



CITY OF NEWPORT BEACH PLANNING COMMISSION STAFF REPORT

September 8, 2022
Agenda Item No. 2

SUBJECT: Gonterman Encroachment (PA2022-127)
▪ Encroachment Permit No. N2022-0147

SITE LOCATION: 2304 Cliff Drive

APPLICANT: Jeff Van Voorhis, Brandon Architects

OWNER: Jason Gonterman

PLANNER: David Keely, Senior Civil Engineer
949-644-3349, dkeely@newportbeachca.gov

PROJECT SUMMARY

A request to waive City Council Policy L-6 for proposed private improvements consisting of the installation of stairs, handrails, retaining walls, and planters that encroach up to eight (8) feet-five (5) inches into the 80-foot-wide Cliff Drive public right-of-way. The Cliff Drive parkway is approximately 12 feet from face of curb to the property line. City Council Policy L-6 ("Encroachments in Public Rights-of-Way") does not allow the proposed stairs, handrails, retaining walls and planters since private structures are limited to a one (1)-foot projection into the right-of-way and the height of encroachments are limited to three (3) feet from the top of curb elevation.

RECOMMENDATION

- 1) Find the project exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 Class 3 (New Construction or Conversion of Small Structures), because it has no significant effect on the environment;
- 2) Waive City Council Policy L-6, *Encroachments in Public Rights-of-Way*, for non-compliant private improvements consisting of stairs, handrails, retaining walls, and planters that encroach into the Cliff Drive public right-of-way, contingent upon all conditions of the Encroachment Permit process being met (Attachment No. PC 1); and
- 3) Adopt Resolution No. PC2022-021 waiving City Council Policy L-6 and approving Encroachment Permit No. N2022-0147 (Attachment No. PC 2).

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INTRODUCTION

The property owner of 2304 Cliff Drive ("Owners") requests a waiver of City Council Policy L-6 for proposed non-compliant private improvements within the Cliff Drive public right-of-way.

Included in this staff report are site photos, Owner letter, plan check approved site plan, and proposed new site plan (Attachment Nos. PC 3, 4, 5 and 6).

DISCUSSION

City Council Policy L-6, *Encroachments in Public Rights-of-Way*, explains and describes how the public rights-of-way are to be reserved for public use or open space; and that the rights of the public, present and future, are not to be diminished by the retention of private improvements within the public rights-of-way. The Policy specifies allowable and prohibited encroachments and describes the required permits and/or encroachment agreements.

Private encroachments that are prohibited without a waiver of Policy L-6 include "... any surfacing other than standard or colored/ textured concrete or flat stone/ brick/ pavers installed at grade". Additionally, Policy L-6 prohibits "...structural encroachments including, but not limited to, fences, walls, patios, raised planters, etc., which encroach in excess of one (1)-foot into the public rights-of-way or exceeds three (3)-feet in height...". The Owner requests a waiver of this policy for proposed non-compliant private improvements consisting of stairs, handrails, retaining walls and planters that encroach up to eight (8) feet-five (5) inches into the Cliff Drive public right-of-way.

A new single-family home is currently being constructed at 2304 Cliff Drive. The approved plans for Plan Check 1025-2021, show the existing wall within the public right-of-way to be removed and a new retaining wall to be constructed on the private side of the property line along Cliff Drive (Attachment No. PC 5) in compliance with City Council Policy L-6. The Owners are requesting to relocate the proposed stairs, handrails, retaining wall, and planters to the back of the new public sidewalk consistent with the adjacent residential properties. The proposed stairs, handrails, retaining walls and planters will encroach up to six (6) feet into the Cliff Drive right-of-way and all structures are a maximum of 7.35 feet above the adjacent top of curb elevation. The side property line walls would encroach up to eight (8) feet five (5) inches into the Cliff Drive public right-of-way, which is consistent with the approved plans.

The Cliff Drive parkway within the public right-of-way is approximately 12 feet from face of curb to the property line and under existing conditions the parkway elevation changes approximately 10-feet between the top of curb and property line. A new five (5)-foot wide sidewalk will be installed along the Cliff Drive frontage. The stairs, handrails, retaining walls and planters are complementary to the area; several residences within the Cliff

Drive right-of-way have similar private encroachments. Some of said encroachments in the area are permitted through an encroachment permit and agreement, whereas others have been constructed without approval or permit. There are no existing City utilities within the encroachment area.

The Public Works Director has reviewed this request and supports this policy waiver to allow the installation of stairs, handrails, retaining walls and planters within the public right-of-way. In staff's review of the site conditions, the improvements do not hinder the use of the public right-of-way. The private improvements are not a detriment to the health, safety, and welfare of the public. The private improvements do not diminish the rights of the public, present and future at this location provided an encroachment agreement between the City and the Owners is executed. The agreement would ensure the removal of the private improvements should the City need the area for a future public improvement.

Summary

Staff supports a waiver of this Policy to allow the installation of stairs, handrails, retaining walls, and planters within the Cliff Drive public right-of-way.

Should the Planning Commission elect to approve the waiver for the installation and retention of the private improvements and appurtenances, staff recommends the requirement of an encroachment agreement consistent with Policy L-6. An encroachment agreement would allow the improvements as requested, and transfer any liability associated with the private improvements to the Owner. Additionally, if the need for public improvements should arise in the future, the Owners would agree to remove all encroachments at no cost to the City. The encroachment agreement will be recorded onto the property's title, provides important notice for the current and future property owner, and protects the City.

Environmental Review

This project is categorically exempt from the California Environmental Quality Act Guidelines pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) because it has no potential to have a significant effect on the environment. Class 3 exempts the construction of accessory (appurtenant) structures associated with a single-family residence including garages, carports, patios, swimming pools, and fences. The proposed improvements (stairs, handrails, retaining walls and planters) are consistent with structures allowed under this exemption. There are no known exceptions listed in CEQA Guidelines Section 15300.2 that would invalidate the use of these exemptions.

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 applicant 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:



David Keely
Senior Civil Engineer

Submitted by:



Jim Campbell
Deputy Community Development Director

ATTACHMENTS

- PC 1 City Council Policy L-6 (Encroachments in Public Right-of-Way)
- PC 2 Draft Resolution with Findings and Conditions
- PC 3 Site Photos
- PC 4 Owner Letter
- PC 5 Plan Check Approved Site Plan
- PC 6 Proposed New Site Plan

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Attachment No. PC 1

City Council Policy L-6 (Encroachments in
Public Rights-of-way)

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ENCROACHMENTS IN PUBLIC RIGHTS-OF-WAY

It is the general policy of the City that the public rights-of-way shall be reserved for public use or open space; and that the rights of the public, present and future, shall not be diminished by the installation of private improvements within the public rights-of-way. For any project located within the Coastal Zone also look to Newport Beach Municipal Code Title 21, or any successor title.

