

ORDINANCE PERMITTING THE ENCROACHMENT OF PROPOSED ARCHITECTURAL BUILDING OVERHANGS WITHIN AN EASEMENT FOR PUBLIC STREET, UTILITIES AND BUS PASSENGER SHELTER PURPOSES, ON PT. LOT 3, LOTS 5, 6 AND 7, BLOCK 9, ROSSLYN, AND ON THE ORIGINAL HERRELL TRACT, AT 1815 FORT MYER DRIVE, (RPC NO. 16037004), WITH CONDITIONS.

BE IT ORDAINED by the County Board of Arlington County, Virginia, that the Applicant, 1812 Holdings, LLC, (“Applicant”), as developer of the project known as 1812 N. Moore Street, authorized by Site Plan Amendment SP # 18, and as the owner of the property identified in the Arlington County Land Records (“Land Records”) as Pt. Lot 3, Lots 5 thru 7, Block 9-Rosslyn, and the Herrell Tract (RPC No. 16037004), is permitted to construct, subject to the following conditions, architectural overhangs within a portion of an Arlington County Easement for Public Street, Utilities and Bus Passenger Shelter Purposes (“Easement”) on Pt. Lot 3, Lots 5, 6, and 7, Block 9, Rosslyn, and the Original Herrell Tract, at 1815 Fort Myer Drive, RPC No. 16037004, created by Deed, dated November 9, 1979, recorded at Deed Book 2002, Page 851, among the land records of Arlington County, Virginia (“Land Records”) on November 30, 1979. The dimensions (length, width, and beginning and ending elevations) and spatial locations of the permitted encroachments (jointly, “Encroachment”) are depicted in Exhibit A attached to the County Manager’s Report dated January 14, 2008, entitled “Plat Showing Encroachment on Easements for Public Street, Utilities, and Bus Passenger Shelter Purposes, Deed Book 2002, Page 851 on Lots Pt Lot 3, Lots 5 through 7, Block 9 – Rosslyn, Deed Book 105, Page 275, and Herrell Tract, Deed Book 138, Page 165, Arlington County, Virginia,” dated October 9, 2007 and revised January 9, 2008, prepared by VIKA and Exhibit D attached to the County Manager’s Report dated January 14, 2008, entitled “Easement Along Moore Street, Section A, 1812 North Moore Street,” dated January 2008, prepared by VIKA (jointly “Plats”). The dimensions, the location, the characteristics of the permitted Encroachment and the spatial area of the permitted Encroachment are shown on the Plats. No other structures are permitted to be installed or constructed by Applicant, or to exist, within the County property shown on the Plats.

BE IT FURTHER ORDAINED that this permission for the Encroachment shall continue until such time as that portion of the architectural overhangs encroaching within a portion of the Easement are destroyed, removed, no longer in use, or not continuously and promptly maintained by the Applicant. Nothing in this Ordinance shall be construed either: to allow the installation by Applicant, or any other person or entity, of any above ground structure or any structure other than the described architectural overhangs within the area as shown on the Plats; or to allow any greater encroachment beyond the dimensions and spatial area shown on the Plats.

BE IT FURTHER ORDAINED that the Applicant, its successors and assigns, shall continuously and promptly maintain architectural overhang(s) and maintain, restore, repair, and replace all County owned facilities, within and adjacent to the Easement, including any sidewalk, curb and gutter, and paved surface, which are damaged by the installation, maintenance, destruction, continued existence, repair or removal of the architectural overhangs. No provision of this Ordinance is intended, or shall be construed to relieve the Applicant, or any other person or entity, to obtain all required permits, approvals, and permissions to perform any work in the public rights-of-way.

BE IT FURTHER ORDAINED that this Ordinance shall not be construed to release the Applicant, its successors and assigns, of negligence on their part on account of such encroachments, and the Applicant, by constructing, or causing to be constructed and by continuing to have the architectural overhangs encroach within the dedicated public right-of-way, thereby agrees for itself, its successors and assigns, to indemnify and hold harmless the County Board of Arlington County, Virginia and County officials, officers, employees, and agents from all claims, negligence, damages, costs and expenses arising out of the construction, maintenance, repair and removal of the architectural overhangs, and the permission for the architectural overhangs to encroach within a portion of the air space of the public right-of-way permitted by this Ordinance.

BE IT FURTHER ORDAINED that no portion of the architectural overhangs permitted by this Ordinance to encroach within the Easement shall be constructed until the Applicant has paid to the County the sum of \$5,762.20 as compensation for the Encroachment.

BE IT FURTHER ORDAINED that, on or before January 26, 2011, the Applicant, at its sole expense, shall cause a certified copy of this Ordinance and Plats, approved by the Director of the Department of Environmental Services or his designee, to be recorded in the lands records of the Arlington County Circuit Court and evidence thereof shall be promptly delivered by the Applicant to the Real Estate Bureau Chief, Engineering and Capital Projects Division, Department of Environmental Services.

