



## EXECUTIVE SUMMARY

**To:** Jim Scholl, City Manager  
**Through:** Amy Kimball-Murley, AICP, Planning Director  
**From:** Nicole Malo, Planner *N. Malo*  
**Date:** November 3, 2010  
**RE:** Easement Request, 1901 Flagler Avenue

Request: This request is for the approval of an easement of 164 square feet to address the encroachment of existing roof eaves, and two second floor balconies and associated balcony roofs related to a contributing historic structure located on the northeast corner of Flagler Avenue and First Avenue.

Location: 1901 Flagler Avenue  
RE # 00045080-000000

Zoning: Limited Commercial (CL) Zoning District

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### 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 an existing mixed use structure that was originally built in the late 1800's. Although located outside of the Historic District, the structure is listed as a contributing structure in the Historic Architectural Survey.

The easement request area includes existing roof eaves and two second floor balconies with associated balcony roofs along Flagler Avenue and First Avenue. The encroachments do not impede public passage or ADA access.

In conjunction with this easement, the applicant has also submitted a variance request for renovations to the structure that exceed 66% of the value of the existing building; no expansion of the non-conforming structure is proposed.

City Actions:

DRC: September 23, 2010  
HARC: September 28, 2010  
Approval # H10-01-343

PLANNING STAFF ANALYSIS:

As described in the Specific Purpose Survey drawn by Reece and White Land Surveying, Inc., dated September 14, 2009, the area of the easement request is for 164 square feet and is specific to the existing encroachments. The encroachments include the main roof eaves, two second floor balconies and the associated balcony roofs. As shown on the enlarged survey the encroachments include approximately 164 square feet for portions of existing roof eaves with an area of 1.08 feet in depth by 33.75 feet in length along First Street and an area of 1.86 feet in depth by 33.49 feet in length along Flagler Avenue, and two second floor balconies with associated roofs, one which is 3.42 feet in depth by 10.61 feet in length along First Street, and one which is 3.38 feet in depth by 10.54 feet in length along Flagler Avenue. The property located is at 1901 Flagler Avenue and the structure is listed as contributing in the Historic Architectural Survey. City staff has reviewed the application through the Development Review Committee and had no comments or concerns regarding the easement application. No neighborhood comment has been received to date.

Code requirements for easements found in Section 2-938 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 164 square feet of city owned property used by the applicant at 1901 Flagler Avenue.

**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.

**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.
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