

April 12, 2000

Honorable City Council:

RE: Petition No. 1854 – Velmeir Co., L.L.C., requesting conversion to easement, outright vacation, encroachment into easement and waiver for non-standard commercial driveway approach in the block bounded by Gray, Dickerson, E. Jefferson and Brooks.

Petition No. 1854 of “Velmeir Co., L.L.C.”, requests the outright vacation of a portion of the east-west public alley (variable width); also the conversion of the remaining public alleys, 18 feet wide, into private easements for public utilities; also a waiver for a non-standard commercial driveway approach and the encroachment of a retaining wall into said easement area, all in the block bounded by Gray Avenue, 60 feet wide, Dickerson Avenue, 60 feet wide, East Jefferson Avenue, 120 feet wide and Brooks Avenue, 60 feet wide. In order to facilitate construction of a new CVS Pharmacy with a drive through window.

The petition was referred to the City Engineering Division – DPW for investigation (utility review) and report. This is our report.

The petitioner plans to remove or alter the existing paved alley return entrances into Gray Ave. (non-standard commercial driveway approach) and Dickerson Ave. The petitioner shall pay all incidental removal costs whenever discontinuance of use makes removal necessary.

The City Engineering Division (CED) and Traffic Engineering Division’s of DPW has no objections provided 100% of the abutting property owners have consented. However, despite substantial efforts 100% consent could not be obtained (even though there were no objections). There has been previous opinions given by the City of Detroit Law Department that your Honorable Body has the legal authority to vacate an alley as long as it does not decrease the value of the property in the block. CED recommends that the Planning and Development Department determine the effect the vacation would have on the adjoining property.

The Planning and Development Department has approved conceptual plans for the above referenced site. The CITY OF DETROIT owns approximately 50% of the property in the block mentioned and Velmeir Co., L.L.C., has received an Offer to Purchase the City owned properties. The petitioner has obtained more than 90% of the signatures of the abutting property owners and wishes that your Honorable Body considers the changes in the public rights-of-way for this re-development of land.

Satisfactory arrangements have been made with ComCast Cablevision of Detroit and the Detroit Edison Company (DeCo) for the removal and/or rerouting of their overhead and underground facilities.

The Public Lighting Department (PLD) reports that they have no objection to the vacation/ conversion to easement of the alleys and encroachment into the easement. However, PLD has an overhead fed street light in the alley and PLD requires a minimum horizontal clearance of 3' - 6" and a vertical clearance of 1' - 0" from their facilities. PLD will remove the four lighting units (fixture & bracket arm) at no cost to the petitioner after notification that the alley is closed. PLD requires 24-hour access for maintenance of their circuits.

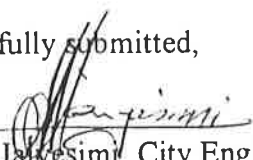
The Detroit Water and Sewerage Department (DWSD) reports there is a 12-inch lateral sewer in the east half of the east-west alley, a 24-inch lateral sewer in the west half of the east-west alley, and a 20-inch - 18-inch lateral sewer in the north-south alley all in the same block, as described above. However, DWSD has no objections to convert the east half of the east-west alley and the entire north-south alley into easement.

In addition DWSD has no objection to outright vacate the west half of the east-west alley provided all properties abutting that alley are owned by the petitioner, and the petitioner relocate the 24-inch lateral sewer. Also, DWSD has no objection to the proposed screen wall encroachments into the proposed easement in the N/S alley east of Gray in accordance with provisions and requirements that are a part of the vacating resolution.

All other City Departments and privately owned utility companies reported no objections to the changes in public rights-of-way. Provisions protecting utility installations are part of the resolution.

