

ORDINANCE NO. 5283

AN ORDINANCE authorizing the owner of the property located at 430 South Pickett Street to construct and maintain an encroachment for a seat wall and trench drain at that location.

WHEREAS, NGI-MDG Alexandria, LLC, is the Owner (“Owner”) of the property located at 430 South Pickett Street, in the City of Alexandria, Virginia; and

WHEREAS, Owner desires to establish and maintain a seat wall and trench drain which will encroach into the public sidewalk right-of-way 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. 2019-00011 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 March 3, 2020, which recommendation was approved by the City Council at its public hearing on March 14, 2020; 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 430 South Pickett Street as shown in the attached Encroachment Plat, in the City of Alexandria, said encroachment consisting of a seat wall and trench drain, 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) 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.
- (c) In the event the City shall, in the future, have need for the area of the proposed encroachment, the Owner shall remove any structure that encroached into the public right-of-way, within 60 days, upon notification by the City.
- (d) Within the encroachment areas identified in the metes and bounds exhibit, no additional equipment or structures may be erected, and no existing equipment or structures shall be enlarged or intensified without prior approval of the Directors of Planning & Zoning and Transportation & Environmental Services.
- (e) The Owner shall bear all cost associated with the removal of the encroachments.
- (f) The Owner shall maintain the following minimum, unobstructed sidewalk widths:
 - 1. Five feet, ten inches (5'10") in between the proposed wall and the existing tree wells; and
 - 2. Seven feet, four inches (7'4") in between the proposed wall and the face of the building, as per the submitted plans.
- (g) The wall itself shall not exceed 2' in height when measured vertically from the sidewalk, as per the submitted plans.

- (h) The ceramic potted urns shall be removed from the wall and replaced with a stone cap or similar.

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 NGI-MDG Alexandria, LLC, and its respective successors in interest.

Section 9. That this ordinance shall be effective upon the date and at the time of its final passage.

JUSTIN M. WILSON
Mayor

Attachment: Encroachment plat

Final Passage: 6/20/20