



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Barry Ng

SUBJECT: SEE BELOW

DATE: November 28, 2017

Approved

D. D. Sy L

Date

12/7/17

COUNCIL DISTRICT: 6

**SUBJECT: VACATION OF THE 25-FOOT AND 15-FOOT SETBACK EASEMENTS
AT 1199 CRESCENT DRIVE**

RECOMMENDATION

Conduct a Public Hearing and adopt a resolution:

- (a) Approving the report of the Director of Public Works setting forth the facts justifying the vacation of the 25-foot and 15-foot light and air easements ("setback easements") located at 1199 Crescent Drive;
- (b) Vacating the 25-foot and 15-foot setback easements located at 1199 Crescent Drive; and
- (c) Directing the City Clerk to record a certified copy of the resolution of vacation with the Office of the Recorder, County of Santa Clara.

OUTCOME

Upon recordation of the resolution of vacation, the 25-foot and 15-foot setback easements located at 1199 Crescent Drive ("subject property") will be vacated.

BACKGROUND

Augustine O'Dwyer and Caitriona O'Dwyer, property owners of 1199 Crescent Drive, have submitted an application for the vacation of the setback easements, 25-feet wide along Crescent Drive and 15 feet wide along Meredith Avenue, located on their corner lot property (see attached map). The setback easements are 2,770 square feet in total size, and were created by dedication on the map of Tract No. 169, recorded on January 22, 1941 in Book 5 of Maps, Page 34, of

Official Records, Office of the Recorder, County of Santa Clara, and apply to all 15 properties created by the subdivision.

The property owners have indicated their desire to construct future improvements to their property that would encroach into the setback easements. The setback easements prohibit buildings from encroaching into these areas.

On November 28, 2017, the City Council adopted a resolution which declared the Council's intention to vacate the subject setback easements. The resolution approved a map showing the subject easements proposed to be vacated, set the public hearing for December 19, 2017, at 1:30 p.m., directed the City Clerk to file the vacation map and advertise said public hearing, and directed the Director of Public Works to post the site with a Notice of Vacation.

ANALYSIS

Staff has reviewed the vacation application and has determined that the setback easements can be vacated because they are not necessary for current or prospective use. Ordinance No. 29821 "An Ordinance of the City of San Jose Amending Title 20 of the Municipal Code to Amend Various Sections of Chapter 20.30...." effective on December 30, 2016 amended the front setback requirement of a single family residence in zoning district R1-8 from 25-feet to 20-feet. Section 20.30.200 of Title 20 of the Municipal Code also requires the side setback for a corner lot single family residence in zoning district R1-8 to be 12.5-feet. This reduction in setbacks was found consistent with the goals of the Envision San Jose 2040 General Plan ("General Plan") to encourage additional density and parking in conventional Residential Zoning Districts.

Consequently, upon review of the vacation application by Planning staff, it was determined that the setback easements on the subject property are no longer necessary for public purposes in favor of the more appropriate current zoning setbacks. In light of this, staff recommends vacating the entire 25-foot and 15-foot setback easements as it is more appropriate to regulate setbacks through the enforcement of the City's zoning code instead of through setback easements.

Because zoning district R1-8 applies to all of Tract No. 169, if proposed, the 25-foot and 15-foot setback easements may be vacated for the entire tract, as all properties in the subdivision could be required to comply with the current setbacks for single family residences in zoning area R1-8 (Municipal Code 20.30.200). However, only the property owners of subject property have applied for a vacation of the setback easements. In the future, other properties in the subdivision may seek a vacation of the setback easements.

As this proposed vacation will remove setback easements that are in excess of those established by Ordinance No. 298821 which applies to this property, staff finds that this proposed vacation is consistent with and will facilitate a General Plan goal to allow additional density and parking with the zoning district R1-8. According to the title report issued by Fidelity National Title

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Company, Augustine O'Dwyer and Caitriona O'Dwyer hold fee ownership to the area being proposed for vacation at subject property.

In addition, there is an existing 5-foot public utility easement along the westerly property line that will remain on the subject property.

If any new information regarding this vacation is received either during or after the November 28, 2017 Council meeting, staff will prepare a supplemental memorandum for Council's consideration.

EVALUATION AND FOLLOW-UP

If Council approves the resolution vacating the 25-foot and 15-foot setback easements at the subject property, no further action by City Council will be required. The City Clerk will record the resolution of vacation at which time the vacation will be complete.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the December 19, 2017, City Council agenda. Additionally, staff will post the site with a Notice of Vacation, file the vacation maps and advertise said public hearing, which alerts the public to the hearing date, location and time.

COORDINATION

This vacation has been coordinated with the Department of Planning, Building and Code Enforcement and the City Manager's Budget Office. The vacation and resolution have been reviewed by the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

FISCAL/POLICY ALIGNMENT

Vacating the setback easements is in alignment with the November 2016 Council approval of Ordinance No. 29821 which lowered the front setback requirement for single family residences.

