

EXHIBIT NO. 1

10
2-23-08

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~~2-12-08~~

Introduction and first reading:	2/12/2008
Public hearing:	2/23/2008
Second reading and enactment:	2/23/2008

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE authorizing James Warbasse and his successor in interest to establish and maintain an encroachment for a brick garden wall at 700 South Royal Street.

Summary

The proposed ordinance permits the owner of the property at 700 South Royal Street to construct and maintain a brick garden wall which will encroach into the public sidewalk of Franklin Street.

Sponsor

Staff

Faroll Hamer, Director, Planning & Zoning
Jill A. Schaub, Senior 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. _____

AN ORDINANCE authorizing the owner of 700 South Royal Street to establish and maintain an encroachment for a brick garden wall.

WHEREAS, James Warbasse is the Owner of the property located at 700 South Royal Street, in the City of Alexandria, Virginia, and, together with his successors in interest as owner of the subject property, are referred to as "Owner" herein; and

WHEREAS, Owner desires to establish and maintain a brick garden 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, 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 Owner be, and the same hereby is, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 700 South Royal Street, in the City of Alexandria, said encroachment consisting of a brick garden wall with pillars for the wall facing Franklin Street extending no more than 2.4 inches, and 48 feet along, the public right-of-way of Franklin Street in front of the property, as generally shown on the plat attached hereto, and as approved by the Old and Historic Board of Architectural Review, 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

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

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

- 18 (a) Neither the City of Alexandria nor any public or private utility company shall be
19 responsible for damage to Owner's property encroaching into the public right-of-way
20 during repair, maintenance or replacement of the public right-of-way or any public
21 facilities or utilities in the area of encroachment.
22
- 23 (b) The Owner shall be responsible for replacement and repairs to the adjacent City
24 right-of-way, including any areas damaged during construction activity.
25
- 26 (c) The Owner shall be required to control weeds within 12 feet of his front property
27 line.
28

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

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

40 Section 6. That nothing in this ordinance is intended to constitute, or shall be
41 deemed to be, a waiver of sovereign immunity by or on behalf of the City of Alexandria or any
42 of its officers or employees.
43

44 Section 7. That the authorization herein granted to establish and maintain the
45 encroachment shall be terminated whenever the City of Alexandria desires to use the affected

1 public right-of-way for any purpose whatsoever and, by written notification, demands from
2 Owner the removal of the encroachment. Said removal shall be completed by the date specified
3 in the notice and shall be accomplished by Owner without cost to the city. If Owner cannot be
4 found, or shall fail or neglect to remove the encroachment within the time specified, the city shall
5 have the right to remove the encroachment, at the expense of Owner, and shall not be liable to
6 Owner for any loss or damage to the structure of the encroachment or personal property within
7 the encroachment area, caused by the removal.

8
9 Section 8. That this ordinance shall be effective upon the date and at the time of its
10 final passage.

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12
13 WILLIAM D. EUILLE
14 Mayor

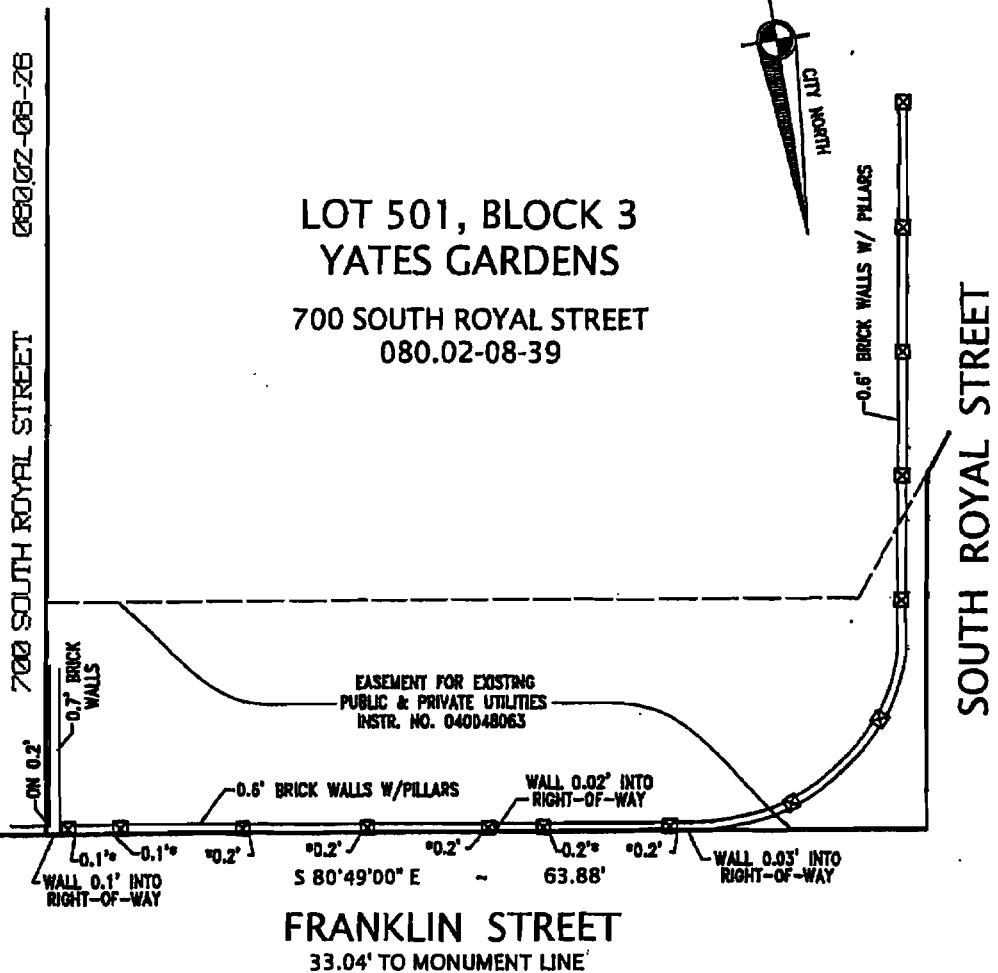
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16 Attachment: Encroachment plat

