

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.



Appendix A Findings PA060022

1	GENERAL PLAN	PA060022
	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	PA060022
	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	PA060022
	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	PA060022
	That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.	
5	PUBLIC FACILITIES	PA060022
	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	PA060022
	That the development project proposed by the application conforms with the certified Local Coastal Program.	
7	COASTAL DEVELOPMENT PERMIT 2	PA060022
	That the project conforms with the public access and public recreation policies of the California Coastal Act.	
8	COASTAL DEVELOPMENT PERMIT 3	PA060022
	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	PA060022
	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	PA060022 (Custom)
	That in accordance with Section 21080(c) of the Public Resources Code and CEQA Guidelines Section 15074, Negative Declaration No. PA060022, 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:	
	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	
	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.	
11	FISH & GAME - EXEMPT	PA060022
	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	PA060022
	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.

13 **FENCE AND WALL 1** **PA060022**
That the height and location of the fence or wall as proposed will not result in or create a traffic hazard.

14 **FENCE AND WALL 2** **PA060022**
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.

15 **PARKING MODIFICATION 1** **PA060022**
That the 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.

16 **PARKING MODIFICATION 2** **PA060022**
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.

17 **PARKING AND CIRCULATION** **PA060022**
That the access, parking and circulation facilities will not result in excess traffic safety hazards.

18 **VARIANCE 1** **PA060022 (Custom)**
That there are special circumstances applicable to the subject building site, being the very small size of the lot, unusual topography, and an unusually-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.

19 **VARIANCE 2** **PA060022**
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 PA060022

1 CP CP NA BASIC/ZONING REG PA060022

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 PA060022

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 PA060022

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 PA060022

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 PA060022

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 PA060022

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 PA060022

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 PA060022

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 PA060022

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 SB ARCHITECTURAL BUILDING PLANS PA060022
[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.

11 SG SG G GEOLOGY REPORT PA060022

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.

12 BP BP G CONSTRUCTION NOISE PA060022

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.

13 SG SG G SIGHT DISTANCE PA060022

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.

14 BI BI RGB WATER QUALITY MANAGEMENT PLAN PA060022

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.

15 BI BI U COMPLIANCE WITH THE WQMP PA060022

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.

16 BI BI GB EROSION AND SEDIMENT CONTROL PLAN PA060022

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.