



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Barry Ng

SUBJECT: SEE BELOW

DATE: November 6, 2017

Approved

Date

11-15-17

COUNCIL DISTRICT: 6

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

RECOMMENDATION

Adopt a resolution of intention to vacate the 25-foot and 15-foot light and air easements located at 1199 Crescent Drive and set a Public Hearing on Tuesday, December 19, 2017, at 1:30 p.m.

OUTCOME

Council adopts a resolution of intention to vacate the 25-foot and 15-foot light and air easements ("setback easements") located at 1199 Crescent Drive ("subject property") and set a Public Hearing on December 19, 2017 at 1:30 p.m. for consideration of the adoption of a resolution vacating the setback easements. By vacating the setback easements, the subject property will conform to the current front and side setback requirements of 20-feet and 12.5-feet, respectively, for single family residences in zoning district R1-8 and the property owners can construct building improvements up to the current setbacks.

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.

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. 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. 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.

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 1199 Crescent Drive 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 conflict with the 2016 Council-approved reduced setback requirements 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, Augustine O'Dwyer and Caitriona O'Dwyer hold fee ownership to the area being proposed for vacation at 1199 Crescent Drive.

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

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

1. Declare its intention to vacate the setback easements located at 1199 Crescent Drive;
2. Set a Public Hearing December 19, 2017, at 1:30 p.m.;

3. Direct the City Clerk to file the vacation map 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 19, 2017, at 1:30 p.m. to consider the adoption of a resolution vacating the setback easements located at the subject property.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the November 28, 2017, City Council agenda.

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 easements 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 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.

HONORABLE MAYOR AND CITY COUNCIL

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CEQA

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

/s/

BARRY NG

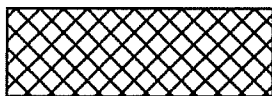
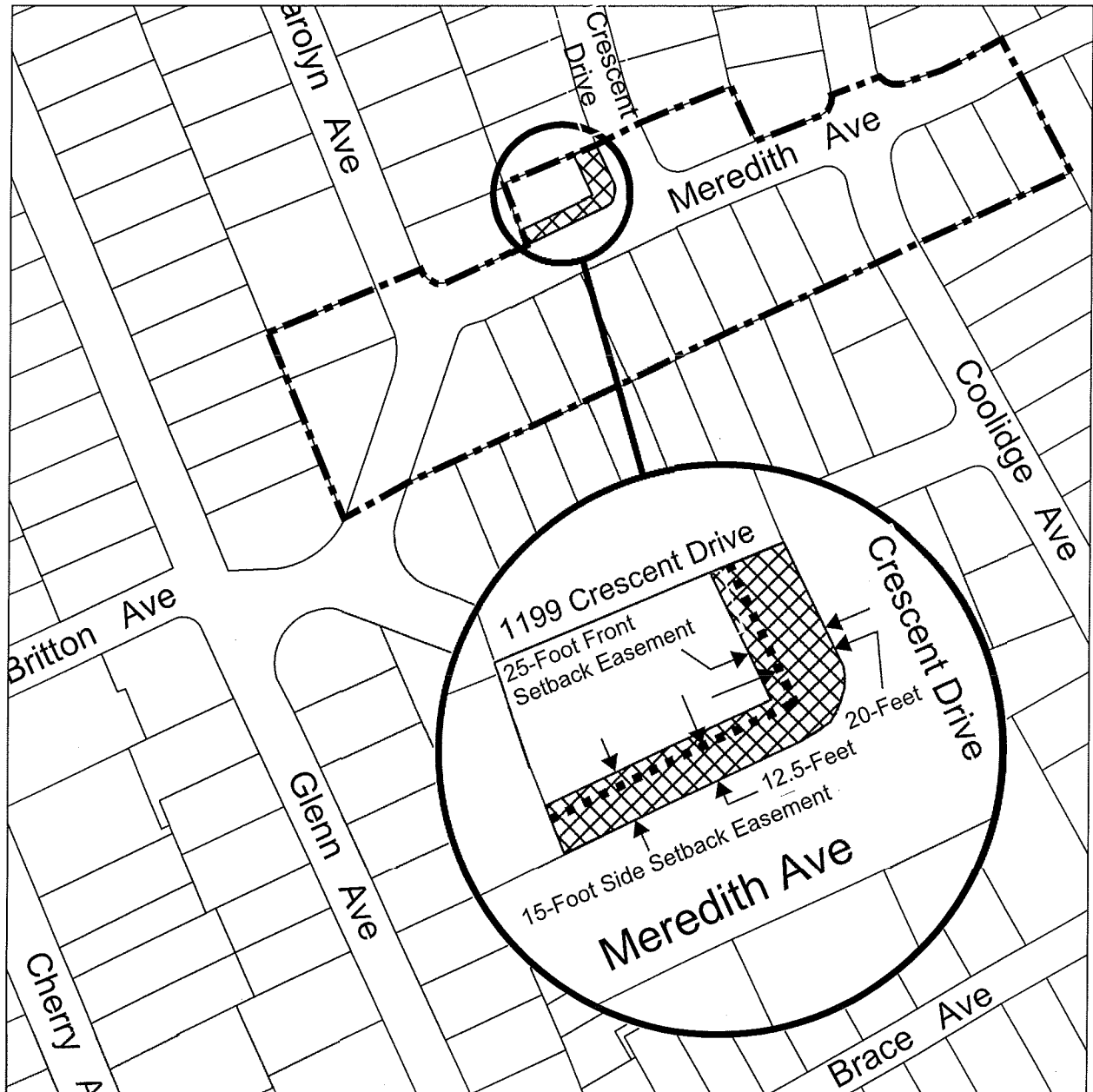
Director of Public Works

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

