

RESOLUTION NO. 67 - 2018

Moved by: Walter R. J. Williams

A resolution authorizing the City of Harrisburg to enter into an Easement Agreement with Los Tres Cubanos, Inc. for the purpose of installing a fire escape connecting the rear second floor of 540 Race Street to the public right-of-way sidewalk on Conoy Street.

WHEREAS, Jose Manjon on behalf of Los Tres Cubanos, Inc. requested and was granted temporary authorization from the City of Harrisburg ("City") to install a secondary means of egress from the second floor of 540 Race Street through Executive Order 1-2018, attached hereto as Exhibit "A"; and

WHEREAS, the property at 540 Race Street is a two-story building constructed in 1920 and sits on a 0.03-acre lot. The property is bounded by Conoy Street to the north, Race Street to the east, the property at 542 Race Street to the south, and a grocer's alley to the west. The property is currently occupied by Los Tres Cubanos restaurant; and

WHEREAS, Los Tres Cubanos, Inc. submitted an Easement Application (the "Application") to continue to construct and maintain a new exterior stairway along the Conoy Street side of the building to provide secondary egress from the second floor of the building. The stairway will occupy an area approximately four (4) by eighteen (18) feet along the side of the building, and will partially displace an existing trash receptacle enclosure occupying an approximate same portion of the sidewalk. The proposed staircase will represent a minor increase in the encroachment on the public right-of-way. A copy of the Application and supporting material is attached hereto as Exhibit "B"; and

WHEREAS, the Harrisburg Planning Commission reviewed the Application at its regular meeting on June 6, 2018 and heard testimony from the Applicant and the report of the Planning Commission staff, which is attached hereto as Exhibit "C"; and

WHEREAS, the Harrisburg Planning Commission by a vote of (4-0) recommended that Harrisburg City Council approve the request with the following conditions:

1. Per review and commentary by the City Engineer, the Applicant will contact PPL to confirm that the proposed stairway will not encroach upon the power lines running along Conoy Street, nor will they create an unnecessary and unacceptable hazard.
2. The Applicant will ensure that the sidewalk adjacent to the stairway, which previously had a tree planted, will be reconstructed to City code specifications, as verified by an inspection from the Codes Bureau and/or City Engineer's Office; and

WHEREAS, the Harrisburg Planning Commission recommended that Harrisburg City Council approve the request for the following reasons:

1. The Applicant received approval for the proposed design from the Harrisburg Architectural Review Board (HARB) at its November 7, 2016 meeting.
2. The proposed stairway will necessitate the removal of the existing fenced trash receptacle enclosure along Conoy Street. As such, although the stairway will encroach into the public right-of-way and constrain public access along the sidewalk,

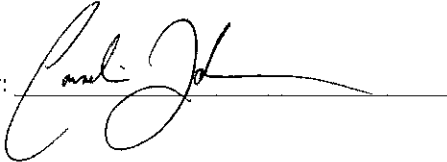
it will only be a de minimis expansion of the existing encroachment; and

WHEREAS, the Resolution of the Harrisburg Planning Commission is attached hereto as Exhibit "D"; and

WHEREAS, a copy of the proposed Easement Agreement with Los Tres Cubanos, Inc. is attached and incorporated as Exhibit "E"; and

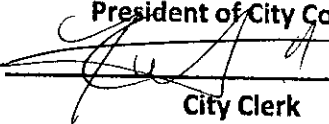
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HARRISBURG, that the Easement Application submitted by Los Tres Cubanos, Inc. to install a fire escape from the second floor of 540 Race Street to the public right-of-way sidewalk along Conoy Street in conformity with the attached Agreement is hereby approved with the conditions recommended by the Harrisburg Planning Commission, as set forth herein.

BE IT FURTHER RESOLVED that appropriate City officials are authorized to take all steps necessary to effectuate the purpose of this Resolution.

Seconded by: 

YEAS		NAYS
	MR. ALLATT	
	MS. DANIELS	
	MS. GREEN	
	MR. JOHNSON	
	MR. MADSEN	
	MR. MAJORS	
	MS. WILLIAMS	
Yeas	7	
Nays	0	

Passed by City Council June 26, 2018


President of City Council
Attest 

City Clerk

- Approved
- Returned to City Council with objections

INTER

OFFICE

MEMO

To: HARRISBURG CITY COUNCIL
From: Kirk Petroski, City Clerk
LEGISLATIVE APPROVAL FORM

Date:

LEGISLATIVE APPROVAL FORM/CERTIFICATE OF ACCEPTANCE

BILL NO. -2018

RESOLUTION NO. 67 2018

THE ABOVE LISTED ITEM WAS WRITTEN AND PREPARED FOR FINAL INTRODUCTION AT THE HARRISBURG CITY SOLICITOR'S OFFICE ON:

Thomas E. Baldeck
Sr. Deputy City Solicitor

Date

6/11/2018

Requested by Department/Bureau:

Planning

Department/Bureau Contact Person:

