

# EXECUTIVE SUMMARY



**To:** Jim Scholl, City Manager

**Through:** Donald Leland Craig, AICP, Planning Director

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

**Meeting Date:** August 5, 2014

**RE:** **Revocable License - 1119 Olivia Street (RE # 00022290-000000, AK # 1023078)** – A request for a revocable license in order to maintain an existing wood fence located within the Ashe Street right-of-way located within the Historic High Density Residential District (HHDR) 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 an existing wood fence located within the Ashe Street right-of-way abutting the property.

Applicant: William Shepler, Architect

Property Owner: Lynn and Hope Hallum

Location: 1119 Olivia Street (RE # 00022290-000000, AK # 1023078)

Zoning: Historic High Density Residential (HHDR)



**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 an existing wood fence within the Ashe Street right-of-way, as shown on the attached survey and site photos. The owner wishes to maintain the existing fence within the City right-of-way, rather than relocate them onto the property. The fence runs along the Ashe Street side of the property, which is located at the northern corner of Olivia and Ashe Streets. The property is located within the Key West Historic District and the building is a contributing structure. The fence is a four-foot-high wood picket fence along Ashe Street. According to the property owner, the fence was located on the street-side of several existing large trees, rather than locate the fence inside or remove the trees.

On May 15, 2014, the Key West Planning Board approved Resolution No. 2014-30 granting with conditions setback variances in order for the property owner to construct a new gable end roof structure over an existing wood deck and two new small shed roof structures over existing exterior stairs for the existing residential building on the property. One of the conditions of approval was that the owner obtains a revocable license for the wood fence that encroaches into City right-of-way, or removes or relocates the fence from City right-of-way.

**City Actions:**

Development Review Committee: June 26, 2014  
City Commission: August 5, 2014

**PLANNING STAFF ANALYSIS:**

The existing fence within the Ashe Street right-of-way is located between 0.4 and 1.3 feet over the Applicant’s property line and runs approximately 60 linear feet. The fence does not impede public passage on any City sidewalks.

According to a review of City permit records, the fence was approved by City Permit # 06-0330 in January 2006 under the previous property owner. The fence passed final building and HARC inspections in March 2006. The current property owner bought the property in April 2008. Therefore, it appears these are not circumstances created by the current property owners, who are requesting to maintain the fence in its current location within City right-of-way.

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 fence shall be immediately removed upon the request of the City and in the event the fence is 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.