



## OC DEVELOPMENT SERVICES REPORT

ITEM # 1

**DATE:** June 14, 2023

**TO:** Orange County Planning Commission

**FROM:** OC Development Services / Planning

**SUBJECT:** Public Hearing on an appeal of Zoning Administrator's approval of Planning Application PA22-0104 for a Coastal Development Permit and Variance

**PROPOSAL:** PA22-0104, a request for a Coastal Development Permit and Variance for the demolition of an existing 2,500 square foot home and the construction of a new residence with 5,750 square feet of living area on three levels and garage spaces for three cars, was approved by the Zoning Administrator on March 2, 2023. A Variance was also granted for reduced front and rear setback of 5 feet, where the Zoning Code would require a setback of 8.35 feet utilizing shallow lot provisions (less than 75 feet deep). An interested party appealed the decision of the Zoning Administrator.

**ZONING:** R1 "Single Family Residence", with a CD "Coastal Development" Overlay and an SR "Sign Restrictions" Overlay within the Emerald Bay Local Coastal Plan area.

**GENERAL PLAN:** 1B "Suburban Residential" (0.5 – 18 DU/AC)

**LOCATION:** The project is located at 52 Emerald Bay, Laguna Beach, CA within the Fifth Supervisorial District. (APN 053-060-92)

**APPLICANT:** Steve Olson, Property Owner  
Charles d'Arcy, Architect

**APPELLANT:** Neel and Sharlene Grover  
Robert L. Labbe, representing attorney

**STAFF CONTACT:** Kevin Canning, Contract Planner  
Phone: (714) 667-8847  
Email: [Kevin.Canning@ocpw.ocgov.com](mailto:Kevin.Canning@ocpw.ocgov.com)

### RECOMMENDED ACTIONS

OC Development Services/Planning recommends the Zoning Administrator:

- a) Receive staff report and public testimony as appropriate; and,
- b) Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA) under the Class 1, Class 2, and Class 3 exemptions pursuant to Sections 15303, 15302 and 15303 of the California Environmental Quality Act (CEQA) Guidelines and County of Orange procedures; and,
- c) Deny the appeal and approve Planning Application PA22-0104 for a Coastal Development Permit and Variance subject to the attached Findings and Conditions of Approval.

## **PROCESSING HISTORY**

The application was filed in May 2022 and referred to appropriate County departments for review and comment. The Emerald Bay Local Coastal Program also requires all discretionary applications be referred to the Emerald Bay Community Association (EBCA) for review and comment, however, at the time of filing, the applicant had completed the EBCA review and included a copy of the Board's architectural approval of the project. Planning staff confirmed with both the applicants and the EBCA staff that the appellants had participated in several EBCA Architectural Review and Board meetings on the proposed project.

Despite the appellants' previous participation in EBCA's review of the project, public hearings for the application before the Zoning Administrator were continued twice to allow the appellants to further discuss their concerns with the EBCA and its Board. At the initial Zoning Administrator's hearing on December 1, 2022, Planning Application PA22-0129 was continued without discussion to January 19, 2023.

The purpose of the continuance was to allow time for a concerned neighbor (now appellant) to meet with the project applicant and the EBCA to further discuss their concerns with the project through a Request for Resolution, a mediation process recognized in the CC&R's. The neighbors, Neel and Sharlene Grover (31 Emerald Bay) had also submitted these concerns in writing to the Planning staff. At the continued hearing of January 19, the item was again continued without discussion because the mediation between the parties had not yet occurred. The mediation was scheduled for February 6, so the application was continued to March 2.

## **ZONING ADMINISTRATOR REVIEW AND ACTION**

At the March 2 Zoning Administrator's hearing, staff reported that the February 6 mediation between the parties had occurred but had resulted in no changes to the EBCA recommendations or changes to the project itself. At this hearing, the Grovers' representative, attorney Robert Labbe, again submitted written comments regarding their concerns with the process by which EBCA had reviewed and acted upon the project.

Planning staff summarized and responded to the objections submitted and noted that the objections raised dealt with the review and decision-making process of the EBCA Board, and not with any County process or requirements. Staff also noted that the Emerald Bay LCP did not require the approval of the project by EBCA, but only that the discretionary permit applications was referred to them for "review and comment" as follows:

*"The Emerald Bay Community Association shall be referred all discretionary permit applications for review and comment in accordance with Section 7-9- 118. No other special requirements or procedures are deemed necessary to carry out the provisions the Emerald Bay Local Coastal Program." (Emerald Bay Local Coastal Program, page 39)*

Staff concluded its report noting that the proposed project conformed with all applicable zoning standards, except for front and rear setbacks for which it was seeking approval of a Variance. The Zoning Administrator approved the project subject to the Findings and Conditions recommended by staff.

