

**PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT**

MS Word Export To Multiple PDF Files Software - Please purchase license.

**DATE:** September 28, 2000

**TO:** Orange County Zoning Administrator

**FROM:** Planning and Development Services Department/Current Planning Services Division

**SUBJECT:** Public Hearing on Planning Application PA00-075 for Variance, Site Development Permit and Use Permit

**PROPOSAL:** A rear yard setback variance is requested to permit construction of a new three-level, 4,253 square foot, single family dwelling to be located five (5) feet from the rear property line when a rear setback of seventeen (17) feet is required for this lot. A Site Development Permit is required to permit grading in excess of 500 cubic yards (973 cubic yards of cut is proposed) in conjunction with the construction of the proposed new dwelling. A Use Permit is required for walls in the front setback area in excess of 3 ½ feet in height.

**LOCATION:** In the community of Emerald Bay, inland of Pacific Coast Highway, at 435, Emerald Bay, Laguna Beach. Fifth Supervisorial District

**APPLICANT:** Murray and Marnie Hay, property owner  
Scott Laidlaw, Laidlaw Schultz, agent

**STAFF CONTACT:** William V. Melton, Project Manager  
Phone: (714) 834-2541 FAX: (714) 834-4652

**SYNOPSIS:** Current Planning Services Division recommends Zoning Administrator approval of PA00-0075 for Variance, Site Development Permit and Use Permit subject to the attached Findings and Conditions of Approval.

**BACKGROUND:**

The subject site is 6,394 square feet in area and is vacant. The site has a elevation change 30 feet from the front to the back, which is a slope of 27 percent. The applicant proposes to construct a new 3-level single-family dwelling with 4,253 square feet of living area including: the basement (lower) area with 338 square feet of living area and a 21 feet wide by 37 feet deep garage; the first floor (middle) with an area of 2,503 square feet; and, the second (upper) level with an area 1,412 square feet. The proposed dwelling has a lot coverage factor of 39.8 percent, which conforms to the Emerald Bay 40 percent maximum standard.

The applicant claims that because of the building requirements for structure height of the Emerald Bay CC&Rs together with the steep grade at the front of the site, a variance to the rear yard setback is required. The foundation of the structure must be "cut" into the property, and because the grading required, which is mostly within the building footprint, exceeds 500 cubic yards on a slope greater than 15

percent, a Site Development Permit is required. In association with the grading on the steep slope, over height retaining walls in the setback areas are also required. A Use Permit is required for the proposed over height walls.

### **SURROUNDING LAND USE:**

The project site and all surrounding properties are zoned R1 (CD) and developed, in most cases, with single-family dwellings. Emerald Bay also has a certified Local Coastal Program. All properties ocean side of Pacific Coast Highway are also subject to regulations contained in Zoning Code Section 7-9-118 “Coastal Development” District. Properties located inland of Pacific Coast Highway, such as this site, are not subject to the CD regulation and are not subject to obtaining a Coastal Development Permit.

### **REFERRAL FOR COMMENT AND PUBLIC NOTICE:**

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site. Additionally, a notice was posted at the site, at the 300 N. Flower Building and as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to four County Divisions and the Emerald Bay Community Association.

As of the writing of this staff report, no comments raising issues with the project have been received from other County divisions by staff. The Emerald Bay Community Association gave preliminary approval to this proposal September 5, 2000. Staff received comments concerning this variance proposal from a representative of the property owner to the rear of the subject site, 504 Emerald Bay. The property to the rear is currently vacant, but the owner has concerns about the height of the proposed dwelling at the proposed 5 foot setback and what effect it could have on the future construction of a home at 504 Emerald Bay. Staff notes that 504 Emerald Bay and the subject site share the same rear property line.

### **CEQA COMPLIANCE:**

Negative Declaration No. PA000075 (Exhibit 2) has been prepared for this proposal. It was posted for public review on August 3, 2000 and became final on August 23, 2000. Prior to project approval, this ND must be found adequate to satisfy the requirements of CEQA by the Zoning Administrator. Appendix A contains the required CEQA Finding.

