

May 20

1232

2008

**Department of Public Works
City Engineering Division**

April 21, 2008

Honorable City Council:

Re: Petition No. 2293 — 400 Monroe Associates request for an encroachment for the installation of a wall mounted entry marquee sign for Fishbones Restaurant at 400 Monroe Avenue.

Petition No. 2293 of "400 Monroe Associates" whose address is 400 Monroe Avenue, Suite 480, Detroit, Michigan 48226 request to encroach into Monroe Avenue, 50 feet wide, east of Brush Street, 50 feet wide, with a wall mounted entry marquee sign that is 5'6" in width and 22' in length. This marquee sign will be 10 feet from the lowest point on the marquee sign to the grade of the sidewalk.

The request was approved by the Planning and Development Department. The petition was referred to the City Engineering Division — DPW for investigation and report. This is our report.

The Traffic Engineering Division — DPW has no objections provided that the encroaching marquee sign shall have a vertical clearance of at least 10 feet above the sidewalk level as shown on attached drawing. The requested 2'1" horizontal clearance (as marked on attached drawing) of the encroaching marquee sign from the face of the curb is less than the required minimum of 2'6". Therefore, concurrence shall be obtained from utility companies for the variance.

The Public Lighting Department (PLD) reports having no objections provided that any structure proposed to be built shall maintain a four and a half feet (4'6") horizontal clearance from the PLD conduit bank and manholes; also a ten (10) feet horizontal clearance for the overhead PLD lines and installations.

Detroit Water and Sewerage Department (DWSD) reports no objections to the proposed encroachment provided that a minimum clearance are maintained and the provision are part of this resolution.

All other involved City departments and privately owned utility companies have reported no objections to the proposed encroachment. Where appropriate, provisions protecting utility installations are part of the resolution.

I am recommending adoption of the attached resolution.

Respectfully submitted,

JESSY JACOB

Interim City Engineer

City Engineering Division — DPW

By Council Member Tinsley-Talabi:

Resolved, The City Engineering Division — DPW is hereby authorized and directed to issue permits to "400 Monroe Associates", to install and maintain the encroachment into Monroe Avenue with an entry marquee sign that is 5'6" in width and 22' in length also 10' from the grade

of sidewalk lying within the South 6.00 feet by 22.00 feet of Monroe Avenue, 50 feet wide, adjacent to the following described property:

Land in the City of Detroit, Wayne County, Michigan, being that part of the Southerly 6.00 feet of Monroe Avenue, 50 feet wide, east of Brush Street, 50 feet wide, lying Northerly of and abutting the North line of Lot 1, Block 7, in the "Plan of part of the Brush Farm" as subdivided into lots by John Mullett Surveyor northwest corner of Biddle's Cornerstore at the intersection of the east line of Randolph Street with the South line of Jefferson Avenue intersection of west line of Brush Farm with South line of Jefferson Avenue Wayne County Register of Deeds as recorded in Liber 7, Page 224-5 Plats, Wayne County Records;

Provided, That any structure(s) built shall have a minimum horizontal clearance of 3-feet 6-inches and a vertical clearance of 1'-0" maintained from the Public Lighting Department (PLD) facilities. Also, the PLD will require 24-hour access for heavy vehicles for maintenance of its installations; and further

Provided, That the encroachment have a vertical clearance of at least 10 feet above the sidewalk level. The requested 2'1" horizontal clearance of the encroaching marquee sign from the face of the curb is less than the required minimum of 2'6". Therefore, concurrence shall be obtained from utility companies for the variance,

Whereas, Approval of this petition the Detroit Water and Sewerage Department (DWSD) does not waive any of its rights to its facilities located in the street, and at all time, DWSD, its agents or employees, shall have the right to enter upon the street to maintain, repair, alter, service, inspect, or install its facilities. All costs incident to the damaging, dismantling, demolishing, removal and replacement of structures or other improvements herein permitted and incurred in gaining access to DWSD's facilities for maintenance, repairing, alteration, servicing or inspection by DWSD shall be borne by the petitioner. All costs associated with gaining access to DWSD's facilities, which could normally be expected had the petitioner not encroached into the street, shall be borne by DWSD; and be it further

