

Attachment No. PC 5

Owner Letter

INTENTIONALLY BLANK PAGE



BRIGGS ALEXANDER

A Professional Law Corporation

July 24, 2026

Chair and Members of the Planning Commission
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

Attention: Public Works Department — Encroachment Permit Application:

Re: Request for Waiver of City Council Policy L-6 — Encroachment Permit Application
Property Address: 20462 SW Birch Street, Newport Beach, CA 92660
Applicant / Owner: Richard Moriarty
General Contractor: Corbin Reeves Construction (Blair Liggatt)

Dear Chair and Members of the Planning Commission:

Nevertheless, in the spirit of good faith and cooperation, Applicant seeks to apply for six (6) residential encroachment items described in Part II below, remaining in the public right-of-way along the property's Birch Street frontage. The application is filed concurrent with the Worksheet for Encroachment Permit, fully dimensional Site Plan, current grant deed, application fee, and mailing label per the procedures outlined by Deputy City Attorney Yolanda Summerhill's 5/19/26 correspondence following the 5/18/26 site walk-through. Each item is supported by item-specific findings under Council Policy L-6, § C.1.a — the operative standard being that the encroachment "will not be a detriment to the health, safety, and welfare of the public." Part III below identifies additional general private encroachments included in this permit application that qualifies for administrative approval by the Public Works Department under L-6 without Planning Commission waiver review.

Part I — General Justification Framework

1. Crime Prevention & Neighborhood Safety-

The property sits at the corner of Mesa Drive and SW Birch Street — one of the main entrances into Santa Ana Heights. Anyone entering or exiting the neighborhood via Mesa or Birch passes directly past this corner. The security-related items in this application (Camera Posts, Birch Fencing, and ADU Gate) provide perimeter-grade detection, controlled access, and NBPD-integrated surveillance at the neighborhood's edge, benefiting the broader community as well as the property. Documented conditions on and around this street include:

Page 1 of 9L-6 WAIVER LETTER — 6 ITEMS + PART III — DRAFT FOR REVIEW

• COVID-era burglary pattern on Mesa Drive — every adjacent house on Mesa Drive was

burglarized during the pandemic period, several multiple times.

- Active casing within the last 30 days — organized crime tourism groups observed casing the neighborhood, consistent with regional patterns targeting Orange County coastal communities.
- Park-adjacent activity — the adjacent park was previously used for narcotics dealing; that activity decreased only after the property's security system was installed and police complaints filed.
- City's own subsequent response — a homeowner-initiated police complaint resulted in the City's first installation of a flock camera in the neighborhood, independently validating the documented public-safety threat.

2. Architectural and Site Constraints Not Created by the Applicant

The property is a corner lot with the Birch Street cul-de-sac terminating at the property line. The corner-lot geometry restricts viable surveillance vantage points and safe fence placement to Birch Street frontage. The original architectural plans did not provide compliant on-site locations for several items. The Power Pedestal location was approved by the City under E2020-0067 (subsequently deleted from CiViC — a City record-keeping event for which the applicant bears no responsibility). The encroachments are corrective safety measures necessitated by pre-existing design and site conditions, do not expand the home footprint or intensify land use, and represent the only feasible locations for the required security and utility infrastructure.

3. Neighborhood Precedent and Consistency

On June 27, 2023, the City Council unanimously approved a pilot program expressly authorizing private security cameras in the public right-of-way; Spyglass Hill (8 cameras), Shore Cliffs (4), and Eastbluff (8) currently operate private security cameras in the PROW coordinated with NBPD. The Council has therefore categorically determined that private security cameras in the PROW are not a detriment to public health, safety, and welfare when coordinated with NBPD. The Santa Ana Heights Specific Plan (SP-7, codified at NBMC Chapter 20.90) does not specify a maximum fence height for side or rear yards within the REQ District (SAHSP pp. IV-5 through IV-8). SAHSP § IV.D.8.f(11) (p. IV-24) MANDATES a 6-foot concrete block wall along Business Park property lines abutting the REQ District — establishing 6 feet as the City's own expected boundary-condition standard at the BP/REQ boundary where this property sits. The City cannot enforce a Specific Plan mandating a 6-foot wall at this boundary while denying a 6-foot fence at that same boundary.

4. Minimal Impact on the Public Right-of-Way

Each of the proposed encroachments is limited in width and height, does not obstruct or alter pedestrian pathways, does not compromise public access, utilities, or emergency routes, and preserves full use of the right-of-way for the City and the general public.

