

**ROBERT L. LABBÉ**  
ATTORNEY AT LAW  
ADMITTED IN NY & CALIFORNIA  
3309 Via Lido, Newport Beach, CA 92663  
Main: 949.278.8265 Email: [rlabbe@labbecompany.com](mailto:rlabbe@labbecompany.com)

<< *Hand Delivered at Counter March 17, 2023*>>

Filing Date: March 17, 2023

Re: Appeal of Orange County Zoning Administrator's Approval of Planning Application PA22-0104 for a Coastal Development Permit, Use Permit, and Variance subject to March 2, 2023 Findings and Conditions of Approval.

Address: 52 Emerald Bay Dr.  
Laguna Beach CA 92651

To: Orange County Planning Commission  
c/o County of Orange Development Processing Center  
Station 1, 300 N. Flower Santa Ana, CA 92703  
cc. Kevin Canning, Contract Planner  
Email: [kevin.canning@ocpw.ocgov.com](mailto:kevin.canning@ocpw.ocgov.com)

From: Robert L. Labbé, Esq.  
Admitted in California and New York  
3309 Via Lido  
Newport Beach CA 92663  
[rlabbe@labbecompany.com](mailto:rlabbe@labbecompany.com)  
(949) 278.8265

Representing: Neel and Sharlene Grover  
31 Emerald Bay  
Laguna Beach CA 92651  
[Adjacent Property Owners]

**Notice**

The undersigned is the attorney representing Neel and Sharlene Grover (collectively, "Appellant"), Emerald Bay Community Association ("EBCA") members and adjacent property owners to Applicant, owner of the subject property at 52 Emerald Bay Laguna Beach CA 92615.

Formal written Notice of Appeal of the Orange County Zoning Administrator's Approval of Planning Application PA22-0104 dated March 2, 2023 is hereby submitted to the Orange County Planning Commission.

**Grounds for Appeal**

Appellant raised a variety of objections to approval of Application PA- PA22-0104 before the Orange County Zoning Administrator at the March 2, 2023 Public Hearing and prior thereto, which objections are set forth below in the present Appeal.

**(1) A 2<sup>nd</sup> Request for Resolution is Currently Pending before the EBCA Board of Directors under Civil Code Section 5935 Regarding the Preliminary Approval of the 52 Emerald Bay Plans, Making PA22-0104 Premature for Determination by the Zoning Administrator at the March 2, 2023 Hearing**

On February 24, 2023, the undersigned issued to the EBCA Board of Directors on behalf of Appellant, a 2<sup>nd</sup> Request for Resolution pursuant to California Civil Code Section 5935 (the “2<sup>nd</sup> Request for Resolution”) which objected to the EBCA Board of Directors Preliminary approval of the plans for the 52 EB Project. A copy of the 2<sup>nd</sup> Request for Resolution and the Exhibits thereto is attached as **Exhibit “A”** and incorporated herein by reference.

Appellant is aware that the County does not regulate or enforce EBCA standards however, the 2<sup>nd</sup> Request for Resolution has not yet been considered and is being placed on the EBCA Board of Directors Agenda for consideration at an upcoming meeting. The Board has up until **April 21, 2023** to respond to Appellant and at the time of the March 2, 2023 Public Hearing the 2<sup>nd</sup> Request for Resolution had not been considered or responded to. It raises, *inter alia*, the following material defects which Appellant is informed and believes render the EBCA Board’s Preliminary approval of the 52 Plans null and void:

- (i) **The Approval of the 52 Plans would Result in the Elimination of an EBCA Parking Space, Requiring a 2/3rds Approval Vote of all EBCA Members:** The Board was required to put the matter of the elimination of an EBCA common area street parking space up to a vote of the entire EBCA Membership and secure a two-thirds (2/3rds) vote of approval prior to granting Board approval. The EBCA Architectural Regulations, Appendix A, p. 36, define “Association Property” as areas including beach Lots, park and recreational areas, streets, walkways, and all easements in all of Emerald Bay owned by the Association, and all facilities and improvements thereon. (CC&R’s, ARTICLE I, No. 5). Board approval of the 52 Plans would grant one Association member, Applicant, with exclusive use of Association property as their driveway entry point to the exclusion of all other EBCA Members. Civil Code §5100 and §4600 and §E.13 of the EBCA Architectural Regulations, provide the conditions under which the Board may grant exclusive use of EBCA common area property (to wit, authorizing curb cuts that take away street parking and elimination of street parking for exclusive use as a driveway). None of the conditions that would enable the granting of an easement on EBCA property by the Board have been met. Since streets/curbs are EBCA property (common areas), exclusive use of such areas cannot be granted to one EBCA Member without providing notice to the entire membership and obtaining a 2/3’s vote of approval from EBCA membership; moreover,
- (ii) **Material Errors Were Made by the Board and Architectural Committee Nullifying the Board’s Preliminary Approval of the 52 Plans:** Appellant has submitted clear and convincing evidence to the EBCA Board in the

**ROBERT L. LABBÉ**  
ATTORNEY AT LAW  
ADMITTED IN NY & CALIFORNIA  
3309 Via Lido, Newport Beach, CA 92663  
Main: 949.278.8265 Email: [rlabbe@labbecompany.com](mailto:rlabbe@labbecompany.com)

attached 2<sup>nd</sup> Request for Resolution to demonstrate that the EBCA Board and Architectural Committee violated the CC&Rs in granting preliminary approval of the 52 Plans, which errors nullify the Board of Directors May 3, 2022 Preliminary approval of the 52 Plans. Appellant's 2<sup>nd</sup> Request for Resolution instructs the Board that if their approval is not voluntarily revoked on grounds of nullity, an action for Declaratory Relief will be filed by Appellant in Orange County Superior Court seeking a judicial declaration that Civil Code §4765 (Procedures for Architectural Review) was not complied with by the Board or the Committee, and seeking an order declaring the Board's May 3, 2022 Preliminary approval of the 52 Plans null and void; moreover,

- (iii) **The EBCA Architectural Committee was not Qualified to Issue a Valid Approval Recommendation of the 52 Plans to the Board and the EBCA Board Relied on the Approval of an Unqualified Architectural Committee that was Lead to Believe Materially Inaccurate Information Submitted to it by Applicant's Architect Regarding Project Parking.**

What was presented to the Committee by the Applicant's Architect, the 'Concept Exhibit' apparently did not accurately depict the on-site parking configuration, did not correctly depict how the on-site parking configuration impacts the on-street parking located in front of the 52 Property and did not tie to the actual 52 Plans which were approved by the Committee and subsequently approved by the Board, material errors upon which the Committee relied, having the effect of misleading the Committee and depriving the Committee the ability to make an informed decision on the Application as related to both on-site and on-street parking when making its final approval recommendation to the Board.

The Committee, which was not qualified to issue a valid approval recommendation to the Board, acted in direct reliance on an erroneous and materially inaccurate 'Concept Exhibit' when issuing its final approval recommendation of the 52 Plans. Appellant commissioned a survey of the cul-de-sac by a licensed Surveyor (something the Applicant apparently had not done) from which a Parking Study was prepared by Appellant's Expert Witness. The Parking Study, being based on an actual Survey of the cul-de-sac, accurately measures and depicts on-street parking, and proves the inaccuracy of the Concept Exhibit relied on by the Committee. The Parking Study has been submitted with the 2<sup>nd</sup> Request for Resolution attached hereto.

Although the County does not regulate or enforce EBCA standards, it does regulate parking, and both on-site and on-street, were a material element of the Committee's and the Board's approval of the Applicant's Plans, and due to the inaccuracy of the Concept Exhibit dealing with the parking element, and their reliance thereon, those material errors nullify the Board of Directors May 3, 2022 Preliminary approval. As a result, parking may be modified following the Board's consideration of the 2<sup>nd</sup> Request for Resolution.

**ROBERT L. LABBÉ**  
ATTORNEY AT LAW  
ADMITTED IN NY & CALIFORNIA  
3309 Via Lido, Newport Beach, CA 92663  
Main: 949.278.8265 Email: [rlabbe@labbecompany.com](mailto:rlabbe@labbecompany.com)

It is therefore submitted that until action is taken by the EBCA Board on the 2<sup>nd</sup> Request for Resolution that PA22-0104 was not ripe for consideration by OC Development Services/Planning or the OCZA at the **March 2, 2023** Public Hearing, since material issues relating to elements such as parking, which the County regulates, and material issues which could impact the very foundation and core of the purported EBCA Preliminary approval were not yet fully developed, resolved or even responded to by the EBCA. In addition, there is a strong likelihood that the Applicant's project may be modified and/or that EBCA's "review and comment" on the 52 Plans would change from the Board's May 3, 2022 approval action due to required modifications to the 52 Plans, and the Emerald Bay Local Coastal Program ("LCP") requires review and comment by the EBCA of the 52 Plans prior to the County Zoning Administrator acting thereon. Therefore, if the Board's Preliminary approval indeed ran afoul of the CC&R's and other governing documents binding the Board and the members of EBCA relating to property development in the community, a County level approval of the Applicant's plans cannot yet be granted; i.e., step #1 of a 2 step process (with County approval being step #2) would change due to the potential for modification of the 52 Plans.

Appellant therefore contends that the issue was prematurely considered by the OCZA, which is contrary to the legal doctrine of ripeness and administrative bodies such as OC Development Services/Planning and the OCZA should not adjudicate matters not yet ripe for adjudication.

**(2) Section 4 of the LCP requires that:** "All new development is monitored and influenced by the Emerald Bay Community Architectural Committee. The committee, which comprises members of the Emerald Bay Board of Directors and architects, reviews construction and landscape plan proposals to:

- o Ensure project conformity with recorded restrictions;
- o Ensure project compatibility with the architectural design and character of the community; and
- o Ensure that existing ocean views of surrounding property owners within the community are preserved."

As set forth above, the 52 Application approval (i) did not conform with recorded restrictions (the EBCA's CC&R's and other governing documents which bind the Board and the members of EBCA relating to property development in Emerald Bay), and (ii) the project, due to its outsized mass and scale, is not compatible with the 'architectural design and character of the community', and lastly, if applicable in the context of Emerald Bay, does not 'Ensure that existing ocean views of surrounding property owners within the community are preserved' as is set forth in Section 4 of the LCP.

**(3) The 52 Project Application Exceeds the Maximum Building Height.** The March 2, 2023 OC Public Works Staff Report indicates a "Proposed Maximum Building Height" of 31 ft. Appellant submits that this building height exceeds the 30 ft. height over natural grade limitation for Tract 940, in which 52 Emerald Bay is located. This proposed height exceeds Emerald Bay CC&R's, Tract 940 Amended Schedule A, April 22, 1985 Building

Restrictions. The March 2, 2023 OC Public Works Staff Report, at p. 7 of 12, indicates the following with respect to the 52 Project Application:

STANDARD	REQUIRED	PROPOSED
Building Site Area	7,200 square feet	4,598 square feet (existing)
Maximum Building Height	35 feet maximum	31 feet

A Proposed Maximum Building Height of 31 ft. above natural grade exceeds the maximum building height set forth in the Emerald Bay CC&R's for Tract 940 of 30 ft., and compliance with the Emerald Bay CC&R's is a prerequisite for OC Development Services/Planning or the OCZA approval of PA22-010452. Therefore, the approval of PA22-0104 should be reversed.

**(4) The Zoning Commissioner Failed to Take into Account the Impact Recorded Easements Would Have on the 52 Application.**

The March 2, 2023 Staff Report fails to identify and measure the impact of a number of easements and other title documents recorded with the County of Orange recorded against and affecting both the Applicant's (#52) and Appellant's (#31) properties, which documents have an impact on the ZA's approval of PA22-010452. Each of them, available through public records, are summarized by Appellant in **Exhibit "B" Easements and Instruments of Record** which is attached hereto and incorporated herewith by reference.

Staff identifies one particular easement to which it is referring as an "Access Easement to Parcel 2" on p. 3 but omits a discussion of the impact of the other easements on the properties affected by the application as there is more than one easement affecting Parcels 1 (#31), 2 (#50) and 3 (#52). Those easements affect access, egress, maintenance areas and on-site parking on the three (3) closely proximate cul-de-sac lots. See **Exhibit "B"**.

Staff Responded that: The "nonexclusive easement for vehicular and pedestrian ingress and egress over and across that area described as "Zone 3"... (language from the easement document itself) serves all three parcels of LL 99-041 (Attachment 10). The easement has existed and served all three parcels since its recordation over twenty years ago (December 2002) and nothing in the proposed project alters the area of the easement or the functionality of this easement. The proposed new residence does not encroach upon or impinge into any of the easement area. Mr. Labbe has not provided examples of the "other easements on the properties affected by the application" so staff cannot respond to this."