Categories of encroachments and improvements are listed below, together with the permit requirement for each category.

Permit and/or encroachment agreement required.

- A. Except as expressly set forth herein, permits and/or encroachment agreements are required for encroachments into the public rights-of-way.
- B. Application for any permit, as required by this policy, shall be filed with the Public Works Department on a form to be provided by the City and shall show the proposed planting or work and the nature thereof. Drawings for encroachment permits requiring Planning Commission review shall be prepared to scale. Plan and elevation drawings shall accurately depict location, height, and extent of the proposed encroachments.
- C. If the application is for a permit required under *private encroachments that are prohibited without a waiver*, it shall be submitted to the Planning Commission for consideration.
 - 1. The Planning Commission is designated to grant or deny a waiver and approve, conditionally approve, or deny applications for encroachment permits, subject to the findings in subsection (a), of this Section.
 - a. The Planning Commission may grant a waiver and may approve or conditionally approve an application for an encroachment permit if the Planning Commission finds the encroachment will not be a detriment to the health, safety, and welfare of the public.
 - b. If an application for a private encroachment that is prohibited without a waiver is part of a larger approval requiring City Council approval, then the Planning Commission shall make a recommendation to the City Council regarding whether this policy should be waived and the permit granted.

- c. The Planning Commission shall have discretion to refer any request for a waiver or encroachment permit before the Planning Commission to the City Council for consideration.
 - d. Any decision made by the Planning Commission may be appealed or called for review in accordance with Chapter 20.64.
2. Notice of the Planning Commission's review of a request to waive a provision of this policy shall be:
- a. Mailed to property owners within 300 feet of the project site at least ten (10) calendar days in advance of a meeting. The notice shall contain the address of the project site, the applicant's name, a brief description of the improvements, date, time, and place of the meeting, and a statement informing the public that they have the ability to provide comments to the Planning Commission; and
 - b. Posted on or close to the subject property in a prominent location at least ten (10) calendar days before the scheduled hearing by the Planning Commission in the following manner:
 - i. One or more sign(s) shall be posted as determined by the Public Works Director.
 - ii. The size and location of the sign(s) shall be as determined by the Public Works Director.
 - iii. The applicant for the encroachment permit/waiver shall be responsible for maintaining the sign(s) in a satisfactory condition.
 - iv. The applicant for the encroachment permit/waiver shall remove all sign(s) at the end of the appeal period.

Private encroachments that are prohibited without a waiver and approval.

- A. All structural encroachments including, but not limited to, fences, walls, patios, raised planters, landscaping, etc., which encroach in excess of one (1)-foot into the public right-of-way, or exceed three (3)-feet in height, measured from the top of curb elevation/or from sidewalk elevation where sidewalk exists.
- B. Driveway approaches not conforming to Council Policy L-2.
- C. Modifications to original design concepts approved by the City.
- D. Private signs except as provided for in the Building Code.
- E. Lighting.
- F. Parkway walkway surfacing of loose rock, gravel, or any surfacing other than standard or colored/textured concrete or flat stone/brick/pavers installed at grade.
- G. Private dwellings and appendages including raised patios decks and bay windows, except as provided for in this section and the Building Code.
- H. Pay telephones and private mail carriers drop boxes.

General private encroachments that require an encroachment permit and if applicable, an encroachment agreement from the Public Works Department.

- A. Drive approaches conforming to Council Policy L-2.
- B. Standard sidewalks.
- C. Carriage walks (not to exceed twenty-five percent (25%) of the parkway area).
- D. Parkway surfacing (standard or colored/textured concrete or flat stone/brick) installed at grade (not to exceed twenty-five percent (25%) of the parkway area).
- E. CATV and public utility facilities.

- F. Structural encroachments including, but not limited to, fences, walls, patios, raised planters, etc., which encroach one (1) foot or less and do not exceed three (3) feet in height within the public right-of-way. If, however, in the opinion of the Public Works Department, the nature or location of this type of encroachment is such that Planning Commission review is warranted, the Department may forward the item to the Planning Commission for action in accordance with the procedures set forth for granting waivers for private encroachments that would otherwise be prohibited.
- G. Mailboxes, when required by the U.S. Postal Service. Mailboxes shall be installed per U.S. Postal Service requirements. Mailbox base construction length and width shall not exceed the length of the mailbox, or twenty-four (24) inches, whichever is less.
- H. The placement of utility pedestals shall be at the back of sidewalks on arterials and major pedestrian thoroughfares without zero setbacks. There shall be at least four (4) feet of clear sidewalk width and/or pedestals shall be placed in the parkway outside of walk area.
- I. When connecting to or relocating public utilities.
- J. Artificial Turf (permeable) up to 100% of the required parkway landscape area. Artificial turf grass shall be installed in accordance to manufacturers' recommendations. Material must be securely anchored and maintained so as to eliminate disrepair, fading, tearing, wrinkling and or edge curling or any other type of material performance. Material shall be replaced prior to the aforementioned conditions occur. Prohibited application: Indoor and outdoor carpet, green in color or otherwise. The Director of Public Works shall from time to time update the standards for this application. See Artificial Turf Material and Installation Standards.
- K. Tree and shrub planting and removal.
- L. Median landscaping.

If, in the opinion of the Public Works Departments, the approved planting is not being maintained for view, safety clearance and sight distance, Newport Beach Municipal Code Chapter 10.50, "Public Nuisance Abatement," or any successor statute, shall be used to remove offending plant material.

The permit applicant shall reimburse the City of Newport Beach for the value of any City tree removed by this process. This value shall be determined by the City Arborist using the International Society of Arboriculture's "Guide for Plant Appraisal" or a minimum forty-eight (48) inch box tree replacement value.

Area specific private encroachments requiring an encroachment permit from the Public Works Department and subject to the execution of an encroachment agreement for non-standard improvements.

