



Adopted as follows:  
 Yeas — Council Members Bates, K. Cockrel, Jr., S. Cockrel, Collins, Everett, McPhail, Scott, Tinsley-Talabi, and President Mahaffey — 9.  
 Nays — None.

**Department of Public Works  
 City Engineering Division**  
 July 25, 2002

Honorable City Council:  
 Re: Petition No. 3797 — Jesus Tabernacle of Deliverance Church, requesting certain changes in public rights-of-way in the area of Outer Drive, Kilbourne, Rosemary and Chalmers.

Petition No. 3797 "Jesus Tabernacle of Deliverance Church", at 10827 Chalmers Avenue, Detroit, Michigan 48213, request

to encroach into the south side of Kilbourne Ave., 150 feet wide, the north and south sides of Rosemary Ave., 120 feet wide, and Chalmers Ave., 76 feet wide. Also, the petitioner requests the conversion of the northerly portion of the north-south public alley, 20 feet wide, between Rosemary Ave. and Kilbourne Ave., first west of Chalmers Ave., into a private easement for public utilities.

The requested encroachment(s) will include the following:

- The creation of parking bays within the south 30 feet of Kilbourne Ave., 150 feet wide, with wrought iron fencing enclosing an area approximately 30 ft. x 100 ft.
- The installation of concrete steps (at grade) within the north 30 feet of Rosemary Ave., 120 feet wide.

- Additional parking spaces created within the south 30 feet of Rosemary Ave., 120 feet wide, to be incorporated in the proposed new church parking lot.

- Two foot subsurface encroachment of the building foundation within the westerly line of Chalmers Ave., 76 feet wide, between Rosemary Ave. and Kilbourne Ave.

The petition was referred to the City Engineering Division — DPW for investigation and report. This is our report.

The Traffic Engineering Division — DPW reports no objections with the requested encroachments and conversion to easement provided that all work is constructed in accordance with City of Detroit standards, approved by the City Engineering Division — DPW and that the petitioner shall be responsible to return the public rights-of-way to it's original condition after the expiration of the encroachment at no cost to the city.

The Public Lighting Department has no objections provided that a minimum horizontal clearance of 3-feet 6-inches and a vertical clearance of 1'-0" be maintained from their facilities.

The Detroit Water and Sewerage Department (DWSD) reports the following:

- Chalmers between Rosemary and Kilbourne: Encroachment in the street. DWSD has an existing 12-inch main located at 6 feet east of the west property line of Chalmers. The building footings are too close to our existing water main. DWSD has no objection to the proposed encroachment provided that the petitioner relocate the water main in the ROW in accordance with plans approved by DWSD. All work necessary to relocate the water main is to be at the petitioner's expense and at no costs to DWSD.

- DWSD has no objections to the remaining changes in public rights-of-way.

All other involved City departments and privately owned utility companies have reported no objections to the encroachments and conversion to easement or that satisfactory arrangements have been made. Where appropriate, provisions protecting utility installations are part of the resolution.

Respectfully submitted,  
 SUNDAY JAIYESIMI  
 City Engineer

City Engineering Division — DPW  
 By Council Member McPhail:

Resolved, That part of the north-south public alley, 20 feet wide, in the block bounded by Kilbourne Avenue, 80 & 150 feet wide, Rosemary Avenue, 60 & 120 feet wide, Chalmers Avenue, 76 feet wide, and Newport Avenue, 60 feet wide, lying Westerly of and abutting the West line of Lot(s) 91-95, both inclusive, the south 30.00 feet of Kilbourne, Avenue, Also, lying Easterly of and abutting the East line

of Lot 96 of 'Michel's Subdivision No. 1 of Parts of Lots 6 & 7, Plat of Thomas Trombly Farm and Part of the David Trombly Farm all in P.C. 389' City of Detroit, Wayne County, Michigan, as recorded in Liber 50, Page 9 Plats, Wayne County Records;

Be and the same is hereby vacated as a public alley and is hereby converted into a private easement for public utilities of the full width of the alley, which easement shall be subject to the following covenants and agreements, uses, reservations and regulations, which shall be observed by the owners of the lots abutting on said alley and by their heirs, executors, administrators and assigns, forever to wit:

First, Said owners hereby grant to and for the use of the public an easement or right-of-way over said vacated public alley herein above described for the purposes of maintaining, installing, repairing, removing, or replacing public utilities such as water mains, sewers, gas lines or mains, telephone, electric light conduits or poles or things usually placed or installed in a public alley in the City of Detroit, with the right to ingress and egress at any time to and over said easement for the purpose above set forth,

