

ORDINANCE NO. _____

AN ORDINANCE authorizing the owner of the property located at 1217 Colonial Avenue to construct and maintain an encroachment for a retaining wall at that location.

WHEREAS, John D. Bullington is the Owner ("Owner") of the property located at 1217 Colonial Avenue, in the City of Alexandria, Virginia; and

WHEREAS, Owner desires to maintain an existing retaining wall 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. 2020-0003 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 1, 2020, which recommendation was approved by the City Council at its public hearing on September 12, 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 1217 Colonial Avenue as shown in the attached Encroachment Plat, in the City of Alexandria, said encroachment consisting of a retaining wall, 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 his 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 his 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

1 This liability insurance policy shall identify the City of Alexandria and Owner as named insureds
2 and shall provide for the indemnification of the City of Alexandria and Owner against any and
3 all loss occasioned by the establishment, construction, placement, existence, use or maintenance
4 of the encroachment. Evidence of the policy and any renewal thereof shall be filed with the city
5 attorney's office. Any other provision herein to the contrary notwithstanding, in the event this
6 policy of insurance lapses, is canceled, is not renewed or otherwise ceases to be in force and
7 effect, the authorization herein granted to establish and maintain the encroachment shall, at the
8 option of the city, forthwith and without notice or demand by the city, terminate. In that event,
9 Owner shall, upon notice from the city, remove the encroachment from the public right-of-way,
10 or the city, at its option, may remove the encroachment at the expense and risk of Owner.
11 Nothing in this section shall relieve Owner of his obligations and undertakings required under
12 this ordinance.

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14 Section 3. That the authorization hereby granted to establish and maintain said
15 encroachment shall in addition be subject to and conditioned upon the following terms:

- 16
17 (a) Neither the City of Alexandria nor any public or private utility company shall be
18 responsible for damage to Owner's property encroaching into the public right-of-way
19 during repair, maintenance or replacement of the public right-of-way or any public
20 facilities or utilities in the area of encroachment.
21
22 (b) The Owner shall be responsible for replacement and repairs to the adjacent City
23 right-of-way, including any areas damaged during construction activity.
24
25 (c) In the event the City shall, in the future, have need for the area of the proposed
26 encroachment, the Owner shall remove any structure that encroached into the public
27 right-of-way, within 60 days, upon notification by the City.
28
29 (d) The applicant shall bear all the cost associated with any future removal of the
30 encroachments.

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32 Section 4. That by accepting the authorization hereby granted to establish and
33 maintain the encroachment and by so establishing and/or maintaining the encroachment, Owner
34 shall be deemed to have promised and agreed to save harmless the City of Alexandria from any
35 and all liability (including attorneys' fees and litigation expenses) arising by reason of the
36 establishment, construction, placement, existence, use or maintenance of the encroachment.

37
38 Section 5. That the authorization herein granted to establish and maintain the
39 encroachment shall be subject to Owner maintaining the area of the encroachment at all times
40 unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous
41 matter.

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43 Section 6. That nothing in this ordinance is intended to constitute, or shall be
44 deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any
45 of its officers or employees.
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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 John D. Bullington, and his respective successors in interest.

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

JUSTIN WILSON
Mayor

Attachment: Encroachment plat

Introduction: 10/6/2020

First Reading: 10/6/2020

Publication:

Public Hearing: 10/17/2020

Second Reading: 10/17/2020

Final Passage: 10/17/2020