- A. Structural encroachments which do not exceed three (3) feet in height measured from the top of curb elevation/or from sidewalk elevation where sidewalk exists, including, but not limited to fences, walls, and raised planters in public rights-of-way in areas that are more than eight (8) feet behind the face of curbs on the following streets:
 - 1. Santa Ana Avenue from Cliff Drive to Fifteenth Street.
- B. Permitted Structural Encroachments on Balboa Island along South Bay Front, North Bay Front, Grand Canal, and East Bayfront are as follows:
 - 1. Planters that do not exceed one (1) foot in height may be installed between the back of existing sidewalk and property line, planted with ground cover and shrubs not to exceed two (2) feet in height measured from sidewalk elevation;
 - 2. Fences and walls with a minimum setback of two (2) feet six (6) inches from back of sidewalk.
 - a. For patios constructed at grade elevation to one (1) foot above sidewalk grade elevation, fences and walls may be three (3) feet high above sidewalk grade.
 - b. For patios constructed greater than one (1) foot above sidewalk grade elevation, fences and walls must be set back a minimum of three (3) feet from back of sidewalk, not exceed two (2) feet six (6) inches in height above the patio, have at least forty percent (40%) visibility through them, and not to exceed four (4) feet in height above existing public sidewalk grade.

3. Patios with a minimum setback of two (2) feet six (6) inches from the back of sidewalk.
 - a. Raised Patios are permitted provided they have a maximum height of two (2) feet six (6) inches above sidewalk grade, are set back a minimum of two (2) feet six (6) inches from back of sidewalk, and provided all bulkhead deadman and tiebacks supporting the Bay front bulkhead are replaced "If required by the Public Works Department" in conformance with the requirements of the Public Works Department; Stairs located a minimum of two (2) feet six (6) inches from back of sidewalk.
- C. Structural encroachments which do not exceed three (3) feet in height, including, but not limited to fences, walls, patios, and raised planters in public rights-of-ways in areas that are five (5) feet behind the face of curb on the following streets:
 1. Southerly side of West Bay Avenue between 8th Street and 15th Street.
- D. Non-standard encroachments, including, but not limited to fences, walls, and raised planters within City easements as approved by the Public Works Director.
- E. Buena Vista Boulevard – Bay Avenue to Edgewater Avenue. The street right-of-way in this reach is ten (10) feet wide, with private property on both sides of the public way. Improvements allowed at this location shall consist of the following:
 1. A minimum six (6) foot wide public sidewalk along the inland side of the right-of-way line maintained by the City.
 2. Landscaping under twenty-four (24) inches in height and park-like improvements in the remaining portion of the right-of-way shall be allowed if installed and maintained by the adjoining property owners. Private improvements such as walls, fences, gates, signs and living areas such as cabanas and other roofed structures shall not be allowed.
 3. Access to existing private piers and floats shall be allowed where a harbor permit has been granted, but such access structures shall not be expanded beyond the original permit dimensions.
- F. Edgewater Avenue – Buena Vista Boulevard to Island Avenue. The street right-of-way in this reach is forty (40) feet wide with private property on the inland side. The bay side is improved with a privately constructed bulkhead on public property. Improvements allowed at this location shall consist of the following:

1. A minimum six (6) foot wide public sidewalk along the inland side of the right-of-way line maintained by the City.
 2. Landscaping under twenty (24) inches in height and park-like improvements in the remaining portion of the right-of-way (between the sidewalk and the bulkhead) shall be allowed if installed and maintained by the adjoining property owner. Private improvements such as fences, gates, signs, and living areas shall not be allowed.
 3. Access to private piers and floats shall be allowed where a harbor permit has been granted, but such access structures shall not be expanded beyond the permit dimensions.
- G. Edgewater Avenue – Island Avenue to Alvarado Street. The street right-of-way in this reach is forty (40) feet wide with private property on the inland side. The bay side is improved with a sloping beach leading to the waters of the bay. Improvements allowed at this location shall consist of the following:
1. A minimum six (6) foot wide public sidewalk along the inland side of the right-of-way maintained by the City.
 2. The remaining portion of the right-of-way shall be reserved as a public beach and no private improvements, impediments or boat storage shall be allowed except for access to existing piers and floats where a harbor or a mooring permit has been granted, but such access structures shall not be expanded beyond the original permit dimensions. Any existing permits to encroach on the right-of-way shall be rescinded
- H. Edgewater Avenue – Alvarado Street to Fernando Street. The street right-of-way in this reach is fifty (50) feet wide. The bay side is improved with a sloping beach leading to the waters of the bay. The private lots bayward of the public right-of-way are under water and within State Tidelands. Improvements allowed at this location shall consist of the following:
1. A minimum six (6) foot wide public sidewalk along the inland side of the right-of-way maintained by the City.
 2. The remaining portion of the right-of-way shall be reserved as a public beach and no private improvements, impediments or boat storage shall be allowed except for access to existing piers and floats where a harbor permit has been granted, but such access structures shall not be expanded beyond the original permit dimensions.
- I. Bay Front Street Ends

1. Bay front street ends at beach level may contain two (2) foot wide planting areas bounded by redwood or concrete strips and containing hedges no more than two (2) feet in height above the adjacent surface. The planting areas may be installed:
 - a. At each side of the prolongation of the street and extending no more than fifteen (15) feet from the end of the paved street.
 - b. At the end of the paved street, except that a twelve (12) foot wide opening must be left for City emergency and maintenance equipment, and pedestrians to enter the beach area.
2. Bay front street ends where tidal flow prevents standard installation may be landscaped, subject to the prior approval by the City of specific plans prepared by the applicant. Access to beach areas shall be provided for in any such specific plans.
3. Improvements shall be installed at the expense of the adjacent property owners.
4. Landscape maintenance and watering shall be provided by the adjacent property owners to the satisfaction of the City. A sprinkler system connected to the adjacent property shall be installed in each planter

J. Unimproved Ocean Front Street Ends

1. Improvements shall be installed at the expense of the adjacent property owners.
2. Landscape maintenance and watering shall be provided by the adjacent property owners to the satisfaction of the City. A sprinkler system connected to the adjacent property shall be installed in each planter.
3. All work shall be installed to grades established by the Public Works Department.
4. A four (4) foot wide sidewalk shall be provided on each side of the street right-of-way adjacent to the property line.
5. A minimum of twelve (12) feet of unobstructed access to the beach in the center of the right-of-way shall be surfaced with brick, asphalt, concrete or artificial turf, or an equivalent surfacing approved by the City.