Second, Said utility easement or right-of-way in and over said vacated alley herein above described shall be forever accessible to the maintenance and inspection forces of the utility companies, or those specifically authorized by them, for the purpose of inspecting, installing, maintaining, repairing, removing, or replacing any sewer, conduit, water main, gas line or main, telephone or light pole or any utility facility placed or installed in the utility easement or right-of-way. The utility companies shall have the right to cross or use the driveways and yards of the adjoining properties for ingress and egress at any time to and over said utility easement with any necessary equipment to perform the above mentioned task, with the understanding that the utility companies shall use due care in such crossing or use, and that any property damaged by the utility companies, other than that specifically prohibited by this resolution, shall be restored to a satisfactory condition,

Third, Said owners for their heirs and assigns further agree that no buildings or structures of any nature whatsoever including, but not limited to, concrete slabs or driveways, retaining or partition walls, shall be built or placed upon said easement, nor change of surface grade made, without prior approval of the City Engineering Division — DPW,

Fourth, That if the owners of any lots abutting on said vacated alley shall request the removal and/or relocation of any existing poles or other utilities in said easement, such owners shall pay all costs incidental to such removal and/or reloca-

tion, unless such charges are waived by the utility owners,

Fifth, That if any utility located in said property shall break or be damaged as a result of any action on the part of said owners or assigns (by way of illustration but not limitation) such as storage of excessive weights of materials or construction not in accordance with Section 3, mentioned above, then in such event said owners or assigns shall be liable for all costs incidental to the repair of such broken or damaged utility; and further

Provided, That if it becomes necessary to remove the paved alley return at the entrance (into Kilbourne Ave.), such removal and construction of new curb and sidewalk shall be done under city permit and inspection according to City Engineering Division — DPW specifications with all costs borne by the abutting owner(s), their heirs or assigns; and be it further

Resolved, That the City Engineering Division — DPW is hereby authorized and directed to issue permits to the "Jesus Tabernacle of Deliverance Church", at 10827 Chalmers Avenue, Detroit, Michigan 48213, to install and maintain following proposed encroachments:

- The creation of parking bays within the south 30 feet of Kilbourne Ave., 150 feet wide, with wrought iron fencing enclosing an area approximately 30 ft. x 100 ft., lying adjacent to property described as: Lot 91 of "Michel's Subdivision No. 1 of Parts of Lots 6 & 7, Plat of Thomas Trombly Farm and Part of the David Trombly Farm all in P.C. 389", City of Detroit, Wayne County, Michigan, as recorded in Liber 50, page 9 Plats, Wayne County Records;

- The installation of concrete steps (at grade) within the north 30 feet of Rosemary Ave., 120 feet wide, lying adjacent to property described as: Lot 1046 of "David Trombly Estate Subdivision No. 4 of the David Trombly Farm P.C. 389", City of Detroit, Wayne County, Michigan, as recorded in Liber 48, Page 44 Plats, Wayne County Records;

- Additional parking spaces created within the south 30 feet of Rosemary Ave., 120 feet wide, to be incorporated in the proposed new church parking lot, lying adjacent to property described as: Lot 941 of "David Trombly Estate Subdivision No. 4 of the David Trombly Farm P.C. 389", City of Detroit, Wayne County, Michigan, as recorded in Liber 48, Page 44 Plats, Wayne County Records;

- Two-foot subsurface encroachment of the building foundation within the westerly line of Chalmers Ave., 76 feet wide, between Rosemary Ave. and Kilbourne Ave. adjacent to the following described property: Lot(s) 1046-1051, both inclusive of "David Trombly Estate Subdivision No. 4 of the David Trombly Farm P.C. 389",

City of Detroit, Wayne County, Michigan, as recorded in Liber 48, Page 44 Plats, Wayne County Records; Lot(s) 91-95, both inclusive, of "Michel's Subdivision No. 1 of Parts of Lots 6 & 7, Plat of Thomas Trombly Farm and Part of the David Trombly Farm all in P.C. 389", City of Detroit, Wayne County, Michigan, as recorded in Liber 50, Page 9 Plats, Wayne County Records;

Provided, The "Jesus Tabernacle of Deliverance Church", or its assigns shall apply to the Buildings and Safety Engineering Department for a building permit prior to any construction. Also, whenever it becomes necessary to open cut public streets, bore, jack, occupy or barricade city rights-of-way for construction of encroachments such work shall be according to detailed permit application drawings prior to any public right-of-way construction; and further