Geoff Knight

For Action on or before:

The attached was received in the Office of the City Clerk for introduction on

Received by:

[Signature]

Date:

6-11-18

E x h i b i t “A”



City of Harrisburg
Office of the Mayor

Mayoral Executive Order No. 1 – 2018

**EXECUTIVE ORDER
OF ERIC PAPENFUSE, IN HIS
OFFICIAL CAPACITY AS MAYOR OF CITY OF HARRISBURG**

WHEREAS, I, **ERIC PAPENFUSE**, Mayor of the City of Harrisburg, situated in Dauphin County, Pennsylvania, having been duly vested with full Executive powers and authority for and on behalf of the City of Harrisburg, state and declare that following:

WHEREAS, Jose Manjon, owner of Los Tres Cubanos restaurant, has requested to erect a fire escape in the public right-of-way along the northern elevation of the property located at 540 Race Street to connect the rear second floor of the property to the street level on the Conoy Street side; and

WHEREAS, the Harrisburg Architectural Review Board conditionally approved Mr. Manjon's application on December 7, 2015 by way of resolution; and

WHEREAS, a building permit has been secured to erect the fire escape at 540 Race Street; and

WHEREAS, it is in the public interest to provide safe egress from the second story of 540 Race Street which will operate as part of the existing first floor restaurant; and

WHEREAS, temporary authorization is hereby granted to Jose Manjon to erect a fire escape in accordance with any and all applicable state and local laws, codes, rules and regulations; and

AND SO NOW, I do hereby **ORDER AND DIRECT** that appropriate City personnel take all actions necessary to effectuate the foregoing.

FURTHER, the Bureau of Planning and the Bureau of Codes are directed to alert the Mayor's office of any legal, structural or procedural deficiencies which arise in the process of securing the above referenced easement.

FURTHER, this authorization is intended to be for no more than 90 days to allow time for a proper easement to be secured.

IN WITNESS WHEREOF, I, ERIC PAPENFUSE, MAYOR OF CITY OF HARRISBURG
have hereunto set my hand and seal this 29 day of May, 2018.

WITNESS:

Katie V. Hicks

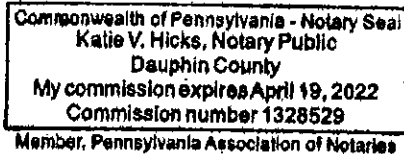
Eric Papenfuse
ERIC PAPENFUSE
MAYOR OF CITY OF HARRISBURG

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF Dauphin :

On this, the 29 day of May, 2018, before me, a Notary Public,
the undersigned officer, personally appeared **ERIC PAPENFUSE, Mayor of City of
Harrisburg**, known to me (or satisfactorily proven) to be the person whose name is subscribed
to the within instrument and acknowledged that they executed the same for the purposes
therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Katie V. Hicks
NOTARY PUBLIC



E x h i b i t “B”



EASEMENT APPLICATION

Note: The Planning Bureau will review all applications for completeness; incomplete applications may cause a delay in processing.

Contact Ben Schmidt at 717-255-6408 or brschmidt@harrisburgpa.gov with any questions.

Primary Property Address of Adjacent Parcel 540 Race Street Harrisburg, PA 17104

Tax Parcel ID Number 01-057-010

<p>Please explain the purpose of the project. Provide as much information and be as specific as possible. (Use Additional Sheets If Necessary)</p> <p><u>The purpose of the easement is to provide a secondary point of egress for the 2nd floor of the restaurant located at 540 Race St, Los Tres Cubanos.</u></p> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>

<p>Type of Easement (check one):</p> <p><input type="checkbox"/> Utility</p> <p><input type="checkbox"/> Accessibility</p> <p><input checked="" type="checkbox"/> Building Projection</p> <p><input type="checkbox"/> Other</p>
--

Easements are executed only with owners of property adjacent to the right-of-way.

Applicant/Main Contact

Name Jose Manjon

Company Los Tres Cubanos, Inc.

Address 540 Race Street, Harrisburg, PA 17104

Phone 717-421-0045

Email manjodoc@aol.com

**City of Harrisburg, Department of Community & Economic Development
Bureau of Housing – Bureau of Parks & Recreation – Bureau of Planning
10 North 2nd Street, Suite 206, Harrisburg, PA 17101 - Phone: (717) 255-6419**

Property Owner

Name Jose Manjon

Company Los Tres Cubanos, Inc.

Address 540 Race Street, Harrisburg, PA 17104

Phone 717-421-0045

Email manjodoc@aol.com

Items to be submitted with this application: (Note: failure to do so WILL delay the review process)

- Site plan to scale indicating: location of streetscape features, including any street/sign poles, fire hydrants, affixed trash cans or mailboxes, affixed newspaper/magazine boxes, or trees, located on or within five (5) feet of the property; distances between the features, curb, buildings, and proposed easement area(s); and any other information that may clarify the layout.
- Six copies of design specifics for utility, accessibility, or building projection easement.
- Twenty-one copies if any other easement requiring reviews by the Harrisburg Planning Commission and Harrisburg City Council.
- Proof of ownership of adjacent property, or signed letter from owner of adjacent property granting permission to utilize right-of-way.
- Easement Agreement *prepared by an Attorney* for recording in Dauphin County Courthouse (including legal description).
- Check made payable to the "City Treasurer" for the amount of \$250.

