

City Engineering Department
June 26, 1990

Honorable City Council:

Re: Petition No. 3538, Eugene A. Gargaro, Jr. and Liberty Temple Baptist Church. Alley to Easement portion of north-south public alley in the block bounded by Greenfield, Prest, W. McNichols, and Santa Maria; also requesting permission to encroach with a masonry screen wall (longitudinally) along and across the alley.

Petition No. 3538 of "Eugene A. Gargaro, Jr. and Liberty Temple Baptist Church" requests the conversion of a portion of the north-south public alley, 20 feet wide, in the block bounded by Greenfield Road, Prest Avenue, W. McNichols Road, and Santa Maria Avenue into an easement for public utilities; also to encroach (longitudinally) along and across the (converted) public alley with a masonry screen wall (approximately 4.50 to 6 feet in height with below grade footings).

The encroaching screen wall is necessary to separate church parking (P1 zoning lots) and residential properties.

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(s) were unable to obtain the written consent from the owners of 17171 and 17203 Prest Avenue. However, all of the abutting property owners have reversionary interest in the (to be converted) public alley. To acquire the entire (converted) public alley for parking, the petitioner(s) must purchase the reversionary interest of all the abutting residential property owners.

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

Resolved, The City Engineering Department is hereby authorized to issue permits to "Eugene A. Gargaro, Jr. and/or Liberty Temple Baptist Church" to construct and maintain a masonry screen wall encroaching longitudinally (and across) the north-south (converted) public alley, 20 feet wide, in the block bounded by Greenfield Road, Prest Avenue, McNichols Road, and Santa Maria Avenue, property described as follows:

The south 10.00 feet of Lot 33, Lots 34 thru 50, and Lot 124 of "J. Lee Baker Company's Division Palmer Subdivision of the West Half of the Southwest Quarter of the Southwest Quarter of Section 7, Town 1 South, Range 11 East", City of Detroit, Wayne County, Michigan as recorded in Liber 55, Page 44, Plats, Wayne County Records;

Encroachment to consist of a masonry screen wall (approximately 4.50 to 6 feet in height with below grade footings) longitudinally along (and across) the north-south (converted public) alley, 20 feet wide, in said block, abutting the above described property;

Provided, That no part of the proposed masonry screen wall (including, but not limited to, below grade footings) shall encroach within the easterly half of the north-south (converted public) alley abutting the south 4.00 feet of Lot 133, and Lots 125 thru 132 of said "J. Lee Baker Company's Division Palmer Subdivision", City of Detroit, Wayne County, Michigan as recorded in Liber 55, Page 44, Plats, Wayne County Records; unless written approval(s), agreement(s), and/or deed(s) are obtained from the residential property owners at 17135, 17141, 17149, 17157, 17165, 17171, 17181, 17187, and 17195 Prest Avenue. Further, said written approval(s), agreement(s), and/or deed(s) shall be recorded with the Wayne County Register of Deeds by the petitioner(s) at the petitioner(s) expense; and further

Provided, The petitioner shall make application to the Buildings and Safety Engineering Department for a building permit. Simultaneously, the petitioner(s) shall make application to the Board of Water Commissioners to obtain approval to construct over (or near) the public sewer. The masonry screen wall encroachment shall be installed and 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, 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(s) or their assigns (by acceptance of permits for construction over or near the public sewer and/or 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 and 2 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(s) 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 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 north-south public alley, 20 feet wide, in the block bounded by Greenfield Road, Prest Avenue, W. McNichols Road, and Santa Maria Avenue lying westerly of and abutting the west line of the south 4.00 feet of Lot 133, and Lots 124 thru 132, also lying easterly of and abutting the east line of the south 10.00 feet of Lot 33, and Lots 34 thru 50 of "J. Lee Baker Company's Division Palmer Subdivision of the West Half of the Southwest Quarter of the Southwest Quarter of Section 7, Town 1 South, Range 11 East", City of Detroit, Wayne County, Michigan as recorded in Liber 55, Page 44, Plats, Wayne County Records;

Be and the same is hereby vacated as 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-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,

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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, (except necessary line fence, and/or the DWSD and B&SE approved masonry screen wall encroachment as referenced above in the encroachment portion of this resolution; including related construction that may be required by DWSD, designed to prevent damage to the public sewer) shall be built or placed upon said easement, nor 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 a certified copy of this resolution shall be recorded with the Wayne County Register of Deeds. The petitioner(s) shall pay all incidental recording costs.

Adopted as follows:

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

Nays — None.

