

Introduction and first reading:	4/13/04
Public hearing:	4/17/04
Second reading and enactment:	4/17/04

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE authorizing the tenant of 6 King Street to establish and maintain an encroachment for outdoor restaurant seating at 6 King Street, in the City of Alexandria, Virginia.

Summary

The proposed ordinance permits the restaurant located at 6 King Street to establish outdoor seating in the adjacent sidewalk area.

Sponsor

Staff

Eileen P. Fogarty, Director, Planning & Zoning
Ignacio B. Pessoa, City Attorney

Authority

§ 2.04(e), Alexandria City Charter

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

EXHIBIT NO. 2

ORDINANCE NO. _____

AN ORDINANCE authorizing the tenant of 6 King Street to establish and maintain an encroachment for outdoor restaurant seating at 6 King Street, in the City of Alexandria, Virginia.

WHEREAS, Thaiphon of Old Town, Inc. ("Tenant") is the Tenant of the property located at 6 King Street, in the City of Alexandria, Virginia; and

WHEREAS, Tenant desires to establish and maintain outdoor restaurant seating which will encroach into the public sidewalk right-of-way at 6 King Street; and

WHEREAS, the public sidewalk right-of-way at that point on at 6 King Street will not be significantly impaired by this encroachment; and

WHEREAS, this encroachment has been approved by the Planning Commission of the City of Alexandria at one of its regular meetings subject to certain conditions; 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 Tenant be, and the same hereby is, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 6 King Street, in the City of Alexandria, said encroachment consisting of outdoor restaurant seating, as generally shown on the plat attached hereto, 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 Tenant 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 Tenant 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

This liability insurance policy shall identify the City of Alexandria and Tenant as named insureds and shall provide for the indemnification of the City of Alexandria and 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, 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 Tenant. Nothing in this section shall relieve Tenant of his 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 utility company shall be responsible for damage to 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) A minimum pedestrian pathway of five feet shall be maintained, including where there are sidewalk features, such as light posts and trees.
- (c) Tenant shall obtain, at its expense, one Model SD-42 Bethesda Series litter receptacle for installation on the adjacent public right-of-way.
- (e) Tenant shall install and maintain landscaped planters, to include four seasons of plants in at least two black containers of a size, style and location approved by the Director of planning and Zoning.
- (f) Kitchen equipment shall not be cleaned outside, nor shall any cooking residue be washed into the streets, alleys or storm sewers.
- (g) Tenant shall control cooking odors, smoke and other air pollution from Tenant's operations at the site, and prevent them from leaving the property of becoming a nuisance to neighboring properties or the public, as determined by the Director of Transportation and Environmental Services.
- (h) Loudspeakers shall be prohibited from the exterior of the building, and no amplified sounds shall be audible at the property line, including within the encroachment area.

- (i) Tenant shall provide a menu or list of foods to be handled at this facility to the Alexandria Health department prior to opening.
- (j) Tenant shall conduct employee training sessions on an ongoing basis, including as new employee orientation, to clearly explain all encroachment provisions and requirements.
- (k) The Director of planning and Zoning shall review restaurant operations one year after the effective date of this ordinance, and shall docket this encroachment for consideration by the Planning Commission and City Council if (a) there have been documented violations of the conditions of this ordinance, (b) the Director has received a request from any person to docket this encroachment for review as a result of a complaint that rises to the level of a violation, or (c) the Director has determined that there are problems with the operation of the restaurant use or that new or revised conditions for this encroachment are needed.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, 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 Tenant's 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 Tenant the removal of the encroachment. Said removal shall be completed by the date specified in the notice and shall be accomplished by Tenant without cost to the city. If 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 Tenant, and shall not be liable to 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. That this ordinance shall be effective upon the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

