

**OC PLANNING REPORT**

**DATE:** April 20, 2023

**TO:** Orange County Zoning Administrator

**FROM:** OC Development Services/Planning Division

**SUBJECT:** Public Hearing on Planning Application PA22-0191 for a Coastal Development Permit, Use Permit and Variance

**PROPOSAL:** A request for a Coastal Development Permit, a Use Permit, and a Variance to allow the remodeling of an existing residence. A Coastal Development Permit is required for the extensive remodeling of the existing residence and miscellaneous grading and landscaping improvements. A Use Permit is required for the extension of an existing wall within the front setback to a maximum height of 6 feet 3 inches where Zoning would otherwise permit a maximum height of 3 feet 6 inches. A Variance is required to allow for a reduced rear setback of 5 feet 10 inches for portions of the remodeled residence where the Zoning Code would otherwise require 25 feet. The existing residence currently has a 4 foot 11 inch rear setback.

**GENERAL PLAN DESIGNATION:** 1B “Suburban Residential”

**ZONING:** R1 “Single Family Residence”, with a CD “Coastal Development” Overlay and an SR “Sign Restrictions” Overlay

**LOCATION:** The project is located in the community of Emerald Bay at 193 Emerald Bay, Laguna Beach, CA within the Fifth Supervisorial District (APN 053-040-21).

**APPLICANT:** Brighton Road Investments, Property Owner

**AGENT:** Shawna Schaffner, CAA Planning

**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 Division recommends 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, Class 3, and Class 4 exemptions pursuant

to Sections 15301 through 15304 of the California Environmental Quality Act (CEQA) Guidelines and County of Orange procedures; and,

- c) Approve Planning Application PA22-0191 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 Lot 23 of Tract 1104 recorded in 1945. The property is approximately 7,700 square feet in area and is located on the coastal side of the Emerald Bay community. The property abuts street frontage along both the front and rear of the lot, with the elevation of rear street approximately 20 feet lower than the front-facing street. Garage spaces are accessed from the rear (lower) street.



## **PROPOSED PROJECT**

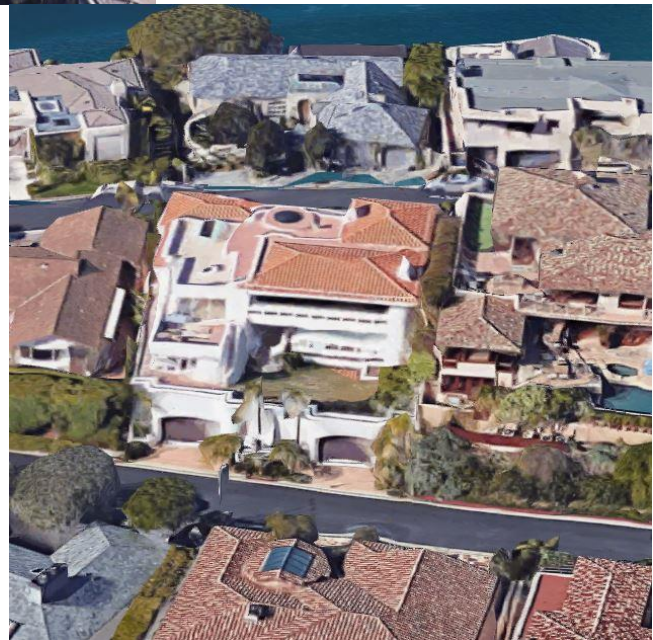
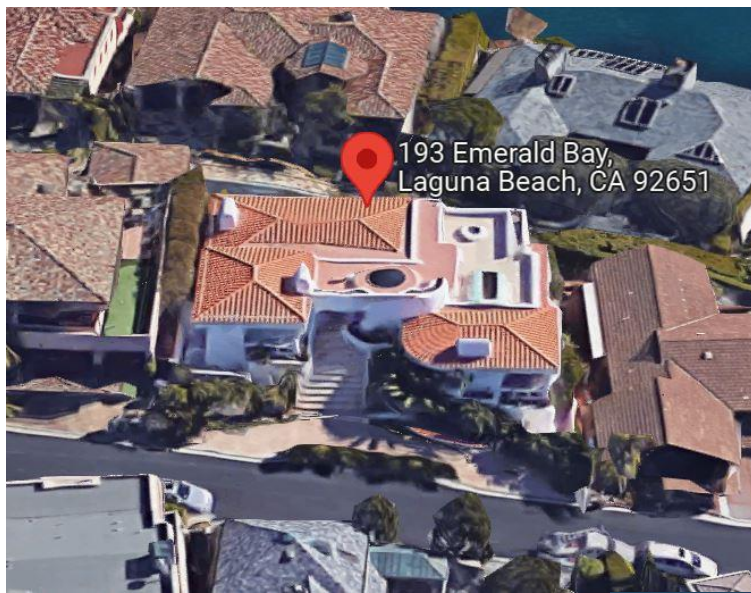
The project proposes a whole house remodel of the existing 7,822 square foot (habitable) residence and 1,112 square foot garage spaces. Overall habitable space will be reduced by 298 square feet, additions to and conversions of existing spaces will create 1,052 square feet of additional subterranean garage and mechanical space. A swimming pool will be added at the existing middle level, and landscaping and driveway modifications will occur in the front and rear of the property. Associated grading will be approximately 589 cubic yards cut, 217 cubic yards of fill and 372 cubic yards of export.

