



EXECUTIVE SUMMARY

To: Jim Scholl, City Manager

Through: Donald Leland Craig, AICP, Planning Director

From: Ginny Haller, Planner

Date: June 5, 2012

Request: This request is for an easement of 219 square feet, more or less, to address the encroachment of portions of an existing building, sign, roof overhang and balcony to a contributing historic structure located at the corner of Thomas and Petronia Streets and along Petronia Street.

Location: 729 Thomas Street/305 Petronia Street
RE # 00013260-000000
RE # 00013250-000000

Zoning: HNC-3 (Historic Neighborhood Commercial) Zoning District

BACKGROUND:

This easement request is the final step of the Minor Development Plan for the property at 305 Petronia Street, 309 Petronia Street, and 729 Thomas Street approved by the City Commission July 19, 2011; and approved by the Planning Board April 21, 2011. The easement plan was a condition of the Minor Development Plan.

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 portions of Blue Heaven restaurant and associated retail structure. Both buildings are contributing, originally built c. 1909 and located in the Historic District. The property is located at the intersection of the northeasterly right of way line of Thomas Street with the northwesterly right of way line of Petronia Street.

The easement request area includes an existing sign, balcony, wood fence, canopy and several building encroachments which have a restaurant and upstairs apartment along Petronia Street and Thomas Street. The encroachments do not impede public passage or ADA access because the sidewalk is wide enough, and the clearance of the canopy is over 7 feet and the balcony approximately 12 feet above the sidewalk.

City Actions:

Development Review Committee:

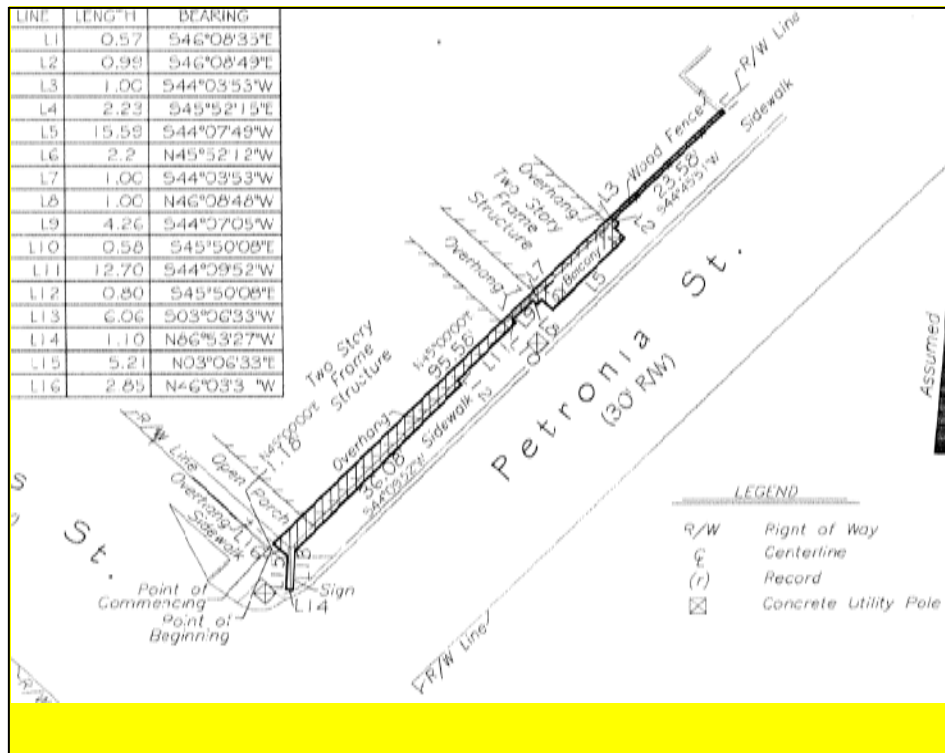
January 27, 2011

City Commission:

June 5, 2012

PLANNING STAFF ANALYSIS:

As described in the Specific Purpose Survey drawn by J. Lynn O’Flynn, Inc, dated November 22, 2010, the area of the easement request is for 219 square feet, more or less. The area of encroachment includes the sign, overhangs, canopy, balcony, and wood fence. As shown below on the enlarged survey, the sign is approximately 6 feet out from the restaurant over the right of way. From the Point Of Beginning of the described area, the line runs 95.58 feet along Petronia Street, turns and runs 0.57 feet along the wood fence, then back along Petronia to the existing sign at the corner of Thomas and Petronia Streets.



The buildings date back to 1909 and are listed as contributing historic structures, which suggests the encroachment is long standing. Photographs have also been submitted with the request. City staff has reviewed the application through the Development Review Committee and had the following comments:

- Easement request to address building, roof overhang, and balcony encroachments
- Need to calculate the total area of the requested easement
- Section 2-938 of the Code of Ordinances requires that each easement granted by the city be required to pay annual fees.

No neighborhood comments have been received to date.

Code Requirements for easements found in Section 2-938 of the Code of Ordinances are as follows:

“(a) The city may grant an easement over any lands or interest therein owned by the city or any city agency. Where the granting of an easement over city-owned real property is proposed, it shall be noticed by both of the following methods, and such advertisement and notice shall state the address of the subject property and shall contain a survey depicting the property and encroachment:

- (1) One publication in a newspaper of general circulation in the city at least 14 days in advance of city commission consideration of the item; and
- (2) a. Certified mail, return receipt requested, to owners of real property adjacent to the proposed easement area on both sides, front and rear, whether or not separated there from by a street, sidewalk, alley or right-of-way, and to any other owners of real property within 50 feet of the proposed easement area; or;
b. Hand delivery of notice to all parties specified in subsection (a)(2)a of this section. Proof of delivery shall be sworn statement of the applicant.”

Notice under subsections (a)(2)a and (a)(2)b of this section shall be mailed or hand delivered at least 14 days in advance of city commission consideration of the item. The applicant shall pay a fee defraying the cost of notice and advertisement in an amount to be determined by the city clerk.

“(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.”

The applicant is required to pay an annual fee of \$400.00 to the city for the 219 square feet, more or less, of city owned property used by the applicant at 729 Thomas Street/305 Petronia Street.

Options / Advantages / Disadvantages:

Option 1. To approve the easement of 219 square feet, more or less, with the following conditions:

- (1) The City may unilaterally terminate the easement upon a finding of public purpose by a vote of the Key West City Commission.

(2) That the owner shall pay the yearly fee of \$400.00 specified in the Code of Ordinances Section 2-938.

(3) That the easement shall terminate upon the failure of the property owner to maintain liability insurance in a minimum amount of two hundred thousand dollars per person and three hundred thousand per occurrence (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 easement.

(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 area cannot be used in site size calculations such as lot, yard, and bulk calculations for site development.

(6) That the City reserves the right to construct surface improvements within the easement area.

(7) 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 the granting and administration of easements.

(8) 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. To deny the easement of 219 square feet, more or less 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 Strategic Plan is silent on the granting and administration of easements.
2. Financial Impact: The City would lose the potential to collect the revenue of an easement agreement.

RECOMMENDATION: Staff Recommends the City Commission approve Option 1

Based on the existing conditions, the Planning Department recommends **approval** to the City Commission for the proposed **easement** with conditions as follows:

(1) The City may unilaterally terminate the easement upon a finding of public purpose by a vote of the Key West City Commission.

(2) That the owner shall pay the yearly fee of \$400.00 specified in the Code of Ordinances Section 2-938.

(3) That the easement shall terminate upon the failure of the property owner to maintain liability insurance in a minimum amount of two hundred thousand dollars per person and three hundred thousand per occurrence (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 easement.

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