



MEMORANDUM

Date: April 1st, 2025

To: Honorable Mayor and Commissioners

Via: Brian L. Barroso
City Manager

From: Katie P. Halloran
Planning Director

Subject: **File ID 25-3295 - Request for an Easement Agreement at 1904-1908 Flagler Avenue (RE #00063480-000000, 00063450-000000)**

Introduction

The above-referenced application involves a request for an easement of approximately one hundred and sixteen (116.87) square feet for an overhang at a future educational facility at 1904-1908 Flagler Avenue. The property is currently improved with a one-story education facility within the Limited Commercial (CL) zoning district. A Major Development Plan to expand and redevelop the educational facility was approved for the site pursuant to City Commission Resolution 25-046. A variance to maximum height was approved by the Board of Adjustment pursuant to Resolution 25-052, authorizing a height of 47.1 feet. A variance to for parking, impervious surface, building coverage, front, rear, and side setbacks were approved pursuant to Planning Board Resolution 2024-042.

The City Commission is authorized to consider the granting of an easement pursuant to Chapter 2 (Administration), Article VIII (City Property) Division 3 (Real Property Disposition).

City of Key West Code Sec. 2-938 (Easements) states, in part, that the “*City may grant an easement over any lands or interest therein owned by the city or any city agency.*” According to Sec. 2-938 (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.*”

Background

The applicant requests an easement of 116.87 square feet for a proposed overhang on the roof level of the structure. As a result of the zero-foot front setback, the proposed overhang encroaches over the sidewalk right-of-way. Due to its height, the overhang would not obstruct passage for pedestrians. The overhangs are permanent additions to the building.

This easement request was reviewed at a publicly held Development Review Committee (DRC) meeting on January 23rd, 2025. There were no major concerns identified by the DRC.



Proposed Elevation and Specific Purpose Survey of 1904-1908 Flagler Ave.

Procurement

If the request for the easement over City-owned land is granted, the Grantee shall be required to pay an annual fee to the City consistent with the below provisions contained in Sec. 2-938:

(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.

Recommendation

The Planning Department recommends **APPROVAL** of the proposed easement agreement subject to the following conditions:

Conditions:

1. The Easement shall allow for the proposed encroachments as depicted on the survey prepared by Eric A. Isaacs of Florida Keys Land Surveying Inc. dated November 22nd, 2024, and a total easement area of approximately 116.87 square feet as depicted on the survey prepared by Eric A. Isaacs of Florida Keys Land Surveying Inc. dated November 22nd, 2024. Additional or future easement area shall require an amendment in accordance with Sec. 2-938 of the City Code.
2. The City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
3. The Grantee shall pay the annual fee as specified in Section 2-938(b)(3) of the City Code.
4. Grantee 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. Prior to the easement becoming effective, the Owners shall obtain Commercial General Liability insurance that extends coverage to the property that is governed by this easement with limits of no less than \$300,000.00. Coverage must be provided by an insurer authorized to conduct business in the State of Florida and with terms and conditions consistent with the latest version of the Insurance Service Office's (ISO) latest filed Commercial General Liability form. Grantees shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as "Additional Insured" or "Additional Interest".
6. The easement areas shall not be used in site size calculations such as lot, yard, and bulk calculations for site development.
7. The City reserves the right to construct surface or sub-surface improvements within the City owned easement areas.
8. The City reserves the right of entry/re-entry for the easement areas for the purposes of inspection, maintenance, improvements, and operations in connection with City owned/leased property.
9. To the fullest extent permitted by law, the Grantee expressly agrees to indemnify and hold harmless the City of Key West, their respective officers, directors, agents, and employees (herein called the "indemnitees") from any and all liability for damages caused by or resulting from the Grantee's improvement in the easement area.