

EXECUTIVE SUMMARY



To: Bogdan Vitas, City Manager

Through: Donald Leland Craig, AICP
Director of Development Services and Planning Director

From: Carlene Smith, LEED Green Associate, Planner Analyst

Meeting Date: July 1, 2014

RE: **Easement - 907 Frances Street (RE# 00021700-000000; AK# 1022454)**
- A request for an easement \pm 461.10 square feet along the rear property line on Havana Avenue in order to address encroachments of principal structure, detached bedroom, two existing cisterns, shed, wooden fence, concrete wall, brick pavers and landscaping on property located within the Historic High Density Residential (HHDR) zoning district pursuant to Section 2-938 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

ACTION STATEMENT:

Request: To approve an easement request of \pm 461.10 square feet more or less within City right-of-way (ROW) abutting the property.

Applicant: Trepanier & Associates, Inc.

Property Owner: Carolyn A. Sprogell

Location: 907 Frances Street (RE# 00021700-000000; AK# 1022454)

Zoning: Historic High Density Residential District (HHDR)



BACKGROUND:

This is a request for an easement pursuant to Section 2-938 of the Code of Ordinances of the City of Key West. The easement request is for ± 461.10 square feet along the rear property line on Havana Avenue in order to address encroachments of principal structure, detached bedroom, two existing cisterns, shed, wooden fence, concrete wall, brick pavers and landscaping, as shown on the attached specific purpose survey dated March 3, 2014. The fence line of 907 Frances is consistent with the fence line of the neighboring properties.

In 1999, the previous property owner of 907 Frances Street was granted an easement via City Commission Resolution 99-149 for an encroachment of approximately 69.09 square feet. The easement addressed the encroachment of the garage onto City ROW. The conditions of the easement were to remove the existing shed and the chain link fence due to a sewer line being installed down Havana Avenue.

In 2000, the same property owner received a variance via Board of Adjustment Resolution 00-136 to convert the garage into a detached bedroom and decrease the encroachment of the garage. However, since the easement in 1999, the encroachments have increased, with the addition of the wooden fence, brick pavers, eaves on the principal structure and landscape inside and outside of the wooden fence. Furthermore, the condition to remove the shed from the original easement approval was never met.

In December 2013, the property was purchased by Carolyn A. Sprogell. She has continued paying the annual easement fee for an easement that she believed encompassed all of the current encroachments.

In 2014, the current owner was cited by Code Compliance for replacement of the rear fence without permits. This action resulted in the review of the original easement and the discovery of the additional encroachments.

City Actions:

Development Review Committee:

March 27, 2014

PLANNING STAFF ANALYSIS:

As described in the Specific Purpose Survey drawn by J. Lynn O’Flynn, Inc., dated March 3, 2014, the area of the easement request is for ± 461.10 square feet more or less. During the Development Review process, the Police Department voiced their concern for the removal of the fence, citing perimeter safety and decrease in navigation through the lane if the opening was used for parking. Additionally, upon further review of the existing concrete wall, the Historic Preservation Planner opined that since the wall has been altered, the partial demolition jeopardized its historic integrity and value.

Both the Planning and Legal Department are aware of the perimeter issue and understand the current owner did not increase the encroachments. However, since the conditions of the original easement (CC Res 99-149) were never met, and the encroachments onto city ROW were increased, staff is recommending that the original easement be revoked and the request for the easement for ± 461.10 square feet be denied.

If the request for the easement over City-owned land is granted, then the owner would be required to pay an annual fee of \$400.00 to the City for the use of the ± 461.10 square feet, more or less, of city property pursuant to Code Section 2-938(b)(3). The annual fee would be prorated based on the effective date of the easement.

Options / Advantages / Disadvantages:

Option 1. Revoke City Commission easement approval 99-149 and deny the easement request for ± 461.10 square feet with the following conditions:

1. All encroachments on the City right-of-way will be removed within 90 days.

Consistency with the City's Strategic Plan, Vision and Mission: Denial of the requested easement would not be inconsistent with the Strategic Plan.