Page 2 of 9L-6 WAIVER LETTER — 6 ITEMS + PART III — DRAFT FOR REVIEW

Part II — Item-by-Item Findings The following six items each receive findings under L-6, § C.1.a. The Planning Commission is respectfully requested to make a finding as to each item that the encroachment will not be a detriment to the health, safety, and welfare of the public.

Item 1 — Power Pedestal (ADU)

Description: Power pedestal in PROW serving the originally approved ADU and supporting the property's electrical service infrastructure, including security lighting and the Connect Newport

Beach camera systems. L-6 Basis: Structural encroachment exceeding 1 ft into the PROW or 3 ft in height (L-6, § A); utility connection in the PROW. Permit History: Originally permitted under E2020-0067 (subsequently deleted from CiViC). Related permits E2019-0515 (withdrawn) and X2020-0942 (deleted) document the same infrastructure. Brandon Architects' 09/2019 site plan shows the originally approved location. The CiViC deletion is a City record-keeping event for which the applicant bears no responsibility. Public Safety, Operational, and Minimal-Impact Findings: The pedestal is the upstream power source for the operating security lighting, Connect Newport Beach camera infrastructure, and emergency systems. Relocation would require PROW trenching, degrading coordinated public-safety infrastructure and creating new public-safety exposures during reconstruction. Utility pedestals are expressly contemplated under L-6, and the footprint is minimal with no obstruction to pedestrian travel, sight distance, drainage, or ADA passage. Primary Request: Reinstatement of E2020-0067 as the cleanest administrative resolution. L-6 waiver requested in the alternative. L-6 Finding Requested: The Planning Commission finds that Item 1 (Power Pedestal) will not be a detriment to the health, safety, and welfare of the public, and the waiver of Council Policy L-6 is granted.

Item 2 — Security Camera Posts on Birch Street (PROW)

Description: Three security-camera posts total: two located in the PROW along the Birch Street frontage (one at the Mesa Drive/Birch Street corner, one at the Birch Street cul-de-sac end); the third post relocated by the owner to private property as a good-faith accommodation.

Operationally integrated with NBPd via the Connect Newport Beach (Axon Fusus) camera-sharing program. L-6 Basis: Lighting (L-6, § E); structural encroachment exceeding 1 ft into the PROW or 3 ft in height (L-6, § A). Public Safety and Strategic Location: The PROW camera posts provide the only feasible camera coverage of the actual gateway intersection where anyone entering or exiting Santa Ana Heights via Mesa

Page 3 of 9 L-6 WAIVER LETTER — 6 ITEMS + PART III — DRAFT FOR REVIEW

or Birch must pass. Combined with the camera on the Mesa Drive frontage, the system covers all primary approach vectors at the neighborhood's edge, directly benefiting the broader community. NBPd opt-in access to relevant footage in active investigations formalizes the public-safety benefit. The City's subsequent installation of flock cameras in this neighborhood — following a homeowner-initiated police complaint — independently validates the underlying threat the owner's system addresses. Precedent, Constraints, and Minimal Impact: Corner-lot geometry places the only viable surveillance vantage points within the PROW; no on-private-property location provides equivalent coverage. Each post occupies less than 1 sq ft of footprint; placement is outside the corner visibility triangle; no interference with utilities, drainage, or ADA passage. Cameras are fixed to view the PROW only and do not capture private-property areas of adjacent residences. The June 27, 2023 Council pilot program cited in Part I categorically supports approval. L-6 Finding Requested: The Planning Commission finds that Item 2 (Security Camera Posts on Birch Street, PROW) will not be a detriment to the health, safety, and welfare of the public, and the waiver of Council Policy L-6 is granted.

Item 3 — Birch Street Fencing (6 ft Height in PROW) Residential Security Fence + Dog-Run Containment Description: Six-foot residential security fence along the Birch Street (side-street) boundary of the corner lot. The fence performs two integrated public-safety functions: (i)

