



## EXECUTIVE SUMMARY

**To:** Jim Scholl, City Manager

**Through:** Donald L. Craig, AICP, Interim Planning Director

**From:** Nicole Malo, Planner *NLM*

**Date:** February 15, 2011

**RE:** An easement request for approximately 441 square feet to address the encroachments of a property located at 1009 Catherine Street (RE# 00031880-000000) in the HMDR zoning district per Section 2-938 of the Code of Ordinances of the City of Key West, Florida.

### **ACTION STATEMENT:**

**Request:** This request is for an easement for approximately 441 square feet that will address encroachments within an area currently enclosed by an existing knee wall and a chain link fence of a single family structure. Within the enclosed area are open spaces and portions of a front porch, walkway and a carport related to a single family home located along the northeastern side of Catherine Street, a publicly owned road.

**Location:** 1009 Catherine Street  
RE # 00031880-000000

**Zoning:** Historic Medium Density Residential (HMDR) 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 front yard that is currently enclosed by an existing CBS knee wall located along the two side yard property lines and a chain-link fence across the front. Structural encroachments within the enclosed front yard area include portions of an open front porch and walkway and carport and that was originally built sometime in the 1940's. The structure is not listed as a contributing structure in the historical architectural survey, due to aesthetic alterations that were applied to the structure in the late 50's early 60's. However, the single family home has rested in its current footprint on the property as early as 1948, as depicted on the Sanborn Map provided. The applicants were attempting to replace the chain-link fence with a

wooden picket fence more consistent with the historic neighborhood and were unable to obtain permits due to the encroachments. The side walls were most likely installed when other renovations were done in the 50's-60's and are likely also historic.

The request will not impede vehicular or pedestrian passage as depicted on the attached Boundary Survey dated July 18, 2006. According to the survey there is approximately 14.6 feet in depth of parking and/or pedestrian passage area between the requested easement area and the paved street. The City Engineer confirmed that there are no proposed plans for a sidewalk on the adjacent right of way.

**City Actions:**

DRC: December 17, 2010

HARC: TBD

**Planning Staff Analysis:**

As described in the Specific Purpose Survey drawn by Lynn O' Flynn, Inc., dated November 10, 2010, the area of the easement request is for 441 square feet. The area of the encroachment is 10.4' in depth by 42.44' in length.

The structure is located within the Historic Medium Density Residential Commercial zoning district and is compatible with the intent of the land use. City staff has reviewed the application through the Development Review Committee and there are no outstanding concerns regarding the easement application. No neighborhood comment have been received to date. Based on the existing conditions the Planning Department recommends the easement be approved with conditions.

**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:*
  - (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*

Should the application for an easement be approved, the applicant shall be required to pay to the City an annual fee of \$400.00 for the 441 square feet of city owned property used by the applicant at 1009 Catherine Street.

### **Options / Advantages / Disadvantages:**

**Option 1.** Approve the easement request of 441 square feet with the following conditions:

1. That the easement shall terminate upon replacement of the encroaching structure and there shall be no expansion or further encroachments in the easement area.
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 on or before the anniversary date of approval.

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 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 easement.

1. **Consistency with the City's Strategic Plan, Vision and Mission:**  
This action is consistent with the City's Strategic Plan, Vision, and Mission.
2. **Financial Impact:**  
The City will collect \$400.00 annually if the application for easement is approved.

**Option 2.** Deny the easement request for 1009 Catherine Street of 441 square feet.

1. **Consistency with the City's Strategic Plan, Vision and Mission:**  
This action would not be consistent with the City's Strategic Plan, Vision, and Mission, and may effect the historical integrity of the neighborhood and structure.
2. **Financial Impact:**  
The City would lose the potential \$400.00 revenue that would be generated annually if the easement is not approved.

**RECOMMENDATION:**

The Planning Department recommends approval of the Easement with the following conditions:

1. That there shall be no expansion or further structural encroachments in the easement area, improvements, repairs and replacements shall be allowed.
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 on or before the anniversary date of approval.
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 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 easement.