

ORDINANCE NO. 4543

AN ORDINANCE to vacate a portion of the public right-of-way located adjacent to and below 206 Reineker's Lane (VAC No. 2007-0001), and to permit an encroachment for existing stairs and planters located along the public right-of-way of 1701 Duke Street.

WHEREAS, Carr Properties, Inc. ("Owner") has applied for a vacation to permit an underground parking garage to extend into the area adjacent to and below the public right-of-way on the east side of Reineker's Lane, in the City of Alexandria, Virginia; and

WHEREAS, the Planning Commission of the City of Alexandria at one of its regular meetings recommended approval of the vacation of such public right-of-way at this location; and

WHEREAS, the Council of the City of Alexandria has approved the recommendation of the Planning Commission; and

WHEREAS, viewers, Dennis L. Jones, chair, Tom Welsh and William L. Brandon, have been, and again by this ordinance are, duly appointed by the Council of the City of Alexandria, to make their reports in conjunction with this vacation; and

WHEREAS, the procedures required by law, including the publication of notice in a newspaper of general circulation in the City of Alexandria, have been followed in conjunction with this vacation; and

WHEREAS, in consideration of the reports of the viewers, of other evidence relative to this vacation and of compliance with the conditions set forth in this ordinance, the Council of the City of Alexandria, has determined that the portion of the public right-of-way to be vacated is no longer desirable for public use and that the public interest will not be harmed by this vacation; and

WHEREAS, in connection with such vacation Owner also wishes to reconstruct and maintain stairs and planters that are currently located in the public right-of-way along 1701 Duke Street, and the public right-of-way will not be significantly impaired by this encroachment, and this encroachment will not be detrimental to the public interest; and therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the vacation of the public right-of-way to Owner, consisting of an area encumbering approximately 910 square feet, and measuring approximately 12 feet in width by 32 feet in depth and extending a distance of 125 feet, located beneath the Reineker's Lane right of way, for the purpose of permitting Owner to extend a three level parking garage into said area, as shown on the plat of vacation attached hereto and incorporated herein by reference, be, and the same hereby is, approved.

Section 2. That the vacation made and provided by the preceding section of this ordinance be, and the same hereby is, subject the conditions set forth below:

- (a) Owner shall prepare a plat of consolidation, showing the property vacated and all easements therein, and consolidating such property with the adjoining lot, and the plat of consolidation shall be filed with the directors of Planning & Zoning and Transportation & Environmental Services and recorded in the land records of the City of Alexandria.
- (b) Easements shall be reserved for all existing public and private utilities within the area vacated. Owner shall show all easements on the plat of consolidation.
- (c) City of Alexandria reserves an easement for subsurface rights within the vacated area outside the limits of the parking garage structure for any future public utilities. City of Alexandria also reserves a permanent surface easement for public right-of way access and use.
- (d) Owner shall not use the vacated land to derive any increased above grade development rights for the lands adjacent to the vacated area, including increased floor area, subdivision rights or additional dwelling units; however, Owner may develop the below grade area and build improvements. The above grade restrictions and below grade improvement rights shall appear as part of the deed of vacation and shall also appear as a note on the consolidation plat, both of which shall be approved by the directors of Planning & Zoning and Transportation & Environmental Services prior to recordation.
- (e) Owner shall be responsible for perpetual ownership, development and maintenance of the improvements constructed in the vacated right-of-way.
- (f) The City of Alexandria shall own and maintain the sidewalk constructed in the public right of way; however, the Owner shall maintain the sidewalk constructed in the vacated right of way. The sidewalk constructed on Owner's property shall be privately owned and maintained, and publicly accessible, via a public right-of-way access easement that allows the public to use the sidewalk.
- (g) Owner shall pay the sum of \$ 51,000.00 to the City for the vacated land.

Section 3. The term "Owner" shall be deemed to include Carr Properties, Inc. and all respective successors in interest.

Section 4. That the city manager be, and hereby is, authorized to do on behalf of the City of Alexandria all things necessary or desirable to carry into effect this vacation, including the execution of documents.

Section 5. That the city clerk be, and hereby is, authorized to attest the execution by the city manager of all documents necessary or desirable to carry into effect this vacation, and to affix thereon the official seal of the City of Alexandria, Virginia.

Section 6. That Owner is authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 1701 Duke Street, in the City of Alexandria, said encroachment consisting of stairs located along the Duke Street frontage of 1701 Duke Street extending approximately 3.68 feet into the public right-of-way for a length of approximately 29.65 feet; and also consisting of two planters, each extending approximately 4.68 feet into the public right-of-way, the first located closest to Reineker's Lane being approximately 6.6 feet long and the second located at the opposite end of the stairs being approximately 6.7 feet long, as generally shown on the plat 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 its part on account of or in connection with the encroachment.

Section 7. 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 or private 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) The Owner shall be responsible for replacement and repairs to the adjacent City right-of-way, including any areas damaged during construction activity.

Section 8. 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 9. That the authorization herein granted to establish and maintain the encroachment shall be subject to Owners and Tenant maintaining the area of the encroachment at all times unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter.

Section 10. 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 11. 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 Owners 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 or personal property within the encroachment area, caused by the removal.

Section 12. That this ordinance shall be effective upon the date and at the time of its final passage; provided, however, that no recordation of this ordinance shall have any force or effect unless and to the extent annexed to a deed, executed by the city manager and attested by the city clerk, conveying the property vacated to Owner. The execution of such deed shall constitute conclusive evidence of compliance with the provisions of this ordinance. Such deed shall be recorded and indexed in the name of the City of Alexandria, as grantor, and Owner as grantee, and such recordation shall be done by the grantee at their own expense. In the event no such deed is recorded within 18 months of the effective date, this ordinance shall be void and of no effect.

WILLIAM D. EUILLE
Mayor

Attachments: Plat of vacation

Final Passage: May 20, 2008

