

EXHIBIT NO. 1

9  
5-15-04

Docket Item #14  
ENCROACHMENT #2003-0010

Planning Commission Meeting  
May 4, 2004

**ISSUE:** Consideration of a request to encroach by 4 feet into right-of-way with fencing, columns or a wall for 34 lots.

**APPLICANT:** Potomac Greens Associates LLC

**LOCATION:** 2201 Jefferson Davis Highway

**ZONE:** CD/Commercial Downtown

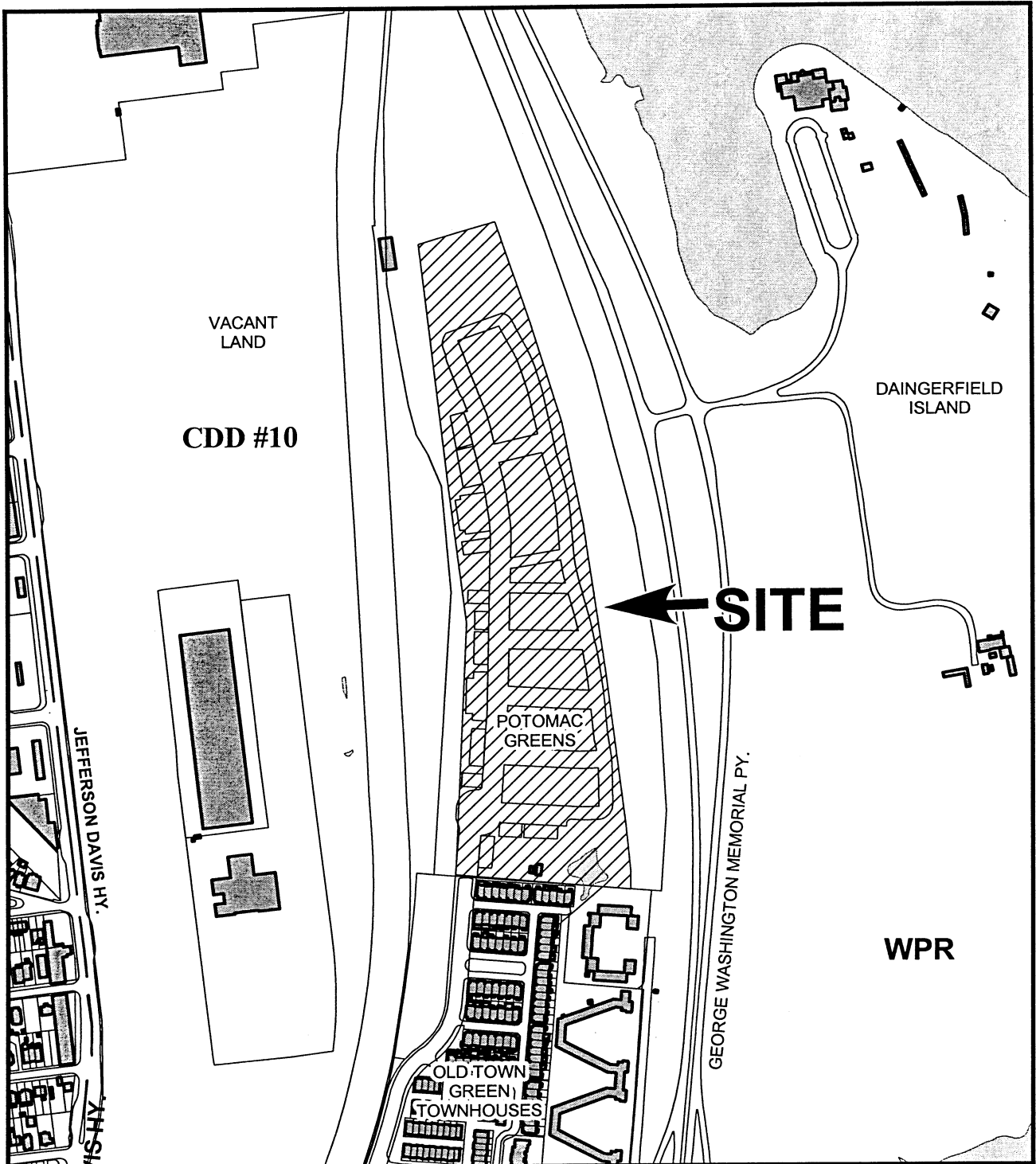
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**PLANNING COMMISSION ACTION, MAY 4, 2004:** By unanimous consent, the Planning Commission recommended approval of the request, subject to compliance with all applicable codes, ordinances and staff recommendations.