APPLICANT/OWNER CERTIFICATION

I hereby certify that the proposed request is authorized by the owner of record and that I agree to conform to all applicable laws of this jurisdiction. I understand that any falsification could lead to denial or criminal penalties, or revocation of any permit pursuant to this application. I agree that work will not commence prior to final approval.

Applicant's Signature

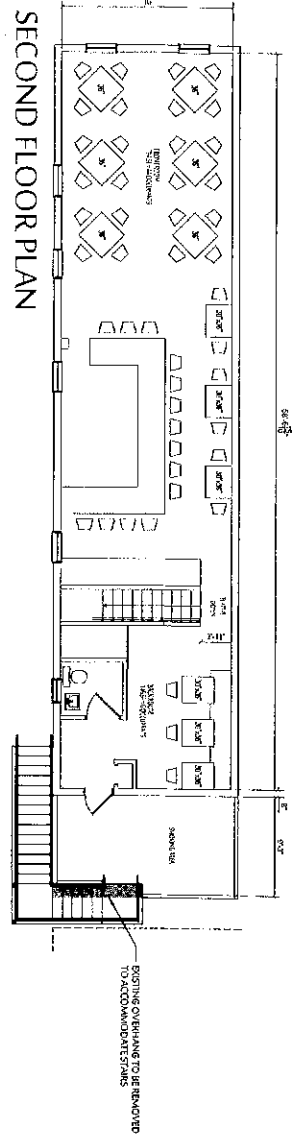
Date

Property Owner's Signature

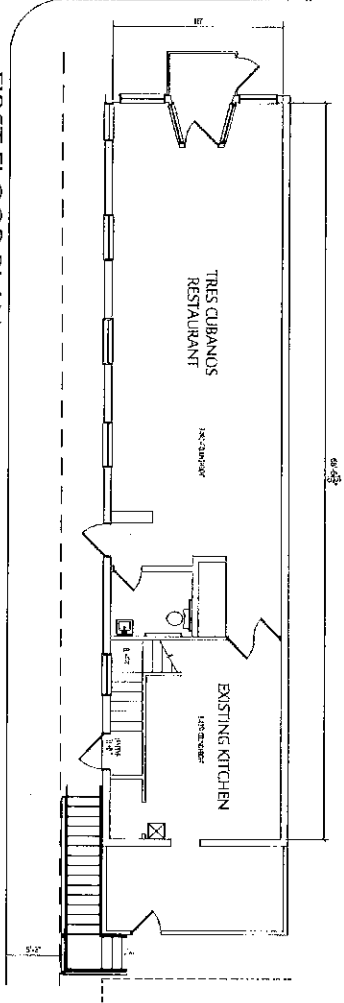
Date

The owner must sign this application. The applicant signature is required when different from owner.

