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PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

DATE: September 19, 2002

TO: Orange County Zoning Administrator

FROM: Current Planning Services Division

SUBJECT: Public Hearing on Planning Application PA02-0080 for Variance and Use Permit.

PROPOSAL: The applicant is proposing to demolish an existing 1,750 square foot single-family dwelling and construct a new 5,255 square foot single-family dwelling. A variance is required to construct the single-family dwelling 9 feet 9 inches from the rear property line when a setback of 25 feet is required. A Use Permit is required to construct over-height walls measuring up to 15.5 feet high within the side yard setback.

LOCATION: In the community of Emerald Bay, inland of Pacific Coast Highway at 322 Emerald Bay, Laguna Beach within the 5th Supervisorial District.

APPLICANT: Bill & Ann Burk, property owners
Scott Laidlaw, architect/agent

STAFF James Thue, Project Manager
CONTACT: Phone: (714) 834-2179 FAX: (714) 834-4652

SYNOPSIS: Current Planning Services Division recommends Zoning Administrator approval of PA 02-0080 subject to findings and conditions.

BACKGROUND:

The project site is zoned R1 "Single-family Residence". The purpose of the "Single-family Residence" District is to provide for the establishment and maintenance of medium density single-family detached residential neighborhoods. The property measures approximately 120 feet long by 68 feet wide. The project site is 6,897 square feet in area and was developed before 1960 with a 1,750 square foot single-family dwelling with an attached garage located on the lower level.

The existing dwelling will be demolished in order to make way for a new 5,255 square foot, 3 level, single-family dwelling. The new dwelling will require a variance for the rear yard setback and a use permit to construct over-height walls within the side yard setback area. The property is in an area of rolling hills that overlook the Pacific Ocean. The average slope of the property is approximately 15%.

SURROUNDING LAND USE:

The project site and all surrounding properties are zone R1 (CD) and are developed with single-family dwellings. Emerald Bay has a certified Local Coastal Program. All properties Oceanside of Pacific Coast Highway are subject to regulations contained in Zoning Code Section 7-9-118 “Coastal Development” (CD) District. Properties located inland of Pacific Coast Highway, as is this site, are not subject to the CD regulations in accordance with the adopted certified Local Coastal Program.

REFERRAL FOR COMMENT AND PUBLIC NOTICE:

A Notice of Hearing was mailed and posted as required by law. A copy of the planning application and a copy of the proposed site plan were distributed to five County divisions and the Emerald Bay Community Association (EBCA). As of the writing of this staff report, no objections to the project have been received. The proposal has been approved by the Emerald Bay Community Association on September 3, 2002.

CEQA COMPLIANCE:

The proposed project is Categorical Exempt from the requirements of CEQA (Class 3, new construction or conversion of small structures, and Class 5, minor alterations in land use limitations such as setback variances). Appendix A contains the required CEQA Findings.

DISCUSSION/ANALYSIS:

The existing one-story dwelling has only 1,750 square feet of living area with an attached 2-car garage located on a lower level. The applicant proposes to improve the property by demolishing the existing single-family dwelling and constructing a two story 5,255 square foot single-family dwelling with an attached 3-car garage. The residence will include a basement level with 700 square feet of living area with a 970 square foot garage, a first level with 2,303 square feet, and a second level with 2,252 square feet.

The new residence will encroach more than 15 feet into the required 25-foot rear yard setback area and will therefore need approval of a variance before construction of the project can be started. Due to the elevation difference between the surrounding properties over-height walls will be constructed on the sides of the property. The retaining walls will allow for the construction of sidewalks and stairs that will run from the front of the property to the rear of the property. All other features on the proposed structure meet zoning regulations.

Setbacks

The front setback for properties can be determined by averaging the front setbacks of the two adjoining properties (Zoning Code Section 7-9-128.4), which are 19 feet 3 inches and 9 feet 5 inches. The proposal calls for a front setback of 19 feet 8 inches, which will satisfy the front setback requirement. The left side yard setback is 6’. The right side yard setback is 6 feet 3inches. Both side yard setbacks will meet the setback requirements. The rear yard setback for the 2nd floor (third level) is 9 feet 9 inches and does not meet the setback requirements as described in Zoning Code Section 7-9-127.

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 deck at the rear of the proposed addition. The rear portion of the second story will be flush with the grade. The building height restrictions imposed in Emerald Bay together with the

CC&Rs are the major causes for setback 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.

Along with setback variances, there is also the issue of ocean views. The Zoning Code does not have regulations regarding views. However, property owners in the community have great concern for ocean views. To address ocean views, the Emerald Bay CC&Rs contain regulations pertaining to views that address structure height. As an example, the CC&Rs for the subject site has a height restriction that the structure be no more than 20 feet above natural grade, with a maximum height of no more than 15 feet above the highest point of the lot. In addition to height regulations, the CC&Rs permit front and rear setbacks of only 5 feet while the County's R1 zoning standard for front and rear setbacks standard is much greater. Staff would also point out that before any home can be built, the Emerald Bay Community Association conducts one or more public meetings on each new home proposed.

Over-height Walls

Orange County Zoning Code Section 7-9-137.5(c) stipulates that the maximum permitted height for walls is 8 feet. Zoning Code Section 7-9-137(f) states that exceptions to this requirement can be permitted through the filing of a Use Permit. Therefore the applicant is requesting a Use Permit for over-height walls relating to the retaining walls in the side yard setbacks. These walls are necessary due to fluctuations in elevation between the surrounding properties. Walls ranging from 3 feet to approximately 15.5 feet run along the property line. Retaining walls in the left side yard about a site that is currently under construction (PA01-0036). The walls will be constructed with the neighboring site in mind. The wall in the left side yard will have a maximum height of approximately 8 feet. The wall will measure a maximum of 6 feet on the neighbor's side due to the elevation difference. The wall in the right side yard will have a maximum height of approximately 15.5 feet in height. The wall on the neighbor's side will measure a maximum height of approximately 6 feet.

CONCLUSION OR SUMMARY:

Zoning Code Section 7-9-150.3(e)(2), Variances, states that in order for an approval of a variance to be granted, the following findings must be made:

- A. Special Circumstances. 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.
- B. No Special Privileges. 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.

Before the Zoning Administrator can approve this request for over height walls, Zoning Code Section 7-9-139.5(f)(2) requires the following special findings addressing over height fences and walls must be made:

- A. The height and location of the fence or wall as proposed will not result in or create a traffic hazard.

- B. The location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.

Staff feels that the two findings listed in Zoning Code Section 7-9-137.5(f) for the over-height fence can be made. Staff is of the opinion that the rear yard setback variance and the use permit for the over-height walls are typical of previously approved proposals throughout Emerald Bay. The proposal appears to be compatible with the properties adjacent to the subject site. The rear yard variance should not pose a privacy issue with the property owner to the rear.

RECOMMENDED ACTION:

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff presentation and public testimony as appropriate; and,
- b. Approve Planning Application PA02-0080 for Variance and Use Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Chad G. Brown, Section Chief
CPSD/Site Planning Section

JJT

ATTACHMENTS:

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

EXHIBITS:

- 1. Applicant's Letter of Explanation
- 2. Site Photos
- 3. Project 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.