



EXECUTIVE SUMMARY

To: Patti McLauchlin, City Manager

Through: Katie P. Halloran, Planning Director

From: Zoe Porter, Planner I

Meeting Date: November 1, 2022

RE: **Easement Agreement – 3838 Flagler Avenue (RE #00071870-000000) –**
A request for an Easement Agreement for an existing encroachment of approximately 266 square-feet, more or less, in order to resume construction of a wooden deck and boat lift over City-owned Sunrise Canal abutting property located within the Single-Family (SF) zoning district at 3838 Flagler Avenue, Key West, Florida (RE# 00071870-000000), pursuant to Section 2-938(b)(3) of the Land Development Regulations of the Code of Ordinances of the City of Key West, Florida; providing fees and conditions.

ACTION STATEMENT:

Request: To grant an easement agreement to resume construction of an existing boatlift and wooden dock encroaching approximately 266 square feet, more or less, onto City owned Sunrise Canal.

Applicant: Gregory S. Oropeza, Esq./Oropeza, Stones & Cardenas, PLLC

Property Owners: Joseph Querci III and Lisa Querci

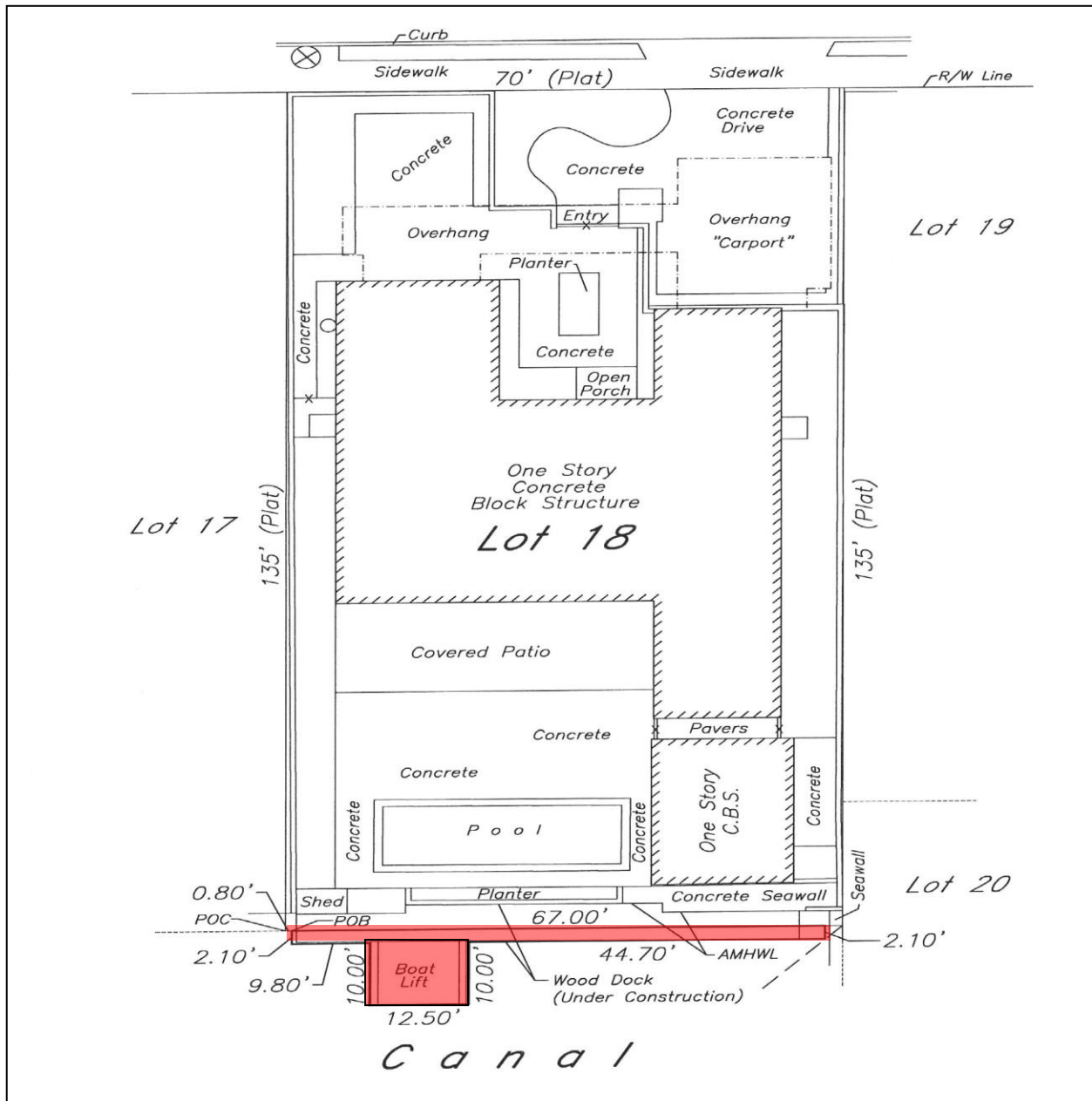
Location: 3838 Flagler Avenue (RE# 00071870-000000)