Reason: The Planning Commission agreed with the staff analysis.

**PLANNING COMMISSION ACTION, APRIL 6, 2004:** By unanimous consent, the Planning Commission deferred the request.

Reason: The applicant and staff requested the deferral.



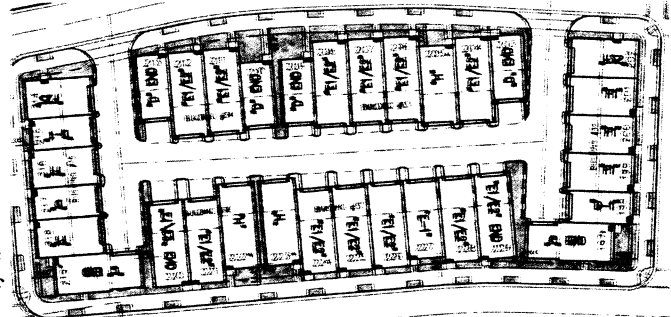
**ENC #2003-0010**

**05/04/04**



## I. EXECUTIVE SUMMARY:

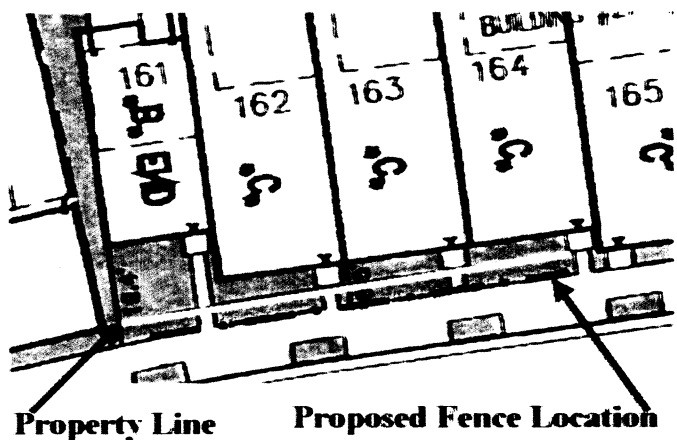
During the review and approval for the site plan, the City and community were concerned about the amount of open space, “openness” and variety of open space provided adjacent to the sidewalks for pedestrians. A fundamental component of the open space for pedestrians are the small front and side yards that the developer was required to provide for many of the units.



*Typical Front Yards*

A concern of staff is that provision of fences will detract from the front yard open space and that the fences will visually narrow the width of the adjoining public sidewalks. In addition, staff was initially concerned that:

- the fences would create a precedent for other townhouses to request encroachments to permit fencing;
- the fences would visually and physically narrow the width of the adjoining public sidewalks; and
- the fences would reduce the visual open space provided by the front yards.

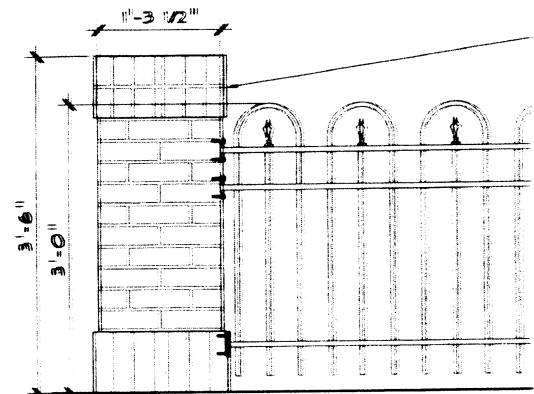


Staff and the community raised concerns regarding the initial encroachment request by the applicant. The initial proposal requested approval for 77 fences to be permitted to encroach into the adjoining public right-of-way. In response to the concerns raised by staff and the community, the applicant agreed to reduce the number of units where fences would encroach from 77 units to the current request of 34 units. The fences will encroach approximately up to 4 ft. into the public right-of-way and the type of fence will vary as discussed in more detail below.

To address the concern regarding other townhouses requesting encroachments, staff is recommending (and the applicant has agreed) to prohibit fencing for units other than those installed by the developer. To ensure that the fences will not obstruct the width of the sidewalk, a condition of approval is that the fences must be located 10-12 inches from the sidewalk. To address the

concern regarding preservation of the visual open space of the front yards, the applicant has worked with staff to propose open wrought iron fences. In addition, the height of the fences has been limited to approximately 2-3 ft. tall. The Potomac Yard Urban Design Advisory Committee (PYDAC) has reviewed the application and recommends approval.

