



April 21, 2015

Honorable City Council:

RE: Petition No. 482 – Honigman representing Curis 1274, request transfer of permit for the building located at 1274 Library Street, Detroit, Michigan to maintain existing basement areaway encroachments, granted in a resolution of the Detroit City Council adopted June 5, 1991.

Petition No. 482 – by Honigman whose address is 39400 Woodward Avenue, Suite 101, Bloomfield Hills, Michigan, 48034 on behalf of Curis 1274 Library LLC request to transfer and maintain the existing encroachments consisting of basement areaways (vaults) under the sidewalks at 1274 Library Avenue. The areaways or vaults extend underground 10.00 feet into both East Grand River Avenue, 60 feet wide, and Library Avenue, 71 feet wide.

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

This request is being made by the new owner of the property since the previously passed resolutions regarding the encroachments may not be transferred or assigned without the written approval of Detroit City Council.

Your Honorable body agreed to the transfer of the encroachment permit to Sequoia LB King LLC in a resolution, approved by the Emergency Manager of the City of Detroit on June 11, 2014 (Petition 197). Sequoia LB King LLC did not end up acquiring the property, so the new purchaser is making the same request for transfer of the permit.

On June 5, 1991 (JCC pages 1234-1236), a resolution was passed unanimously by the Honorable City Council authorizing and directing the City Engineering Department to issue permits to “Annis Historic Properties Development” to maintain the existing basement areaway encroachments extending approximately 10 feet into both East Grand River Avenue, 60 feet wide, and Library Avenue, 71 feet wide.

The investigation and report from June 5, 1991 states: Since October 8, 1935 (J.C.C. page 1903) the City Council directed the Building and Safety Engineering Department to reject any new building plans for public property areaway encroachments. However, the encroaching basement areaways of the subject building (formerly the Annis Furs Building) have existed since 1911 (believed to be the year the building was originally built). Further, there are no retrievable records available that prove the original owners had City Council permission to construct and maintain the existing encroachment basement areaways.

Michael Duggan. MAYOR



The investigation and report from June 5, 1991 then states: Therefore, it is the recommendation of the City Engineering Department in conjunction with the Building and Safety Department that the pre-1935 existing encroaching basement areaways can be permitted and maintained by a "grandfather clause" (subject to the terms and conditions commonly applied to pre-1935 approved areaways within the Governor and Judges Plan).

Therefore, it is the recommendation of DPW – City Engineering Division to allow the transfer of the existing basement areaway encroachments on the same basis and under the same conditions as previously approved by the City Council resolution of June 5, 1991.

All other City Departments have reported that they have no objections to the existing encroachments. Provisions protecting utility installations and public safety are incorporated into the resolution.

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

Respectfully submitted,


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

JK/

Cc: Ron Brundidge, Director, DPW
Mayor's Office – City Council Liaison

Michael Duggan. MAYOR

BY COUNCIL MEMBER _____

Whereas, Since October 8, 1935 (JCC page 1903) the City Council has directed the Building, Safety Engineering and Environmental Department to reject any new plans for public property areaway encroachments; and

Whereas, The encroaching basement areaways of the L. B. King Building (formerly the Annis Furs Building) located at 1274 Library Avenue have existed possibly since 1911 (believed to be the year the building was originally built); and

Whereas, There are no retrievable records available that prove the original (1911) owners had City Council permission to construct and maintain the existing encroaching basement areaways; and

Whereas, It is the recommendation of the Department of Public Works, City Engineering Division that the pre-existing (prior to October 8, 1935) encroaching basement areaways can be permitted and maintained by a “grandfather clause” (subject to terms and conditions commonly applied to pre-1935 approved areaways within the Governor and Judges Plan); and

Whereas, The permit for encroachment was transferred to Sequoia LB King LLC in a resolution passed by your honorable body and approved by the Emergency Manager of the City of Detroit on June 11, 2014 in accordance with EM order No. 3 dated April 11 2013; and now the new property owner, Curis 1274 Library LLC, is requesting the permit be transferred to them as is appropriate; Therefore Be It

