

**PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT**

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**DATE:** May 29, 2003

**TO:** Orange County Zoning Administrator

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

**SUBJECT:** Public Hearing on Planning Application PA03-0030 for Use Permit

**PROPOSAL:** The applicant requests approval of a Use Permit, as permitted by Zoning Code Section 7-9-137.5 "Fences and walls", to allow construction of a new retaining wall in excess of 6 feet above finished grade in the 25 foot rear yard setback area. The proposed retaining wall varies in height from 10 to 14 feet above finished grade and is located at a distance of between 7 feet and 12 feet from the rear property line. The proposed retaining wall is in conjunction with the construction of a new swimming pool and spa.

**LOCATION:** In the northern corner of the community of Emerald Bay, inland of Pacific Coast Highway, at 1601 Emerald Bay, Laguna Beach. Fifth Supervisorial District.

**APPLICANT:** Steve and Denise Hopkins

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

**SYNOPSIS:** Current Planning Services Division recommends Zoning Administrator approval of PA03-0030 for Use Permit subject to the attached Findings and Conditions of Approval.

**BACKGROUND:**

The subject property is approximately 10,700 square feet in area, developed with a single-family dwelling, irregularly shaped and located at the end of a cul-de-sac. The site has steep topography, dropping 60 feet in elevation at a fairly constant slope between the front property line and the rear property line. This slope continues past the rear of the property where the adjacent dwelling has a building pad elevation of some 45 feet lower than the subject site's rear property line. The property to the east has topography similar to the subject site, as has many of the lots in the northern portion of Emerald Bay.

Prior to this Use Permit request, two previous variance permits have been approved on this site. In September 1958, Variance V3362 was approved for a front yard setback variance for the dwelling and the garage to be located 17 feet and 18 feet respectively from the front property line. The variance proposal also included a provision for a swimming pool, however it does not appear that the pool was constructed. In May 1997, PA97-0055 was approved for a front yard setback variance to add a one-car garage; and, a site development permit to allow for an over height wall on the west side property line.

**SURROUNDING LAND USE:**

Direction	Zoning	Existing Land Use
Project Site	R1 “Single-Family Residence (CD)	Single-family residence
North	R1 “Single-Family Residence (CD)	Single-family residence
South	R1 “Single-Family Residence (CD)	Single-family residence
East	R1 “Single-Family Residence (CD)	Single-family residence
West	State of California	Crystal Cove State Park open space



**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 3 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 that could not be addressed through the conditions of approval. The Emerald Bay Community Association approved the project on May 6, 2003.

**CEQA COMPLIANCE:**

The proposed project is Categorical Exempt (Class 3, construction of limited numbers of new small structures or facilities) from the requirements of CEQA. Appendix A contains the required CEQA Finding.

**DISCUSSION/ANALYSIS:**

In accordance with Zoning Code Section 7-9-137.5 “Fences and walls”, the Zoning Administrator may approve modification to wall or fence heights. However, before the Zoning Administrator takes an action to approve the modified wall or fence height, the following two findings must be made

- 1. That the height and location of the fence or wall as proposed will not result in or create a traffic hazard.*
- 2. That 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.*

Since the proposed wall is not adjacent to a street, finding no. 1 above is not really applicable to the proposed retaining wall. The discussion that follows addresses the second finding. Based on this discussion, staff is of the opinion that the Zoning Administrator is able to make the two findings required for walls and fences.

Staff notes that a recent similar proposal (PA02-0122) for a 12 feet high retaining wall, also in conjunction with a swimming pool, located 6 to 15 feet from the rear property line, was approved for 1103 Emerald Bay (located 500 feet down the hill from the subject site) at a December 12, 2002 Zoning Administrator hearing. At that public hearing there was considerable debate concerning the impact of privacy that the pool would have on the property owner to the rear. The proposal was approved with conditions regarding landscaping between the rear property line and the proposed retaining wall/pool.

The applicant’s agent for the current retaining wall/swimming pool proposal informed staff that three meetings were held before the Emerald Bay Community Association. The property owner to the rear of the subject site was notified by mail of the first meeting and did not attend any of the meetings. The applicant is unaware of any concerns voiced by the property owner to the rear. The applicant stated that a minimum of 5+ feet of existing dense landscaping would be retained on the slope at the rear of the site. As seen in the air photo in Exhibit 2, there is a significant amount of landscape buffer at the rear of the subject site and in the rear yard of the down slope neighbor. The site plan includes a conceptual section view between the proposed retaining wall/pool and the property to the rear showing the approximate distance and grade change between the two properties. The issue of privacy that was voiced for the proposal under PA02-0122 does not appear to be an issue for this project.

Over height walls in Emerald Bay are not uncommon. The most common type of over height wall is on the side property line. In order to conform to the Emerald Bay height standard, the elevation of the site’s building pad must be lowered. To provide for light and air within the 5 feet side yard setback area, a Use Permit is requested for retaining walls ranging in height from 8 feet to 14 feet. Since the project is similar to previously approved projects in the vicinity, has been approved by the Emerald Bay Community Association and since no objection to the proposal has been raised by the property owner to the rear of the project or other property owners, staff can support the proposal and make a recommendation for approval. If staff receives any project concerns or issues after the distribution of this report, staff will present those concerns or issues at the public hearing.

**RECOMMENDED ACTION:**

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA03-0030 for Use Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Chad G. Brown, Chief  
CPSD/Site Planning Section

WVM

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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 Department.