



OC DEVELOPMENT SERVICES REPORT

ITEM # 1

DATE: February 2, 2023

TO: Orange County Zoning Administrator

FROM: OC Development Services / Planning

SUBJECT: Public Hearing on a Coastal Development Permit, Use Permit and Variance (Planning Application PA22-0163)

PROPOSAL: A request for a Coastal Development, Use Permit and Variance in conjunction with the major remodeling of and additions to an existing single-level 2,131 square foot home. 1,035 square feet of new living area in a new second floor is proposed. The Coastal Development Permit is required for the improvements to the existing home with associated site grading. The Use Permit is required for over-height retaining walls at the rear of the property (abutting Coast Highway) and for a reduced driveway depth. The Variance is required for reduced setbacks: a) a reduced rear yard of 10 feet 10 inches where Zoning would require 17 feet 8 inches on a shallow lot; c) reduced side yard setback to a minimum of 4 feet 10 inches to allow the proposed new constriction to match existing, nonconforming side yard setbacks where Zoning would require 5 feet. (NOTE: The publicly noticed front yard setback variance for the proposed raised front deck has been determined to conform to Zoning standards. See discussion below under Variances for Setbacks)

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"

LOCATION: The project is located at 117 Emerald Bay, Laguna Beach, CA within the Fifth Supervisorial District. (APN 053-040-53)

APPLICANT: AFS Realty Investments LLC (Andrea Shelly), Property Owner
Jason Yaw, MTD Studio Inc., Agent

STAFF CONTACT: Kevin Canning, Contract Planner
Phone: (714) 667-8847
Email: 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 15301, 15302 and 15303 of the California Environmental Quality Act (CEQA) Guidelines and County of Orange procedures; and,
- c) Approve Planning Application PA22-0163 for a Coastal Development Permit, Use Permit, and Variance subject to the attached Findings and Conditions of Approval.

BACKGROUND AND EXISTING CONDITIONS

The subject property is developed with an existing 2,131 square foot single-family residence with an attached garage. The property abuts North Coast Highway to the rear where there is an existing noise mitigation wall (partially retaining) on the rear property line that will remain. The project site is below the grade of North Coast Highway by approximately 15 to 17 feet at its midpoint. A previous project was approved for the site as PA20-0015 in June 2021, however the property owner has abandoned that design in favor of the current project.

PROPOSED PROJECT

The project includes the partial demolition of the existing residence and the remodeling and construction of a two-level 3,121 square foot single-family residence with an attached two-car garage and one uncovered parking spaces. Also proposed are various landscape improvements. Grading associated with the project will total approximately 160 cubic yards, balanced onsite.