Resolved, That the Department of Public Works, City Engineering Division is hereby authorized and directed to issue permits to Curis 1274 Library LLC to maintain the existing (pre-1935) encroaching basement areaways extending underground approximately 10.00 feet into both East Grand River Avenue, 60 feet wide, and Library Avenue, 71 feet wide, abutting property described as follows:

Land in the City of Detroit, Wayne County, Michigan being Lot 62 of the “Plan of the Section Numbered Seven of the City of Detroit in the Territory of Michigan, confirmed by the Governor and Judges” as recorded in Liber 34, Page 544 of Deeds, Wayne County Records; commonly known as 1274 Library Avenue;

Provided, The maintenance of the existing basement areaway encroachments shall be subject to the rules, regulations, permits and annual inspection of the Building, Safety Engineering and Environmental Department as required by the Building Code. Also the maintenance of the public sidewalk above the existing basement areaway encroachments shall be according to the permits, specifications, and inspection of the Department of

Public Works – City Engineering Division as required by Detroit Code Section 50-4-24; and further

Provided, The City and all utility companies retain their rights to service, inspect, maintain, repair, install, remove or replace utilities within the public rights-of-way; and further

Provided, By approval of this petition the Detroit Water and Sewerage Department (DWSD) does not waive any of its rights to its facilities located in the right-of-way, and at all time, DWSD, its agents or employees, shall have the right to enter upon the right-of-way 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 caused by the encroachment 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 right-of-way, 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

Provided, That if DWSD facilities located within the right-of-way 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 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 right-of-way being encroached upon the petitioner agrees to pay all costs for such removal and/or relocation; and be it further

Provided, That the contractor call MISS DIG 72 hours prior to starting any underground construction where they plan the underground encroachment; and be it further

Provided, That all cost for the construction, maintenance, permits and use of the encroachments shall be borne by Curis 1274 Library LLC; 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 Curis 1274 Library LLC or its assigns. Should damages to utilities occur, Curis 1274 Library 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, That Curis 1274 Library LLC shall file with the Finance Department and/or City Engineering Division – DPW an indemnity 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 Curis 1274 Library LLC of the terms thereof. Further, Curis 1274 Library 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 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 encroachments 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 Department of Public Works – City Engineering Division and/or Building, Safety Engineering and Environmental Department are granted with the distinct understanding that in the event that the City Charter, or Detroit Code(s), or ordinances, or resolution(s), or City policies (governing the maintenance of areaway or vault encroachments within the public rights-of-way in the Governor and Judges Plan) are amended to provide for the levying thereafter, of a fee, charge, or rental, to be hereinafter determined upon, for the occupancy of the public streets, alleys or other public places, that the permittee will pay said fee, charge, or rental provided for in said City Charter, or Detroit Code(s), or ordinances, or resolution(s), or City policies; also said permittee does hereby bind itself thereunto, and to accept said permits on the conditions hereby imposed, and in the event said permittee shall contest the validity of said City Charter, or Detroit Code(s), or ordinances, or resolution(s), or City 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 Curis 1274 Library LLC acquires no implied or other privileges hereunder not expressly stated herein; and further

Provided, That the encroachment permits shall not be assigned or transferred without the written approval of the City Council; and further

Provided, The filing of the Indemnity Agreement and the securing of the necessary permit(s) referred to herein shall be construed as acceptance of this resolution by the permittee; 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.

