



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Cano

SUBJECT: SEE BELOW

DATE: September 9, 2019

Approved

Date

9/19/19

COUNCIL DISTRICT: 1

SUBJECT: VACATION OF A 25-FOOT SETBACK EASEMENT AT 1064 WEST RIVERSIDE WAY

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 a 25-foot light and air easement ("Setback Easement") at 1064 West Riverside Way.
- (b) Vacating a 25-foot front light and air easement at 1064 West Riverside Way.
- (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 Setback Easement located at 1064 West Riverside Way will be vacated. By vacating the Setback Easement, the property will conform to the current San Jose Municipal Code front setback requirement for single family residences in zoning district R1-8 and the property owner can construct building improvements up to the current setbacks.

BACKGROUND

Sowmyarani Ramarao, property owner of 1064 West Riverside Way, submitted an application for the vacation of the Setback Easement on her property, which is Lot 23 of Tract No. 1693. The Setback Easement was created by dedication on the map of Tract No. 1693 Friendly Woods Unit No. 1, recorded on March 22, 1956 in Book 68 of Maps, at Pages 4 and 5, of Official Records, Office of the Recorder, County of Santa Clara, and applies to all properties. The property owner has indicated her desire to construct future improvements to her property that would encroach into the Setback Easement. The Setback Easement prohibits a building from encroaching into the area.

On June 4, 2019, the City Council adopted a resolution to declare the Council's intention to vacate all the setback easements within the tract. The resolution also approved a map showing all the setback easements proposed to be vacated, set a Public Hearing for June 25, 2019, 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.

On June 25, 2019, a Public Hearing was conducted. Neighboring residents within Tract No. 1693 objected to the vacation of all setback easements within the entire tract. The applicant was unable to attend and City Council deferred the item to give the applicant an opportunity to speak on her behalf.

ANALYSIS

Staff has reviewed the vacation application and determined that the Setback Easement can be vacated as 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 is no longer necessary for public use in favor of the more appropriate current zoning setbacks. Staff also concluded that it is more appropriate to regulate setbacks through the enforcement of the City's zoning code instead of through setback easements. This reduction in the 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.

Since the December 2016 adoption of Ordinance No. 29821, the volume of setback easement vacation requests has increased. As a result, staff coordinated with the City Attorney's Office and the Office of the County Recorder to establish a proactive process through vacating all setback easements for entire subdivisions as opposed to the prior practice of vacating setback easements for individual properties upon request.

At the June 25, 2019 Public Hearing, residents from the tract objected to the vacation of the tract-wide Setback Easements. The sentiment was that the reduction of the original setback requirement does not align with the character of this neighborhood.

To uphold the applicant's right to vacate the Setback Easement on their lot, conform to the zoning ordinance, and to not interfere with the neighboring property owners' desire to preserve the existing Setback Easements on their own lots: Staff recommends vacating the Setback Easement solely at 1064 West Riverside Way, Lot 23 as part of this application.

There is an existing public utility easement that will remain on the property.

EVALUATION AND FOLLOW-UP

If Council approves the resolution vacating the Setback Easement at 1064 West Riverside Way, 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

Extensive outreach was conducted by staff prior to the 2016 approval of Ordinance No. 29821 including facilitating numerous community and stakeholder meetings.

This memorandum will be posted on the City's website for the October 1, 2019 City Council agenda.

Staff will post the site with a Notice of Vacation, file the vacation map, 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.

FISCAL/POLICY ALIGNMENT

Vacating the Setback Easement is in alignment with the November 2016 Council approval of Ordinance No. 29821 which governs the setback requirements for single family residences in zoning district R1-8.

HONORABLE MAYOR AND CITY COUNCIL

September 9, 2019

Subject: Vacation of a 25-Foot Setback Easement at 1064 West Riverside Way

Page 4

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 April 3, 2019, during fiscal year 2018-2019, of \$5,916 to process the subject vacation. These fees were received to support the Public Works Development Fee Program.

CEQA

Categorically Exempt, File No. 3-24857, CEQA Guidelines Section 15305, Minor Alterations in Land Use Limitations.

