

EXECUTIVE SUMMARY



To: Jim Scholl, City Manager
Through: Thaddeus Cohen, Planning Director
From: Patrick Wright, Planner II
Meeting Date: November 4, 2015

RE: **Easement – 1529 Von Phister Street (RE # 00042640-000000, AK # 1043273)** – A request for an easement in order to maintain a portion of an existing roof overhang and wood fence that extend a total of 60 ± square feet into the Thompson Street right-of-way on property located within the Single Family (SF) zoning district pursuant to Section 2-938 of the Code of Ordinances of the City of Key West, Florida.

ACTION STATEMENT:

Request: A request for an easement in order to maintain a portion of an roof overhang and wood fence that extends a total of 60 ± square feet into the Thompson Street right-of-way.

Applicant: Richard McChesney Esq.

Property Owner: The Wendy Perks Fisher Living Trust April 19, 1996

Location: 1529 Von Phister Street (RE # 00042640-000000, AK # 1043273)

Zoning: Single Family (SF)



BACKGROUND:

The property is located at the southwest corner of Von Phister and Thompson Street. The property contains a single family home with a one story guest quarters structure in the northeast corner of the property. The one story frame guest quarters received a variance through Board of Adjustment Resolution 97-320 allowing the structure to be built with a zero side setback. The building was subsequently constructed through Building Permit 98-395, at this time it appears to have been permitted with the structure's wall at a zero line setback and a consideration for the roof overhang in the right-of-way was not made. The fence was constructed through building permit 98-2524.

The applicant is requesting an easement pursuant to Section 2-938 of the Code of Ordinances of the City of Key West. This request is for the encroachment of the fence and guest quarters roof overhang. The total of the encroachments in the Thompson Street right-of-way is 60 ± square feet.

City Actions:

Development Review Committee:	June 25, 2015
City Commission:	November 4, 2015

PLANNING STAFF ANALYSIS:

As described in the Specific Purpose Survey prepared by J. Lynn O'Flynn, Inc. dated June 1, 2015, the request is for the encroachment of the fence and guest quarters overhang. The total of the encroachments in the Thompson Street right-of-way is 60 ± square feet.

The encroachment does not impede public passage on City sidewalks.

If the request for an easement over City-owned land is granted, then the owner would be required to pay an annual fee of \$300.00 to the City for the use of 20 square feet to 100 square feet of City property pursuant to Code Section 2-938(b)(2). 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 structures.
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 \$300.00 specified in Code Section 2-938(b)(2).
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. 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
6. 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.
 7. 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.
 8. 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.
 9. The existing roof overhang and fence shall be the total allowed construction within the easement area.
 10. The easement area shall not be used in site size calculations such as lot, yard, and bulk calculations for site development.
 11. The City reserves the right to construct surface improvements within the easement area.

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 \$300.00 annually as part of the approval of 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.