### **DISCUSSION/ANALYSIS:**

The proposed Site Development Permit for grading in excess of 500 cubic yards and the Use Permit for over height walls in a setback area are not unlike previous requests for new home construction in Emerald Bay, especially in this hilly northern portion of the community. The grading proposed is mainly under the footprint of the proposed structure. Retaining walls are required in the setback areas to provide terrace

area in the front and to provide for light and air in the sides and rear. Staff does not see any planning issues with these two portions of the Planning Application.

There may be an issue with the proposed rear yard setback variance. Front and rear setback variances are sometimes a sensitive issue in Emerald Bay. This is because the CC&Rs permit front and rear setbacks of only 5 feet and the Emerald Bay's R1 zoning standard for front and rear setbacks standard is much greater. In addition to setbacks there is also structure height issues between the Zoning Code and the Emerald Bay CC&Rs. In general, the Zoning Code would permit a structure on this lot up to a height 35 feet above finished grade. In addition to the height requirements, the CC&Rs has a maximum lot coverage of 40 percent, while the Zoning Code has no such requirement.

Along with setback variances, there is also the issue of ocean views. The Zoning Code does not have regulation regarding views. On the other hand property owners in the community have great concern for ocean views. To address ocean views, the Emerald Bay CC&Rs contains regulations pertaining to views that address structure height. As an example, the CC&Rs for the subject site has a height restriction that structure be no more than 20 feet above natural grade, with a maximum height of no more than 15 feet above highest point of the lot. Additionally, before any home can be built, the Emerald Bay Community Association conducts one or more public meetings on each new home proposed. It is staff's understanding the issues concerning views is resolved at these Community Association meetings.

Regarding comments from the owners of 504 Emerald Bay, it is hard to say what, if any, potential impacts on view this rear yard variance request will have on future lot construction. It appears that the views from 504 Emerald Bay, along with the subject site, are southwesterly to the ocean towards the side property line. The rear setback variance proposed may not have effect on any potential view corridor from 504 Emerald Bay. Additionally, according to the applicant's architect, since new construction normally occurs on the high point of a lot (as is the case of the subject site), construction on lot 504 Emerald Bay would most likely occur towards the front of the lot, away from the rear property line.

Another issue commonly associated with rear setback variance requests is the matter of privacy with the lot to the rear. For this proposal, the only windows facing the rear are bathroom and bedroom windows. The applicant indicated that he is willing to provide some type of window treatment to the bedroom windows to limit visibility if there is a privacy issue. There is also a second story terrace or deck located at 5 feet from the rear property line. This deck is located closer to the a lot adjacent to 504 Emerald Bay at 502 Emerald Bay. According to the applicant, the property owners of 502 Emerald Bay have seen the proposal and have no objections.

Staff is of the opinion that the Site Development Permit for grading, the Use Permit for over height walls, and the rear yard setback Variance are typical of previously approved proposals throughout Emerald Bay. The proposal appears to be compatible with the properties adjacent to the subject site. However, before this variance request can be approved, the Zoning Administrator, in accordance with State and County planning laws, must be able to make the following variance findings listed below. If the Zoning Administrator can not make these findings, the application must be disapproved.

1. There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations.
2. Approval of the application will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations when the specified conditions are complied with.

Staff is of opinion that the Zoning Administrator is able to make these two special variance findings. The special circumstances for approving the variance requested for this proposal is in Finding No. 10 of Appendix A. Because the requested variance is typical of previously approved setback variances, staff can support the proposed rear setback variance, the grading and over height retaining walls. Staff makes a recommendation as follows.

**RECOMMENDED ACTION:**

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA00-0075 for Variance, Site Development Permit and Use Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted

William V. Melton, Project Manager  
CPSD/Site Planning Section

WVM

Folder: D/Emerald Bay/PA00-0075 Staff

**APPENDICES:**

- A. Recommended Findings
- B. Recommended Conditions of Approval

**EXHIBITS:**

- 1. Applicant's Letter of Explanation
- 2. Environmental Documentation
- 3. Site Plans

**APPEAL PROCEDURE:**

Any interested person may appeal the decision of the Zoning Administrator on this permit to the Orange County Planning Commission within 15 calendar days of the decision upon submittal of required documents and a filing fee of \$245.00 filed at the Development Processing Center, 300 N. Flower St., Santa Ana.