

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

DATE: July 13, 2006
TO: Orange County Zoning Administrator
FROM: Planning and Development Services Department/Land Use Services Division
SUBJECT: Public Hearing on Planning Application PA05-0071 for Coastal Development Permit, Use Permit, and Variance.

PROPOSAL: The applicant requests a Coastal Development Permit to demolish an existing single family dwelling, to construct a new single family dwelling with attached garage, and a new spa; Variances for a proposed structural rear setback of 22 feet and roof eave setback of 14 feet, a Use Permit for over-steep driveway (nearly 20% down), extending into the floor of the garage at 8% down, and for accessory structures in the front setback, plus a Use Permit for driveway walls in the front setback to 4 feet tall, and for other walls in the rear and side setbacks to a height of 9 feet.

Though the project involves approximately 900 cubic yards of grading, a Site Development Permit per Zoning Code Section 7-9-139 is not required because less than 500 cubic yards of that work is on slopes over 30%.

LOCATION: In the community of Emerald Bay, on the coastal side of Pacific Coast Highway, at 145 Emerald Bay, Laguna Beach. Fifth Supervisorial District.

APPLICANT: Mr./Mrs. Raymond Francis, property owners, and C. J. Light Associates, Architect

STAFF J. Alfred Swanek, Project Manager Phone: (714) 796-0140
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SYNOPSIS: Land Use Services Division recommends Zoning Administrator approval of PA05-0071 for Coastal Development Permit, Variance, and Use Permits subject to the attached Findings and Conditions of Approval.

BACKGROUND:

The project site is not a portion of a recorded tract, but, rather was created with the Record of Survey 14-20 in 1944. It is clearly depicted as an intended lot on that 1944 exhibit, although not being numbered, and has not changed in shape or dimensions since that time. The existing home to be demolished was constructed in 1987. The lot size is 8422 square feet. The property is zoned R1 (CD) District (Single-family Residence with a Coastal Development overlay).

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.



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, other than driveway issues addressed below. The Emerald Bay Community Association approved the applicant's preliminary plans on March 28, 2006.

CEQA COMPLIANCE:

Pursuant to the California Environmental Quality Act (CEQA), the project is documented by Negative Declaration PA050071, which became final without appeal on July 10, 2006. Mitigation measures included have been transposed into recommended conditions of approval. Prior to project approval, the

decision-maker must conclude that this Negative Declaration is adequate to satisfy the requirements of CEQA for the proposed project. A finding to that effect is included.

DISCUSSION/ANALYSIS:

Emerald Bay has a certified Local Coastal Program (LCP). The LCP has a requirement that all properties on the ocean side of PCH 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 Permit prior to demolishing a dwelling, making a large addition to an existing residence and/or construction of a new dwelling. Properties located on the ocean side of Pacific Coast Highway, such as the subject site, are subject to the CD regulation and are subject to obtaining a Coastal Development Permit for new construction. Projects requiring a Coastal Development Permit are appealable to the California Coastal Commission.

The applicant proposes a new three-level single family dwelling of 6,980 sq. ft. of living area plus 1,360 sq. ft. garage. The required rear yard setback is 25 feet; the proposed Variance would allow the walls of the new home to be placed as close as 22 feet.

The setback variances proposed are similar to other setback variances approved throughout the community of Emerald Bay, on small, irregularly-shaped and often steep lots. Staff has examined variances granted in the last 10 years for both front and rear yard setbacks, and notes that a typical case involves a structural setback varying along the front or rear property line 5-10 feet for the first story of a home, and perhaps 5-15 feet for a second story.

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 topography and unusual shape

A Use Permit is required as an off-street parking modification for a driveway 16% and then 19.5% down-grade beginning 5 feet from the front property line (where 18 feet is the standard), grades extending into the garage at 8% down, and one grade break of more than 10% (5% to 16%). Since there is no apparent entrance on the garage level, it seems unlikely anyone other than the owners or visitors already familiar with the property would ever use it. Anyone parking in the driveway must go back up to the front of the lot and then enter through the adjoining entry court.