- a. Portland Cement Concrete. A minimum six (6) inches over native compacted material.
 - b. Asphalt Concrete. A minimum two (2) feet six (6) inches of asphalt concrete over a six (6) inch thick aggregate.
 - c. Brick. Brick installed over four inches of imported aggregate base. A dry mix of one-to-one cement and clean plaster sand to be swept into the one-quarter (1/4) to one-half (1/2) inch space between bricks. The dry mix shall be moistened with a fine spray of water after it is in place.
6. Planters five (5) feet wide shall be provided between the side and the center access along a portion of each side of the street with a heavy emphasis on drought resistant plant materials. Plant materials shall be installed to City specifications. A six (6) inch to eighteen (18) inch high lip of concrete, brick or rock may be installed as part of the planter.
 7. Special provisions shall be made in the design when garage access is required from street ends.
 8. Where unusually large quantities of sand exist in a street end area, the City shall assist the adjacent owners by moving the sand to an area determined by the City.

K. Unimproved Alleys that End at the Ocean Front

1. Improvements shall be installed at the expense of the adjacent property owner.
2. All work shall be installed to grades established by the Public Works Department.
3. Landscaping of potted plants shall be permitted in the portion of the alley right-of-way that terminates at the ocean front sidewalk. A six (6) foot wide inviting passageway shall be maintained for pedestrian access.
4. Where vehicles or pedestrians will travel, alleys may be surfaced with brick, asphalt, concrete or equivalent surfacing.
5. Improvements shall extend from the nearest street of alley improvement to the northerly line of the ocean front.

If, in the opinion of the Public Works Department, the nature or location of this type of encroachment is such that Planning Commission review is warranted, the Department may forward the application to the Planning Commission for original action in accordance with the procedures set forth for granting waivers for private encroachments that would otherwise be prohibited.

The City Manager is authorized to execute, on behalf of the City, agreements for non-standard improvements, which are entered into pursuant to this section or other authorization.

Private encroachments not requiring a permit:

- A. Parkway lawn, ground cover and drought tolerant planting. Parkway areas with the exception of carriage walks/parkway paving/artificial turf shall be entirely planted with lawn, ground cover and/or drought tolerant planting.
- B. Parkway sprinkling systems.
- C. Use of public streets and projections over public property, which are covered by the latest adopted edition of the California Code of Regulations Title 24 under a valid building permit issued by the City.

Encroachments on public sidewalks

Newport Beach sidewalks are a desirable place to walk, stroll and jog and it is, therefore, the policy of the City that public sidewalks are to provide unobstructed passage whenever possible.

Sidewalks shall be reserved for public use and the rights of the public shall not be diminished by the installation of benches, planters, bicycle racks, etc., by private entities nor by the installation of facilities by public utilities or other public agencies. It is the policy of the City that encroachments on public sidewalks shall be subject to the following:

- A. General
 - 1. Permitted encroachments shall not reduce the sidewalk width available for normal pedestrian movement.
 - 2. Permitted encroachments may be located in areas between tree wells or other existing improvements as long as they do not interfere with pedestrian travel.

3. Permitted encroachments shall be located at least eighteen (18) inches from the curb face. In areas where vehicles do not park or otherwise extend over the sidewalk, this setback may be reduced.
4. Permitted encroachments shall not be located within thirty-six (36) inches of a parking meter or street light, nor shall they be located where they will interfere with the normal use of other facilities.
5. Encroachments shall not block access from parked cars.
6. They shall not be located within ten (10) feet of a crosswalk, fire hydrant or driveway.
7. Encroachments may not be chained or otherwise anchored to any tree, streetlight, parking meter or other property.
8. Applicant shall pay all costs for City and/or the California Department of Transportation ("CalTrans") permit processing where necessary.
9. Applicant shall pay all costs associated with the installation and maintenance of the encroachments by the City or private installer.

B. Public Benches

1. When applying the above requirements to benches, allowance shall be made for the space required for a person sitting on the bench.
2. Benches to be installed in an area where there is a theme or bench style shall conform to that theme or style.

C. Public Bicycle Racks

1. Bicycle racks shall be located to allow bicycles to extend five (5) feet from the center of the rack and comply with the above requirements.

History

(1969, 08/25) - L-6 - Adopted (Private Encroachments in Public Rights-of-Way)
 (1969, 08/25) - I-12 - Adopted (Ocean Front Street-End Improvements)
 (1970, 03/09) - L-6 - Reaffirmed

(1970, 03/09) - I-12 - Amended
 (1971, 02/08) - L-6 - Reaffirmed
 (1972, 02/14) - L-6 - Amended
 (1972, 02/14) - I-12 - Reaffirmed
 (1973, 12/10) - L-6 - Reaffirmed
 (1973, 12/10) - I-12 - Amended
 (1974, 11/11) - L-6 - Reaffirmed
 (1974, 11/11) - I-12 - Amended
 (1975, 08/11) - L-6 - Amended
 (1977, 03/14) - L-7 - Adopted (Encroachments and Bay Access on Buena Vista Blvd. -
 Edgewater Ave. Between bay Ave. and Fernando St.)
 (1977, 09/12) - L-7 - Reaffirmed
 (1981, 02/09) - L-6 - Amended
 (1981, 02/09) - I-12 - Amended
 (1981, 08/24) - L-10 - Adopted - incorporating I-12 & L-10
 (1981, 11/23) - L-6 - Amended
 (1982, 11/08) - L-10 - Amended
 (1986, 10/27) - L-6 - Amended
 (1987, 01/26) - L-6 - Amended
 (1987, 07/13) - L-6 - Amended
 (1989, 02/13) - L-6 - Amended
 (1989, 08/14) - L-6 - Amended
 (1989, 11/27) - L-6 - Amended
 (1989, 11/27) - L-10 - Amended
 (1991, 12/09) - L-6 - Amended
 (1992, 12/14) - L-6 - Amended
 (1993, 01/11) - L-18 - Adopted (Encroachments on Public Sidewalks)
 (1993, 07/12) - L-6 - Amended
 (1994, 01/24) - L-6 - Amended
 (1994, 01/24) - L-7 - Reaffirmed
 (1994, 01/24) - L-8 - Amended - changed to L-8
 (1994, 01/24) - L-15 - Amended - changed to L-15
 (1994, 05/09) - L-6 - Amended
 (1995, 02/27) - L-6 - Amended
 (1996, 02/26) - L-6 - Amended
 (1996, 02/26) - L-15 - Amended
 (2001, 05/08) - L-6 - Amended
 (2001, 05/08) - L-7 - Amended
 (2001, 05/08) - L-8 - Amended
 (2015, 01/27) - L-6 - Amended
 (2018, 08/14) - L-6 - Amended (incorporating L-6, L-7, L-8 & L-15)
 (2018, 11/27) - L-6 - Amended

