


## MEMORANDUM

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Date: July 13, 2023

To: Honorable Mayor and Commissioners

Via: Albert P. Childress  
City Manager 

From: Katie Halloran  
Planning Director

Subject: **Easement Agreement at 302 Amelia Street**

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### **Introduction**

The City Planning Department recommends approval of an approximately one-hundred forty-eight (148) square-foot easement for the encroachment of a wood fence for a property located at 302 Amelia Street (RE #00026280-000000).

### **Background**

This item was previously scheduled for the May 2, 2023 City Commission meeting. The item was postponed, date certain, to June 8, 2023. Staff and the applicant requested the item be postponed and placed on the July 13, 2023 City Commission agenda.

This is a request for an easement located at 302 Amelia Street in the Historic Medium Density residential district, pursuant to Section 2-938 of the Code of Ordinances of the City of Key West. The property is a corner lot at the intersection of Thomas Street and Amelia Street. The property contains a two-story single-family residential dwelling. The property is owned by Lindsay Properties, LLC. The applicant is Richard McChesney of Spottswood, Spottswood, Spottswood & Sterling, PLLC.

The easement is requested to allow for the repair and/or reconstruction of a wood fence that results in a 147.92 square-foot encroachment onto the Thomas Street and Amelia Street rights-of-way. The fence ranges between 0.5' and 1.7' over the property line, as shown on the specific purpose survey and in the images below. The fence is approximately 127 linear feet. The

requested easement area includes the fence itself, as well as portions of the right-of-way that are on the interior of the fence line.

This application was reviewed at the March 23, 2023, Development Review Committee meeting. Comments were provided from the Multimodal Transportation Coordinator, Urban Forester, and the Historic Preservation Planner:

- Multimodal Transportation: Consider the visibility requirements of sections 108-452 and 122-1406 as it relates to safety and line-of-sight at the intersection.
- Urban Forestry: Relocation of the fence to the property line would have only minor impacts on vegetation.
- HARC: There is space on the property to relocate the fence to the property line. If the fence is removed and replaced, it should be replaced on the property line.

Section 122-1183(d): *Walls and fences* states: “Fences shall be erected on the lot of the applicant and shall not extend into a public right-of-way. The fence may abut but shall not be located on any property line.”

Section 122-28: *Replacement or reconstruction* states that all noncomplying fences shall require a variance in order to be enlarged, reconstructed, or replaced, either voluntarily or involuntarily.

Section 122-29: *Repairs and maintenance* states that if repairs or maintenance accomplished within twelve months exceeds 66% of the value of the current assessed or appraised value of a structure, the improvements shall be governed by Section 122-28: *Replacement or reconstruction*.

The subject fence is noncompliant and is therefore subject to Section 122-28 and 122-29. In accordance with these provisions, and considering recommendations from members of the Development Review Committee, the Planning Department recommends that the subject fence may be maintained and repaired in accordance with the criteria set forth in Section 122-28 and Section 122-29. Under these criteria, replacement or reconstruction of the fence would function to terminate the easement.

Due to the difficulty in assessing the value of the subject fence, and therefore what extent of work would constitute 66% of its value, the applicant and the Planning Department have agreed replacement of pickets and horizontal supports shall constitute ordinary repair and maintenance, and that replacement of vertical structural supports or fence posts shall function to terminate this easement.

The Planning Department also recommends that any replaced or reconstructed fence shall be located on the lot of the applicant and shall not extend into the public right-of-way, and that removal or enlargement of the fence shall function to terminate the easement.

This recommendation is consistent with Comprehensive Plan Policy 2-1.2.1, which provides that the City shall preserve existing rights-of-way, and Objective 2-1.2, which provides that The City shall protect existing and future right-of-way from building encroachment.

