

EXHIBIT NO. 1

5
12-18-10 ~~12~~
~~12-14-10~~

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Introduction and first reading: 12/14/10
Public hearing: 12/18/10
Second reading and enactment: 12/18/10

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE authorizing the tenant of the property located at 320 Montgomery Street in the City of Alexandria, Virginia to construct and maintain an encroachment for outdoor restaurant seating on Royal Street at the side of the building located at 320 Montgomery Street.

Summary

The proposed ordinance permits the restaurant located at 320 Montgomery Street to establish outdoor seating in the adjacent sidewalk area.

Sponsor

Staff

Faroll Hamer, Director, Planning & Zoning
James L. Banks, Jr., City Attorney
Joanna C. Frizzell, Assistant 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

ORDINANCE NO. _____

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2
3 AN ORDINANCE authorizing the tenant of the property located at 320 Montgomery Street in
4 the City of Alexandria, Virginia to construct and maintain an encroachment for outdoor
5 restaurant seating on Royal Street at the side of the building located at 320 Montgomery
6 Street.

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8 WHEREAS, Philip McCombie is the Tenant (“Tenant”) of the property located at
9 320 Montgomery Street in the City of Alexandria, Virginia; and

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11 WHEREAS, Tenant desires to establish and maintain outdoor restaurant seating
12 which will encroach into the public sidewalk right-of-way on Royal Street at the side of the
13 building located at 320 Montgomery Street; and

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

17
18 WHEREAS, in Encroachment No. 2010-0007, the Planning Commission of the City
19 of Alexandria recommended approval to the City Council subject to certain conditions at one of
20 its regular meetings held on October 5, 2010, which recommendation was approved by the City
21 Council at its public hearing on October 16, 2010; and

22
23 WHEREAS, it has been determined by the Council of the City of Alexandria that
24 this encroachment is not detrimental to the public interest; now, therefore,

25
26 THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

27
28 Section 1. That Tenant be, and the same hereby are, authorized to establish and
29 maintain an encroachment into the public sidewalk right-of-way on Royal Street at the side of
30 the building located at 320 Montgomery Street as shown in the attached Encroachment Exhibits
31 (See Exhibits A and B), in the City of Alexandria, said encroachment consisting of outdoor
32 restaurant seating, until the encroachment is removed or destroyed or the authorization to
33 maintain it is terminated by the city; provided, that this authorization to establish and maintain
34 the encroachment shall not be construed to relieve Tenant of liability for any negligence on their
35 part on account of or in connection with the encroachment and shall be subject to the provisions
36 set forth below.

37
38 Section 2. That the authorization hereby granted to establish and maintain said
39 encroachment shall be subject to and conditioned upon Tenant maintaining, at all times and at
40 their own expense, liability insurance, covering both bodily injury and property damage, with a
41 company authorized to transact business in the Commonwealth of Virginia and with minimum
42 limits as follows:

43
44 Bodily Injury: \$1,000,000 each occurrence
45 \$1,000,000 aggregate
46

1
2 Property Damage: \$1,000,000 each occurrence
3 \$1,000,000 aggregate
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5 This liability insurance policy shall identify the City of Alexandria as named insured and shall
6 provide for the indemnification of the City of Alexandria against any and all loss occasioned by
7 the establishment, construction, placement, existence, use or maintenance of the encroachment.
8 Evidence of the policy and any renewal thereof shall be filed with the city attorney's office. Any
9 other provision herein to the contrary notwithstanding, in the event this policy of insurance
10 lapses, is canceled, is not renewed or otherwise ceases to be in force and effect, the authorization
11 herein granted to establish and maintain the encroachment shall, at the option of the city,
12 forthwith and without notice or demand by the city, terminate. In that event, Tenant shall, upon
13 notice from the city, remove the encroachment from the public right-of-way, or the city, at its
14 option, may remove the encroachment at the expense and risk of Tenant. Nothing in this section
15 shall relieve Tenant of their obligations and undertakings required under this ordinance.
16