Attachment No. PC 2

Draft Resolution with Findings and
Conditions

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RESOLUTION NO. PC2022-021

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH, CALIFORNIA, WAIVING CITY COUNCIL POLICY L-6 (ENCROACHMENTS IN PUBLIC RIGHTS-OF-WAY) AND APPROVING ENCROACHMENT PERMIT NO. N2022-0147 TO ALLOW CONSTRUCTION OF IMPROVEMENTS WITHIN THE PUBLIC RIGHT-OF-WAY FOR THE PROPERTY LOCATED AT 2304 CLIFF DRIVE (PA2022-127)

THE PLANNING COMMISSION OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Jason Gonterman, ("Owner"), with respect to property located at 2304 Cliff Drive, Newport Beach, California and legally described as Lot 5 in Block 4 of Tract 919, as shown on a map recorded in Book 29, Pages 31 to 34 inclusively of Miscellaneous Maps in the office of the County Recorder of Orange County ("Property"), requesting approval of an encroachment permit.
2. The Owner requests approval for private improvements within the Cliff Drive public right-of-way consisting of stairs, handrails, retaining walls and planters encroaching up to eight (8) feet five (5) inches into the 80-foot-wide Cliff Drive public right-of-way ("Project"). The Cliff Drive parkway is approximately twelve (12) feet from face of curb to the property line. City Council Policy L-6 ("Encroachments in Public Rights-Of-Way") ("Policy") prohibits the proposed stairs, handrails, retaining walls and planters since structures are limited to a one (1)-foot projection into the right-of-way and the height of encroachments are limited to three (3) feet from the top of curb elevation.
3. The requested approvals are not specifically provided for within City Council Policy L-6. Thus, the Project is prohibited under Section A (Private encroachments that are prohibited without a waiver and approval) of said policy. Due to this prohibition, the requested encroachments may only be approved upon the waiver of City Council Policy L-6 with approval of the encroachment permit by Planning Commission.
4. The Property is not located within the coastal zone; therefore, a coastal development permit is not required.
5. A public meeting was held on September 8, 2022, in the City Council Chambers located at 100 Civic Center Drive, Newport Beach, California. A notice of time, place and purpose of the public hearing was given in accordance with Government Code Section 54950 *et seq.* ("Ralph M. Brown Act") and City Council Policy L-6. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this public hearing.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This Project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Class 3 (New Construction or Conversion of Small Structures) exemption includes construction of a single-family residence and related accessory structures in a residential zone. The proposed improvements, which consist of stairs, handrails, retaining walls, and planters within the public right-of-way, are accessory to the existing single-family home.
3. The exceptions to this categorical exemption under Section 15300.2 are not applicable. The Project location does not impact an environmental resource of hazardous or critical concern, does not result in cumulative impacts, does not have a significant effect on the environment due to unusual circumstances, does not damage scenic resources within a state scenic highway, is not a hazardous waste site, and is not identified as a historical resource.

SECTION 3. REQUIRED FINDINGS.

In accordance with City Council Policy L-6 (Encroachments in Public Rights-of-Way), the following findings and facts in support of such findings are set forth:

Finding:

- A. *The proposed private improvements will not be a detriment to the health, safety, and welfare of the public.*

Facts in Support of Finding:

1. The Cliff Drive parkway within the public right-of-way is approximately twelve (12) feet from face of curb to the property line.
2. The Cliff Drive parkway elevation changes approximately ten (10) feet between the top of curb and property line.
3. The Project does not diminish the rights of the public, present and future, along the Cliff Drive right-of-way. The project will be installing a five (5) foot wide sidewalk along the Cliff Drive frontage.
4. The Project does not hinder the present or future use of the public right-of-way, including sidewalks, and there are no existing City utilities located within the encroachment area.

5. Approval would require the owners to enter into an Encroachment Agreement to allow the improvements as requested, and any liability associated with the private improvements would be transferred to the owners. Additionally, if the need for public improvements arises in the future, the owners shall remove all encroachments at no cost to the City.

Finding:

- B. The individual circumstances applicable to this application and the proposed encroachment are consistent with the public interest.*

Facts in Support of Finding:

1. The improvements appear complementary to the area; adjacent neighbors have similar private encroachments within the Cliff Drive right-of-way. Some of the adjacent encroachments are permitted through an encroachment permit and agreement, whereas others have been constructed without approval.
2. There are no existing City utilities within the encroachment area.

SECTION 4. DECISION.

NOW, THEREFORE, BE IT RESOLVED:

1. The Planning Commission of the City of Newport Beach finds this Project is categorically exempt from CEQA pursuant to Section 15303 under Class 3 (New Construction or Conversion of Small Structures) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential to have a significant effect on the environment.
2. The Planning Commission of the City of Newport Beach hereby waives City Council Policy L-6 and approves Encroachment Permit No. N2022-0147, subject to the conditions set forth in Exhibit "A," which is attached hereto and incorporated by reference.
3. This action shall become final and effective fourteen (14) days following the date this Resolution is adopted unless within such time an appeal or call for review is filed with the City Clerk in accordance with the provisions of Title 20 (Planning and Zoning), of the Newport Beach Municipal Code.

PASSED, APPROVED, AND ADOPTED THIS 8TH DAY OF SEPTEMBER 2022

AYES:

NOES:

ABSTAIN:

ABSENT:

BY: _____
Lauren Kleiman, Chairman

BY: _____
Mark Rosene, Secretary

EXHIBIT “A”**CONDITIONS OF APPROVAL****PUBLIC WORKS DEPARTMENT**

1. The Project shall be in substantial conformance with the approved site plan stamped and dated with the date of this approval.
2. The Project is subject to all applicable City ordinances, policies, and standards, unless specifically waived or modified by the conditions of approval.
3. The Owners shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use may be cause for revocation of this Encroachment Permit and any associated Encroachment Agreements.
4. The Owners shall enter into an Encroachment Agreement within one (1) calendar year upon receipt of approval, otherwise this approval shall automatically expire.
5. This Encroachment Permit allows stairs, handrails, retaining walls and planters to project eight (8) feet five (5) inches into the Cliff Drive public right-of-way with a waiver of City Council Policy L-6, Section A of “Private Encroachments that are Prohibited Without a Waiver and Approval”.
6. A new 5-foot wide sidewalk shall be installed along the Cliff Drive frontage.
7. If the need for public improvements arises in the future, Owners shall remove all encroachments at no cost to the City.
8. To the fullest extent permitted by law, Owners shall indemnify, defend and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs, and expenses (including without limitation, attorney’s fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City’s approval of the Gonterman Encroachment (PA2022-127) including, but not limited to, Encroachment Permit No. N2022-0147. This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys’ fees, and other expenses incurred in connection with such claim, action, causes of action, suit, or proceeding whether incurred by Owners, City, and/or the parties initiating or bringing such proceeding. The Owners shall indemnify the City for all of City’s costs, attorneys’ fees, and damages, which City incurs in enforcing the indemnification provisions set forth in this condition. The Owners shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