Buildings and Safety Engineering Department

November 28, 1990

Honorable City Council:

Re: Eugene A. Gargaro, Jr. and Liberty Temple Baptist Church (Petn. #3538). Modify Previously Adopted Council Resolution to Convert North-South Alley to Easement. Block Bounded by Greenfield, Prest, W. McNichols and Santa Maria (17140 Greenfield).

The above-referenced Petitioners, as owners of an existing parking lot on property located on the east side of Greenfield between W. McNichols and Santa Maria desire to expand, onto the westerly ½ of an adjoining alley/easement, their existing parking lot in order to increase the parking lot capacity to better accommodate the needs of the Liberty Temple Baptist Church parishioners occupying the adjacent building to the north and the Sinai Hospital employees occupying an adjacent building to the south.

In connection with this proposed parking lot expansion, their Petition No. 3538 to convert the adjoining alley to an easement was approved with conditions by

your Honorable Body on July 18, 1990 (J.C.C. pages 1652-1654), one of the conditions being that a six (6) foot high masonry wall be erected along the center line of the converted alley to separate the adjacent existing parking lot on the east side of Greenfield from the adjacent existing rear yards of the homes on the west side of Prest. However, the Petitioners have now been advised that the Water and Sewerage Department will not allow the erection of a masonry wall within the easement right-of-way because of the underground utility lines located therein.

Because the northerly portion of the Petitioners parking lot is zoned in the R2 (two family residential) district classification and the southerly portion is zoned in the P1 (parking) classification, and because Sections 65.0000, 82.0300 and 111.1100 of the Zoning Ordinance allow the Buildings and Safety Engineering Department to modify the wall requirements for parking lots in R2 and P1 zoning districts, the Petitioners have submitted a request to this Department for such modification and for approval to erect a six (6) foot high wooden stockade fence in lieu of the six (6) foot high masonry wall.

The Buildings and Safety Engineering Department held a public hearing in connection with the consideration given this requested wall modification, at which time no opposition was expressed. The proposal was subsequently approved with conditions (see attached copy of approval letter for B & S E Case #138-90 which is on file in the City Clerk's Office). However, because the Buildings and Safety Engineering Department has no authority to modify a Resolution of the City Council, a modification of your earlier Resolution would be required in order to the two actions to be consistent and for the Petitioners to complete their planned parking lot expansion as proposed.

In view of the above, it is respectfully requested that the attached Resolution, amending your earlier action, be adopted. In addition, because of the pending closing of the paving season, it is requested that this action be taken with a waiver of reconsideration.

Respectfully submitted,
CREIGHTON C. LEDERER
Director

By Council Member Hood:

Resolved, That in accordance with the foregoing communication from the Buildings and Safety Engineering Department, the Resolution of the City Council relative to Petition No. 3538 (adopted July 18, 1990, J.C.C. pages 1652-1654) be and is hereby amended only to the extent necessary to insert the following paragraph immediately preceding the final paragraph of the original Resolution as adopted:

Sixth, that in reference to the above-stated masonry wall requirements, the Buildings and Safety Engineering Department is hereby authorized to modify the masonry wall requirements of this Resolution in accord with the provisions of Section 65.0000, 82.0300 and 111.1100 of the Zoning Ordinance if such modification is found to be necessary or appropriate.

It is further resolved, That the original Resolution of the City Council relative to this matter remain in full force and effect except as herein modified and such original Resolution is hereby deemed to be an integral part of this Resolution and is, by reference, as though it were printed as amended in its entirety herein.

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

Adopted as follows:

Yeas — Council Members Butler, Cleveland, Hood, Kelley, Ravitz, and President Pro Tem. Hill — 6.

Nays — None.

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AMENDED

DEC. 5, 1990

J.C.C. Pgs. 2707-8

SANTA MARIA
20.02

20	25	28	100	20	25	40	118.86	35	40
"	"	30	"	"	"	40	118.93	"	40
"	"	"	"	"	"	39	119.01	"	39
"	"	32	"	"	"	"	119.08	133	"
"	"	34	"	"	"	"	119.16	"	"
"	"	36	"	"	"	"	119.24	131	"
"	"	38	"	"	"	"	119.31	"	"
"	"	40	"	"	"	"	119.39	129	"
"	"	42	"	"	"	"	119.46	"	"
"	"	44	"	"	"	"	119.54	127	"
"	"	46	"	"	"	"	119.61	"	"
"	"	48	"	"	"	"	119.69	125	"
25	20	50	100	25	20	39	119.76	124	39
Temp. Closed						20.02	24.82		
51	90	53	55	57	59	20	61 90		
20	"	"	"	"	"	20	24.97		

PREST

ALLEY TO EASEMENT

W. McNICHOLS

PET. NO. 3538
CARTO NO. 86-D