residential security barrier discouraging trespass, and (ii) controlled containment enclosure for the homeowner's planned on-site guard dog, preventing accidental egress into the public sidewalk and street. Currently installed as a temporary structure pending Commission determination; permanent (poured-concrete-footing) installation deferred out of respect for the review process. L-6 Basis: Fences exceeding 3 ft in height encroaching into the PROW (L-6, § A). Public Safety — Security + Guard-Dog Containment: The fence is not a discretionary amenity but the physical infrastructure required to safely operate the guard-dog component of the site security program. Without a fenced dog-run, the guard dog cannot be safely contained on the property — potentially endangering pedestrians, children, and cyclists. With the fence as designed, the dog remains secure and controlled, pedestrians are protected from unexpected animal contact, and accidental egress is eliminated. The fence also provides physical and visual barrier discouraging trespass at one of the main entrances into Santa Ana Heights (see Part I). Corner-Lot Configuration and SP-7 REQ District Code Justification: The home's primary frontage orients to Mesa Drive (front yard); Birch Street is the side-street elevation. The Mesa-side fence is on private property only and does not encroach into the PROW (its height is a separate zoning matter, not part of this L-6 request). As to the Birch fence: (a) the SP-7 REQ District regulations do NOT specify a maximum fence height for side or rear yards (SAHSP pp. IV-5 – IV-8), meaning the proposed 6-foot height is not in conflict with the Specific Plan; and (b) SAHSP § IV.D.8.f(11) MANDATES a 6-foot concrete.

Page 4 of 9L-6 WAIVER LETTER — 6 ITEMS + PART III — DRAFT FOR REVIEW

block wall along the BP/REQ boundary where this property sits — establishing 6 feet as the City's own expected boundary-condition standard at this precise location. Neighborhood Consistency and Minimal Impact: Existing properties across the street and along the frontage maintain similar frontage conditions; there is no sidewalk on this segment of Birch Street. The fence terminates outside the corner visibility triangle, does not block pedestrian access, does not reduce corner line-of-sight, and does not interfere with utilities, ADA passage, drainage, or traffic operations. L-6 Finding Requested: The Planning Commission finds that Item 3 (Birch Street Fencing, 6 ft height in PROW) will not be a detriment to the health, safety, and welfare of the public, and the waiver of Council Policy L-6 is granted.

Item 4 — Trash Pad (PROW Portion Only, After Owner Extension)

Description: Residual concrete pad in the PROW serving the residential trash-collection point at the Birch Street cul-de-sac. **The owner has voluntarily extended the concrete pad onto private property and relocated the rolling trash bin entirely to private property — the bin is no longer in the PROW.** Only the residual concrete access pad remains, providing a level, anchored rolling surface for CR&R commercial waste collection. L-6 Basis: Structural encroachment (L-6, § A); modification to original design (L-6, § C). Pre-Existing Condition (Approximately 50 Years) and Precedent: The bin and pad have been at this location, in substantially this configuration, for approximately 50 years. The owner has voluntarily *reduced* a long-standing pre-existing condition. A neighborhood-precedent photo exhibit (attached) shows comparable installations at multiple nearby properties (2598 Mesa Drive, 20262/20473/20152/20112 Cypress, and adjacent residential properties). Residential trash-collection pads at or near the PROW are a near-universal condition citywide. Operational Need and Minimal Impact: The anchored pad provides stable, level placement during collection; without it, bins staged on parkway turf can shift, tip, or roll into the travel way — creating a public-safety hazard. Residual PROW footprint is the minimum necessary; the pad sits flush with grade; no obstruction of pedestrian travel, sight

distance, drainage, utilities, or ADA passage. L-6 Finding Requested: The Planning Commission finds that Item 4 (Trash Pad, PROW portion only) will not be a detriment to the health, safety, and welfare of the public, and the waiver of Council Policy L-6 is granted.

Item 5 — Curb Cut Approach / Driveway Approach Serving the Future ADU

Description: Curb cut and driveway approach in the PROW at the end of the SW Birch Street cul-de-sac, serving the future ADU on the merged parcel. Comprises three physical components within the PROW: (i) the curb cut at the back-of-curb line, (ii) the driveway approach apron, and (iii) the driveway itself extending onto the parcel. Page 5 of 9L-6 WAIVER LETTER — 6 ITEMS + PART III — DRAFT FOR REVIEW L-6 Basis — Planning Commission Jurisdiction: Council Policy L-6 expressly designates the procedural path. Under "Private encroachments that are prohibited without a waiver and approval," Item B lists "Driveway approaches not conforming to Council Policy L-2," and Section C.1 designates the Planning Commission as the waiver authority, subject to the L-6 § C.1.a "no detriment" finding. Because the proposed driveway approach is a third approach on the merged parcel — not conforming to L-2's two-approach standard — Item 5 is properly within Planning Commission L-6 waiver jurisdiction. Recorded Access Easement and City-Directed Lot Merger: On August 3, 2021, Richard and Marilyn Moriarty recorded with the Orange County Recorder a Declaration of Easements, Restrictions and Covenants Running with the Land ("Recorded Easement," recorded 8/5/2021), creating a 30-foot Road and Utility Easement along the western border of the then-Servient Tenement at 20460 SW Birch, for the benefit of the Dominant Tenement at 20462 SW Birch and expressly granted "for the purposes of constructing, Developing, and maintaining gas, water, electric and other utilities, as well as for access purposes." The City had constructive notice of this recorded access intent since 8/5/2021. The City had additionally acknowledged both parcels as legal lots with separate City-assigned addresses in the September 18, 2020, address-assignment letter from Newport Beach Senior Planner Makana Nova. Subsequently, the Owner was directed by the City to merge the two parcels as a condition related to project generator placement. Lot

