

ORDINANCE NO. 7865-23

AN ORDINANCE AUTHORIZING AN ENCROACHMENT UPON THE HUNTINGTON AVENUE AND 33RD STREET RIGHTS-OF-WAY, IN THE CITY OF NEWPORT NEWS, VIRGINIA, AS MORE PARTICULARLY SET FORTH HEREIN, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST AN ENCROACHMENT AGREEMENT BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA AND 311 33RD STREET LLC.

WHEREAS, the Council of the City of Newport News, Virginia is authorized pursuant to Virginia Code §15.2-2009 and Va. Code §15.2-2010 to permit encroachments upon certain public ways within the City of Newport News, Virginia; and

WHEREAS, 311 33rd Street LLC, a Virginia limited liability company, owns a parcel of real estate in the City of Newport News known as 311 33rd Street, Newport News, Virginia (Tax ID No. 305.03-03-25) (“the Property”); and

WHEREAS, the Property is on the corner of and adjacent to public rights-of-way known as Huntington Avenue (“Huntington Avenue Right-of-Way”) and 33rd Street (“33rd Street Right-of-Way”); and

WHEREAS, 311 33rd Street LLC has asked for an encroachment to allow it to install and maintain a canopy that will extend approximately five (5) feet into the Huntington Avenue Right-of-Way, balconies that will extend approximately four (4) feet into the 33rd Street Right-of-Way, and decorative brick cornices that will extend approximately thirteen (13) inches into the Huntington Avenue Right-of-Way and the 33rd Street Right-of-Way, all as shown on the drawing attached to the proposed Encroachment Agreement between the City of Newport News, Virginia and 311 33rd Street LLC, a copy of which is attached hereto and made a part hereof (the “Encroachment Agreement”); and

WHEREAS, this encroachment can be facilitated without causing undue public danger or inconvenience, and with no adverse effects on the maintenance of the Huntington Avenue Right-of-Way and the 33rd Street Right-of-Way, given the terms incorporated in the proposed Encroachment Agreement; and

WHEREAS, 311 33rd Street LLC has requested that City Council authorize the encroachments and the execution of the Encroachment Agreement; and

WHEREAS, the City Manager recommends that the Council authorize the encroachments requested by 311 33rd Street LLC and authorize the execution of the Encroachment Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News, Virginia:

1. That it desires to, and hereby does, authorize a non-permanent, revocable encroachment upon the Huntington Avenue Right-of-Way and the 33rd Street Right-of-Way as described herein.

2. That the non-permanent, revocable encroachment is authorized subject to compliance with the terms of that certain Encroachment Agreement between the City of Newport News, Virginia and 311 33rd Street LLC, a copy of which is attached hereto and made a part hereof.

3. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Encroachment Agreement by and between the City of Newport News, Virginia and 311 33rd Street LLC.

4. That a copy of this ordinance and the executed Encroachment Agreement be recorded in the real estate records of the Clerk's Office of the Circuit Court of the City of Newport News, Virginia.

5. That this ordinance shall be in effect on and after the date of its adoption, January 10, 2023.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON JANUARY 10, 2023

Mabel Washington Jenkins, MMC
City Clerk

Phillip D. Jones
Mayor

A true copy, teste:

City Clerk

**PREPARED BY AND
RETURN TO:
Office of the City Attorney
2400 Washington Ave, 9th Floor
Newport News, VA 23607
(757) 926-8416 phone
(757) 926-8549 fax**

**Tax ID No. 305.03-03-25
311 33rd Street, Newport News, VA 23607**

Consideration: \$0

ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (the "Agreement") is made and entered as of this 10th day of January, 2023, by and between the **CITY OF NEWPORT NEWS, VIRGINIA**, a municipal corporation in the Commonwealth of Virginia whose mailing address is 2400 Washington Avenue, Newport News, Virginia 23607 (hereinafter referred to as "GRANTOR" or "City"), in favor of **311 33rd STREET LLC**, a Virginia limited liability company, whose mailing address is 1397 Laskin Road, Virginia Beach, Virginia 23451 (hereinafter referred to as "GRANTEE").

