

City Engineering Department
February 1, 1990

Honorable City Council:

Re: Petition No. 3363. Pinkard's Plumbing and Heating Supplies. Alley to Easement (easterly) portion of east-west public alley in the block bounded by Indiana, Wisconsin, Pilgrim and Puritan; also requesting permission to maintain an existing masonry block wall encroaching across the alley.

Petition No. 3363 of "Pinkard's Plumbing and Heating Supplies" requests the conversion of an easterly portion of the east-west public alley, 18 feet wide, in the block bounded by Indiana, Wisconsin, Pilgrim and Puritan Avenues into an easement for public utilities; also to maintain an existing (9.50 feet height) masonry block wall encroaching across the public alley.

The requested conversion into a public utility easement was approved by the Community and Economic Development Department. The petition was referred to the City Engineering Department for investigation and report. This is our report:

The petitioner plans to use the paved alley return entrance (into Wisconsin) and requests such remain in its present status. The petitioner shall pay all incidental removal costs whenever discontinuance of use makes removal necessary.

The westerly portion (into Indiana) of the above mentioned east-west public alley, 18 feet wide, must remain open to service other property owners in the block. Because a part of the masonry block wall encroaches into the (westerly) portion of the public alley (to remain open), vehicles have "hit" the wall trying to turn. Therefore, a part of the masonry block wall must be moved from the (westerly) portion of the public alley (to remain open) to the privately-owned property of the petitioner. Masonry block wall construction on private property is subject to the specifications, permit, and inspection of the Buildings and Safety Engineering Department.

Provisions protecting the Water and Sewerage Department's interests in the public sewer are incorporated into the resolution.

Additionally, a provision to prevent storm water ponding onto the alleys that remain public property is included in the resolution.

All other City departments and privately-owned utility companies have replied they have no objection to the proposed conversion or the encroachment. Should damages to utilities occur the petitioner shall be liable for all incidental repair costs and waives all claims for damages to the encroaching installations.

An appropriate resolution is attached for consideration by your Honorable Body.

Respectfully submitted,
CLYDE R. HOPKINS
Director

By Council Member Hill:

Resolved, The City Engineering Department is hereby authorized to issue permits to "Pinkard's Plumbing and Heating Supplies" to maintain an existing masonry block wall encroaching across a portion of the east-west (converted public) alley, 18 feet wide, in the block bounded by Indiana, Wisconsin, Pilgrim and Puritan Avenues, property described as:

The east 11.00 feet of Lot 111, and Lots 112 thru 117 as platted in "Ruritan Park" a Subdivision of the North Half of the Northwest Quarter of the Southwest Quarter of Section 16, Town 1 South, Range 11 East, Greenfield Township, City of Detroit, Wayne County, Michigan as recorded in Liber 44, Page 22, Plats, Wayne County Records;

Encroachment to consist of an existing (9.50 feet height) masonry block wall across the east-west (converted public) alley, 18 feet wide, abutting part of the above described property;

Provided, The petitioner shall make application to the Buildings and Safety Engineering Department for a building permit. Simultaneously, the petitioner shall make application to the Board of Water Commissioners to obtain approval to maintain construction over the public sewer. The masonry block wall encroachment shall be maintained in accord with plans submitted to and approved by the Buildings and Safety Engineering Department (B&SE) and the Water and Sewerage Department

(DWSD) — Sewer Services Section. All costs for plan review, inspection, and permits shall be paid by the petitioner; and further

Provided, That any part of the masonry block wall encroaching into the (westerly) portion of the public alley (to remain open) shall be moved to the privately-owned property of the petitioner (by the petitioner at the petitioner's expense). Further, any masonry block wall construction on the petitioner's privately-owned property shall be subject to the specifications, permit, and inspection of the Buildings and Safety Engineering Department; and further

Provided, That if it becomes necessary to alter the existing pavement grade of the public alleys (to remain open), such change of surface grade shall be done under City permit and inspection according to City Engineering Department specifications with all costs borne by the petitioner, their heirs or assigns. This will prevent storm water ponding onto the alleys that remain public property; and further

Provided, If the public sewer or overhead utility wires located (or to be located) in said (converted public) alley shall break, causing damage to any construction, property or materials, the petitioner or their assigns (by acceptance of permits for construction over the public sewer or near overhead utility wires) waives all claims for damages to the encroaching installations and agree to pay the costs incurred in their removal, if removal becomes necessary; and further

Provided, If the public sewer or overhead utility wires located (or to be located) in said (converted public) alley shall break or be damaged as a result of any action on the part of the petitioner or their assigns (by way of illustration but not limitation, such as storage of excessive weights of materials, or any construction not in accordance with Provisions 1 thru 4 above), then the petitioner or assigns shall be liable for all costs incidental to the repair of the broken or damaged public sewer and/or overhead utility wires. The petitioner and assigns shall be liable for all claims, damages, or expenses resulting from their action(s); and further

Provided, The permittee (at the time of obtaining said permits) shall file with the Finance Director an indemnity agreement in form approved by the Law Department, saving and protecting the City of Detroit harmless from any and all claims, damages, or expenses that may arise by reason of the issuance of said permits and the faithful performance by the permittee of the terms thereof, and in addition to pay all claims, damages or expenses that may arise out of the maintenance of said encroachment; and further

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

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

Resolved, All that part of the east-west public alley, 18 feet wide, in the block bounded by Indiana, Wisconsin, Pilgrim and Puritan Avenues lying southerly of and abutting the south line of the east 11.00 feet of Lot 111, and Lots 112 to 116; also lying northerly of and abutting the north line of Lot 117 as platted in "Ruritan Park" a Subdivision of the North Half of the Northwest Quarter of the Southwest Quarter of Section 16, Town 1 South, Range 11 East, Greenfield Township, City of Detroit, Wayne County, Michigan as recorded in Liber 44, Page 22, Plats, Wayne County Records;

Be and the same is hereby vacated as a public alley and is hereby converted into a public easement 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-

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mentioned tasks, 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 other structures of any nature whatsoever including but not limited to, concrete slabs or driveways (except necessary line fence, and the existing 9.50 feet height masonry block wall; subject to the approval of DWSD and B&SE as referenced above in the encroachment portion of this resolution) shall be built or placed upon said easement, nor any change of surface grade made, without prior approval of the City Engineering Department.

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 relocation, 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

Provided, That if it becomes necessary to remove the paved alley return at the (Wisconsin) entrance, such removal and construction of new curb and sidewalk shall be done under City permit and inspection according to City Engineering Department specifications with all costs borne by the petitioner, their heirs or assigns; and

Provided Further, That a certified copy of this resolution shall be recorded with the Wayne County Register of Deeds. The petitioner shall pay all incidental recording costs.

Adopted as follows:

Yeas — Council Members Butler, Cleveland, Collins, Eberhard, Hill, Hood, Kelley, Ravitz, and President Mahafley — 9.

Nays — None.

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PURITAN

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WISCONSIN

ALLEY TO EASEMENT

PILGRIM

PET. NO. 3363
CARTO. NO. 90-E