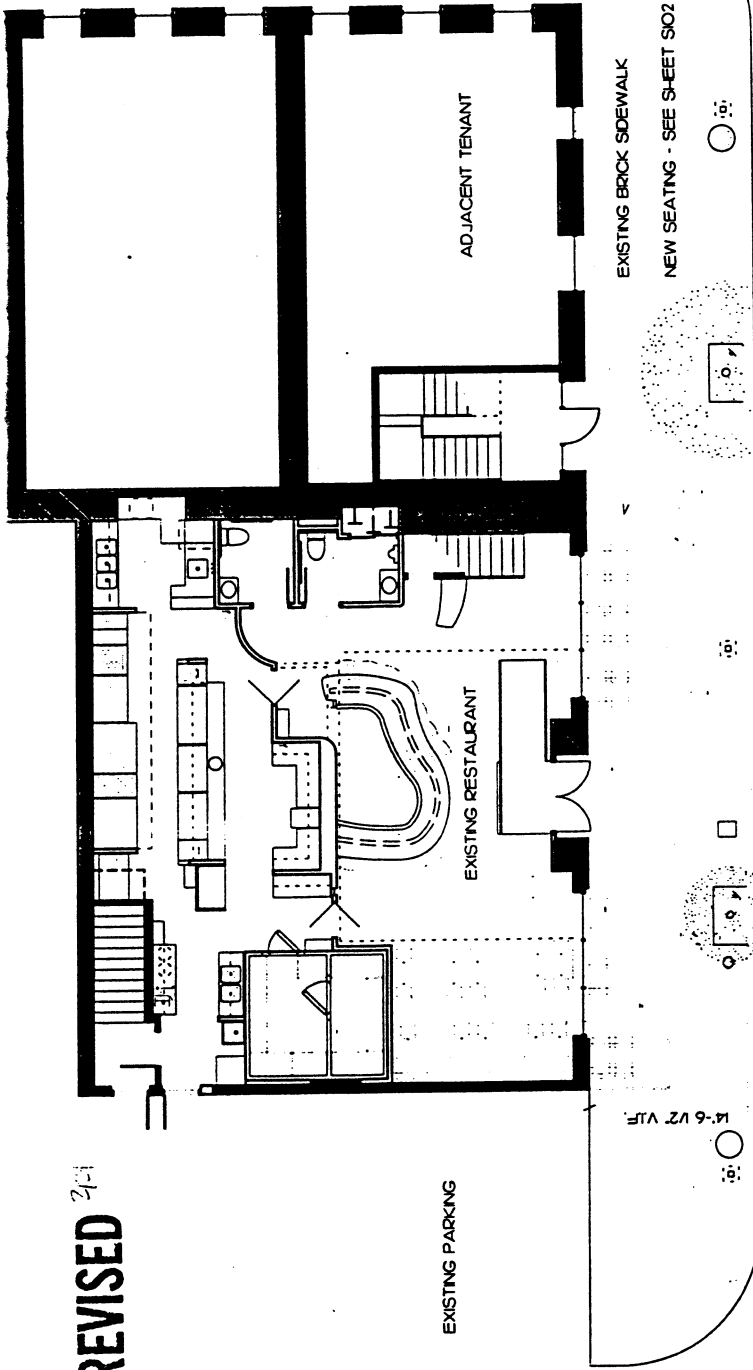
Attachment: Encroachment plat

Introduction: 4/13/04
First Reading: 4/13/04
Publication:
Public Hearing:
Second Reading:
Final Passage:

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REVISED 2/04

EXISTING PARKING



SITE PLAN
SCALE: 3/32" = 1'-0"

KING STREET

14'-6 1/2" V.L.F.