In response, please see **Exhibit "B"** which provides examples by Applicant of other easements and recorded documents on title (including a settlement agreement and amended settlement agreement addressing building height agreements made in exchange for the granting of both property and perpetual easements impacting Appellant's property). The

**ROBERT L. LABBÉ**  
ATTORNEY AT LAW  
ADMITTED IN NY & CALIFORNIA  
3309 Via Lido, Newport Beach, CA 92663  
Main: 949.278.8265 Email: [rlabbe@labbecompany.com](mailto:rlabbe@labbecompany.com)

easements and other recorded documents materially impact both properties affected by Application PA- PA22-0104 and include:

- **December 30, 1998: Certificate of Compliance (Subdivision Map Act)** for Parcel 1 Lot 76 (#31 EB), Parcel 2 Lot 77 (#50 EB) by Toal Engineering, Inc. on behalf of Boehringer (owner #31 and #50 EB) certified the legal buildable lot creation (division) of Lot 76 (#31 EB), and Lot 77 (#50 EB) and **sets forth the requirement that “The owner of Lot 77 (#50 EB) shall grant a 12 ft. wide access and utility easement to the owner of Lot 76 (#31 EB) prior to the issuance of a Building Permit for either Lot 76 or Lot 77”.**
- **January 5, 1999: Lawsuit filed by Neighbors of Emerald Bay (w/ Cavanaugh as lead) v. County of Orange, William E. Boehringer II (OCSC Case # 803978).** Lawsuit challenges County’s issuance of Certificate of Compliance and alleges that County failed to engage in any review as required by the California Environmental Quality Act (CEQA).
- **October 8, 1999: Settlement and Mutual Release Agreement dated September 24, 1999** is recorded under Instrument #19990717080 between Neighbors of Emerald Bay and Boehringer. The Settlement resolves Cavanaugh (#52 ) owner’s objections of December 1, 1998 to the County issuing a Certificate of Compliance asserting that due to the way the property was developed that it was a single buildable parcel and ineligible for a Certificate of Compliance determining that that Lot 76 and Lot 77 were individual buildable parcels. The Settlement calls for, inter alia:
  - By September 20, 1999 Cavanaugh and Boehringer to submit to the County an application for a Lot Line Adjustment to facilitate the transfer of fee title from Boehringer to Cavanaugh of those portions of the driveway marked as Zone 2 and Zone 3 on Exhibit A (which is a portion of the Parcel 2 (#50 EB) and a right-of way-easement in the Grant Deed contained in Book 760, page 217.
  - Cavanaugh to convey to Boehringer a non-exclusive easement over the Zone 3 (on Exhibit A) area contemporaneously with the conveyance from Boehringer to Cavanaugh of fee title to Zone 2.
  - Boehringer to offer to Cavanaugh fee title to Zone 2 and Cavanaugh to offer to Boehringer a non-exclusive access easement over Zone 3. [Fee title to Zone 2 was traded to Cavanaugh for an easement over Zone 3].
  - When Boehringer conveys to Cavanaugh fee title to Zone 2 Boehringer to convey to Cavanaugh a non-exclusive easement for

**ROBERT L. LABBÉ**  
ATTORNEY AT LAW  
ADMITTED IN NY & CALIFORNIA  
3309 Via Lido, Newport Beach, CA 92663  
Main: 949.278.8265 Email: [rlabbe@labbecompany.com](mailto:rlabbe@labbecompany.com)

ingress and egress over Zone 1 of Exhibit A. [Fee title to Zone 2 to Cavanaugh and easement over Zone 3 to Cavanaugh].

- **Boehringer agrees not to protest Cavanaugh's plan for development for Lot 74 (#52) provided Cavanaugh's plans do not exceed 24 ft. over grade for (i) the garage footprint, (ii) the area described in Exhibit C and over the area "matching the external footprint of the kitchen".**
- **Boehringer to grant to Cavanaugh an irrevocable maintenance easement three (3) ft. in width along the northern lot line separating Lots 74 (#52 EB) and 77 (#50 EB). This grant of easement shall not prohibit Boehringer from constructing physical improvements such as fountains . . .".**
- **June 1, 2000: Grant Deed w/ Reservation of Easements (Instrument #20000288854 recorded 6/01/2000) from Boehringer to Cavanaugh conveying Zone 2 and Zone 3 "reserving unto himself a non-exclusive easement for vehicular and pedestrian ingress and egress over and across that area described as Zone 3 on Exhibit "B" and further shown on the diagram attached as Exhibit "C".**
- **November 25, 2002: Grant Deed (Instrument #2002001068896 recorded 11/25/2002) whereby Cavanaugh grants to Boehringer the property described as Zone 2 and Zone 3 on Exhibit "A" and Exhibit "B". "The effect of this Grant Deed is to reverse the effect of a document entitled Grant Deed with Reservation of Easements that was recorded June 1, 2000 as Instrument #20000288854 and re-recorded January 18, 2001 as Instrument #20010031320. This Grant Deed describes Zone 2 (Lot 77) and Zone 3 (Lot 77). [Corrective Deed].**
- **November 25, 2002: Easement Deed (for Maintenance) (Instrument #2002001068897 recorded 11/25/2002) from Boehringer to Cavanaugh granting "an Easement for maintenance purposes, including, but not limited to maintenance of the home and landscaping, and utility meter maintenance and reading" purposes over a three (3) ft. wide area of Lot 77 (Parcel 2, #50) parallel and adjacent to the lot line separating Lot 77 (#50) and Lot 74 (#52) shown on Exhibit "A". "This easement is a non-exclusive easement and shall not prohibit Boehringer from constructing physical improvements such as fountains, providing such improvements do not significantly impede the specific purposes for which this easement has been granted."**
- **November 25, 2002: First Amendment to Settlement and Mutual Release Agreement dated 6/27/02 (Instrument #2002001068898 recorded 11/25/2002) between Cavanaugh**

**ROBERT L. LABBÉ**  
ATTORNEY AT LAW  
ADMITTED IN NY & CALIFORNIA  
3309 Via Lido, Newport Beach, CA 92663  
Main: 949.278.8265 Email: [rlabbe@labbecompany.com](mailto:rlabbe@labbecompany.com)

and Boehringer. **Effect: Boehringer agrees not to protest Cavanaugh's plan for development for Lot 74 (#52) providing Cavanaugh's plans do not exceed 23 ft. (instead of 24 ft.) over grade for (i) the garage footprint, (ii) the area described in Exhibit C and over the area "matching the external footprint of the kitchen".**

- **December 6, 2002: Lot Line Adjustment LL 99-041** (Instrument #2002001104927 recorded 12/06/2002) of Parcels 1 (#31 EB), Parcel 2 (#50 EB) and Parcel 3 (#52 EB) by Toal Engineering, Inc. on behalf of Boehringer (owner of Parcels 1 (#31 EB), Parcel 2 (50 EB) and Cavanaugh (owner of 52). Recording date 12/06/02. This recording adjusted the lot lines of each of Parcels 1 (#31 EB), Parcel 2 (#50 EB) and Parcel 3 (#52 EB).
- **December 6, 2002: Driveway Easement CC&R's** recorded 12/06/02 as Instrument #2002001104931 recorded concurrently with Lot Line Adjustment, burdening Parcel 1 (#31 EB) and Parcel 2 (#50 EB) as Owners and their Permitted Users **taking away right to park vehicles on their common driveway by providing: "No person, including any Owner or Permitted User may park, place stop or leave unattended any vehicle or anything else in any portion of the Driveway Easement".** [**\*Note:** This Driveway Easement prohibiting on-site driveway parking by #31 and #50 makes offsite street parking that much more necessary].
- **December 6, 2002: Grant Deed w/Reservation of Easements** recorded 12/06/02 as Instrument #2002001104932 recorded concurrently with Lot Line Adjustment LL 99-041 whereby Boehringer grants to Cavanaugh that portion of Parcel 3 of the Lot Line Adjustment referred to in Exhibit A as Zone 2 and Zone 3 as shown on Exhibit B and reserving unto himself a **non-exclusive easement for vehicular and pedestrian ingress and egress over and across that area described as Zone 3 on Exhibit A and Exhibit B.**
- **December 6, 2002: Easement Deed** recorded 12/06/02 as Instrument #2002001104933 recorded concurrently with Lot Line Adjustment LL 99-041 whereby Boehringer grants to Cavanaugh a "**perpetual, nonexclusive easement for the purposes of pedestrian and vehicular ingress and egress over the real property . . . and particularly described as Parcels 1 (#31) and 2 (#50) . . .**" of the Lot Line Adjustment on Exhibit A as **Zone 1**. [This easement for pedestrian and vehicular ingress and egress over Zone 1 is in favor of Parcel 3 (52 EB) and burdens Parcels 1 (31) and 2 (50) and all successors.
- **March 12, 2003:** Amendment to Driveway Easement CC&Rs as Instrument #2003-26828.
- **September 20, 2011: Easement** for ingress and egress and driveway purposes recorded 09/20/2011. Instrument No. 2011-465945, of OC Official Records.



It is submitted by Appellant that the Zoning Administrator be directed to withhold and defer reconsideration of Application PA22-0104 until such time as the ZA's Development Services Staff has reviewed each of the publicly available records referenced above and their impact on both properties prior to approval of Application PA22-0104. For example, the Settlement and Mutual Release Agreement dated September 24, 1999 recorded under Instrument # 19990717080 and the First Amendment to Settlement and Mutual Release Agreement dated 6/27/02 recorded under Instrument #2002001068898 on November 25, 2002 referenced above, although awkwardly drafted, clearly appear to reflect an agreement by the predecessors in interest to each of the Applicant's and Appellant's properties to impose a height limit of first 24' in 1999 and then 23' in 2002 on the development of Applicant's property over certain parts of the 52 Property footprint, in exchange for perpetual easements having been granted to and benefitting the predecessor in interest to, and the Applicant. These easements now and forever burden the Appellant's property, and benefit the Applicant's in perpetuity and therefore should impact the height envelope proposed in Application PA22-0104. The County Zoning Administrator should take the effects of these recorded documents into account as well as all the other documents referenced above, all of which are recorded with the official records of the County of Orange and have not as of now been reviewed or considered save for LLA 99-041 (the "Lot Line Adjustment") of 2002 referenced in Attachment 10 to the March 2, 2023 Staff Report.

**(5) The March 2, 2023 Staff Report upon which the Zoning Commissioner Relied in Approving PA22-0104 Failed to Take into Account that in the 2<sup>nd</sup> Request for Resolution (which has not yet been considered by the EBCA) New Material Information was Submitted to the EBCA for Consideration.** In its preparation for the February 6, 2023 Mediation, new material information was discovered by Appellant as the basis for Appellant's 2<sup>nd</sup> Request for Resolution and the Exhibits thereto attached hereto as "**Exhibit "A"**". ZA Development Services Staff Report of March 2, 2023 is therefore incorrect in asserting that "the EBCA and its Architectural Committee have heard the concerns of the Grovers and considered the project at several different meetings, and still have not modified their May 2022 approval."

Indeed, based upon the new information provided to the EBCA in the 2<sup>nd</sup> Request for Resolution it is very probable that the project will be modified and/or that EBCA's review and comment on the project would change from the Board's May 3, 2022, approval action.

### **RELIEF SOUGHT**

Pursuant to the County of Orange Zoning Code, the action of the Planning Commission as the Board of Appeals shall be one (1) or more of the following in compliance with the same procedures and requirements as were applicable to the approving authority:

- Approve or disapprove the Appeal.

**ROBERT L. LABBÉ**  
ATTORNEY AT LAW  
ADMITTED IN NY & CALIFORNIA  
3309 Via Lido, Newport Beach, CA 92663  
Main: 949.278.8265 Email: [rlabbe@labbecompany.com](mailto:rlabbe@labbecompany.com)


- Approve or disapprove the original Application.
- Add, modify or delete conditions of the original Application;
- Approve a modified Application submitted by original Applicant.
- Refer the Application back to the decision-making body with directions for action by the approving authority or for recommendations or reports to the Board of Appeals.

**THEREFORE**, it is respectfully submitted that the Zoning Administrator's Approval of Planning Application PA22-0104 for a Coastal Development Permit, Use Permit and Variance subject to the March 2, 2023 Findings and Conditions of Approval be overturned by the Planning Commission and this Appeal be approved;

or in the alternative,

**THAT** Application PA22-0104 be referred back to the Zoning Administrator for reconsideration, with a Planning Commission directive that once the matter of the validity of the May 3, 2022 Preliminary Approval of the 52 Plans by the EBCA Board of Directors is resolved and adjudicated, making the matter ripe for consideration by the Zoning Administrator, that the Zoning Administrator reconsider Application PA22-0104 at that time, with the additional condition that the Zoning Administrator's Development Services Staff shall have reviewed each of the publicly available records referenced in Exhibit "B" hereto and their impact on the approval of PA22-0104.

Respectfully submitted.

Robert Labbé 

Robert L. Labbé, Esq.  
Admitted in California and New York  
3309 Via Lido Newport Beach, CA 92663  
(949) 278.8265  
[rlabbe@labbecompany.com](mailto:rlabbe@labbecompany.com)

**Exhibit "A"**: 2<sup>nd</sup> Request for Resolution to the EBCA Board of Directors dated February 24, 2023 and Exhibits A - E thereto.