## **SURROUNDING LAND USE**

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

<b>Direction</b>	<b>Zoning Description</b>	<b>Existing Land Use</b>
Project Site	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling
North	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling
South	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling
East	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling
West	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling

**Aerials of Front and Rear of Project Site**





**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**

STANDARD	REQUIRED	PROPOSED
Building Site Area	7,200 square feet	7,700 square feet (approximate) <sup>1</sup>
Maximum Building Height	35 feet maximum	30 feet
Structural Front Setback	8 feet 11.5 inches <sup>2</sup>	15 feet 11 inches minimum (13 feet 8 inches existing)
Structural Side Setback	5 feet minimum	5 feet minimum
Structural Rear Setback	25 feet	5 feet 10 inches <sup>3</sup> (4 feet 11 inches existing)
Walls within Front Setback	3 feet 6 inches	6 foot 3 inches maximum <sup>4</sup>

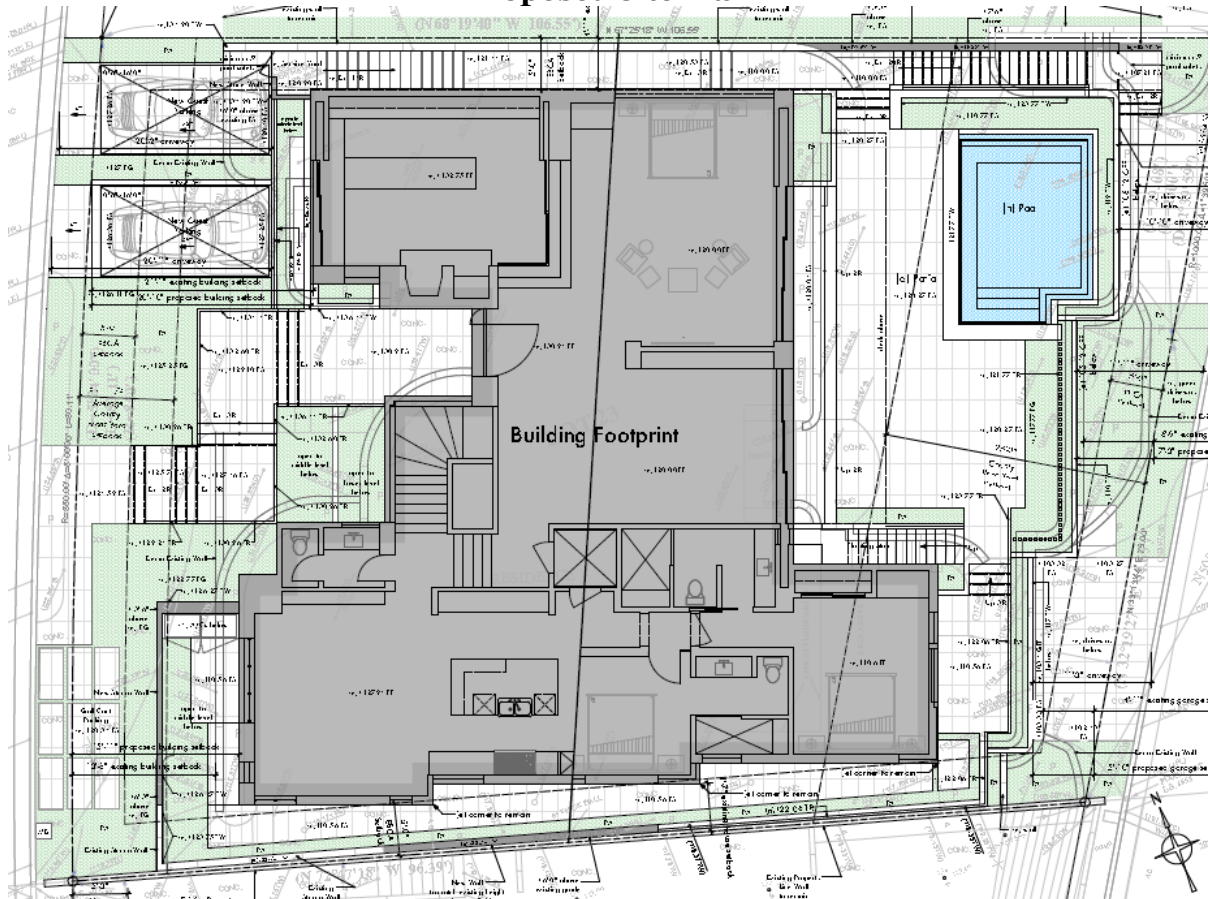
<sup>1</sup> Lot area calculations vary slight between assessor’s information and architecture plans

