

**PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT**

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**DATE:** May 9, 2002

**TO:** Orange County Zoning Administrator

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

**SUBJECT:** Public Hearing on Planning Application PA02-0025 for Variance and Use Permit

**PROPOSAL:** The applicant proposes to demolish an existing single-family residence and construct a new three level (including basement/garage), 3,661 square foot single-family residence. A Variance is requested to allow a rear yard setback of 13 feet from the property line when the standard setback for this lot is 25 feet. A Use Permit is requested for a modification to the off-street parking regulations to allow a down slope grade of 14% in the first 18 feet of the driveway from the street, when the standard down slope grade is 6% in the first 18 feet.

**LOCATION:** In the community of Emerald Bay, inland of Pacific Coast Highway at 316 Emerald Bay. Fifth Supervisorial District.

**APPLICANT:** Linda and Robert Losey

**STAFF CONTACT:** William V. Melton, Project Manager  
Phone: (714) 834-2541 FAX: (714) 667-8344

**SYNOPSIS:** Current Planning Services Division review determined that the proposal is consistent with other developments in Emerald Bay and recommends Zoning Administrator approval of PA02-0025 subject to the attached Findings and Conditions of Approval.

**BACKGROUND:**

The subject site is 4,672 square feet in area, is rectangular in shape, and measures 58 feet along the front property line, 32 feet along the rear property line and averaging 106 feet along the side property lines. The property rises from the front to the rear with an elevation change of 18 feet. The site is developed with a two-story single-family dwelling setback 8 feet from the front property line, 31 feet from the rear property line and 5 feet from the side property lines. Records indicate the residence was built in 1941 and has 1,283 square feet of living area. The applicant proposes to demolish the existing residence and construct a new residence as shown in the proposal above. In order to construct the new home, the applicant requests approval a rear yard setback variance and a use permit to modify the off-street parking standards. A discussion of these two requested permits is presented in the discussion section of this report.

**SURROUNDING LAND USE:**

The project site and all surrounding properties are zoned R1 “Single-family Residence” District with a CD “Coastal Development” District overlay, and developed with single family dwellings. Emerald Bay also has a certified Local Coastal Program (LCP). The LCP has a requirement that all properties on the ocean side of Pacific Coast Highway are also subject to regulations contained in Zoning Code Section 7-9-118 “Coastal Development” District. In general, property owners are required to obtain approval of a Coastal Development prior to demolishing or making large additions to an existing residence and/or construction of a new dwelling. Properties located inland of Pacific Coast Highway, as is the subject 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 eight County Divisions and the Emerald Bay Community Association. As of the writing of this staff report, no comments raising issues with the project that cannot be addressed through conditions of approval have been received from other County divisions by staff. The proposal was reviewed by the Emerald Bay Community Association and was given preliminary approval in January 2002.

**CEQA COMPLIANCE:**

The proposed project is Categorical Exempt (Class 2, replacement or reconstruction of similar type structures or use) from the requirements of CEQA. Appendix A contains the required CEQA Finding.

**DISCUSSION/ANALYSIS:**Off-street parking modification

In order to construct the desired residence and to conform to the strict height limits imposed by the Emerald Bay CC&Rs, the applicant must excavate the site (approximately 490 cubic yards) to create a lower building pad level. This excavation places the first level of the structure (the garage/basement area) 5 ½ feet lower than the street grade. The applicant plans on setting the garage entrance back 36 feet from the street. This calculates to a driveway down slope of a negative 14% from the street curb line to the garage. Off-street parking regulations Section 7-9-145.2(e)(1) requires a driveway on an up slope at a maximum grade of 15% and a down slope at a maximum grade of negative 6% in the first 18 feet. Modifications to this standard are through a Use Permit approved by the Zoning Administrator.

This proposal was reviewed by Subdivision and Grading Services Division/Traffic Review staff. Traffic Review indicated that the slope of the driveway should not create a grade break at the street or garage that would prevent normal vehicular access to and from the garage to the street. They requested two

conditions that they would need to see the final grading plans and that the standard sight distance condition would be required. It should be noted that the applicant could provide the normal -6% grade in the first 18 feet of driveway length, however the balance of the driveway could result in an extreme grade break at the garage entrance. Additionally, the applicant is providing a drain and pump at the end of the driveway at the garage entrance that will divert water coming down the driveway back to a street drain.

### Rear setback variance

Rear setback variances are sometimes a sensitive issue in Emerald Bay. In other rear yard setback variance requests, situations arise where second story decks are proposed in the rear setback area. This raises concerns regarding privacy from the adjoining property owner to the rear of a site. This will not be the case in this proposal. There is no upper level deck at the rear of the proposed addition. The resident is only one level above grade in the rear setback area. The encroachment into the rear yard should have no affect on the property owner to the rear. It should also be noted that the property to the rear is at a higher elevation. The proposed rear yard setback of 13 feet is not unlike many other rear yard setback variances previously approved in Emerald Bay where some rear setbacks are only 5 feet from the rear property line. Staff did not identify any planning issues associated with this variance request.

The building height restrictions imposed in Emerald Bay (which for this lot is 15 feet above the existing grade) together with the CC&Rs that permit 5 feet front and rear setbacks are the major elements for setback variance requests in Emerald Bay. Since additions to existing homes and construction of new homes cannot be constructed to the heights permitted by the R1 zone, the new additions are forced to encroach into the setback areas. Staff estimates that over a thousand variances for front and rear setbacks have been approved in Emerald Bay.

Staff is of the opinion that the rear yard setback variance proposed is typical of previously approved proposals throughout Emerald Bay. The proposal appears to be compatible with the properties adjacent to the subject site. The rear setback variance request should not pose a privacy issue with the property owner to the rear. 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 are in Finding No. 11 of Appendix A. Because the requested variance is typical of previously approved setback variances, staff can support the proposed rear setback variance and the modification to the driveway down slope. 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 PA02-0025 for Variance and Use Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Chad G. Brown, Chief  
CPSD/Site Planning Section

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**APPENDICES:**

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

**EXHIBITS:**

1. Applicant's Letter of Explanation
2. Site Photos
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. 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.