Financial Impact: There would be no cost to the City for revoking easement 99-149. The City would however lose the potential to collect the revenue of the easement agreement.

Option 2. Revoke City Commission easement approval 99-149 and approve the easement request for ± 461.10 square feet along the rear property line on Havana Avenue in order to address encroachments of principal structure, detached bedroom, two existing cisterns, shed, wooden fence, concrete wall, brick pavers and landscaping inside the fence, with the following conditions:

1. The easement shall terminate upon the replacement of the structure.
2. The City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
3. The owner shall pay the annual fee of \$400.00 specified in Code Section 2-938(b).
4. The owner shall irrevocably appoint the City Manager as its agent to permit the removal of the encroachment if the annual fee required by the Code of Ordinances is not paid.
5. The easement shall terminate upon the failure of the property owner to maintain liability insurance in a minimum amount of \$200,000.00 per person and \$300,000.00 per incident, or such other amount as may legislatively be determined to be the maximum extent of sovereign immunity waiver, naming the City as an additional insured for that portion of real property which is the subject of this easement.
6. The existing eaves on both the principal structure and the detached habitable bedroom, along with the two existing cisterns, shed, wooden fence, concrete wall, brick pavers and landscaping inside the fence, shall be the only total allowed construction within the easement area.
7. The easement area shall not be used in site size calculations such as lot, yard, and bulk calculations for site development.
8. The City reserves the right to construct surface or sub-surface improvements within the easement area.
9. The owner will obtain all necessary approvals to remove the existing landscaping and paving outside of the wooden fence.

Consistency with the City's Strategic Plan, Vision and Mission: Granting the requested easement would not be inconsistent with the Strategic Plan.

Financial Impact: There would be no cost to the City for revoking easement 99-149. The City would collect \$400.00 annually as part of the approval of the easement. There would be no cost to the City for granting the easement.

Option 3. Revoke City Commission easement approval 99-149 and approve the easement request for only the encroachment of the eaves of the principal structure and detached bedroom, with the following conditions:

1. The easement shall terminate upon the replacement of the structure.
2. The City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
3. The owner shall provide a revised survey which shows the total square footage of the encroachment of the eaves of the principal structure and detached bedroom.
4. The owner shall pay the annual fee based on the total square footage of the eaves of the principal structure and detached bedroom specified in Code Section 2-938(b).
5. The owner shall irrevocably appoint the City Manager as its agent to permit the removal of the encroachment if the annual fee required by the Code of Ordinances is not paid.
6. The easement shall terminate upon the failure of the property owner to maintain liability insurance in a minimum amount of \$200,000.00 per person and \$300,000.00 per incident, or such other amount as may legislatively be determined to be the maximum extent of sovereign immunity waiver, naming the City as an additional insured for that portion of real property which is the subject of this easement.
7. The existing eaves on both the principal structure and the detached habitable bedroom, along with the two existing cisterns, shed, wooden fence, concrete wall, brick pavers and landscaping inside the fence, shall be the only total allowed construction within the easement area.
8. The easement area shall not be used in site size calculations such as lot, yard, and bulk calculations for site development.
9. The City reserves the right to construct surface or sub-surface improvements within the easement area.
10. The owner will obtain all necessary approvals to remove the existing landscaping and paving outside of the wooden fence.

Consistency with the City's Strategic Plan, Vision and Mission: Granting the requested easement would not be inconsistent with the Strategic Plan.

Financial Impact: There would be no cost to the City for revoking easement 99-149. The City would collect the annual fee based on the total square footage of the eaves of the principal structure and detached bedroom annually as part of the approval of the easement. There would be no cost to the City for granting the easement.

RECOMMENDATION: Option 1.

Based on the existing conditions, the Planning Department recommends to the City Commission **APPROVAL** of the proposed Resolution **revoking** easement approval 99-149 and **denying** the easement request for ± 461.10 square feet with the following conditions:

1. All encroachments on the City right-of-way will be removed within 90 days.