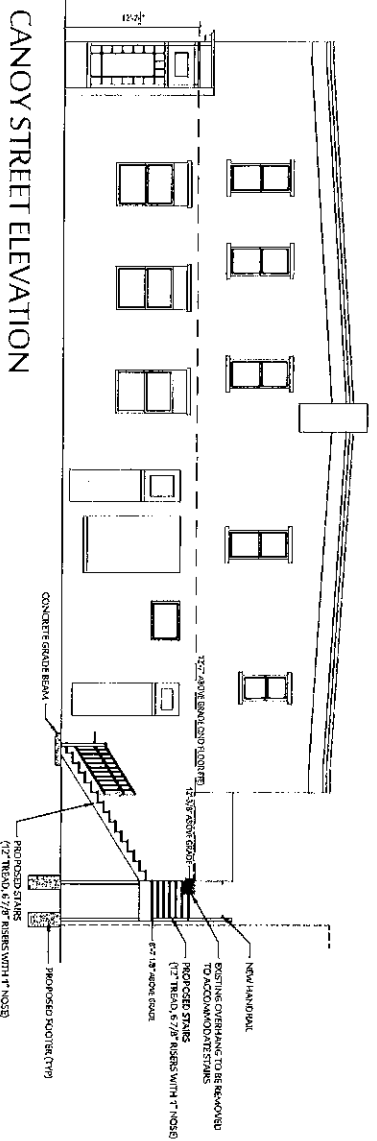
SECOND FLOOR PLAN



FIRST FLOOR PLAN



CANOPY STREET ELEVATION



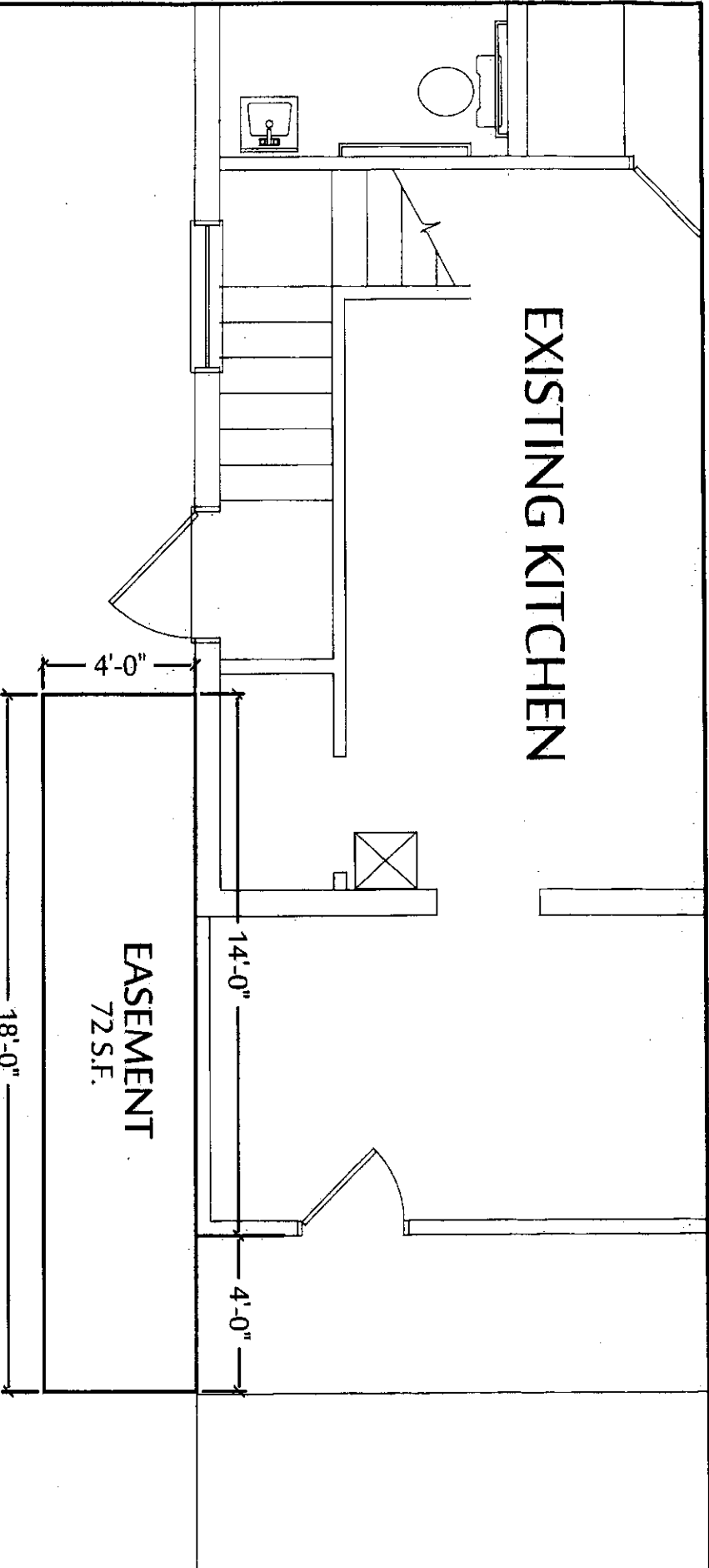
DATE	REVISIONS	BY

DRAWING NO. 1801SC008
 SCALE: 1/8" = 1'-0"
 DATE: 05/11/2010
 DRAWING NUMBER: C100

REVISED
 BUILDING PERMIT PLAN
 FOR
TRES CUBANOS - 540 RACE ST.
 SECOND FLOOR
 CITY OF HARRISBURG, PENNSYLVANIA

SAVARDO & WRIGHT
 CONSULTANTS
 1000 N. MARKET STREET
 HARRISBURG, PA 17102
 P: 717-651-4400
 F: 717-651-4400
 WWW.SAVARDOANDWRIGHT.COM

DATE	REVISIONS	BY



EXISTING KITCHEN

EASEMENT
72 S.F.

CONOY STREET

EASEMENT EXHIBIT

FOR

540 RACE STREET

SCALE: 1/4" = 1'-0"

CITY OF HARRISBURG DAUPHIN COUNTY

Exhibit “C”



Eric Papenfuse, Mayor

PLANNING BUREAU REPORT

Aerial Easement Application

PROPERTY ADDRESS: 540 Race Street

PID: 01-057-010

PROPERTY ADDRESS: 540 Race Street	APPLICANT: Jose Manjon with Los Tres Cubanos, Inc.	HPC DATE: June 6, 2018
PID: 01-057-010	ZONING: Residential Medium-Density (RM)	SITE VISIT DATE(S): May 31, 2018
HISTORIC DISTRICT: Shipoke Municipal & Harrisburg National Historic District(s)	FLOODPLAIN: AE (100-Year) Floodplain	SUBMISSION DATE: May 4, 2018

REQUEST DESCRIPTION:

The Applicant is requesting a Building Easement to install a secondary means of egress from the second floor of the building, for which an expansion of the existing restaurant is proposed. The proposed stairway will encroach upon the public right-of-way (sidewalk) along Conoy Street, and will replace the existing trash receptacle enclosure.