**Exhibit "B"**: Easements and Instruments of Record on Applicant's and Appellant's Properties.



**Exhibit “A”**

March 17, 2023 Appeal of Orange County Zoning Administrator Approval  
Planning Application PA22-0104

**ROBERT L. LABBÉ**  
ATTORNEY AT LAW  
ADMITTED IN NY & CALIFORNIA  
3309 Via Lido, Newport Beach, CA 92663  
Main: 949.278.8265 Email: rlabbe@morcapadvisors.com

February 24, 2023

<<Via Email 02/24/23 1<sup>st</sup> Class USPS Mail>>

Re: Notice to Emerald Bay Community Association

To: Emerald Bay Community Association  
Attention: Ms. Toni Hughes, CCAM-LS, CMCA, Community Manager  
Attention: Emerald Bay Board of Directors  
600 Emerald Bay  
Laguna Beach CA 92651  
[office@ebca.net](mailto:office@ebca.net)

From: Robert L. Labbe, Esq.  
3309 Via Lido  
Newport Beach CA 92663  
[rlabbe@labbecompany.com](mailto:rlabbe@labbecompany.com)  
(949) 278.8265

Representing: Neel and Sharlene Grover  
31 Emerald Bay  
Laguna Beach CA 92651

Re: Proposed Project #52  
52 Emerald Bay Dr.  
Laguna Beach CA 92651

cc. Jillisa L. O'Brien, Esq.  
Law Office of Jillisa L. O'Brien, P.C.  
5 Corporate Park, Suite 260  
Irvine, CA 92606-5169 Mr. Steve  
[jobrien@obrien-law-pc.com](mailto:jobrien@obrien-law-pc.com)

cc. Mr. Steven Scheck  
Palmieri, Tyler, Wiener, Wilhelm & Waldron LLP  
1900 Main Street, Suite 700  
Irvine, CA 92614  
[sscheck@ptwww.com](mailto:sscheck@ptwww.com)

February 24, 2023

**Notice of Updated Request for Resolution as of February 24, 2023**

As you know, the undersigned is the attorney representing Neel and Sharlene Grover, Emerald Bay Community Association (“EBCA”) members who reside at 31 Emerald Bay Drive, Laguna Beach CA 92615.

The purpose of this correspondence is to provide written notification to the EBCA, its Board of Directors, Manager and attorneys that Mr. & Mrs. Grover maintain their objections to the Board’s Preliminary approval of the plans for a new residence submittal for 52 Emerald Bay Dr. (the “52 Project”) and this letter will constitute our client’s updated Request for Resolution pursuant to California Civil Code Section 5935.

**Basis of Dispute**

Mokri Vanis & Jones, LLP previously notified the EBCA of certain of our client’s objections to the Board of Directors Preliminary approval of the 52 Project in a letter dated May 3, 2022 to the EBCA Board of Directors, same are incorporated herein by reference and reiterated.

Moreover, our client’s grounds for objecting to the Board’s Preliminary approval of the 52 Project include:

- **Mass & Scale**: The 52 Project’s outsized mass and scale and lack of consistency with the development of surrounding homes, supported by the Summary of Mass & Scale in Relation to Surrounding Cul-de-Sac Properties (16) and in Relation to Subgroup of Homes Facing Green/Beach (6) is attached as **Exhibit “A”**. The Summary demonstrates the 52 Project is between **1.55X** and **1.57X** the scale of the surrounding homes.
- **Proposed Parking is Not Practical**: The 52 Project parking is not practical, and the scarcity of beach side on-street parking makes the potential elimination of 25% of the cul-de-sac’s available parking a tangible burden and negative imposition on neighboring property owners and the Members of Emerald Bay at large.
- **Elimination of Parking Space Requires a 2/3rds Vote of Members**: The Board was required to put the matter of the elimination of an EBCA common area parking space up to a vote of the entire EBCA Membership and secure a two-thirds (2/3rds) vote of approval prior to granting Board approval. The EBCA Architectural Regulations, Appendix A, p. 36, define “Association Property” as areas including beach Lots, park and recreational areas, **streets**, walkways, and all easements in all of Emerald Bay owned by the Association, and all facilities and improvements thereon. (CC&R’s, ARTICLE I, No. 5). Board approval of the 52 Plans would grant one Association member, Applicant, with exclusive use of Association property to the exclusion of all other EBCA Members. Civil

Code §5100 and §4600 and §E.13 of the EBCA Architectural Regulations, provide the conditions under which the Board may grant exclusive use of EBCA common area property (to wit, authorizing curb cuts that take away street parking and elimination of street parking for exclusive use as a driveway). None of the conditions that would enable the granting of an easement on EBCA property by the Board have been met. Since streets/curbs are EBCA property (common areas), exclusive use of such areas cannot be granted to one Member without providing notice to the entire membership and obtaining a 2/3's vote of approval from EBCA membership.

- **Material Errors by the Board and Architectural Committee:** Our client has ample evidence to demonstrate that the EBCA Board and Architectural Committee violated the CC&Rs. An action for Declaratory Relief seeking a judicial declaration that Civil Code §4765 (Procedures for Architectural Review) was not complied with by the Board or the Committee, will be lodged by our client seeking to invalidate and nullify the Board of Directors Preliminary approval of the 52 Project on May 3, 2022 if the dispute is not otherwise resolved. The evidence will include, but not be limited to the following:
  - **No Alternative Designs Were Provided by Applicant.** At the April 5, 2022 Board meeting, when the Board considered the Committee's recommended approval, and deferred a Board decision on the Committee's approval recommendation, the Board specifically directed the Committee via motion to further consider their recommendation in order to provide the Applicant and their design team "additional time for consideration of if there is a different design possible that does not reduce available on-street parking spots." (*Harley Bassman, Board Member*). See copy of April 5, 2022 Board meeting minutes attached as **Exhibit "B"**. Moreover, immediately prior to the conclusion of that April 5, 2022 Board meeting, Scott McCarter, who was Chair of the Committee stated that if the Applicant did not find a way to revise the 52 Plans while maintaining existing off-street parking utilizing the East-side parking, that the 52 Plans would be denied. The Committee held a workshop to consider different designs that did not reduce on-street parking followed by the April 26, 2022 Architectural Committee meeting; however, Applicant failed to provide any alternative designs to the Architectural Committee, ostensibly because Applicant's Architect could not find a way to not reduce available on-street parking spots.
  - **Additional Documentation Provided by Applicant Appears to Have Been Materially Inaccurate.** Chad Peterson of D'Arcy Architecture ("Applicant's Architect") advised the County of Orange in an email dated November 30, 2022 attached as **Exhibit "C"** that the Committee ". . . unanimously approved [the 52 Project] after reviewing "***additional documentation***" without providing said documentation. Thereafter, on

May 3, 2022 the Board went on to approve the project as designed. It is our client's information and belief that the "additional documentation" referred to by the Applicant's Architect consisted of only a 'Concept Exhibit' which was erroneous and materially inaccurate insofar as:

- (i) the size of the on-street parking spots were exaggerated, which lead the Committee to be under the impression that there was only sufficient space for two (2) on-street parking spots in front of the 52 Property instead of three (3);
  - (ii) the size of the on-street parking spots in what was presented to the Committee was different than their size as depicted in the approved 52 Property plans; and,
  - (iii) the end of the east-side driveway parking ended at the 5' setback line in what was submitted to the Committee; however, the same driveway ends at the property line in the approved 52 Property plans, resulting in a further substantial discrepancy between what was submitted to the Committee and what is found in the approved 52 Plans; and,
  - (iv) therefore what was presented did not accurately depict the on-site parking configuration, did not correctly depict how the on-site parking configuration impacts the on-street parking located in front of the 52 Property and did not tie to the actual 52 Plans which were approved by the Committee and subsequently approved by the Board, material errors upon which the Committee relied, having the effect of misleading the Committee and depriving the Committee the ability to make an informed decision on the Application as related to parking when making its final approval recommendation to the Board.
- **The Architectural Committee Erred in its Review of Existing Cul-de-Sac Conditions and Parking.** The Committee acted in direct reliance on the erroneous and materially inaccurate Concept Exhibit when issuing its final approval recommendation of the 52 Plans. Our client commissioned a survey of the cul-de-sac by a licensed Surveyor (something Applicant had apparently never done) from which a Parking Study was prepared by



our client's Expert Witness. The Parking Study is attached as **Exhibit "D"** and being based on an actual Survey of the cul-de-sac, accurately depicts on-street parking, and proves the inaccuracy of the Concept Exhibit relied on by the Committee.

- **The Architectural Committee was not Qualified** to issue a valid approval or disapproval recommendation of the 52 Plans to the Board.
  
- **The Board Relied on the Approval of an Unqualified Architectural Committee that was Lead to Believe Three (3) On-Street Parking Spaces were Not Feasible.** The minutes from the May 3, 2022 Board meeting demonstrate that, per Director Scott Swensen, the Board "*relies heavily on the professionals on the Architecture Committee*" in approving the 52 Project. The Board's approval was based on an erroneous recommendation of approval by the Architectural Committee, evidenced by its final recommendation of approval at the April 26, 2022 Committee meeting, a copy of which is attached as **Exhibit "E"**: "**Impacts to on-street parking in this area are important considerations. FINAL COMMITTEE RECOMMENDATIONS: 1. The Committee previously deferred its recommendation due to inadequate information provided to address the Board's concern for the on-street parking situation. The Committee considered the Applicant's exhibit, the Applicant addressed the Board's comments, and it appears that three on-street parking spaces are not feasible. Therefore, the Committee recommends Approval of the plans.**" This recommendation was based on inaccurate information contradicted by our Expert Witness' Parking Study supported by a Survey.
  
- **The Board Failed to Consistently Apply the Architectural Regulations.** In approving the 52 Plans the Board acted capriciously and arbitrarily in its review process when compared to its denial of the Speed plans for #45 Emerald Bay a few homes away in the same cul-de-sac, where they deemed the Speed's parking impractical, the landscaping insufficient and required the mass, size and scale of the Speed's project to be significantly reduced. When asked by Jeffrey Speed how the Architectural Committee could possibly reconcile the objections they had to his building plans for #45, with their approval of the 52 Property plans, the Chair of the Architectural Committee, Scott McCarter, responded that he "had not looked at the Speed plans". (Jefferey Speed).
  
- **The Board failed to "Equally Enforce the Same Rules" and to provide a "Consistent and Fair Review Process"** for approval of plans as required by the CC&R's and should have required that adjustments be made to the 52 Plans to reduce size and massing to reduce required

parking, and mitigate negative neighbor impacts as was done in the Speed's Application.

- **Neither the Architectural Committee or the Board Examined the Impact of the Easements Affecting the 52 Property and Adjacent Properties** by the 52 Plans (31 and 50 Emerald Bay), which Easements all stem from a recorded settlement agreement and amended settlement agreement in Neighbors of Emerald Bay v. County of Orange, William E. Boehringer II (OCSC Case # 803978). The Easements affect access, egress and ability to park on the three (3) closely proximate cul-de-sac lots (#52, #50 and #31), and permanently restrict the use by the Grover Property driveway at 31 Emerald Bay, i.e., they severely restrict our client's ability to park in their own driveway, rendering the limited on-street parking that much more necessary, and materially impact the practicality of the 52 Plan parking.

The Easements were granted in favor of the 52 Property in exchange for the 50 and 31 Property owners not opposing a 52 structure with a height limit not exceeding 23 ft. above natural grade, restricting the permissible height envelope of the Applicant's 52 Property. The permanent nature of the recorded Easements granted in favor of the 52 Property evidence the permanent nature of the 23 ft. above grade height limitation.

### **Relief Sought**

- That the EBCA Board's Preliminary approval of the 52 Project submission at the May 3, 2022 Board meeting be declared null and void by the Board as soon as the Board next convenes.
- That the 52 Project application be returned to the Architectural Committee for *de novo* review by a qualified, duly constituted Architectural Committee, taking into account the compatibility of the planned development with the mass and scale of the surrounding properties and the aesthetics of the neighborhood in a non-capricious and fair manner, consistent with its treatment of past submissions in the cul-de-sac, such as the Speed application, and which maintains the existing on-street parking as was requested by the Board at the April 5, 2022 meeting attached as Exhibit "B".
- That if the Board rejects the above relief, that the Board convene a limited series of settlement communication privileged Architectural Committee Workshops attended by our client's Architectural representative, for a review of alternative designs which are

**ROBERT L. LABBÉ**  
ATTORNEY AT LAW  
ADMITTED IN NY & CALIFORNIA  
3309 Via Lido, Newport Beach, CA 92663  
Main: 949.278.8265 Email: rlabbe@morcapadvisors.com

both in conformity with the EBCA Architectural Regulations and the CC&R's and are less injurious to our client.

- That the EBCA reimburse the Grover family the \$125,000 expended in legal and Expert Witness fees since the onset of this matter through the date hereof, the whole according to proof as will be provided by our client to the Board in the form of invoices and proof of payment thereof.

### **Thirty (30) Day Response Period**

As you know, we are required to provide notice that the party receiving the Request for Resolution is required to respond within thirty (30) days of receipt or the request will be deemed rejected.

