

ORDINANCE NO. 5476

AN ORDINANCE authorizing the Owner and Tenant of the property located at 2462 Mandeville Lane, Alexandria, VA 22332, to construct and maintain an encroachment for an outdoor dining use at that location.

WHEREAS, Foundry Associates Owner, LLC is the Owner (“Owner”) of the property located at 2462 Mandeville Lane, Alexandria, VA 22332, in the City of Alexandria, Virginia; and

WHEREAS, Nando’s Restaurant Group is the Tenant (“Tenant”) of the property located at 2462 Mandeville Lane, Alexandria, VA 22332, in the City of Alexandria, Virginia; and

WHEREAS, Owner and Tenant desire to establish and maintain outdoor dining facilities 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. 2022-00005 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 January 5, 2023, which recommendation was approved by the City Council at its public hearing on January 21, 2023; 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 and Tenant be, and the same hereby are, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 2462 Mandeville Lane, Alexandria, VA 22332 as shown in the attached Encroachment Plat, in the City of Alexandria, said encroachment consisting of an outdoor dining use including tables, seating, pole mounted lighting, and non-permanent planters, 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 or Tenant 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 and/or Tenant 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 and/or Tenant as named insureds and shall provide for the indemnification of the City of Alexandria and Owner and/or Tenant 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 and Tenant 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 and Tenant. Nothing in this section shall relieve Owner and Tenant 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 or Tenant'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 and Tenant shall be responsible for replacement and repairs to the adjacent City right-of-way, including any areas damaged during construction activity, and shall repair or replace the sidewalk where the improvements were anchored into the concrete.
- (c) In the event the City shall, in the future, have need for the area of the proposed encroachment, the Owner or Tenant shall remove any structure that encroached into the public right-of-way, within 60 days, upon notification by the City. The Owner shall bear all the cost associated with any future removal of the encroachments.
- (d) The Owner or Tenant shall maintain the following minimum, unobstructed sidewalk widths:
 1. Seven feet (7') in between the proposed patio enclosure and the existing street tree wells on Hoffman Street; and
 2. Five feet, six inches (5' 6") in between the proposed patio enclosure and the top of the existing ADA sidewalk ramp on Hoffman Street; and
 3. Six feet, six inches (6' 6") in between the proposed patio enclosure and the top of the existing ADA sidewalk ramp on Mandeville Lane.

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 and Tenant 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 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 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 or Tenant the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Owner or Tenant without cost to the city. If Owner or Tenant 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 or Tenant, and shall not be liable to Owner or Tenant 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" and "Tenant" shall be deemed to include Foundry Associates Owner, LLC, and Nando's Restaurant Group 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.



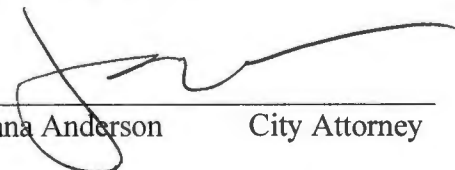
JUSTIN M. WILSON MAYOR

ATTEST:



Gloria A. Sitton, CMC City Clerk

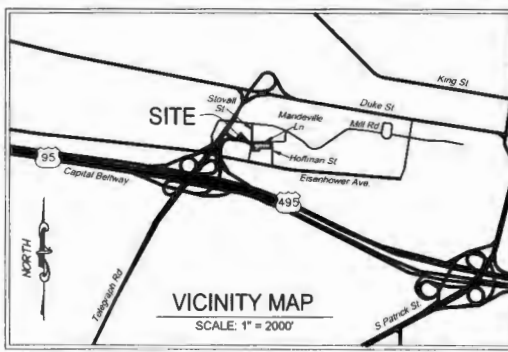
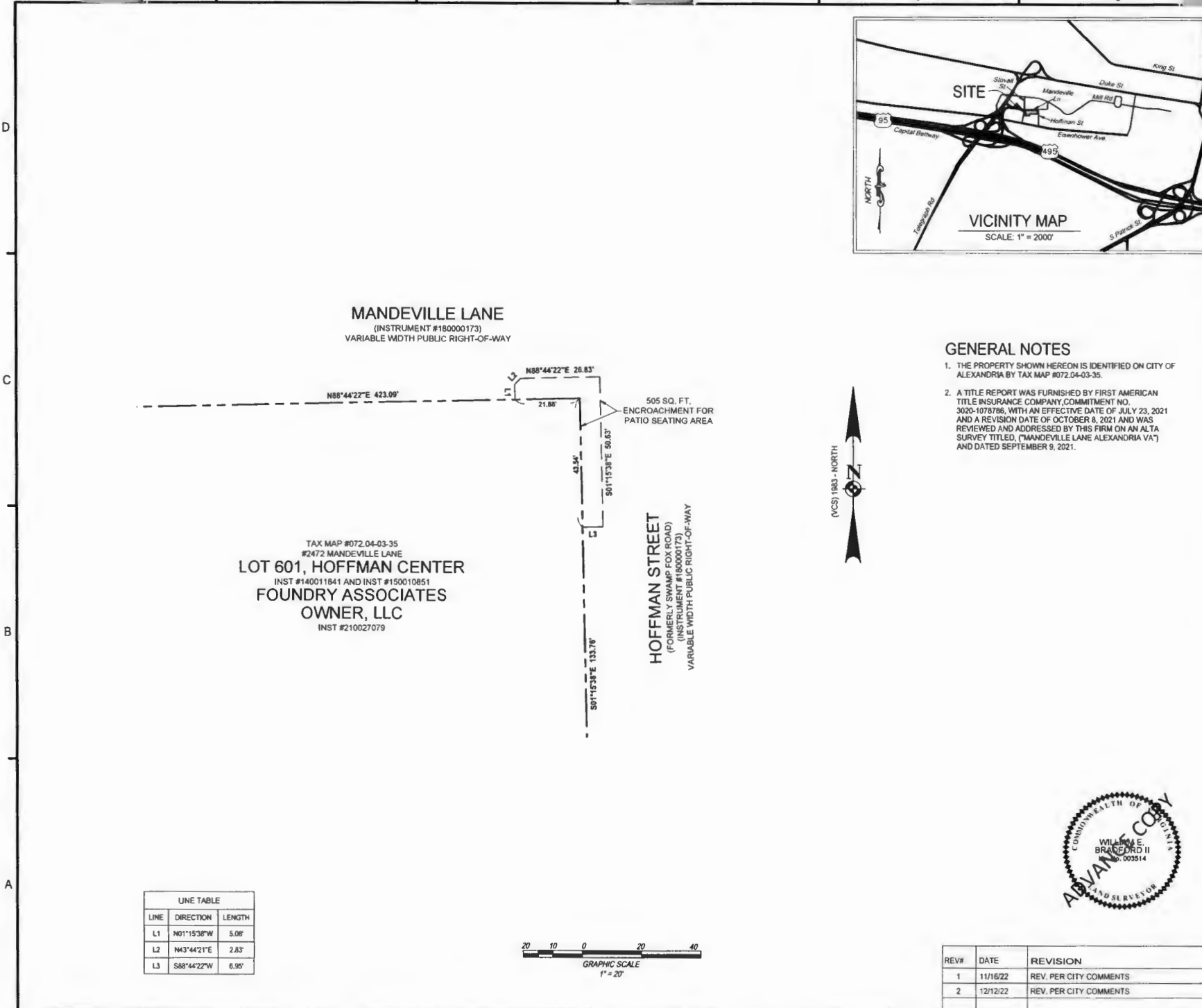
Approved as to Form:



Joanna Anderson City Attorney

Final Passage: February 25, 2023

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GENERAL NOTES

1. THE PROPERTY SHOWN HEREON IS IDENTIFIED ON CITY OF ALEXANDRIA BY TAX MAP #072.04-03-35.
2. A TITLE REPORT WAS FURNISHED BY FIRST AMERICAN TITLE INSURANCE COMPANY, COMMITMENT NO. 3020-1078786, WITH AN EFFECTIVE DATE OF JULY 23, 2021 AND A REVISION DATE OF OCTOBER 8, 2021 AND WAS REVIEWED AND ADDRESSED BY THIS FIRM ON AN ALTA SURVEY TITLED, ("MANDEVILLE LANE ALEXANDRIA VA") AND DATED SEPTEMBER 9, 2021.



LINE TABLE		
LINE	DIRECTION	LENGTH
L1	N01°15'38"W	5.08'
L2	N43°44'21"E	2.83'
L3	S88°44'22"W	6.95'



REV#	DATE	REVISION
1	11/16/22	REV. PER CITY COMMENTS
2	12/12/22	REV. PER CITY COMMENTS

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EXHIBIT SHOWING
 ENCROACHMENT FOR PATIO SEATING AREA
 MANDEVILLE LANE AND HOFFMAN STREET
 PUBLIC RIGHT-OF-WAY
 AT
LOT 601, HOFFMAN CENTER
 CITY OF ALEXANDRIA, VIRGINIA

PROJECT: 98085.067.00
DRAWING NO.: 112194
SCALE: 1" = 20'
DATE: 10/11/2022
DRAWN EAS CHECKED: MB/WEB
SHEET No. 1 of 1