17 Section 3. That the authorization hereby granted to establish and maintain said
18 encroachment shall in addition be subject to and conditioned upon the following terms:
19

20 (a) Neither the City of Alexandria nor any public or private utility company shall be
21 responsible for damage to Tenant's property encroaching into the public right-of-way during
22 repair, maintenance or replacement of the public right-of-way or any public facilities or utilities
23 in the area of encroachment.
24

25 (b) The Tenant shall be responsible for replacement and repairs to the adjacent City
26 right-of-way, including any areas damaged during construction activity.
27

28 (c) Outdoor dining at the restaurant shall comply with all requirements and conditions of
29 SUP#2010-0047.
30

31 (d) The applicant shall maintain a minimum 4' wide unobstructed sidewalk.
32

33 (e) In the event the City shall, in the future, have need for the area of the proposed
34 encroachment, the applicant shall remove any structure that encroached into the public right-of-
35 way, within 60 days, upon notification by the City.
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37 (f) The ground surface material in the proposed encroachment area shall be approved by
38 the Director of Transportation & Environmental Services and shall be flush with the existing
39 sidewalk.
40

41 Section 4. That by accepting the authorization hereby granted to establish and
42 maintain the encroachment and by so establishing and/or maintaining the encroachment, Tenant
43 shall be deemed to have promised and agreed to save harmless the City of Alexandria from any
44 and all liability (including attorneys' fees and litigation expenses) arising by reason of the
45 establishment, construction, placement, existence, use or maintenance of the encroachment.
46

1 Section 5. That the authorization herein granted to establish and maintain the
2 encroachment shall be subject to Tenant maintaining the area of the encroachment at all times
3 unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous
4 matter.

5
6 Section 6. That nothing in this ordinance is intended to constitute, or shall be
7 deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any
8 of its officers or employees.

9
10 Section 7. That the authorization herein granted to establish and maintain the
11 encroachment shall be terminated whenever the City of Alexandria desires to use the affected
12 public right-of-way for any purpose whatsoever and, by written notification, demands from
13 Tenant the removal of the encroachment. Said removal shall be completed by the date specified
14 in the notice and shall be accomplished by Tenant without cost to the city. If Tenant cannot be
15 found, or shall fail or neglect to remove the encroachment within the time specified, the city shall
16 have the right to remove the encroachment, at the expense of Tenant, and shall not be liable to
17 Tenant for any loss or damage to the structure of the encroachment or personal property within
18 the encroachment area, caused by the removal.

19
20 Section 8. The term "Tenant" shall be deemed to include Philip McCombie and his
21 respective successors in interest to the tenancy at 320 Montgomery Street.

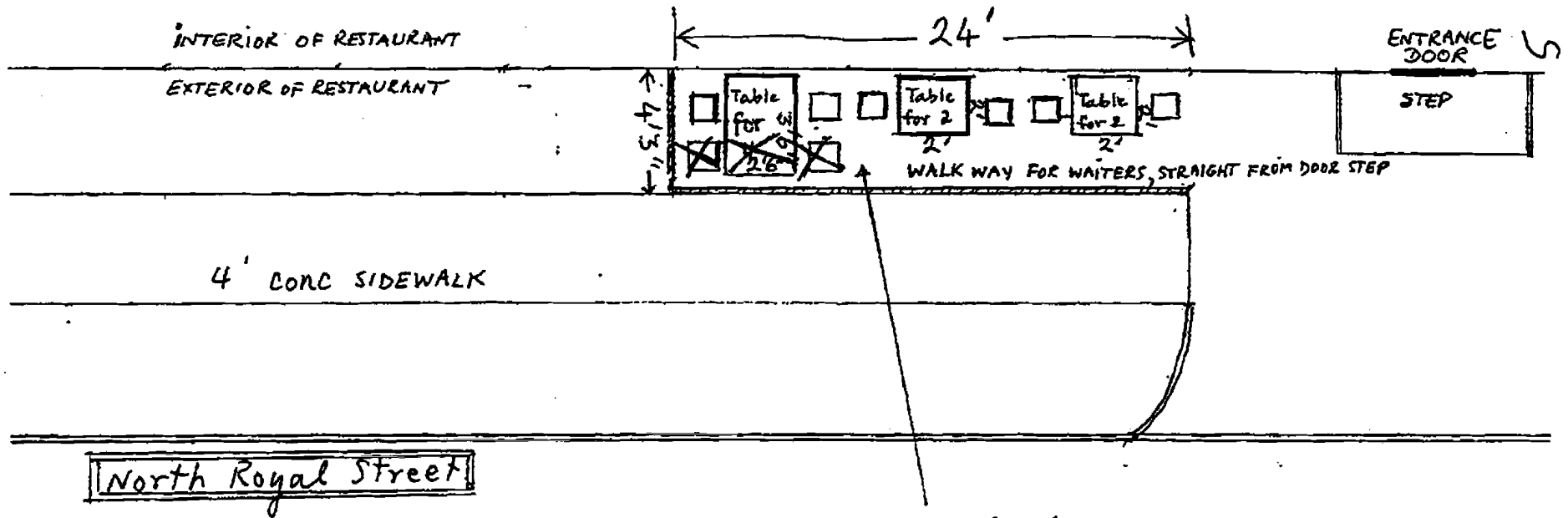
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23 Section 9. That this ordinance shall be effective upon the date and at the time of its
24 final passage.