WITNESSETH:

WHEREAS, GRANTEE is the owner of a parcel of real property (the "Property") known as 311 33rd Street, Newport News, Virginia, more fully described as:

SEE EXHIBIT A

and

WHEREAS, the Property is on the corner of and adjacent to an eighty foot (80') right-of-way known as Huntington Avenue ("Huntington Avenue Right-of-Way") and a sixty foot (60') right-of-way known as 33rd Street ("33rd Street Right-of-Way"); and

WHEREAS, Grantee wishes to install a canopy attached to the Property that will extend approximately five feet (5') into the Huntington Avenue Right-of-Way, balconies attached to the Property that will extend approximately four feet (4') into the 33rd Street Right-of-Way, and decorative brick cornices that will extend approximately thirteen inches (13") into the Huntington Avenue and 33rd Street Rights-of-Way, all as shown on the attached **Exhibit B** (collectively, "the Encroachments"); and

WHEREAS, City has determined that there is no objection to the Encroachments; and

WHEREAS, the City Council of the City of Newport News, by ordinance adopted at its meeting on January 10, 2023, approved the Encroachments described herein upon the aforesaid Huntington Avenue Right-of-Way and 33rd Street Right-of-Way.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor and Grantee, Grantor and Grantee do hereby agree as follows:

1. **Acknowledgement and Agreement Regarding Encroachments.** Grantor, insofar as its rights and interests are concerned, does hereby consent to the Encroachments, pursuant to Va. Code §15.2-2009 and §15.2-2010, and hereby grants permission to the Grantee to install and maintain the Encroachments within the Huntington Avenue Right-of-Way and the 33rd Street Right-of-Way, subject to the following terms and conditions.

2. **Use.** Permission for the Encroachments is granted provided the construction, use, and maintenance thereof do not interfere with the safe and efficient construction, operation, maintenance or use of Grantor's right-of-way, sidewalk, or any of the facilities therein ("Grantor's Facilities"), and further provided that such activities are in compliance with all applicable laws, ordinances, regulations, and codes. Grantee agrees it will not construct or cause to be constructed or erected any other structure or improvement upon the Huntington Avenue Right-of-Way and/or the 33rd Street Right-of-Way.

3. **Defective Condition.** If the Encroachments, or any portion thereof, are determined by the Grantor to be in such a defective condition as to cause damage to or to otherwise adversely affect Grantor's Facilities, the safety and health of pedestrians, or the general safety and health of the public, Grantee shall cause the condition to be corrected, remedied or removed at no expense to Grantor within thirty (30) days after written notification by Grantor. Grantee agrees to reimburse Grantor all costs incurred by Grantor in repairing any damage to Grantor's Facilities arising out of the use of the Encroachments within thirty (30) days of receiving an invoice from Grantor for such costs.

4. **Indemnity.** The Grantee hereby agrees to defend, indemnify and save harmless the Grantor and its agents, officials, and employees from any and all claims, demands, damages, including death, and liability of every kind and nature whatsoever for, on account of, or arising out of the use of the Encroachments under the consent hereby granted, except to the extent caused by the gross negligence or willful misconduct of Grantor.

5. **Insurance.** The Grantee will maintain general liability coverage in the amount of at least One Million Dollars (\$1,000,000) per occurrence, endorsed to name the Grantor as an additional insured thereon, and obtain an endorsement requiring the insurer to provide the City with at least thirty (30) days advance notice of cancellation (ten (10) days' notice for cancellation due to non-payment of premium), and shall continue to provide the Grantor with updated certificates of insurance upon each renewal of the coverage. Failure to provide or maintain the required insurance coverage shall result in termination of this Encroachment Agreement.

6. **Termination.** This Agreement shall in no way be construed as the granting of a perpetual easement or any type of property right by Grantor. Pursuant to Va. Code §15.2-2010, the permission granted herein shall be deemed to be a license revocable at the pleasure of the City. This Agreement is revocable at will by either party upon one hundred eighty (180) days' written notice.