Separate Use Permits are required for accessory structures in the front setback (a patio cover), plus a Use Permit for driveway walls in the front setback to 4 feet tall, and for other walls in the rear and side setbacks to a height of 9 feet.

Zoning Code Section 7-9-145.7 (“Alternatives to off-street parking regulations”) provides for alternative parking standards by use permit when the decision-maker is able to make findings that:

- (1) *Applicable off-street parking requirements are excessive or inappropriate due to the nature of the specific use involved or because of special circumstances applicable to the property; and*
- (2) *The proposed off-street parking facilities comply with the intent of...Section 7-9-145.1.*

Section 7-9-145.1 states: “It is intended that these regulations will result in the installation of properly designed parking facilities of sufficient capacity to minimize traffic congestion, enhance public safety, generally provide for the parking of motor vehicles at locations other than on the streets, and for safe passage of pedestrians to and from parked vehicles.”

County traffic engineering staff reviewed all elements of the off-street parking modification Use Permit through a series of design efforts and commented that these situations as currently planned are manageable with a recommended condition for “line-of-sight” (see Condition 16). The Zoning Administrator is requested to find that the standards not being met are inappropriate due to the interior size of the garage, the length of the driveway, and the light traffic on this portion of Emerald Bay Drive.

A Use Permit is required for the height of the proposed wall adjoining the proposed garage, being up to 4 ft. tall in the front setback, and elsewhere to a maximum of 9 feet in height. There are no “typical” walls or wall heights that have been granted in Emerald Bay, since every lot is different in size, shape, and topography. However, with the exception of the architecturally-unusual planter elevated to be over the entrance to the driveway, the walls would not be at all out of character. With the standard condition on line-of-sight referenced previously, staff believes the Zoning Administrator can make the special findings required for “overheight” walls, being:

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

A Use Permit is also required for an accessory structure in the front setback, a patio cover, with no special findings beyond compatibility with the neighborhood.

Finally, the applicant requests a Coastal Development Permit to demolish the existing single family dwelling, construct a new single family dwelling with attached garage, retaining walls, a new spa, and detached patio cover, with special findings for Local Coastal Program consistency as recommended by staff.

RECOMMENDED ACTION:

Land Use Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA05-0071 for Use Permits, Variance, and Coastal Development Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Charles Shoemaker, Chief
LUSD/Site Planning Section

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.

In addition to County appeal procedures, 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.



Appendix A Findings PA050071

1	GENERAL PLAN	PA050071
	That the use or project proposed is consistent with the objectives, policies, and general land uses and programs specified in the General Plan adopted pursuant to the State Planning and Zoning Law.	
2	ZONING	PA050071
	That the use, activity or improvement(s) proposed, subject to the specified conditions, is consistent with the provisions of the Zoning Code, or specific plan regulations applicable to the property.	
3	COMPATIBILITY	PA050071
	That the location, size, design and operating characteristics of the proposed use will not create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity.	
4	GENERAL WELFARE	PA050071
	That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.	
5	PUBLIC FACILITIES	PA050071
	That the approval of the permit application is in compliance with Codified Ordinance Section 7-9-711 regarding public facilities (fire station, library, sheriff, etc.).	
6	COASTAL DEVELOPMENT PERMIT 1	PA050071
	That the development project proposed by the application conforms with the certified Local Coastal Program.	
7	COASTAL DEVELOPMENT PERMIT 2	PA050071
	That the project conforms with the public access and public recreation policies of the California Coastal Act.	
8	COASTAL DEVELOPMENT PERMIT 3	PA050071
	That the approval of this application will result in no modification to the requirements of the certified land use plan.	
9	COASTAL DEVELOPMENT PERMIT 4	PA050071
	That the approval of the application will result in a project which is in full compliance with the requirements of the certified land use plan.	
10	NEGATIVE DECLARATION	PA050071 (Custom)
	That in accordance with Section 21080(c) of the Public Resources Code and CEQA Guidelines Section 15074, Negative Declaration No. PA050071, which reflects the independent judgment of the lead agency, satisfies the requirements of CEQA and is adopted for the proposed project based upon the following findings:	
	<p>a. The Negative Declaration and comments on the Negative Declaration received during the public review process were considered and the Negative Declaration was found adequate in addressing the impacts related to the project; and</p> <p>b. On the basis of the whole administrative record there is no substantial evidence that the project, with the implementation of the mitigation measures, if any that are included in the Negative Declaration, will have a significant effect on the environment.</p>	
11	FISH & GAME - EXEMPT	PA050071
	That pursuant to Section 711.4 of the California Fish and Game Code, this project is exempt from the required fees as it has been determined that no adverse impacts to wildlife resources will result from the project.	

