



August 10, 2021

OC Public Works  
OC Development Services  
Attention: Mr. Kevin Canning, Contract Planner  
300 N. Flower Street  
Santa Ana, CA 92702

Subject: Coastal Development Permit Application, 311 Emerald Bay, Laguna Beach, CA 92651

Dear Mr. Canning:

On behalf of Richard and Karen Varner, CAA Planning, Inc. (CAA) submits the attached application for a Coastal Development Permit (CDP), a Variance, and a Use Permit in conjunction with the demolition of an existing residence and detached garage and the construction of a new 2,852-square-foot single-family residence with basement and an attached 488-square-foot two-car garage at 311 Emerald Bay. A CDP is required for the demolition of the existing residence and the construction of the new residence including hardscape, landscape, and associated grading. In addition to the CDP, a variance will be required to reduce the front setback to 5.5 feet and the rear setback to 14.5 feet. Also, a use permit will be required for new walls exceeding 6 feet in the left and right setbacks and exceeding 3.5 feet in the front setback, and a use permit will be required for a driveway less than 18 feet in length.

The location of the existing residence is shown on the attached regional and vicinity maps (Exhibits A and B) and the attached aerial (Exhibit C). Details of the proposed improvements are shown on the enclosed project site plan, floor plans, elevations, cross sections, grading plan, and landscaping plan (Exhibit D).

The proposed project is consistent with the LCP, the Emerald Bay Building Restrictions, and the County of Orange Zoning Code R1 Building Regulations as described below.

### **Local Coastal Program**

The community of Emerald Bay is regulated by the Emerald Bay Local Coastal Program (LCP), which was approved by the County of Orange (County) on January 24, 1989 and was certified by the California Coastal Commission on September 13, 1989. The LCP serves as both the Land Use Plan and the Implementing Actions Program for the Emerald Bay Community. At adoption of the LCP, the County applied the R1 Zoning over all residential lots that had been created pre-LCP (Exhibit E). The Emerald Bay LCP is fully certified, and therefore, the issuance of a required CDP is within the jurisdiction of the County.



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### **Coastal Development Permit**

The proposed project qualifies as “Development” per the County Zoning Code because it proposes demolition of an existing structure and the construction of a new structure per §7-9-40.3, and therefore a CDP is required per §7-9-40.4. However, the project site is not located between the ocean and the first public road (Pacific Coast Highway) and is therefore not located within the California Coastal Commission appeal jurisdiction as identified in Section III-B of the LCP and delineated on Figure 9 – Post LCP Certification Permit and Appeal Jurisdiction Map (Exhibit F).

### **Emerald Bay Building Restrictions**

In addition to the County Zoning Code, the development of the subject property is regulated by the Building Restrictions contained in Covenants, Conditions and Restrictions (CC&Rs), which are administered by the Emerald Bay Community Association. In that regard, the proposed project was closely reviewed by the Emerald Bay Design Review Board (DRB) to ensure it meets the requirements of the CC&R Building Restrictions and will be aesthetically compatible and harmonious with adjacent homes in Emerald Bay. Approval from the DRB will be provided prior to the Zoning Administrator Hearing.

### **County of Orange Zoning Code R1 Building Regulations**

The residences in Emerald Bay are subject to the County Zoning R1 District Regulations (Regulations) in Zoning Code §7-9-31.3, established with adoption of the Emerald Bay LCP in 1989. The County provides for deviation from the Regulations with variance and/or use permit approvals. The following discussion outlines the project’s compliance with the County’s site development standards and identifies the need for any deviations from the Regulations with respect to setbacks, wall heights, and driveway length.

*Building Site Area* – Per Table 7-9-31.3 of the Zoning Code the minimum building site area in the R1 Zoning District is 7,200 square feet. However, many of the lots in Emerald Bay were established legal lots prior to adoption of the LCP and are still valid pursuant to §7-9-61.4. The subject property is an established legal lot and described as Lot 91 and a Portion of Lot 90 in Tract 977 (Exhibit G) with an area of 4,935 square feet.