### **ADR Code Sections**

If any recipient hereof requires a copy of the Alternative Dispute Resolution Civil Code Sections please advise the undersigned in writing and same will be provided.

Thank you for your consideration and we look forward to constructive next steps.

Sincerely,

*Robert Labbé*

Robert L. Labbé  
Attorney at Law  
Admitted in California and New York  
3309 Via Lido, Newport Beach, CA 92663  
(949) 278.8265  
[rlabbe@labbecompany.com](mailto:rlabbe@labbecompany.com)

*[Exhibit list to follow on next page]*

**ROBERT L. LABBÉ**  
ATTORNEY AT LAW  
ADMITTED IN NY & CALIFORNIA  
3309 Via Lido, Newport Beach, CA 92663  
Main: 949.278.8265 Email: rlabbe@morcapadvisors.com

**Exhibit List:**

**Exhibit “A”**: Summary of Mass & Scale in Relation to Surrounding Cul-de-Sac Properties (16) and in Relation to Subgroup of Homes Facing Green/Beach (6) demonstrating the proposed 52 Project would be between **1.55X** and **1.57X** the scale of the surrounding homes.

**Exhibit “B”**: April 5, 2022 Board Meeting Minutes.

**Exhibit “C”**: Chad Peterson of D'Arcy Architecture (“Applicant’s Architect”) email dated November 30, 2022 advising the County of Orange that the Committee “. . . unanimously approved [the 52 Project] after reviewing “*additional documentation*”.

**Exhibit “D”**: Parking Study based on Land Survey of the Cul-de-Sac depicting on-street parking.

**Exhibit “E”**: April 26, 2022 Architectural Committee Final Recommendation of Approval to Board.

---

**Exhibit "A"**

## Exhibit “A”

### Study of Dimensions of Cul-de-Sac Lots and Structures (January 27, 2023)

#### Mass and Scale

The project is not compatible with surrounding neighborhood development in size, design and massing, see statistics below.

In terms of mass and scale, the planned development is not consistent with the pattern of development and will negatively impact the overall aesthetics of the neighborhood, and the character of the community, creating an injurious impact to adjacent properties and is inconsistent with the pattern of development. Moreover, it eliminates 25% of the cul-de-sac parking.

The objectives of the EBCA Design Guidelines take into account factors such as promoting the construction of improvements in a manner aesthetically compatible and harmonious with surrounding properties and other improvements in the neighborhood, potential imposition on neighboring properties, improvement of the overall aesthetics of the neighborhood and consistency with the development of surrounding homes. It is submitted the planned development fails to conform to these objectives and should not meet with the EBCA’s approval.

#### Applicable Standards

- Mass and scale of planned development compatibility with the surrounding properties
- Consistency with development of surrounding homes
- Aesthetically compatible with surrounding homes
- Imposition and impact on neighboring properties

#### A. Summary of Mass & Scale in Relation to Surrounding Cul-de-Sac Properties

Street Map: Attached

No. of Homes in Cul-de-Sac: 16

Average Lot Sq. Ft.: 3,742

Average Home Sq. Ft.: 3,657

Square Ft. Proposed at 52: 5,750

**Sq. Ft. above Average: 2.093**

**52 Home Size vs. Average: 1.57X**

#### Cul-de-Sac Property List (16 properties)

<u>Address</u>	<u>Home Size (sqft)</u>	<u>Lot Size (sqft)</u>	<u>Year-Built</u>	<u>Owner</u>
#50	4,985	3,885	2003	Mitchell Ogron
#31	3,274	3,454	2001	Neel & Sharlene Grover
#45	2,221	3,131	1954	Jeff & Kathryn Speed
#43	2,114	3,412	1950	Curt W. and Tiffany Ensign
#41	2,297	3,954	1962	Carol L. Engen

#39	4,774	4,725	1990	Joseph J. Duran
#37	3,841	3,190	1993	Jeffrey Estabrooks
#35	3,103	3,049	1955	Brian Y. Chang
#33	6,000	4,000	1990	Steven A. Rodosky
#64	3,588	3,250	1986	Susan White
#62	3,800	4,072	1989	Mike Moinfar
#60	2,351	4,640	1936	Sylvester Johnson
#58	4,950	3,920	1950	David Coolidge
#56	4,142	3,300	1982	John A. McDermott
#54	3,556	3,300	1982	Fredrick L. Allen
#52	3,528	4,598	1926	Steve Olson
<b><u>Average</u></b>	<b><u>3,657</u></b>	<b><u>3742</u></b>		

**B. Summary of Mass/Scale in Relation to Subgroup of Homes Facing Green/Beach (6)**

<u>Address</u>	<u>Home Size (sqft)</u>	<u>Lot Size (sqft)</u>	<u>Year-Built</u>	<u>Owner</u>
#62	3,800	4,072	1989	Mike Moinfar
#60	2,351	4,640	1936	Sylvester Johnson
#58	4,950	3,920	1950	David Coolidge
#56	4,142	3,300	1982	John A. McDermott
#54	3,556	3,300	1982	Fredrick L. Allen
#52	3,528	4,598	1926	Steve Olson
<b><u>Average</u></b>	<b><u>3,721</u></b>	<b><u>3,971</u></b>		

**Facts as to Subgroup of Homes Facing Green/Beach (6 properties)**

No. of Homes in Sub-group: 6  
Average Lot Sq. Ft.: 3,971  
Average Home Sq. Ft.: 3,721  
Square Ft. Proposed at 52: 5,750  
**Sq. Ft. above Average: 2,029**  
**52 Home Size vs. Average: 1.55X**

\*all lot and home sq. ft. data taken from public records.

**Exhibit "B"**



## REGULAR SESSION MEETING MINUTES

EMERALD BAY COMMUNITY ASSOCIATION  
BOARD OF DIRECTORS MEETING  
COMMUNITY CENTER AND VIA VIDEO TELECONFERENCE  
April 5, 2022

Board Members Present: Scott Swensen, Cheryl Doyle, Harley Bassman, Scott McCarter, Neel Grover, Joselyn Miller, and Bill Moore

Board Members Absent:

Staff Present: Toni Hughes, Cisco Farias, Coryn Henderson, Jillisa O'Brien, Esq., Michele Parenteau, Michael Robertson, Bill Stoffregen

### CALL TO ORDER

The meeting was called to order by Scott Swensen at **3:00 PM**. The Pledge of Allegiance was recited.

The Board entered Executive Session at **3:02 PM**.

The Board returned to Open Session at **5:42 PM** (after a brief break at **5:25 PM**).

### EXECUTIVE SESSION DISCLOSURE

An Executive Session Meeting was held just prior to this General Session, where the Board of Directors discussed items related to the following: (1) Architecture and Construction litigation or potential litigation; (2) Non-Architecture and Construction litigation or potential litigation; (3) Contracts; (4) Approval of Executive Session Consent Agenda; and (5) Executive Session Announcements.

### CONSENT AGENDA

- A. Minutes – March 1, 2022  
March 5, 2022  
March 15, 2022
- B. Reports:
  - 1. Security Log – March 2022
  - 2. Dog violations report – March 2022
  - 3. Fire & Emergency Services Report – March 2022
  - 4. Party Requests
  - 5. Reserve Fund Projects & Common Area Report – March 2022
  - 6. Ratification of February 2022 Monthly Detailed Financial Matters Review
  - 7. Board Goals Update

Scott Swensen requested to pull the Party Requests from the Consent Agenda.

**A motion was made by Scott McCarter to accept the remaining Consent Agenda, including the ratification of the financial review by Cheryl Doyle and Scott Swensen. The motion was seconded by Cheryl Doyle. The motion passed.**

Party Requests Discussion – Brittney Hodges presented each of the Party Requests.

*Caya #309 EB Event scheduled for Sunday May 1, 2022* – This request is to reserve tennis courts for a private event. **A motion was made by Joselyn Miller to approve the Party Request for #309 EB on the condition that the time of the event be moved from 2:00 PM – 5:00 PM to 3:00 PM - 6:00 PM. The motion was seconded by Scott McCarter. The motion passed.**

*Shonfeld #267 EB Event scheduled for Saturday October 22, 2022* – This request is for a Bat Mitzvah. Staff recommends that if approved, updated details to the scope of the event be submitted for approval at the July 12, 2022 Board Meeting. **A motion was made by Bill Moore to grant preliminary approval of the Party Request for #267 EB pending the submittal of an updated scope and review at the July 12, 2022 Board Meeting. The motion was seconded by Cheryl Doyle. The motion passed.**

*Ward #13 EB Event scheduled for Saturday May 21, 2022 Update* – This event is a School Carnival, but in scope of a birthday party type of event. **A motion was made by Scott McCarter to approve the Party Request for #13 EB with the condition that all rentals are picked up by 11 PM on May 21, 2022. The motion was seconded by Neel Grover. The motion passed.**

*Jonas #1129 EB Event scheduled for Saturday May 7, 2022 (Previously approved at the March Board Meeting).* **Special Request** – Mrs. Jonas is requesting approval for rental pickup on Monday, May 9, 2022. **A motion was made by Joselyn Miller to approve the Special Request for #1129 EB. The motion was seconded by Cheryl Doyle. The motion passed.**

*Wirta #102 EB Event scheduled for Sunday April 24, 2022 (Handout at meeting)*– This event is a child's birthday party. **A motion was made by Joselyn Miller to approve the Party Request for #102 EB with the fee charged for late submission. The motion was seconded by Neel Grover. The motion passed.**

#### **GENERAL MEMBER COMMENT**

Scott Swensen opened Member Comment at 5:51 PM. Member Comment ended at 6:03 PM

A Member presented their concern regarding loud bass-type music coming from an event in Swanson Park. They suggested that music in Swanson Park be set-up on the basketball court or somewhere closer to PCH, and to establish some parameters around the volume and/or placement of the music.

A Member commented that they would like to see one of the Tennis courts turned into a volleyball court.

#### **COMMITTEE REPORTS**

Report of Recreation Committee Meeting, March 8, 2022 – Coryn Henderson reported that the Committee discussed Volleyball Rules, the possible reintroduction of pickleball, the concert schedule for summer, and the Fourth of July wristband allocation. The Committee is recommending that the Board approve a 15-wristband allocation per family.

**A motion was made by Neel Grover to approve the recommended allocation of 15 wristbands per family for the Fourth of July event. The motion was seconded by Joselyn Miller. The motion passed.**

Report of CERT Meeting March 15, 2022 – Mike Robertson reported the CERT Committee discussed the response to the Emerald Fire and the importance of keeping up to date lists for emergencies. They are also discussing the possibility of reimplementing a siren within the Bay.

Report of Aesthetics Committee Meeting March 21, 2022 – Toni Hughes reported that the Committee decided that the new Recreation Office doors should be painted green to match the others. The Committee is also reviewing the projects for the pool and feel that it may be difficult to rebid them prior to the summer season; they are considering working on completing the cubbies project first. Toni also mentioned that the Committee has requested that the firehouse doors be painted.

## **STAFF REPORTS**

Approval of Members to serve on the 2022-23 Nominating Committee – Toni Hughes announced the names of members to act as the 2022-23 Nominating Committee (3 prior Board Members and 2 Members-at-Large): Three prior Board Members which accepted are:

- Mark Disman
- John Murphy
- Gordon Orsborn

Toni reported that she had received two submissions for the Member-at-Large positions in response to the March 4, 2022 mailing:

- Pam Banks
- Dan Potter

**Scott Swensen and Scott McCarter recused themselves from election-related discussions and actions.**

**A motion was made by Neel Grover to approve the appointment of the two drawn Members at Large, Pam Banks and Dan Potter, in addition to Mark Disman, John Murphy and Gordon Orsborn to the 2022-23 Nominating Committee and direct Staff to send the announcement letter to Members with an invitation to submit Board Candidate names to the Nominating Committee. The motion was seconded by Joselyn Miller. The motion passed.**

**A motion was made by Neel Grover to require that Board Candidates must be a member for at least a year before being qualified to run for a seat on the Board. The motion was seconded by Cheryl Doyle. The motion passed.**

Updated Election Rules – At 6:17 PM Scott Swensen opened a Member Hearing on the Proposed Election Rules to add Election by Acclamation. Hearing no comment, Scott Swensen closed the Member Hearing at 6:18 PM.

**A motion was made by Harley Bassman to approve the Updated Election Rules. The motion was seconded by Neel Grover. The motion passed.**

Selection of Strategic Planning Focus Group Ad-hoc Committee – Toni Hughes reported on the progress of scheduling Members for the focus groups. She also noted that she received a request to solicit members-at-large for the Ad-hoc Focus Group Subcommittee to assist with the recruitment of Members for the groups. Staff has worked on providing various demographics for consideration and will provide the ad-hoc committee with a range of information for their use.

At present, the names received for the members-at-large are Lisa Rossi, and Alan (AJ) Johnson.

**A motion was made by Bill Moore to appoint Lisa Rossi and Alan Johnson to join Scott Swensen, Cheryl**

Doyle, and Harley Bassman on the ad-hoc Focus Group Subcommittee. The motion was seconded by Harley Bassman. The motion passed.

