (walls, foundations, wells, privies, cisterns, etc.) or concentrations of artifacts are discovered during construction, the Owner shall cause Alexandria Archaeology to be notified immediately at 703-838-4399, and all work in the area of the discovery shall forthwith cease until a City Archaeologist comes to the site and records the discovery, and, further, that the Owner shall cause verbatim notice of this provision to appear on the face of plans and construction drawings for the work authorized by this encroachment, such that on-site contractors are made aware of this provision.

Section 9. That this ordinance shall be effective upon the date and at the time of its final passage.

KERRY J. DONLEY
Mayor

Attachment: Encroachment Plan

Introduction:	10/08/02
First Reading:	10/08/02
Publication:	10/10/02
Public Hearing:	10/19/02
Second Reading:	10/19/02
Final Passage:	10/19/02