## **ANALYSIS OF APPEAL**

The following is a summary of the appeal points included in the appellants' letter dated March 17, 2023 (Attachment 3) with a staff response.

- Inappropriate elimination of an on-street parking space (not following Association procedures)
  - The project proposes a two-car garage, which requires a new curb cut, and a single car garage that would utilize the existing curb cut. The new curb cut would eliminate one on-street parking spot. The streets within the Emerald Bay community are private and are controlled and maintained by its Association. The County's development review process assesses the required off-street parking only, as on-street parking has only an ancillary relationship to the required parking for single-family development. Additionally, it should be noted that the Emerald Bay architectural guidelines have different, more stringent, parking requirements for development within the community based upon the overall size of the residence while the County's is based only upon the number of bedrooms (or bedroom equivalents such as an office or den). Under County requirements, the project requires three covered off-street parking spaces, which it provides.
- EBCA Architectural Committee unqualified to issue recommendation (due to Applicant's submission of inaccurate plans)
  - An exhibit submitted to the Committee regarding measurements of on-street parking on the cul de sac apparently may have had inaccuracies. This exhibit was not submitted to the County as it was not applicable to the County process and regulations.
- EBCA Architectural Committee failed to comply with EBCA CC&R's regarding architectural compatibility and preservation of ocean views of surrounding properties
  - County regulations contain no provisions regarding an assessment of either architecture or preservation of private scenic views. Per the Emerald Bay LCP, it is the Association's responsibility to assess these two provisions, but it provides no specific standards or parameters for such review. During its review of projects, EBCA will require the placement of story poles so that both neighbors and the Board can make its assessments. The County relies upon the EBCA review, comment, and approval of projects to make this assessment.
- Proposed project exceeds maximum building height
  - The County and EBCA measurement of building height differs significantly. The County measures from finished grade measured five feet from the structure to create a 35-foot maximum height building envelope that must be observed (with certain architectural exceptions). The EBCA 30-foot maximum height is measured from the contours of a 1960 topographic map of the community. There is no equivalency between the two methods. The project is under the County's maximum height limit.
- Failure of County to consider various recorded easements on the subject site
  - County staff did consider the easement(s) that had a potential effect on parking and access to the adjacent (non-appellant) lot. Other easements cited deal with private limitations and restrictions based upon previous settlements between previous private property owners. The County does not enforce such private agreements. Further, the appellants' letter lists the easements and cites provisions within them, but it does not provide any assessment of how the approved project might conflict with such provisions.
- Failure of County to consider the appellant's submittal to EBCA of a 2<sup>nd</sup> Request for Resolution (mediation of disputes).
  - County staff did consider the submittal of the 2<sup>nd</sup> Request for Resolution and determined that additional continuances of the project's public hearing (two continuances had

already been granted delaying consideration by three months) would create an unreasonable burden to the project applicants given that the appellants had already presented their concerns to EBCA through several meetings as well as their initial Request for Resolution but had yet to effect any change in the EBCA's approval. Additionally, it was noted that any action on the project by the Zoning Administrator could be appealed to the Planning Commission. Finally, the project is located within the 'appealable area' of the Emerald Bay LCP, which provides for an appeal to the California Coastal Commission following the County's final determination. Moreover, if any changes are proposed by the EBCA, OC Development Services staff can consider those changes and whether the Applicant must re-submit anything to the Zoning Administrator or through a change plan administrative process.

### **SYNOPSIS OF STAFF REPORT TO THE ZONING ADMINISTRATOR**

Below is a summary of the Zoning Administrator's March 2, 2023, staff report on the project. The full report is included as Attachment 4.

