

EXECUTIVE SUMMARY



To: Bogdan Vitas, City Manager

Through: Donald Leland Craig, AICP, Planning Director

From: Kevin Bond, AICP, LEED Green Associate, Planner II

Meeting Date: June 3, 2014

RE: **Revocable License – 1413 Grinnell Street (RE # 00039200-000000, AK # 1039942)**
A request for a revocable license in order to maintain existing wood fences located within the Grinnell Street and Washington Street rights-of-way located within the Historic Medium Density Residential District (HMDR) Zoning District pursuant to Section 2-939 of the Code of Ordinances of the City of Key West, Florida

ACTION STATEMENT:

Request: To grant a revocable license to maintain existing wood fences located within City rights-of-way abutting the property.

Applicant: Wayne Larue Smith and Daniel E. Skahen

Property Owner: Wayne Larue Smith and Daniel E. Skahen

Location: 1413 Grinnell Street (RE # 00039200-000000, AK # 1039942)

Zoning: Historic Medium Density Residential District (HMDR)



BACKGROUND:

This is a request for a revocable license pursuant to Section 2-939 of the Code of Ordinances (the “Code”) of the City of Key West (the “City”). The request is for existing wood fences within the Grinnell and Washington Street rights-of-way, as shown on the attached boundary survey and site photos. The owner wishes to maintain the existing fences within the City rights-of-way, rather than relocate them onto the property. The fences run parallel along the two property lines adjacent to the streets of the property, which is located at the northern corner of Grinnell and Washington Streets. The property is not located within the historic district. The fence is a four-foot-high wood picket fence along Grinnell Street and about half of the Washington Street frontage. The wood fence increases to six feet high along the eastern half of the Washington Street frontage.

City Actions:

Development Review Committee:
City Commission:

February 27, 2014
June 3, 2014

PLANNING STAFF ANALYSIS:

The existing fence within the Grinnell Street right-of-way is located between 5.5 and 6.0 feet over the Applicant’s property line. The existing fence within the Washington Street right-of-way is located between 3.3 and 3.6 feet over the Applicant’s property line. The land area of City right-of-way enclosed by the fences is approximately 603 square feet. There are no existing sidewalks, so the fences do not impede public passage on any City sidewalks.

According to a review of City permit records (see attached), there has been fencing within City right-of-way since at least 1993. According to a survey dated June 14, 1993, there was a fence within the eastern portion of the Washington Street right-of-way. This may be the same six-foot-high fence currently located in this area that meets up with a six-foot-high concrete wall, which is located at the rear corner of the Applicant’s property and also extends into the right-of-way. In 1994, the previous owner obtained a building permit and a final inspection for work including four-foot high picket fencing in the front yard along Grinnell Street. According to a survey dated January 14, 1997, the new four-foot high wood fences were now located within both the Grinnell and Washington Street rights-of-way. The Applicant bought the property in May 1997. Plans stamped received on March 25, 1998 also show the existing fence located within the rights-of-way. No record of a Right-of-Way Permit for the fences was found. Therefore, it appears these are circumstances not created by the current property owners, who are requesting to maintain the fences in their current locations within City rights-of-way.

The Applicant’s request was originally submitted to the City as an easement application. However, staff had concerns that the proposed easement area of City right-of-way between the existing fences and the Applicant’s property lines would effectively become the Applicant’s property. Staff did not believe an easement would be an appropriate method to maintain the Applicant’s fences in their current locations. Rather, Staff recommended that the Applicant withdraw the easement application and instead apply for a revocable license for the existing fences and brick pavers located within City rights-of-way. The revocable license is a more appropriate solution and would be easier for the City to terminate in the event of non-payment of

the annual fee, a future public purpose such as sidewalks, or other necessities. The Applicant, of course, also has the option to relocate the fences onto the Applicant's property.

If the request for the revocable license is granted, then the owner would be required to pay an annual fee of \$200.00 to the City for the use of City property pursuant to Code Section 2-939(d). The annual fee would be prorated based on the effective date of the revocable license.

Options / Advantages / Disadvantages:

Option 1. Approve the revocable license with the following conditions:

1. The City may unilaterally terminate the revocable license with or without cause upon 30 days written notice.
2. The owner shall pay the annual fee specified in Section 2-939(d) of the City Code of Ordinances.
3. The owner shall irrevocably appoint the City Manager as its agent to permit the removal of the fences on City property if the annual fee required by City Code is not paid. The costs incurred by the City associated with any such removal shall be borne by the owner.
4. The revocable license shall terminate upon the failure of the property owner to maintain liability insurance, such public liability and property damage insurance protecting the City from all claims and damage to property or bodily injury. Such insurance shall provide coverage of not less than one million dollars (\$1,000,000.00), or such other amount as may be legislatively 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 revocable license. The policy shall not terminate or be cancelled without 45 days' written notice sent via certified mail to the City's Chief Building Official.
5. In the event this revocable license is terminated, the fences shall be immediately removed upon the request of the City and in the event the fences are not removed, or due to an emergency the City finds it necessary to act immediately, the City may remove same and shall not be responsible for damage incurred due to such removal. The cost incurred by the City associated with any such removal shall be borne by the owner.
6. The revocable license shall be personal to the current property owner and may not be transferred or assigned.

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 \$200.00 annually as part of the approval of the revocable license. There would be no cost to the City for granting the revocable license.

Option 2. Deny the revocable license 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 revocable license would not be inconsistent with the Strategic Plan.

Financial Impact: There would be no cost to the City for denying the revocable license. However, there would continue to be liability concerns by allowing the encroachment into City property to continue without the revocable license.

RECOMMENDATION: Option 1.

Based on Staff's analysis, the Planning Department recommends to the City Commission **APPROVAL** of the proposed Resolution granting the requested revocable license with conditions as outlined above.