

EXECUTIVE SUMMARY



To: Jim Scholl, City Manager
Through: Thaddeus Cohen, Planning Director
From: Carlene Smith, LEED Green Associate, Planner II
Meeting Date: August 4, 2015

RE: **Revocable License – 1415 Olivia Street (RE # 00023940-000000; AK # 1024741) -** A request for a revocable license of 212 ± square feet along the Olivia Street right-of-way in order to maintain existing brick pavers and landscaping associated with a single family historic structure on property located within the Historic Medium Density Residential (HMDR) zoning district pursuant to Section 2-939 of the Code of Ordinances of the City of Key West, Florida.

ACTION STATEMENT:

Request: This request is for a revocable license for nonpermanent use of City property for 212 ± square feet area to maintain existing brick pavers and landscaping.

Applicant: Jermy Jon Ashby

Owner: 1415 Olivia Street LLC

Location: 1415 Olivia Street (RE # 00023940-000000; AK # 1024741)

Zoning: HMDR (Historic Medium Density Residential Commercial) Zoning District



This is a petition for a revocable license pursuant to Section 2-939, City of Key West Code of Ordinances. The property received an easement approval in April 2011 (City Commission Resolution 11-113) for approximately 204 square feet to allow construction of a fence, brick pavers and landscape planting. However, shortly after the approval the applicant withdrew the request and the easement agreement remained unsigned.

The property was then cited by Code Compliance on June 2014. The applicant has since applied for a revocable license in order to maintain the existing landscaping and brick pavers.

City Actions:

DRC: April 23, 2015
City Commission: August 4, 2015
April 5, 2011 (Resolution 11-113)

PLANNING STAFF ANALYSIS:

As described in the Specific Purpose Survey drawn by Island Surveying Inc., dated February 24, 2015, the area of the revocable license request is for 212 ± square feet.

On May 5, 2015, the urban forester conducted a site visit and had no objections to the landscaping on site. Planning Department staff conducted a site visit on May 20, 2015 and is recommending the property owner coordinate with the Engineering Department on replacing the existing pavers with City approved material.

Code requirements for revocable license found in Section 2-939 are as follows:

- (a) The City may grant a revocable license for a nonpermanent use of City property. A revocable license shall be revocable at the will of the City.
- (b) A nonpermanent use may include but not be limited to planters, awnings, trash receptacles, planted areas, benches, flagpoles, guardrails, ramps and light fixtures, but shall not include buildings or accessory structures affixed to real property.
- (c) Except for the procedure specified for awnings described in paragraph (e) below, the same notice requirements pertaining to applications for an easement in section 2-938(a)(1) and (2) shall apply to applications for a revocable license.
- (d) Except for a license issued in accordance with paragraph (e) below, if the City grants an applicant's request for a license, the applicant shall pay an annual fee to the City in the amount of \$200.00. This fee shall be prorated based on the effective date of the license. The applicant shall pay the fee each subsequent year the license is in effect.
- (e) The chief building official is authorized to issue a revocable license which allows a nonpermanent use of city airspace for an awning under the following circumstances:
 - (1) The applicant has obtained, or will obtain contemporaneously with the request for a nonpermanent use of city airspace, a properly issued building permit for such awning; and
 - (2) The applicant shall obtain HARC approval where applicable; and
 - (3) Unless the circumstances dictate that stricter standards are applicable under the Florida Building Code, the awning may extend across the front of a building and may only project a maximum of two-thirds of the width of a sidewalk, or, to within 18 inches of the face of the curb, whichever is less. There shall be a minimum eight feet of clearance between the lowest point or projection of the awning and a sidewalk or public travelway immediately below. Any valance attached to an awning shall not project above the top surface of the awning. In no event shall a permit be issued that will adversely impact vehicular or pedestrian traffic and determined by the chief building official in conjunction with the city engineering department; and

