

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

DATE: April 6, 2006
TO: Orange County Zoning Administrator
FROM: Planning and Development Services Department/Land Use Services Division
SUBJECT: Public Hearing on Planning Application PA06-0001 for Site Development Permit, Use Permit, and Variance.

PROPOSAL: The applicant proposes to construct a single-family dwelling with an attached garage on a vacant “thru-lot” with street access on two sides. A Variance is requested to allow the structure as close as 5.5 feet to the rear property line instead of the required 10.85 feet.

A second “lot area variance” is sought because the current legal parcel, Parcel 2 of Lot Line Adjustment (LLA) 2004-23, and 6,625 square feet in size, was created from Parcel 2 of LLA 2000-42, 7,085 square feet in size, where 7,200 square feet is required. This lot area variance would make this 2004 legal parcel into a legal building site. In the case of both LLAs, the other property involved, Parcel 1, always remained in excess of the minimum lot size.

Use Permits are required for a proposed minimum driveway length of 11.6 feet, where 18 feet is required; a wall adjoining the proposed garage in the front setback up to 11 feet tall, the wall being 3 feet from the driveway/street intersection where 5 feet is required; and combined planter/exterior stairway/retaining wall/screen walls in the front setback, including an elevated planter (which may also be considered a “deck”), that together rise approximately 24.5 feet in height.

A Site Development Permit is required for grading approximately 1,000 cubic yards on slopes over 30%.

LOCATION: In the community of Emerald Bay, on the inland side of Pacific Coast Highway, at 540 Emerald Bay, Laguna Beach. Fifth Supervisorial District.

APPLICANT: Randall and Allison Bone, property owners, and Scott Laidlaw, architect-agent

STAFF J. Alfred Swanek, Project Manager Phone: (714) 796-0140
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SYNOPSIS: Land Use Services Division recommends Zoning Administrator approval of PA06-0001 for Use Permit, Variance, and Site Development Permit subject to the attached Findings and Conditions of Approval.

BACKGROUND:

The subject site has approximately 43 feet of elevation change in an 88 foot distance across the property, or a 50% slope. The site fronts on two streets; the lower elevation being where the garage entrance is proposed, as well as the front of the lot for setback purposes. The site has never been built upon.

The project site occupies approximately the same location as Lot 46 of Tract 1108, recorded in 1945. The boundaries of the current property are identical to those of Lot 46 on the north and the west. Lot 46 was 6,332 square feet. The current lot size is 6,625 square feet, as the result of a series of Lot Line Adjustments, where the lot at one time was 7,085 square feet in size. The project site has never been 7,200 sq. ft. in size or larger, the minimum for the zoning District in which it is located.

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. 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 on November 1, 2005.

CEQA COMPLIANCE:

Pursuant to the California Environmental Quality Act (CEQA), the project is documented by Addendum PA060001 to previous Negative Declaration PA000123, for a very similar project on the previous site. Mitigation measures included have been transposed into recommended conditions of approval. Prior to project approval, the decision-maker must conclude that this Addendum/Negative Declaration is adequate to satisfy the requirements of CEQA for the proposed project. A finding to that effect is included.

DISCUSSION/ANALYSIS:

The applicant proposes a new three-level single family dwelling of 4,618 sq. ft. plus 1,079 sq. ft. garage. Using the Zoning Code "shallow lot" criteria, (Section 7-9-128.2), the rear setback would be 10.85 feet. The proposal is to place the new home at 5.5 feet, requiring a setback variance.

The setback variance proposed is similar to other setback variances approved throughout the community of Emerald Bay, on small, odd-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

The second variance is to recognize that this lot was at one time as large as 7,085 sq. ft. in size, but is now only 6,625 sq. ft., the result of a Lot Line Adjustment approved in 2004. This parcel has never met the 7,200 sq. ft. minimum lot size for the zoning District in which it is located. Lot Line Adjustment 2004-23, which reduced the size of this parcel from 7,085 square feet in size to 6,625 square feet in size, did not include an area variance. The records do not provide any insight into the justification for this Lot Line Adjustment. Review of the aerial photo for the subject lot and the lot to the east whose mutual boundaries were adjusted does not offer any clue as to why this lot was not made 7,200 sq. ft. in size, with the shared property line appearing to be brush-covered. The fact remains that the lot, larger now than when it was legally created under the Subdivision Map Act in 1945, has never met the District minimum lot size requirement.

Staff believes the topography and unusual lot shape justifies recognition of the current 6,625 sq. ft. parcel as a legal building site, and would allow the variance findings for the setback to cover the lot size as well.

Use Permits are required for a proposed driveway length of 11 feet 7 inches, where 18 feet is required; and a wall adjoining the proposed garage in the front setback extending perpendicular right to the front property line, said wall being 3 feet from the driveway/street intersection where 5 feet is required. 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.”

The garage provides covered parking for three cars where the Zoning Code only requires two covered spaces. The driveway in front of one of the three garage spaces is the required 18 feet in length. County traffic engineering staff commented that this situation and the interaction of the wall extending to the property line with a nearby driveway cut (3 feet away) are manageable with the standard condition for “line-of-sight” (see Condition 15). The Zoning Administrator is requested to find that the standards not being met are inappropriate due to the size of the garage, the length of the driveway in front of one garage space, and the light traffic on this portion of Emerald Bay Drive.

