

ORDINANCE NO. 5455

AN ORDINANCE authorizing the owners of the property located at 300 Hume Avenue to maintain an encroachment for a fence along the public right-of-way on Hume Avenue.

WHEREAS, Jeffrey W. and Jenafer B. Howard are the Owners ("Owners") of the property located at 300 Hume Avenue, in the City of Alexandria, Virginia; and

WHEREAS, Owners desire to maintain a fence which will encroach into the public right-of-way on Hume Avenue; and

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

WHEREAS, in Encroachment No. 2022-00001 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 September 6, 2022, which recommendation was approved by the City Council at its public hearing on September 17, 2022; 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 Owners be, and the same hereby are, authorized to establish and maintain an encroachment into the public right-of-way at 300 Hume Avenue as shown in the attached Encroachment Plat, in the City of Alexandria, said encroachment consisting of fencing in the public right-of-way on Hume Avenue, 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 Owners 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 Owners 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 Owners as named insureds and shall provide for the indemnification of the City of Alexandria and Owners 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, Owners 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 Owners. Nothing in this section shall relieve Owners 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 Owners' 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 Owners 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 Owners 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 encroachment.
- (d) The Owners shall bear all of the cost associated with maintenance of the improvements within the encroachment and associated with any future removal of the improvements within the encroachment.
- (e) The fence shall remain 50% open and there shall not be any shrubs, trees, or any other landscape planted or placed within the vision clearance triangle located behind the fence.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, Owners 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 Owners maintaining the area of the encroachment at all times unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous matter.

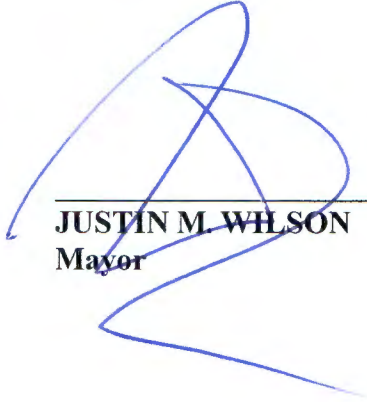
Section 6. That nothing in this ordinance is intended to constitute, or shall be deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any of its officers or employees.

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 Owners 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 Owners 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 Owners, and shall not be liable to Owners 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 "Owners" shall be deemed to include Jeffrey W. and Jenafer B. Howard and their respective successors in interest.

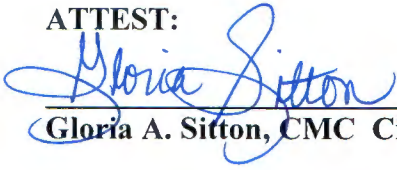
Section 9. That this ordinance shall be effective upon the date and at the time of its final passage.

Attachment: Encroachment plat



JUSTIN M. WILSON
Mayor

ATTEST:



Gloria A. Sifton, CMC City Clerk

APPROVED AS TO FORM:



Joanna Anderson City Attorney

NOTES: 1. FENCES ARE FRAME.