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Attachment No. PC 3

Site Photos

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Attachment No. PC 4

Applicant Letter



PC Review / L-6 Waiver Request

To: City of Newport Beach
Attention: Plan Checker
City of Newport Beach | Community Development Dept.
100 Civic Center Drive
Newport Beach, CA 92663
T: (949) 644.3292
E: daquino@newportbeachca.gov

From: Jeff Van Voorhis, AIA
C.C.: Gavin Frieauf
Brandon Architects, Inc.
151 Kalmus Drive, Suite G-1
Costa Mesa, CA 92626
T: (714) 754.4040 | Ext. 115
E: gavin@brandonarchitects.com

Planning Commission Review & L-6 Waiver Request

Plan Check No: **1025-2021**

Correction Date: **N/A**

Memo: **2304 Cliff Drive, Newport Beach CA 92663**

Dear City Staff,

The owners of 2304 Cliff are requesting a planning commission hearing and waiver to the L-6 encroachment policy to install retaining and landscape walls beyond their property line to integrate a city-required sidewalk expansion into the bluff. The encroachment will also include stairs down the bluff to access the property from Cliff Dr.

An ~18" retaining wall existed adjacent to the existing sidewalk but was required to be removed for the mandated sidewalk expansion. The new configuration of the stairs and the site walls are similar to many adjacent properties on cliff. Images of several properties on the same street are included in this letter. All wall locations and heights were previously reviewed during the First Check of the building plan check review and found to comply by the planning and public works departments. Please let us know if any further information is needed to schedule a time for a planning commission hearing.

Thank you,

Jeff Van Voorhis
Project Architect, AIA



2312 Cliff



2304 Cliff Dr.



2216 Cliff



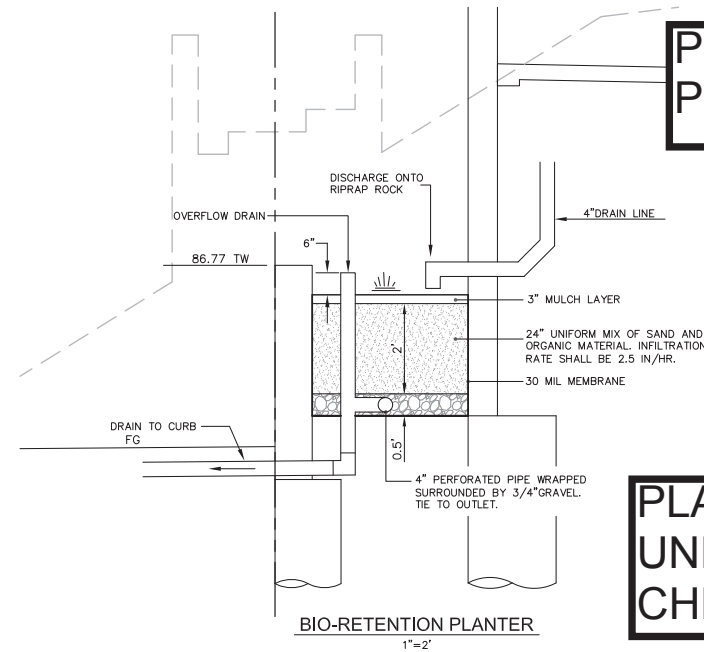
2212 Cliff

Attachment No. PC 5

Plan Check Approved Site Plan

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- ① CONSTRUCT 6" MIN CONCRETE DRIVEWAY
- ② CONSTRUCT 4" CONCRETE HARDSCAPE.
- ③ INSTALL 4" FLAT GRATE DRAIN
- ④ INSTALL 4" ATRIUM GRATE DRAIN
- ⑤ INSTALL 4" PVC SDR 35 DRAIN LINE, S=0.01 MIN
- ⑥ INSTALL TRENCH DRAIN PER DETAIL SHEET C2
- ⑦ CONSTRUCT BIO-RETENTION PLANTER PER DETAIL SHEET C2.
- ⑧ INSTALL CURB DRAIN PER STD 184.
- ⑨ REMOVE EXIST WALLS, BRICK AND WALKS AND PLACE NEW SIDEWALK PER STD 180.




PLANS APPROVED
UNDER PLAN
CHECK 1025-2021

ABBREVIATIONS

ARCH	ARCHITECTURAL
A.C.	ASPHALT CONCRETE
BFF	BASEMENT FINISH PAD
BFP	BASEMENT FINISH PAD
B.S.P.	BY SEPARATE PERMIT
C.O.	CLEAN OUT
CONC	CONCRETE
DCG	DECOMPOSED GRANITE
D.O.	DOWNSPOUT
DWH	DRIVEWAY
EMW	ELECTRIC MANHOLE
EP	EDGE OF PAVEMENT
ESMT	EASEMENT
EXIST	EXISTING
FD	FOUND
FF	FINISH FLOOR
FG	FINISH GRADE
FF	FIRE HYDRANT
FL	FLOWLINE
FP	FINISH PAD
FS	FINISH SURFACE
GSB	GRADE BREAK
GFF	GARAGE FINISH FLOOR
GFP	GARAGE FINISH PAD
GM	GAS METER
HP	HANDHOLE
HP	HIGH POINT
IE	INVERT ELEVATION
I.P.	IRON PIPE
L&T	LEAD AND TACK
MH	MANHOLE
MON.	MONUMENT
NTG	NOTHING
ORG	ORIGINAL GROUND
P.A.	PLANTER AREA
PL	PULL BOX
PB	PROPERTY LINE
PROP	PROPOSED
P.U.E.	PUBLIC UTILITY EASEMENT
R/W	RIGHT OF WAY
S.D.W.K.	SIDEWALK
SMH	SEWER MANHOLE FOUND NOTHING
STLT.	STREET LIGHT
T.B.M.	TRIMMED BENCHMARK
TC	TOP OF CURB
TD	TOP OF DECK
TEL	TELEPHONE
TF	TOP OF FOOTING
TFN	TOP OF FENCE
TG	TOP OF GRATE
TC	TOP OF CONCRETE
TOS	TOP OF SLAB
TP	TOP OF PILASTER
TW	TOP OF WALL
W	WROUGHT IRON
WM	WATER METER



