

Introduction and first reading:	1/11/05
Public hearing:	1/22/05
Second reading and enactment:	1/22/05

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE authorizing the owners of 335 North Patrick Street to establish and maintain an encroachment for a fence.

Summary

The proposed ordinance permits the owners of 335 North Patrick Street to construct a picket fence three feet tall, which will encroach four feet into the public right-of-way along the Princess Street frontage of the property, for a length of 70 feet.

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

ORDINANCE NO. _____

AN ORDINANCE authorizing the owners of 335 North Patrick Street to establish and maintain an encroachment for a fence.

WHEREAS, David and/or Sarah Goldstein ("Owners") are the Owners of the property located at 335 North Patrick Street, in the City of Alexandria, Virginia; and

WHEREAS, Owners desire to establish and maintain a picket fence 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, 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 Owners be, and the same hereby are, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 335 North Patrick Street, in the City of Alexandria, said encroachment consisting of a picket fence, approximately three feet in height, and extending four feet into the public right-of-way along the Princess Street frontage of the property, for a length of 70 feet, 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 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

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

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 utility company shall be responsible
18 for damage to Owners' property encroaching into the public right-of-way during
19 repair, maintenance or replacement of the public right-of-way or any public facilities
20 or utilities in the area of encroachment.
21

22 Section 4. That by accepting the authorization hereby granted to establish and
23 maintain the encroachment and by so establishing and/or maintaining the encroachment, Owners
24 shall be deemed to have promised and agreed to save harmless the City of Alexandria from any
25 and all liability (including attorneys' fees and litigation expenses) arising by reason of the
26 establishment, construction, placement, existence, use or maintenance of the encroachment.
27

28 Section 5. That the authorization herein granted to establish and maintain the
29 encroachment shall be subject to Owners maintaining the area of the encroachment at all times
30 unobstructed and free from accumulation of litter, snow, ice and other potentially dangerous
31 matter.
32

33 Section 6. That nothing in this ordinance is intended to constitute, or shall be
34 deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any
35 of its officers or employees.
36

37 Section 7. That the authorization herein granted to establish and maintain the
38 encroachment shall be terminated whenever the City of Alexandria desires to use the affected
39 public right-of-way for any purpose whatsoever and, by written notification, demands from
40 Owners the removal of the encroachment. Said removal shall be completed by the date specified
41 in the notice and shall be accomplished by Owners without cost to the city. If Owners cannot be
42 found, or shall fail or neglect to remove the encroachment within the time specified, the city
43 shall have the right to remove the encroachment, at the expense of Owners, and shall not be
44 liable to Owners for any loss or damage to the structure of the encroachment or personal
45 property within the encroachment area, caused by the removal.
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