

**PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT**

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**DATE:** September 18, 2003

**TO:** Orange County Zoning Administrator

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

**SUBJECT:** Public Hearing on Planning Application PA03-0049 for Variance.

**PROPOSAL:** Variance to add 259 square feet of living area to an existing second floor 5 feet from the rear property line that itself was located at 5 feet from the rear property line by virtue of an earlier variance. Using the Zoning Code “shallow lot” criteria, (Section 7-9-128.2), the standard rear setback would be 15’. The proposal is to place the addition to the home with a full two-story configuration along the entire rear yard at 5’.

**LOCATION:** In the community of Emerald Bay, on the inland side of Pacific Coast Highway, at 724 Emerald Bay, Laguna Beach. Fifth Supervisorial District.

**APPLICANT:** Steven and Linda Obradovich, property owners, and Steven Sloan, architect-agent

**STAFF CONTACT:** J. Alfred Swanek, Project Manager Phone: (714) 796-0140  
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**SYNOPSIS:** Current Planning Services Division recommends Zoning Administrator approval of PA03-0049 for Variance subject to the attached Findings and Conditions of Approval.

**BACKGROUND:**

The subject site is sloping up gently from the front, approximately 7,250 square feet in area and is currently developed with a 4,156 square foot two-story single-family dwelling. The property is zoned R1 (CD) District (Single-family Residence with a Coastal Development overlay). The applicant proposes an addition of 259 square feet of living area.

Using the Zoning Code “shallow lot” criteria, (Section 7-9-128.2), the rear setback would be 15’. The proposal is to place the addition to the home with a full two story configuration along the entire rear yard at 5’, requiring a variance.

**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. As an “inland side” property, these additional regulations are not applicable.

**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 County Divisions and the Emerald Bay Community Association. As of the writing of this staff report, no comments raising substantive issues with the project have been received from other County divisions. The Emerald Bay Community Association approved the applicant's preliminary plans in February 2003.

**CEQA COMPLIANCE:**

The proposed project is Categorical Exempt (Class 3, New Construction or Conversion of Small Structures) from documentation requirements of CEQA. Appendix A contains the recommended CEQA Finding.

**DISCUSSION/ANALYSIS:**

The applicant proposes to add to an existing second floor that itself was located at 5 feet from the rear property line by virtue of an earlier variance. The current partial second story intrusion into the rear yard setback accomplished via Planning Application PA97-0177 was approved by the Orange County Planning Commission on appeal from the Zoning Administrator. Letters from 27 property owners in opposition to this partial second floor intrusion were received, including several of the Obradovich's neighbors. Others letters were received fully in support of the application. The Planning Commission on March 24, 1998 denied the appeal and upheld the variance request, finding that:

“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. The special circumstances are as follows:

- 1) the site is a baseball diamond shaped site creating unique rear and side yards that are for all practicable purposes indistinguishable from one another. The area of the requested variance visually appears and will serve as a side yard. Enforcement of a 15' rear yard setback in this area would deny the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations; and,
- 2) the applicable Emerald Bay CC&Rs are in conflict with the County site development standards relating to this site, to wit (a) Emerald Bay has a 20' height limit versus the County's 35' height limitation; (b) Emerald Bay has a 40% lot coverage restriction versus no such limitation with the County; (c) Emerald Bay has increased on site parking requirements versus the County's lower requirement; and (d) Emerald Bay has a 5' rear yard setback requirement versus the County's 15'. Application of the most restrictive requirements of both the Emerald Bay CC&Rs and the County ordinances would deprive the building site of privileges enjoyed by other properties in the vicinity and subject to the same zoning regulations; and

3) the site is at a lower grade level than the grade level of the house to the rear.”

The Commission also eliminated a condition that the Zoning Administrator had placed on the project, requiring a revised plan that would have “reflected smaller windows with raised plates”.

Here it is also noted that a still previous variance for a rear yard variance of 5’ covering a much-smaller portion of the lot (PA960119) was also approved 10/24/96, with finding language that also noted the Emerald Bay CC&R requirement for additional on-site parking mitigated against pushing a home toward the front of the lot.

Finally, a home on the site destroyed in the great fire of 1993 itself had a partial rear yard setback of 5’, granted by Variance 4730 in 1961.

Given that a prior variance that would appear to have less potential impact on the privacy of neighbors than the current application was itself controversial, staff requested additional justification from the applicant. The following information was provided in correspondence from the applicant’s architect dated July 16, 2003 (received August 26, 2003), which is attached as Exhibit 1.b., Supplemental Letter:

“First, with respect to the approval of the former variance; the appeal was filed by the former rear neighbor of the applicant (at) 821 Emerald Bay...Please find attached a copy of letters from the current property owners at this same “rear” adjacent address (the Montgomery’s) and from the adjacent “side” neighbor (722 Emerald Bay/Gladstone), both expressing their complete support.