### **BACKGROUND AND EXISTING CONDITIONS**

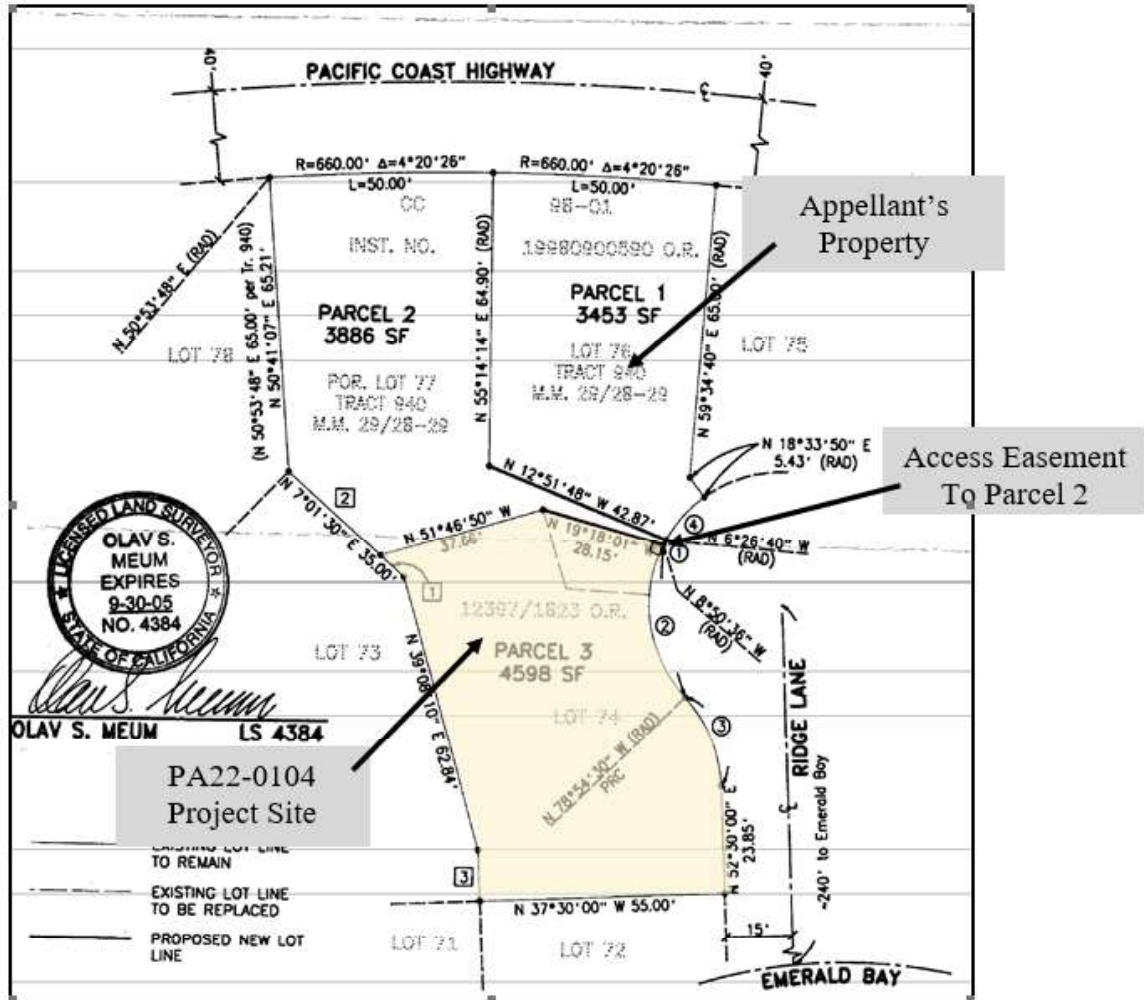
The subject property is developed with an existing 2,500 square foot (approximate) single-family residence with an attached garage. The building site and two adjoining parcels were modified in 2002 with the recordation of LLA 99-041.

#### **AERIAL OF PROJECT SITE**



That lot line adjustment established the subject site as Parcel 3 and the two adjacent lots as panhandle lots. The home on Parcel 2 is served by a narrow street access, however there is a parking and access easement recorded over a portion of the subject lot to preserve access to this rear lot.

**Lot Line Adjustment LLA 99-041**



**PROPOSED PROJECT**

The project includes the demolition of an existing 2,500 square foot home and the construction of a new residence with 5,750 square feet of living area on three levels and garage spaces for three cars (a two-car garage and a one-car garage). Approximately 1,300 cubic yards of cut materials would be exported from the site. The applicant also requests a Variance for reduced front and rear setbacks.

