

ORDINANCE NO. 4561

AN ORDINANCE authorizing Carlyle Centre, L.P., and its successors in interest, to establish and maintain an encroachment for three entrance canopies over the public sidewalk right-of-way at Carlyle Center, 310 Hoofs Run Drive, in the City of Alexandria, Virginia.

WHEREAS, Carlyle Centre, L.P., is the Owner of the property located at 310 Hoofs Run Drive, in the City of Alexandria, Virginia; and

WHEREAS, Owner desires to establish and maintain three entrance canopies which will encroach over the public right-of-way at each of the three building entrances entering the building known as Carlyle Centre, at 310 Hoofs Run Drive; and

WHEREAS, the public rights-of-way at those locations of the sidewalk adjacent to Carlyle Center 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 over the public right-of-way in the City of Alexandria, said encroachment consisting of three entrance canopies, as follows: 1) "Canopy A", which is approximately 7 feet wide and 27 feet long, wrapping around the building at the corner of John Carlyle Street and currently Hoofs Run Drive (which will be the future location of Eisenhower Park Drive), extending approximately 6 feet and 10 inches over the public right-of-way; and 2) "Canopy B", which is 7 feet wide and 33 feet and 10 5/8 inches long, wrapping around the building at the corner of John Carlyle Street and Savoy Street, extending approximately 6 feet and 10 inches over the public sidewalk right-of-way; and 3) "Canopy C", which is 7 feet wide and 14 feet and 9 1/8 inches long, extending approximately 6 feet and 9 inches over the public sidewalk right-of-way, as shown on the final site plan attached hereto and approved by DSUP No. 2006-0012, 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 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 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:	\$1,000,000 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 as an additional insured and shall provide coverage for the City of Alexandria and Owner against claims, losses or actions 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 its 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) The Owner shall be responsible for replacement and repairs to the adjacent City right-of-way, including any areas damaged during construction activity.

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 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 or personal property within the encroachment area, caused by the removal.

Section 8. The term “Owner” shall be deemed to include Carlyle Centre, L.P., Carlyle Center L.L.C. and their respective successors in interest.

Section 9. 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, 2008

Attachment: Final Site Plan