## TREASURER'S REPORTS

February 2022 six-month Financial Statements – Michele Parenteau reported on the February 2022 Financial Statements:

### *Operating Fund Performance*

- As of February 2022, Operating Revenue was ahead of budget by \$7,266.
- Expenses were below budget by \$152,622 (6%).
- Total amount added to the Operating fund balance for the current fiscal year is \$196,955.

### *Reserve Fund Performance*

- YTD expenses are \$133,671 out of a budgeted amount of \$853,320 for the year. The transfer to the operating fund for the February 2022 expenses in the amount of \$22,288 was made at the end of March.
- Amount added to the Reserve Fund for the current fiscal year is \$317,637.

## ARCHITECTURE APPEALS

Neel Grover recused himself from the architectural discussions relating to Olson, 52 EB.

Scott McCarter presented a brief summary of the Olson project at 52 EB. The Architectural Committee has given preliminary approval to the proposed structure at 52 EB which would include the removal of one on-street parking space on the cul-de-sac given the submittal's location driveways to accomplish required off-street parking to comply with the Regulation's off-street parking requirements.

Duran (#39) Appeal of Architectural Committee Approval of 52 EB Project – Joseph Duran noted that there is already very limited parking in that area, and opined it is unreasonable not to consider that challenge prior to granting a submittal that will result in a reduction of on street parking as a consequence. Jennifer Duran stated that she would like the Board/Architectural Committee to consider the functionality of the street including current levels of domestic workers, deliveries, Ubers, that deliver to homes on the cul-de-sac.

Grover (#31) Appeal of Architectural Committee Approval of 52 EB Project – Sharlene Grover stated that she feels strongly that the Olsons need to submit a proposal to build their house within the Rules and Regulations and without eliminating one on-street parking space. Removing one of the cul-de-sac's on-street parking spaces reduces the cul-de-sac's on-street party by 25%. Neel Grover added that he felt there were procedural issues in that the Community did not receive notice regarding the impact on on-street parking and questioned whether the submittal (if approved) would result in the exclusive use of common area by a single family..

Speed (#45) Appeal of Architectural Committee Approval of 52 EB Project – Jeff Speed argued the recommended approval of the Olson submittal was an inconsistent application of the Architectural Regulations because the Olson submittal includes tandem parking to meet its off-street parking requirements while resulting in the loss of one of the cul-de-sac's on-street parking spaces. Speed state tandem parking was not permitted by the Architectural Committee when he was going through the submittal process, because the Architectural Committee told him tandem parking was impractical.

Hood, #1006, Appeal of Architecture Committee Approval of 1008 EB Project – Bill Hood presented his concerns regarding the approval of the project at 1008 EB and the wraparound side deck and the windows

facing his home based on privacy reasons. He also feels the Setback calculations are incorrect and an issue for Mr. Hood. Scott Laidlaw, Architect for project 1008 EB, addressed the concerns regarding the Setbacks.

Steve & Kerry Olson 52 EB – Steve Olson outlined some of the concessions they have made throughout the submittal process in order to accommodate and to be amenable to the neighbors, particularly concerning the views. Steve added that having the most frontage (75 feet) on the street and being asked to keep a twelve-foot driveway as the only access to the house is extremely unfair to them.

Director Scott McCarter, Chair of the Architectural Committee, mentioned that the Architectural Committee considered a number of factors including the net gain of two parking spaces as a result of the submittal, with the loss of one on-street spot offset by the gain of three off-street parking spaces, the project being below the height envelope in several areas, coupled with the fact that the lot tiers down the slope, so the house does not appear to be as large as it actually is.

#### **Other comments from various Members**

- This is exactly the parking access that was purchased with the property.
- Most people when they purchase a lot, are usually quite savvy of the physical requirements per the CC&Rs of building within the envelope. They noted that when their project was approved, it took away a parking space in that subdivision.
- One Member would like to hear from the Architectural Committee on how tandem parking off-street is “practical”.
- One Member was in favor of the Olsons’ project, recognizing there is precedence and history on both sides of the argument.

The Board consider the written and verbal information as presented during member comment.

**Harley Bassman made a motion to defer a Board decision on the Architectural Committee’s recommendation regarding the Olson project at #52 EB project and to send it back to the Architectural Committee for further consideration** in order to provide the Olsons and their design team additional time for consideration of if there is a different design possible that does not reduce available on-street parking spots. **The motion was seconded by Cheryl Doyle. The motion passed.**

#### **ARCHITECTURE REPORT & RECOMMENDATIONS**

##### *Variances*

Ochal 1008 EB Variance – This Variance request is for a non-conforming sloped roof of 1.5:12 pitch which will permit a total flat roof for the proposed new home of 17.9%, exceeding the 15% maximum permitted.

At 7:38 PM, Scott Swensen opened a Member Hearing for comments. Hearing none, Scott Swensen closed the Member Hearing at 7:38 PM.

**A motion was made by Scott McCarter to make the required findings, approve the Variance Request, and adopt Resolution #2022-04-05-01. The motion was seconded by Cheryl Doyle. The motion passed.**

Post 547 EB Variance - This Variance request is to grant a 60 square foot kitchen addition that is 15.25 feet over height.

At 7:40 PM, Scott Swensen opened a Member Hearing for comments. Hearing none, Scott Swensen closed the Member Hearing at 7:40 PM.

**A motion was made by Harley Bassman to make the required findings, approve the Variance Request, and adopt Resolution #2022-04-05-02. The motion was seconded by Bill Moore. The motion passed.**

Architectural Submittals – Bill Stoffregen presented the Architectural Committee recommendations for the April 2022 projects.

1. Hansen (#1016)  
Major Remodel with Medium Landscape/Hardscape – Preliminary Resubmittal  
Recommendation Approval
2. Giem (#193)  
25-50% Remodel with Major Landscape/Hardscape - Preliminary  
Recommendation Disapproval
3. Reda (#412)  
10-25% Remodel with Medium Landscape/Hardscape – Preliminary Resubmittal  
Recommendation Approval
4. Koury (#135)  
New Residence with Major Landscape/Hardscape – Final  
Previous Recommendation was for Approval  
Recommendation has been changed to a Deferral
5. Bower (#191)  
New Residence with Major Landscape/Hardscape – Revised Final  
Recommendation Approval
6. Ochal (#1008)  
New Residence with Major Landscape/Hardscape with VARIANCE – Preliminary Resubmittal  
(Previously Deferred)  
Recommendation Approval
7. Varner (#311)  
New Residence with Major Landscape/Hardscape – Final  
Recommendation Approval
8. Post (#547)  
10-25% Remodel with Major Landscape/Hardscape with VARIANCE – Revised Preliminary (Previously  
Deferred)  
Recommendation Approval
9. Vuylsteke (#530)  
Less than 10% Remodel – Concept & Final  
Recommendation Approval
10. Werlemann (#519)  
25-50% Remodel with Major Landscape/Hardscape – Preliminary Resubmittal (Landscape only)  
Recommendation Approval

11. Olson (#52)

New Residence with Major Landscape/Hardscape – Preliminary  
Recommendation Approval  
Recommendation has been changed to a Deferral

A motion was made by Harley Bassman to approve the Architecture Committee recommendations as summarized, with the amendment of Koury #135 as Deferral and per the previously determined deferral of Olson #52. The motion was seconded by Scott McCarter. The motion passed with Neel Grover recused from voting on Olson #52 Emerald Bay.

**BRIEF ANNOUNCEMENTS AND REPORTS**


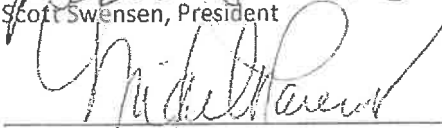
There were no announcements.

The next scheduled Board Meeting is Tuesday, May 3, 2022, at 3:00 PM.

The meeting was adjourned at 7:46 PM.

Submitted by:

5/3/22  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Scott Swensen, President  
  
\_\_\_\_\_  
Michele Parenteau, Recording Secretary

**Exhibit "C"**



## Canning, Kevin

**From:** Chad Peterson <chadp@DARCYARCHITECTURE.COM>  
**Sent:** Wednesday, November 30, 2022 1:44 PM  
**To:** Canning, Kevin; Charles d'Arcy; Charles Calloway  
**Subject:** RE: Correspondence regarding PA22-0104 (52 Emerald Bay)

Attention: This email originated from outside the County of Orange. Use caution when opening attachments or links.

Hello Kevin,

As discussed on the phone, the project experienced neighbor objection during its EBCA review. After unanimous EBCA Architectural Review approval in March 2022, the EBCA Board decided to defer approval pending another review by the Architectural Review committee.

In April 2022, the EBCA Architectural Review Committee unanimously approved again after reviewing additional documentation. On May 3<sup>rd</sup>, 2022 the EBCA Board approved the project as designed for both the mass & scale, as well as the street parking impacts.

We look forward to tomorrow's hearing. If you or the Zoning Administrator have any questions prior, please let us know.

Thank you and have a great day.

Chad Peterson  
Vice President



18 Technology Drive | Suite 161 | Irvine , CA 92618  
949 407 7760 ext 103 | [www.darcyarchitecture.com](http://www.darcyarchitecture.com)

Office Hours: M - Th 7:30AM to 5:30PM; F 7:30AM to 12:00PM

**From:** Canning, Kevin <Kevin.Canning@ocpw.ocgov.com>  
**Sent:** Wednesday, November 30, 2022 1:18 PM  
**To:** Charles d'Arcy <charles@DARCYARCHITECTURE.COM>; Charles Calloway <ccalloway@DARCYARCHITECTURE.COM>; Chad Peterson <chadp@DARCYARCHITECTURE.COM>  
**Cc:** Robert Labbé <rlabbe@labbecompany.com>  
**Subject:** Correspondence regarding PA22-0104 (52 Emerald Bay)

Gentlemen,

of a neighboring property.

I will be forwarding this information to the Zoning Administrator, for her consideration at tomorrow's public hearing on the project.

Please also know that I have spoken with John Canedo, Emerald Bay Community Association (EBCA), and he confirmed to me that EBCA has in fact agreed to meet with Mr. Labbe and the Grovers to discuss a possible mediation/discussion of the EBCA Board's previous approval actions regarding the project proposed by PA22-0104.

Finally, I note that during our several telephone conversations today, I discussed the possibility of all parties agreeing today to a continuance of tomorrow's scheduled hearing. There was no consensus for a continuance so the hearing remains scheduled for Thursday, December 1 at 1:30pm (see attached agenda)

**Kevin Canning** | Contract Planner | OC Development Services / Planning

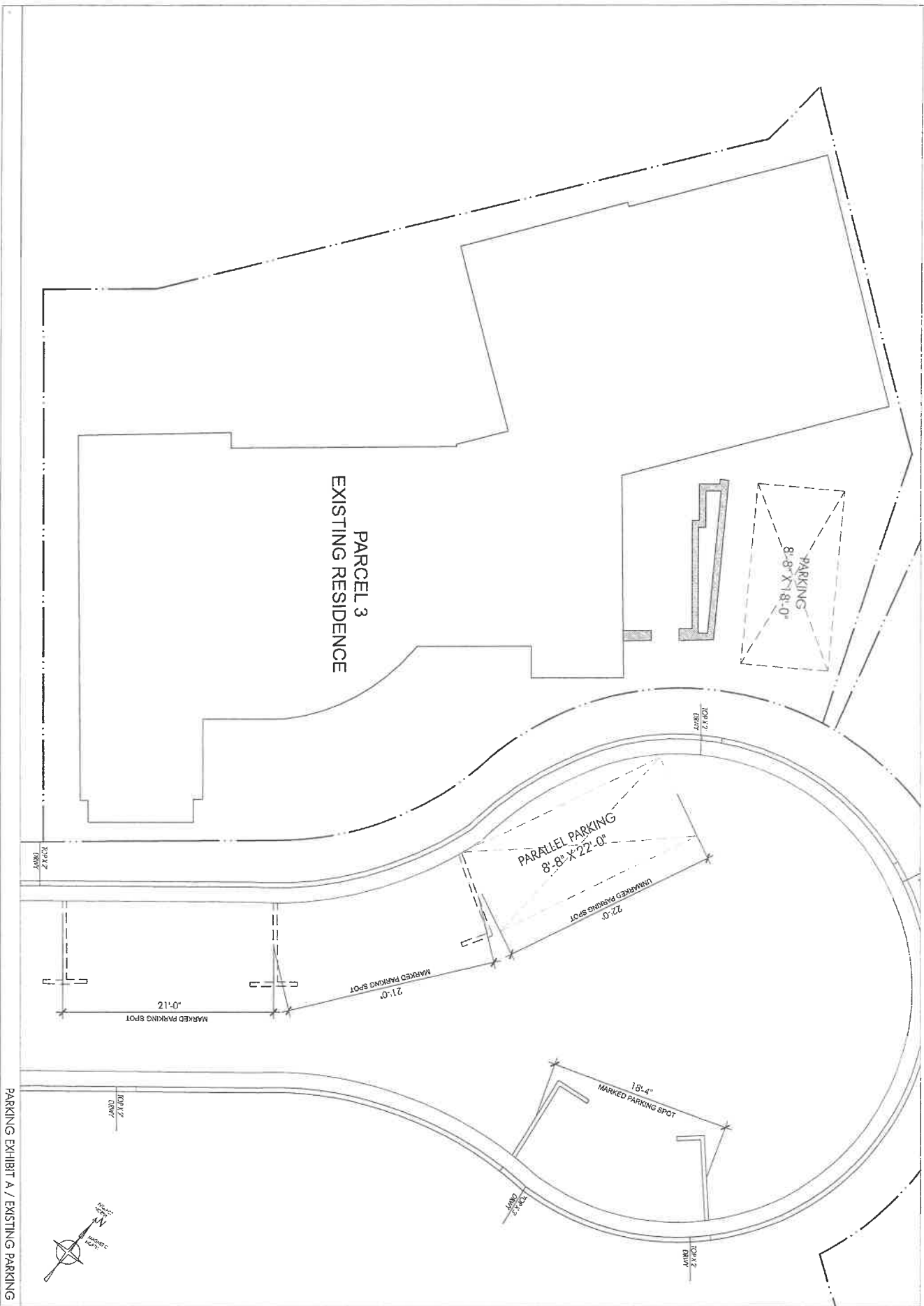
601 North Ross Street | Santa Ana, California 92701-4048

714.667.8847 | [kevin.canning@ocpw.ocgov.com](mailto:kevin.canning@ocpw.ocgov.com)

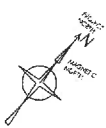
Visit us online for permitting applications/project status at <https://myoceservices.ocgov.com/> or general questions and assistance call 714 667-8888

PLEASE NOTE: My primary work days are now Tuesday thru Thursday, replies to messages received on other days may be delayed.

