

ORDINANCE NO. 4317

AN ORDINANCE authorizing the Stabler Leadbeater Apothecary Museum to establish and maintain an encroachment for bay windows into the public sidewalk right-of-way at 105 South Fairfax Street, in the City of Alexandria, Virginia.

WHEREAS, the Stabler Leadbeater Apothecary Museum (AOwner@) is the Owner of the museum property located at 105 South Fairfax Street, in the City of Alexandria, Virginia; and

WHEREAS, Owner desires to establish and maintain a stoop and ADA lift which will encroach into the public sidewalk right-of-way at 105 South Fairfax Street; and

WHEREAS, the public right-of-way at that point on 105 South Fairfax 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 at 105 South Fairfax Street, in the City of Alexandria, said encroachment consisting of a stoop and ADA lift, 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 the authorization hereby granted to establish and maintain said encroachment shall in addition be subject to and conditioned upon the following terms:

- (a) Neither the City of Alexandria nor any public utility company shall be responsible for damage to Owner=s property encroaching into the public right-of-way during repair, maintenance or replacement of the public right-of-way or any public facilities or utilities in the area of encroachment.
- (b) Owner shall call Alexandria Archaeology (703-838-4399) two weeks prior to any ground disturbing activity (such as coring, grading, filling, vegetation removal, undergrounding utilities, pile driving, landscaping and other excavations as defined in Section 2-151 of the City of Alexandria Zoning Ordinance) on the Owner=s property and adjacent right-of-way. City archaeologists will provide on-site inspections to record significant finds. This statement must appear in the General Notes of the site plan, so that on-site contractors are aware of the requirement.
- (c) Owner shall call Alexandria Archaeology (703-838-4399) immediately if any buried structural remains (wall foundations, wells, privies, cisterns, etc.) or concentrations of artifacts are discovered during construction or renovation on the property or in the adjacent right-of-way. Work must cease in the area of the discovery until a City archaeologist comes to the site and records the finds. This statement must appear in the General Notes of the site plan, so that on-site contractors are aware of the requirement.

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

WILLIAM D. EUILLE  
Mayor

Final Passage:           October 18, 2003

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