

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT
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DATE: December 12, 2002

TO: Orange County Zoning Administrator

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

SUBJECT: Public Hearing on Planning Application PA02-0099

PROPOSAL: The applicant proposes to build a new multi-level, 9,480 square foot single-family dwelling on a vacant 12,274 square foot ocean front lot. The following discretionary permits are required to construct the residence as submitted:

1. Coastal Development Permit
The proposal is in the coastal zone. Additionally, the proposal is defined as an appealable development because it is located between the first public road and the ocean.
2. Variances to the site development standards, including:
 - a. front setback variance to allow a setback 5 feet from the front property line when the required setback is 9.25 feet; and,
 - b. a height variance to allow a building height of 38 feet when the standard height is 35 feet.
3. Use Permit to allow the following:
 - a. a 400 square feet second residential unit; and,
 - b. over height walls in the setback areas; and,
 - c. a driveway grade in excess of the standard -6% downgrade.
4. Site Development Permit for:
grading of over 500 cubic yards of material on a slope greater than 30 percent.

LOCATION: The project is located in the community of Emerald Bay, on the ocean side of Pacific Coast Highway at 110 Emerald Bay, Laguna Beach. Fifth Supervisorial District.

APPLICANT: Blackstone Trust

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

BACKGROUND:

The subject site is in the R1 “Single-Family Residential” (CD “Coastal Development”) District. The subject site is also in the Emerald Bay Local Coastal Program (LCP). The site is a beachfront property with 12,274 square feet of area and averaging 80 feet in width and 153 feet in depth. The property has an elevation drop of over 50 feet from the front of the property to the rear (beach side) of the property, which is a slope greater than 30 percent. The site is vacant, sparsely vegetated, containing one palm tree and bushes, which will be removed before construction of the new dwelling.

The proposed single-family dwelling has four living levels. The upper (highest) living level is approximately 10 feet lower than the frontage street at the centerline of the property. The lowest level of the dwelling is approximately 43 feet lower than the frontage street at the centerline of the property. The highest point of the roof will be approximately 15 feet above street level. The garage area for the dwelling provides covered spaces for up to 6 cars, is located on two levels under the first living level and is accessed by a spiral driveway. The proposed second residential unit is located on the first level, contains approximately 400 square feet and is not located in any setback area. Additionally, a swimming pool is proposed at the rear of the dwelling, located 16 feet from the rear property line.

The proposed new structure is similar in scale to recently approved Coastal Development Permits for new single-family dwellings on similar lots in the immediate vicinity (see photo on next page). On the property to the west (112 Emerald Bay), Planning Application PA00-0097 was approved on November 30, 2000 for a new 7,331 square foot single-family dwelling with over height walls, front setback variance and grading of 2,500 cubic yards. On the property to the east (108 Emerald Bay), Planning Application PA99-206 was approved on March 16, 2000 for a new 8,920 square foot single-family dwelling with over height walls, front setback variance, a guesthouse and grading of 2,810 cubic yards. The east of that property (106 Emerald Bay), Planning Application PA00-0087 was approved on November 16, 2000 for a new 10,100 square foot single-family dwelling with front, rear and height variances, a guesthouse and grading of 4,300 cubic yards.

REFERRAL FOR COMMENT AND PUBLIC NOTICE:

A Notice of Hearing was mailed to all owners of record within 300 feet of the subject site and all occupants of homes within 100 feet of the 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 have been received from other County. The Emerald Bay Community Association approved the proposal on July 2, 2002 (see Exhibit 2).

CEQA COMPLIANCE:

Negative Declaration No. PA020099 (Exhibit 3) has been prepared for this proposal. It was posted for public review on November 1, 2002 and became final on November 21, 2002. 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.

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 (see photo below). 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 dwelling or making large additions to an existing residence and/or construction of a new dwelling. Properties located inland of Pacific Coast Highway are not subject to the CD regulation and are not subject to obtaining a Coastal Development Permit for new construction.