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27 WILLIAM D. EUILLE
28 Mayor

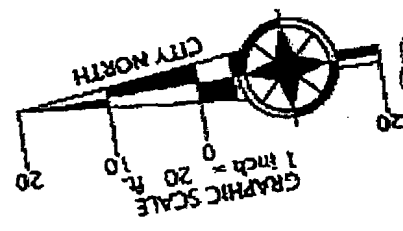
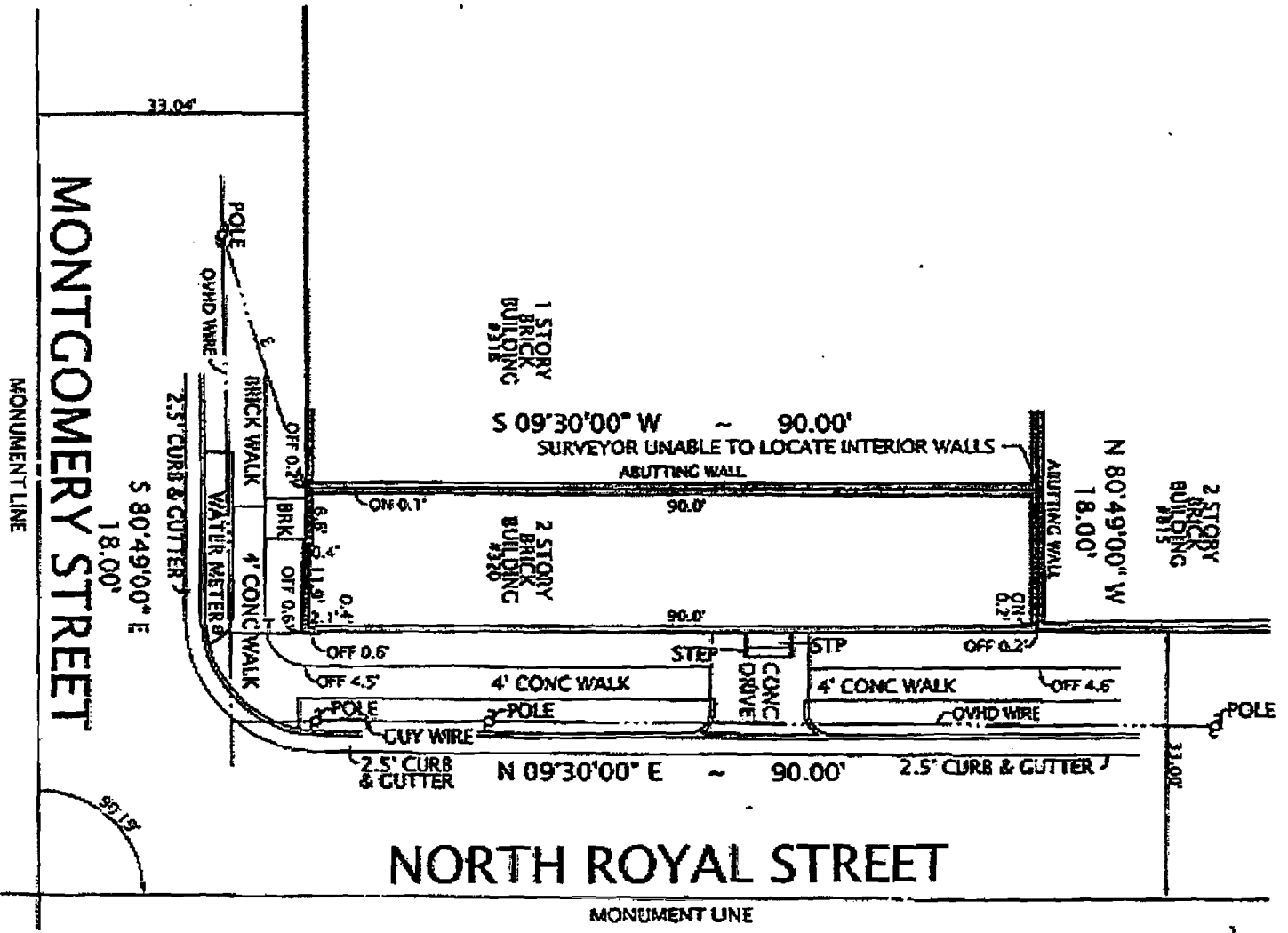
29
30 Attachment: Encroachment Exhibits