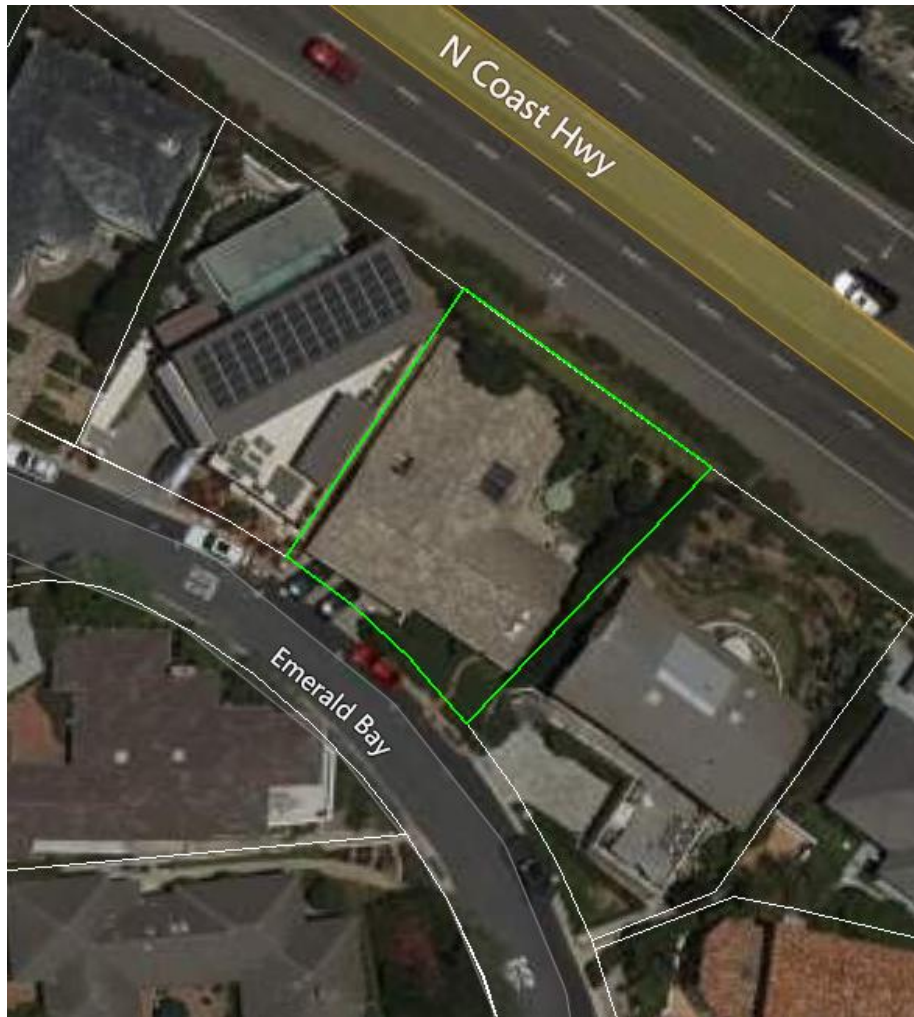


SURROUNDING LAND USE

The project site is a residential use and is surrounded on three sides by residential uses. The zoning and existing land use for surrounding properties is as follows:

Direction	Zoning Description	Existing Land Use
Project Site	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling
North	n/a	North Coast Highway
South	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling
West	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling
East	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling

SUBJECT SITE



DISCUSSION/ANALYSIS

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

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

Standard	Zoning Code	Proposed
Building Site Area	7,200 square feet	6,234 square feet (existing)
Building Height	35 feet maximum	24 feet
Min. Structural Front Setback ¹	7.35 feet ¹	7.35 feet (to main structure)
Max. Front Deck Projection	3 feet from property line	5.8 feet from property line
Min. Structural Rear Setback ¹	17.6 feet ²	10.8 feet ³
Structural Side Setback	5 feet minimum	4.8 feet minimum (to match existing nonconforming setback)
Parking	2 covered spaces	2 covered/2 uncovered spaces
Walls in rear setback area	6.0 feet	8.0 foot maximum ⁴

¹ Average of adjoining setbacks = 7.2 feet + 7.5 feet / 2 = 7.35 feet.

² Shallow lot = average depth 88 feet x 20% = 17.6 feet

³ Variance request

⁴ Use Permit request

Coastal Development Permit

The project includes the partial demolition of the existing residence and remodeling and construction of a two-level 3,121 square foot single-family residence with an attached two-car garage, with various landscape improvements. Grading associated with the project will total approximately 160 cubic yards, balancing onsite.

