

## EXECUTIVE SUMMARY



**To:** Bogdan Vitas, City Manager

**Through:** Donald Leland Craig, AICP  
Director of Development Services and Planning Director

**From:** Carlene Smith, Planner Analyst

**Meeting Date:** March 4, 2014

**RE:** Revocable License – 4 Pinder Lane (Re# 00008500-000000, AK# 1008761) – A request for a revocable license for nonpermanent use of City property for 760.75 square feet area to maintain existing brick pavers and landscaping associated with a historic structure per Section 2-939 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

### ACTION STATEMENT:

**Request:** This request is for a revocable license for nonpermanent use of City property for 760.75 square feet area to maintain existing brick pavers and landscaping associated with the configuration of Pinder Lane.

**Applicant:** Smith | Oropeza, P.L.

**Owner:** Christopher and Kimberly Darby

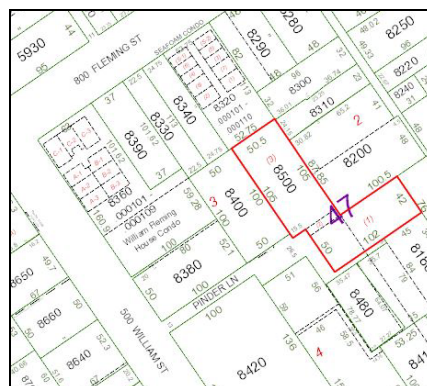
**Location:** 4 Pinder Lane (Re# 00008500-000000, Alt Key# 1008761)

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

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### BACKGROUND:

This is a petition for a revocable license pursuant to Section 2-939, City of Key West Code of Ordinances. The applicant originally requested a vacation of City right-of-way in order to address the encroachment of an existing front porch step and to maintain the existing brick pavers and landscaping associated with the configuration of Pinder Lane. However, during the Development Review process, the applicant agreed to remove the encroachment and seek a revocable license for the existing brick pavers and landscaping instead of the vacation request.



City Actions:

DRC: September 26, 2013, Vacation of City ROW Application (withdrawn)

PLANNING STAFF ANALYSIS:

As described in the Specific Purpose Survey drawn by J. Lynn O'Flynn, Inc., dated August 30, 2013, the area of the revocable license request is for 760.75 square feet. As shown on the enlarged survey, an area of the front porch step encroaches 5.5 x 1 foot across the front of the structure. The applicant has agreed to remove the encroachment by reconfiguring the steps which shall meet Florida Building Code Requirements and HARC guidelines.

City staff has reviewed the application through the Development Review Committee (DRC) as a request for Vacation of City Right-of-Way (ROW). Utility access and life safety accessibility concerns were raised during the DRC. No neighborhood comment has been received to date.

On December 4, 2013, staff conducted a joint site visit with the Fire Department and the applicant. The only point of access to 5 and 6 Pinder Lane would be via the area considered for the proposed revocable license request. The Fire Department requested that the planters and vegetation located in front of 4 Pinder Lane be removed to increase life safety accessibility (see Exhibit 1). The applicant submitted a coordination letter with Keys Energy addressing no concerns from Keys Energy for the utility access.

Code requirements for revocable license found in Section 2-939 are as follows:

- (a) The City may grant a revocable license for a nonpermanent use of City property. A revocable license shall be revocable at the will of the City.
- (b) A nonpermanent use may include but not be limited to planters, awnings, trash receptacles, planted areas, benches, flagpoles, guardrails, ramps and light fixtures, but shall not include buildings or accessory structures affixed to real property.
- (c) Except for the procedure specified for awnings described in paragraph (e) below, the same notice requirements pertaining to applications for an easement in section 2-938(a)(1) and (2) shall apply to applications for a revocable license.
- (d) Except for a license issued in accordance with paragraph (e) below, if the City grants an applicant's request for a license, the applicant shall pay an annual fee to the City in the amount of \$200.00. This fee shall be prorated based on the effective date of the license. The applicant shall pay the fee each subsequent year the license is in effect.
- (e) The chief building official is authorized to issue a revocable license which allows a nonpermanent use of city airspace for an awning under the following circumstances:
  - (1) The applicant has obtained, or will obtain contemporaneously with the request for a nonpermanent use of city airspace, a properly issued building permit for such awning; and
  - (2) The applicant shall obtain HARC approval where applicable; and
  - (3) Unless the circumstances dictate that stricter standards are applicable under the Florida Building Code, the awning may extend across the front of a building and may only project a maximum of two-thirds of the width of a sidewalk, or, to within 18 inches of the face of the curb, whichever is less. There shall be a minimum eight feet of clearance between the lowest point or projection of the awning and a sidewalk or public travelway immediately below. Any valance attached to an awning shall not project above the top surface of the awning. In no event shall a permit be issued that will adversely impact vehicular or pedestrian traffic and determined by the chief building official in conjunction with the city engineering department; and

- (4) Prior to the issuance of a permit, the applicant shall furnish the chief building official with a signed and notarized statement that the permittee shall hold harmless and indemnify the city, its officers and employees from any claims for damages to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit; and
- (5) Permittee shall furnish and maintain such public liability and property damage insurance protecting the city from all claims and damage to property or bodily injury, including death, which may arise from the existence of the awning. Such insurance shall provide coverage of not less than \$1,000,000.00 for bodily injury and property damage respectively, per occurrence. Such insurance shall be without prejudice to coverage otherwise existing therein and shall name as additional insureds the city, its officers and employees and shall further provide that the policy shall not terminate or be cancelled without 45 days' written notice to the chief building official, sent via certified mail; and
- (6) If found to be necessary by the city for the protection of the health, safety and welfare of the public, awnings shall be immediately removed upon the request of the city and in the event an awning 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 costs incurred by the city associated with any such removal shall be borne by the permittee.

