

MEMORANDUM

Date: August 8th, 2024

To: Honorable Mayor and Commissioners

Via: Todd Stoughton
Interim City Manager

From: Katie P. Halloran
Planning Director

Subject: **File ID: 23-4990 Request for an Easement Agreement at 423 Front Street (RE #00000160-000000)**

Introduction

The above-referenced application involves a request for an easement to maintain a series of encroachments onto City right-of-way for property located at 423 Front Street. The property is situated adjacent to the west side of Front Street, south side of Exchange Street, east side of Wall Street, and the north side of Wolfson Street. It is currently improved with a historically contributing two-story commercial structure within the Historic Residential Commercial Core – 1 (HRCC) District.

The City Commission is authorized to consider the granting of an easement pursuant to Chapter 2 (Administration), Article VIII (City Property) Division 3 (Real Property Disposition).

Background

Sec. 2-938 (Easements) states, in part, that the *“City may grant an easement over any lands or interest therein owned by the city or any city agency.”* According to Sec. 2-938 (b), *“If the City grants an applicant's request for easement over any lands owned by the city or any city agency, the applicant shall pay an annual fee to the city. The annual fee shall be prorated based on the effective date of the easement.”*

In this instance, there are a series of existing encroachments onto City right-of-way adjacent to all four street frontages. This includes, but is not limited to, a balcony and support columns adjacent to Front Street, entryway steps adjacent to Exchange Street, air conditioner units and bay windows adjacent to Wolfson Street, and a balcony adjacent to Wall Street.

The structure was built circa 1886 and is improved with retail uses on the first floor and transient rental units on the second floor. The requested easement would allow the property owner to maintain the existing encroachments adjacent to the City's right-of-way, including the large southeast facing balcony and support columns and other encroachments as depicted on the survey prepared by J. Lynn O'Flynn PSM of J. Lynn O'Flynn, INC. on August 2, 2023.

This easement request was reviewed at the October 26, 2023 Development Review Committee (DRC) meeting. The committee members expressed concern that the existing encroachments adjacent to Wolfson Street may impede future access. The applicant has indicated a willingness to remove any encroachments that impede access along Wolfson Street in the event the City elects to open and improve the right-of-way; however, the applicant has submitted an affidavit stating they do not own the yellow wooden fences block Wolfson Street. Should the City Commission approve the easement request, this matter would be considered by the Historic Architectural Review Commission (HARC) as a next step.

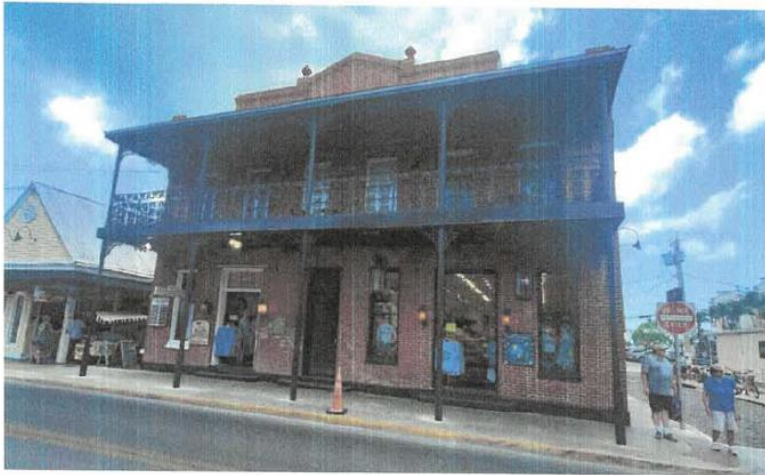


Image depicts Street View of the property.

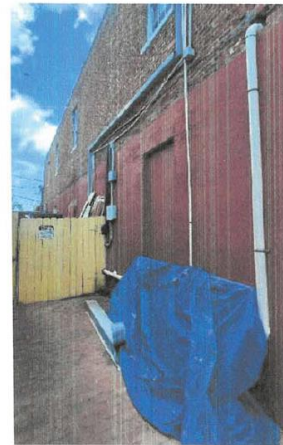


Image depicts one side view of the historic structure.

Procurement

If the request for the easement over City-owned land is granted, the Grantee shall be required to pay an annual fee to the City consistent with the below provisions contained in Sec. 2-938:

(b) If the city grants an applicant's request for easement over any lands owned by the city or any city agency, the applicant shall pay an annual fee to the city. The annual fee shall be prorated based on the effective date of the easement. The applicant shall pay the fee each subsequent year the easement is in effect, as follows:

- (1) Each easement granted by the city for the use of less than 20 square feet of city property, \$200.00.
- (2) Each easement granted by the city for the use of 20 square feet to 100 square feet of city property, \$300.00.
- (3) Each easement granted by the city for the use of more than 100 square feet of property, \$400.00.

Recommendation

The Planning Department recommends APPROVAL of the proposed easement agreement subject to the following conditions:

Conditions:

1. The Easement shall allow for the existing encroachments as depicted on the survey prepared by J. Lynn O'Flynn PSM of J. Lynn O'Flynn, INC., dated August 2, 2023. Additional or future encroachments shall require an amendment of this easement in accordance with Sec. 2-938 of the City Code.

2. Applicant/owner agrees to remove the air conditioner (AC) units adjacent to Wolfson Street within six (6) months notice in the event the City elects to open and improve Wolfson Street. The relocation of the AC units shall be subject to the review and approval of the Historic Architectural Review Commission (HARC) Planner, Chief Building Official and Fire Department.
3. The City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
4. The Grantee shall pay the annual fee as specified in Section 2-938(b)(3) of the City Code.
5. Grantee 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. Prior to the easement becoming effective, the Owners shall obtain Commercial General Liability insurance that extends coverage to the property that is governed by this easement with limits of no less than \$300,000.00. Coverage must be provided by an insurer authorized to conduct business in the State of Florida and with terms and conditions consistent with the latest version of the Insurance Service Office's (ISO) latest filed Commercial General Liability form. Grantees shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as "Additional Insured" or "Additional Interest".
7. The easement areas 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 areas.
9. To the fullest extent permitted by law, the Grantee expressly agrees to indemnify and hold harmless the City of Key West, their respective officers, directors, agents, and employees (herein called the "indemnitees") from any and all liability for damages caused by or resulting from the Grantee's improvement in the easement area.