DISCUSSION/ANALYSIS:

Following on the next page is a chart of the proposed home identifying lot area, living area, building levels, grading, front setbacks and building height. Included in this chart are the three adjacent and nearby single-family dwelling previously approved at 106, 108 and 112 Emerald Bay.

Address	Lot Area sq. ft.	Living Area, sq. ft.	Levels	Grading (cubic yards)	Front Setback	Maximum Height
106	10,900	10,100	4	4,300	9 feet – 5 inches	43 feet
108	11,230	8,920	5	2,800	8 feet – 6 inches	Under 35 feet
Subject 110	12,274	9,480	4	8,000	5 feet (below grade) 12 feet (above grade)	38 feet
112	8,661	7,331	4	2,500	10 feet	Under 35 feet

As shown, the proposed dwelling is similar in respect to structure size, setbacks, height and grading as the three new dwellings at 106, 108 and 112 Emerald Bay (see photo on page 3 for locations) approved and under construction on either side of the subject site. All three of the new dwellings included a Use permit for over height walls and grading in excess of standards and a front setback variance. In addition to the Coastal Development Permit for the construction of the new dwelling, this Planning Application includes, over height walls in the setback area, grading in excess of 500 cubic yards on a slope greater than 30 percent, variances for height and setbacks; and, a request for a second residential unit.

Regarding the proposed second residential unit, Zoning Code Section 7-9-146.5 permits second residential units up to 1,200 square feet in area on a lot less than an acre in size subject to the approval of a Use Permit. Other requirements for a second residential unit include: that it isn't located in a setback area and that one off-street parking space is provided. The proposed second residential unit conforms to all standards by being substantially smaller than 1,200 square feet, is not located in a setback area and is provided a parking space in the site's 6-car garage. Staff did not note any issues with the second residential unit. Staff notes that the new homes at 106 and 108 Emerald Bay were approved with guesthouses.

The grading proposed is typical of new homes in Emerald Bay. In order to conform to the strict height limits of the CC&Rs, new homes are being constructed with multi-level basements requiring substantial amounts of earth to be removed from the site. The three homes on 106, 108 and 112 Emerald Bay all required grading of 4,300, 2,800 and 2,500 cubic yards of grading respectfully. This proposal calls for grading of 2,000 cubic yards of fill and 8,000 cubic yard of cut, leaving an export of 6,000 cubic yards. The grading proposed is to create two basement levels of the house and the below grade parking area. The majority of the proposed grading is for the parking area. Staff did not notice any outstanding planning issues associated with this grading request. Standard conditions for grading and drainage should address any potential grading issues. It should be noted that a standard requirement for grading any activities includes providing a detailed erosion control plan with the grading permit.

The applicant is also requesting approval of over height retaining walls located in the front and side setback areas. The retaining wall in the front setback is due to the design of the driveway to the below grade parking area. The retaining walls in the side setback area are to provide for light and air at the sides of the property. The over height retaining walls face the interior of the site and should not have a negative

affect on the adjacent properties. Over height retaining walls are common for new construction in Emerald Bay and were approved at 108 and 112 Emerald Bay. Staff did not identify any planning issues with this portion of the Planning Application.

The variance portion of the application is for a front setback variance and a height variance. The front setback requirement for this lot is 9.25 feet, which is the average of the two adjoining lots. The closest part of the structure above grade from the front property line (a stairway tower) is setback 12 feet from the front property line and conforms to the setback standard. The front wall of the below grade parking area, however, comes to within 5 feet of the front property line. Even though this structure is below grade, a variance is required. The below grade variance proposed will have no impact on surrounding properties.