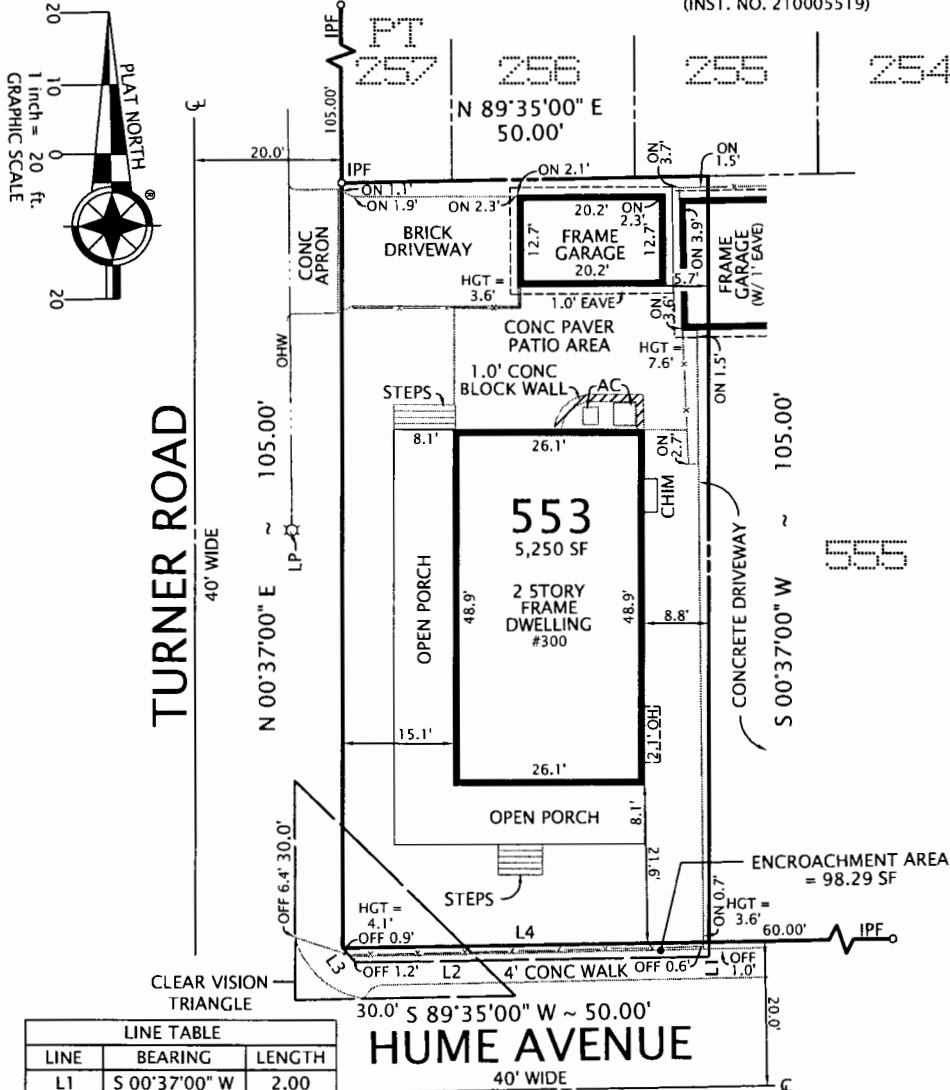
2. UTILITIES ARE UNDERGROUND.

3. TM: 024.02-08-11

4. ZONE: R 2-5

5. OWNERS: JEFFREY AND JENAHER HOWARD

300 HUME AVENUE
ALEXANDRIA, VA 22301-1019
(INST. NO. 210005519)



ENCROACHMENT PLAT

SHOWING HOUSE LOCATION ON
LOT 553

OF A RESUBDIVISION OF
LOTS 153, 154, 155, 156 &
PART OF LOT 152

ST. ELMO SUBDIVISION

(DEED BOOK 398, PAGE 36)

CITY OF ALEXANDRIA, VIRGINIA

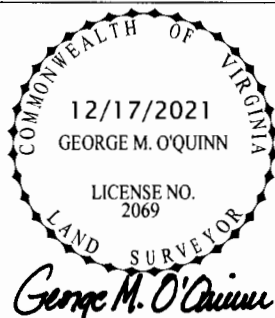
SCALE: 1" = 20' DECEMBER 17, 2021

CERTIFIED CORRECT:

THIS PLAT IS SUBJECT TO
RESTRICTIONS OF RECORD.

A TITLE REPORT WAS NOT FURNISHED.

NO CORNER MARKERS SET.



ORDERED BY:

JEFFREY HOWARD

DOMINION Surveyors Inc.®
8808-H PEAR TREE VILLAGE COURT
ALEXANDRIA, VIRGINIA 22309
703-619-6555
FAX: 703-799-6412

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CASE NAME: HOWARD

#210210001-1