

September 14, 2014

Honorable Detroit City Council:

RE: Petition No. 2981 - Giffels Webster on behalf of Whitney Partners, LLC, request to encroach into a portion the east-west public alley with the installation of HVAC equipment and request said alley be closed on a temporary basis for a period of five (5) years, all adjacent to the David Whitney Building.

Petition No. 2981 of "Giffels Webster", 28 W. Adams, Suite 1200, Detroit, Michigan 48226 on behalf of "Whitney Partners, LLC", 535 Griswold St., Suite 2650, Detroit, Michigan 48226, has been revised to respectfully request the Temporary Closing of a public alley (for a period of Five (5) years), in order to install an 8-ft Aluminum Gate, and request to install and maintain the encroachment(s) in said alley of an air handling unit, three (3) air condenser unit(s), and service platforms all in and across said east-west public alley, 20 feet wide, in the block bounded by Washington Blvd., 195 ft. wd., Woodward Ave., 120 ft. wd., Clifford Ave., 60 ft. wd. and Park Ave., 60 ft. wd.

The Historic David Whitney Building at Woodward and Grand Circus Park is going through an extensive \$82 million renovation. The 19 story building will consist of a hotel, apartments, restaurants and bars and a connection to downtown public transportation. In order to service the newly renovated building it has become necessary to request that the City of Detroit investigate the installation and maintenance of an air handling unit, three (3) air condenser unit(s), service platforms and aluminum fencing with an 8-ft gate, encroaching into and across said public alley in order to provide security protecting the proposed encroachments.

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

The request was approved by the Solid Waste Division – DPW, and the Traffic Engineering Division – DPW, provided that access gates are installed, and ingress/egress is provided and maintained for all property owners and businesses adjacent to or directly impacted by said closure. The Traffic Engineering Division – DPW also requires that the petitioner contact the Operations Section of the Traffic Engineering Division – DPW for deploying proper signage during the closure period.

Also, The Traffic Engineering Division – DPW reports no objections with the requested encroachment(s) provided that the proposed encroachment(s) are compliant and that all work is constructed in accordance with City of Detroit standards and approved by the City Engineering Division – DPW.

The City of Detroit Planning and Development Department Historic District Commission (P&DD/HDC) reports that the requested encroachments are within the David Whitney Historic District. The P&DD/HDC has determined that the scope of work is appropriate and has issued a "Certificate of Appropriateness" to Whitney Partners, LLC. Therefore, P&DD/HDC has no objections to the requested encroachments and temporary alley closing.

The Public Lighting Department (PLD) requires a minimum horizontal clearance of 3-feet 6-inches and a vertical clearance of 1'-0" be maintained from their facilities. The petitioner will be liable for any damages to any PLD installations. The PLD will require unimpeded access to service the public and/or their existing facilities.

The Detroit Water and Sewerage Department (DWSD) has no objection to the proposed encroachment(s) provided that a horizontal clearance of 5-feet is maintained between the proposed HVAC equipment and DWSD facilities and that any alterations to the City's water mains and sewers as a result of the Trench Drain System installation be done under DWSD's permit and inspection, in accordance with plans approved by DWSD. Also, these alterations are to be done at the petitioner's expense at no cost to DWSD.

The DWSD, the PLD and the Fire Department will require unimpeded access to service the public and/or their existing facilities. Any fence and gate installation must provide 13 feet horizontal and 15 feet vertical clearance(s) for utility maintenance vehicles.

SBC/Ameritech reports that the petitioner must maintain access to its manholes and conduit, in order to perform maintenance.

All other City departments and privately owned utility companies have reported no objections to the proposed request.

An appropriate resolution, containing the necessary conditions, protecting the City from the proposed encroachments and authorizing the City Engineering Division – DPW to issue permits to close said public alley, on a temporary basis, for a period of five (5) years to expire on November 5, 2019 is attached for consideration by your Honorable body.

I am recommending adoption of the attached resolution.