**DISCUSSION/ANALYSIS**

Below is a table comparing the development standards for “Single-Family Residence” District with the proposed project:

**Project Comparison with R1 “Single-Family Residence” District Site Development Standards**

<b>STANDARD</b>	<b>REQUIRED</b>	<b>PROPOSED</b>
Building Site Area	7,200 square feet	4,598 square feet (existing)
Maximum Building Height	35 feet maximum	31 feet
Structural Front Setback	8 feet 4 inches <sup>1</sup>	5 feet <sup>2</sup>
Structural Rear Setback	8 feet 4 inches <sup>1</sup>	5 feet <sup>2</sup>
Structural Side Setback	5 feet minimum	5 feet minimum
Off-street parking	3 covered spaces	3 covered spaces

<sup>1</sup> Under Zoning Code Sec. 7-9-61.12 setbacks on a shallow lot – 55’8” average depth x 15% = 8.34’

<sup>2</sup> Indicates Variance requested by the applicant

Coastal Development Permit

Within the Coastal Development Overlay zone, and specifically within the Emerald Bay Local Coastal Program (LCP), the project requires the approval of a Coastal Development Permit (Zoning Code Section 7-9-40 and Emerald Bay Local Coastal Program Section III.A.). The proposed project conforms to the goals and objectives of the LCP through its design and the application of standard conditions of approval. The project is consistent with the approved intensity of development, as well as the applicable Land Use Policies contained in LCP Section E regarding resources Management – Watershed, Environmental Hazards – Geologic and Fire Hazard.

As required by the LCP, the project was reviewed by the Emerald Bay Community Association (EBCA) and approved in May 2022. The EBCA found the proposal consistent with their local architectural and design criteria. All streets within the community are private and on-street parking is regulated based upon local standards. The project is compatible with surrounding development in its size, design, and massing. The subject property is within the ‘appealable jurisdiction’ area of the LCP, which means after a final determination by the County (here by the Planning Commission), an appeal may be taken with the Coastal Commission.

Variance for Front and Rear Setback

The applicant requests a Variance approval to allow a 5-foot setback for both the front and rear property lines, where the Zoning Code would otherwise require a setback of 8 feet 4 inches (because the lot qualifies as a shallow lot which also reduces the required setbacks).

Other homeowners within this community have had 5-foot setbacks approved. This is due to the prevalence of substandard lot sizes, the often steep topography on individual lots throughout the Emerald Bay community, and the strict architectural restrictions that limit structures height and massing that would obstruct ocean views from adjoining properties. The combination of these factors limits the options and opportunities for home designs in Emerald Bay that would be available to properties under similar zoning in other parts of the County. Where an Emerald Bay project design is limited by height or view restrictions, the alternative is to expand the building envelope on the lot with reduced setbacks. It is also noted that there is a 5-foot public utility easement running across the front of the subject lot which would function as an additional 5-foot setback from the private street right-of-way. This easement helps to mitigate the streetscape of the project.



### Proposed Front Elevation



Zoning Code Section 7-9-125.6 requires that certain findings be made to approve a variance request, as follows:

- a. *Special circumstances. There are special circumstances applicable to the subject building site which, when applicable zoning regulations are strictly applied, deprive the subject building site of privileges enjoyed by other property in the vicinity and subject to the same zoning regulations. (The special circumstances shall be specified in the adopted finding.)*
- b. *No special privileges. Approval of the application will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations, when the specified conditions are complied with.*

Staff finds that the special circumstances relating to the property include its shape, size and topography, and its location in a coastal community with strict architectural guidelines. All of these are unique aspects to the subject lot and vicinity when compared to other R1 zoned properties within the County. The community of Emerald Bay has had many previous variance requests approved for reduced front yard setbacks. The proposed setback variance would not be a special privilege as it is consistent with other approved variances within the immediate area allowing for the reasonable development of the property consistent with homes in the vicinity.

### PUBLIC NOTICE

A Notice of Appeal Hearing was mailed to all property owners of record within 300 feet of the subject site and all occupants of dwelling units within 100 feet of the site (Coastal Development Permit Requirement) on May 31, 2023. Additionally, a notice was posted in front of the Project site, and a

notice was published in a newspaper of general circulation, as required by established public hearing posting procedures.

At the time of original filing, a copy of the planning application and the proposed site plan were distributed for review and comment to County Divisions, Orange County Fire Authority, and the EBCA. All comments by County Divisions and OCFA have been addressed through incorporation of proposed Conditions of Approval provided as Attachment 2. As previously noted, the Emerald Bay Community Association approved the proposed project at their Board meeting in May 2022, and after meeting with the appellants during a Request of Resolution on February 6, 2023, did not alter their first approval.

## **CEQA COMPLIANCE**

The California Environmental Quality Act (CEQA) allows categorical exemptions for projects that have been determined not to have a significant effect on the environment. (CEQA Guidelines §15300-15332). Following is a brief analysis of the project's consistency with Class 1, Class 2 and Class 3 categorical exemptions.