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COST SUMMARY/IMPLICATIONS

The Public Works Department collected cost-recovery fees on July 18, 2017, during fiscal year 2017-2018, of \$4,612 to process the subject vacation. These fees were received to support the Public Works Development Fee Program.

CEQA

Exempt, File No. PP17-069, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitation.

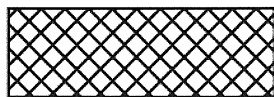
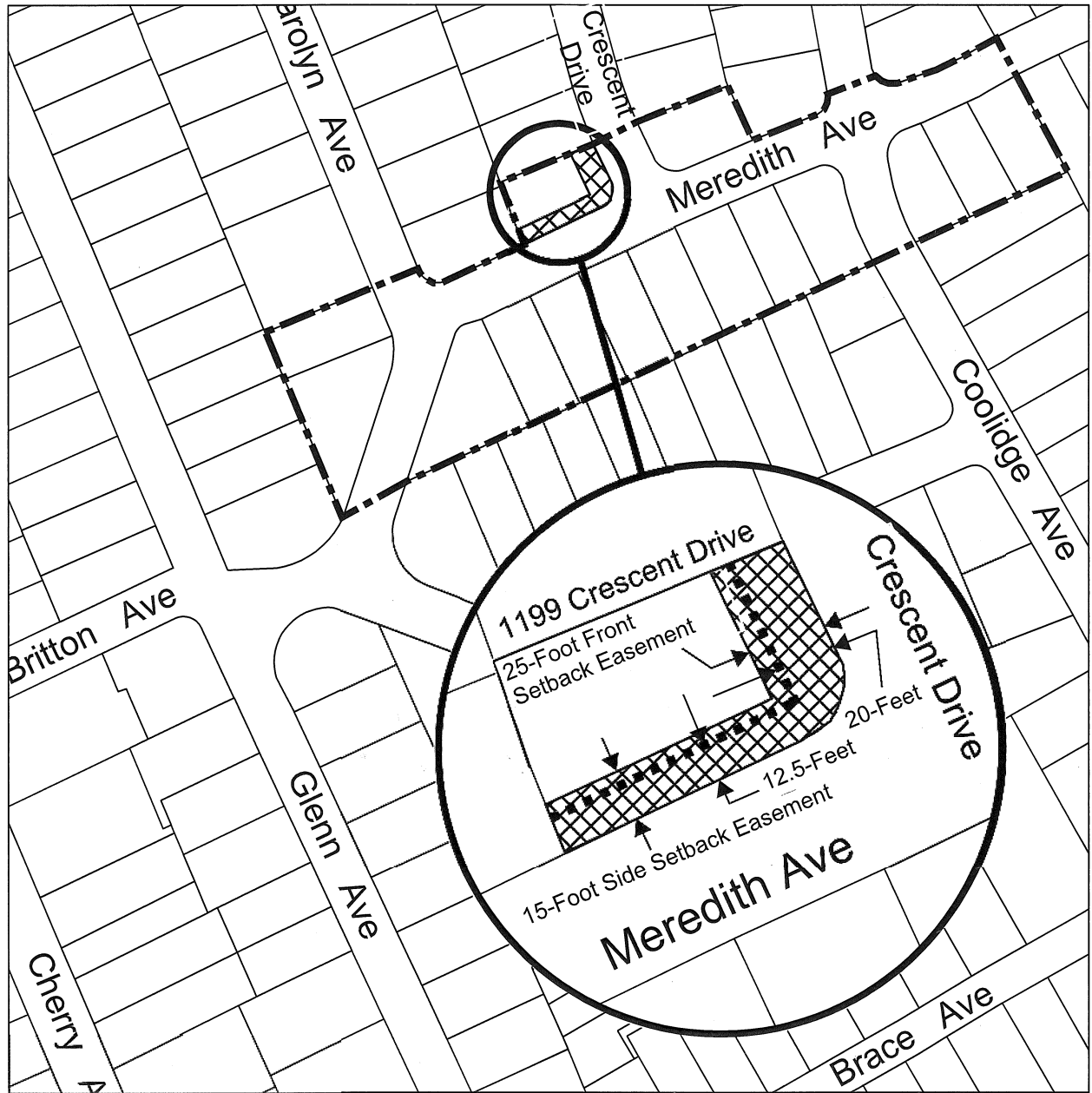
/s/
BARRY NG
Director of Public Works

For questions please contact Michael Liw, Deputy Director, at (408) 535-6835.

Attachment: Location Map

LOCATION MAP

SHOWING THE 25-FOOT AND 15-FOOT SETBACK EASEMENTS
AT 1199 CRESCENT DRIVE TO BE VACATED



AREA TO BE VACATED (2,770
SQ. FT.)



R1-8 ZONING DISTRICT
SETBACK



BOUNDARY OF TRACT 169