Respectfully submitted,

Richard Doherty, P.E., City Engineer  
City Engineering Division – DPW

KM: JK

cc: Ronald J. Brundidge, Director – DPW  
Mayor's Office City Council Liaison

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

RESOLVED, The City Engineering Division – DPW is hereby authorized and directed to issue permits to “Whitney Partners, LLC”, 535 Griswold St., Suite 2650, Detroit, Michigan 48226, to close the east-west public alley, 20 feet wide, deeded to the City of Detroit Feb. 19, 1901, in the block bounded by Washington Boulevard, 195 feet wide, Woodward Avenue, 120 feet wide, Clifford Avenue, 60 feet wide, and Park Avenue, 60 feet wide; lying southerly of and abutting the south line of a parcel described as Lots 20 – 23, inclusive, and the vacated alley adjoining, “Plat of Section 8 Governor & Judges Plan”, as recorded in Liber 34, Page 543, Deeds, Wayne County Records; on a temporary basis (for a period of Five (5) years) to expire on November 5, 2019;

PROVIDED, That “Whitney Partners, LLC”(“the petitioner”) shall file with the Finance Department an indemnity agreement in form approved by the Law Department. The agreement shall save and protect the City of Detroit harmless from all claims, damages or expenses that may arise by reason of the issuance of permits and the 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 temporary public alley closing; and

PROVIDED, That access gates are installed, and ingress/egress is provided and maintained for all property owners and businesses adjacent to or directly impacted by said closure. The Traffic Engineering division – DPW (TED) also requires that the petitioner contact the Operations Section of TED for deploying proper signage barricades during the closure period; and

PROVIDED, The permit shall be issued after the City Clerk has recorded a certified copy of this resolution with the Wayne County Register of Deeds; and

PROVIDED, No buildings or other structures of any nature whatsoever (except necessary barricades and the later requested encroachments), shall be constructed on or over the public rights-of-way. “The petitioner” shall observe the rules and regulations of the City Engineering Division – DPW. The City of Detroit retains all rights and interests in the temporarily closed public rights-of-way. The City and all utility companies retain their rights to service, inspect, maintain, repair, install, remove or replace utilities in the temporarily closed public rights-of-way. Further, “the petitioner” shall comply with all specific conditions imposed to ensure unimpeded 24-hour-per-day access to the City and utility companies; and

PROVIDED, All of “the petitioner’s” public property fence, gate and barricade installations shall be subject to the review and approval of the City Engineering Division – DPW (if necessary, in conjunction with the Traffic Engineering Division – DPW, and the Planning and Development Department – Historic District Commission); and

PROVIDED, This resolution does not permit the storage of materials, displays of merchandise, or signs within the temporarily closed public rights-of-way. Further, the placement of materials, merchandise, or signs on any adjacent berm area is prohibited; and

PROVIDED, That at the expiration of the permit, all obstructions (except for allowed encroachments) shall be removed at "the petitioner's" expense. The public property shall be restored to a condition satisfactory to the City Engineering Division – DPW by the petitioner at "the petitioner's" expense; and

PROVIDED, "The petitioner's" fence, gate and barricade installations shall provide 13 feet horizontal and 15 feet vertical clearance(s) for utility maintenance vehicles; and

PROVIDED, This resolution is revocable at the will, whim or caprices of the Detroit City Council without cause. Further, the permittee acquires no implied or other privileges hereunder not expressly stated herein. If this permit is continued for the five (5) year period, the City Council may (upon written request and if the circumstances justify accordingly) grant an extension thereto; and be it further

RESOLVED, The City Engineering Division – DPW is hereby authorized and directed to issue permits to "Whitney Partners, LLC", 535 Griswold St., Suite 2650, Detroit, Michigan 48226, to install and maintain encroachments ) in said aforementioned requested temporarily closed alley with an air handling unit, three (3) air condenser unit(s), and service platforms, adjacent to the following described property:

Said, east-west public alley, 20 feet wide, deeded to the City of Detroit Feb. 19, 1901, in the block bounded by Washington Boulevard, 195 feet wide, Woodward Avenue, 120 feet wide, Clifford Avenue, 60 feet wide, and Park Avenue, 60 feet wide; lying southerly of and abutting the south line of a parcel described as Lots 20 – 23, inclusive, and the vacated alley adjoining, "Plat of Section 8 Governor & Judges Plan", as recorded in Liber 34, Page 543, Deeds, Wayne County Records;

