



EXECUTIVE SUMMARY

To: Jim Scholl, City Manager

Through: Amy Kimball-Murley, AICP, Planning Director

From: Brendon Cunningham

Date: October 19, 2010

RE: Easement – 630 Elizabeth Street (RE# 00011970-000000) – An easement request for 67 square feet associated with an existing historic structure per Section 2-938 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

ACTION STATEMENT:

Request: This request is for an easement of 67 square feet to address the encroachment of portions of an existing porch, roof eaves and steps related to a contributing historic structure located at the corner of Elizabeth and Angela Streets, publicly owned rights-of-way.

Location: 630 Elizabeth Street
RE # 00011970-000000

Zoning: HHDR (Historic High Density Residential Commercial) Zoning District

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 residential structure that was originally built in the late 1800's. The property is located on the corner of Elizabeth and Angela Streets. The property faces Elizabeth Street at the terminus of Angela Street at Windsor Lane.

In conjunction with this easement request, the applicant has also submitted and received a request for variances by the Planning Board, contingent upon the granting of this easement request. The existing structure is in a dilapidated condition and the applicant intends to renovate the structure. To do so, per Section 122-28(b), the applicant has received Planning Board approval for variances to dimensional requirements as

proscribed in the code when renovations exceed 66% of the assessed value of the structure.

City Actions:

HARC: January 15, 2010, Approval # H10-01-15-49
DRC: August 26, 2010, Variance Application
Planning Board: September 16, 2010, Variance Application, Resolution #2010-035
DRC: September 23, 2010, Easement Application
City Commission: October 19, 2010, Easement Application

PLANNING STAFF ANALYSIS:

As described in the Specific Purpose Survey drawn by Reece & White, dated September 13, 2010, the area of the easement request is for 67 square feet. The area of the encroachment includes the front porch and eave overhangs, in addition to the steps leading up to the porch. As shown on the enlarged survey, an area of the front porch and overhang encroaches 1.8 feet in depth by 28.84 feet in width across the front of the structure and 0.4 feet in depth by 36.71 feet in length on the side along Angela Street. This request is for the encroaching portions of the building only.

The building dates back to 1887 and is listed as a contributing historic structure; that suggests that the encroachment is long standing. Photographs have also been submitted with the request. 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 \$300.00 to the city for the 67 square feet of city owned property used by the applicant at 630 Elizabeth Street.

Options / Advantages / Disadvantages:

Option 1. To approve the easement of 67 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. That the owner shall pay the yearly fee specified in Code of Ordinances section 2-938.
3. 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.
4. 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.

1. **Consistency with the City's Strategic Plan, Vision and Mission:**
The Strategic Plan is silent to this issue.
2. **Financial Impact:** The City will collect \$300.00 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:**
The Strategic Plan is silent to this issue.

2. **Financial Impact:** The City would lose the potential to collect the revenue of an easement agreement.

RECOMMENDATION: Option 1

Based on the existing conditions, 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. That the owner shall pay the yearly fee specified in Code of Ordinances section 2-938.
3. 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.
4. 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.