

EXECUTIVE SUMMARY



To: Jim Scholl, Interim City Manager
Through: Donald Leland Craig, AICP, Planning Director
From: Carlene Smith, LEED Green Associate, Planner II
Meeting Date: October 21, 2014

RE: **Easement – 1406 Leon Street (RE # 00041610-000000; AK # 1042277)**
– A request for an easement of approximately ± 69.16 square feet on the Leon Street right-of-way and ± 498.84 square feet on the Washington Street right-of-way in order to maintain an existing concrete wall, portion of the pool, pool equipment and landscaping on property located within the Single Family (SF) zoning district pursuant to Section 2-938 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

ACTION STATEMENT:

Request: To approve an easement request of approximately ± 69.16 square feet on the Leon Street right-of-way and ± 498.84 square feet on the Washington Street right-of-way abutting the property.

Applicant /
Property Owner: Vicki L. Gordon

Location: 1406 Leon Street (RE # 00041610-000000; AK # 1042277)

Zoning: Single Family (SF) zoning district



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 approximately ±69.16 square feet on the Leon Street right-of-way and ±498.84 square feet on the Washington Street right-of-way in order to maintain an existing concrete wall, portion of the pool, pool equipment and landscaping, as shown on the attached specific purpose survey dated July 31, 2014.

In February 1999, the property owner received variance approval from the Board of Adjustment via Resolution 99-60. The variance approval was for the construction/placement of the swimming pool, pool equipment, gazebo and fence and wall height requirements.

In April 1999, the property owner received an easement from the City Commission via Resolution 99-122. However, the easement agreement was never signed by the property owner. Document dated August 2, 1999 by then City Attorney, Robert Tischenkel, stated that the property owner would have conditions to fulfill before the easement could be executed and recorded. The condition to fix the line of sight issue was resolved by the property owner in 2011 during the construction of the Leon Street sidewalk project.

The property owner is seeking an easement in order to sell the property and address all encroachments which is the focus of an open Code Violation.

City Actions:

Development Review Committee:	March 27, 2014
Board of Adjustment (Variance):	February 3, 1999 (BOA Res 99-60)
City Commission (Easement):	April 6, 1999 (CC Res 99-122 / not executed)

PLANNING STAFF ANALYSIS:

As described in the Specific Purpose Survey drawn by Island Surveying Inc., dated July 31, 2014, the area of the easement request is for approximately ±69.16 square feet on the Leon Street right-of-way and ±498.84 square feet on the Washington Street right-of-way.

If the request for the 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 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 request of approximately ±69.16 square feet on the Leon Street right-of-way and ±498.84 square feet on the Washington Street right-of-way in order to maintain an existing concrete wall, portion of the pool, pool equipment and landscaping, 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)(3).

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 wall, portion of the pool, pool equipment and landscaping 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 or sub-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 request with the following conditions:

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. The City would however lose the potential to collect the revenue of the easement agreement.

RECOMMENDATION: Option 1.

Based on the existing conditions, the Planning Department recommends to the City Commission **APPROVAL** of the easement request for approximately ±69.16 square feet on the Leon Street right-of-way and ±498.84 square feet on the Washington Street right-of-way in order to maintain an existing concrete wall, portion of the pool, pool equipment and landscaping with the conditions listed above.