

**PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT**

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**DATE:** February 9, 2006

**TO:** Orange County Zoning Administrator

**FROM:** RDMD/PDS/Current and Advance Planning Services

**SUBJECT:** Public Hearing on Planning Application PA05-0069 for Coastal Development Permit and Variance

**PROPOSAL:** **Coastal Development Permit** - demolish existing single-family dwelling and construct a new 4,857 square foot, three-level single-family dwelling on a 9,131 square foot lot. Proposal also includes construction of a new swimming and spa. **Use Permit** – screen and combination retaining walls with railings to the maximum combined height of 21 feet; five (5) feet of the front property line, one (1) foot on the side property line; other walls to 9 feet height at zero (0) feet from the side property lines.

**LOCATION:** The project is located in the community of Emerald Bay, on the ocean side of and adjacent to the Pacific Ocean at 98 Emerald Bay, Laguna Beach. Fifth Supervisorial District.

**APPLICANT:** Diane Stellar, property owner  
Glen Gellatly, Bissell Architects, agent

**STAFF** Yosh Kawasaki, Staff Planner  
**CONTACT:** Phone: (714) 834-4389 FAX: (714) 667-8344

**SYNOPSIS:** PDS/Current and Advance Planning Services recommends Zoning Administrator approval of PA05-0069 for Coastal Development Permit subject to the attached Findings and Conditions of Approval.

**BACKGROUND:**

The subject property is located in the coastal portion of Emerald Bay on a peninsula on the southwestern edge of the community. The property is located at 98 Emerald Bay and is legally known as Lot 13 of Tract 975. The lot is approximately 9,131 square feet rectangular size lot, measuring 60 feet across the street frontage and 60.66 feet at the rear, with an average depth of approximately 152 feet. The site is developed with a single-family dwelling. The dwelling is single story from the street side and three storied (two below grade) from the beach side. The development is designated R1 Residential with a CD – Coastal Development overlay.

The site is a bluff property ranging in elevation from approximately 17 feet above sea level at the rear of the lot to approximately 75 feet at the front of the property. The rear property line abuts an open space/beach area belonging to the Emerald Bay Community Association. The property is developed with

an existing multi-level single-family dwelling setback 12 feet (the garage face is setback 4 feet - 6 inches) from the front property line. The home was constructed in 1960's and is approximately 3,989 square feet in size. A pathway is currently constructed from the front of the home along the south-easterly property line to the beach area at the rear.

The applicant proposes to demolish the existing home and construct a new three-level dwelling containing 4,857 square feet of living area. The structure has one level at the grade of the roadway and two levels (including a daylight basement) below grade. A total of four (4) on-site parking spaces are provided: an oversized two-car garage and two (2) uncovered space parking spaces on the north-easterly side of the dwelling. From the front street level, the dwelling will appear to be single story in height with the top of the roof approximately 12 feet above the front curb elevation. In addition to the proposed new dwelling, a pool and spa are proposed at the rear yard area and an existing pathway will be modified and improved. In order to construct the proposed dwelling, the applicant proposes to partially regrade the lot and drill caissons approximately 20 feet below the grade of the roadway rather than over-excavating and back filling for the pad. An estimated 1,300 cubic yards of earthwork will be required; 1,200 cubic yards will be cut and 100 cubic yards will be fill.

#### **SURROUNDING LAND USE:**

The subject site and all surrounding properties are zoned R1 "Single-family Residence" District with a CD "Coastal Development Permit" District overlay, except for the property to the south-west (ocean side) which is the private beach area belonging to the Emerald Bay Community Association (see photo below). The site is also within a certified Local Coastal Program (Emerald Bay LCP). All properties in Emerald Bay ocean side of Pacific Coast Highway are subject to the CD District of the Zone Code and development projects are subject to appeal to the Coastal Commission. Surrounding properties are developed with single-family dwellings.



**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 dwelling within 100 feet of the site (Coastal Development Permit requirement). 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 issues with the project have been received from other County divisions. The Emerald Bay Community Association “preliminarily” approved the proposal at its September 27, 2005 meeting.

**CEQA COMPLIANCE:**

Negative Declaration No. PA050069 has been prepared and posted for public review on December 8, 2005 this proposed project. It is attached for your consideration and must be approved prior to project approval with a finding that together, they are adequate to satisfy the requirements of CEQA. Appendix A contains the required CEQA Finding.

**DISCUSSION/ANALYSIS:**

The proposed removal of a house on a lot and replacement with a larger house is common in the Emerald Bay community. This is true for sites on the ocean side and inland side of Pacific Coast Highway. Numerous Planning Applications have been received requesting approval of discretionary permits to remove a home and construct a larger home. In addition to the Coastal Development Permits, the majority of these applications include a request for a front or rear yard variance, and/or a Use Permit for over height walls in the setback area. This project requires a Coastal Development Permit for the demolition and the construction of a new dwelling and a Use Permit for a combination screening and retaining walls to the maximum height of 21 feet as close to five (5) feet from the property line and one (1) foot on one side, and nine (9) feet height at zero (0) feet on the remaining side property lines.

The proposed structure is located at approximately the same location as the existing structure. The building footprint of the proposed structure extends down the bluff an additional approximately 60 feet beyond the limit of the existing structure. Since this is a bluff lot, there are sometimes “string line” issues and associated ocean views with new home location on the bluff. Emerald Bay uses a procedure to establish the location of a structure on a lot based on the location of the structures on the lot on either side. In most cases a new structure cannot encroach beyond a string line connecting the outer most points of the two adjoining lots. The County does not include site development standards regarding this string line or views. The Scenic Resources section of the Land Use Plan of the Emerald Bay LCP establishes the Emerald Bay Board of Directors with the responsibility to “*Ensure that existing ocean views of surrounding property owners within the community are preserved.*” The string line and associated ocean views is established and administrated by the community association. The proposed pool and spa are at a ground elevation that is at a lower basement level and will have no effect on ocean views from adjoining properties. It is also noted that the Emerald Bay HOA offered a “preliminary approval” to this proposal.

The front setback requirement for the dwelling on this site is determined by averaging the setbacks of the two adjoining lots. The front setback conforms to this standard. The Emerald Bay CC&Rs allows for a setback of 5 feet in most cases. A standard garage setback is 18 feet from the street curb. The site requires two covered spaces. The applicant's plans call for two (2) covered spaces and two (2) open spaces.

Front and rear setback variance requests are common in Emerald Bay. 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 the opinion that the Zoning Administrator is able to make these two variance findings and approve the variance request for this proposal. The special circumstance required by finding 1 above is found in Appendix A, Finding No. 15 which states: "*The special circumstances are: the steep topography of the site together with the restrictive Emerald Bay CC&Rs prohibit the applicant from constructing a single-family dwelling that could otherwise be constructed under County's R1 zoning site development regulations applicable to the site.*" In conclusion, staff's review determined the applicant's proposed Coastal Development Permit for a new single-family dwelling, proposed grading and variance request are consistent with other bluff top properties previously approved in Emerald Bay. Staff supports the applicant's proposal and makes a recommendation as follows.

**RECOMMENDED ACTION:**

PDS/Current and Advance Planning Services recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA05-0069 for Coastal Development Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted

*Signature on file*

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Charles M. Shoemaker, Chief  
RDMD/Current and Advance Planning

**APPENDICES:**

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

**EXHIBITS:**

- 1. Applicant's Letter of Explanation
- 2. Environmental Documentation
- 3. Site photos and aerial photos
- 4. Site Plans
- 5. Environmental documentation

**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 for a single family dwelling matter or \$760.00 for all other matters, to be 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.