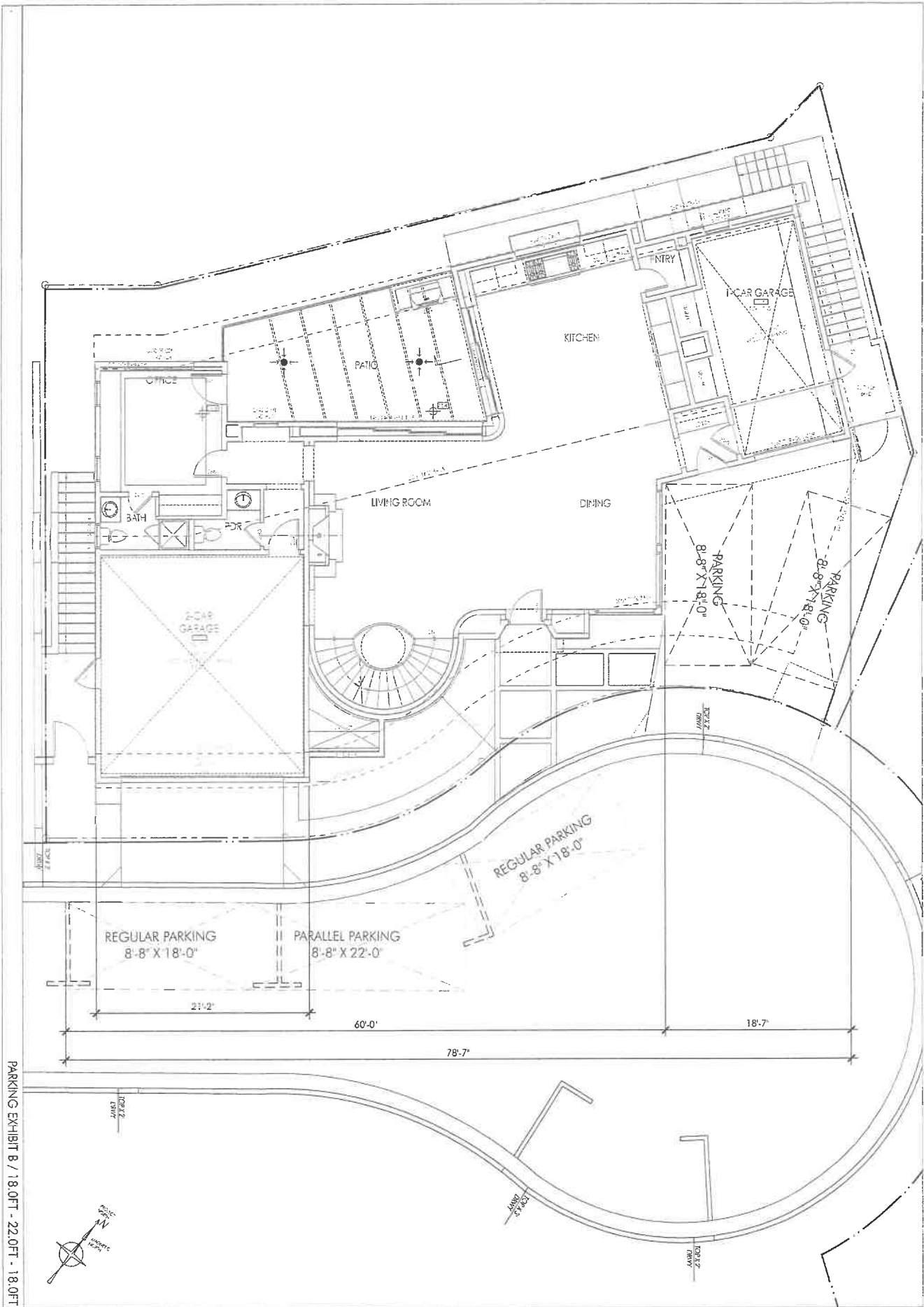
**Exhibit "D"**



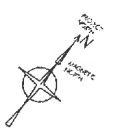
PARKING EXHIBIT A / EXISTING PARKING



<h1>E1</h1>	<h1>IAA</h1> <p>— iman amini associates</p>	<h1>PARKING EXHIBIT</h1> <p>52 EMERALD BAY, LAGUNA BEACH, CA 92651</p>	<p>PROJECT: 52 EMERALD BAY, LAGUNA BEACH, CA 92651          DATE: 1/15/2023          DRAWN BY: [Name]          CHECKED BY: [Name]          SCALE: 1/8" = 1'-0"</p>
	<p>DATE: 1/15/2023          SCALE: 1/8" = 1'-0"</p>		<p>PROJECT: 52 EMERALD BAY, LAGUNA BEACH, CA 92651          DATE: 1/15/2023          DRAWN BY: [Name]          CHECKED BY: [Name]          SCALE: 1/8" = 1'-0"</p>

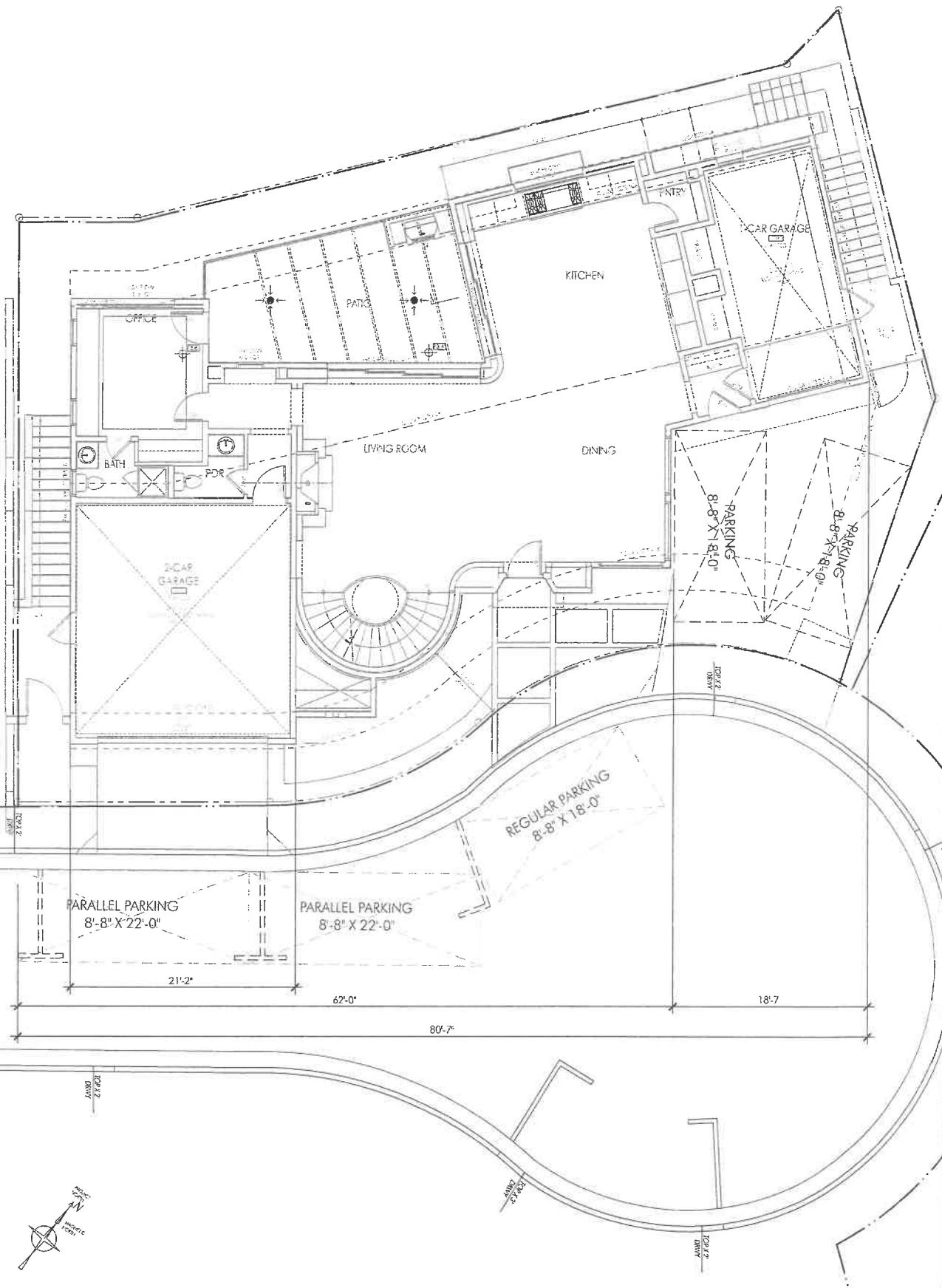


PARKING EXHIBIT B / 18.0FT - 22.0FT - 18.0FT

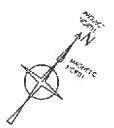


<h1 style="margin: 0;">E2</h1>	<p style="font-size: small;">SCALE 1/8" = 1'-0" DATE 1.2023</p>	<h1 style="margin: 0;">IAA</h1> <p style="margin: 0;">— iman amini associates</p>	<h1 style="margin: 0;">PARKING EXHIBIT</h1> <p style="margin: 0; font-size: small;">52 EMERALD BAY, LAGUNA BEACH, CA 92651</p>
--------------------------------	---	---	--

ALL RIGHTS RESERVED  
 THIS DOCUMENT IS THE PROPERTY OF IMAN AMINI ASSOCIATES  
 NO PART OF THIS DOCUMENT MAY BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF IMAN AMINI ASSOCIATES.



PARKING EXHIBIT C / 22.0FT - 22.0FT - 18.0FT



**E3**

1/8" = 1'-0"

1.2023

**IAA**  
— iman amini associates

**PARKING EXHIBIT**

52 EMERALD BAY, LAGUNA BEACH, CA 92651

PROJECT NO. 2023-001  
 DATE: 01/15/2023  
 DRAWN BY: [Name]  
 CHECKED BY: [Name]  
 APPROVED BY: [Name]  
 SCALE: 1/8" = 1'-0"  
 SHEET NO. 1.2023



**Exhibit "E"**



**APPLICANT:** OLSON  
**ADDRESS:** #52  
**PROJECT:** 3031 TRACT: 940 LOTS: 74 and Pt 77  
**SCOPE OF WORK:** NEW RESIDENCE w/ MAJOR LANDSCAPE/HARDSCAPE  
**SUBMITTAL:** PRELIMINARY  
**ARCHITECT:** Charles d'Arcy  
Phone: 949-407-7760  
License: C32314  
**LANDSCAPE ARCHITECT:** John Porzuczek  
Phone: (949) 412-4981

*Architectural review by Ken Wilkins*

*Landscape review by James Dockstader*

**FINAL COMMITTEE RECOMMENDATION: APPROVAL**

**HISTORY OF SUBMITTALS:**

- |                |             |              |
|----------------|-------------|--------------|
| • January 2022 | CONCEPT     | ACKNOWLEDGED |
| • March 2022   | PRELIMINARY | DEFERRED     |

**SUMMARY OF PROPOSED ARCHITECTURAL IMPROVEMENTS:**

The scope of work indicated in the Submittal Application is a new residence of approximately 6,524.7 SF, which includes 2-car and 1-car garage. Overlays were provided. **Some inaccuracies and omissions occur in the overlays. Stacking stairs are only required to be counted at one level. EBCA calculation\*\***

The areas indicated on the submittal are:

	Concept	Proposed	Change
• Upper Level	2,067.2 SF**	2,019.8 SF	- 47.4 SF
• Main Level	1,580.25 SF**	1,580.4 SF**	-15 SF
• Garage	774.5 SF	774.5 SF	0 SF
• Basement	2,016 SF	2,044.5 SF	+ 28.5 SF
• Supported Deck	307 SF	307 SF	0 SF
• Roof Deck	87.6 SF**	87.6 SF**	0 SF

**Primary revisions made since CONCEPT include:**

- Re-design of Front Elevation
- Clarification of Mechanical ceiling structure

**SUMMARY OF PROPOSED LANDSCAPE IMPROVEMENTS:**

Proposed landscape improvements include: Spa, plunge pool, walls, fencing, paving, planting, irrigation.