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32 Introduction: 12/14/10
33 First Reading: 12/14/10
34 Publication:
35 Public Hearing:
36 Second Reading:
37 Final Passage:

ENC 2010-0007



Area proposed for 6 seats,
sectioned off completely from sidewalk,
waiters bring food through the door and step
directly into this area without encroaching
the sidewalk.



ENC 2010-0037

PLAT
 SHOWING BUILDING LOCATION ON
 THE PROPERTY LOCATED AT
#320 MONTGOMERY STREET
 CITY OF ALEXANDRIA, VIRGINIA 1A

DEED BOOK 786, PAGE 273
 SCALE: 1" = 20'
 APRIL 19, 2005

STATE LEGAL
 EXHIBIT
B

ORDINANCE NO. 4694

AN ORDINANCE authorizing the tenant of the property located at 320 Montgomery Street in the City of Alexandria, Virginia to construct and maintain an encroachment for outdoor restaurant seating on Royal Street at the side of the building located at 320 Montgomery Street.

WHEREAS, Philip McCombie is the Tenant (“Tenant”) of the property located at 320 Montgomery 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 on Royal Street at the side of the building located at 320 Montgomery Street; and

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

WHEREAS, in Encroachment No. 2010-0007, 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 October 5, 2010, which recommendation was approved by the City Council at its public hearing on October 16, 2010; 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 are, authorized to establish and maintain an encroachment into the public sidewalk right-of-way on Royal Street at the side of the building located at 320 Montgomery Street as shown in the attached Encroachment Exhibits (See Exhibits A and B), in the City of Alexandria, said encroachment consisting of outdoor restaurant seating, 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 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 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 as named insured and shall provide for the indemnification of the City of Alexandria 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 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 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 Tenant shall be responsible for replacement and repairs to the adjacent City right-of-way, including any areas damaged during construction activity.
- (c) Outdoor dining at the restaurant shall comply with all requirements and conditions of SUP#2010-0047.
- (d) The applicant shall maintain a minimum 4' wide unobstructed sidewalk.
- (e) In the event the City shall, in the future, have need for the area of the proposed encroachment, the applicant shall remove any structure that encroached into the public right-of-way, within 60 days, upon notification by the City.
- (f) The ground surface material in the proposed encroachment area shall be approved by the Director of Transportation & Environmental Services and shall be flush with the existing sidewalk.