Staff believes the fences will add visual interest and variety at the pedestrian level similar to the characteristics of the traditional neighborhoods of Old Town and Del Ray, the models for Potomac Yard. With the limited amount of encroachments and conditions to ensure adequate sidewalk widths, and the height of the fences staff recommends approval.



*One of Several Proposed Fence Styles*

## **II. BACKGROUND:**

The applicant requests to encroach by up to 4 feet into the public right-of-way in front of 34 lots to permit installation of fencing, fencing with brick columns and a low retaining wall. The proposed encroachments will be located within the approved Potomac Greens development (DSUP#2002-0026) approved by City Council on May 17, 2003. The subject property is zoned CDD #10, and is located in the Potomac Yard/Potomac Greens Small Area Plan.

The Potomac Yard Urban Design Guidelines require that all fences that are visible to the public be constructed of masonry or painted wrought iron. The proposed fences consist of a combination of ornamental metal fencing and metal fencing with brick columns, ranging in height from a 1'-10" all metal fence to a 3' metal fence with 3'-6" brick columns. Where the applicant proposes fence encroachments into the right-of-way, townhouses are generally set back approximately 2 to 4 feet from the right-of-way. The applicant contends that fences would be beneficial at these locations but that placing the fence on the property line approximately 2 to 4 feet from the building and 4 feet from the sidewalk would create an awkward space, with the landscape area split in half by the proposed fence. The applicant requests to locate the fence at the inside edge of the sidewalk incorporating the landscape strip along the sidewalk into the otherwise narrow yard space.

The applicant also proposes a one-foot high brick retaining wall for some units (lots 201 to 206 and 209 to 211). The units where the wall is proposed would not include fencing on top of the walls. The walls are proposed along the east side of the northernmost block facing the George Washington Parkway to transition from the interior of the block with a grade elevation of 30 ft. to the eastern side of the block that sits at a grade elevation of 26 ft.

The applicant originally proposed that fences encroach adjacent to 77 of the approved 227 townhouses in Potomac Greens. The applicant amended its request in response to staff comments that in Alexandria in general and according to the Potomac Yard Urban Design Guidelines, fences should follow property lines and reinforce the street wall. The applicant relocated many of the proposed fences to the front property lines and reduced the number of encroachments requested from 77 to 34 units, or 15% of the units in Potomac Greens. Fences on private lots are proposed in front of 13 units with larger setbacks that permit the fences to be placed on the front property line.

### **III. STAFF ANALYSIS:**

The Potomac Yard Urban Design Guidelines direct that fences and walls should be located along lot lines where gaps in a street wall occur “to form a continuous structure.” As discussed above, the primary concern of staff regarding the proposed encroachment was detracting from the open space and “openness” provided in the front yards, reducing the width of the sidewalks and establishing a precedent for other townhouses.



*Fence Along Property Line with only 2-4' of Setback Behind Fence*

To address the concern regarding the loss of the openness of the front yards, the applicant has agreed to less fences, lower fences and open metal fences that allow the visual open space to be retained adjacent to the street and sidewalks for pedestrians.

Staff had concern that proposed encroaching fences would negatively impact pedestrians on the adjacent sidewalk. Because pedestrians tend to allow a comfortable separation for an adjoining fence as opposed to an open front yard, the fences would visually, though not physically, reduce the width of the sidewalk. Therefore, staff is recommending that the fences be setback 10-12 inches from the edge of the sidewalk to maintain the functional width of the sidewalks.



*Encroaching Fence Similar to Applicants' Request*

Staff was also concerned that approving encroachments in this case may set a precedent for similar requests in the future when the improved appearance of additional fences might not outweigh the detrimental effect to

the public realm and public sidewalk. Staff therefore recommends that the applicant limit fences to the locations requested in this application by adding this restriction to the homeowners agreement documents.

***The Potomac Yard Urban Design Advisory Committee (PYDAC):***

The Potomac Yard Design Advisory Committee recommended by a vote of 5-0 (with 2 members absent) to approve the application as submitted. The Committee believed that the proposed fences would increase the overall quality and appearance of the project. The committee expressed some concern that the proposed encroachments could negatively impact the sidewalks but believed that the overall benefit outweighed the possible negative impacts. Some committee members offered the opinion that adding fences that project out from the property line will introduce an interesting variety to the project streetscape that would emulate other parts of the city that had developed over time. They also noted that they supported the application as submitted only for the specific locations and specific fence designs proposed, emphasizing that this recommendation should not extend to additional units in the development or to future developments in Potomac Yard.