7. **Reservation.** Grantor reserves all rights of access to its Huntington Avenue Right-of-Way and its 33rd Street Right-of-Way for construction, operation, and maintenance of its facilities without incurring any liability for damage to or loss of use of the Encroachments described herein or for inverse condemnation thereof. Grantor expressly reserves all rights, privileges, and immunities granted to it under the laws and statutes of the United States and the Commonwealth of Virginia and under the Code of Ordinances of the City of Newport News as to any claims made against it.

8. **Governing Law.** This Agreement shall be governed and construed under the laws of the State of Virginia, without regard to its conflicts laws or choice of law rules.

9. **Successor and assigns.** The terms of this Agreement are binding upon and shall inure to the benefit and obligation of the heirs, personal representatives, successors and assigns of the parties and their respective successors in title, but shall not otherwise grant any rights to any entity not a party to this Agreement nor create any rights in any third-party beneficiary of this Agreement.

10. **Exhibits.** The Exhibits attached to this Agreement are incorporated herein by reference and made a part hereof.

[SIGNATURE PAGES FOLLOW]

WITNESS the following signatures and seals:

GRANTOR

CITY OF NEWPORT NEWS, VIRGINIA

By: _____

Name: Cynthia D. Rohlf

Title: City Manager

ATTEST:

APPROVED AS TO FORM:

Mabel Washington Jenkins,
City Clerk

Collins L. Owens, Jr.
City Attorney

COMMONWEALTH OF VIRGINIA
City of Newport News, to wit:

The foregoing instrument was acknowledged before me this ___ day of _____,
2023, by Cynthia D. Rohlf, as City Manager, and attested by Mabel Washington Jenkins,
as City Clerk, on behalf of the City of Newport News, Virginia.

NOTARY PUBLIC

Registration No. _____

My Commission Expires: _____

GRANTEE

311 33rd STREET LLC,
a Virginia limited liability company

By: 311 33rd Street MM LLC,
a Virginia limited liability company,
its Manager

By: Margolis Family Investments LLC,
a Maryland limited liability company,
its Manager

By: _____
Name: Robert B. Margolis
Title: Manager

STATE/Commonwealth of _____
City/County of _____, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Robert B. Margolis, as Manager for and on behalf of Margolis Family Investments LLC, a Maryland limited liability company, as Manager for and on behalf of 311 33rd Street MM LLC, a Virginia limited liability company, as Manager for and on behalf of 311 33rd Street LLC, a Virginia limited liability company.

NOTARY PUBLIC

Registration No. _____

My Commission Expires: _____

EXHIBIT A

All those certain lots, pieces or parcels of land, situate, lying and being in the City of Newport News, Virginia, known, numbered and designated as Lot Numbered Twenty-Four A (24-A), as shown on that certain plat entitled, "PROPERTY LINE VACATION BETWEEN LOTS 24, 25, 26, 27, 28, 29 & 33, BLOCK 223, MAP OF PART OF THE CITY OF NEWPORT NEWS, VIRGINIA AND A 4' WIDE PERPETUAL RIGHT OF WAY AND EASEMENT AS DESCRIBED IN DEED BOOK 78, PAGES 385 & 386 AND INSTRUMENT 120004434, CITY OF NEWPORT NEWS", dated May 5, 2013 and made by Davis & Associates, P.C., Surveyors – Planners, York County Virginia and duly recorded in the Clerk's Office of the Circuit Court for the City of Newport News, Virginia, as Instrument number 130012714.

EXHIBIT B

Project Name	
Client	
Address	
City	
State	
Zip	
Scale	
Date	

THE COILE
 311 33rd Street
 Newport News, VA 23607

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 C.J.M.W. Architecture, P.A.