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 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.

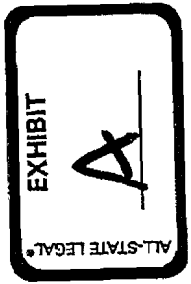
Section 8. The term "Tenant" shall be deemed to include Philip McCombie and his respective successors in interest to the tenancy at 320 Montgomery Street.

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

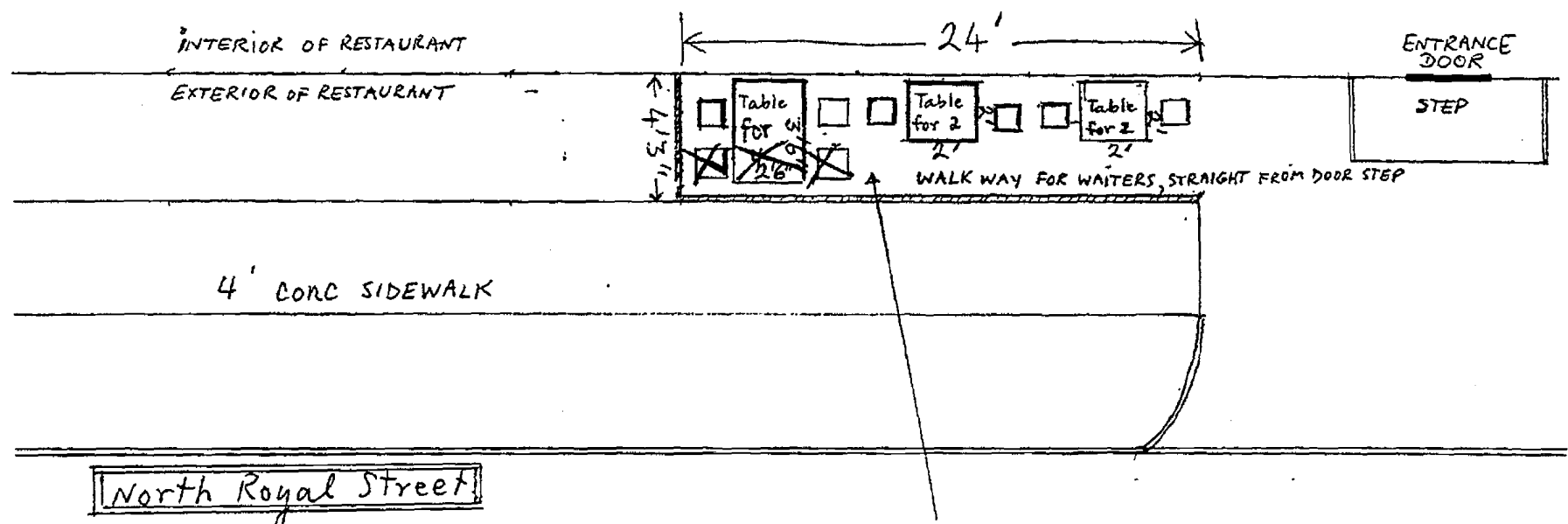
WILLIAM D. EUILLE
Mayor

Attachment: Encroachment Exhibits