PROPERTY DESCRIPTION:

The property at 540 Race Street is a two-story building, sits on a 0.03-acre lot, and was constructed in 1920 (per Dauphin County Property Tax Records). The property is bounded by Conoy Street to the north, Race Street to the east, the property at 542 Race Street to the south, and a grocer's alley to the west. The subject property is currently occupied by Los Tres Cubanos restaurant.

This two-story, brick masonry, semi-detached structure is of the Italianate architectural style. Character-defining features include large commercial awnings along both Race Street and Conoy Street; a decorative storefront entryway; a decorative brick cornice above the second floor; and a large sign advertising the business along Conoy Street. There is a newer addition on the rear of the property and a small enclosure along the side of the building for storing trash and recycling bins. The entryway features a paneled wood door set within a wood frame, surrounded by wood paneling and large, unique divided-lite windows with multi-paned sidelites. Fenestration includes large, decorative storefront windows bordered by smaller panes on the first floor front façade, three one-over-one wood windows along the first floor side façade, two two-over-two wooden

windows on the second floor of the front façade, and three two-over-two wood windows on the second floor along the side façade. There is also a small single-pane window along the side elevation of the second floor. All windows feature wooden lintels and headers. The structure does contribute to the architectural and historic character of the streetscape.

ANALYSIS:

1. Project Specifics

The project involves the construction of a new exterior stairway along the Conoy Street side of the building to provide secondary egress to the second floor of the building, which is required by City building codes. The stairway will occupy an area approximately four (4) feet by eighteen (18) feet along the side of the building, and will partially displace an existing trash receptacle enclosure that had been occupying a portion of the sidewalk about the same width and approximately half as long. As such, the proposed stairwell will represent a minor increase of the encroachment on the public right-of-way. The Planning Bureau does note that the property owner removed along the Conoy Street sidewalk and has replaced the tree well with a brick sidewalk; however, the Planning Bureau is unsure of whether a permit was secured from the City for the removal of the tree.

2. Easement Documentation

The Applicant has provided:

1. A draft Easement Agreement for review and comment by the City’s Law Bureau and City Engineer; and
2. A sketch site plan of the proposed easement area.

3. Other Factors, as appropriate:

The Applicant has received conditional approval to begin construction on the fire escape, per the Mayor’s Executive Order No.1-2018, although any changes to the design required by the Planning Commission and/or City Council will be made at the owner’s expense.

CITY STAFF RECOMMENDATION:

- City Engineer – The City Engineer has note the relative proximity of the proposed stairway to the electrical lines running along Conoy Street, and has recommended that PPL approve the proposed design.
- Law Bureau – Currently under review

PLANNING BUREAU RECOMMENDATION:

Approval With Conditions

The Planning Bureau staff recommends the request be approved with the following condition(s):

1. Per review and commentary by the City Engineer, the Applicant will contact PPL to confirm that the proposed stairway will not encroach upon the power lines running along Conoy Street, nor will they create an unnecessary and unacceptable hazard.

STAFF REPORT – 540 Race Street, Building Easement Request

June 6, 2018

Page 3

2. The Applicant will ensure that the sidewalk adjacent to the stairway, which previously had a tree planted, will be reconstructed to City code specifications, as verified by an inspection from the Codes Bureau and/or City Engineer's Office.

The Planning Bureau staff recommends the request be approved for the following reason(s):

1. The Applicant received approval for the proposed design from the Harrisburg Architectural Review Board (HARB) at its November 7, 2016 meeting.
2. The proposed stairway will necessitate the removal of the existing fenced trash receptacle enclosure along Conoy Street. As such, although the stairway will encroach into the public right-of-way and constrain public access along the sidewalk, it will only be a de minimis expansion of the existing encroachment.

REVIEW PROCESS:

1. Harrisburg Planning Commission
2. Harrisburg City Council
3. City review of Easement Application & Agreement

ATTACHMENTS:

1. GIS Zoning & Location Map
2. Easement Application
3. Draft Easement Agreement
4. Draft Easement Sketch Plan
5. Proposed Floor & Elevation Plans
6. Proposed Materials
7. HARB Certificate Letter, dated December 5, 2016
8. Mayoral Executive Order No.1-2018



**Zoning & Location Map
540 Race Street**

E x h i b i t “D”

**RESOLUTION
OF
HARRISBURG PLANNING COMMISSION
540 Race Street
OFFICIAL MAP CHANGE REQUEST (Building Easement)**

WHEREAS, Jose Manjon with Los Tres Cubanos, Inc. submitted a request for an official map change for a building easement over the Conoy Street right-of-way to install a secondary means of egress from the second floor of the building, for which an expansion of the existing restaurant is proposed. The proposed stairway will encroach upon the public right-of-way (sidewalk) along Conoy Street, and will replace the existing trash receptable enclosure.

