



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Barry Ng

SUBJECT: SEE BELOW

DATE: November 6, 2017

Approved

Date

11-8-17

COUNCIL DISTRICT: 9

**SUBJECT: VACATION OF A 25-FOOT SETBACK EASEMENT AT
5159 AND 5181 BREWSTER AVENUE**

REASON FOR ADDENDUM

To prevent any further delay of the proposed vacation proceedings, staff recommends the addition of this item to the November 14, 2017 City Council agenda. Staff had recently proposed to defer the November 14, 2017 public hearing for the vacation of the subject easement. However, due to issues with posting of a Notice of Vacation at the site, staff proposes to drop the November 14, 2017 public hearing and replace the item with this proposal.

RECOMMENDATION

Adopt a resolution of intention to vacate a 25-foot light and air easement located at 5159 and 5181 Brewster Avenue and set a Public Hearing on Tuesday, December 5, 2017, at 1:30 p.m.

OUTCOME

Council adopts a resolution of intention to vacate a 25-foot light and air easement ("setback easement") located at 5159 and 5181 Brewster Avenue ("subject properties") and set a Public Hearing on December 5, 2017 at 1:30 p.m. for consideration of the adoption of a resolution vacating the setback easement. By vacating the setback easement, the subject properties will conform to the current front setback requirement of 20-feet for single family residences in zoning district R1-8 and the property owners can construct building improvements up to the current front setback.

BACKGROUND

Meghan Goss, property owner of 5159 Brewster Avenue, and Garrett Akahoshi, property owner of 5181 Brewster Avenue, have submitted an application for the vacation of a 25-foot setback easement located on both of their properties (see attached map). The setback easement is 1,500 square feet in size, was created by dedication on the map of Tract No. 1714, recorded on June 29, 1956 in Book 71 of Maps at Pages 1-3, of Official Records, Office of the Recorder, County of Santa Clara, and applies to all 79 properties created by the subdivision.

Both property owners have indicated their desire to construct future improvements to their properties that would encroach into the setback easement. The setback easement prohibits buildings from encroaching into these areas.

On October 17, 2017, the City Council adopted a resolution which declared the Council's intention to vacate the setback easements. The resolution also approved a map showing the setback easements to be vacated, set a public hearing for November 14, 2017 at 1:30 p.m., and directed the Director of Public Works to post the site with a Notice of Vacation.

After City Council approval on October 17, 2017, staff proposed to defer the November 14, 2017 public hearing and consequently did not post either site with a Notice of Vacation. In lieu of deferral by the City Council, staff is recommending Council drop the original November 14, 2017 public hearing for the proposal vacations, restart the vacation proceedings with this memorandum and proposed resolution, and replace the item with this proposal.

ANALYSIS

Staff has reviewed the vacation application and has determined that the setback easement can be vacated because it is 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. Consequently, upon review of the vacation application by Planning staff, it was determined that the setback easement on the subject properties is no longer necessary for public purposes in favor of the more appropriate current zoning setback. In light of this, staff recommends vacating the entire 25-foot setback easement as it is more appropriate to regulate setbacks through the enforcement of the City's zoning code instead of through setback easements. This reduction in setback 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.

Because zoning district R1-8 applies to all of Tract No. 1714, if proposed, the 25-foot setback easement may be vacated for the entire tract, as all properties in the subdivision could be required to comply with the current 20-foot front setback for single family residence in zoning

area R1-8 (Municipal Code 20.30.200). However, only the two property owners at 5159 and 5181 Brewster Avenue have applied for a vacation of the setback easement. In the future, the other properties in the subdivision may seek a vacation of the setback easement.

As this proposed vacation will remove a setback easement that conflicts with the 2016 Council-approved reduced setback requirement in the City's zoning code for 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 Company, Michael C. & Meghan R. Goss hold fee ownership to the area being proposed for vacation at 5159 Brewster Avenue. According to the title report issued by Chicago Title Company, Garrett K. Akahoshi holds fee ownership to the area being proposed for vacation at 5181 Brewster Avenue.

Additionally, there are other existing easements on both properties that will remain. At 5159 Brewster Avenue, there is an existing 10-foot public utility easement at the rear and an existing 2-foot by 30-foot anchor easement at the eastern side of the property that will remain. At 5181 Brewster Avenue, there is an existing 10-foot public utility easement at the rear of the property that will remain.

By adopting the recommended resolution of intention to vacate, the Council will:

1. Declare its intention to vacate the setback easement located at 5159 and 5181 Brewster Avenue;
2. Set a Public Hearing December 5, 2017, at 1:30 p.m.;
3. Direct the City Clerk to file the vacation maps and advertise said public hearing; and
4. Direct the Director of Public Works to post the site with a Notice of Public Hearing.

