

ORDINANCE NO. 4312

AN ORDINANCE authorizing Potomac Greens Associates, LLC, and its successors in interest to establish and maintain encroachments for landscaping and decorative fixtures into the public sidewalk rights-of-way within the Potomac Greens development.

WHEREAS, Potomac Greens Associates, LLC (Applicant) was the applicant for Encroachment No. 2003-0002, approved by City Council on May 17, 2003, as part of the approval for the Potomac Greens development, Development Special Use Permit No. 2002-0026 (ADSUP No. 2002-0026"); and

WHEREAS, Applicant desires to establish and maintain certain landscaping and decorative features which will encroach into the public sidewalk rights-of-way within the development; and

WHEREAS, the said 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; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Applicant and its successors in interest be, and the same hereby are, authorized to establish and maintain encroachments into the public sidewalk rights-of-way within the Potomac Greens development for stoops, railings, upper level bays, decorative embellishments and roof overhangs, as generally shown on the preliminary plans approved in connection with DSUP No. 2B2-0026, but subject to Conditions No. 34, 35, 36 and 37 of DSUP No. 2002-0026, and as definitively shown on the as-built site plan or plans for the development which are to be filed with and approved by the city from time to time, until the encroachments are removed or destroyed or the authorization to maintain same are terminated by the city; provided, that this authorization to establish and maintain the encroachments shall not be construed to relieve Applicant or its successors in interest of liability for any negligence on its or their part on account of or in connection with the

encroachments 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 or its successors in interest maintaining, at all times and at his own expense, a single policy of 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 and its successors in interest as named insureds and shall provide for the indemnification of the City of Alexandria and Applicant and its successors in interest 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, Applicant and its successors in interest 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 and its successors in interest. Nothing in this section shall relieve Applicant and its successors in interest of its or their 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, Applicant and its successors in interest 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 4. That the authorization herein granted to establish and maintain the encroachments shall be subject to Applicant and its successors in interest maintaining the area of the encroachments at all times unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter.

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 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 Applicant and its successors in interest the removal of the encroachments. Said removal shall be completed by the date specified in the notice and shall be accomplished by Applicant and its successors in interest without cost to the city. If Applicant and its successors in interest 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 its successors in interest, and shall not be liable to Applicant and its successors in interest for any loss or damage to the structure of the encroachments caused by the removal.

Section 7. That for purposes of this ordinance, the Applicant=s successors in interest shall be deemed to be the Homeowners= Association or Associations or like entities (AHOA@) established for the Potomac Greens development, and not the individual homeowners within the development; so long as the declarations establishing the HOA grant the HOA the necessary authority to comply with all the terms of this ordinance, as determined by the city attorney.

Section 8. That this ordinance shall be effective upon the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

Final Passage: September 13, 2003

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