12	NCCP NOT SIGNIFICANT	PA050071
<p>That the proposed project will not have a significant unmitigated impact upon Coastal Sage Scrub habitat and therefore, will not preclude the ability to prepare an effective subregional Natural Communities Conservation Planning (NCCP) Program.</p>		
13	FENCE AND WALL 1	PA050071
<p>That the height and location of the fence or wall as proposed will not result in or create a traffic hazard.</p>		
14	FENCE AND WALL 2	PA050071
<p>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.</p>		
15	PARKING MODIFICATION 1	PA050071 (Custom)
<p>That the applicable off-street parking requirements are inappropriate due to the interior size of the garage, the length of the driveway, and the light traffic on this portion of Emerald Bay Drive.</p>		
16	PARKING MODIFICATION 2	PA050071
<p>That the proposed off-street parking facilities comply with the intent of Section 7-9-145.1 "Off-Street Parking Regulations" of the Orange County Zoning Code.</p>		
17	PARKING AND CIRCULATION	PA050071
<p>That the access, parking and circulation facilities will not result in excess traffic safety hazards.</p>		
18	VARIANCE 1	PA050071 (Custom)
<p>That there are special circumstances applicable to the subject building site, being topography and an irregularly shaped lot, 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.</p>		
19	VARIANCE 2	PA050071
<p>That 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.</p>		



Appendix B Conditions of Approval PA050071

1 CP CP NA BASIC/ZONING REG PA050071

This approval constitutes approval of the proposed project only to the extent that the project complies with the Orange County Zoning Code and any other applicable zoning regulations. Approval does not include any action or finding as to compliance of approval of the project regarding any other applicable ordinance, regulation or requirement.

2 CP CP NA BASIC/TIME LIMIT PA050071

This approval is valid for a period of 36 months from the date of final determination. If the use approved by this action is not established within such period of time, this approval shall be terminated and shall thereafter be null and void.

3 CP CP NA BASIC/PRECISE PLAN PA050071

Except as otherwise provided herein, this permit is approved as a precise plan. If the applicant proposes changes regarding the location or alteration of any use or structure, the applicant shall submit a changed plan to the Director, PDS, for approval. If the Director, PDS, determines that the proposed change complies with the provisions and the spirit and intent of the approval action, and that the action would have been the same for the changed plan as for the approved plot plan, he may approve the changed plan without requiring a new public hearing.

4 CP CP NA BASIC/COMPLIANCE PA050071

Failure to abide by and faithfully comply with any and all conditions attached to this approving action shall constitute grounds for the revocation of said action by the Orange County Planning Commission.

5 CP CP NA BASIC/OBLIGATIONS PA050071

Applicant shall defend at his/her sole expense any action brought against the County because of issuance of this permit. Applicant shall reimburse the County for any court costs and attorneys fees that the County may be required to pay as a result of such action. The County may, at its sole discretion, participate in the defense of any action, but such participation shall not relieve applicant of his/her obligations under this condition.

6 CP CP NA BASIC/APPEAL EXACTIONS PA050071

Pursuant to Government Code Section 66020, the applicant is hereby informed that the 90-day approval period in which the applicant may protest the fees, dedications, reservations or other exactions imposed on this project through the conditions of approval has begun.