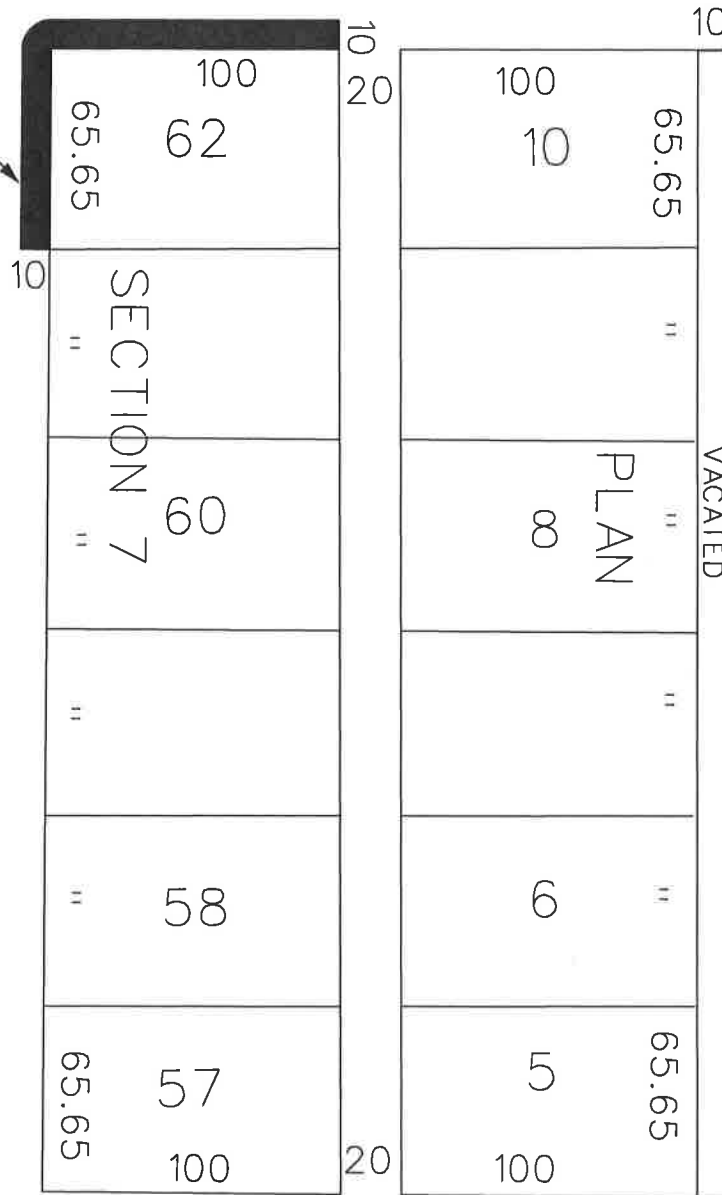
PETITION NO. 482
 HONIGMAN
 C/O CURIS1274 LLC
 39400 WOODWARD AVE. SUITE 101
 BLOOMFIELD HILLS, MICHIGAN 48304
 C/O AARON BASS ESQ.
 PHONE NO. 248 566-8609



E. GD. RIVER AVE. 60 FT. WD.

AREA OF ENCROACHMENT
 EXISTING BASEMENT AREAWAYS
 (VAULTS) BELOW GRADE

LIBRARY AVE. 71 FT. WD.



BROADWAY AVE. 100 FT. WD.

GRATIOT AVE. 60 FT. WD.



- REQUEST ENCROACHMENT
 (With Vaults Below Grade)

(FOR OFFICE USE ONLY)

CARTO 28 A

B					
A					
DESCRIPTION		DRWN	CHKD	APPD	DATE
REVISIONS					
DRAWN BY	CHECKED				
	JK / WLW				
DATE	APPROVED				
	04-22-15				

**REQUEST FOR TRANSFER OF ENCROACHMENT
 INTO BOTH E. GRAND RIVER
 AND LIBRARY AVE.
 WITH EXITING BASEMENT AREAWAYS
 10 FEET INTO R.O.W.
 (With Vaults Below Grade)**

CITY OF DETROIT	
CITY ENGINEERING DEPARTMENT	
SURVEY BUREAU	
JOB NO.	01-01
DRWG. NO.	x482 (aka x197)