PROVIDED, That the proposed encroachment(s) are compliant with building codes as adopted by the Buildings and Safety Engineering and Environmental Department and that all work is constructed in accordance with City of Detroit standards and approved by the City Engineering Division – DPW; and further

PROVIDED, That a minimum horizontal clearance of 3-feet 6-inches and a vertical clearance of 1'-0" be maintained from The Public Lighting Department facilities (PLD); and further

PROVIDED, That the Petitioner shall be liable for any damages to any PLD installations as a result of the installation of said encroachments; and further

PROVIDED, That any alterations to the City's water mains and sewers as a result of the installation of said encroachments, all work is to be done under Detroit Water and Sewerage Department's (DWSD) permit and inspection, in accordance with plans approved by DWSD. Also, these alterations are to be done at the petitioner's expense at no cost to DWSD, and further

PROVIDED, That the 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; 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, That "Whitney Partners, LLC", or its assigns shall apply to the Buildings and Safety Engineering and Environmental Department for a building permit prior to any construction. Also, if it becomes necessary to open cut public streets, bore, jack, occupy or barricade city rights-of-way for maintenance and installation of encroachment(s) such work shall be according to detailed permit application drawings submitted to the City Engineering Division-DPW prior to any public right-of-way construction; and further

PROVIDED, That the encroachments shall be constructed and maintained under the rules and regulations of the City Engineering Division-DPW; also in accord with plans submitted to and approved by these departments; including the Public Lighting Department (if necessary), the Water and Sewerage Department (if necessary), and the Traffic Engineering Division-DPW (if necessary); and further

PROVIDED, That all costs for the construction, maintenance, surveying, permits and use of the encroachments shall be borne by "Whitney Partners, LLC" 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 "Whitney Partners, LLC" or its assigns. Should damages to utilities occur "Whitney Partners, LLC" 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, "Whitney Partners, LLC" (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, That "Whitney Partners, LLC" shall file with the Finance Department 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 the faithful or unfaithful performance by "Whitney Partners, LLC" of the terms thereof. Further, "Whitney Partners, LLC" shall agree to pay all claims, damages or expenses that may arise out of the maintenance of the proposed encroachments; and further

PROVIDED, That the property owned by "Whitney Partners, LLC" and the encroachment(s) shall be subject to proper zoning or regulated use (Board of Zoning Appeals Grant); and further

PROVIDED, That said permits issued by the City Engineering Division – DPW and the Buildings and Safety Engineering and Environmental 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 building encroachments in public rights-of-way) 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 Petitioner 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 Petitioner does hereby bind itself thereunto and to accept said permits on the conditions hereby imposed, and in the event said Petitioner 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, 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 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, This resolution is revocable at the will, whim or caprice of the City Council, and The Petitioner, "Whitney Partners, LLC", acquires no implied or other privileges hereunder not expressly stated herein, however, there shall be no revocation or termination of the permit to allow the Encroachment(s) without a resolution from the Detroit City Council directing such revocation or termination before revoking such permit, the City Council may consider engineering reports and studies from City departments and "Whitney Partners, LLC"; and further

PROVIDED, That the owner and/or their contractor, shall submit two copies of "as built" drawing(s) sealed by a professional engineer registered in the State of Michigan to the City Engineering Division - DPW within 30 days after installing the public right-of-way encroachment(s); subject to city specifications, permits and inspections. Said "as built" drawing(s) shall furnish a complete means of identifying and ascertaining the precise position of every part of the "encroachments" with courses, distances, and depth throughout (containing City of Detroit datum), so that it may be determined with certainty where any portion of the "encroachment" has been built. Copies of the certified "as built" map(s) and survey(s) shall be an "appendix" to the City Council resolution. City Engineering Division - DPW shall record (or cause to be recorded) one copy of the "appendix" in the Wayne County Register of Deeds; and further

PROVIDED, that any installation, renovation or adjustments of areaways or vaults shall be approved by the City Engineering Division-DPW prior to any work commencing and built to City of Detroit specifications, and further

PROVIDED, The owner shall apply to and become a participating member of the "Miss Dig" organization; 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 copy of this resolution.