WHEREAS, the property at 540 Race Street is a two-story building, sits on a 0.03-acre lot, and was constructed in 1920 (per Dauphin County Property Tax Records). The property is bounded by Conoy Street to the north, Race Street to the east, the property at 542 Race Street to the south, and a grocer's alley to the west. The subject property is currently occupied by Los Tres Cubanos restaurant.

This two-story, brick masonry, semi-detached structure is of the Italianate architectural style. Character-defining features include large commercial awnings along both Race Street and Conoy Street; a decorative storefront entryway; a decorative brick cornice above the second floor; and a large sign advertising the business along Conoy Street. There is a newer addition on the rear of the property and a small enclosure along the side of the building for storing trash and recycling bins. The entryway features a paneled wood door set within a wood frame, surrounded by wood paneling and large, unique divided-lite windows with multi-paned sidelites. Fenestration includes large, decorative storefront windows bordered by smaller panes on the first floor front façade, three one-over-one wood windows along the first floor side façade, two two-over-two wooden windows on the second floor of the front façade, and three two-over-two wood windows on the second floor along the side façade. There is also a small single-pane window along the side elevation of the second floor. All windows feature wooden lintels and headers. The structure does contribute to the architectural and historic character of the streetscape.

WHEREAS, the project involves the construction of a new exterior stairway along the Conoy Street side of the building to provide secondary egress to the second floor of the building, which is required by City building codes. The stairway will occupy an area approximately four (4) feet by eighteen (18) feet along the side of the building, and will partially displace an existing trash receptacle enclosure that had been occupying a portion of the sidewalk about the same width and approximately half as long. As such, the proposed stairwell will represent a minor increase of the encroachment on the public right-of-way. The Planning Bureau does note that the property owner removed along the Conoy Street sidewalk and has replaced the tree well with a brick sidewalk; however, the Planning Bureau is unsure of whether a permit was secured from the City for the removal of the tree.

WHEREAS, the easement drawings and legal descriptions consist of a draft easement agreement for the construction of the secondary egress stairway over the public right-of-way,

which must be acted upon by the Harrisburg Planning Commission and City Council, and a sketch site plan of the proposed project area.

WHEREAS, the Applicant has received conditional approval to begin construction on the fire escape, per the Mayor's Executive Order No.1-2018, although any changes to the design required by the Planning Commission and/or City Council will be made at the owner's expense.

WHEREAS, the City Engineer has note the relative proximity of the proposed stairway to the electrical lines running along Conoy Street, and has recommended that PPL approve the proposed design.

WHEREAS, the Law Bureau has not made a recommendation in regards to the proposal.

WHEREAS, the Harrisburg Planning Commission reviewed said request at its regular meeting on June 6, 2018, pursuant to the provisions of Chapter 7-503 of the Planning and Zoning Code, and heard the report of the Planning Commission staff, which is attached hereto and made a part hereof, and testimony from the Applicant, further described below:

Mr. Knight gave a synopsis of the report, recommending Approval with Conditions; the conditions were that:

1. Per review and commentary by the City Engineer, the Applicant will contact PPL to confirm that the proposed stairway will not encroach upon the power lines running along Conoy Street, nor will they create an unnecessary and unacceptable hazard.
2. The Applicant will ensure that the sidewalk adjacent to the stairway, which previously had a tree planted, will be reconstructed to City code specifications, as verified by an inspection from the Codes Bureau and/or City Engineer's Office.

Mr. Knight also noted that he had received a letter of opposition from a neighborhood resident to the proposal as presented, a copy of which he had provided to the Commissioners. He noted that the issues include encroachment into the grocer's alley right-of-way behind the building, which adjacent neighbors used to access their rear yards.

The case was represented by Jose Manjon (the property owner), 540 Race Street, Harrisburg, PA 17104; Glenn Hickey (the contractor), 211 North York Road, Dillsburg, PA 17019; and Paul Navarro with Navarro & Wright (the project engineer), 151 Reno Avenue, New Cumberland, PA 17070 (aka "the Applicants").

Commissioner Alsberry asked the Applicants if they had any changes to the Planning Bureau's case report. The Applicants stated that the conditions were acceptable.

The Applicants stated that they were on-site on the day of the meeting and had spoken with an individual from the neighborhood. They noted that the existing configuration of the stairway, with a post near the middle of the entrance to the grocer's alley, was only a temporary construction until the correct post could be installed. They noted that the final location of the post would be out of the way of the grocer's alley, and stated that they had informed the neighborhood

resident of this issue. The Applicants provided existing conditions photos showing the existing, temporary support and the location of the permanent support post to be installed.