With regard to potential impact on privacy for the adjoining neighbors: of the four new windows... the three at the rear are in virtually the identical positions as the former windows, though closer to the property line. To ensure privacy, we have negotiated the design with the Association such that the center window is raised above eye level to prevent views out, while still admitting light. In addition, please note that the subject property rests a full floor lower than the rear neighbor such that, as viewed from the neighbor’s property, the overall visual impact of the subject property is similar to that of a 1-story home on level ground with that of the neighbor. Further, an existing 6 ft. fence runs the entire length of the common lot line and an even taller hedge, both belonging to the neighbor, forms a continuous visual screen to the subject property. This leaves a view only of the uppermost portion of the tile roof directly across, not of windows or living space. The fourth window, facing the side yard, was not deemed a privacy concern to the adjacent neighbor, and again, this neighbor has written a letter indicating his support. Due to this sensitive handling of the design, Emerald Bay and the adjacent neighbors are entirely satisfied that there will be no negative privacy impact...

The property at 51 Emerald Bay, with an entire 2-story rear height being filled in, was approved in 2000. The Obradovich lot is also a “shallow” lot at an average of approx. 80 ft. deep. The corner location and “baseball diamond” shape of the site dictated the “L-shape” of the building with the open garden area towards the street, the view and the light, all of which the Association ultimately agreed offered substantial aesthetic and safety benefits to the neighborhood over the usual yard to the rear approach...

I also understand that the McDonald residence, at 155 Emerald Bay, included a rear yard entirely filled in to the 5 ft. setback, and that their project was possibly completed in 1999 [Staff Note: 155

Emerald Bay is a true triangular lot, in which the rear was deemed the point at the “head” of the triangle. A variance PA98-0132 was granted to allow a setback of 16.5’ from that point, instead of the required 19.5’]...

Please note also that the CC & R’s for Emerald Bay...allow for a 5 ft. setback at the location in question. Their Design Review Board reserves the right to require additional setbacks where they deem necessary on a case-by-case basis. However, in the absence of the former neighbor’s opposition...and with the support of the current adjacent neighbors, and in light of no other opposition whatever to the proposal, the Emerald Bay Design Review and Board of Directors have unanimously approved the project. [Staff Note: approval in February 2003]

Also, the owners were required, as part of their original [Staff Note: 1997] approval, to redesign the northeast corner of the building, “clipping” this [Staff Note: side yard] corner and holding back the East face to leave a “view” from a specific location at the rear neighbor towards the ocean. Due to this approach, the home sits several feet further from the east property setback than the minimum allowed [Staff Note: 9.5’, rather than the 5’ that would be allowed by the Zoning Code for a side yard setback]”

A rear yard setback variance in general is not unusual for the numerous setback variances approved throughout the community of Emerald Bay, on these small, odd-shaped and often steep lots. Staff has examined variances granted in the last 10 years for rear yard setbacks. If one were asked to give a “typical” case, it would involve a structural setback itself variable along the rear property line 5-10 feet for the first story of a home, and a variable 5-15 feet from the rear for the second story. Most rear yard variances in the interior of Emerald Bay have setbacks varying from 5’ to 11’, or leave at least one second floor corner open, or with deck only, much as this house is now. In other words, a full 2-story profile along the entire rear property line only 5’ from said line, as is proposed, would be very un-usual. A single example of the entire rear being filled in to a 2-story height at 51 Emerald Bay was approved in 2000, but that lot was only 55 feet deep, leaving that owner few options.

In essence, this is viewed as the most extreme variance that could reasonably be granted for a structure to be placed in a rear yard. The Zoning Administrator is asked to consider: 1) the applicant’s additional justification for the requested variance; 2) the findings that have been made to grant variances in the past on this property; and 3) photographs of the site that may support both.

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 Variance 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.*

Noting as precedent but not justification the numerous variances previously approved in the vicinity and throughout Emerald Bay, staff is of the opinion that the Zoning Administrator would be able to make these two variance findings on the sole basis of this lot's unusual shape, and approve the project.

Related to this is the required finding of neighborhood compatibility. The wording is: "that the location, size, design and operating characteristics of the proposed use will not create unusual noise, traffic or other conditions or situations that may be objectionable, detrimental, or incompatible with other permitted uses in the vicinity." Staff is concerned, as apparently was the Emerald Bay Association, that views from windows on the second floor could seriously impinge on the ability of adjoining neighbors to fully enjoy the privacy of their rear yards.

It should be noted that the Planning Commission deleted a condition apparently attempting to establish architectural control over second floor window heights on this same lot included by the Zoning Administrator in 1998. A condition requiring such control will admittedly be difficult to enforce in the long run. Nonetheless, staff recommends such a condition (see Condition #7) which would provide that the Manager, Current Planning Services, would review all future building permits on this property, including those for "window change-outs", to verify that still additional impacts to the yard privacy of adjoining property owners do not occur.

**RECOMMENDED ACTION:**

Current Planning Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA03-0049 for Variance subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Chad G. Brown, Chief  
CPSD/Site Planning Section

**APPENDICES:**

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

**EXHIBITS:**

1. a. Applicant's Letter of Explanation
- b. Applicant's Supplemental Letter
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.