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

Respectfully submitted,

  
Sunday Jayesimi, City Engineer  
City Engineering Division-DPW

JDF:

Cc: Stephanie R. Green, Interim Director - DPW  
Gerarda McCarthy, Mayor's Office

BY COUNCIL MEMBER: \_\_\_\_\_

WHEREAS, The City of Detroit owns approximately 50% of the property in the project block and Velmeir Co., L.L.C., has received an Offer to Purchase the City owned lots, and has obtained more than 90% of the remaining property owner's signatures of consent and wishes that your Honorable Body considers to allow the changes in the public rights-of-way for the development, be it further

RESOLVED, That all that part of the east-west public alley, variable width, north of East Jefferson Avenue and east of Gray Avenue lying southerly of and abutting the south line of lot 132 as platted in "Sterling Park Sub. Of the easterly part of Sterling Realty Co.'s Sub. Private Claims 315 and 322," Detroit, Wayne County, Michigan, as recorded in Liber 27, Page 61 Plats, Wayne County Records;

Be and the same is hereby vacated (outright) as a public alley to become a part and parcel of the abutting property;

Provided, All properties abutting that vacated (outright) part of the alley are owned by the petitioner and the petitioner relocate the Detroit Water and Sewerage Department 24-inch lateral sewer; and be it further

RESOLVED, All of the north-south and the remaining portion of the east-west public alleys, 18 feet wide, in the block bounded by Gray, Dickerson, Brooks and East Jefferson Avenues lying easterly of and abutting the east line of lots 132 – 150, both inclusive, and the east line of the vacated public alley; also, lying westerly of and abutting the west line of lots 100 – 119, both inclusive; also, lying northerly of and abutting the north line of lots 120 – 127, both inclusive, as platted in "Sterling Park Sub. of the easterly part of Sterling Realty Co.'s Sub. Private Claims 315 and 322," Detroit, Wayne County, Michigan, as recorded in Liber 27, Page 61 Plats, Wayne County Records;

Be and the same is hereby vacated as public alley(s) and is hereby converted into private easement(s) for public utilities of the full width of the alley(s), which easement(s) 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(s) 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(s) 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(s) 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, (except the screen wall encroachment allowed further in this resolution) 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(s) 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 further

PROVIDED, That if it becomes necessary to remove the paved alley return(s) at the entrances (into Brooks and Dickerson), 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 heir or assigns; and be it further

RESOLVED, That the City Engineering Division – DPW be and is hereby authorized and directed to issue permits to CVS Pharmacy or its contractors to construct a precast concrete screen wall which will encroach into the north-south private easement for public utilities, 18 feet wide, in the block bounded by Gray, Dickerson, Brooks and East Jefferson Avenues, property being described as:

expected had the petitioner not encroached into the alley shall be borne by DWSD, and further

PROVIDED, That all construction performed under this petition shall not be commenced until after five (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 further

PROVIDED, 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 further

PROVIDED, If DWSD facilities located within the alley and adjoining easement shall break or be damaged as the result of any action on the part of the petitioner, then in 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 further

PROVIDED, The petitioner shall hold DWSD harmless for any damage to the encroaching device constructed or installed under this petition which may be caused by the failure of DWSD's facilities, and further

PROVIDED, If at any time in the future the petitioner shall request removal and/or relocation of DWSD's facilities in the alley being encroached upon the petitioner agree to pay all costs for such removal and/or relocation, and further

PROVIDED, That said permit should be issued only after a certified copy of this resolution has been duly recorded by and at the petitioner's expense in Wayne County Register of Deeds, and further

PROVIDED, That no right in the public alley shall be considered waived by this permission which is granted expressly on the condition that the building and all obstructions in connection therewith shall be removed at the expense of the grantee at any time when so directed by City Council, and further

PROVIDED, If at any time in the future it becomes necessary to repair or replace the sewers or other utilities located or to be located in said alley by the acceptance of this permission, the owners for themselves, their heirs and 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 at the owners expense, and further

PROVIDED, That this resolution is revocable at the will, whim or caprice of the City Council, and the grantees by the acceptance of this permission waive any right to claim damages or compensation for any structures constructed and maintained hereunder, or for

removal of the same, and they acquire no implied nor any other privileges not expressly stated herein; and be it further

PROVIDED, The installation and maintenance of any encroachments referred to herein shall be construed as acceptance of this resolution by the permittee; 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.

A WAIVER OF RECONSIDERATION