**IV. CONCLUSION:**

Staff recommends approval of the application as submitted with the conditions as outlined in the staff report. The fences and walls that are proposed will be constructed of high quality metal and brick, meeting the Potomac Yard Urban Design Guidelines for material and style, and will add a richness of texture and variety to the streetscape that will improve its aesthetic appearance. The limited number and type of fences will ensure that the visual open space provided by the front yards will be retained.

**STAFF:** Eileen Fogarty, Director, Department of Planning and Zoning;  
Jeffrey Farnar, Development Chief;  
Stephen Milone, Urban Planner.

**V. STAFF RECOMMENDATION:**

Staff **recommends approval** subject to compliance with all applicable codes and ordinances and the following conditions:

1. The applicant (and his or her successors, if any) obtain and maintain a policy of general liability insurance in the amount of \$1,000,000, which will indemnify the applicant (and his or her successors, if any) and the City of Alexandria, as an additional named insured, against all claims, demands, suits, etc., and all costs related thereto, including attorney fees, relating to any bodily injury or property damage which may occur as a result of the granting of this encroachment. (P&Z) (City Atty) (T&ES)
2. In the event the City shall, in the future, have need for the area of the proposed encroachment, the applicant or subsequent homeowners shall remove any structure or projection that encroaches into the public right-of-way, within 60 days, upon notification by the City. (P&Z)
3. Neither the City nor any Private utility company will be held responsible for damage to the private improvements in the public right-of-way during repair, maintenance or replacement of any utilities that may be located within the area of the proposed encroachment. (T&ES)
4. Applicant is responsible for maintenance of the private improvements installed within the encroachment. (T&ES)
5. The Homeowner Association (HOA) documents shall prohibit fence locations or types other than those depicted on the plan dated 1/30/04 prepared by Studio 39 and the homeowners association document shall not be permitted to be revised unless all homeowners within the community agree to the change once the community has been fully occupied. The language of the HOA restrictions regarding fences shall be reviewed and approved by the City Attorney. (P&Z)
6. The fences and walls within the right-of-way shall be setback 10-12 inches from the edge of the sidewalk depending upon the type of fence. This area shall be landscaped to the satisfaction of the Director of Planning & Zoning. (P&Z)

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**Staff Note:** For commercial properties, the applicant and/or his successors are responsible for payment of an annual charge for such encroachment pursuant to Section 3-2-85 of the City Code.

CITY DEPARTMENT COMMENTS

Legend: C - code requirement R - recommendation S - suggestion F - finding

Planning & Zoning:

Revise the final site plan for DSUP#2002-0026 to show all approved fences and brick walls.

Transportation & Environmental Services:

Show right-of-way with heavy line type.

Code Enforcement:

No comments

Health Department:

No comments

Police Department:

No objections.

Parks and Recreation:

No code comments.



APPLICATION for ENCROACHMENT

220

ENC # 2003-0010

[must use black ink or type]

PROPERTY LOCATION: Potomac Yard - LandBay A

TAX MAP REFERENCE: 035.02-02-01 ZONE: CDD - #10

Potomac Greens Associates LLC  
APPLICANT'S NAME: c/o Eakin Youngentob Associates, Inc.  
1000 Wilson Boulevard, Suite 2720  
ADDRESS: Arlington, VA 22209

Potomac Greens Associates LLC  
PROPERTY OWNER NAME: c/o Eakin Youngentob Associates, Inc.  
ADDRESS: 1000 Wilson Boulevard, Suite 2720  
Arlington, VA 22209

ENCROACHMENT DESCRIPTION: As shown on Sheet L2.02, to encroach by 4 feet  
with fencing, columns or a wall on Lots \*  
(\*See attached sheet for Lot Nos.)


INSURANCE CARRIER (copy attached) Hartford Insurance Group POLICY # 42UUNUD4971  
A certificate of general liability insurance in the amount of \$1,000,000 which will indemnify the owner and names the city as an additional insured must be attached to this application.

THE UNDERSIGNED hereby applies for an Encroachment Ordinance in accordance with the provisions of Section 8-1-16 and Sections 3-2-82 and 85 of the Code of the City of Alexandria, Virginia.

THE UNDERSIGNED, having obtained permission from the property owner, hereby grants permission to the City of Alexandria to post placard notice on the property for which this application is requested, pursuant to Article XI, Section 11-301 (B) of the 1992 Zoning Ordinance of the City of Alexandria, Virginia.

THE UNDERSIGNED also attests that all of the information herein provided and specifically including all surveys, drawings, etc., required of the applicant are true, correct and accurate to the best of their knowledge and belief.