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18 Introduction: 2/12/08
19 First Reading: 2/12/08
20 Publication:
21 Public Hearing:
22 Second Reading:
23 Final Passage:
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ENCROACHMENT ORD 700 SOUTH ROYAL STREET.WPD

ENL2007-0001

* DENOTES EXTENT OF ENCROACHMENT OF BRICK PILLAR INTO STREET RIGHT-OF-WAY. EXCEPT AS NOTED, WALLS BETWEEN THE PILLARS DO NOT ENCROACH INTO THE RIGHT-OF-WAY.

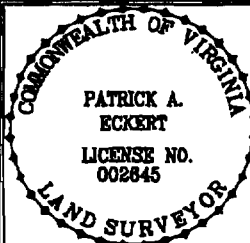


PLAT
SHOWING IMPROVEMENTS WITHIN
A PORTION OF
FRANKLIN STREET
CITY OF ALEXANDRIA, VIRGINIA
SCALE: 1" = 10' MARCH 12, 2007

CASE NAME:

WARBASSE

GRAPHIC SCALE



BY PROVISIONS OF THE VIRGINIA CODE: NO CORNER MARKERS SET, BOUNDARY SURVEY NOT PERFORMED. PLAT SUBJECT TO RESTRICTIONS OF RECORD, TITLE REPORT NOT FURNISHED.

I HEREBY CERTIFY THAT THE POSITIONS OF ALL THE EXISTING IMPROVEMENTS HAVE BEEN CAREFULLY ESTABLISHED BY A CURRENT FIELD SURVEY, AND UNLESS OTHERWISE SHOWN, THERE ARE NO VISIBLE ENCROACHMENTS.

PA
PATRICK A. ECKERT

REQUESTED BY:
WARBASSE

ALEXANDRIA SURVEYS
INTERNATIONAL, LLC
6343 SOUTH KINGS HIGHWAY ALEXANDRIA, VIRGINIA 22306
TEL. NO. 703-560-6615 FAX NO. 703-768-7764

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PL/24-H6

#070302004

ORDINANCE NO. 4518

AN ORDINANCE authorizing the owner of 700 South Royal Street to establish and maintain an encroachment for a brick garden wall.

WHEREAS, James Warbasse is the Owner of the property located at 700 South Royal Street, in the City of Alexandria, Virginia, and, together with his successors in interest as owner of the subject property, are referred to as "Owner" herein; and

WHEREAS, Owner desires to establish and maintain a brick garden 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, 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 Owner be, and the same hereby is, authorized to establish and maintain an encroachment into the public sidewalk right-of-way at 700 South Royal Street, in the City of Alexandria, said encroachment consisting of a brick garden wall with pillars for the wall facing Franklin Street extending no more than 2.4 inches, and 48 feet along, the public right-of-way of Franklin Street in front of the property, as generally shown on the plat attached hereto, and as approved by the Old and Historic Board of Architectural Review, 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

This liability insurance policy shall identify the City of Alexandria and Owner as named insureds and shall provide for the indemnification of the City of Alexandria and Owner 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, Owner 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 Owner. Nothing in this section shall relieve Owner 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 or private utility company shall be responsible for damage to Owner'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 Owner shall be responsible for replacement and repairs to the adjacent City right-of-way, including any areas damaged during construction activity.
- (c) The Owner shall be required to control weeds within 12 feet of his front property line.

