



EXECUTIVE SUMMARY

To: Jim Scholl, City Manager

Through: Donald Leland Craig, AICP, Planning Director

From: Nicole Malo, Planner II

Date: June 5, 2012

RE: **Easement - 405 Frances Street (RE#00004910-000000)** – An easement request for 157 square feet for a residential property in the HNC-2 zoning district per Section 2-938 of the Land Development Regulations of the Code of Ordinances of the City of Key West.

Location: 405 Frances Street
RE # 00004910-000000

Zoning: Historic Neighborhood Commercial
HNC-2

Background

This is a petition for an easement pursuant to Section 2-938, City of Key West Code of Ordinances. The applicant seeks to obtain an easement for a portion of a historically contributing single-family structure and side-yard area that is enclosed by a fence that encroaches into Elgin Lane and portions of the front yard fence on Frances Street for a total area of 157 square feet. The single family structure was recently renovated in accordance with the HARC approval and elevated to meet FEMA regulations; although, the building was replaced 0.3 feet and the fence was built-out two feet into Elgin Lane and 1.5 feet into the right-of-way on Frances Street. In the future, the applicant anticipates that the easement area may be used for the placement of an ADA access ramp.

City Actions

DRC: April 26, 2012
HARC: March 12, 2012
October 16, 2009 (H09-11-1054)
September 11, 2009

Project Analysis

As described in the Specific Purpose Survey drawn by Lynn O'Flynn, Inc., dated January 31, 2012, the area of the easement request is for 157 square feet and is specific to the existing encroachments. As shown on the enlarged survey the encroachments include approximately 51' in length and 2' in width running along Elgin Lane and 41' in length and 1.5' in width along Frances Street.

Because the fence concerned as part of this project was installed without a certificate of appropriateness the applicant first sought and was approved by HARC on October 16, 2009. However, on March 12, 2012 the applicant resubmitted a HARC application, for exceeding the scope of the 2009 Certificate of Appropriateness, for the existing fence. The request was approved with the condition that the Easement be approved. Further, City staff has reviewed the application through the Development Review Committee and had no relevant concerns regarding the easement application. The encroachments do not impede public passage on the existing sidewalk or ADA access, but allow minimal passage for emergency access within the fence area and the house. No neighborhood comment has been received to date.

The applicant is required to pay an annual fee of \$400.00 to the city for the 157 square feet of city owned property used by the applicant at 405 Frances Street.

Options / Advantages / Disadvantages:

- Option 1.** To approve the easement of 164 square feet with the following conditions:
1. That the easement shall terminate upon the replacement of the structure.
 2. That the City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
 3. That the owner shall pay the yearly fee specified in Code of Ordinances section 2-938.
 4. That the owner shall irrevocably appoint the City Manager as its agent to permit the removal of the encroachment if the yearly fee required by the Code of Ordinances is not paid.
 5. That the easement shall terminate upon the failure of the property owner to maintain liability insurance in a minimum amount of one hundred thousand dollars (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. That the City reserves the right to construct surface improvements within the easement area.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** This action is not inconsistent with the City's Strategic Plan, Vision, and Mission. The Strategic Plan is silent on administering Easements.

2. **Financial Impact:** The City will collect \$400.00 annually as part of the approval of the application. There will be no cost to the city for this easement approval.

Option 2. Deny the easement based on findings that the City's needs outweigh the request.

1. **Consistency with the City's Strategic Plan, Vision and Mission:** This action would not be inconsistent with the City's Strategic Plan, Vision, and Mission. The Code is silent on administering Easements.

2. **Financial Impact:** The City would lose the potential to collect the revenue of an easement agreement (\$400 annually).

RECOMMENDATION: Option 1

The Planning Department recommends **approval** to the City Commission for the proposed **easement** with conditions as follows:

1. That the easement shall terminate upon the replacement of the structure.
2. That the City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
3. That the owner shall pay the yearly fee specified in Code of Ordinances section 2-938.
4. That the owner shall irrevocably appoint the City Manager as its agent to permit the removal of the encroachment if the yearly fee required by the Code of Ordinances is not paid.
5. That the easement shall terminate upon the failure of the property owner to maintain liability insurance in a minimum amount of one hundred thousand dollars (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. That the City reserves the right to construct surface improvements within the easement area.