Zoning: Single Family (SF) zoning district



BACKGROUND:

This is a request for an easement pursuant to Section 2-938 (b)(3) of the Code of Ordinances of the City of Key West. The easement request is for a total of 266 square feet, more or less, to resume construction of a wooden dock and boat lift encroaching on City owned Sunrise Canal, as shown on the survey below. This request is a result of Code Case 2021-01690; the property owner did not obtain proper building permits before commencing construction over City property. A stop work order was issued on 10/20/2021.



Red indicates potential easement area

CITY ACTIONS:

Development Review Committee:

September 22, 2022

City Commission:

November 1, 2022

PLANNING ANALYSIS:

The boat lift and wooden dock area will encroach approximately 266 square feet, more or less, onto City owned property.

A site visit was conducted on August 30, 2022. It was determined by Planning Staff that the proposed encroachment would not impede public passage on Sunrise Canal.

If the request for the easement over City-owned land is granted, then the owners would be required to pay an annual fee of \$400.00 to the City for the use of 210 square feet, more or less, of city property, pursuant to Code Section 2-938(b)(2). The annual fee would be pro-rated based on the effective date of the easement.



Options / Financial Impact:

Option 1. Approve the easement request for a maximum of 266 square-feet, more or less, on the Sunrise Canal in order to resume construction of a wooden dock and boat lift with the following conditions:

1. The easement shall terminate upon the removal of the structures.
2. The City may unilaterally terminate the easement upon a finding of public purpose by vote of the Key West City Commission.
3. The Owners shall pay the annual fee of \$400.00 specified in Code Section 2-938(b)(3).
4. The Owners 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 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 General Liability form. The Owners shall furnish an original Certificate of Insurance indicating, and such policy providing coverage to, City of Key West named as "Additional Insured". The Owners shall provide proof of Insurance annually upon payment of annual fee.
6. The easement area 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 easement area.
8. The area to maintain the existing encroachment of the boatlift and wooden dock onto Sunrise Canal shall be the total allowed within the easement area.
9. To the fullest extent permitted by law, the Owners 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 damage.

Financial Impact: The City would collect \$400 annually as part of the approval of the requested easement agreement.

Option 2. Deny the easement request with the following conditions:

1. The Owner will obtain the appropriate permits for the removal of all items that encroach onto the City right-of-way.

2. All encroachments on the City right-of-way will be removed within 90 days

Financial Impact: There would be no cost to the City to deny the easement. However, the City would lose the potential to collect the revenue of the easement agreement.

RECOMMENDATION:

Option 1:

Based on the existing conditions, Planning Staff recommends to the City Commission **APPROVAL** of the proposed Resolution granting the requested easement agreement with conditions as outlined above.