Provided, That the necessary permits shall be obtained from the City Engineering Division — DPW and the Buildings and Safety Engineering Department. The encroachments shall be constructed and maintained under their rules and regulations; also in accord with plans submitted to and approved by the Traffic Engineering Division — DPW; and further

Provided, That all costs for the construction, maintenance, permits and use of the encroachments shall be borne by the "Jesus Tabernacle of Deliverance Church", or its assigns; and further

Provided, That all costs incurred by privately owned utility companies and/or city departments to alter, adjust, and/or relocate their existing utility facilities located in close proximity to the encroachments, shall be borne by the "Jesus Tabernacle of Deliverance Church", or its assigns. Should damages to utilities occur the "Jesus Tabernacle of Deliverance Church", or its assigns shall be liable for all incidental repair costs and waives all claims for damages to the encroaching installations; and further

Provided, If it becomes necessary to repair or replace the utilities located or to be located within the public rights-of-way, by acceptance of this permission, the "Jesus Tabernacle of Deliverance Church", (owners) for themselves, or their assigns, (by acceptance of permits for construction near underground utility lines, conduits, or mains) waives all claims for damages to the encroaching installations and agree to pay all costs incurred in their removal (or alteration), if removal (or alteration) becomes necessary; and further

Provided, The "Jesus Tabernacle of Deliverance Church", shall agree to pay all claims, damages or expenses that may arise out of the maintenance of the proposed encroachments; and further

Provided, The petitioner shall file with the Finance Department an indemnity agreement approved by the Law Department, saving and protecting the City of Detroit from any and all claims which may arise therefrom. Also, the petitioner shall be required by the Law Department in conjunction with the Finance Department — Risk Management Division to present proof of financial capability (bonds and insurance; the City of Detroit shall be named as coinsured therein) to pay all claims, damages or expenses that may arise as a result of the installation, maintenance or use of encroachments within public street rights-of-way. To protect the City in the event of petitioner default, a surety bond in a penal sum sufficient to pay the City of Detroit's cost to remove or alter the encroachment (if such removal or alteration becomes necessary) shall be maintained by the "Jesus Tabernacle of Deliverance Church". Also, the "Jesus Tabernacle of Deliverance Church", shall maintain said surety bond in perpetuity. The petitioner shall be unable to obtain a release from said surety bond as long as the encroachment exists within said public rights-of-way. The City Engineering Division — Street Design Bureau in conjunction with the Traffic Engineering Division — DPW shall be responsible for determining the amount of said surety bond, and then to transmit the information to the Finance Department; and further

Provided, The property owned by the "Jesus Tabernacle of Deliverance Church", and the encroachments shall be subject to proper zoning or regulated use (Board of Zoning Appeals Grant); and further

Provided, That no other rights in the public streets, alleys or other public place shall be considered waived by this permission which is granted expressly on the condition that said encroachments shall be removed at any time when so directed by the City Council, and the public property affected shall be restored to a condition satisfactory to the City Engineering Division — DPW; and further

Provided, The Detroit Water and Sewerage Department (DWSD) forces

shall have free and easy access to the water main and/or sewer facilities at all times to permit proper operation, maintenance and if required, alteration or repair of the water main and/or sewer facilities. Free and easy access shall mean that no structures or storage of materials will be allowed upon the area of encroachment to hinder the movement of maintenance equipment; and further

Provided, Any proposed fence must have a gate installed to permit access for DWSD forces. The gate shall remain unlocked 24 hours a day, unless a guard is stationed near the gate to allow the DWSD ingress and egress at any time. The minimum dimensions of the gate or gates shall provide 15 foot vertical and 13 foot horizontal clearances for freedom of DWSD equipment movement; and further

Provided, Should the water main and/or sewer facilities be broken or damaged as a result of any action on the part of the petitioner or assigns, then in such event the petitioner or assigns shall be liable for all costs incident to the repair of such broken or damaged water main and appurtenances, and waives all claims for damages; and further

Provided, The placement and maintenance of encroachments in public rights-of-way shall be construed as acceptance by "Jesus Tabernacle of Deliverance Church". Notwithstanding the fact that the filing of the indemnity agreement and the securing of the necessary permit(s) referred to above in this resolution are stipulations of this encroachment (permission) grant; and further

Provided, This resolution is revocable at the will, whim or caprice of the City Council, and the "Jesus Tabernacle of Deliverance Church", acquires no implied or other privileges hereunder not expressly stated herein; and further

Provided, That the encroachment permit shall not be assigned or transferred without the written approval of the City Council; and further

Provided, That the City Clerk shall within 30 days record a certified copy of this resolution with the Wayne County Register of Deeds.