Commissioner Marek asked the Applicants to clarify the proposed finished state of the stairway. The Applicants approached the Commissioners and showed them on the existing conditions photos where the proposed post would be installed. They noted that in constructing the stairway, they had encountered an underground gas line, which was being located by UGI.

The Applicants reiterated that they were accepting all the conditions the Planning Bureau had mentioned in their case report.

Commissioner Marek asked if the plans provided by the Applicant had been approved by HARB; Mr. Knight confirmed that they had. She asked whether anything had changed in the design that was being submitted to the Planning Commission. The Applicants confirmed that there was no change. They stated that they believe that the tree which had previously been in the sidewalk had probably pushed the gas line into the proposed location for the post footer.

Commissioner Alsberry asked the Applicants whether they had approached the Shipoke Neighborhood Association to notify them of the proposed project. Mr. Manjon stated that he was previously the Vice President of the Shipoke Neighborhood Association. Commissioner Alsberry clarified that he was asking whether there was opposition; the Applicants replied they were not aware of any. The Applicants stated that community members had inquired as to when the construction of the stairway and expansion of the restaurant would be complete.

Commissioner Green inquired as to whether the proposed stairway would be a primary means of ingress and egress; the Applicants responded that it would not.

Commissioner Alsberry asked whether there was anyone from the public that was for or against the project; there were no comments.

Commissioner O'Toole moved and Commissioner Green seconded the motion to Approve the request with Staff Conditions. The motion was adopted by a unanimous vote (4-0).

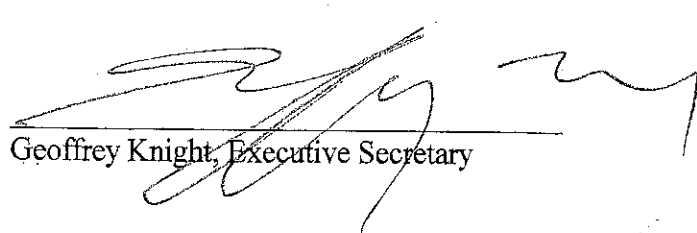
NOW, THEREFORE, BE IT FURTHER RESOLVED that the Harrisburg Planning Commission unanimously (4-0) recommends that the Harrisburg City Council **Approve** the request with the following conditions:

1. Per review and commentary by the City Engineer, the Applicant will contact PPL to confirm that the proposed stairway will not encroach upon the power lines running along Conoy Street, nor will they create an unnecessary and unacceptable hazard.
2. The Applicant will ensure that the sidewalk adjacent to the stairway, which previously had a tree planted, will be reconstructed to City code specifications, as verified by an inspection from the Codes Bureau and/or City Engineer's Office.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the Harrisburg Planning Commission unanimously (4-0) recommends that the Harrisburg City Council **Approve** the request for the following reasons:

1. The Applicant received approval for the proposed design from the Harrisburg Architectural Review Board (HARB) at its November 7, 2016 meeting.
2. The proposed stairway will necessitate the removal of the existing fenced trash receptacle enclosure along Conoy Street. As such, although the stairway will encroach into the public right-of-way and constrain public access along the sidewalk, it will only be a de minimis expansion of the existing encroachment.

This is to certify that the foregoing Resolution is a true and correct copy of the Resolution adopted by the Harrisburg Planning Commission on the 6th day of June, 2018.


Geoffrey Knight, Executive Secretary

E x h i b i t “E”

EASEMENT AGREEMENT

This Easement Agreement (this "Easement") is made this ____ day of _____, 2018, by and between the CITY OF HARRISBURG, a City of the third class of the Commonwealth of Pennsylvania (the "City"), and LOS TRES CUBANOS, INC., a Pennsylvania corporation (hereinafter referred to as "LOS TRES"), owner of Los Tres Cubanitos Restaurant.

WHEREAS, the City owns or holds a right-of-way easement for public use on and over the sidewalk adjoining the southern side of Conoy Street, in the City of Harrisburg. Said right-of-way being comprised of the cartway, and adjoining sidewalks, and the City has regulated the use of the same by Ordinance; and

WHEREAS, LOS TRES owns the property known as 540 Race Street in the City of Harrisburg (the "Building") and wishes to erect a fire escape/secondary egress (the "Fire escape") extending onto a portion of said sidewalk, as more fully described in Exhibit "A" attached hereto; and

WHEREAS, LOS TRES requested and was granted temporary authorization from the City to erect a fire escape/secondary egress through Executive Order 1-2018; and

WHEREAS, LOS TRES desires and has requested authorization to continue to install and maintain the fire escape/secondary egress from the rear second story of 540 Race Street to the public right-of-way sidewalk on Conoy Street; and

WHEREAS, the City, in the public interest and in furtherance of development, is willing to grant authorization to LOS TRES for the installation and maintenance of the fire escape/secondary egress upon the terms and conditions set forth in this Agreement; and