EVALUATION AND FOLLOW-UP

If Council approves this resolution, a hearing will be set for December 5, 2017, at 1:30 p.m. to consider the adoption of a resolution vacating a setback easement located at the subject properties.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the November 14, 2017, City Council agenda.

HONORABLE MAYOR AND CITY COUNCIL

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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.

FISCAL/POLICY ALIGNMENT

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

COMMISSION RECOMMENDATION/INPUT

No commission recommendation or input is associated with this action.

COST SUMMARY/IMPLICATIONS

The Public Works Department collected cost-recovery fees on July 17, 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. PP17-054 & PP17-055, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitation.

/s/

BARRY NG

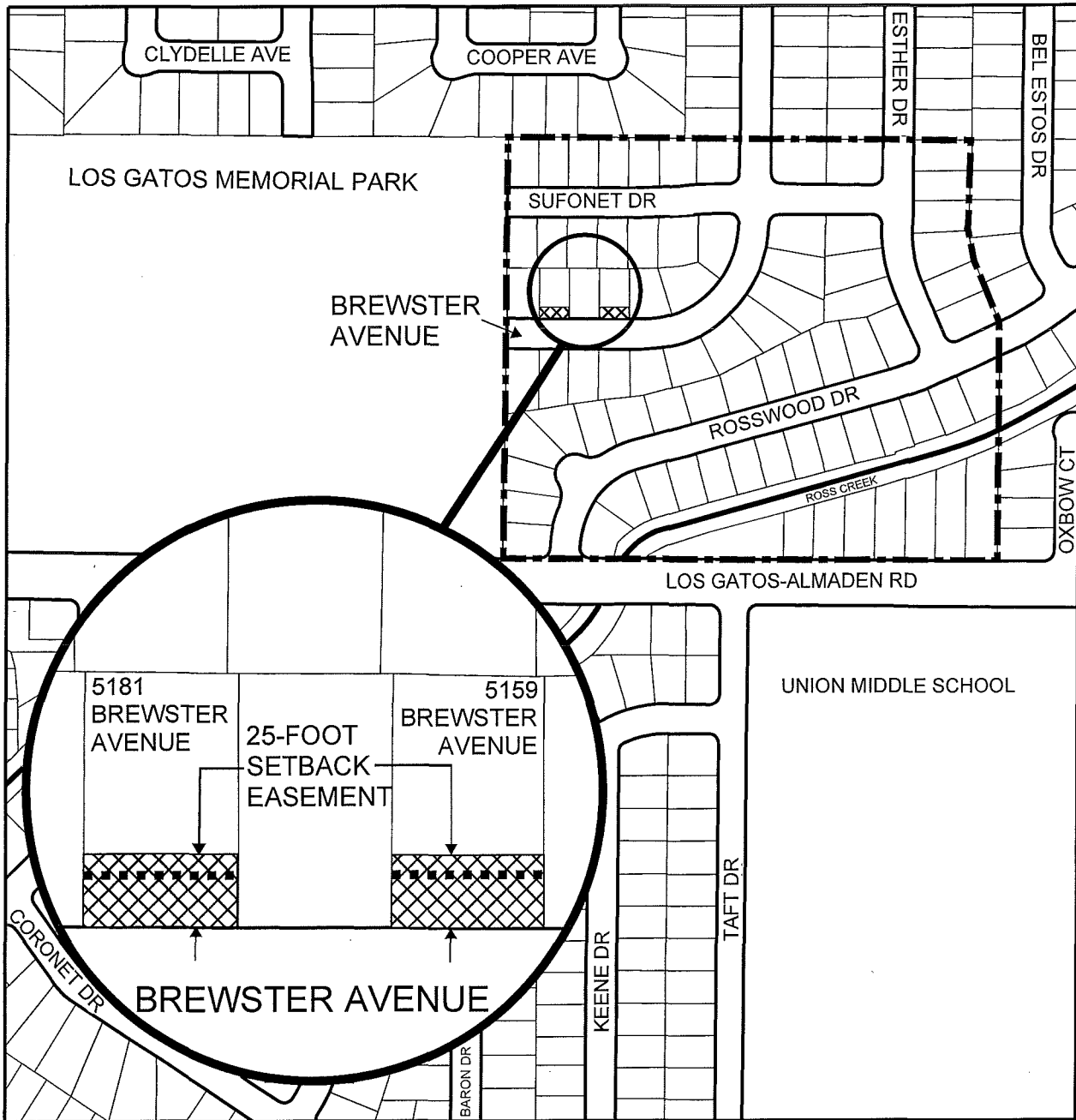
Director of Public Works

Attachment: Location Map

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

LOCATION MAP

SHOWING THE 25-FOOT SETBACK EASEMENT
AT 5159 & 5181 BREWSTER AVENUE TO BE VACATED



AREAS TO BE VACATED
(1,500 S.F. PER LOT)



20-FOOT ZONING DISTRICT
R1-8 SETBACK



BOUNDARY OF TRACT 1714