**STAFF ARCHITECTURAL FINDINGS:**

1. **ARCHITECT STAMP (Section B.2):** The plans are stamped and signed. **This will be verified at each submittal. OK**
2. **ARCHITECTURAL REVIEW - SUBMITTAL COMPLETENESS (Section B.5):** Submittal is generally complete enough for review. **OK**
3. **LOT COVERAGE (Section C.1):** There are no lot coverage requirements for Tract 940, lots 74 and Part of 77. The lot coverage stated on the submittal is 2,767.4 SF / 4,598.0 SF = 60.1% (was 59.6%). **Omissions occur in the overlay provided.** Lot coverage shall be calculated as the total area of the roof less the overhang including anchored decks. **EBCA calculation 2,847.2 SF / 4,598.0 SF = 61.9% OK**  
  
A signed copy of the 1960 topo plan was submitted.
4. **SETBACKS (Section C.2):** The setbacks appear to be conforming at all sides. **Submittal application states setbacks are dimensioned to finish surface of the exterior walls. OK**
5. **UTILITY EASEMENTS (Section C.3):** Portions of retaining walls, stairs and planters are allowed within the Utility Easements. **OK**
6. **PARKING (Section C.4):** The parking requirement shown on the Submittal Application is 5,879.7 SF. The garage area used for required parking (430 SF + 215 SF) is not included in the parking calculations **EBCA calculation (6,419.2 - 430 - 215 = 5,774.2 SF)** This requires a two-car garage plus three off-street parking spaces (one may be compact). **A two-car + 1-car garage with two regular off-street parking spaces are shown in the driveway. The height of the basement level Mechanical Room was clarified to be 6'-5" structure to structure and therefore not included. Add Mechanical room name and ceiling height back on sheet A210. OK**
7. **SERVICE YARD (Section C.5):** Shown on the Northeast side yard, Sht. A091. **OK**
8. **BACKFLOW PREVENTION DEVICES (Section C.8):** New residences and renovations/remodels/additions that include the addition of 2 or more plumbing fixtures require a backflow prevention device. **The Service District requires this for the scope of work proposed. This will be confirmed during construction.**
9. **NUMBER OF STORIES (Section D.1):** No structure shall exceed two stories. First Basement Rule: If the elevation of the finished floor level directly above a basement is more than 6 feet above Natural Grade for more than 50% of the perimeter or is more than 12 feet at any point then it shall be considered a story. The Submittal Application indicates a structure with 2 stories plus a basement. The proposed structure appears to be in compliance. **OK**

10. **BUILDING HEIGHT (Section D.2):** No structure on any Lot or Parcel in this Tract shall not exceed thirty (30) feet in height above the Natural Grade of the Lot or Parcel." The primary natural grade is identified as 72' (no 73' contour is shown).  $72' + 30' = 102'$ . The highest roof ridge is 98.8', highest stair tower point was lowered by 2.1' to 99.5'. (nearest to the 74' contour). The ornamental spire element is below the allowable. **OK**

11. **COMPATIBILITY (Section D.3):** Materials are noted as clay tile roof, smooth trowel stucco, wood rafter tails, white over-grouted brick, clay tile vent, cast stone headers and reclaimed wood accents, W.I. guardrails. **Materials will be verified at Final review.**

The Committee appreciates the effort to improve the front elevation and addressing the comments from the Architectural Committee.

At time of staking the applicant was to work with the neighbors to evaluate and balance views per the View Mitigation requirements of the CC&Rs and Architectural Regulations.

12. **NON-CONFORMING STRUCTURES (Section D.4):** A pre-existing, non-conforming Structure or portions of a Structure may be retained where the proposed alteration does not increase the square footage by 25% or more, increase the height of the Structure such that it is above the height envelope for the Tract and there is no change to the existing broad style of architecture.

All new elements must conform to the current Architectural Regulations or a Variance Request must be submitted.

Existing non-conforming:

- N/A

New non-conforming elements:

- None

13. **ROOFS (Section D.5):**

Roof pitch: 3:12. **OK**

Flat roof: Built-up Class "A". Roof slopes less than 3:12 are considered flat. The maximum area of flat roofs is 15% of the roof area. None shown. **OK**

Roof materials: Two-piece Class "A" clay tile. **OK**

Roof Equipment: None shown. **OK**

Parapet: None shown. **OK**

14. **ROOF DECKS (Section D.6):** A roof deck is considered to be a covered or uncovered exterior space constructed over any part of the residence Structure or garage. Roof decks are not allowed except when the deck is directly accessible from an interior living space on the same level and the area of the deck is equal to or less than the area of the living space from which access is taken. **Occurs at the Upper Level.** Appears to be in conformance. **OK**

15. **MATERIALS AND COLORS (Section D.7):** Actual materials samples and exterior colors are required to be submitted on a board no smaller than 11 x 17 and no larger than 18 x 24. A color rendering must be included on the board to clearly identify the location of all proposed materials and colors. **The Committee will review the color and materials at the**

**Final review. Include samples of the awning material and color proposed for the slide wire on the steel canopy structure.**

16. **WINDOWS AND DOORS (Section D.8): Dark anodized bronze aluminum doors and windows. OK**
17. **ANTENNAS (Section D.9): None shown. OK**
18. **SOLAR PANELS (Section D.10). None shown. OK**
19. **SKYLIGHTS (Section D.11): None shown. OK**
20. **ARCHITECTURAL EXTERIOR LIGHTING (Section D.12):** Light fixtures must be down lit or shielded to prevent glare or be a nuisance to neighbors. Light fixtures must be complementary to the architectural style of the residence.  
**Location of light fixtures are shown on elevations.**
21. **GUTTERS AND DOWNSPOUTS (Section D.13): Indicated on roof plan and elevations. OK**
22. **OTHER COMMENTS:**
  - **Note: All exterior finishes of wall including stucco, brick, stone, etc., must remain out of all setbacks.**

**STAFF LANDSCAPE FINDINGS:**

1. **SUBMITTAL COMPLETENESS (Section B.5):** Submittal must be generally complete enough for review. **OK**
2. **LANDSCAPE STRUCTURES ARE SET BACK 5' FROM LOT BOUNDARIES (Tract Schedule A Exhibits):** Except for fences and walls, structures are 5' from PL. **Spa and plunge shells appear to be proposed in rear setback, and is not allowed.**  
**UTILITY ELEMENTS / EBSD SUBMITTAL:** Evidence of EBSD review and approval will be required at the time of final submittal. **Submit at time of final submittal**
3. **LOT COVERAGE (Sec C.1):** Landscape features such as raised patios and/or freestanding structures must not create a lot coverage overage. **OK**
4. **SITE DRAINAGE (Sec C.6):** A conceptual grading and drainage plan must be included, generally showing adequate site drainage. **OK**
5. **CURBS AND GUTTERS (Sec C.7):** For new residences and major remodels, plans must show complete replacement of curb and gutter along entire street frontage with reference to EBSD requirements. **OK**
6. **BACKFLOW PREVENTION (Sec C.8):** A backflow prevention device must be installed for proposed irrigation systems and must not be located on Association Property. **Show at time of final**

7. **EXTERIOR MECHANICAL EQUIPMENT (Sec E.1):** Mechanical equipment shall not be located in easement areas. **AC and mechanical equipment are in room/alcove at basement level. OK**

Mechanical spa equipment appears to be screened from view. **OK**

Noise impacts on adjacent neighbors must be avoided and/or minimized. **OK**

An acoustical report prepared by a qualified expert is submitted showing that anticipated noise impacts are less than the County maximum at the nearby property lines. **Submit at time of final**

Acoustical report assumptions and recommendations are consistent with submittal drawings. **Reviewed at time of final**

8. **EXTERIOR LIGHTING (Sec E.2):** Landscape lighting proposals must be shown and must appear to limit glare and annoyance. **Path lights only. OK**
9. **FENCES, WALLS, AND HEDGES (Sec E.3):**

In front yard setback areas fences, hedges, and walls are to be 4' high or less as compared to adjacent top of curb elevations. For corner lots, the maximum height is 3'. **OK**

Between the front yard setback and the house structure fences, walls, hedges, railings or other features are to be 4' high or less compared to finished grade. **OK**

Front yard improvements address issues of visual impact, compatibility, and contributions to common visual streetscape. **OK**

In side yard and rear yard setback areas fences and/or walls must be 6' high or less as compared to existing grade along neighbor's side of property line. **Unclear. Pool enclosure along most of west side does not appear to be established. It is unclear if raising existing wall on neighbor's property is proposed (existing pool enclosure on neighbor's property can be acceptable for EBCA but potentially not for County) but building pool enclosure on neighbor's property is not allowed by EBCA.**

Property line fences, walls, and footings must be constructed completely on the subject property. **Unclear if new walls/fencing proposed along west property line.**

Block walls are finished on all sides. **Unclear**

At the street fences, walls, and railings must be held back a minimum of 18 inches from face of curb. **OK**

10. **PLAY EQUIPMENT AND PLAY HOUSES (Sec E.5):** Issues of noise and visual impact have been adequately addressed. **None proposed. NA**

11. MAILBOXES (Sec E.6): Design and location must be shown. **OK, however because of the need to preserve on-street parking, the mailbox should be moved to adjacent the south side of the double driveway.**

12. OUTDOOR FIREPLACES, FIREPITS, COOKING ELEMENTS (Sec E.7): Outdoor fireplaces, BBQs, and ovens shall be a minimum of 5' clear of any property line and must be gas only. **OK**

The minimum setback for any open firepit shall be a minimum of 10'. **None proposed. OK**

13. WATER FEATURES, SWIMMING POOLS, SPAS (Sec E.8): Pool and spa structures are located entirely outside the 5' utility easement area. **OK**

Issues of noise and visual impact must be adequately addressed. **OK**

Security/pool fencing is shown. **Unclear along west side.**

14. PARKWAY ACCESS (Sec E.12): Planting and paving within 18-24" of face of curb shall allow for convenience of on-street parking **OK**

15. IMPROVEMENTS ON EBCA PROPERTY Section C, Part 21): Trees, hedges, and structures are not proposed on EBCA property. **OK**

16. POTENTIAL OBSTRUCTION OF VIEW (Sec A.5): Trees and shrubs must not unreasonably block a neighbor's view. **OK**

17. PREPARATION BY LANDSCAPE ARCHITECT (Sec B.2): **OK**

18. FUEL MODIFICATION (Sec E.14): Highly flammable target species shall not be proposed. **OK**

Perimeter properties appear to be consistent with Orange County requirements for Zone A. **NA**

19. OTHER:

- **Impacts to on-street parking in this area are important considerations.**

#### **FINAL COMMITTEE RECOMMENDATIONS:**

1. The Committee previously deferred its recommendation due to inadequate information provided to address the Board's concern for the on-street parking situation. The Committee considered the Applicant's exhibit, the Applicant addressed the Board's comments, and it appears that three on-street parking spaces are not feasible. Therefore, the Committee recommends **Approval** of the plans.
2. The Applicant may submit for Committee's review taking the Staff Findings above and the following into consideration:

- a. As a part of the Preliminary submittal the proposed structure must be staked and certified by a California State licensed civil engineer or land surveyor. Stake proposed changes at all decks, deck rails, eave corners and ridges with connecting string lines. The Committee reserves the right to request increased setbacks after review of the stakes and Community input. **Staking is certified – OK.**
  - b. Add Mechanical room name and ceiling height back to Sht. A210. **Revised. OK**
  - c. Delete portions of spa and plunge structures within setback areas. Pool and spa bond beams must be shown out of the setback. **Revised. OK**
  - d. Clearly demonstrate pool enclosure along west side. Delete proposals for new offsite construction to establish pool enclosure. Existing walls do not appear to provide adequate pool enclosure. **Revised. OK**
  - e. Delete hedge on EBCA property in front. **Revised. OK**
  - f. Move the mailbox to a location just south of the double driveway to avoid impacts to on-street parking. Show on-street parking spaces, adjusted to preserve as many spaces as feasible. Architect may want to consider contacting 54 Emerald Bay regarding the possibility of utilization of on-street parking across the 2 property lines. **Revised. OK**
  - g. Show curb cuts and aprons as narrow as feasible. The southern double driveway shown on landscape plans is appropriate and the architect/civil drawings should be adjusted accordingly. **Revised to 16' wide. OK**
  - h. Owner to lower roof 6 inches. **Revised. OK**
3. At time of FINAL submittal:
- a. An executed Easement Agreement recorded with the County of Orange for improvements on EBCA property will be required. An Encroachment Permit application and exhibits prepared by a licensed civil engineer describing the area of the Easement and legal descriptions are required for EBCA to prepare the Agreement. This is required to be approved by the EBCA Board of Directors prior to the approval of the project.
  - b. A color and materials board with actual factory colors and materials must be submitted. Photographs of colors and materials are not allowed. Materials board must be a minimum of 11" x 17" and no larger than 18" x 24". Roof material, glazing sample of windows, doors, and garage (if applies) needs to be included. A colored elevation must be included on the board clearly identifying the location of all proposed colors and materials.
  - c. An acoustical report prepared by a qualified expert must be submitted showing that anticipated noise impacts are less than the County maximum at the closest property line. Submitted plans must be consistent with the recommendations of the report.
  - d. Submit drawings and the application fee of \$400 to EBSD for review. Provide evidence of EBSD review and approval. The preliminary plans must be developed in sufficient detail to confirm that there will be no structural encroachments into the 5' easement. If caissons are required for the foundation, they must be shown on the Final submittal for review by the District Engineer and approved by the Service District.

