

ORDINANCE NO. 4751

AN ORDINANCE authorizing the owner of the property located at 923 King Street to construct and maintain an encroachment for two (2) bay windows and a front door entry way on the King Street right of way and two (2) bay windows and a portion of a building wall on the Patrick Street right of way at that location.

WHEREAS, Seyed Hossein Shoja-Maddahi is the owner (“Owner”) of the property located at 923 King Street, in the City of Alexandria, Virginia; and

WHEREAS, Owner desires to establish and maintain bay windows, a portion of a building wall and a front door entry way which will encroach into the public sidewalk right-of-way on King Street and on Patrick Street at that location; and

WHEREAS, the public sidewalk right-of-way at that location will not be significantly impaired by this encroachment; and

WHEREAS, in Encroachment No. 2011-0004 the Planning Commission of the City of Alexandria recommended approval to the City Council subject to certain conditions at one of its regular meetings held on December 6, 2011 which recommendation was approved by the City Council at its public hearing on December 17, 2011 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 923 King Street as shown in the encroachment plat labeled Attachment A attached hereto and incorporated fully herein by reference, in the City of Alexandria, said encroachment consisting of two (2) bay windows and a front door entry way on King Street and two (2) bay windows and a portion of a building wall on Patrick Street, 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 their 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 their 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 their 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) The applicant (and his successors, if any) shall maintain a minimum 4.44-foot wide unobstructed sidewalk in front of the new bay window encroachment on North Patrick Street as shown on the submitted plan and shall maintain the existing unobstructed sidewalk widths in front of all other encroachments, unless amended by subsequent encroachment or outdoor dining approval.

(b) Neither the City nor any private utility company will be held responsible for damage to the private improvements in the public right-of-way during repair, maintenance or replacement of any utilities that may be located within the area of the proposed encroachment.

(c) In the event the City shall, in the future, have need for the area of the proposed encroachment, the applicant shall remove any structure that encroached into the public right-of-way, within 60 days, upon notification by the City.

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 terms "Owner" shall be deemed to include their 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

Attachment: Encroachment plat

Final Passage: February 25, 2012