



## **CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT**

August 6, 2026  
Agenda Item No. 3

**SUBJECT:** Moriarty Residence Encroachments (PA2026-0134)  
▪ Encroachment Permit No. N2026-0255

**SITE LOCATION:** 20462 Birch Street

**APPLICANT/OWNER:** Richard Moriarty

**ENGINEER:** Josh McDonald, Principal Civil Engineer  
949-644-3326, [jmcdonald@newportbeachca.gov](mailto:jmcdonald@newportbeachca.gov)

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### **PROJECT SUMMARY**

A request to waive City Council Policies L-6 (Encroachments in Public Rights-of-Way) and L-2 (Driveway Approaches) and to approve an Encroachment Permit to allow retention of certain existing, noncompliant private improvements encroaching into the 60-foot-wide Birch Street and 60-foot-wide Mesa Drive public rights-of-way, including retention of an existing third driveway approach along Birch Street. The encroachments include fencing, pedestrian and vehicular gates; electrical utility equipment and security camera posts; a concrete pad; landscaping, decorative boulders, landscape lighting, and bollards; and an existing third driveway approach along Birch Street intended to serve a future accessory dwelling unit.

### **RECOMMENDATION**

- 1) Find the Project Encroachments exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1 - Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential to have a significant effect on the environment; and
- 2) Adopt Resolution No. PC2026-023, waiving City Council Policies L-6 (Encroachments in Public Rights-of-Way) and L-2 (Driveway Approaches), and approving Encroachment Permit No. N2026-0255.

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### VICINITY MAP



### GENERAL PLAN



### ZONING



| LOCATION  | GENERAL PLAN                            | ZONING                                 | CURRENT USE               |
|-----------|-----------------------------------------|----------------------------------------|---------------------------|
| ON-SITE   | Single Unit Residential Detached (RS-D) | Santa Ana Heights Specific Plan (SP-7) | Residential               |
| NORTHEAST | CO-G                                    | SP-7                                   | General Commercial Office |
| SOUTHEAST | RS-D                                    | SP-7                                   | Residential Equestrian    |
| NORTHWEST | PR                                      | SP-7                                   | Parks and Recreation      |
| SOUTHWEST | RS-D                                    | SP-7                                   | Residential Equestrian    |

## **INTRODUCTION**

### **Relevant City Council Policies**

#### *City Council Policy L-2 (Driveway Approaches)*

City Council Policy L-2 (Driveway Approaches) regulates driveway approaches and curb openings within the public right-of-way to protect public safety and circulation, preserve on-street parking, and minimize traffic conflict points (Attachment No. PC 2). Council Policy L-2 generally limits the number of driveway approaches serving a single residential parcel and requires appropriate permitting for work within the public right-of-way. It further prohibits retention or construction of more than two driveway approaches serving a single residential parcel. The L-2 waiver is being presented to the Planning Commission because the Commission has authority to grant encroachment waivers, and the waiver is being considered in conjunction with the related L-6 encroachment waiver.

#### *City Council Policy L-6 (Encroachments in Public Rights-of-Way)*

City Council Policy L-6 (Encroachments in Public Rights-of-Way) provides that public rights-of-way are to be reserved for public use or open space and that the rights of the public, in both the present and future, are not to be diminished by retaining private improvements within the public right-of-way (Attachment No. PC 3). Council Policy L-6 identifies both allowable and prohibited encroachments and the permits and/or agreements required. It prohibits private encroachments of fences, walls, patios, raised planters, etc. that encroach more than one foot into the public right-of-way and/or exceed 36 inches in height; however, the Planning Commission may grant a waiver of these standards.

### **Existing Conditions and Project Description**

The subject property is located along the entire extent of a cul-de-sac on the northeastern corner of Mesa Drive and Birch Street and across the street from the City's Mesa Birch Park (Project Site). It is improved with a newly constructed single-unit residence and includes a variety of unauthorized private improvements that encroach onto both the Birch Street and Mesa Drive public rights-of-way.

The Owner requests a waiver of Council Policy L-6 to retain all the following existing improvements encroaching into the Birch Street and Mesa Drive public rights-of-way:

- A 39-inch-high electrical pedestal encroaching approximately 3 feet into the Birch Street public right-of-way;
- Three approximately 10-foot-high security camera posts encroaching between 5 feet, 9 inches and 5 feet, 1 inch into the Birch Street public right-of-way;

- A 6-foot-high fence, pedestrian gate, motorized vehicular access gates and electrical utility boxes, and utility risers encroaching at varying depths within the Mesa Drive and Birch Street public rights-of-way;
- A concrete pad serving the residence's private solid waste and recycling storage area encroaching 7 feet, 5 inches into the Birch Street public right-of-way;
- A 6-foot-high vehicular access gate, intended to serve a future accessory dwelling unit (ADU) encroaching 21 feet, 5 inches into the Birch Street public right-of-way;
- Landscaping and boulders of various heights (under 5 feet) encroaching 4 feet, 2 inches into the Birch Street public right-of-way;
- Landscape lighting encroaching approximately 2 feet into the Mesa Drive public right-of-way and 6 feet, 11 inches into the Birch Street public right-of-way;
- Three 42-inch-high bollards encroaching within the Birch Street public right-of-way; and
- Retention of an existing third driveway approach along Birch Street.