EXISTING BUILDING
TO REMAIN TYPICAL

NEW FABRIC AWNING
WITH 4'-0" OVER-HANG
NEW FIXED METAL
RAILING 3'-0" HIGH

2 KING STREET ELEVATION
SCALE: 3/32" = 1'-0"

ADJACENT TENANT

6 KING STREET

RICH MARKUS ARCHITECT
125 CONNECTICUT AVENUE NW
THIRD FLOOR
WASHINGTON DC 20036
202.633.9292

THAI RESTAURANT
6 KING STREET
OLD TOWN ALEXANDRIA VA

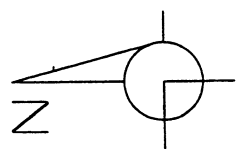
EXTERIOR SEATING
PLAN

3/32" = 1'-0"
30 FEB 2004

SIO1

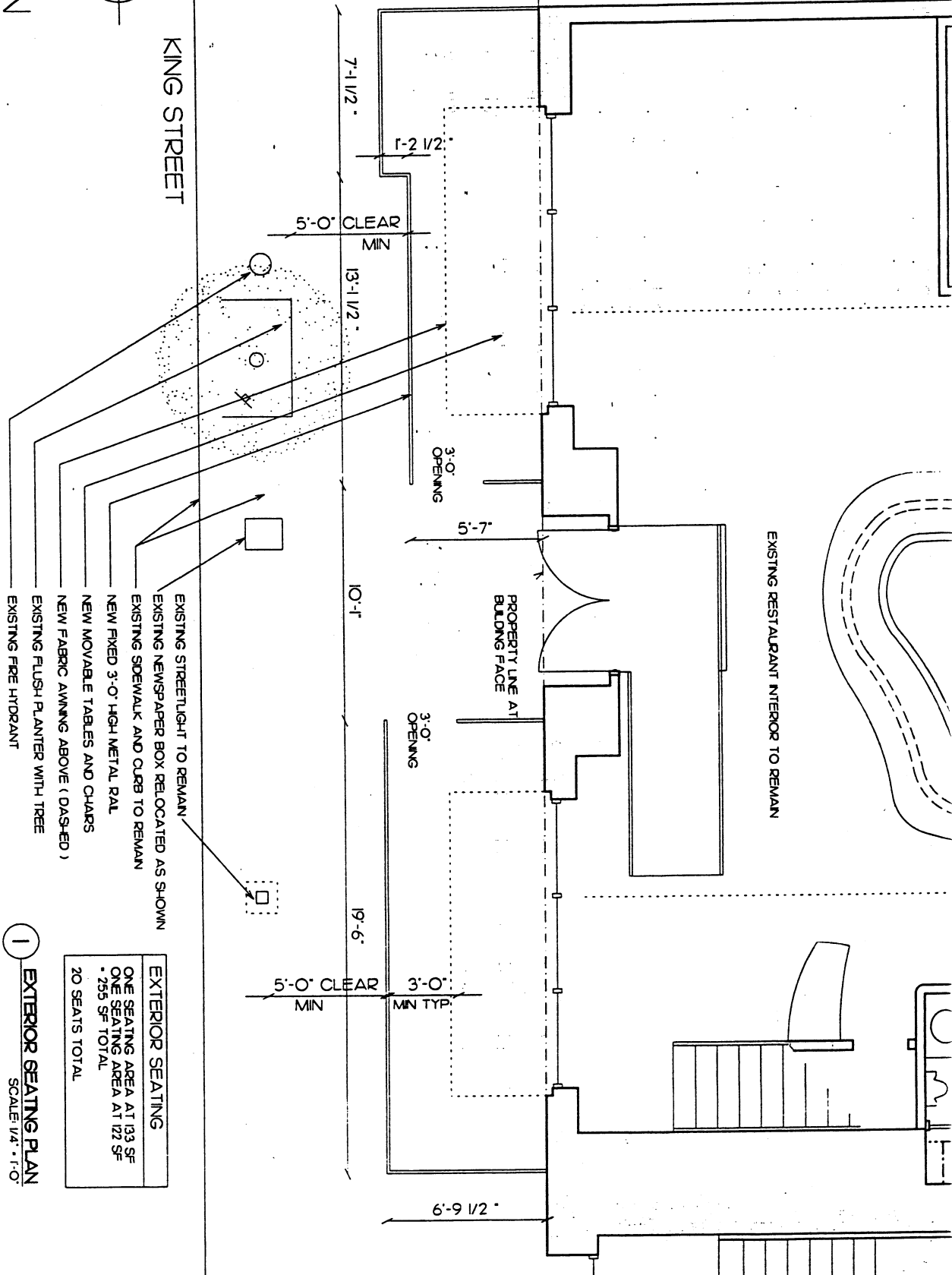
ENC 2004-001

REVISED 9/2



KING STREET

14'-6 1/2" EXISTING V.I.F.
7'-9" 6'-9 1/2"



- EXISTING STREETLIGHT TO REMAIN
- EXISTING NEWSPAPER BOX RELOCATED AS SHOWN
- EXISTING SIDEWALK AND CURB TO REMAIN
- NEW FIXED 3'-0" HIGH METAL RAIL
- NEW MOVABLE TABLES AND CHAIRS
- NEW FABRIC AWNING ABOVE (DASHED)
- EXISTING FLUSH PLANTER WITH TREE
- EXISTING FIRE HYDRANT

EXTERIOR SEATING
 ONE SEATING AREA AT 133 SF
 ONE SEATING AREA AT 122 SF
 • 255 SF TOTAL
 20 SEATS TOTAL

1 EXTERIOR SEATING PLAN
 SCALE 1/4" = 1'-0"

ENC 2004-0011

SIO2
 1/4" = 1'-0"
 20 FEB 2004

EXTERIOR SEATING PLAN

THAI RESTAURANT
 6 KING STREET
 OLD TOWN ALEXANDRIA VA

RICH MARKUS ARCHITECT
 125 CONNECTICUT AVENUE NW
 THIRD FLOOR
 WASHINGTON DC 20036
 202.833.9292

32
4-13-04

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April 8, 2004

VIA FACSIMILE 703-838-6433

Jackie M. Henderson
City Clerk and Clerk of Council
301 King Street
Alexandria, VA 22314

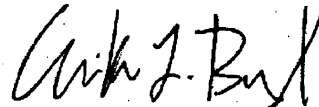
Re: Docket Item #32: Ordinance to Approve an Encroachment for Outdoor Restaurant Seating at 6 King Street Scheduled for Tuesday, April 13, and Saturday, April 17, 2004

Dear Ms. Henderson:

On behalf of the applicant for the encroachment application described above, Thaiphoon of Old Town Inc., I hereby respectfully request that City Council approve the proposed encroachment to allow for outdoor seating at the proposed Thai restaurant, which would be called Mai Thai, located at 6 King Street. The applicant is very familiar with the urban Old Town setting where the restaurant would be located. The restaurateur is well aware that vehicular traffic, including the loading and unloading of buses, will occasionally occur in an area near the proposed outdoor seating and he still very strongly desires approval for the outdoor seating.

Patrons coming to the restaurant will, of course, be given a choice as to whether to sit indoors or to sit outside. Any fumes from vehicles will be dissipated significantly and quickly in the outdoor setting. The important point to note here, I believe, is the fact that patrons will be given a choice as to whether or not to sit outdoors. For these reasons and the other justifications articulated in the enthusiastically supportive Staff Report, I respectfully request the approval of the encroachment request to accommodate outdoor seating for 6 King Street.

Sincerely,



Erika L. Byrd

ELB/ep

cc: Barbara Ross, Department of Planning and Zoning
Bettina Irps, Planner II
Woody Tongrugs, Thaiphoon of Old Town, Inc.
Rich Markus, Rich Markus Architects

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