Line Adjustment / Lot Merger LM 2022-022, prepared by Paul D. Craft, P.L.S. 8516, was reviewed, approved, and signed by the City Engineer on August 27, 2024. Under California Civil Code § 811(1), the merger extinguished the Recorded Easement by operation of law. At no point in the merger process was the Owner advised that compliance with the City's merger directive would extinguish the Recorded Easement or trigger the L-2 two-driveway-per-parcel standard as to the future ADU access. State ADU Preemption: The future ADU is subject to Government Code §§ 66310 et seq. (effective 1/1/2025, formerly § 65852.2). Section 66317 provides that "No other local ordinance, policy, or regulation shall be the basis for the delay or denial of a building permit or a use permit" for an ADU. Section 66321(b) (3) and the March 2026 HCD Handbook further prohibit local actions rendering an ADU "infeasible or unusable." The proposed driveway approach is the only feasible vehicular access to the future ADU given corner-lot geometry and the cul-de-sac terminus at the property line; application of L-2's two-approach standard to preclude this access would not survive preemption analysis. Constraints, Operational Need, and Minimal Impact: The two-driveway-per-parcel constraint arises from the city-directed lot merger administered without disclosure of its consequence on the Recorded Easement. The 30-foot recorded easement strip remains the only feasible vehicular access location on the merged parcel. The proposed approach complies with standard City design specifications, does not obstruct pedestrian travel or utilities, and falls entirely outside the corner visibility triangle.

L-6 Finding Requested: The Planning Commission finds that Item 5 (Curb Cut Approach / Driveway Approach Serving the Future ADU) will not be a detriment to the health, safety, and welfare of the public, and the waiver of Council Policy L-6 is granted.

Page 6 of 9L-6 WAIVER LETTER — 6 ITEMS + PART III — DRAFT FOR REVIEW

Item 6 — Metal Service / ADU Gate (PROW) Residential Security Entry Gate with Lighting and Cameras Description: Metal service / ADU gate at the SW Birch Street cul-de-sac terminus, in the PROW, serving as the controlled entrance to the future ADU. Designed as a wrought-iron / open-grillwork structure with at least forty percent (40%) of the gate face open. Integrated with a residential security entry system, security lighting, and security cameras consistent with the Connect Newport Beach infrastructure described in Item 2. Anticipated to exceed the standard 3.5-foot front-setback fence height. L-6 Basis: Structural encroachment exceeding 1 ft into the PROW or 3 ft in height (L-6, § A); Lighting (L-6, § E). The Recorded Easement described in Item 5 above (recorded 8/5/2021) expressly contemplated access control improvements appurtenant to the access easement use. Front-Setback Height Exception and Fire-Apparatus Compliance: The proposed gate qualifies for the front-setback fence-height exception under NBMC § 20.30.040(3)(b)(i) wrought-iron design with at least 40% of the gate face open. The gate is set back at least thirty (30) feet from the SW Birch Street roadway (CFC Appendix D), provides at least twenty (20) feet clear width in the open position, and is equipped with a Knox-approved emergency override per CFC § 503.6. The gate is therefore a fire-apparatus-supportive improvement, not fire-apparatus-impeding. Crime Prevention, Operational Need, and Minimal Impact: The gate is a primary crime-prevention improvement complementing Items 2 (Cameras) and 3 (Fencing) at one of the main entrances into Santa Ana Heights (see Part I). Controlled access manages occupant, guest, delivery, and service-provider entry to the ADU; integrated lighting provides PROW illumination; integrated cameras extend NBPD-coordinated coverage to the cul-de-sac terminus. The 30-foot setback stores vehicles on private property rather than queuing in the roadway. The 40%-open wrought-iron design preserves sightlines into the cul-de-sac for both pedestrians and cameras.

L-6 Finding Requested: The Planning Commission finds that Item 6 (Metal Service / ADU Gate with Integrated Security Entry System, Lighting, and Cameras) will not be a detriment to the health, safety, and welfare of the public, and the waiver of Council Policy L-6 is granted.

