

## EXECUTIVE SUMMARY



**To:** James K. Scholl, City Manager  
**Through:** Thaddeus Cohen, Planning Director  
**From:** Melissa Paul-Leto, Planner Analyst  
**Meeting Date:** April 5, 2016

**RE:** **Easement – 903 Frances Street (RE # 00021710-000000, AK # 1022462)**  
– A request for an easement in order to maintain existing back yard concrete slab, an underground cistern, wood decks and fence which encroach onto the Havana Avenue Right-of-Way located within the Historic High Density Residential (HHDR) Zoning District pursuant to Section 2-938 of the Code of Ordinances of the City of Key West, Florida.

### **ACTION STATEMENT:**

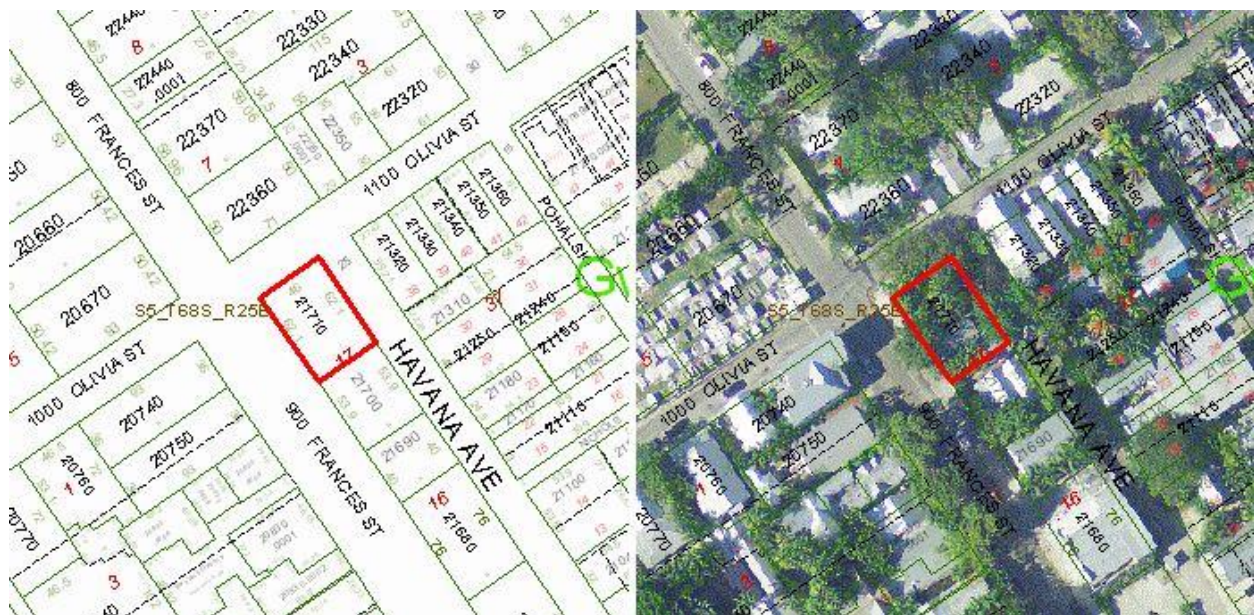
**Request:** To grant an easement of approximately 462 square feet more or less within City right-of-way abutting the property.

**Applicant:** Trepainer & Associates

**Property Owner:** Arthur G. Mustakas

**Location:** 903 Frances Street (RE # 00021710-000000, AK # 1022462)

**Zoning:** Historic High Density Residential (HHDR) Zoning District



**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 an existing concrete slab, wood decks, underground cistern, balcony and fence that encroaches onto the Havana Avenue Right-of-Way, as shown on the attached specific purpose survey.

A 1962 Sanborn map depicts a cistern on the back of the lot, facing Havana Avenue. The cistern was not in use in 1962, either by removal or filled. The 1962 Sanborn map depicts a one-story frame structure right on the back of the main house probably used as a carport.

The request for the easement was prompted by a code violation pursuant to Sections 62.2 Obstruction of Streets and 122-1078 Restriction of building and structures including entry ways.

**City Actions:**

Development Review Committee:

February 25, 2016

Planning Board:

April 5, 2016

**PLANNING STAFF ANALYSIS:**

As described in the Specific Purpose Survey drawn by J. Lynn O’Flynn of J. Lynn O’Flynn, Inc., dated January 15, 2016, the area of the easement request is for 462 square feet more or less. The back yard concrete slab, wood decks, underground cistern, balcony and fence encroaches 8.0 square feet onto the Havana Avenue Right-of-Way (ROW).

If the request for an 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 462 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.** Approve the easement 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 back yard concrete slab, underground cistern, wood decks, balcony and fence shall be the total allowed construction within the easement area.

7. The property owner must maintain the vegetation from impacting the access to Havana Lane.
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 improvements within the easement area.
10. Grantee shall secure, pay for, and file with the Grantor, prior to commencing any work under this Agreement, all certificates for public liability, and property damage liability insurance, and such other insurance coverages as may be required by specifications and addenda thereto, in at least the following minimum amounts with specification amounts to prevail if greater than minimum amount indicated. Notwithstanding any other provision of this Agreement, Grantee shall provide the minimum limits of liability coverage as follows:
  - General Liability
    - a. \$2,000,000 Aggregate (Per Project)
    - b. \$2,000,000 Products Aggregate
    - c. \$1,000,000 Any One Occurrence
    - d. \$1,000,000 Personal Injury
    - e. \$ 300,000 Fire Damage/Legal
11. Grantee shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as “Additional Insured” on a primary and non-contributory basis utilizing an ISO standard endorsement at least as broad as CG 2010 (11/85) or its Equivalent, (combination OF CG 20 10 07 04 and CG 20 37 07 04, providing coverage for completed operations is acceptable) including a “Waiver of Subrogation” clause in favor of City of Key West on all policies. Grantee shall maintain the General Liability coverage summarized above, including the “additional insured” endorsement, with coverage continuing in full force during the period of time this easement agreement remains in effect.
12. Grantee’s insurance policies shall be endorsed to give 30 days written notice to Grantor in the event of cancellation or material change, using form CG 02 24, or its equivalent.
13. Certificates of Insurance submitted to Grantor shall not be accepted without copies of the endorsements being requested. This includes additional insured endorsements, cancellation / material change notice endorsements and waivers of subrogation. Copies of USL&H Act and Jones Act endorsements shall also be required if necessary. Grantee shall advise its insurance agent accordingly.

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

**Financial Impact:** 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 2.** Deny the easement based on findings that the City’s needs outweigh the request.

1. The owner will obtain the appropriate permits for the removal of all items that encroach onto the City right-of-way
2. 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 denying the easement, however the City would lose the potential to collect the annual revenue of the easement agreement

**RECOMMENDATION: Option 1.**

Based on the existing conditions, the Planning Department recommends to the City Commission **APPROVAL** of the proposed Resolution granting the requested easement with conditions as outlined above.