# SPECIFIC PURPOSE SURVEY

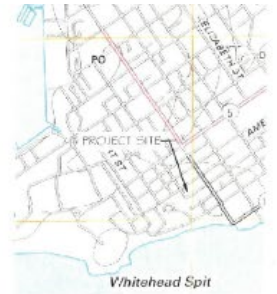
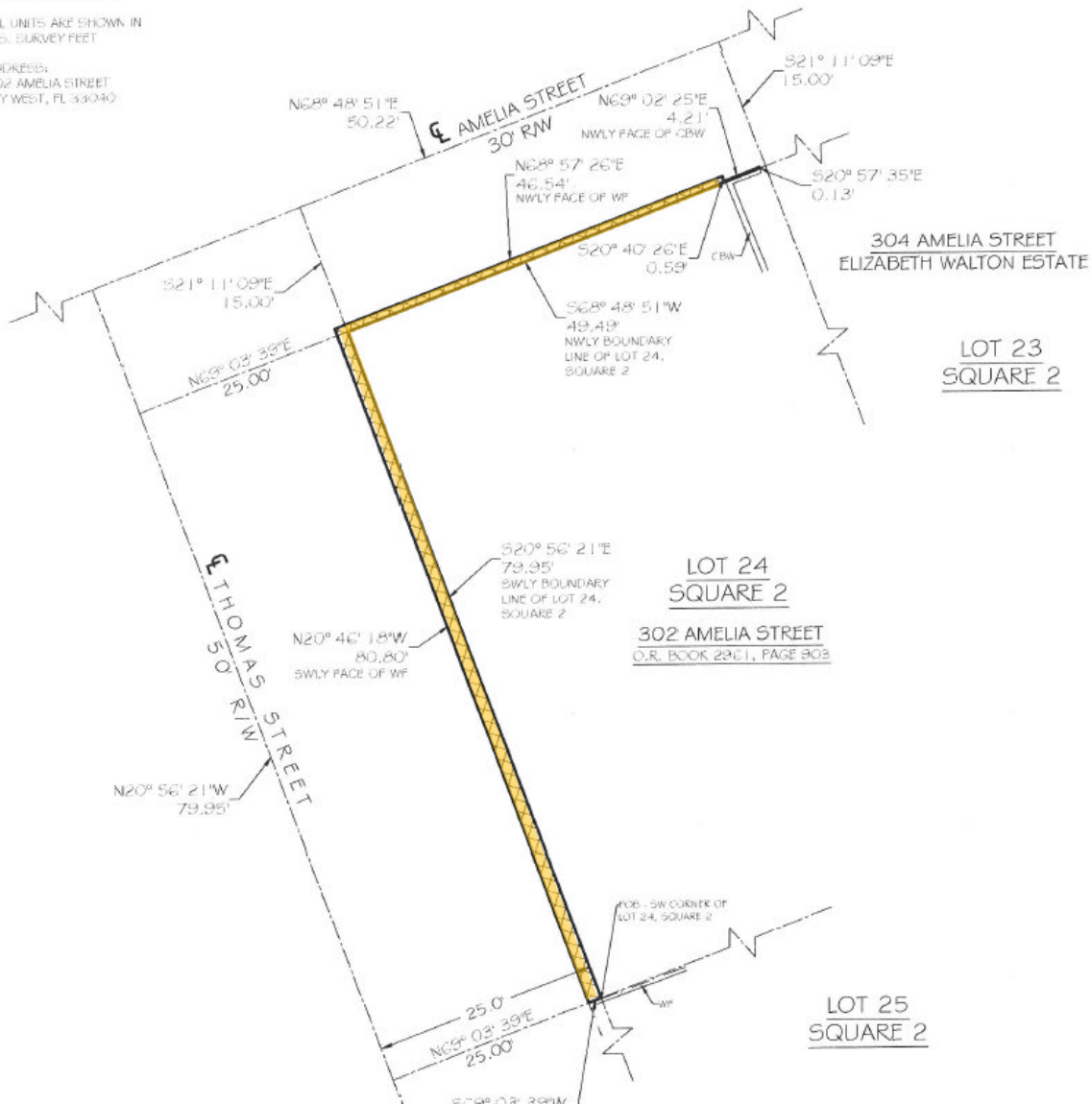
BEARING BASE:  
ALL BEARINGS ARE BASED  
ON N68°41'51"E ASSUMED  
ALONG THE CENTERLINE OF  
AMELIA STREET.

ALL ANGLES DEPICTED  
ARE IN DEGREES UNLESS  
OTHERWISE INDICATED.

ALL UNITS ARE SHOWN IN  
U.S. SURVEY FEET

ADDRESS:  
302 AMELIA STREET  
KEY WEST, FL 33040

## LEGAL DESCRIPTION SKETCH



Encroachments highlighted in orange.