					ARCHITECT:	OWNER/DEVELOPER:	PREPARED BY:	<div><div><div>REGISTERED PROFESSIONAL ENGINEER</div><div>THOMAS M. RUIZ</div><div>NO. 58627</div><div>EXP. 12-31-22</div><div>CIVIL</div><div>STATE OF CALIFORNIA</div></div><div></div><div>THOMAS M. RUIZ</div><div>DATE 8/26/21</div></div>	SOILS ENGINEER/GEOLOGIST:	BENCHMARK:	LEGAL DESCRIPTION:	<div>PRECISE GRADING PLAN</div> <div>2304 CLIFF DRIVE</div> <div>NEWPORT BEACH, CALIFORNIA</div>	SHEET:
					BRANDON ALCHUTTS 151 KALMUS DR. SUITE G-1 COSTA MESA, CA 92626 (714) 754-4040	MR. JASON GONTERRAN 2043 WESTCLIFF DRIVE NEWPORT BEACH, CA	FORKERT ENGINEERING & SURVEYING, INC. 22311 BROOKHURST ST. STE 203 HUNTINGTON BEACH, CA 92646 (714) 963-0793 JN 10208		EGA CONSULTANTS, LLC 375-C MONTE VISTA AVENUE COSTA MESA, CALIFORNIA 92627 PH (949) 642-9309	BENCHMARK NO: NB5-14-70	LOT 5 IN BLOCK 4 OF TRACT 919, IN THE CITY OF NEWPORT BEACH		C2
3	8/26/21	REVISED PER PLAN CHECK		DRAWN: MJ					ELEVATION: 84.489 FEET (NAVD88)				
2	8/12/21	REVISED PER PLAN CHECK		CHK'D: TR					YEAR LEVELED 1992				
1	7/22/21	REVISED PER PLAN CHECK											
NO.	DATE	R E V I S I O N S		DATE: 5/3/21									

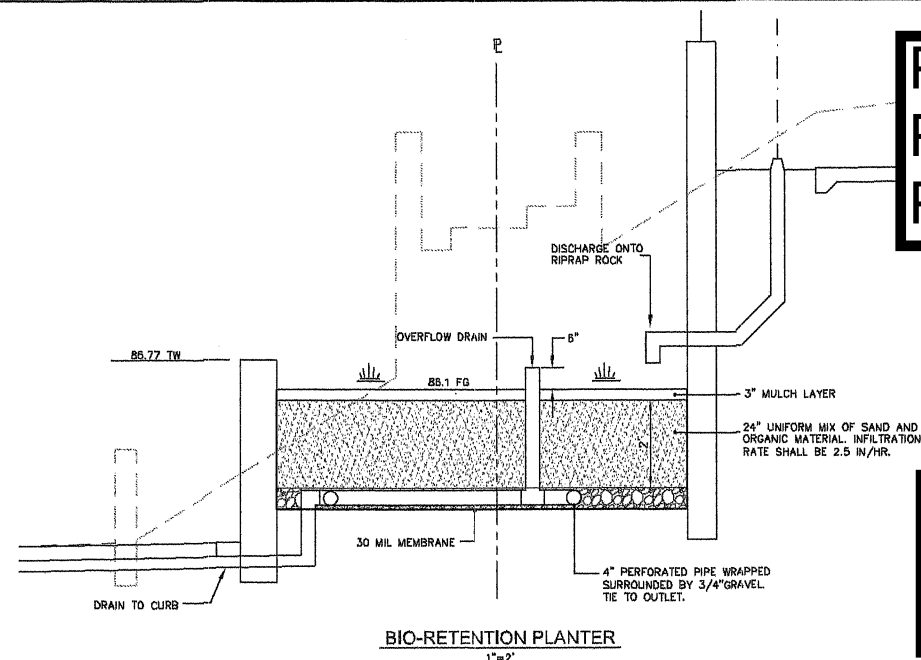
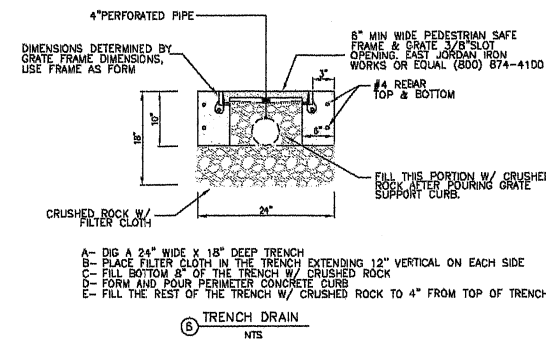
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Attachment No. PC 6