In relation to the garage parking area, is the driveway from the street to the two parking levels. Zoning Code Section 7-9-145.2(e) "Maximum grades permitted" has a requirement that driveways descending from the street have a maximum grade of -6 percent in the first 18 feet of driveway length from the road right-of-way. The driveway proposed has a maximum grade of -10 percent in a portion of first 18 feet. The driveway at the edge of the street is at -5 percent. The Traffic Review Section reviewed this plan and determined that the proposed grade would be satisfactory. The reason for the grade restriction is to prevent vehicles from bottoming out entering the driveway from the road and to provide adequate site distance when entering the street from the driveway. A Condition of Approval requires the applicant to submit final building plans to Traffic Review Section for review of adequate site distance.

Regarding the requested height variance, the maximum height limit for this site is 35 feet above finished grade. The dwelling is designed to conform to the Emerald Bay development standards. In some cases the Emerald Bay standards can exceed the County development standards, as is this proposal. As is shown on sheets A3.2 and A3.3 of the site plan, a small portion of a roof element exceeds the 35 feet height limit by two or three feet. Because the property slopes both right and left and up and down, together with the location of the driveway, it is challenging to determine the exact building height envelope for this property using the height standard shown in Zoning Code Section 7-9-129.1(a). A determination was made by staff that the roof portion of the structure, while an architectural feature, was enclosing habitable living space, it penetrated the building envelope and a variance to the height standard would be required. While the County development standard building envelope for this site may be difficult to determine, the structure does conform to the Emerald Bay height standard for the lot. The proposed variance is minor and should little if any impact on views of adjoining properties. Staff supports the applicant's variance request for building height.

Front and rear setback variance requests are common in Emerald Bay. Request for a height variance is not as common in Emerald Bay, but does occur on steep lots (more common in the northern section of Emerald Bay). Even though there does not appear to be issues with the variances proposed, State and County laws require that a variance application may be approved only if the approving agency makes the variance findings listed below. If the Zoning Administrator cannot make these findings, then the variance request 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 is in Finding No. 16 of Appendix A. An added finding for building height is included in Finding No. 18. Because the requested variances are typical of previously approved variances for surrounding properties, staff can support the variance request for height and front setback.

This Planning Application also serves to provide a vehicle to permit the use of a second kitchen in the main house. Because the house is on four levels and is large, a small galley type kitchen is proposed to be located on the lowest level. This level also contains a guest bedroom suite, a gym, a media room and a cabana. This floor level also provides the main access to the outdoor living area. Because the main kitchen is located on the second level, the forth-level kitchen provides a food preparation area for the outdoor activities. In large houses, a smaller second kitchen area is often referred to as a “wet bar” with a sink, small refrigerator and a microwave oven. A concern with a single-family residence with two fully equipped kitchens is the possibility that the dwelling could be converted into a two-family dwelling. Staff does not believe that the house will be divided up into a duplex with the incorporation of a second small kitchen area on the first floor. Staff does not have any issues with this portion of the planning application request.

CONCLUSION:

The application for the proposed single-family dwelling with attached second residential unit is proposing a significant number of discretionary permits. This proposal could have the appearance of “overbuilding” the project site. However, as was depicted on the chart on page 4 of this report, it is consistent with three other ocean front single-family dwellings previously approved. The site is large with a significant slope from front to back. The over height walls proposed face the interior of the site, will not affect adjoining properties and are typical of many new homes currently under construction in all parts of Emerald Bay. The height variance proposed should have no visual impacts on the adjacent properties. It should be noted that the maximum height of the structure is approximately 16 feet above the average level of the frontage street. All aspects of the proposal appear to be consistent with surrounding development. Staff supports the applicant’s proposal and recommends project approval 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 PA02-0099 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. Emerald Bay Community Association approval
- 3. Environmental Documentation
- 4. Site Photos and air photos
- 5. 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.

In addition, this project is within the Coastal Zone and is an "appealable development". Approval of an appealable development may be appealed directly to the California Coastal Commission (telephone number 562-560-5071), in compliance with their regulations, without exhausting the County's appeal procedures.