

City of Detroit
OFFICE OF THE CITY CLERK

Janice M. Winfrey
City Clerk

Robin R. Underwood, CMC
Deputy City Clerk

DEPARTMENTAL REFERENCE COMMUNICATION

Wednesday, November 26, 2014

To: *The Department or Commission Listed Below*

From: *Janice M. Winfrey, Detroit City Clerk*

The following petition is herewith referred to you for report and recommendation to the City Council.

In accordance with that body's directive, kindly return the same with your report in duplicate within four (4) weeks.

DPW - CITY ENGINEERING DIVISION

482 *Honigman, represents Curis 1274, request transfer of permit for the building located at 1274 Library Street, Detroit, Michigan to maintain existing basement areaway encroachments, granted in resolution of the Detroit City Council adopted June 5, 1991.*

482

HONIGMANHonigman Miller Schwartz and Cohn LLP
Attorneys and CounselorsDETROIT
CITY CLERK

2014 NOV 25 P 12:37

Aaron E. Bass

(248) 566-8609

Fax: (248) 566-8610

abass@honigman.com

Via Hand Delivery

November 21, 2014

Detroit City Council
c/o City Clerk
2 Woodward Avenue
Detroit, Michigan 48226

Re: Transfer of permit for the building located at 1274 Library Street, Detroit, Michigan (the "Property") to maintain existing basement areaway encroachments, granted in resolution of the Detroit City Council adopted June 5, 1991, and approved by the Mayor of the City of Detroit on June 11, 1991 (the "Permit")

Dear Honorable City Council:

This firm represents Curis 1274 Library LLC, a Michigan limited liability company (the "Purchaser"), which has entered into an agreement to purchase the Property from Annis Historic Properties, LLC, a Michigan limited liability company. Your honorable body originally issued the Permit to allow the then-owner of the Property to maintain the existing (pre-1935) basement and vault encroachments at the Property, which extend approximately 10 feet into both Grand River Avenue and Library Street. The Permit provides that these encroachments are grandfathered in and permitted, but that the Permit may not be assigned or transferred without the written approval of the City Council. A copy of the Permit recorded in Liber 25225, Page 887 and in Liber 25291, Page 173 is attached to this letter for your convenience.

Your honorable body recently agreed to the transfer of the Permit to Sequoia LB King LLC ("Sequoia") in the attached resolution, approved by the Emergency Manager of the City of Detroit on June 11, 2014. Sequoia did not end up acquiring the Property. The Purchaser is now making the same request as Sequoia. Accordingly, Purchaser respectfully requests that this letter serve as its request to transfer the Permit to Purchaser.

Please do not hesitate to contact me with any questions or if you require anything further in order to transfer the Permit to Purchaser. We look forward to hearing from you regarding this matter.

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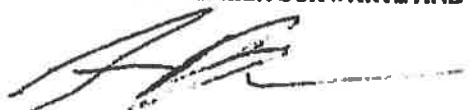
HONIGMAN

November 21, 2014

Page 2

Very truly yours,

HONIGMAN MILLER SCHWARTZ AND COHN LLP



Aaron E. Bass, Esq.

cc: Anthony Curis (Anthony@curisenterprises.com)
James A. Ketai, Esq. (jimketai@bedrockmgt.com)
Sam Hamburger (samhamburger@bedrockmgt.com)
Howard N. Luckoff, Esq. (hluckoff@honigman.com)
Paul W. Mardirosian, Esq. (pmardirosian@honigman.com)

HONIGMAN

November 21, 2014
Page 3

Permit

Station ID: L1100

Branch: TSF, Ctr: TS13



City Engineering Department
In witness, this 11th day of June, 1991

Resolved, That the City Clerk of the City of Detroit, Michigan do hereby certify that the annexed paper is a true copy of a Resolution adopted by the City Council on June 5, 1991 and approved by the Mayor on June 11, 1991 as it appears from the Detroit Legal News on file in my office.

Resolved, That the City Clerk of the City of Detroit, Michigan do hereby certify that the annexed paper is a true copy of a Resolution adopted by the City Council on June 5, 1991 and approved by the Mayor on June 11, 1991 as it appears from the Detroit Legal News on file in my office.

Provided, That the City Clerk of the City of Detroit, Michigan do hereby certify that the annexed paper is a true copy of a Resolution adopted by the City Council on June 5, 1991 and approved by the Mayor on June 11, 1991 as it appears from the Detroit Legal News on file in my office.