Provided, That all construction performed under this petition shall not be commenced until after (5) days written notice to DWSD. Seventy-two (72) hours notice shall also be provided in accordance with P.A. 53 1974, as amended, utilizing the MISS DIG one call system; and be it further

Provided, That construction under this petition is subject to inspection and approval by DWSD forces. The cost of such inspection shall, at the discretion of DWSD, be borne by the petitioner; and be it further

May 20

1233

2008

Provided, That DWSD facilities located within the street shall break or be damaged as the result of an action on the part of the petitioner, then such event the petitioner agrees to be liable for all costs incident to the repair, replacement or relocation of such broken or damaged DWSD facilities; and be it further

Provided, That the petitioner shall hold DWSD harmless for any damages to the encroaching device constructed or installed under this petition which may be caused by the failure of DWSD's facilities; and be it further

Provided, That if at any time in the future the petitioner shall request removal and/or relocation of DWSD's facilities in the street being encroached upon the petitioner agrees to pay all costs for such removal and/or relocation; and be it further

Provided, The petitioner, "400 Monroe Associates" shall make an application to the Building and Safety Engineering Department for a building permit. The Fishbones' marquee sign encroachment shall be installed and maintained in accord with plans submitted to and approved by Building and Safety Engineering Department and/or City Engineering Division. All cost for plan review, inspection, and building permits shall be paid by the petitioner; and further

Provided, That the petitioner shall file with the Finance Department and/or City Engineering Division — DPW an indemnity agreement in form approved by the Law Department. The agreement shall save and protect the City of Detroit from any and all claims, damages or expenses that may arise by reason of the issuance of the permits and faithful or unfaithful performance by the petitioner of the terms thereof. Further, the petitioner shall agree to pay all claims, damages, or expenses that may arise out of the maintenance of the proposed encroachments; and further

Provided, That such use of the public rights-of-way shall be under the rules and regulations of the City Engineering Division in conjunction with the Building and Safety Engineering Department (if necessary). The City of Detroit retains all rights to establish, maintain, inspect, and service any utilities within or over said Public Street; and further

Provided, All costs for the construction, maintenance, permits, and use of the marquee sign project encroachment(s) within the said public right-of-ways shall be borne by the petitioner. The installation and maintenance of said encroachment(s) shall comply with the rules and regulations of the City Engineering Division — DPW (in conjunction with Buildings and Safety Engineering Department, (if necessary), and Traffic Engineering Division — DPW; and further

Provided, If it becomes necessary to repair or replace the utilities located or to be located in the public right-of-ways, by

the acceptance of this permission, the marquee sign project encroachment(s) owners for themselves, their heirs or assigns waive claims for any damages to the encroaching installations and agree to pay the costs incurred in their removal, if their removal becomes necessary, and to restore the property affected to a condition satisfactory to the City Engineering Division — DPW (in conjunction with Buildings and Safety Engineering Department, (if necessary) at the encroachment owner's expense; and further

Provided, That said permittee shall be subject to any tax under the provisions of the General Property Tax Act, which may be levied against it pursuant to law; and further

Provided, That no rights in the public streets, alleys or other public places shall be considered waived by this permission which is granted expressly on the condition that said marquee sign encroachment(s) 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, That said permits issued by the City Engineering Division — DPW and/or the Buildings and Safety Engineering Department are granted with the distinct understanding that in the event the City Charter, or Detroit Code(s), or ordinance(s), or resolution(s), or City policies (governing the placement of encroachments in public right-of-ways are amended to provide for the levying thereafter, of a fee, charge or rental, to be hereafter determined upon, for the occupancy of public streets, alleys or other public places, that the permittee will pay said fee, charge or rental provided for in said Charter, or code(s), or ordinance(s), or resolution(s), or policies; also said permittee does hereby bind itself thereunto, and accept said permits on the conditions hereby imposed, and in the event said permittee shall contest the validity of said charter, or code(s), or ordinance(s), or resolution(s), or policies of said fee, charge or rental, or upon refusal to pay same, these permits shall immediately become void; and further