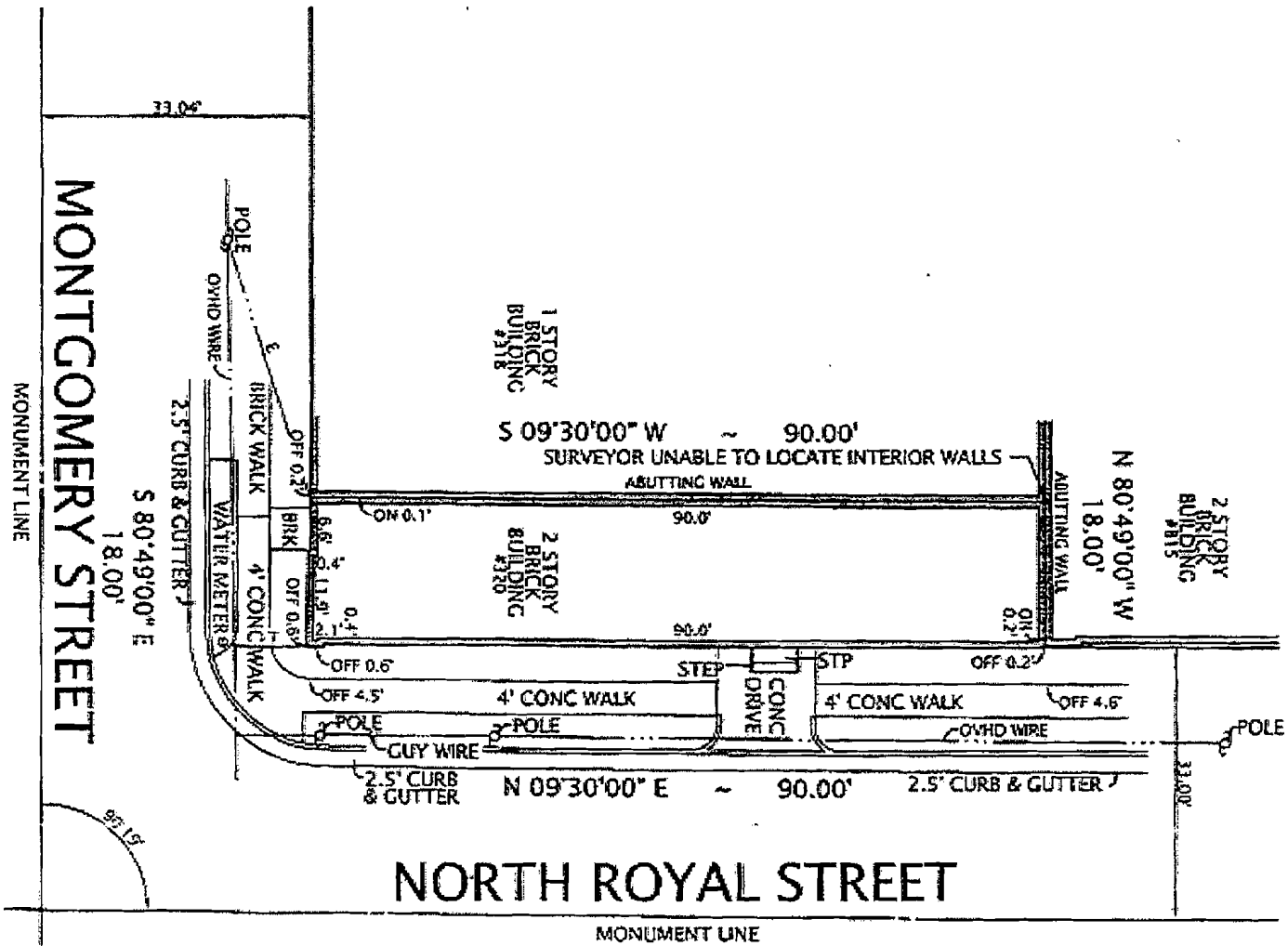
Final Passage: December 18, 2010



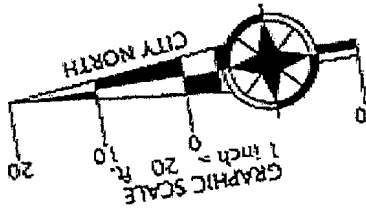
ENC 2010-0007



Area proposed for 6 seats,
sectioned off completely from sidewalk,
Waiters bring food through the door and step
directly into this area without encroaching
the sidewalk.



ENC 2010-0007



PLAT

SHOWING BUILDING LOCATION ON
THE PROPERTY LOCATED AT

#320 MONTGOMERY STREET

(DEED BOOK 786, PAGE 2731)

CITY OF ALEXANDRIA, VIRGINIA 18

SCALE: 1" = 20'

APRIL 19, 2005

