

EXECUTIVE SUMMARY



To: Jim Scholl

Through: Donald Craig, AICP Planning Director

From: Ashley Monnier, Planner II

Meeting Date: July 5, 2011

RE: An application has been filed by Robert T. Feldman, personal representative of the Estate of Robert William Townshend, deceased, requesting modification to the terms of an easement that was approved by City Commission Resolution 10-136 for approximately 3200 square feet of the Eisenhower Drive right-of-way allowing this encroachment of existing structures at 712-716 Eisenhower Drive (RE# 00023300-000000) in the Historic Medium Density Residential zoning district per Section 2-938 of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida.

ACTION STATEMENT:

Request: To modify the terms of the easement agreement, specifically, the City Commission's ability to terminate the easement upon a finding of public purpose, as long as the other terms of the easement agreement are satisfied.

Location: 712-716 Eisenhower Drive (RE# 00023300-000000)

BACKGROUND:

In April of 2010, the City Commission conditionally approved an easement through City Commission Resolution 10-136 for 3200 square feet at 712-716 Eisenhower Drive. The easement was approved contingent upon the deed-restricted, affordable use of the 11 units that have existed on the site. This requirement of the lease remains the same. After the easement agreement was executed, the legal counsel representing the subject property requested that the City modify the terms of the easement agreement, specifically with respect to the City Commission's ability to terminate the easement over the habitable areas of the structure now existing on the property upon a finding of public purpose, as long as the other terms of the easement agreement are satisfied.

Previous City Actions:

Administrative Lot Split Approval:	April 27, 2010
City Commission Easement Approval:	April 6, 2010
City Commission Nomination of Property for Land Acquisition:	February 16, 2010
Development Review Committee Meeting:	January 28, 2010

Administrative Build-back Determination:

May 20, 2009

City Commission Nomination of Property for Land Acquisition:

April 7, 2009

Planning Staff Analysis:

The request to modify the terms of the easement agreement does not affect the physical land area that was approved by the City Commission in Resolution 10-136. The physical size and scope of the approved easement, including the structural and non-structural encroachments, are not proposed to change. The easement agreement that was entered into currently provides that the easement may be terminated upon a finding of public purpose. The applicant is requesting to modify this term so that the habitable areas of the structure may not be extinguished by a finding of public purpose so long as all other terms of the easement agreement are satisfied. Further, in paragraph (7) of the proposed easement agreement, under Conveyance of Easement, it is provided that the "easement shall immediately terminate upon a finding by the City Commission that any of the units are not occupied or utilized within the affordability guidelines."

Options / Advantages / Disadvantages:

Option 1. Approve the easement modification with the following conditions:

- (1) That the easement shall terminate upon the replacement of the structure and there shall be no expansion or further encroachments in the easement area.
- (2) That the City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission, except as specifically set forth below.
- (3) That the owner shall pay the yearly fee specified in Code of Ordinances section 2-938, as may be amended time to time.
- (4) That the owner shall irrevocably appoint the City Manager as its agent to permit the removal of the encroachment(s) if the yearly fee required by the Code of Ordinances is not paid.
- (5) 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.
- (6) That approval of the easement is contingent upon deed-restricted, affordable use of the units on-site.
- (7) That this easement shall immediately terminate upon a finding by the City Commission that any of the units are not occupied or utilized within the affordability guidelines.

- (8) That the City reserves the right to construct an ADA compliant sidewalk and stormwater improvements within the easement area.
- (9) That the easement area cannot be used in site size calculations such as lot, yard, and bulk calculations for site development. There shall be no additional construction related to this encroachment. Notwithstanding the ability of the City Commission to terminate this easement upon a finding of public purpose, the easement over those habitable areas of the structure now existing on the property may not be extinguished by a finding of public purpose so long as all other terms of this easement agreement are satisfied.

- 1. **Consistency with the City’s Strategic Plan, Vision and Mission:**
The City’s Strategic Plan encourages the protection and creation of affordable housing units. If the easement modification is approved, it may be more feasible for affordable housing units to be available on the site.
- 2. **Financial Impact:**
The City will collect \$400.00 annually if the easement modification is approved, pursuant to Chapter 2 of the Code of Ordinances.

Option 2. Deny the easement modification.

- 1. **Consistency with the City’s Strategic Plan, Vision and Mission:**
If the easement modification is denied, it may be more difficult to provide affordable housing opportunities on the site.
- 2. **Financial Impact:**
There is no direct financial impact to the city itself. However, if the proposed easement modification is not approved, the City would lose the potential \$400.00 revenue that would be generated annually as required in Chapter 2 of the Code of Ordinances.

RECOMMENDATION:

The Planning Department recommends **Option 1** to the City Commission, **approving the easement modification request.**