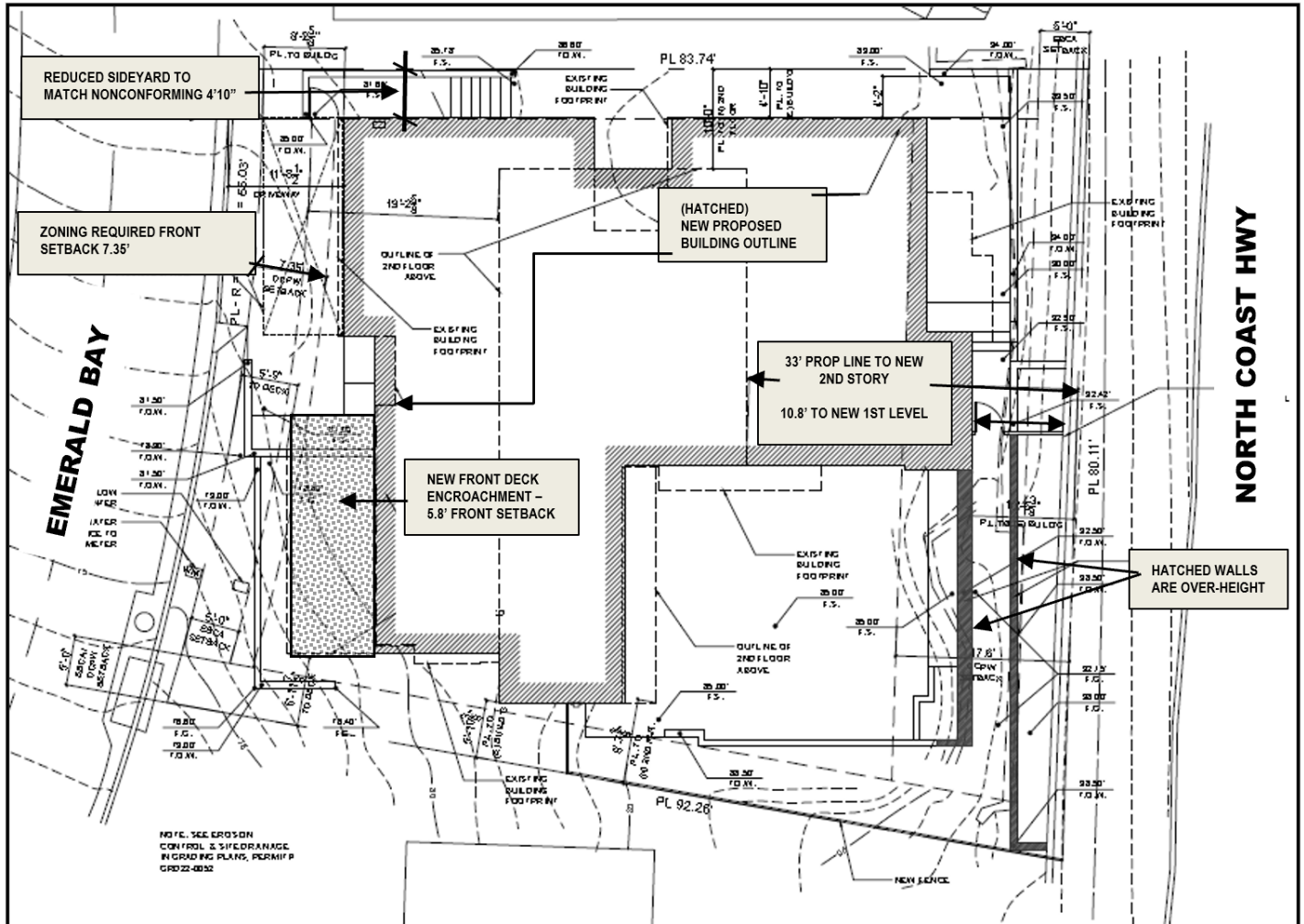
Within the Coastal Development Overlay zone, and specifically within the Emerald Bay Local Coastal Program (LCP), the demolition and replacement of a structure, with the associated site grading requires the approval of a Coastal Development Permit (Zoning Code Section 7-9-40 and Emerald Bay Local Coastal 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 September 2022. 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.

Variance for Setbacks

The project site backs up to North Coast Highway and is also a shallow building site per Zoning Code Section 7-9-61.12. With an average depth of 85.00 feet, the required front and rear setback for the subject project site is 17.6 feet, calculated as follows: Average Lot Depth x 20% = required (front and) rear setback (88.00 x 20% = 17.6 feet).

VARIANCE REQUEST



Due to the highway and resultant noise impacts, building sites within Emerald Bay located west of the highway and located at or below the elevation of the highway, have been historically developed with minimal private back yards. This development approach places structures, which can more be easily sound mitigated than a private yard area, more towards the back of the lots. Of the 36 such lots within the Emerald Bay community, only three lots have the minimum R1 rear yard setback of 25 feet, with two undeveloped lots (number based upon inspection of aerial photographs). The proposed project utilizes similar design and planning to achieve a more useable single family site plan by moving the proposed home further back on the shallow lot. It is also noted that the existing home has some floor areas that are closer to the rear property line than the proposed project design, but these areas will be removed.

As noted above, the proposed design would have a raised deck area within the front yard of the residence. Due to the topography of the lot and the sloping grade of the frontage street, this deck would be between 5 to 7 feet above adjacent grade at the property line. Zoning Code Section 7-9-61.16 allows balconies, decks, and porches in excess of 30 inches in height to project into a front yard setback up to 5 feet but no closer than 3 feet of a front property line. The proposed deck would project 2 feet into the required and 5 feet 9 inches from the property line and thus conforms to the Zoning standard.