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STATE OF MICHIGAN
CITY OF DETROIT

I, JAMES H. BRADLEY, CITY CLERK of the City of Detroit, do hereby certify that the annexed paper is a True Copy of a Resolution adopted by the City Council on June 5, 1991 and approved by the Mayor on June 11, 1991 as it appears from the Detroit Legal News on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Corporate Seal of said City, at Detroit, on

June 12, 1991

James H. Bradley
City Clerk

WAYNE, MI Document:RS 25225.007
Printed on:12/7/2011 2:14 PM

Page: 1 of 1

HONIGMAN

November 21, 2014

Page 5

Resolution

TRUE COPY CERTIFICATE

Form C of D-16-CR

STATE OF MICHIGAN, }
City of Detroit } ss.

CITY CLERK'S OFFICE, DETROIT

I, *Janice M. Winfrey*, City Clerk of the City of Detroit, in said

State, do hereby certify that the annexed paper is a TRUE COPY OF RESOLUTION

Approved by the Emergency Manager for the City of Detroit on

June 11, 20 14

in accordance with EM Order No. 3 dated April 11, 2013.

as appears from the Journal of said City Council in the office of the City Clerk of Detroit, aforesaid; that I have compared the same with the original, and the same is a correct transcript therefrom, and of the whole of such original.

In Witness Whereof, I have hereunto set my hand and affixed the corporate seal of said City, at

Detroit, this 21st

day of June A.D. 20 14

[Signature]
CITY CLERK

HONIGMAN

November 21, 2014

Page 6



HONIGMAN LLP
 27777 Franklin Road, Suite 2500
 Southfield, Michigan 48034
 Tel: 248.277.1000
 Fax: 248.277.1000
 www.honigman.com

11/21/14 (14)

NOV 21 2014 10:00 AM
 RECEIVED
 DETROIT CITY ENGINEERING DIVISION
 11/21/14

May 12, 2014

Honorable City Council:

RE: Petition No. 197 -- Sequoia LB King LLC, requesting transfer of permit of building located at 1274 Library Avenue to encroach granted in a resolution of the Detroit City Council adopted June 5, 1991 and approved by the Mayor of the City of the City of Detroit on June 11, 1991.

Petition No. 197 by Jaffe, Raitt, Heuer & Weiss whose address is 27777 Franklin Road, Suite # 2500, Southfield, Michigan, 48034 on behalf of Sequoia LB King LLC request to transfer and maintain the existing encroachments consisting of basement arwayways (vaults) under the sidewalks at 1274 Library. The arwayways 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 because the property is in the process of being purchased by the petitioner and in order to get a mortgage and clear title, the basement arwayway encroachments need to be transferred by resolution of Detroit City Council.

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 arwayway 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 arwayway encroachments. However, the encroaching basement arwayways 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 arwayways.

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 arwayways can be

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November 21, 2014

Page 7

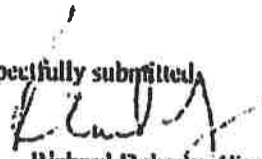
permitted and maintained by a "grandfather clause" (subject to the terms and conditions commonly applied to pre-1915 approved arcways within the Governor and Judges Plan).

Therefore, it is the recommendation of DPW - City Engineering Division to allow the transfer of the existing basement arcway 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, City Engineer
City Engineering Division - DPW

JK/

Cc: Ron Brantidge, Director, DPW
Mayor's Office - City Council Liaison

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HONIGMAN

November 21, 2014

Page 8

BY COUNCIL MEMBER BENSON

Whereas, Since October 8, 1935 (JCC page 1003) 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, The Sequoia LB King LLC is seeking a mortgage and title insurance for the L.B. King Building; 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); Therefore Be It

Resolved, That the Department of Public Works, City Engineering Division is hereby authorized and directed to issue permits to Sequoia LB King 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

HONIGMAN

November 21, 2014

Page 9

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 Sequoia I B King L.L.C.; 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 Sequoia I B King L.L.C. or its assigns.

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HONIGMAN

November 21, 2014

Page 10

Should damages to utilities occur, Sequoia LB King 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 Sequoia LB King 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 Sequoia LB King LLC of the terms thereof. Further, Sequoia LB King 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 Sequoia LB King 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.

