

ITEM #1

PLANNING & DEVELOPMENT SERVICES DEPARTMENT REPORT

DATE: September 21, 2006

TO: Orange County Zoning Administrator

FROM: RDMD/PDS/Current and Advance Planning Services

SUBJECT: Public Hearing on Planning Application PA060059 for Coastal Development Permit, and Use Permit

PROPOSAL: The applicant proposes approval of a Coastal Development Permit to construct an in-ground level spa; and a Use Permit for overheight walls, an addition to existing perimeter wall to a maximum of 11' bordering lot 3 of Tract 1076.

LOCATION: The project is located in the community of Emerald Bay, on the ocean side and adjacent to the Pacific Ocean at 50 Emerald Bay, Laguna Beach. Fifth Supervisorial District.

APPLICANT: Mr. & Mrs. Petersen, property owner
Kathryn Murrel, Agent

STAFF CONTACT: Chris Uzo-Diribe, Project & CEQA Manager
Phone: (714) 834-2542 FAX: (714) 834-6132

SYNOPSIS: PDS/Current and Environmental Planning Services recommends Zoning Administrator approval of PA060059 for Coastal Development Permit and Use Permit subject to the attached Findings and Conditions of Approval.

BACKGROUND:

The subject property is Lot 77 of Tract 940 located in the community of Emerald Bay. The site's R1 zoning requires a minimum lot size of 7,200 square feet. The lot however consists of 4,216 square feet since it was legally created prior to adoption of the zoning regulation and is therefore legal non-conforming lot. On December 9, 1999 a Coastal Development Permit, CDP PA 990132 was approved by the Zoning Administrator for demolition of the previous residence and construction of the existing residence.

The site is located at the end of a private cul-de-sac and Pacific Coast Highway. Due to fact that site is located between the first public road (PCH) and the ocean, a Coastal Development Permit is required.

The applicant proposes a Coastal Development Permit PA 060059 to construct a spa on Lot 77, and a Use Permit for overheight walls, including the addition to an existing perimeter wall up to a maximum height of 11 feet bordering the adjacent residence on Lot 3 of Tract 1076.

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 (or approved for) single-family dwellings (see photo below).



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 six County Divisions, the Orange County Fire Authority and the Emerald Bay Community Association. As of the writing of this staff report, no comments raising issues with the project have been received from other County divisions. The Emerald Bay Community Association approved this proposal on June 7, 2006.

CEQA COMPLIANCE:

Addendum PA 060059 to Negative Declaration No. PA 990132 (approved in 1999 for construction of the existing residence) has been prepared for this proposal. It is attached for your consideration and must be approved prior to project approval with a finding that it is adequate to satisfy the requirements of CEQA.

DISCUSSION/ANALYSIS:

The proposal is subject to approval of two separate discretionary permits: a Coastal Development Permit and a Use Permit for wall height in the front setback area. Since the project site is located between the ocean and the first public highway (Pacific Coast Highway) the Coastal Development Permit, required for the construction of the proposed spa, is subject to appeal to the California Coastal Commission. The proposed new spa conforms to the site development standards of the Emerald Bay CC&Rs.

The proposed development of approximately 45 square foot spa is proportional to the lot size and similar to other property additions in the general area. The Emerald Bay CCRs (which effect development for all lots in Emerald Bay) permits a site coverage factor of up to 40 percent for this lot; the R1 District has no site coverage standard. Due to the size of the proposed project, lot coverage is not considered an issue.

The proposed spa will be located at approximately the same elevation as the existing dwelling and within the foot print of the building's previously graded area. Because a building pad exists, other than minor excavation, no additional grading (importing/exporting) is proposed.

Staff does not have any issues with this CDP request. Findings 6, 7, 8 and 9 are necessary to support CDP approval and are included for this element of the plan.

The second request is for a Use Permit for over-height walls in excess of the permitted 3.5 feet. The applicant is proposing addition to existing perimeter wall to a maximum height of 11 feet bordering neighbor residence. However, this proposed retaining wall meets all the required setbacks, and would not create any obstruction to adjacent properties, due to it's location with approximately 10 foot vegetation buffer zone between the adjacent residence. A separate 5 foot screening wall with tempered glass would provide the necessary pool fencing required by the County of Orange Code.

Additionally, the retaining wall will not create a traffic hazard. The Emerald Bay Community Association approved the height of the structure. The approval of a Use Permit should not create any negative impacts with surrounding property owners. Because the height request is for the wall and not a habitable living area, staff does not have an issue with this aspect of the proposal. Findings 10 and 11 are included for approval of this element of the plan.

