



CITY OF DETROIT
DEPARTMENT OF PUBLIC WORKS
CITY ENGINEERING DIVISION

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April 24, 2017

Honorable City Council:

RE: Petition No. 1385 – Bert Dearing Jr. request to obtain a permanent outdoor café in the parking spaces provided in front of Bert’s Marketplace Theatre located at 2727-2739 Russell St. Detroit Michigan 48207.

Petition No. 1385 – Bert Dearing Jr. requests to install and maintain an encroachment with café seating on the west side of Russell Street, 86 feet wide between Division Street, 50 feet wide and Wilkins Street, 60 feet wide.

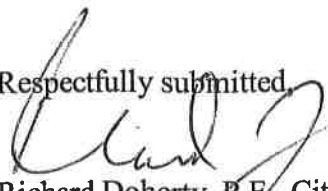
The petition was referred to the City Engineering Division – DPW for investigation and report. This is our report.

City Engineering Division – DPW reports that previously the Outdoor Café at this location used more of the public right-of-way than permitted by expanding beyond the limits of the approved area. In 2012 a notice to remove obstructions from the public right-of-way was issued. In 2013 City Engineering-DPW objected to the proposed café because the layout made it unsafe for pedestrian travel. In 2014 the non-compliance with respect to the use of the public right-of-way also became an issue as there were tables and chairs set out in the right-of-way with no barricades for protection, and a handicap ramp was blocked with a grill. In 2015 construction was taking place and Russell Street was upgraded with a new streetscape to enhance the market area. In 2016 the tables and chairs were placed in the street with no barricades for protection. Therefore, should the petitioner violate the terms of the attached resolution the City of Detroit through its Department of Public Works shall revoke the permissions granted.

Traffic Engineering Division – DPW (TED), reports being involved and approves provided certain conditions are met. The TED conditions have been made a part of the attached resolution. Provisions protecting utility installations, Detroit Water and Sewerage Department, Great Lakes Water Authority, Public Lighting Department and Public Lighting Authority are part of the attached resolution.

A resolution is attached is for your consideration.

Respectfully submitted,


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

JMK/

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

*City Council
approved
5-2-2017*

BY COUNCIL MEMBER _____

RESOLVED, That the Department of Public Works, City Engineering Division is hereby authorized and directed to issue permits to Bert Dearing Jr. or his assigns to install and maintain an encroachment with café seating on the west side of Russell Street, 86 feet wide between Division Street, 50 feet wide and Wilkins Street, 60 feet wide. The encroachments being land in the City of Detroit, Wayne County, Michigan and further described as follows: The sidewalk café seating including planters, barriers, etcetera all lying between the curb and pavement striping denoting the street parking area, said area being 117 feet 4 inches in length and 14 feet 8 inches in width all lying easterly of and adjoining a line 15 feet easterly of the east line of vacated Alfred Street the full 50 foot width and east line of the northerly 67.33 feet of Lot 37 "S.B. Morse's Subdivision of part of Lot No. 3 Mullett Farm" as recorded in Liber 46, Page 514 Deeds, Wayne County Records.

PROVIDED, that if there is any cost for the removing and/or rerouting of any utility facilities, it shall be done at the expense of the petitioner and/or property owner; and be it further

PROVIDED, that the remaining sidewalk being a 15 feet wide and any handicap ramps in the area be maintained free and clear from obstruction; and be it further

PROVIDED, that the petitioner shall install a platform/surface to raise the level of the area under the proposed outdoor seating patio thereby creating a surface that is level with the sidewalk adjacent to it, and further

PROVIDED, that the petitioner shall install a railing along the boundary of the outdoor seating patio adjacent to the west edge of the traveled roadway of southbound Russell, 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 times, 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 necessary permits shall be obtained from the City Engineering Division – DPW and the Buildings and Safety Engineering Department. The encroachments shall be constructed and maintained under their rules and regulations; and further

PROVIDED, that the area being used as an Outdoor Café shall meet the general requirements set by the “Outdoor Café Guidelines” as adopted by the City Council and guided by Section 50-2-20 of the City Code; and further

PROVIDED, that the petitioner obtains all necessary licenses and permits every year from Departments having jurisdiction over the outdoor café process; and further

PROVIDED, that said activities are conducted under the rules and regulations of the Department of Public Works and the supervision of the Police Department; and further

PROVIDED, that the sale of food or soft drinks is held under the direction and inspection of the Institute of Population Health; and further

PROVIDED, that the petitioner is responsible to obtain approval of the Michigan Liquor Control Commission, if necessary and approval from the Detroit Police Liquor License Bureau if serving liquor; and further

PROVIDED, that all cost for the construction, maintenance, permits and use of the encroachments shall be borne by Bert Dearing Jr. or his 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 Bert Dearing Jr. or his assigns. Should damages to utilities occur Bert Dearing Jr. or his assigns shall be liable for all incidental repair costs and waives all claims for damages to the encroaching installations; 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 the Petitioner, “Bert Dearing Jr.” 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 “Bert Dearing Jr.” of the terms thereof. Further, The Petitioner, “Bert Dearing Jr.” shall agree to pay all claims, damages or expenses that may arise out of the use, repair and maintenance of the proposed Encroachments; and further

PROVIDED, that violation of the terms of this resolution automatically authorizes the Department of Public Works to revoke the issued permits and rescind the encroachment permissions causing the encroachments to be removed; and the 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 Bert Dearing Jr. 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, that the City Clerk shall within 30 days record a certified copy of this resolution with the Wayne County Register of Deeds.