

## EXECUTIVE SUMMARY



**To:** Bogdan Vitas, City Manager

**Through:** Donald Leland Craig, AICP  
Director of Development Services and Planning Director

**From:** Carlene Smith, Planner Analyst

**Meeting Date:** May 6, 2014

**RE:** **Easement – 801 Emma Street (RE # 00014640-000000, AK # 1015024)**  
– A request for an easement in order to maintain an existing concrete front porch, balcony and eaves which encroach onto the Emma Street right-of-way located within the Historic Neighborhood Commercial – Bahama Village District (HNC-3) 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 129.4 square feet more or less within City right-of-way abutting the property.

Applicant: Jim Marsh

Property Owner: Cajun Key West Realty, LLC

Location: 801 Emma Street (RE # 00014640-000000, AK # 1015024)

Zoning: Historic Neighborhood Commercial – Bahama Village District (HNC-3)



**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 front porch, balcony and eaves that encroach onto the Emma Street right-of-way, as shown on the attached specific purpose survey.

The building is a contributing structure in the historic district. Although the building was remodeled after a fire in 1984, historic photos from the 1960s confirm no change in the original footprint of the structure.

The owner applied for a certificate of appropriateness to make repairs to the exterior of the structure. As is City policy, the owner is required to obtain an easement in order to maintain the location of the existing concrete front porch, balcony and eaves within City property.

**City Actions:**

Development Review Committee:

March 14, 2014

**PLANNING STAFF ANALYSIS:**

As described in the Specific Purpose Survey drawn by Frederick H. Hildebrandt of Island Surveying, Inc., dated March 17, 2014, the area of the easement request is for 129.4 square feet more or less. Although the concrete front porch/balcony only encroaches 39.5 square feet onto the Emma Street Right-of-Way (ROW), the encroachment of the eaves is what increases the square footage.

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 129.4 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 for 129.4 square feet, more or less, 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 concrete front porch/balcony and eave shall be the only total allowed construction within the easement area.
7. The easement area 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 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 \$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.

**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 but the City would lose the potential to collect the \$400 annual fee. However, there would continue to be liability concerns by allowing the encroachment onto City property to continue without the easement and required insurance.

**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.