

## EXECUTIVE SUMMARY



**To:** Jim Scholl, City Manager

**Through:** Kevin Bond, AICP, Acting Planning Director

**From:** Carlene Smith, LEED Green Associate, Planner II

**Meeting Date:** April 7, 2015

**RE:** **Easement - 1011 Whitehead Street (RE # 00027330-000200; AK # 8682425)** - A request for an easement  $\pm$  243.12 square feet along the Whitehead Street and Julia Street rights-of-way in order to address encroachment of portions of principal structure, entrance steps, overhang, eaves, two tiered rear balcony and rear gate and wooden fence associated with a multi-story mixed use historic structure on property located within the Historic Medium Density Residential (HMDR) zoning district pursuant to Section 2-938 of the Code of Ordinances of the City of Key West, Florida.

### ACTION STATEMENT:

Request: To grant a  $\pm$  243.12 square foot easement for existing encroachments into the Whitehead Street and Julia Street rights-of-way.

Applicant: One Call Construction, Inc.

Property Owner: Boleto Properties, LLC

Location: 1011 Whitehead Street (RE # 00027330-000200; AK # 8682425)

Zoning: Historic Medium Density Residential (HMDR)



**BACKGROUND:**

This request is for an easement pursuant to Section 2-938 of the Code of Ordinances of the City of Key West. The easement request is for ± 243.12 square feet along the Whitehead Street and Julia Street rights-of-way in order to address existing encroachment of portions of the principal structure, entrance steps, overhang, eaves, two tiered rear balcony and rear gate and wooden fence associated with a multi-story mixed use structure as shown on the attached specific purpose survey dated January 9, 2015. The existing non-conforming multi-story mixed use structure is located within the front, street side and rear yard setbacks.

The property is located within the Key West Historic District; however, the front portion of the building is the only contributing part of the structure. It is estimated by the Historic Preservation Planner, Kelly Perkins, that the structure at 1011 Whitehead was built sometime between 1899 and 1912 as a one-story, wood frame, commercial structure. A 1965 photo from the Key West Public Library, shows some of the encroachments that exist today (portion of principal structure, entrance steps, overhang and eaves). The building has been altered over time and a three-story addition was added to the rear of the structure. This addition is not historic.

Whitehead Street right-of-way (± 159.35 square feet)

An existing six foot overhang encroaches along the entire frontage of the Whitehead Street right-of-way along with a portion of the primary structure and entrance steps.

Julia Street right-of-way (± 83.77 square feet)

The existing overhead eaves encroach along the entire side of the Julia Street right-of-way along with a portion of the primary structure, two tiered rear balcony and a gate and wooden fence.

The request for the easement was prompted by a HARC application to repair existing decking and fence replacement.

Although the property is located within the HMDR zoning district, the current commercial use is legally nonconforming. The city also recognizes one non-transient residential dwelling unit on site. However, the owner applied for a lawful unit determination in July 2014 in order to legalize two additional units and their transient use for a total of three transient units. Their application is under review.

**City Actions:**

Development Review Committee:	February 26, 2015
City Commission:	April 7, 2015

**PLANNING STAFF ANALYSIS:**

As described in the Specific Purpose Survey prepared by Island Surveying, Inc. dated January 9, 2015, the area of the easement request is for ± 243.12 square feet on the Whitehead Street and Julia Street rights-of-way. During the Development Review Process, the Building Official voiced his concern on the existing wood ramp outside of the rear gate. The applicant has agreed to remove the existing wooden ramp and construct a new ramp within the property line.

The encroachments on the Julia Street right-of-way do not impede public passage on City sidewalks, as no sidewalks exist on this block.

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 more than 100 square feet of City property pursuant to Code Section 2-938(b). 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 structure.
2. The wooden ramp shall be removed from the Julia Street right-of-way within 60 days.
3. The City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
4. The owner shall pay the annual fee of \$400.00 specified in Code Section 2-938(b).
5. 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.
6. 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
7. 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.
8. 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.
9. 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.

10. The portions of principal structure, entrance steps, overhang, eaves, two tiered rear balcony and rear gate and wooden fence shall be the total allowed construction within the easement area.
11. The easement area shall not be used in site size calculations such as lot, yard, and bulk calculations for site development.
12. 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.

**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.