Proposed New Site Plan

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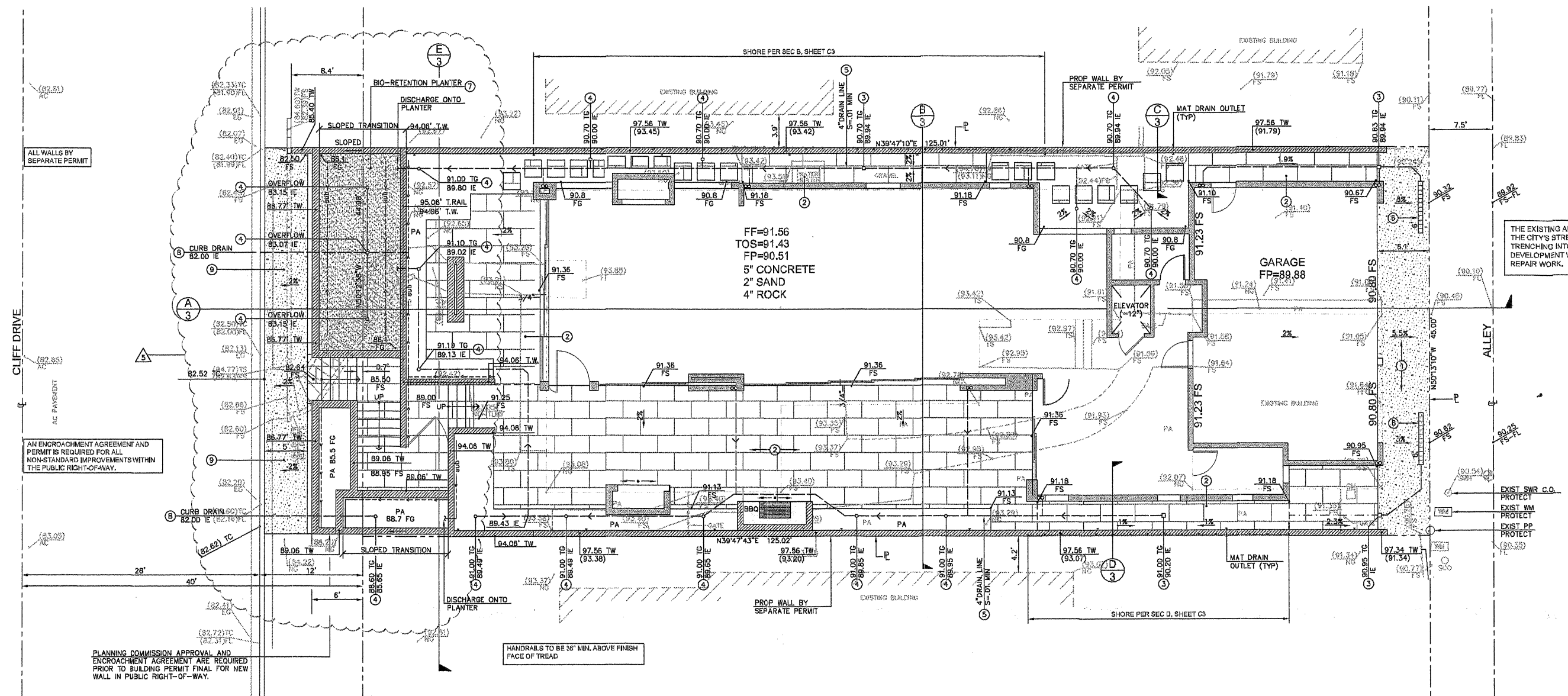
- ① CONSTRUCT 6" MIN CONCRETE DRIVEWAY
- ② CONSTRUCT 4" CONCRETE HARDSCAPE.
- ③ INSTALL 4" FLAT GRATE DRAIN
- ④ INSTALL 4" ATRIUM GRATE DRAIN
- ⑤ INSTALL 4" PVC SDR 35 DRAIN LINE, S=0.01 MIN
- ⑥ INSTALL TRENCH DRAIN PER DETAIL SHEET C2
- ⑦ CONSTRUCT BIO-RETENTION PLANTER PER DETAIL SHEET C2.
- ⑧ INSTALL CURB DRAIN PER STD 184.
- ⑨ REMOVE EXIST WALLS, BRICK AND WALKS AND PLACE NEW SIDEWALK PER STD 180.
- ⑩ PLANT 36" BOX TRISTANIA LAURINA (WATER GUM) TREE.

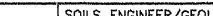


PC6 - PROPOSED PLANS

PROPOSED PLANS

- ## ABBREVIATIONS
- | | |
|--------|------------------------|
| ARCH | ARCHITECTURAL |
| A.C. | ASPHALT CONCRETE |
| B.F.T. | BASEMENT FINISH FLOOR |
| B.F.P. | BASEMENT FINISH PAD |
| B.S.P. | BY SEPARATE PERMIT |
| C.O. | CLEAN OUT |
| CONC. | CONCRETE |
| DG | DECOMPOSED GRANITE |
| DS | DOWNSPOUT |
| DWY | DRIVEWAY |
| EMH | ELECTRIC MAN-HOLE |
| EP | EDGE OF PAVEMENT |
| ESMT | EXISTING |
| EXIST | EXISTING |
| FD | FOUND |
| FF | FINISH FLOOR |
| FG | FINISH GRADE |
| FH | FINE HYDRANT |
| FL | FLOWLINE |
| FN | FINISH PAD |
| FS | FINISH SURFACE |
| GB | GRADE BREAK |
| GA | GARAGE FINISH FLOOR |
| GFP | GARAGE FINISH PAD |
| GM | GAS METER |
| GH | HANDHOLD |
| HP | HIGH POINT |
| IE | INVERT ELEVATION |
| I.P. | IRON PIPE |
| L&T | LEAD AND TACK |
| MH | MANHOLE |
| MON. | MONUMENT |
| NTO | NOTHING |
| OG | ORIGINAL GROUND |
| PA | PLANTER AREA |
| PL | PULL BOX |
| PP | PROPERTY LINE |
| PRO | PROPOSED |
| R/O.E. | RIGHT OF EASEMENT |
| R/W | RIGHT WAY |
| SDWK | SIDEWALK |
| S.F.N. | SEARCHED FOUND NOTHING |
| SEW | SEWER MANHOLE |
| STLT | STREET LIGHT |
| T.B.M. | TEMPORARY BENCHMARK |
| TOP | TOP OF CURB |
| TD | TOP OF DECK |
| TEL | TELEPHONE |
| TF | TOP OF FOOTING |
| TFN | TOP OF FENCE |
| TG | TOP OF GRADE |
| TOP | TOP OF CONCRETE |
| TOS | TOP OF SLAB |
| TP | TOP OF PILASTER |
| TOP | TOP OF WALL |
| W | WROUGHT IRON |
| WM | WATER METER |



5	3/9/22	REVISED SITE WALLS	ARCHITECT: BRANDON ARCHITECTS 151 KALMUS DR. SUITE G-1 COSTA MESA, CA 92626 (714) 754-4640	OWNER/DEVELOPER: MR. JASON CONTERMAN 2043 WESTCLIFF DRIVE NEWPORT BEACH, CA	PREPARED BY: FORKERT ENGINEERING & SURVEYING, INC. 22311 BROOKHURST ST, STE 203 HUNTINGTON BEACH, CA 92646 (714) 963-6793 JN 16268	 THOMAS M. RUIZ DATE 3/9/22	SOILS ENGINEER/GEOLOGIST: EGA CONSULTANTS, LLC 375-C MONTE VISTA AVENUE COSTA MESA, CALIFORNIA 92627 PH (949) 642-9309 PROJECT NO. JG900.1 OCTOBER 15, 2020	BENCHMARK: BENCHMARK NO: N65-14-70 ELEVATION: 84.489 FEET (NAVD88) YEAR LEVELED 1992	LEGAL DESCRIPTION: LOT 5 IN BLOCK 4 OF TRACT 919, IN THE CITY OF NEWPORT BEACH	PRECISE GRADING PLAN 2304 CLIFF DRIVE NEWPORT BEACH, CALIFORNIA	SHEET: C2 45
4	9/20/21	REVISED SLAB									
3	9/1/21	REVISED PER PLAN CHECK									
2	8/12/21	REVISED PER PLAN CHECK									
1	7/22/21	REVISED PER PLAN CHECK									
NO. DATE R E V I S I O N S			DRAWN: MJ CHECK'D: TR DATE: 5/3/21								

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