The applicant is required to pay an annual fee of \$200.00 to the City for the revocable license of City owned property used by the applicant and maintain liability and property insurance.

**Options / Advantages / Disadvantages:**

**Option 1.** To approve the revocable license for nonpermanent use of City property for 760.75 square feet area to maintain existing brick pavers and landscaping with the following conditions, whereas “Licensor” is the City of Key West and “Licensee” is Christopher and Kimberley Darby:

1. The Licensor hereby grants to the Licensees a revocable and non-assignable license to enter in, on, over, and across Licensor’s Property, for the purpose of allowing Licensee to park vehicles on the Licensor’s property; and also to maintain (but not make physical changes to) the existing landscaping and pavers on Licensor’s Property within the Pinder Lane right-of-way adjacent to Licensees’ Property in accordance with the sketch attached hereto and more particularly described as Exhibit “B”; reserving, however, to the Licensor, its successors and assigns, all such right, title, interest and privilege as may be used and enjoyed without interfering with or abridging the rights and right-of-entry hereby acquired.
2. This License is personal to Licensees and may not be assigned or transferred. Licensor shall have the right to terminate this License with or without cause upon thirty (30) days written notice to Licensee at the following address: P.O. Box 808, Jackson, New Hampshire, 03846-0808. In such event, Licensees’ personal property shall be immediately removed upon receipt of the notice. In the event Licensees’ personal property is not removed or due to an emergency the Licensor finds it necessary to act immediately, the Licensor may remove same and shall not be responsible for damage incurred due to such removal. The costs incurred by the Licensor associated with any such removal shall be

borne by the Licensees. This License Agreement shall expire upon a sale or other change of ownership of Licensees' Property.

3. Licensees agree to indemnify, hold harmless and defend the Licensor, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorney's fees, court costs, and expenses, caused by the conduct, misconduct, negligent error, omission or act of Licensees, their employees agents, servants or officers, or accruing, resulting from, or related to the subject matter of this License Agreement, including, without limitation, any and all claims, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property, whether or not suit be brought. The provisions of this indemnification provision shall survive the expiration or earlier termination of this License Agreement. Nothing herein is intended to waive the immunity afforded to Licensor pursuant to Florida Law, including section 768.28, Florida Statutes.
4. Prior to the issuance of this License Agreement, Licensees shall furnish and maintain such public liability and property damage insurance protecting the Licensor from all claims and damage to property or bodily injury, including death, which may arise from the placement of Licensees' personal property on Licensees' Property. Such insurance shall provide coverage of not less than one million dollars (\$1,000,000.00) for bodily injury and property damage respectively, per occurrence. Such insurance shall be without prejudice to coverage otherwise existing therein and shall name as additional insured's the Licensor, its officers and employees and shall further provide that the policy shall not terminate or be cancelled without forty-five (45) days' written notice to the Chief Building Official, sent via certified mail. This License Agreement shall terminate in the event that the required insurance policy is not maintained properly.
5. If any action of the Licensees or their employees or agents in the exercise of this License results in damage to Licensor's Property, the Licensees will either repair such damage or make a settlement acceptable to the Licensor. In no event shall such repair or settlement exceed the fair market value of the fee title to the real property at the time immediately preceding such damage.
6. Licensor does not warrant or represent that the property is safe or suitable for the purpose for which Licensee is permitted to use it, and Licensees assume all risks in its use.
7. Licensees shall pay to Licensor an annual fee of Two Hundred and No/100 Dollars (\$200.00). Payment shall be made to the Licensor's Finance Department on each anniversary date of this License. The Licensees irrevocably appoint the City Manager as their agent to permit the removal of the benches on Licensor's Property if the yearly fee required by the Code of Ordinances is not paid. The costs incurred by the Licensor associated with any such removal shall be borne by the Licensees.
8. The Licensee shall increase life safety accessibility, by removing planters and vegetation located in front of 4 Pinder Lane (as shown in Exhibit 1).
9. The Licensee shall remove the front steps which encroach into city's right-of-way by reconfiguring the front steps to comply with Florida Building Code requirements and HARC guidelines.

**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 \$200.00 annually as part of the approval of the application. There will be no cost to the City for this revocable license approval.

**Option 2:** Deny the revocable license for nonpermanent use of City property.

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 a revocable license agreement.

**RECOMMENDATION:** Option 1

Based on the existing conditions, the Planning Department recommends **approval** to the City Commission for the proposed revocable license for nonpermanent use of City property for 760.75 square feet area to maintain existing brick pavers and landscaping area with the conditions listed above.