7 SG SG G DRAINAGE STUDY PA050071

Prior to the issuance of any grading permits, the following drainage studies shall be submitted to and approved by the Manager, Subdivision and Grading:

- A. A drainage study of the project including diversions, off-site areas that drain onto and/or through the project, and justification of any diversions; and
- B. When applicable, a drainage study evidencing that proposed drainage patterns will not overload existing storm drains; and
- C. Detailed drainage studies indicating how the project grading, in conjunction with the drainage conveyance systems including applicable swales, channels, street flows, catch basins, storm drains, and flood water retarding, will allow building pads to be safe from inundation from rainfall runoff which may be expected from all storms up to and including the theoretical 100-year flood.

8 SG SG G DRAINAGE IMPROVEMENTS PA050071

A. Prior to the issuance of any grading permits, the applicant shall in a manner meeting the approval of the Manager, Subdivision and Grading:

- 1) Design provisions for surface drainage; and
- 2) Design all necessary storm drain facilities extending to a satisfactory point of disposal for the proper control and disposal of storm runoff; and
- 3) Dedicate the associated easements to the County of Orange, if determined necessary.

B. Prior to the issuance of any certificates of use and occupancy, said improvements shall be constructed in a manner meeting the approval of the Manager, Construction.

9 SG SG G DRAINAGE OFFSITE PA050071

Prior to the issuance of any grading permit, and if determined necessary by the Manager, Subdivision and Grading, the applicant shall record a letter of consent, from the upstream and/or downstream property owners permitting drainage diversions and/or unnatural concentrations. The form of the letter of consent shall be approved by the Manager, Subdivision and Grading Services prior to recordation of the letter.

10 F F GBU FIRE HYDRANTS PA050071 (Custom)
[Res] Service Code: 1.12.1, 1.29, 1.30

Prior to the issuance of a building permit, the applicant shall submit a fire hydrant location plan to the Fire Chief for review and approval.

11 F F B WATER AVAILABILITY PA050071 (Custom)
[Res] Service Code: 1.12.1

Prior to the issuance of any grading permits or the issuance of a building permit, whichever occurs first, the applicant shall provide evidence of adequate fire flow. The "Orange County Fire Authority Water Availability for Fire Protection" form shall be signed by the applicable water district and submitted to the Fire Chief for approval. If sufficient water to meet fire flow requirements is not available an automatic fire extinguishing system may be required in each structure affected.

12 F F RBU AUTOMATIC FIRE SPRINKLER PA050071 (Custom)
[Res] Service Codes: 1.27-1.28

A. Prior to the issuance of a building permit, the applicant shall submit plans for any required automatic fire sprinkler system in any structure to the Fire Chief for review and approval. Please contact the Orange County Fire Authority at (714) 744-0499 for additional information.

B. Prior to the issuance of a certificate of use and occupancy, this system shall be operational in a manner meeting the approval of the Fire Chief.

13 F F RG FIRE ACCESS ROADS PA050071 (Custom)
[Res] Service Code: 1.12.1

Prior to the issuance of any grading permits or the issuance of a building permit, whichever occurs first, the applicant shall obtain approval of the Fire Chief for all fire protection access roads to within 150 feet of all portions of the exterior of every structure on site. Please contact the Orange County Fire Authority at (714) 744-0499 or visit the Orange County Fire Authority website to obtain a copy of the "Guidelines for Emergency Access, or Bulletin number 08-99, "Fire Department Access Requirements for A Single Family Residence."

14 SG SG G GEOLOGY REPORT PA050071

Prior to the issuance of a grading permit, the applicant shall submit a geotechnical report to the Manager, Subdivision and Grading, for approval. The report shall include the information and be in the form as required by the Grading Manual.

15 BP BP G CONSTRUCTION NOISE PA050071

A. Prior to the issuance of any grading permits, the project proponent shall produce evidence acceptable to the Manager, Building Permit s Services, that:

- (1) All construction vehicles or equipment, fixed or mobile, operated within 1,000' of a dwelling shall be equipped with properly operating and maintained mufflers.

(2) All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).

(3) Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

B. Notations in the above format, appropriately numbered and included with other notations on the front sheet of the project's permitted grading plans, will be considered as adequate evidence of compliance with this condition.