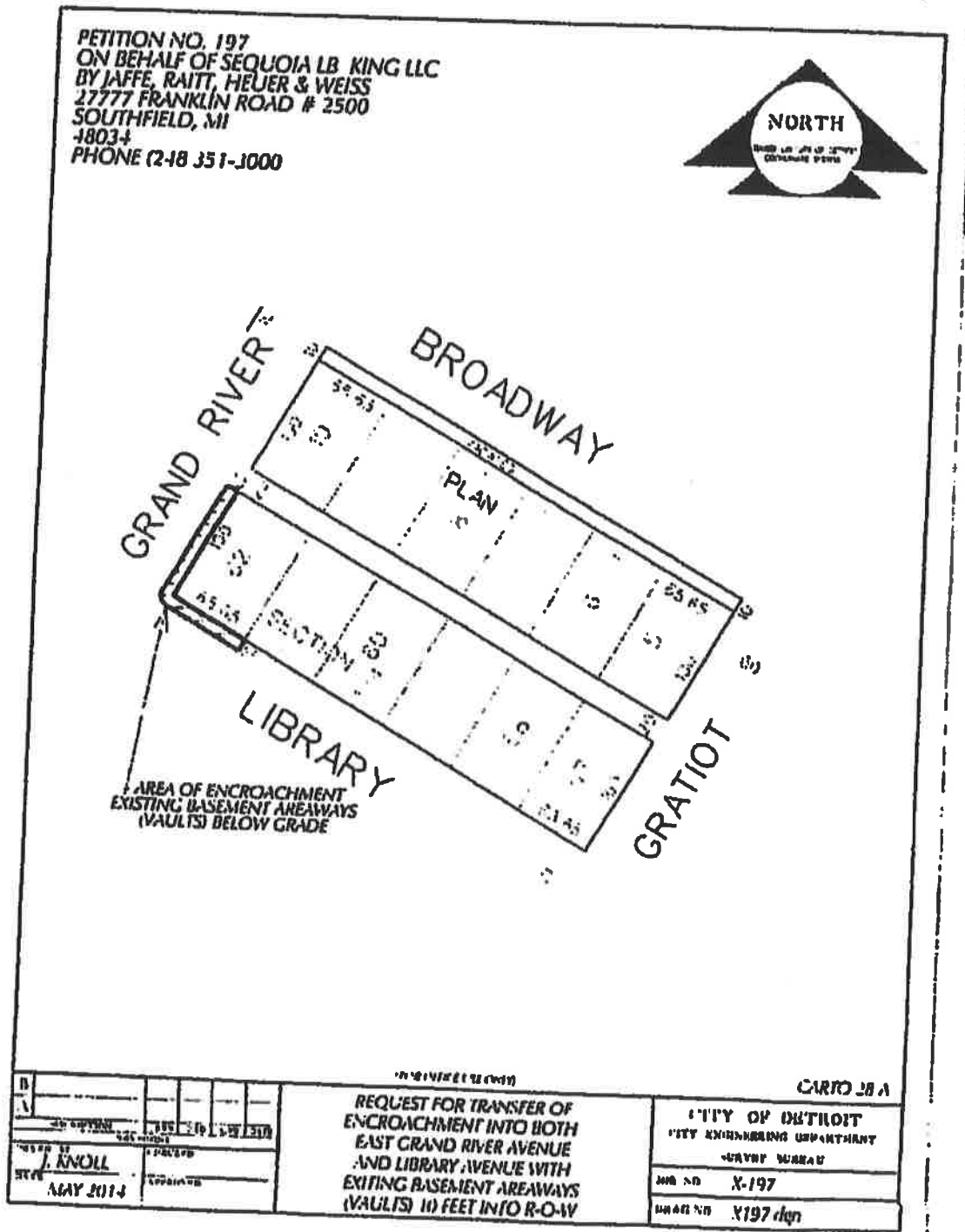
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HONIGMAN

November 21, 2014

Page 11



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HONIGMAN

November 21, 2014

Page 12

ADOPTED AS FOLLOWS COUNCIL MEMBERS

		YEAS	NAYS
Scott	BENSON	✓	
Raquel	CASTANEDA-LOPEZ		
*George	CUSHINGBERRY, JR.	✓	
Saunteel	JENKINS	✓	
Gabe	LELAND	✓	
Mary	SHEFFIELD	✓	
Andre L.	SPIVEY	✓	
James	TATE	✓	
Branda	PRESIDENT JONES	✓	
*PRESIDENT PRO TEM			

25-Nov-14

482

482 *Petition of Honigman, represents Curis 1274, request transfer of permit for the building located at 1274 Library Street, Detroit, Michigan to maintain existing basement areaway encroachments, granted in resolution of the Detroit City Council adopted June 5, 1991.*

REFERRED TO THE FOLLOWING DEPARTMENT(S)

DPW - CITY ENGINEERING DIVISION