Part III — General Private Encroachments (Direct Public Works Approval).

The following additional items are included in the accompanying Encroachment Permit Application. Each item encroaches one (1) foot or less into the public right-of-way and does not exceed three (3) feet in height. Under Council Policy L-6, these items fall within the category of "General private encroachments that require an encroachment permit" (L-6, § F) and qualify for administrative approval by the Public Works Department. No Planning Commission waiver is required for these items; they are listed here for completeness so that the entire encroachment scope on this property is captured in a single unified application:

- Bollards — four (4) total in front of the Transformer / Generator, in PROW; ~2" to ~1 ft encroachment.

Page 7 of 9L-6 WAIVER LETTER — 6 ITEMS + PART III — DRAFT FOR REVIEW

- Decorative Driveway Tile — two (2) driveways; ~3" to ~1 ft in PROW.
- Boulders on Birch — three (3) total; ~2" to ~1 ft in PROW.
- Landscape Security Uplights — recessed in-ground lighting; ~4" to ~11" in PROW.

- Mesa Electrical Underground Conduit / Wiring — from landscape lighting in PROW to main dwelling, below grade; ~4" to ~11".

The Public Works Department is respectfully requested to administratively approve the general private encroachment items above without Planning Commission waiver, in accordance with the categorical treatment under Council Policy L-6, § F. Conclusion and Requested Action

Each of the six items in Part II is supported by item-specific findings under L-6, § C.1.a establishing that the encroachment will not be a detriment to the health, safety, and welfare of the public. The owner has voluntarily reduced the PROW footprint where possible (relocating the third security camera post to private property; extending the trash pad onto private property and removing the bin from the PROW). The general private encroachment items in Part III qualify for direct Public Works Department approval without Planning Commission waiver.

The Planning Commission is respectfully requested to:

- Grant the waiver of City Council Policy L-6 as to Items 1 through 6 above; and
- Approve, or conditionally approve, the accompanying Encroachment Permit Application (which includes the Part III general private encroachment items for administrative Public Works approval).

Thank you for your consideration. On a final note, this office reserves the right on behalf of the Applicant to supplement any issues and/or property rights that may arise. This office respectfully submits this formal request for a waiver of City Council Policy L-6, without waiving Applicant's right to contest and/or determine if the cul-de-sac located at 20462 SW Birch Street, Newport Beach and pursuant to the terms and condition of the Final Order of Condemnation filed on May 14th, 2003 in Orange County Superior Court in County of Orange v. Guity-Mehr et al Case No. 76-53-26 and recorded at the County of Orange Recorder's Office dated 5/22/2003 document number 2003-0000592265, which provides certain requirements to be completed in order for this sector to qualify for public use — and that Applicant may have certain reversionary property rights and specifically pertaining to the Cul-de-sac at 20462 SWE Birch Street, Newport Beach. In addition to any court remedy rendered by the Orange County Superior Court in case #30-2026-01557138- CU-EK-CXC. Nevertheless, in the spirit of good faith and cooperation, Applicant seeks to apply for above six (6) residential encroachment items and auxiliary requests described herein in the furtherance to expedite the approval of the occupancy permit for the residence located at 20462 SW Birch Street, Newport Beach, California.

Respectfully submitted,
/s/ Dictated But Not Read
Leon Alexander, Esq.
Briggs Alexander, APLC

cc: Richard Moriarty, Applicant
Jeffrey Weber, Esq.
Sara Oliver

Enclosures (filed concurrently with this letter):

- EP Worksheet for Encroachment Permit (City of Newport Beach, Public Works Department)
- Fully Dimensional Site Plan to Scale (PC As-Built drawing — Brandon Architects)

Page 8 of 9L-6 WAIVER LETTER — 6 ITEMS + PART III — DRAFT FOR REVIEW

- Copy of the current Grant Deed
- Mailing Label for Public Notice (per L-6, § C.2)
- Application Fee — \$4,594
- Photo Exhibit — Commercial Dumpsters and Trash Collection Pads in the PROW, Neighborhood Surrounding 20462 SW Birch Street (Updated 6/2/26)
- Declaration of Easements, Restrictions and Covenants Running with the Land (executed 8/3/2021; recorded 8/5/2021)
- Lot Line Adjustment / Lot Merger LM 2022-022 (approved and signed by the City Engineer on 8/27/2024)
- September 18, 2020 address-assignment letter from Newport Beach Senior Planner Makana Nova