16 SG SG G SIGHT DISTANCE PA050071

Prior to the issuance of any grading permits, the applicant shall provide adequate sight distance per Standard Plan 1117 at all street intersections, in a manner meeting the approval of the Manager, Subdivision and Grading. The applicant shall make all necessary revisions to the plan to meet the sight distance requirement such as removing slopes or other encroachments from the limited use area in a manner meeting the approval of the Manager, Subdivision and Grading Services.

17 BI BI RGB WATER QUALITY MANAGEMENT PLAN PA050071

Prior to the issuance of any grading or building permits, the applicant shall submit for review and approval by the Manager, Inspection Services Division, a Water Quality Management Plan (WQMP) specifically identifying Best Management Practices (BMPs) that will be used onsite to control predictable pollutant runoff. This WQMP shall identify, at a minimum, the routine structural and non-structural measures specified in the current Drainage Area Management Plan (DAMP). The WQMP must also:

- Address Site Design BMPs (as applicable) such as minimizing impervious areas, maximizing permeability, minimizing directly connected impervious areas, creating reduced or "zero discharge" areas, and conserving natural areas;
- Incorporate applicable Routine Source Control BMPs as defined in the DAMP;
- Include an Operation and Maintenance (O&M) Plan that identifies the mechanism(s) by which long-term O&M of all structural BMPs will be provided.

18 BI BI U COMPLIANCE WITH THE WQMP PA050071

Prior to the issuance of a certificate of use and occupancy, the applicant shall demonstrate compliance with the WQMP in a manner meeting the satisfaction of the Manager, Inspection Services Division, including:

- Demonstrate that all structural Best Management Practices (BMPs) described in the project's WQMP have been implemented, constructed and installed in conformance with approved plans and specifications;
- Demonstrate that the applicant has complied with all non-structural BMPs described in the project's WQMP;
- Submit for review and approval an Operations and Maintenance (O&M) Plan for all structural BMPs for attachment to the WQMP;
- Demonstrate that copies of the project's approved WQMP (with attached O&M Plan) are available for each of the incoming occupants;
- Agree to pay for a Special Investigation from the County of Orange for a date (12) twelve months after the issuance of a Certificate of Use and Occupancy for the project to verify compliance with the approved WQMP and O&M Plan; and
- Demonstrate that the applicant has agreed to and recorded one of the following: 1) the CC&R's (that must include the approved WQMP and O&M Plan) for the project Home Owner's Association; 2) a water quality implementation agreement that has the approved WQMP and O&M Plan attached; or 3) the final approved Water Quality Management Plan (WQMP) and Operations and Maintenance (O&M) Plan.

19 BI BI GB STORMWATER POLLUTION PREVENTION PLAN PA050071

Prior to the issuance of any grading or building permits, the applicant shall demonstrate compliance under

California's General Permit for Stormwater Discharges Associated with Construction Activity by providing a copy of the Notice of Intent (NOI) submitted to the State Water Resources Control Board and a copy of the subsequent notification of the issuance of a Waste Discharge Identification (WDID) Number or other proof of filing in a manner meeting the satisfaction of the Manager, Building Permit Services. Projects subject to this requirement shall prepare and implement a Stormwater Pollution Prevention Plan (SWPPP). A copy of the current SWPPP shall be kept at the project site and be available for County review on request.

20 BI BI GB EROSION AND SEDIMENT CONTROL PLAN PA050071

Prior to the issuance of any grading or building permit, the applicant shall submit a Erosion and Sediment Control Plan (ESCP) in a manner meeting approval of the Manager, Building Permit Services, to demonstrate compliance with local and state water quality regulations for grading and construction activities. The ESCP shall identify how all construction materials, wastes, grading or demolition debris, and stockpiles of soil, aggregates, soil amendments, etc. shall be properly covered, stored, and secured to prevent transport into local drainages or coastal waters by wind, rain, tracking, tidal erosion or dispersion. The ESCP shall also describe how the applicant will ensure that all BMP's will be maintained during construction of any future public right-of-ways. A copy of the current ESCP shall be kept at the project site and be available for County review on request.