

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

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DATE: August 28, 2002

TO: Orange County Zoning Administrator

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

SUBJECT: Public Hearing on Planning Application PA03-0050 for Use Permit and Variance

PROPOSAL: The applicant requests approval of a Use Permit to construct a terrace wall in the front setback area located 5 feet back from the front property line that varies in height from 3.5 feet to a maximum height of 8.1 feet above finished grade when a maximum wall height of 3.5 feet is permitted in this area. This Planning Application also includes a request for a Variance to permit a second story cantilevered deck to project into the rear 25 feet setback area to within 12 feet – 4 inches of the rear property line where such projections shall be located no closer that 20 from the rear property line.

LOCATION: The project site is located in the south coastal area of the County, in the community of Emerald Bay at 927 Emerald Bay, Laguna Beach. Fifth Supervisorial District

APPLICANT: Jeff and Mary Underwood, property owners
Laidlaw Schultz Architects, agent

STAFF William V. Melton, Project Manager

CONTACT: Phone: (714) 834-2541 FAX: (714) 667-8344

SYNOPSIS: Current Planning Services Division recommends Zoning Administrator approval of PA03-0050 subject to the attached Findings and Conditions of Approval.

BACKGROUND:

The subject site is rectangular in shape, averaging 68 feet in width and 111 feet in depth with approximately 7,560 square feet in area. The site is developed with a multi-level, 4,500 square feet single-family dwelling. The lot and dwelling are typical for the development in this area of Emerald Bay. The dwelling is setback 11 feet from the front property line, 13 feet – 9 inches from the rear property line and 5 feet from the side property lines. Available records indicate Variance V3101 established the existing setbacks. As indicated in the project proposal, the applicant requests a Use Permit for an over height wall in the front setback and a Variance to permit a second level deck that encroaches into the rear setback area.

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 (or approved for) 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, such as the subject site, are not subject to the CD regulation and are not subject to obtaining a Coastal Development Permit for new construction.



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 three 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. The Emerald Bay Community Association approved the proposal on May 6, 2003.

CEQA COMPLIANCE:

The proposed project is Categorically Exempt (Class 1, repair or minor alteration of existing structures or facilities and Class 5, minor alterations in land use limitations such as setback variance) from the requirements of CEQA. Appendix A contains the required CEQA Finding.

DISCUSSION/ANALYSIS:

While there are many variances approved in Emerald Bay, a rear setback variance for upper level deck usually raises the most concerns. The adjoining property owner to the rear of the subject property generally raises these concerns on privacy issues. In response to this issue, the Emerald Bay Community Association required the proposed deck to be setback an additional 2'-6" from the homeowners original submittal. The deck setback submitted to the County reflects the deck setback approved by Emerald Bay. Since the proposed setback has been reviewed by the property owners to the rear and approved by Emerald Bay, staff is of the opinion that the issue of privacy has been addressed.

Use Permits for over height walls are also common in Emerald Bay. Many are for over height walls in the side and rear setback areas to allow a basement level or first level new single-family dwelling to be lowered in order to conform to the Emerald Bay height restrictions. Over height walls in the front setback area are typical to that requested by the applicant. These terrace/retaining walls are constructed to allow for greater use of sloping areas in the front of a dwelling.

The proposed retaining/screen wall is shown with a setback of 5 feet from the front property line. For this proposal staff noticed heavy landscaping in the front setback will be removed to construct the proposed wall (see photos in Exhibit 2). Since the proposed wall will reach a maximum height of 8 feet at a point 5 feet from the side property line, the wall could have visual impacts on the surrounding properties. To address this issue, a landscaping plan for the front of the property has been approved by Emerald Bay. Since there are no zoning requirements for landscaping, Emerald Bay's approval of the landscaping plans would appear to address any visual impacts.

The applicant also proposes a freestanding fireplace in the new courtyard created by the retaining wall. The new fireplace and chimney are located 5 feet beyond the new retaining wall. The height of the fireplace does not exceed the height of the wall. A 5 feet wide by five feet tall decorative section of the chimney would be visible above the retaining wall. The freestanding fireplace and chimney structure stands 8 feet high above the finished courtyard elevation. Since this structure is below the eve line of the existing roof, staff sees no issues with the fireplace.

The issues common with the variance and use permit appear to have been addressed through the Emerald Bay Community Association. 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.

In addition to the Variance findings, Zoning Code Section 7-9-137.5 “Fences and walls” states that modifications to wall and fence height provisions may be permitted subject to a Use Permit and the following two findings.

1. The height and location of the fence or wall as proposed will not result in or create a traffic hazard.
2. The location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objection-able, detrimental or incompatible with other permitted uses in the vicinity.

Staff is of opinion that the Zoning Administrator is able to make these two special variance findings and the two required findings for the over height wall. The special circumstance for approving the variance requested for this proposal is in Finding No. 9 of Appendix A. The two findings for the over height wall is Findings No. 7 and 9. Because the requested Variance is typical of previously approved setback Variances and the Use Permit for an over height wall is also typical in Emerald Bay, staff can support the proposed project and make 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 PA03-0050 for Use Permit and Variance 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.