NOW, THEREFORE, the parties hereto in consideration of One Dollar (\$1.00) and the foregoing recitals, which are made a part hereof, and the promises and mutual covenants contained herein, and intending to be legally bound hereby, agree as follows:

1. The City hereby grants to LOS TRES, its successors and assigns, a four (4) foot wide by eighteen (18) long easement over the sidewalk on the southern side of Conoy Street, for the sole purpose to install, construct, reconstruct, inspect, repair, maintain, clean, replace, occupy and use, the Fire Escape. LOS TRES agrees that it will construct and maintain the Fire Escape at no cost and expense to the City and that the Fire Escape shall afford pedestrian clearance on the sidewalk of not less than four (4) feet. Other than temporary encroachments and/or blockages caused by the install, construct, reconstruct, inspect, repair, maintain, cleaning or replacement of

the Fire Escape, the aforesaid clearance shall not be diminished and shall remain unobstructed for travel thereon upon completion of such construction.

2. Final plans and the actual construction of the Fire Escape shall comply with all applicable federal, state and local statutes, ordinances, building codes and rules and regulations issued thereunder. The signing of this Easement shall not constitute a waiver of any regulation, code, ordinance, statute or procedure governing the final approval of plans for the structure and/or operation of the Fire Escape when completed.

3. LOS TRES shall be solely responsible for any cost and expenditure associated with relocating or removing the Fire Escape in the event that said relocation or removal is required for the corporate purposes of the City. The City will use best efforts to minimize any construction, repair, or maintenance impacts or other corporate purpose of the City that requires relocation or removal of the Fire Escape.

4. LOS TRES acknowledges the presence of certain facilities located in the sidewalk along Conoy Street, which facilities are owned and operated by the City, public utility companies and/or others. Any excavation or subsurface work on the sidewalk or adjacent thereto by LOS TRES, or its agents or contractors, shall be performed in a manner which will not damage or endanger the underground facilities now occupying said space. In the event any line, pipe, or other facility must be relocated or specially protected by reason of grading or placing of the Fire Escape in close proximity thereto, LOS TRES, and not the City, shall bear the cost of such relocation and/or protection. Any damage to the underground facilities resulting from or arising out of the construction work shall be the sole responsibility of LOS TRES, who shall promptly repair or pay the owner of the facility for same.

4. LOS TRES agrees to indemnify, defend and save harmless the City from and against any and all loss, damage, injury, suit or claim, direct or indirect, including costs of defending any suit or claim, of whatsoever kind or description, caused by or resulting from the install, construct, reconstruct, inspect, repair, maintain, clean, replace, occupy or use of the Fire Escape in connection with this Easement; provided, however, this indemnification shall not extend to or apply to any loss, damage, injury or liability resulting from the willful misconduct or negligence of City, its agents, officers or employees.

5. The existence of the Fire Escape shall not defeat or adversely affect, by adverse use or prescription or otherwise, the public rights in the street, the sidewalk, or any areas above or below same, except to the extent herein provided.

6. In the event that, for any reason, the Fire Escape is not adequately maintained to the satisfaction of the City, this Easement shall be null and void and the rights and privileges herein granted to LOS TRES, its successors and assigns, shall cease and terminate absolutely.

7. This Easement contains all covenants and terms between the City and LOS TRES related to the Easement and any oral representations or modifications concerning this Easement shall be of no force and effect. Any subsequent amendment or modification to this Easement must be in writing and agreed to by the City and LOS TRES.

8. The invalidity or unenforceability of any provision of this Agreement, as determined by a court of competent jurisdiction, shall not affect any other provision and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was omitted.

9. This Easement may be executed in multiple counterparts, each of which shall be regarded for all purposes as an original, and such counterparts shall constitute but one in the same instrument.

IN WITNESS WHEREOF, the parties have caused this Easement Agreement to be duly executed as provided by law.

ATTEST:

CITY OF HARRISBURG

Kirk Petroski, City Clerk Date By: _____
Eric Papenfuse, Mayor Date

Approved as to form and legality:

Law Bureau Date By: _____
Charles DeBrunner, Controller Date

ATTEST:

LOS TRES CUBANOS, INC.

_____ By: _____
Date Title: Date

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF DAUPHIN :

On this, the ____ day of _____, 2018, before the undersigned Notary Public, personally appeared Eric Papenfuse, who satisfactorily proved himself to be the Mayor of the City of Harrisburg, and that he, in such capacity and being duly authorized to do so, executed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.

Notary Public

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF DAUPHIN :

On this, the ____ day of _____, 2018, before the undersigned Notary Public, personally appeared Charles DeBrunner, who satisfactorily proved himself to be the Controller of the City of Harrisburg, and that he, in such capacity and being duly authorized to do so, executed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.

Notary Public

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF DAUPHIN :

On this, the ____ day of _____, 2018, before the undersigned Notary Public, personally appeared _____, who satisfactorily proved himself/herself to be the _____ of LOS TRES CUBANOS, INC., and that in such capacity and being duly authorized to do so, executed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.

Notary Public