

EXECUTIVE SUMMARY



To: Greg Veliz, City Manager

Through: Roy Bishop, Planning Director

From: Angela Budde, Planner I

Meeting Date: February 4, 2020

RE: **Revocable License – 818-826 Terry Lane (RE # 00014340-000800)** A request for a revocable license for nonpermanent use of City property in order to maintain existing landscape timbers and planted areas located on the City’s right-of-way for properties located within the Historic Medium Density Residential District (HMDR) Zoning District pursuant to Section 2-939 of the Code of Ordinances of the City of Key West, Florida

ACTION STATEMENT:

Request: To grant a revocable license to maintain existing landscape timbers and planted areas located within the City’s right-of-way abutting the properties.

Applicant: Susan Mitchell, Treasurer and representative for the Terry Lane Court Condo Association

Property Owners: Terry Lane Court Condo Association representing members Daniel Emery, Wendy Rangel, Jeff and Sherryl Turner, and Bruce and Susan Mitchell

Location: 818-826 Terry Lane (RE # 00014340-000800)

Zoning: Historic Medium Density Residential District (HMDR)



BACKGROUND:

This is a request for a revocable license pursuant to Section 2-939 of the Code of Ordinances (the “Code”) of the City of Key West (the “City”). The request is for existing landscape timbers and planted areas within the Terry Lane right-of-way, as shown on the attached boundary survey and site photos. The Terry Lane Court Condo Association wishes to maintain the existing landscape timbers and planted areas within the City right-of-way, rather than relocate them onto the properties. The properties were built circa 1903 and are all contributing structures to the Key West Historic District. The planted areas run along the lane abutting the parcels. On September 27, 2019, the property was cited by Code Compliance for obstructions of the public right-of-way on Terry Lane. The applicant met with Planning staff and applied for a revocable license on November 4, 2019 in order to maintain the existing landscape timbers and planted areas. The Urban Forestry Manager opined at the DRC meeting held on December 19, 2019, that the plantings were not regulated as per City code. On January 2, 2020, a site visit was conducted with the Code Compliance Director where measurements were taken of the landscape timbers surrounding the planted areas. Currently, there are no existing sidewalks on the Lane, thus the 5.5 x 5.5 landscape timbers and planted areas do not impede public passage on any City sidewalks.



City Actions:

Development Review Committee:
City Commission:

December 19, 2019
February 4, 2020

PLANNING STAFF ANALYSIS:

As described in the survey drawn by Monroe County Surveying & Mapping, Inc., Surveyors & Mappers, City Engineers, a Division of Zurwelle-Whittaker, Inc. dated December 19, 2019, the area of the revocable license request is for 114.50-square feet, more or less.

Upon research of City permit records, no record of a Right-of-Way Permit for the planted areas was found. Therefore, it appears these are circumstances are not created by the current property owners, who are requesting to maintain the landscape timbers and planted areas in their current locations within City right-of-way.

The Applicant also has the option to relocate the landscape timbers and planted areas onto the Applicant’s property.

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.

If the request for the revocable license is granted, the applicant would be required to pay an annual fee of \$200.00 to the City for the use of City owned property and maintain liability and property insurance. The annual fee would be prorated based on the effective date of the revocable license,

Options / Advantages / Disadvantages:

Option 1. Approve the revocable license with the following conditions:

1. The revocable license is granted only to Terry Lane Court Condo Association representing properties at 818, 820, 822, 824 and 826 Terry Lane.
2. The City may unilaterally terminate the revocable license with or without cause upon 30 days written notice.
3. The owner shall pay the annual fee specified in Section 2-939(d) of the City Code of Ordinances.
4. The owner shall irrevocably appoint the City Manager as its agent to permit the removal of the wood planters on City property if the annual fee required by City Code is not paid. The costs incurred by the City associated with any such removal shall be borne by the owner.
5. The revocable license shall terminate upon the failure of the property owner to maintain liability insurance, such public liability and property damage insurance protecting the City from all claims and damage to property or bodily injury. Such insurance shall provide coverage of not less than one million dollars (\$1,000,000.00), or such other amount as may be legislatively 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 revocable license. The policy shall not terminate or be cancelled without 45 days' written notice sent via certified mail to the City's Chief Building Official.
6. In the event this revocable license is terminated, the landscape timbers and planted areas shall be immediately removed upon the request of the City and in the event the wood planters are 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 cost incurred by the City associated with any such removal shall be borne by the applicant.

Financial Impact: The City would collect \$200.00 annually as part of the approval of the revocable license. There would be no cost to the City for granting the revocable license.

Option 2. Deny the revocable license based on findings that the City's needs outweigh the request.

Financial Impact: There would be lose the potential to collect revenue of a revocable license agreement and there would continue to be liability concerns by allowing the encroachment into City property to continue without the revocable license.

RECOMMENDATION:

Option 1.

Based on Staff's analysis, the Planning Department recommends to the City Commission **Approval** of the proposed Resolution granting the requested revocable license for nonpermanent use of City property for 114.50-square feet, more or less, to maintain the existing landscape timbers and planted areas with the conditions listed above.