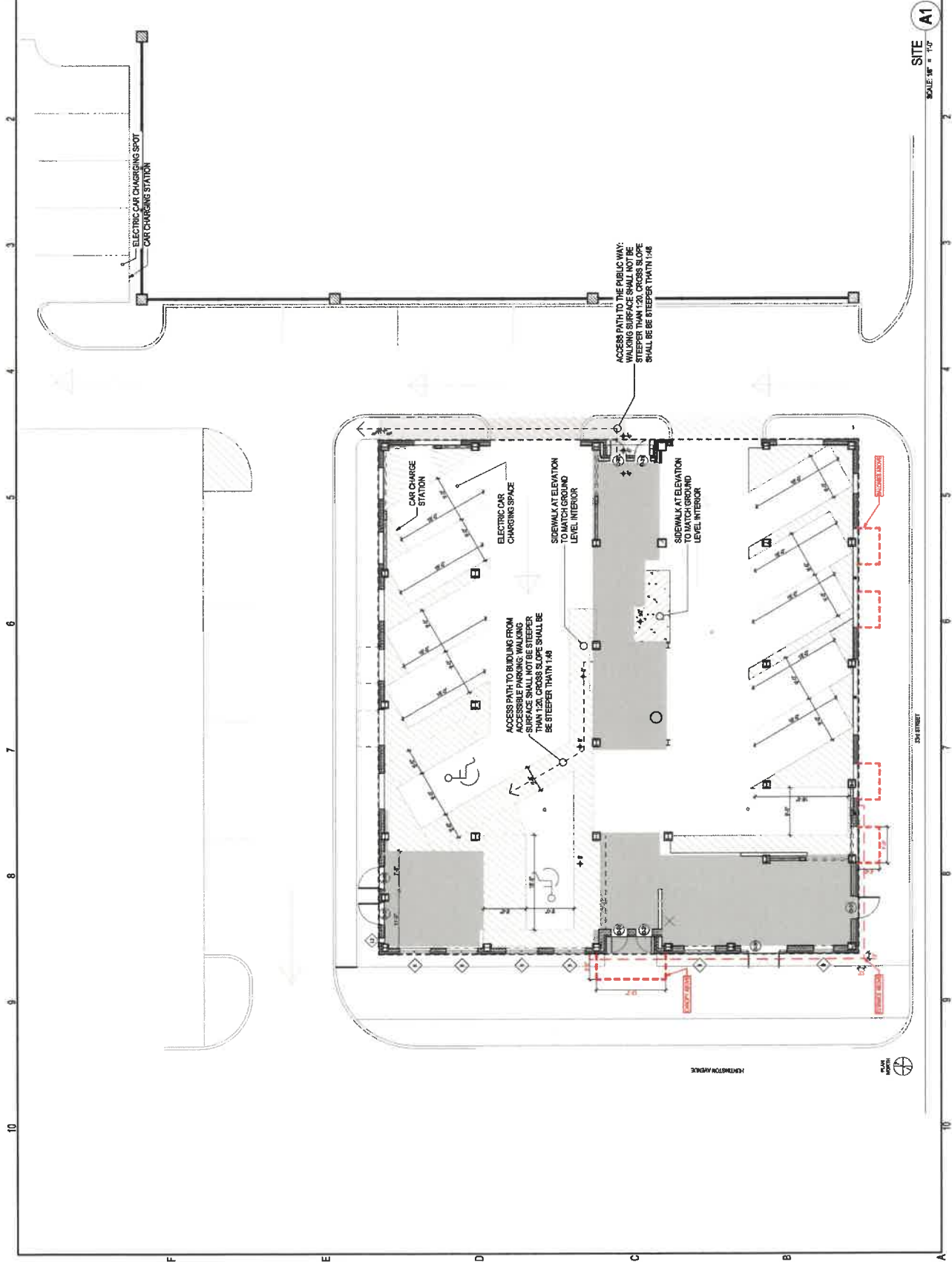
ARCHITECTURAL SITE PLAN

Sheet No.

A1.01

Drawn By	11/18/21
Checked By	11/18/21
Scale	

SITE A1
 SCALE: 1/8" = 1'-0"



PROVIDED AS SHOWN - PROJECT OWNER SHALL VERIFY ALL DIMENSIONS AND CONDITIONS ON SITE PRIOR TO CONSTRUCTION. THIS PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF C.J.M.W. ARCHITECTURE, P.A.