Provided, This resolution is revocable at the will, whim or caprice of the City Council, and permittee waives any right to claim damages or compensation for removal of encroachment(s), and further, that the permittee acquires no implied or other privileges hereunder not expressly stated herein; and further

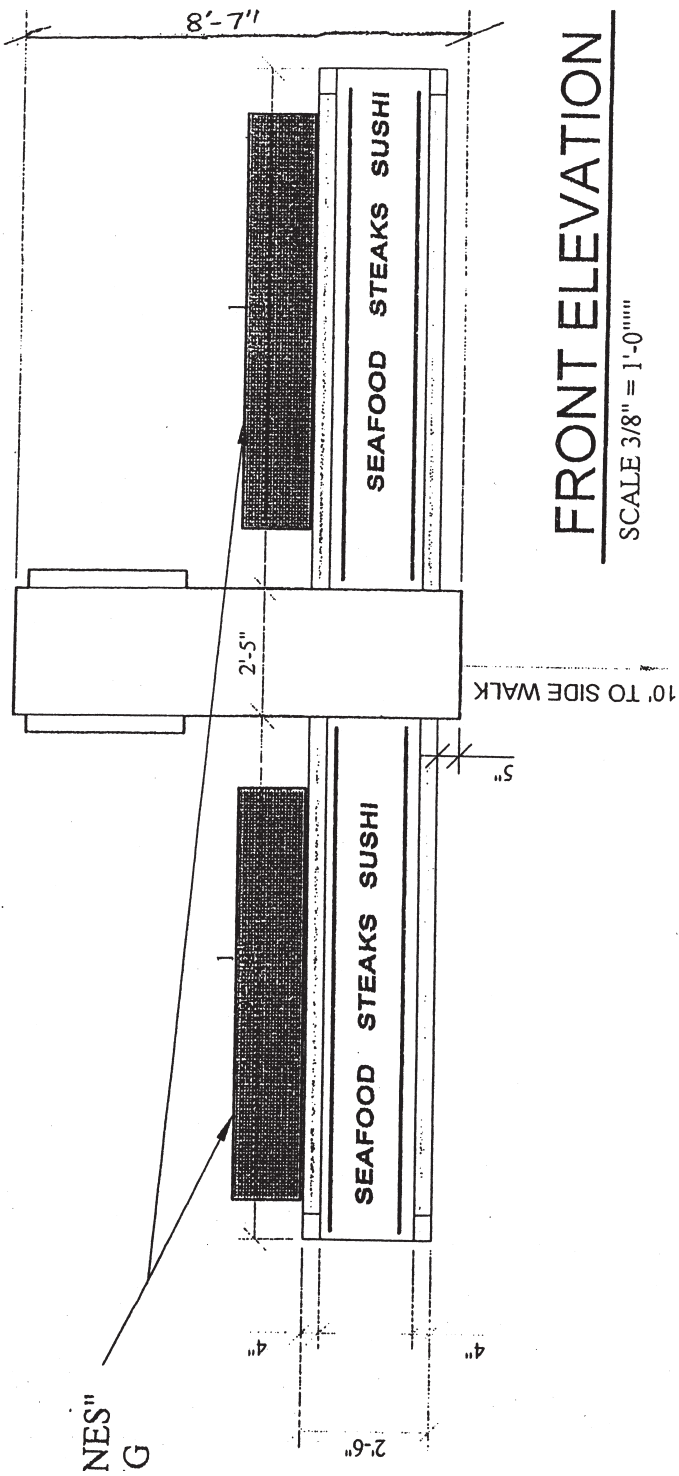
Provided, That the marquee sign encroachment(s) permit shall not be assigned or transferred without the written approval of the City Council; and further