- (4) Prior to the issuance of a permit, the applicant shall furnish the chief building official with a signed and notarized statement that the permittee shall hold harmless and indemnify the city, its officers and employees from any claims for damages to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit; and
- (5) Permittee shall furnish and maintain such public liability and property damage insurance protecting the city from all claims and damage to property or bodily injury, including death, which may arise from the existence of the awning. Such insurance shall provide coverage of not less than \$1,000,000.00 for bodily injury and property damage respectively, per occurrence. Such insurance shall be without prejudice to coverage otherwise existing therein and shall name as additional insureds the city, its officers and employees and shall further provide that the policy shall not terminate or be cancelled without 45 days' written notice to the chief building official, sent via certified mail; and
- (6) If found to be necessary by the city for the protection of the health, safety and welfare of the public, awnings shall be immediately removed upon the request of the city and in the event an awning is not removed or due to an emergency the city finds it necessary to act immediately, the city may remove same and shall not be responsible for damage incurred due to such removal. The costs incurred by the city associated with any such removal shall be borne by the permittee.

The applicant is required to pay an annual fee of \$200.00 to the City for the revocable license of City owned property used by the applicant and maintain liability and property insurance.

Options / Advantages / Disadvantages:

Option 1. To approve the revocable license for nonpermanent use of City property for 212 ± square feet area to maintain existing landscaping and replace existing pavers with City approved material with the following conditions, whereas “Licensor” is the City of Key West and “Licensee” is 1415 Olivia Street LLC:

1. The revocable license is granted only to 1415 Olivia Street LLC, and shall not transfer to succeeding tenants or property owners of 1415 Olivia Street.
2. The property owner shall coordinate with the Engineering Department on replacing the existing pavers with City approved material.
3. The applicant shall pay the annual fee pursuant to Section 2-939(d) of the City Code of Ordinances.
4. The revocable license shall terminate upon the failure of the property owner to maintain liability insurance in a minimum amount of two hundred thousand dollars (\$200,000.00) per person and three hundred thousand dollars (\$300,000.00) per incident (or such other amount as may be legislatively determined to be the maximum extend of sovereign immunity waiver) naming the City as an additional insured for that portion of real property which is the subject of this revocable license.

Consistency with the City’s Strategic Plan, Vision and Mission: The Strategic Plan is silent to this issue.

Financial Impact: The City will collect \$200.00 annually as part of the approval of the application. There will be no cost to the City for this revocable license approval.

Option 2. To approve the revocable license for nonpermanent use of City property for 212 ± square feet area to maintain existing brick pavers and landscaping with the following

conditions, whereas “Licensor” is the City of Key West and “Licensee” is 1415 Olivia Street LLC:

1. The revocable license is granted only to 1415 Olivia Street LLC, and shall not transfer to succeeding tenants or property owners of 1415 Olivia Street.
2. The applicant shall pay the annual fee pursuant to Section 2-939(d) of the City Code of Ordinances.
3. The revocable license shall terminate upon the failure of the property owner to maintain liability insurance in a minimum amount of two hundred thousand dollars (\$200,000.00) per person and three hundred thousand dollars (\$300,000.00) per incident (or such other amount as may be legislatively determined to be the maximum extend of sovereign immunity waiver) naming the City as an additional insured for that portion of real property which is the subject of this revocable license.

Consistency with the City’s Strategic Plan, Vision and Mission: The Strategic Plan is silent to this issue.

Financial Impact: The City will collect \$200.00 annually as part of the approval of the application. There will be no cost to the City for this revocable license approval.

Option 3: Deny the revocable license for nonpermanent use of City property.

Consistency with the City’s Strategic Plan, Vision and Mission: The Strategic Plan is silent to this issue.

Financial Impact: The City would lose the potential to collect the revenue of a revocable license agreement.

RECOMMENDATION: Option 1

Based on the existing conditions, the Planning Department recommends **approval** to the City Commission for the proposed revocable license for nonpermanent use of City property for 212 ± square feet area to maintain existing landscaping and replace existing pavers with City approved material with the conditions listed above.