A Use Permit is also required for the height of the proposed wall adjoining the proposed garage, being up to 11 ft. tall in the front setback, and combined planter/external stairway/retaining wall/screen walls, also in the front setback, including an elevated planter, that together rise approximately some 24.5 feet in height when viewed as combined and having a combined height. These walls are most clearly seen on the “west elevation” on Plan Sheet A.300.

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.*

Finally, a Site Development Permit is required for the amount of grading, nearly 1,000 cubic yards on slopes over 30%. No special findings are required for this aspect of the project, beyond finding that the proposed grading will contribute to an overall project that is compatible with the neighborhood.

RECOMMENDED ACTION:

Land Use Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA06-0001 for Use Permits, Variances, and Site 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.



Appendix A Findings PA060001

1	GENERAL PLAN	PA060001
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	PA060001
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	PA060001
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	PA060001
That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.		
5	PUBLIC FACILITIES	PA060001
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	NEGATIVE DECLARATION AND ADDENDUM	PA060001 (Custom)
That the decision-maker has considered Negative Declaration IS PA000123, previously adopted on February 22, 2001, and Addendum IS PA060001 prior to project approval. The Addendum is approved for the proposed project based upon the following findings:		
<ul style="list-style-type: none"> a. Together, these documents are adequate to satisfy the requirements of CEQA by the decision-maker; and b. The additions, clarifications, and/or changes to the original document caused by the Addendum do not raise new significant issues that were not addressed by the Negative Declaration; and c. The consideration of the Negative Declaration and the approval of the Addendum for the proposed project reflect the independent judgment of the Lead Agency. 		
7	FENCE AND WALL 1	PA060001
That the height and location of the fence or wall as proposed will not result in or create a traffic hazard.		
8	FENCE AND WALL 2	PA060001
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.		
9	PARKING MODIFICATION 1	PA060001 (Custom)
That the applicable off-street parking requirements are inappropriate due to the size of the garage, the length of the driveway in front of one garage space, and the light traffic on this portion of Emerald Bay Drive.		
10	PARKING MODIFICATION 2	PA060001
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.		

11 **PARKING AND CIRCULATION** **PA060001**

That the access, parking and circulation facilities will not result in excess traffic safety hazards.

12 **VARIANCE 1** **PA060001 (Custom)**

That there are special circumstances applicable to the subject building site, being steep topography and an unusual lot shape, 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.

13 **VARIANCE 2** **PA060001**

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.



Appendix B

Conditions of Approval

PA060001

1 CP CP NA BASIC/ZONING REG PA060001

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 PA060001

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 PA060001

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/OBLIGATIONS PA060001

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.

5 CP CP NA BASIC/APPEAL EXACTIONS PA060001

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.

6 SG SG G DRAINAGE STUDY PA060001

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.

7 SG SG G DRAINAGE IMPROVEMENTS PA060001

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.

8 SG SG G DRAINAGE OFFSITE PA060001

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.

9 F F SB ARCHITECTURAL BUILDING PLANS PA060001
[Com] Service Codes: 1.14-1.17

Prior to the issuance of a building permit, the applicant shall submit architectural plans for the review and approval of the Fire Chief if required per the "Orange County Fire Authority Plan Submittal Criteria Form." Please contact the Orange County Fire Authority at (714) 744-0499 for a copy of the Site/Architectural Notes to be placed on the plans prior to submittal.

10 F F RBU AUTOMATIC FIRE SPRINKLER PA060001 (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.

11 F F RRB FIRE HAZARD NOTIFICATION PA060001 (Custom)
[Res] Service Codes: 1.5 & 1.7

Prior to the issuance of a building permit, the applicant shall place a note on the plans meeting the approval of the Fire Chief that all requirements for development and construction within a "Special Fire Protection Area," including street widths, Class A roof assemblies, fire sprinklers, etc. will be met. 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 Development within Special Fire Protection Areas and Instructions for Request for Exclusion from SFPA."

12 F F B COMBUSTIBLE CONSTRUCTION LETTER PA060001
[Res] No OCFA Service Code (Usually Received with 1.12.1)

Prior to the issuance of a building permit for combustible construction, the builder shall submit a letter on company letterhead stating that water for fire-fighting purposes and all-weather fire protection access roads shall be in place and operational before any combustible material is placed on site. *Building permits will not be issued without Orange County Fire Authority approval obtained as a result of an on-site inspection.* Please contact the Orange County Fire Authority at (714) 744-0499 to obtain a copy of the standard combustible construction letter.

13 SG SG G GEOLOGY REPORT PA060001

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.

14 BP BP G CONSTRUCTION NOISE PA060001

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.

15 SG SG G SIGHT DISTANCE PA060001

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.

16 SG SG G DRIVEWAYS PA060001 (Custom)

Prior to the issuance of any grading permits, the applicant shall construct the garage driveway and approach per Zoning Code Sec. 7-9-145.2(e)(1), in a manner meeting the approval of the Manager, Subdivision and Infrastructure.

17 BI BI RGB WATER QUALITY MANAGEMENT PLAN PA060001

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 GB EROSION AND SEDIMENT CONTROL PLAN PA060001

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.