



**Asbury Park, New Jersey
ORDINANCE NO. 2020-1**

AUTHORIZING THE CITY OF ASBURY PARK TO CONVEY EASEMENTS TO PERMIT CERTAIN LIMITED ENCROACHMENTS INTO THE RIGHT-OF-WAY AREA (INCLUDING AIR SPACE) INCLUDING ALONG PORTIONS OF AN UNNAMED ALLEY, TO BENEFIT THE PROPERTY LOCATED AT 722-724 COOKMAN AVENUE (BLOCK 2405, LOT 1), ASBURY PARK, NEW JERSEY.

WHEREAS, the City of Asbury Park (the “City”) possesses jurisdiction over certain public right-of-way (“R.O.W.”) areas located within the City; and

WHEREAS, C&C Cookman Development, LLC (the “applicant”) is the owner of the property located at 722-724 Cookman Avenue, Asbury Park, New Jersey, which is more commonly known and designated as Block 2405, Lot 1 on the City’s official Tax Map (the “Property”); and

WHEREAS, the Property is located in the CBD Cookman Avenue Retail Core Area of the Central Business District Redevelopment Area, situated approximately one hundred (100) feet east of the intersection of Cookman Avenue and Main Street, and further situated along the south side of Cookman Avenue (bordering an unnamed alley to the west); and

WHEREAS, on September 9, 2019, the Asbury Park Planning Board adopted a Resolution (the “Resolution”) approving an application for preliminary and final site plan, with variance(s), for the renovation of an existing structure and the construction of new improvements (the “project”); and

WHEREAS, the project will contain approximately two thousand (2,000) square feet of ground floor retail space and nine (9) residential apartments; and

WHEREAS, the approved plans for the project include a cornice or overhang on the façade of the building that will encroach in limited respects into the City R.O.W. (including air space), with the total area of the cornice encroachment measuring approximately three hundred sixty-six (366) square feet; and

WHEREAS, the cornice encroachment is described and depicted in more detail in a legal description and map, respectively, which were prepared by Maser Consulting, P.A., dated July 15, 2019, copies of which are attached hereto collectively as “Exhibit A”; and

WHEREAS, the approved plans for the project also show an existing porch and stairs on the side of the building which encroach in limited respects into the City R.O.W. of unnamed

alley, with the total area of the porch/stair encroachment measuring approximately thirty-five (35) square feet; and

WHEREAS, the porch/stair encroachment is described and depicted in more detail in a legal description and map, respectively, which were prepared by Maser Consulting, P.A., dated December 23, 2019, copies of which are attached hereto collectively as “Exhibit B”; and

WHEREAS, the approvals set forth in the Planning Board Resolution were conditioned upon, among other things, the approval of the Mayor and Council to the limited encroachments into the City R.O.W., as set forth above; and

WHEREAS, applicant has now requested the approval of the Mayor and Council to the limited encroachments by way of easements; and

WHEREAS, the Mayor and Council have previously determined to consider requests for encroachment into the public R.O.W. areas on a case-by-case basis; and

WHEREAS, with respect to the within request, the Mayor and Council have determined the following:

1. The within proposed limited encroachments into the public R.O.W. shall not interfere with the ability of the public to continue to utilize the existing sidewalk that is adjacent to the Property along Cookman Avenue, nor shall the encroachments interfere with the ability of the public to continue to utilize the existing unnamed alley that is adjacent to the Property to the west;
2. The total land areas associated with the proposed limited encroachments are de minimus given the overall size of the Property; and
3. The granting of easement(s) associated with the within proposed limited encroachments will not negatively affect the surrounding area in which the Property is located; and

WHEREAS, as a result, to the extent that the City has jurisdiction over the areas in question, and without making any affirmative representations with regard thereto, the Mayor and Council are willing to grant assignable easement(s) in perpetuity to the applicant over the areas referenced in “Exhibit A” and “Exhibit B” (as attached hereto) in order to permit the encroachments of the cornice and the porch/stairs into the City R.O.W., for the nominal consideration of One Dollar (\$1.00), subject to the condition that the areas associated with the easement(s) shall only be used for the purpose(s) set forth herein and for no other purpose(s), and further subject to the terms and conditions to be set forth in an Easement Agreement(s) to be executed by the parties, which Agreement(s) shall be in a form satisfactory to the City Attorney; and

WHEREAS, the purpose of this Ordinance is to authorize the approval of easement(s) associated with the above-referenced encroachments, in accordance with the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12-1, *et seq.*, and/or other appropriate authority; and

WHEREAS, the Mayor and Council do not wish for the granting of these easement(s) to serve as a precedent for further encroachments into the City's R.O.W. areas elsewhere in the City, but rather declare that any and all such requests must be carefully reviewed by the Governing Body and considered strictly on a case-by-case basis, and that any such requests shall be granted only where substantial reasons are shown to justify and warrant the granting of the same.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the City of Asbury Park in the County of Monmouth and State of New Jersey, as follows:

1. That, to the extent that the City has jurisdiction over the areas in question, and without making any affirmative representations with regard thereto, the City hereby authorizes the conveyance of assignable easement(s) in perpetuity to the applicant over the areas described and depicted in "Exhibit A" and "Exhibit B" (as attached hereto) in order to permit the encroachment of the cornice and the porch/stairs into the City R.O.W., for the nominal consideration of One Dollar (\$1.00), subject to the condition that the areas associated with the easement(s) shall only be used for the purpose(s) set forth herein and for no other purpose(s), and further subject to the terms and conditions to be set forth in an Easement Agreement(s) to be executed by the parties, which Agreement(s) shall be in a form satisfactory to the City Attorney.
2. That the Mayor is hereby authorized to execute, and the Municipal Clerk to attest, Easement Agreement(s) in order to effectuate the granting of the within easements, which Agreement(s) shall be consistent with the intentions set forth herein and which shall be in a form satisfactory to the City Attorney.
3. That, following proper execution and notarization of the said Easement Agreement(s), the same shall be recorded with the Monmouth County Clerk's Office.
4. That all other City officials and employees are hereby authorized to undertake any and all activities that are necessary in furtherance of the intentions of the within Ordinance.
5. That all costs and expenses associated with this matter shall be paid by the applicant, through an escrow account established with the City.

6. That this Ordinance shall become effective twenty (20) days following its final passage, in accordance with N.J.S.A. 40:69A-181(b).
7. That the provisions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent jurisdiction such judgment shall be limited in its effect only to the portion of the Ordinance actually adjudged invalid and shall not be deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.
8. That all other Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies.

I, MELODY HARTSGROVE, Deputy City Clerk of the City of Asbury Park, Monmouth County, New Jersey, DO HEREBY CERTIFY the foregoing to be a true and exact copy of ORDINANCE NO. 2020-1 which was finally adopted by the City Council at a meeting held on the 12th day of February, 2020

MELODY HARTSGROVE
DEPUTY CITY CLERK