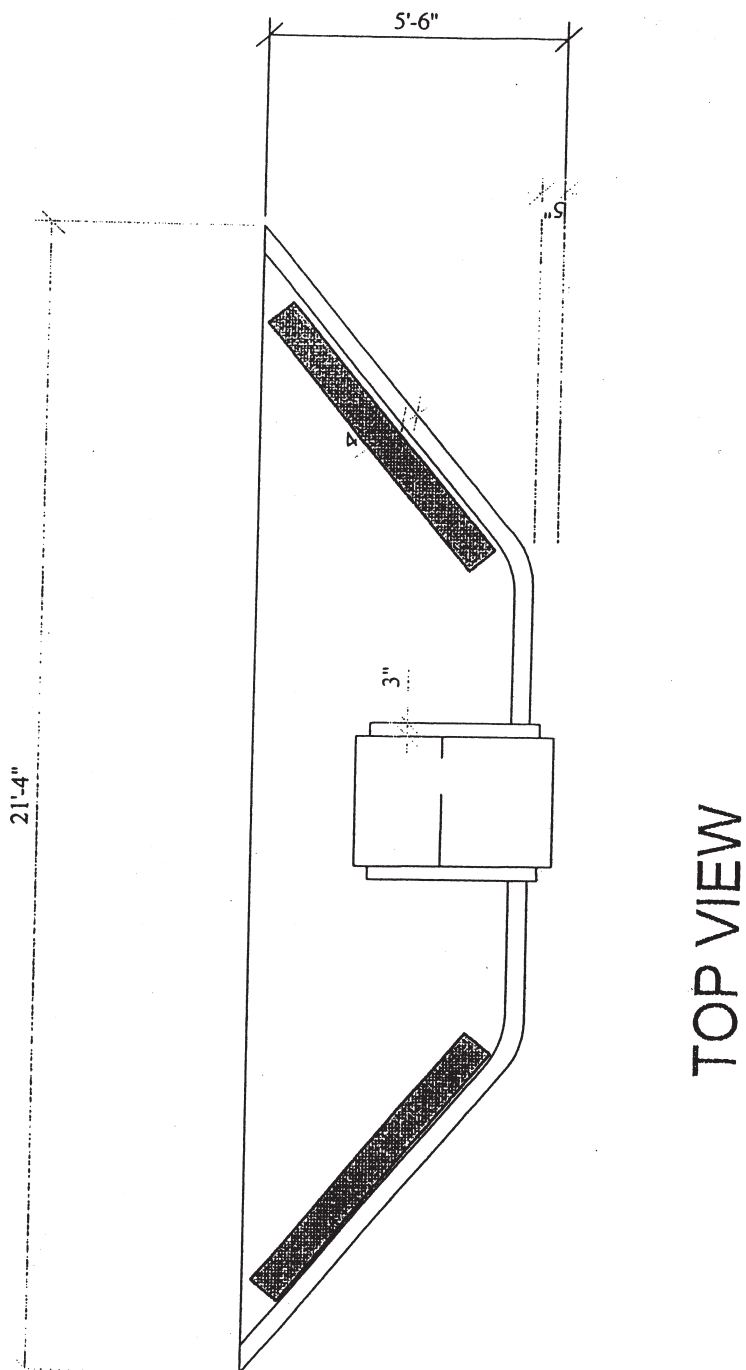
Provided, That the City Clerk shall within 30 days record a certified copy of this resolution and indemnity agreement with the Wayne County Register of Deeds.

May 20

1236

2008





Adopted as follows:
Yeas — Council Members S. Cockrel, Jones, Kenyatta, Reeves, Tinsley-Talabi, and President K. Cockrel, Jr. — 6.
Nays — Council Member Watson — 1.