### *Class 1 Categorical Exemption*

The Class 1 (Section 15301) exemption provides for the operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of the use beyond that existing at the time of the lead agency's determination. Examples include:

*(l) Demolition and removal of individual small structures listed in this subdivision:*

*(1) One single-family residence. . .*

The project includes the demolition of an existing single-family residence and construction of a new single-family residence with attached garage spaces. Accessory structures are also listed in the Class 1 exemption, and demolition of "Accessory (appurtenant) structures including garages, carports, patios, swimming pools and fences" are exempt. The project will include demolition of an existing garage, and fences/walls as well as other hardscape improvements, all of which are addressed in the Class 1 exemption.

### *Class 2 Categorical Exemption*

The Class 2 (Section 15302) exemption consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. As noted in the Class 1 Exemption discussion above, the existing residence will be demolished, and a new residence will be constructed in substantially the same footprint as shown on the attached site plan. While Class 2 does not specifically list a single-family residence, it is noted that the exemption is not limited to the examples provided. The reconstruction of the residence is consistent with the Class 2 Exemption because the new residence will have substantially the same purpose and capacity as the structure replaced.

### *Class 3 Categorical Exemption*

The Class 3 (Section 15303) exemption consists of construction and location of limited numbers of new, small facilities or structures. Examples of the exemption include:

*(a) One single-family residence or a second dwelling unit in a residential zone. . .*



(e) *Accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.*

The proposed project is eligible for a Class 3 exemption because construction of a single-family residence and the related improvements including the garage, spa, patio, and fences are specifically included in the list of examples.

None of the exceptions listed in Section 15300.2 apply to the project. Each component of the project, including the demolition of the existing residence and accessory structures, and the reconstruction of the residence and accessory structures, meets criteria outlined in the Class 1, Class 2 and Class 3 exemptions. The project will not result in a cumulative impact, significant environmental effect, and will not damage scenic or historic resources and the appropriate environmental document for this project is a Notice of Exemption. Standard conditions of approval applied by the County for all construction projects of this nature will address any less than significant short-term construction related concerns.

## CONCLUSION

Staff has reviewed both the applicant's request for a Coastal Development Permit and Variance and the appellant's objections to the project. Staff found the proposed project to be compliant with the Emerald Bay Local Coastal Program. Building of a single-family home is an allowed Principal Permitted Use in the "Single-Family Residence" District and has been found to be compatible with adjacent residential uses, including similar previous approvals. Staff also found that the two findings required for approval of the Variance request could be made and has offered such findings. Staff did not find the objections raised pertinent to the applicable regulations that the County must use to evaluate the project. Staff recommends denial of the appeal and approval of the planning application subject to the Findings and Conditions of Approval provided as Attachments 1 and 2.

Submitted by:



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Kevin Canning, Contract Planner  
Planning, OC Development Services

Approved by:



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Justin Kirk, Deputy Director  
OC Public Works/Development Services

## ATTACHMENTS

1. Planning Commission Recommended Findings
2. Planning Commission Recommended Conditions of Approval
3. Letter of Appeal dated March 17
4. March 2, 2023, Staff Report to Zoning Administrator
  - a. Zoning Administrator Findings
  - b. Zoning Administrator Conditions of Approval
  - c. Applicant's Letter
  - d. EBCA Board Approval

- e. Site Photos
- f. Project Plans
- g. November 30, 2022, letter from Robert Labbe
- h. February 16, 2023, email from Robert Labbe
- i. Two late letters from Grover/Labbe 02-24-23 and 03-01-23
- j. Exhibit of Portion of Tract 940
- k. Lot Line Adjustment LL 99-041
- l. December 1, 2022, Staff Report to Zoning Administrator

### **COASTAL COMMISSION APPEAL PROCEDURE**

The decision of the Orange County Planning Commission on the subject project is final. However, due to the property's location within the appealable jurisdiction of the Emerald Bay Local Coastal Program an appeal of the project may be filed with the California Coastal Commission. Following the Planning Commission's action on the project, a Notice of Final Decision will be filed with the California Coastal Commission's South Coast District office. It will then be posted online under the Currently Appealable Projects at weblink listed below. The appeal to the Coastal Commission must be filed within the 10-day period listed for the project. Further instructions to file this appeal are also listed.

[https://documents.coastal.ca.gov/assets/appeal-projects/Statewide Appealable Projects Report.pdf](https://documents.coastal.ca.gov/assets/appeal-projects/Statewide%20Appealable%20Projects%20Report.pdf).