Jonathan P. Rak  
Print Name of Applicant or Agent  
c/o McGuireWoods LLP  
1750 Tysons Blvd., Ste. 1800  
Mailing/Street Address  
McLean, VA 22102  
City and State Zip Code

  
Signature  
703-712-5000 703-712-5050  
Telephone # Fax #  
November 25, 2003  
Date

=====**DO NOT WRITE BELOW THIS LINE - OFFICE USE ONLY**=====

Application Received: \_\_\_\_\_ Date & Fee Paid: \_\_\_\_\_ \$ \_\_\_\_\_

ACTION - PLANNING COMMISSION: \_\_\_\_\_

ACTION - CITY COUNCIL: \_\_\_\_\_

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## APPLICATION FOR ENCROACHMENT

(Continued)

### **ENCROACHMENT DESCRIPTION:**

Lots 13, 14, 19, 20, 27, 28, 30, 33, 34, 38, 49, 50, 59, 60, 65, 67, 68, 72, 77, 81, 82, 88, 89, 93, 97, 98, 101, 102, 106, 108, 109, 110, 118, 119, 123, 124, 126, 127, 135, 136, 143, 146, 147, 148, 149, 151, 154, 155, 158, 159, 160, 161, 162, 166, 167, 172, 181, 182, 183, 187, 188, 195, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 217, 220, and 221.

\\REA\195197.1

Nov-21-03 05:02pm From-Franey Muha Alliant

703970895

T-909 P.002/002 F-959

**ACORD CERTIFICATE OF LIABILITY INSURANCE**

FORM 14 11/21/03

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

<b>PRODUCER</b> Franey Muha Alliant/va 4530 Walney Road, Suite 200 Chantilly VA 20151 Phone: 703-397-0977 Fax: 703-397-0895		<b>INSURERS AFFORDING COVERAGE</b> INSURER A: HARTFORD INSURANCE GROUP INSURER B: INSURER C: INSURER D: INSURER E:	<b>NAIC #</b>
<b>INSURED</b> Potomac Greens Associates LLC Potomac Greens Retail LLC c/o Eakin Youngentob Assoc. 1000 Wilson Blvd., Suite 2720 Arlington VA 22209			

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSURANCE TYPE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	42UJNUD4971	09/29/03	09/29/04	EACH OCCURRENCE \$ 1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50000 MED EXP (Any one person) \$ 10000 PERSONAL & ADV INJURY \$ 1000000 GENERAL AGGREGATE \$ 2000000 PRODUCTS - COMP/DP AGG \$ 2000000
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	42UJNUD4971	09/29/03	09/29/04	COMBINED SINGLE LIMIT (Ea accident) \$ 1000000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYER \$ E.L. DISEASE - POLICY LIMIT \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 City of Alexandria is named as additional insured

**CERTIFICATE HOLDER**

CITYALE  
 City of Alexandria  
 301 King Street  
 Alexandria VA 22314

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE  
*Maria Marlowe*

# Del Ray Citizens Association

PO Box 2233

ALEXANDRIA VA 22301

ESTABLISHED 1954

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To: Members of Alexandria Planning Commission  
Eileen Fogarty, Director, Office of Planning and Zoning

From: Justin Wilson, President  
Amy Slack, Land Use Committee Co-Chair  
Sarah Haut, Land Use Committee Co-Chair

Date: April 30, 2004

Subject: Encroachment #2003-0010 at 2201 Jefferson Davis Hwy Potomac Yards  
- Landbay A.  
Request for an encroachment of residential lots with fencing, columns or  
a wall into the public right-of-way

*PC Docket Item #14  
ENC 2003-0010*

The City of Alexandria Department of Planning and Zoning requested comments from the Association. The item was first announced in the Association newsletter in February.

The Executive Board voted to deny the application.

The Board disagrees with PYDAC and staff opinion that the public will derive benefits by allowing the encroachment.

The public loses present and future rights to the use land which is theirs by virtue of city ownership and neither the public nor the city are compensated for that loss. Capital dividends will be realized by the developer and by individuals granted exclusive and free use of public land at public expense.

Should Planning Commission approve the request for encroachment, we ask that the following condition be included:

- A contribution to the Open Space Fund, based on the fair market value of the allowed encroachment be made by the applicant.

We request your support for this position and welcome your questions and comments. Please feel free to contact President Justin Wilson at 703-299 1576 or Co-chairs Amy Slack at 703-549-3412 and Sarah Haut at 703-838-9060.