*Building Height* – Per Table 7-9-31.3 of the Zoning Code the maximum building height limit allowed for structures in the R1 Zoning District is 35 feet above finished grade. The maximum height of the proposed structure is 15.61 feet at the front elevation and 25.3 feet at the rear elevation as shown on Drawing Sheets A4 and A5 of Exhibit D. The maximum structure height is well below the maximum R1 Zoning District of 35 feet.

*Building Setbacks* – Per Table 7-9-31.3 of the Zoning Code the minimum setbacks established for the R1 Zoning District are 20 feet for the front setback, 5 feet for the side setbacks, and 25 feet for the rear setback. The Zoning Code allows exceptions to the front setback requirements subject to





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criteria set forth in the Zoning Code. §7-9-61-14 says “Where a building site is situated between two (2) building sites, each of which has a main building within forty (40) feet of said building site which projects into the required front setback area, the front building line for said building site need not set back any further than the average of the setbacks of the two (2) adjoining buildings.” Using this criterion, the required front setback for the project can be established using the average distance for the two adjoining buildings, which calculates to be 14.5 feet  $([14.2+14.8] \div 2=14.5)$ .

For comparison purposes, the Zoning Code setbacks and exceptions, the Emerald Bay setbacks, and the proposed setbacks are shown in following table.

Setbacks				
Description	Code Requirement <sup>1</sup>	Emerald Bay Requirement	Existing Setbacks <sup>2</sup>	Proposed Setbacks
Front	14.5'	5'	10.3'	5.5'
Right Side	5'	5'	5'	5'
Left Side	5'	5'	5'	5'
Rear	25'	5'	20.5'	14.5'

<sup>1</sup> The front setback area is calculated per §7-9-128.4 of the Zoning Code, which allows for a front setback using the average distance for the two adjoining buildings. Using this method of calculation results in a front setback of 14.5 feet  $([14.2 + 14.8] \div 2 = 14.5)$ .

<sup>2</sup> As measured from the Topographic Survey for the existing residence.

The side yard setbacks are in compliance with the R1 Zoning Code requirement. However, as shown in the above table, a variance will be required to reduce the front setback from the required 14.5 feet to 5.5 feet and to reduce the rear setback from the required 25 feet to 14.5 feet as shown on Exhibit H.

**Walls** – The Code limits the maximum wall height in the required side or rear setbacks to 6 feet and to 3.5 feet in the front setback per §7-9-64(b)(4). The project proposes to construct walls to 10.8 feet in the left setback, and to 8.9 in the right setback and to 7.4 feet in the front setback as shown on Exhibit H. A use permit will be required for the over-height walls.

**Off-street Parking** – The established number of off-street parking spaces for an R1 development is 2 covered spaces. The Emerald Bay requirement for a house of this size is 2 spaces with a minimum of 2 garage spaces. The proposed residence will provide the required 2 spaces within the garage as shown on Drawing Sheet SP1/A1 of Exhibit D and is in compliance with the parking requirement.

**Driveway** – Per §7-9-70.3(d)(1) the minimum distance (i.e., driveway length) from the garage to the property line is 18 feet. The average length of the project driveway is 9.5 feet but 10.5 feet measured at the midpoint of the garage opening. A use permit will be required for the reduction in driveway length.



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*Lights* – The lighting proposed for the new residence will be downlighted or shielded to prevent glare or to prevent being a nuisance to neighbors, and as such is in compliance with the R1 Regulations for lighting as shown on Drawing Sheet L-3 of Exhibit D.

## **Variances**

### *Front and Rear Setbacks*

The building site at 311 Emerald Bay is located on a narrow lot with an average width of 53.7 feet. The front property line is 2.5 times wider than the rear property line. In addition, the rear of property is encumbered by an 8-foot utility easement. As a result, the majority of the buildable area is located toward the front of the lot. The applicant seeks approval for the following variances from the R1 Zoning Code requirement.