Additionally, the Owner requests a waiver of Council Policy L-2 for the retention of an existing third driveway approach on Birch Street. Site photographs (Attachment No. PC 4), the Owner's letter (Attachment No. PC 5), and Project plans (Attachment No. PC 6) are attached to this staff report.

Collectively, the waivers of Council Policies L-6 and L-2 are referred to as the "Project Encroachments."

## **DISCUSSION**

### **Waiver of Council Policy L-6**

Consistent with Council Policy L-6, the existing encroachments do not diminish the rights of the public, present and future, along the Birch Street and Mesa Drive public rights-of-way. There are no sidewalks on the project side of Birch Street, northeast of the property's southwesterly driveway, along the dead-end segment northeast of Mesa Drive, nor does the City currently have a plan to install sidewalks on this street. Based on the Public Works Department's review of the existing conditions, the existing encroachments do not interfere with traffic visibility for vehicles traveling along the dead-end segment of Birch Street, northeast of Mesa Drive, at the intersection of Mesa Drive. The Project Encroachments are complementary to the neighborhood. The improvements, which include fences, gates, landscaping, and utilities, are consistent with other properties along Mesa Drive, which are improved with taller fences, walls, and landscaping. The Project Site is the only residence on the southeastern side of Birch Street, as it is a deep lot that occupies the entirety of the short street. Therefore, it is visually consistent with Birch Street and Mesa Drive.

The Public Works Department is recommending approval of the L-6 Waiver for all existing improvements subject to the conditions of approval in Attachment No. PC 1.

### Waiver of Council Policy L-2

As the Project Site includes an existing third driveway approach along Birch Street intended to serve a future ADU, the Owner is also requesting a waiver of Council Policy L-2.

The third driveway approach is located along the cul-de-sac frontage on Birch Street, which has a relatively low volume of traffic and lower vehicle speeds. The location of this driveway minimizes the potential for conflicts between vehicles and pedestrians, as there is no intersection of streets. Additionally, the Project Encroachments do not require relocation of public facilities or infrastructure and preserves the City's ability to maintain or improve the public right-of-way in the future.

The Public Works Department is recommending approval of the L-2 Waiver for the third driveway, subject to the conditions of approval.

The required findings are further supported by the fact that the existing encroachments do not impede public use of the Birch Street or Mesa Drive public rights-of-way, create a traffic safety hazard, or interfere with traffic visibility. There are no known existing City utilities within the encroachment areas, and approval would require the Owner to enter into an Encroachment Agreement, assume responsibility for the improvements, and remove them at no cost to the City if needed for future public improvements. These provisions preserve the City's ability to maintain or improve public rights-of-way and ensure that the encroachments are not detrimental to the health, safety, or welfare of the public. The improvements are also generally complementary to the surrounding neighborhood and consistent with the public interest.

The requested waiver of Council Policy L-2 is supported by the location of the third driveway approach along the Birch Street cul-de-sac, where traffic volumes and vehicle speeds are relatively low. The driveway does not require relocation of public facilities, is not located at a street intersection, and minimizes potential conflicts between vehicles and pedestrians. Accordingly, retention of the third driveway approach is not detrimental to public safety and is consistent with the public interest.

### Environmental Review

The Project Encroachments are categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 under Class 1 (Existing Facilities) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 (CEQA Guidelines), because the Project Encroachments include the retention of existing minor improvements (electrical pedestal, security cameras/posts, fencing, concrete trash bin pad, third driveway approach, motorized sliding and swinging metal gates and equipment,

swinging pedestrian gate, decorative boulders, bollards, low-voltage landscape lighting, and landscaping), that have no potential to result in a direct or reasonably foreseeable indirect physical change in the environment. The existing improvements are consistent with structures allowed under this exemption.

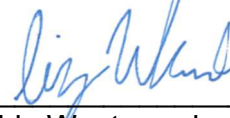
### Public Notice

Notice of this hearing was mailed to all owners of property within 300 feet of the boundaries of the site (excluding intervening rights-of-way and waterways) including the applicants and posted on the subject property at least 10 days before the scheduled meeting, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the city website.

Prepared by:

  
Josh McDonald, P.E.  
Principal Civil Engineer

Submitted by:

  
Liz Westmoreland, AICP  
Deputy Community Development Director

### ATTACHMENTS

- PC 1 Draft Resolution with Findings and Conditions
- PC 2 City Council Policy L-2 (Driveway Approaches)
- PC 3 City Council Policy L-6 (Encroachments in Public Right-of-Way)
- PC 4 Site Photos
- PC 5 Owner Letter dated June 30, 2026
- PC 6 Project Site Plan

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