## NORTH VIEW



*View of the subject property from Amelia Street. The fence encroaches approximately 6 inches onto the Amelia Street right-of-way. There is a small gap between the neighboring concrete block wall fence and the subject wood fence. It appears the sidewalk was constructed along the fence line of both properties.*





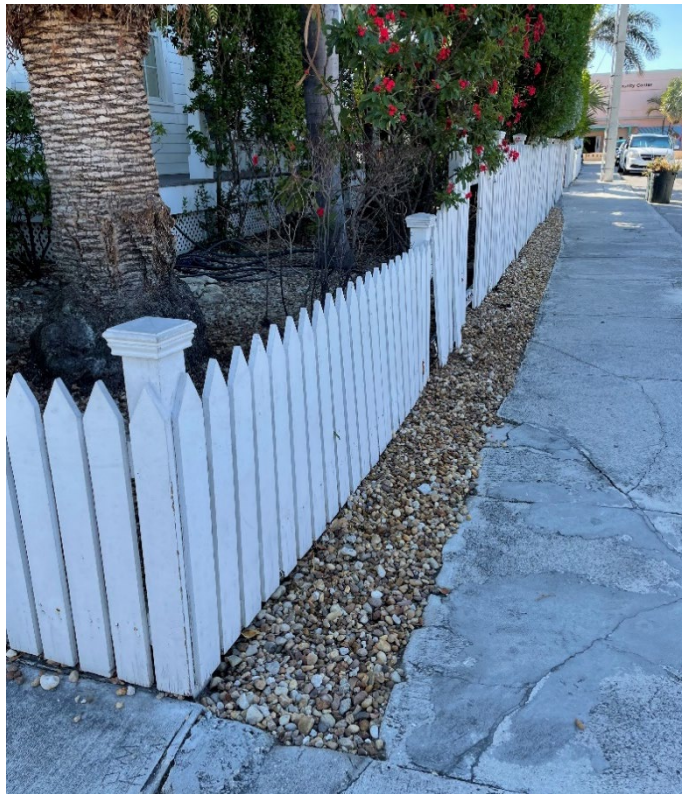
*View of the northwest corner of the property on the Corner of Thomas Street and Amelia Street.*



## WEST VIEW



*On the west side, there is a gap between the fence and the sidewalk that ranges between approximately 1 and 1.5 feet.*



## **Procurement**

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 148-square-foot, more or less, portion of city property pursuant to Code Section 2-938(b)(3). The annual fee would be pro-rated based on the effective date of the easement. The fee would be deposited into the General Fund.

## **Options**

1. To approve the request for an easement, with the following conditions: Ordinary repair and maintenance shall be permitted, which shall include repair and replacement of pickets and horizontal support beams. Replacement or reconstruction of fence posts or vertical structural supports shall function to terminate this easement. The easement shall also terminate if the fence is enlarged or removed. A reconstructed fence shall be erected on the lot of the applicant and shall not extend into a public right-of-way.
2. City Attorney's Recommendation: To approve the request for an easement, with the following conditions: Ordinary repair and maintenance shall be permitted. The fence may be replaced with like materials in its existing three-dimensional footprint after a review for consistency with the easement agreement by the Planning Department. The Easement shall terminate if the fence is enlarged. The Easement shall terminate if the fence is reconstructed or replaced beyond the existing materials and three-dimensional footprint.
3. Deny the request for an easement.

## **Recommendation**

The City Manager's Office recommends that the easement agreement at 302 Amelia Street be approved with the following conditions:

1. To approve the request for an easement, with the following conditions: The fence may be repaired or replaced in accordance with Section 122-28: Replacement or reconstruction and Section 122-29: Repairs and maintenance. Ordinary repair and maintenance shall be permitted. The easement shall terminate if the fence is enlarged, reconstructed, or replaced. A reconstructed fence shall be erected on the lot of the applicant and shall not extend into a public right-of-way.

The City Manager's Office recommends the Mayor and Commission approve the resolution, with conditions, authorizing the City Manager to execute an easement agreement with Lindsay Properties, LLC, owners of the property located at 302 Amelia Street (RE #00026280-000000).

Exhibits:

Exhibit A – Proposed Easement Agreement

Exhibit B – Application & Supporting Documents