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.*

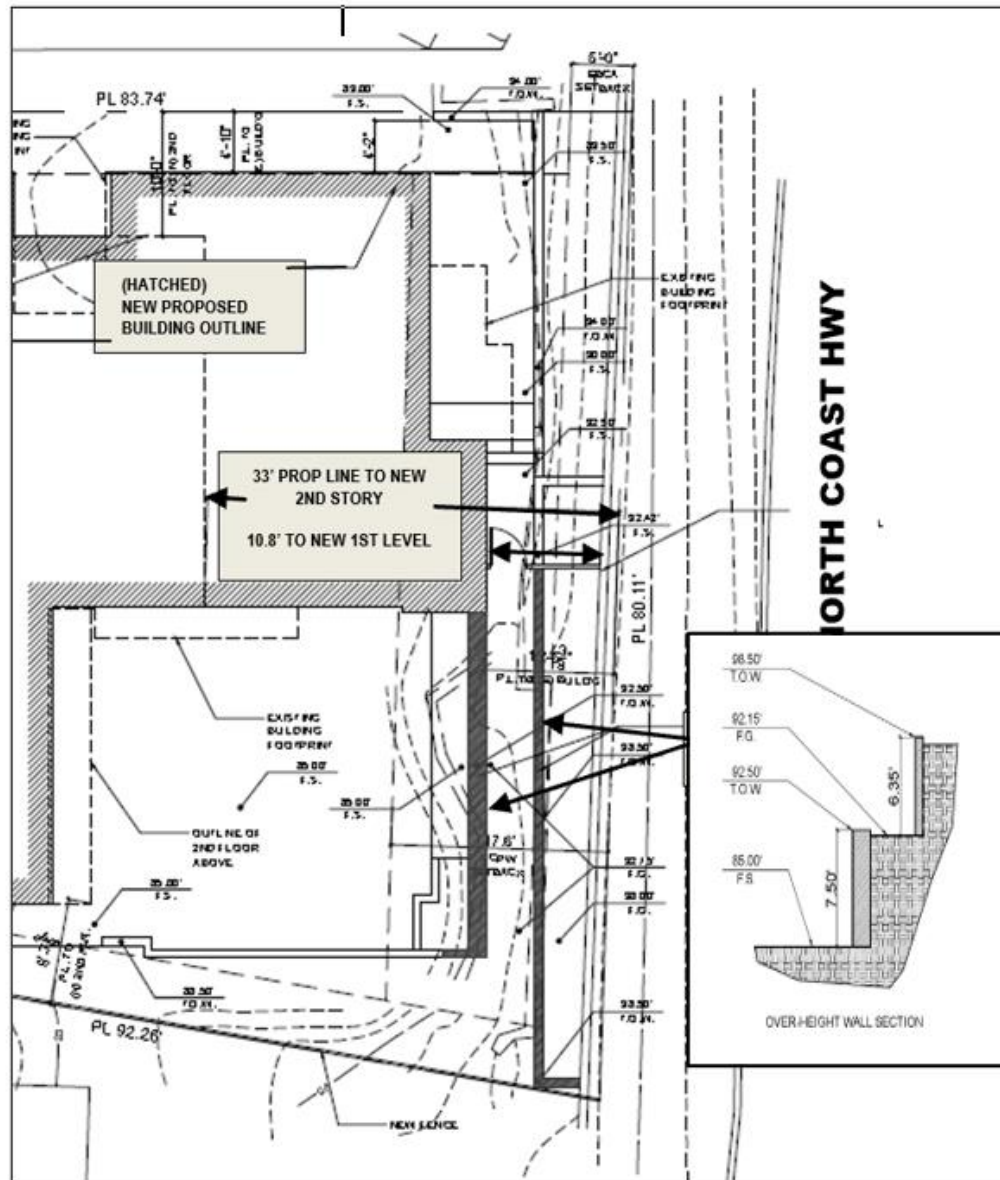
Staff finds that the special circumstances relating to the property include its shallow depth, its proximity to and elevational difference from North Coast Highway, and its location in a coastal community with strict architectural guidelines. All of these are unique aspects to the subject lot and vicinity when compared to other R1 zoned properties within the County.

