

**PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT**

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**DATE:** March 14, 2002

**TO:** Orange County Zoning Administrator

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

**SUBJECT:** Public Hearing on Planning Application PA02-0012 for Variance

**PROPOSAL:** The applicant requests approval of a side yard setback Variance to establish a setback of 3.30 feet from the property line for an existing single-family dwelling when the standard side yard setback is 5.00 feet. This Variance proposal is in association with a Lot Line Adjustment, which will establish a new property line between the subject site (341 Emerald Bay) and the adjoining site (339 Emerald Bay). The subject dwelling currently has a side yard setback in excess of 5 feet from the property line.

**LOCATION:** In the community of Emerald Bay, inland of Pacific Coast Highway at 341 Emerald Bay. Fifth Supervisorial District.

**APPLICANT:** Michael and Sherry Schulman, property owners

**STAFF** William V. Melton, Project Manager

**CONTACT:** Phone: (714) 834-2541 FAX: (714) 667-8344

**SYNOPSIS:** Current Planning Services Division recommends Zoning Administrator approval of PA02-0012 for Variance subject to the attached Findings and Conditions of Approval.

**BACKGROUND:**

Both the subject site (341 Emerald Bay) and the adjoining site (339 Emerald Bay) are developed with multi-story single-family dwellings. The owners of 339 Emerald Bay, Laguna Beach, California (Albert and Marjorie Gumb) and the owners of 341 Emerald Bay (Michael and Sherry Schulman) have been, since December of 2000, involved in a protracted legal battle regarding the property line between 339 Emerald Bay and 341 Emerald Bay and a strip of land bordering that property line of which both the Gumbs and Schulmans have claimed ownership.

The Gumbs and the Schulmans have agreed to settle the dispute through a lot line adjustment. However, the lot line adjustment proposed, if approved, will result in a corner of the Schulman's garage being located within the 5-foot side yard setback. Due to the fact that the projected lot line adjustment will result in the Schulman's garage being located in the 5 foot setback from the readjusted lot line, the settlement between the Gumbs and Schulmans is also conditional upon the County's and Emerald Bay Community Association's approval of a variance to permit a side yard setback of 3.30 feet from the adjusted property line to the Schulmans garage. The Emerald Bay Community Association has reviewed and approved this proposal. See Exhibit 1 for a history of this situation prepared by the applicant's attorney.

### **SURROUNDING LAND USE:**

The project site and all surrounding properties are zoned R1 (CD) and developed 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, as is this site, are not subject to the CD regulation.

### **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 two 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. The Emerald Bay Community Association reviewed and approved the proposal.

### **CEQA COMPLIANCE:**

The proposed project is Categorically Exempt (Class 5, minor alterations in land use limitations such as setback variance) from the requirements of CEQA. Appendix A contains the required CEQA Finding.

### **DISCUSSION/ANALYSIS:**

The letter (Exhibit 1) submitted by the applicant’s agent describes precisely why a lot line adjustment and variance is now required to settle a legal issue. The problem started when a building permit was issued a half century ago for improvements on 339 Emerald Bay based up on what was depicted as a “new property line”. The error at that time was not requiring new legal descriptions (what is now known as a lot line adjustment) to be recorded between 341 and 339 Emerald Bay to reflect the “new property line” before the improvements took place. When the original home at 341 Emerald Bay was built in 1955, it was setback a distance greater than 5 feet from the lot line of record at that time. As was the home in 1955 and the current home, the setbacks are based on the lot lines of record and not the unrecorded “new property line” proposed in 1951. The home on 341 Emerald Bay currently conforms to the 5-foot side yard setback standard. However, to address the encroachment of the existing improvements from 339 Emerald Bay, a variance on 341 Emerald and lot line adjustment is required to settle the dispute between the affected property owners.

Since both structures are existing, approval of a variance will have no visible effect between the properties. The proposed 3.30 feet setback proposed for 341 Emerald Bay conforms to Fire Code regulations for setbacks so no modifications to the home are required. The approval of this variance will rectify a situation created over 50 years ago. 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 cannot 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. 6 of Appendix A. Staff support the approval of this variance to allow the proposed Lot Line Adjustment to proceed.

**RECOMMENDED ACTION:**

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA02-0012 for Variance subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Chad G. Brown, Chief  
CPSD/Site Planning Section

WVM

Folder: C:\Documents and Settings\meltonw\My Documents\Emerald Bay\PA02-0012 Staff Schulman 3-14.doc

**APPENDICES:**

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

**EXHIBITS:**

- 1. Applicant's Letter of Explanation
- 2. Site Photos
- 3. Proposed Lot Line Adjustment between 341 and 339 Emerald Bay with proposed setback variance for 341 Emerald Bay.

**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. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to the Planning and Development Services Dept.