

**PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT**

**DATE:** February 22, 2007  
**TO:** Orange County Zoning Administrator  
**FROM:** Planning and Development Services Department/Land Use Services Division  
**SUBJECT:** Public Hearing on Planning Application PA06-0022 for Coastal Development Permit, Use Permit, and Variance.

**PROPOSAL:** The applicant proposes to demolish the existing home and construct a new single-family dwelling with an attached garage on a lot abutting at the rear to an unimproved portion of Pacific Coast Highway, specifically a slope down from the highway roadbed. The Coastal Development Permit is required both to demolish the existing residence and to construct a new dwelling unit.

A Variance is requested to allow the new house structure as close as 5 feet to the front property line instead of the required 9 feet. At the rear, where the true property line is within a slope leading up to Pacific Coast Highway, a similar variance to place portions of the house as close as 5 feet at the closest point is requested.

Use Permits are required to allow the driveway to be reduced in length from the existing house driveway's 13.5 feet at driveway midpoint to perhaps 9 feet at the same point in the proposed home's driveway; and also to allow walls in the side yard and rear yard setbacks to be as tall as 17.5 feet exposed, where a maximum of 8 feet exposed is standard.

**LOCATION:** In the community of Emerald Bay, on the coastal side of Pacific Coast Highway, at 17 Emerald Bay, Laguna Beach. Fifth Supervisorial District.

**APPLICANT:** David Cooper, property owner, and Mike Blakemore, architect-agent

**STAFF** J. Alfred Swanek, Project Manager Phone: (714) 796-0140  
**CONTACT:** FAX: (714) 834-4772 E-mail: Jim.Swanek@pdsd.ocgov.com

**SYNOPSIS:** Land Use Services Division recommends Zoning Administrator approval of PA06-0022 for Coastal Development Permit, Variance, and Use Permits subject to the attached Findings and Conditions of Approval.

**BACKGROUND:**

The project site occupies the entirety of Lot 26 of Tract 940, recorded in 1929, plus a narrow strip of land likely acquired around 1930. Lot 26 was 3,245 square feet. Lot 26 plus "the strip" is 3,476 square feet. 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, as is the case here, 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, as well as all occupants within 100 feet. Additionally, notice was posted at the site, the 300 N. Flower Building and as required by public hearing posting procedures. Copies of the planning application and proposed plans were distributed for review and comment to County Divisions and 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 current plans on February 6, 2007.

A number of parties have submitted correspondence to staff indicating opposition to the proposal they have at various times also made directly to the Association. Staff believes their opposition is to the applicant proposing to go from what is essentially a 2-story home to a 3-story. The new structure will

indeed approach but not exceed the County's 35 foot height limit. If the aerial photo is closely examined, the existing home appears to be the lowest in elevation above grade in the area. The new home higher in elevation may well block portions of ocean views as seen from the other side of Pacific Coast Highway.

### **CEQA COMPLIANCE:**

Pursuant to the California Environmental Quality Act (CEQA), the project is documented by Negative Declaration PA060022, which became final without appeal on June 5, 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:**

The applicant proposes a new three-level single family dwelling of 4,325 sq. ft. plus 1086 sq. ft. garage. Using the Zoning Code "shallow lot" criteria, (Section 7-9-128.2), the rear setback would be 9 feet. The proposal is to place the new home as close as 5 feet to the front. At the rear, the true property line is within a slope up to Pacific Coast Highway, and a similar request to allow portions of the house to be placed as close as 5 feet from the rear is involved.

The existing home to be demolished was built in 1948 and includes 1594 square feet of living area, plus an attached 2-car garage.

The setback variance proposed can be compared 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. In this case, the lot is very small and very shallow, very comparable to the property at 51 Emerald Bay, where PA000065 was approved to allow a new home with front and rear setbacks as close as 5 feet from the property lines.

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

Use Permits would be involved to allow the driveway to be reduced in length from the existing house driveway's 13.5 feet at driveway midpoint to perhaps 9 feet at the same point in the proposed home's driveway; and also to allow walls in the side yard setback to be as tall as 17.5 feet exposed, where a maximum of 8 feet exposed is standard. The walls would be topped by 3.5 foot tall guardrails where necessary for safety. This is particularly evident at the left rear of the proposal, where a walk at the side of the property deadends into a 14 foot tall wall, above which is what can reasonably be seen as a perch or overlook, which would likely overlook the neighbor's rear yard to the left. Other than on this issue, staff views the walls as comparable to and compatible with others common in the Emerald Bay community.

The new walls at the rear of the property would be as tall as 8.5 feet. Although "freeboard" above the top of that rear wall to catch debris is not shown, staff recommends the Zoning Administrator assume that an additional 2.5 feet of non-retaining wall height at the rear will need to be added to prevent debris from the slope below the travel lanes of Pacific Coast Highway coming down to the property and landing in the rear courtyard.

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. 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.*

As to the reduction in the driveway length from approximately 13.5 feet at driveway midpoint in the existing house to perhaps 9 feet at the same point in the proposed home's driveway, both are substandard, and the Zoning Administrator is asked to determine if the proposed driveway length would make it more or less likely for a car to attempt to park in the new driveway, and to hang out past the property line and possibly into the street, than at present. The County's Traffic Review unit made no recommendation on the driveway length, other than to ensure adequate line-of-sight at the driveway/street intersection. If the Zoning Administrator can find that the new situation would be an improvement, staff recommends the application of Zoning Code Section 7-9-145.7 ("Alternatives to off-street parking regulations"), providing for alternative parking standards by use permit when the decision-maker is able to find 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."

At the same time, if the Zoning Administrator finds the proposed driveway length worse in terms of its possible traffic safety impacts than is offered at present, it should not be approved, and the applicant should be requested to redesign accordingly.

**RECOMMENDED ACTION:**

Land Use Services Division recommends the Zoning Administrator:

- a. Receive staff report and public testimony as appropriate; and, subject to the ability to make all required findings,
- b. Approve Planning Application PA06-0022 for Use Permits, Variance, and Coastal Development Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Ron Tippets, 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 Department.

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 562-590-5071), in compliance with their regulations, without exhausting the County's appeal procedures.