The community of Emerald Bay has had many previous variance requests approved for reduced yard setbacks. The proposed setback variances 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.

Use Permit for Wall Height

The project proposes over-height retaining walls in several locations.

- Within the front yard setback at the southwestern corner of the lot, a 6-foot wall is proposed, where 3.5 feet is the maximum under the Zoning Code. This is proposed to match grades of the adjacent lot.
- Along portions of the side and rear property lines, retaining walls up to 10-feet in height where 6-feet is the maximum under the Zoning Code. It is noted that the side and rear walls do not measure over 6-feet when measured from the adjacent lot's finished grade.

OVER-HEIGHT WALLS REQUEST

Zoning Code Section 7-9-64(f), Modifications permitted, states that exceptions and modifications to the fence and wall height provisions may be permitted by approval of a Use Permit by the Zoning Administrator if the following findings can be made:

- 1) That the height and location of the fence or wall as proposed will not result in or create a traffic hazard.
- 2) That the location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental, or incompatible with other permitted uses in the vicinity.

The proposed walls will be located at the rear of the property away from the street and will not result in or create a traffic hazard. The location, size and design of the walls are consistent with similar improvements throughout Emerald Bay and will not be objectionable, detrimental, or incompatible with other permitted uses within the community. Staff recommends that the two required findings to modify permitted wall height can be made. Recommended findings are included in Attachment 1.

Reduced Driveway Depth

In the proposed remodeling of the existing residence, the existing garage space and its setback from the street would remain in the same location and would retain the existing driveway (centerline) depth of approximately 11 feet from the curb line. Zoning Code Section 7-9-70.3(d)(1) requires that the garage entry location be 20 feet from the ultimate right-of-way (or 18 feet if a roll-up garage door is used). With four bedrooms proposed (including an office space counted as a bedroom), the Zoning Code would require only the two covered garage spaces. However, to meet the EBCA design criteria, a third off-street space is necessary to meet local standards.

Due to the reduced setback, the project design would locate the locally-required third space as an uncovered off-street parking space within the driveway area, but parallel to the garage door rather than a traditional perpendicular orientation. The Zoning Code allows the modification of its parking standards with the approval of a Use Permit. The proposed design and functionality of the third space does not pose any potentially hazardous conditions and could be accessed and used safely. Staff recommends approval of the design request.

REFERRAL FOR COMMENT AND PUBLIC NOTICE

A Notice of 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 January 19, 2023. Additionally, a notice was posted at the project site, the County Hall of Administration and at the County Administration South building, 601 North Ross Street, as required by established public hearing posting procedures. A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to County Divisions, Orange County Fire Authority, and the Emerald Bay Community Association. All comments by County Divisions and OCFA have been addressed through incorporation of proposed Conditions of Approval provided as Attachment 2. The Emerald Bay Community Association approved the proposed project at their Board meeting in September 2022.

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 remodeling and reconstruction of a single-family residence and the related improvements including the garage, 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

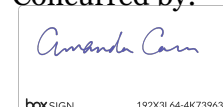
Staff has reviewed the applicant's request for a Coastal Development Permit, Use Permit, and Variance and found the proposed project to be compliant with the Emerald Bay Local Coastal Program. It is an allowed Principal Permitted Use in the "Single-Family Residence" District and has been found to be compatible with adjacent residential uses, including similar previous approvals. Staff supports approval of the planning application subject to the Findings and Conditions of Approval provided as Attachments 1 and 2.

Submitted by:



Justin Kirk, Division Manager
Planning, OC Development Services

Concurred by:



Amanda Carr, Interim Deputy Director
OC Public Works/Development Services

ATTACHMENTS

1. Recommended Findings
2. Recommended Conditions of Approval
3. Applicant's Letter
4. EBCA Board Approval
5. Site Photos
6. Project Plans

APPEAL PROCEDURE

Any interested person may appeal the decision of the Zoning Administrator on this permit to the OC Planning Commission within 15 calendar days of the decision upon submittal of required documents and a fee of \$500 filed at the County Administration South building, 601 N. Ross Street, Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to OC Development Services/Planning.