CONCLUSION:

Based on staff's review of this proposal and the current development patterns in this area of Emerald Bay, staff is of the opinion that this proposal will be compatible with existing residence and surrounding development. The proposal conforms to all development standards for the R1 District. The proposal has been reviewed and approved by the Emerald Bay Community Association. Staff is therefore of the opinion that the findings and development standard modification findings can be made for this project. Staff supports the proposal and recommends approval as follows:

RECOMMENDED ACTION:

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

- a. Receive staff report and public testimony as appropriate; and,
- b. Approve Planning Application PA060059 for Coastal Development Permit and Use Permit subject to the attached Findings and Conditions of Approval.

Respectfully submitted

Ron Tippets, Chief
RDMD/Environmental and Current Planning

APPENDICES:

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

EXHIBITS:

1. Applicant's Letter of Explanation
2. Site Photos
3. Environmental Documentation
4. 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 RDMD/Planning and Development Services.

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 PA060059 Findings

1 [AA01
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GENERAL PLAN

PA060059

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 [AA02
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ZONING

PA060059

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 [AA03
]

COMPATIBILITY

PA060059

That the location, size, design and operating characteristics of the proposed use will not create unusual noise, traffic or other conditions or situations that may be objectionable, detrimental, or incompatible with other permitted uses in the vicinity.

4 [AA04
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GENERAL WELFARE

PA060059

That the application will not result in conditions or circumstances contrary to the public health and safety and the general welfare.

5 [AA05
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PUBLIC FACILITIES

PA060059

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 [CD01
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COASTAL DEVELOPMENT PERMIT 1 PA060059

That the development project proposed by the application conforms with the certified Local Coastal Program.

7 [CD02

COASTAL DEVELOPMENT PERMIT 2 PA060059

]

That the project conforms with the public access and public recreation policies of the California Coastal Act.

8 [CD03
]**COASTAL DEVELOPMENT PERMIT 3 PA060059**

That the approval of this application will result in no modification to the requirements of the certified land use plan.

9 [CD04
]**COASTAL DEVELOPMENT PERMIT 4 PA060059**

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 [FW01
]**FENCE AND WALL 1 PA060059**

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

11 [FW02
]**FENCE AND WALL 2 PA060059**

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.

12 [ED09
]**ADDENDUM TO NEGATIVE
DECLARATION PA 990132 PA060059 (Custom)**

In accordance with Section 21080(c) of the Public Resources Code and CEQA Guidelines Section 15164(b), the decision-maker has considered Negative Declaration No. **PA 990132**, previously approved on **December 9, 1999** and Addendum **PA 060059** prior to project approval. Together they are approved for the proposed project based upon the following findings:

- a. Together, these documents are adequate to satisfy the requirements of CEQA by the decision-maker;
- b. The additions, clarifications and/or changes to the Negative Declaration caused by the Addendum do not raise new significant issues which were not addressed by the original document; and
- c. The approval of the Negative Declaration and Addendum for the proposed project reflect the independent judgment of the Lead Agency.

13 [EF01
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FISH & GAME - EXEMPT

PA060059

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.

14 [EN01
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NCCP NOT SIGNIFICANT

PA060059

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.



Appendix B
Conditions of Approval
PA060059

1 [Z01 CP CP BASIC/ZONING REG PA060059
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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 [Z02 CP CP BASIC/TIME LIMIT PA060059
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This approval is valid for a period of 24 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 [Z03 CP CP BASIC/PRECISE PLAN PA060059
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Except as otherwise provided herein, this permit is approved as a precise plan. After any application has been approved, if changes are proposed regarding the location or alteration of any use or structure, a changed plan may be submitted 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 [Z04 CP CP BASIC/COMPLIANCE PA060059
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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 [Z05 CP CP NA BASIC/OBLIGATIONS PA060059
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Applicant shall defend at his/her sole expense any action brought against the County because of issuance of this permit. Applicant will reimburse the County for any court costs and attorneys fees which 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 [Z06 CP CP NA BASIC OBLIGATIONS PA060059
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Pursuant to Government Code Section 66020, the applicant is informed that the 90-day period in which

the applicant may protest the fees, dedications, reservation or other extraction imposed on this project through the conditions of approval has begun.

7 [D01 SG SG RG] DRAINAGE STUDY PA060059 (Custom)

Prior to 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 site including diversions, off-site areas that drain onto and/or through the subdivision, 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 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
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8. D03a] DRAINAGE OFFSITE PA060059
Approval: SG SG G

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 [N09 BP BP G] CONSTRUCTION NOISE PA060059

- A. Prior to the issuance of any grading permits, the project proponent shall produce evidence acceptable to the Manager, Building Permits, 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 grading plans, will be considered as adequate evidence of compliance with this condition.
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