4. Note:

- a. Approvals are valid for one year. See extension request requirements in the Architectural Regulations for additional information.
- b. All future submittals must be accompanied by a detailed scope of work and highlighting revisions to previous scope of work, if any.
- c. If it becomes necessary or desirable for the Association to utilize its easements within private property boundaries, it is the responsibility of the owner of such property to remove improvements (whether previously approved by the Association or not) to provide access and to replace or repair improvements subsequent to Association access at no cost to the Association.
- d. Any changes to the Final approved plans must be submitted for Architectural Committee's review prior to construction.

**Chad Peterson (d'Arcy and Associates Architecture) and Charles d'Arcy (Architect) were in attendance to discuss the submittal.**

**Members Present:**

**#39 Joe Duran (Via Zoom)  
#76 Kelly Anthony (Via Zoom)  
#45 Kathryn Speed (Via Zoom)  
#38 Crystal Sims  
#31 Sharleen and Neel Grover  
#39 Jen Duran**

**At their meeting on May 3, 2022, the Board voted to Approve the recommendation of the Architectural Committee.**





**Exhibit “B”**

March 17, 2023 Appeal of Orange County Zoning Administrator Approval  
Planning Application PA22-0104

## EXHIBIT “B”

### EASEMENTS & TITLE INSTRUMENTS AFFECTING 52 EMERALD BAY & 31 EMERALD BAY

- **December 1, 1998:** Douglas S. Cavanaugh (Lot 74, #52 EB) owner) on behalf of himself and Emerald Bay “Neighbors” who believe they will be adversely affected by William E. Boehringer II (owner of Parcel 1 (Lot 76, #31 EB) and Parcel 2 (Lot 77, #50 EB)’s development of the two (2) lots send a letter through Rutan and Tucker to the County of Orange objecting to the County issuing a Conditional Certificate of Compliance, asserting that due to the way the property was developed that it was a **single buildable parcel** and thus ineligible for a Certificate of Compliance determining that that #31 EB, and #50 EB were individual buildable parcels unless the Certificate include a condition that the lots be subdivided in accordance with the Subdivision Map Act.
- **December 16, 1998:** The County of Orange issues to Boehringer a Conditional Certificate of Compliance determining that Lot 76 (#31 EB) and Lot 77 (#50 EB) were in fact individually buildable lots.
- **December 30, 1998: Certificate of Compliance (Subdivision Map Act)** for Parcel 1 Lot 76 (#31 EB), Parcel 2 Lot 77 (#50 EB) by Toal Engineering, Inc. on behalf of Boehringer (owner #31 and #50 EB) certified the legal buildable lot creation (division) of Lot 76 (#31 EB), and Lot 77 (#50 EB) and sets forth the requirement that “The owner of Lot 77 (#50 EB) shall grant a 12 ft. wide access and utility easement to the owner of Lot 76 (#31 EB) prior to the issuance of a Building Permit for either Lot 76 or Lot 77”.
- **January 5, 1999: Lawsuit** filed by Neighbors of Emerald Bay (w/ Cavanaugh as lead) v. County of Orange, William E. Boehringer II (OCSC Case # 803978). Lawsuit challenges County’s issuance of Certificate of Compliance and alleges that County failed to engage in any review as required by the California Environmental Quality Act (CEQA).
- **October 8, 1999:** Settlement and Mutual Release Agreement dated September 24, 1999 is recorded under Instrument #19990717080 between Neighbors of Emerald Bay and Boehringer. The Settlement resolves Cavanaugh (#52 ) owner’s objections of December 1, 1998 to the County issuing a Certificate of Compliance asserting that due to the way the property was developed that it was a single buildable parcel and ineligible for a Certificate of Compliance determining that that Lot 76 and Lot 77 were individual buildable parcels. The Settlement calls for, inter alia:
  - By September 20, 1999 Cavanaugh and Boehringer to submit to the County an application for a Lot Line Adjustment to facilitate the transfer of fee title from Boehringer to Cavanaugh of those portions of the driveway marked as Zone 2 and Zone 3 on Exhibit A (which is a portion of the Parcel 2 (#50 EB) and a right-of way-easement in the Grant Deed contained in Book 760, page 217.

## EXHIBIT “B”

### EASEMENTS & TITLE INSTRUMENTS AFFECTING 52 EMERALD BAY & 31 EMERALD BAY

- Cavanaugh to convey to Boehringer a non-exclusive easement over the Zone 3 (on Exhibit A) area contemporaneously with the conveyance from Boehringer to Cavanaugh of fee title to Zone 2.
  - Boehringer to offer to Cavanaugh fee title to Zone 2 and Cavanaugh to offer to Boehringer a non-exclusive access easement over Zone 3. [Fee title to Zone 2 was traded to Cavanaugh for an easement over Zone 3].
  - When Boehringer conveys to Cavanaugh fee title to Zone 2 Boehringer to convey to Cavanaugh a non-exclusive easement for ingress and egress over Zone 1 of Exhibit A. [Fee title to Zone 2 to Cavanaugh and easement over Zone 3 to Cavanaugh].
  - Boehringer agrees not to protest Cavanaugh’s plan for development for Lot 74 (#52) provided Cavanaugh’s plans do not exceed 24 ft. over grade for (i) the garage footprint, (ii) the area described in Exhibit C and over the area “matching the external footprint of the kitchen”.
  - Boehringer to grant to Cavanaugh an irrevocable maintenance easement three (3) ft. in width along the northern lot line separating Lots 74 (#52 EB) and 77 (#50 EB). This grant of easement shall not prohibit Boehringer from constructing physical improvements such as fountains . . .”.
- **June 1, 2000: Grant Deed w/ Reservation of Easements** (Instrument #20000288854 recorded 6/01/2000) from Boehringer to Cavanaugh conveying Zone 2 and Zone 3 “reserving unto himself a non-exclusive easement for vehicular and pedestrian ingress and egress over and across that area described as Zone 3 on Exhibit “B” and further shown on the diagram attached as Exhibit “C”.”
  - **January 18, 2001: Grant Deed w/ Reservation of Easements.** Instrument #20010031320 recorded 1/18/2001. Very similar to June 1, 2000 Grant Deed.
  - **November 25, 2002: Grant Deed** (Instrument #2002001068896 recorded 11/25/2002) whereby Cavanaugh grants to Boehringer the property described as Zone 2 and Zone 3 on Exhibit “A” and Exhibit “B”. “The effect of this Grant Deed is to reverse the effect of a document entitled Grant Deed with Reservation of Easements that was recorded June 1, 2000 as Instrument #20000288854 and re-recorded January 18, 2001 as Instrument #20010031320. This Grant Deed describes Zone 2 (Lot 77) and Zone 3 (Lot 77). [Corrective Deed].

## EXHIBIT “B”

### EASEMENTS & TITLE INSTRUMENTS AFFECTING 52 EMERALD BAY & 31 EMERALD BAY

- **November 25, 2002: Easement Deed** (for Maintenance) (Instrument #2002001068897 recorded 11/25/2002) from Boehringer to Cavanaugh granting “an Easement for maintenance purposes, including, but not limited to maintenance of the home and landscaping, and utility meter maintenance and reading” purposes over a three (3) ft. wide area of Lot 77 (Parcel 2, #50) parallel and adjacent to the lot line separating Lot 77 (#50) and Lot 74 (#52) shown on Exhibit “A”. “This easement is a non-exclusive easement and shall not prohibit Boehringer from constructing physical improvements such as fountains, providing such improvements do not significantly impede the specific purposes for which this easement has been granted.”
- **November 25, 2002: First Amendment to Settlement and Mutual Release Agreement** dated 6/27/02 (Instrument #2002001068898 recorded 11/25/2002) between Cavanaugh and Boehringer. Effect: Boehringer agrees not to protest Cavanaugh’s plan for development for Lot 74 (#52) providing Cavanaugh’s plans do not exceed 23 ft. (instead of 24 ft.) over grade for (i) the garage footprint, (ii) the area described in Exhibit C and over the area “matching the external footprint of the kitchen”.
- **December 6, 2002: Lot Line Adjustment** LL 99-041 (Instrument #2002001104927 recorded 12/06/2002) of Parcels 1 (#31 EB), Parcel 2 (#50 EB) and Parcel 3 (#52 EB) by Toal Engineering, Inc. on behalf of Boehringer (owner of Parcels 1 (#31 EB), Parcel 2 (50 EB) and Cavanaugh (owner of 52). Recording date 12/06/02. This recording adjusted the lot lines of each of Parcels 1 (#31 EB), Parcel 2 (#50 EB) and Parcel 3 (#52 EB).
- **December 6, 2002: Driveway Easement CC&R’s** recorded 12/06/02 as Instrument #2002001104931 recorded concurrently with Lot Line Adjustment, burdening Parcel 1 (#31 EB) and Parcel 2 (#50 EB) as Owners and their Permitted Users taking away right to park vehicles on their common driveway by providing: “No person, including any Owner or Permitted User may park, place stop or leave unattended any vehicle or anything else in any portion of the Driveway Easement”. [**\*Note:** This Driveway Easement prohibiting on-site driveway parking by #31 and #50 makes offsite street parking that much more necessary].
- **December 6, 2002: Grant Deed w/Reservation of Easements** recorded 12/06/02 as Instrument #2002001104932 recorded concurrently with Lot Line Adjustment LL 99-041 whereby Boehringer grants to Cavanaugh that portion of Parcel 3 of the Lot Line Adjustment referred to in Exhibit A as Zone 2 and Zone 3 as shown on Exhibit B and reserving unto himself a non-exclusive easement for vehicular and pedestrian ingress and egress over and across that area described as Zone 3 on Exhibit A and Exhibit B.
- **December 6, 2002: Easement Deed** recorded 12/06/02 as Instrument #2002001104933 recorded concurrently with Lot Line Adjustment LL 99-041 whereby Boehringer grants to Cavanaugh a “perpetual, nonexclusive easement for the purposes of pedestrian and

## **EXHIBIT “B”**

### **EASEMENTS & TITLE INSTRUMENTS AFFECTING 52 EMERALD BAY & 31 EMERALD BAY**

vehicular ingress and egress over the real property . . . and particularly described as Parcels 1 (#31) and 2 (#50) . . . ” of the Lot Line Adjustment on Exhibit A as Zone 1. [This easement for pedestrian and vehicular ingress and egress over Zone 1 is in favor of Parcel 3 (52 EB) and burdens Parcels 1 (31) and 2 (50) and all successors.

- **March 12, 2003**: Amendment to Driveway Easement CC&Rs as Instrument #2003-26828.
- **September 20, 2011**: **Grant Deed** from Ingrid Trenkle to Neel and Sharleen Grover recorded 9/20/11 as Instrument #2011000465945 conveying as Parcel A, Parcel 1 of Lot Line Adjustment LL 99-041 (Instrument #2002001104927 recorded 12/06/2002). Conveyance to Grover is subject to Driveway Easement CC&Rs recorded 12/06/02 as Instrument #2002001104931 amended March 12, 2003 as Instrument #2003-26828.
- **September 20, 2011**: **Easement** for ingress and egress and driveway purposes recorded 09/20/2011. Instrument No. 2011-465945, of OC Official Records.
- **October 22, 2020**: **Grant Deed** Instrument #2020000596797 recorded 10/22/20 from Douglas S. Cavanaugh and Julie Cavanaugh conveying to Steve Olson and Keri Olson’s 2005 Olson Family Trust Parcel 3 of the Lot Line Adjustment No. 99-041 recorded 12/5/2002 as Instrument #2002-1104927 and describing a perpetual, non-exclusive easement for pedestrian and vehicular ingress and egress as said easement is set forth in that Easement Deed recorded 12/6/2002 as Instrument # 2002-1104933.

*This list summarizes recorded instruments and relevant the time periods for ease of reference only. Reference should be made by the reader to the terms of the actual recorded documents.*