1. The applicant seeks to reduce the front yard setback from the R1 Zoning Code requirement of 14.5 feet to 5.5 feet to accommodate encroachment of the new garage into the front setback as shown on Exhibit H. The field condition indicates that the as-built front setback is 10.3' to accommodate the existing garage as shown on the Topographic Survey for the existing residence.
2. The applicant seeks to reduce the rear yard setback from the R1 Zoning Code requirement of 25 feet to 14.5 feet to accommodate encroachment of the back of the proposed residence as shown on Exhibit H. The field condition indicates that the as-built rear setback is 20.5 feet as shown on the Topographic Survey for the existing residence.

## **Use Permits**

### *Over-Height Walls*

Section 7-9-64(b)(4) of the Zoning Code restricts wall heights within the side yard setback to 6 feet, but the height of side yard walls can be increased through the approval of a use permit. Therefore, the applicant is requesting a use permit for the following side yard walls as shown on Exhibit H.

1. The applicant proposes over-height walls to 8.9 feet in the first 25 feet of the right side setback.
2. The applicant proposes over-height walls to 10.8 feet in the last 20 feet of the left side setback.
3. The applicant proposes over-height walls to 7.4 feet in the front setback.

### *Reduced Length Driveway*

Per §7-9-70.3(d)(1), the minimum driveway length for a house less than 20 feet from the curb line is 18 feet. The average width of this lot is only 53.7 feet, and it would be impractical to design a driveway 20 feet long. The existing driveway averages 10.5 feet in length, and the proposed driveway for the new residence averages 9.5 feet but 10.5 feet at the midpoint of the garage opening.





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## **California Environmental Quality Act**

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 why the project is consistent 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 a 1,268-square-foot single-family residence and attached 446-square-foot garage with a 1,714-square-foot footprint, to be replaced with a 2,852-square-foot single-family residence and attached 488-square-foot garage with a 1,974-square-foot footprint in substantially the same location as the existing structure. The project involves an expansion of the use beyond the existing use (increase in square footage). However, the footprint will remain essentially the same as the existing footprint. 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, fences/walls, and 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 with substantially the same footprint as shown on the attached site plan (Architectural Drawing Sheet SP1/A1). 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 Varner 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. . .*



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*(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 walls/fences are specifically included in the list of examples.

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 or a 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 short-term construction-related concerns.

## **Conclusion**

Demolition of older single-family residences and new construction on the same building site is common in the Emerald Bay community. In addition to a CDP for demolition and construction within the coastal zone, many of these applications request approval of a variance for reduced setbacks and use permits for over-height walls in the front, side, and rear setbacks and steep/reduced length driveways (Architectural Drawing Sheet SP1/A1). The variance and use permits requested herein are minor in nature, and would not be required but for the shallow lot size and the disparity between the Emerald Bay Building Restrictions and the County's R1 Zoning. If the County Zoning Code setback requirements were strictly applied to this lot, previous applications approved by the County would enjoy privileges beyond the permits requested for the proposed residence at 311 Emerald Bay Drive.

The proposed project is consistent in character with previously approved requests of homeowners in the surrounding neighborhood and is consistent with the Emerald Bay CC&R Building Restrictions. In addition, the proposed residence at 311 Emerald Bay is consistent with the Emerald Bay LCP and the County Zoning Code.

We appreciate the County's consideration on this project and look forward to working with you. If you have any questions, please contact me or Shawna Schaffner at (949) 581-2888.

Sincerely,  
CAA PLANNING, INC.

Paul Shaver





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Attachments: Exhibit A – Regional Map  
Exhibit B – Vicinity Map  
Exhibit C – Aerial  
Exhibit D – Plans  
Exhibit E – Zoning  
Exhibit F – Appeal Area  
Exhibit G – Tract Map  
Exhibit H – Setback and Wall Height Exhibit

cc: Richard Varner – Laguna House LLC  
Nolan Mead – CJ Light  
Shawna Schaffner – CAA Planning, Inc.