Section 4. That by accepting the authorization hereby granted to establish and maintain the encroachment and by so establishing and/or maintaining the encroachment, Owner 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 Owner 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 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. That this ordinance shall be effective upon the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

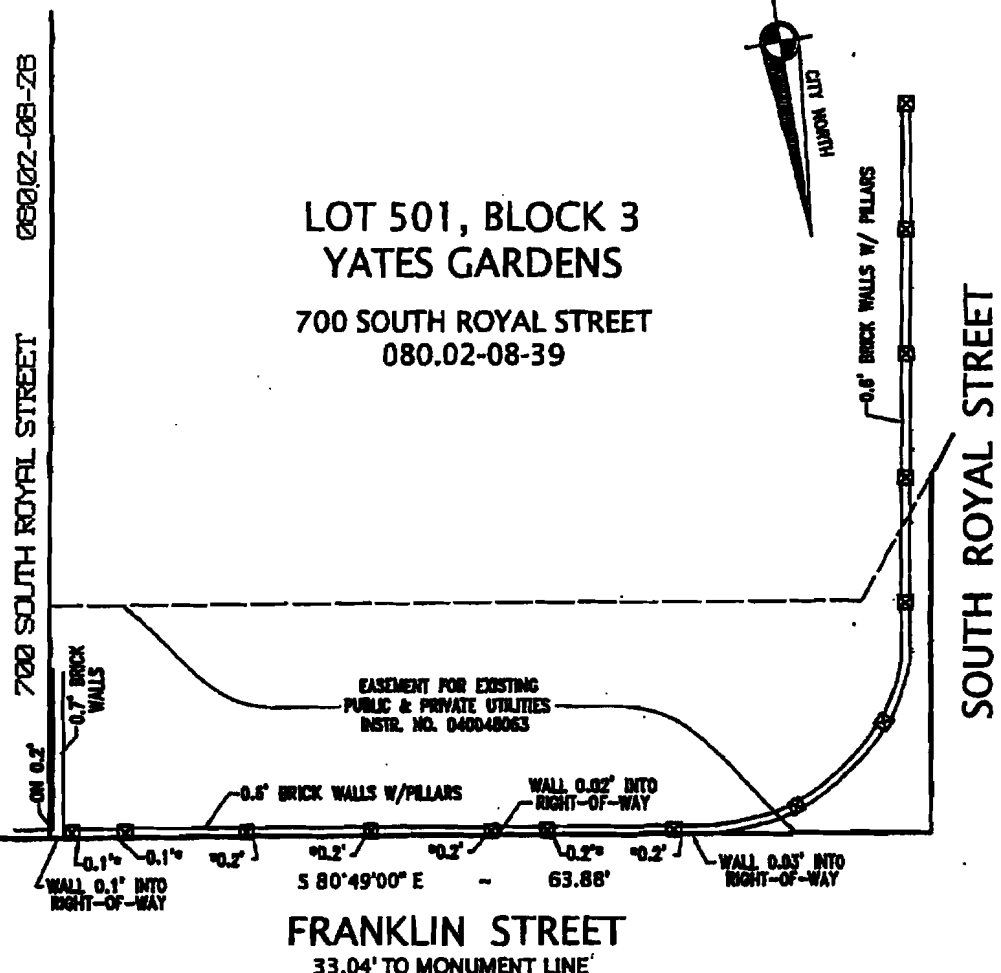
Attachment: Encroachment plat

Final Passage: February 23, 2008

ENG 2007-000

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PLAT
SHOWING IMPROVEMENTS WITHIN
A PORTION OF
FRANKLIN STREET
CITY OF ALEXANDRIA, VIRGINIA
SCALE: 1" = 10' MARCH 12, 2007

CASE NAME: WARBASSE		GRAPHIC SCALE 0 10 20	
	BY PROVISIONS OF THE VIRGINIA CODE: NO CORNER MARKERS SET, BOUNDARY SURVEY NOT PERFORMED. PLAT SUBJECT TO RESTRICTIONS OF RECORD, THIS REPORT NOT FORWARDED.		
	I HEREBY CERTIFY THAT THE PORTIONS OF ALL THE EXISTING IMPROVEMENTS HAVE BEEN CAREFULLY EXAMINED BY A CURRENTLY LICENSED SURVEYOR, AND UNLESS OTHERWISE SHOWN, THERE ARE NO VISIBLE ENCROACHMENTS.		
REQUESTED BY: WARBASSE		ALEXANDRIA SURVEYS INTERNATIONAL, LLC 6343 SOUTH KINGS HIGHWAY ALEXANDRIA, VIRGINIA 22304 TEL. NO. 703-660-6815 FAX NO. 703-768-7764	

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