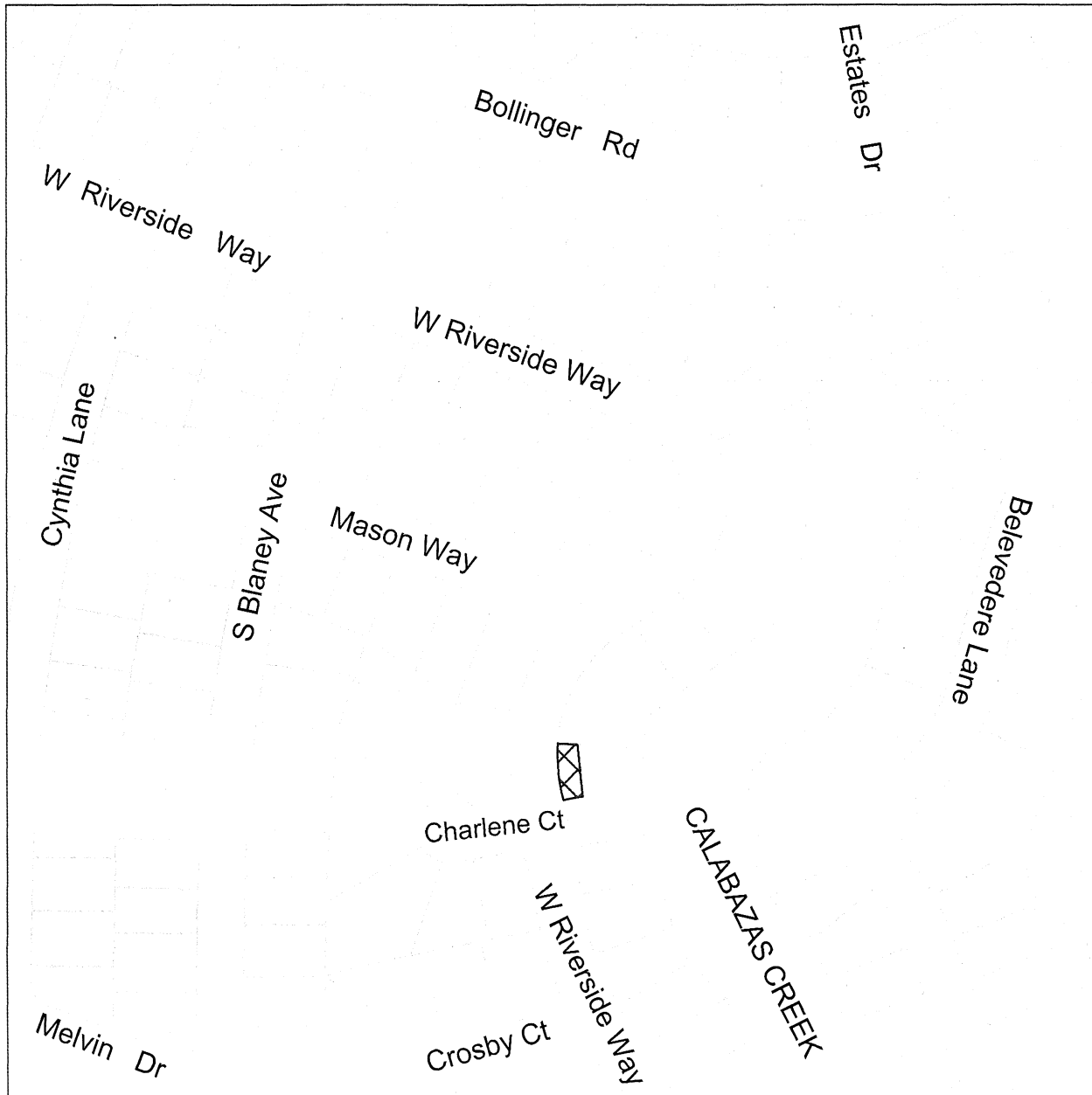
/s/
MATT CANO
Director of Public Works

For questions please contact Matthew Loesch, Deputy Director of Public Works, at (408) 535-8300.

Attachment: Location Map

LOCATION MAP

SHOWING THE 25-FOOT SETBACK EASEMENT
AT 1064 WEST RIVERSIDE WAY TO BE VACATED



AREA TO BE VACATED