<sup>2</sup> Average of adjacent setbacks (Section 7-9-61.14)  $[12'08" + 5'3"]/2 = 8'11.5"$

<sup>3</sup> Indicates Variance requested by the applicant

<sup>4</sup> Indicates Use Permit requested by the applicant

**Proposed Site Plan**



Coastal Development Permit

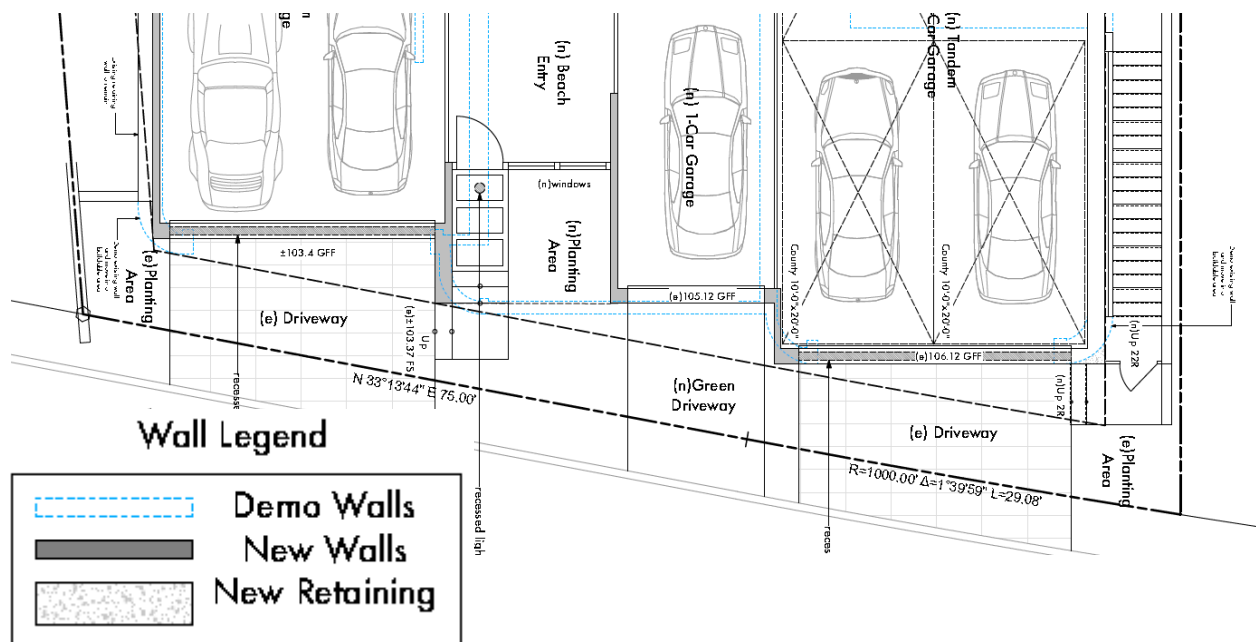
Within the Coastal Development Overlay zone, and specifically within the Emerald Bay Local Coastal Program (LCP), the remodeling of a structure, to the extent proposed here, with the associated site grading, requires the approval of a Coastal Development Permit (Zoning Code Sections 7-9-40 and Emerald Bay Local Coastal Program). The proposed project conforms to the goals and objectives of the LCP through its design and the application of standard conditions of approval, included within Attachment 2. 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 Emerald Bay LCP, the project was referred to the Emerald Bay Community Association (EBCA) for review and comment. The EBCA approved the project at their meeting of September 8, 2022. The subject property is within the ‘appealable jurisdiction’ area of the LCP.

Variance – Rear yard setback

The subject lot is a through-lot with street frontages at both the front and rear property lines. The existing configuration takes advantage of the front-to-rear elevational differences by having access to subterranean garages spaces to the rear (east) and uncovered parking spaces within a semi-circular driveway on the front (west). It exists with a nonconforming rear yard setback of 4 feet 11 inches. The home was constructed in 1990 and County files indicate that a Variance (VA89-50Z) and Coastal Development Permit (CD89-46Z) were approved for the home in 1989, but those files could not be located to confirm that the rear yard setback was the subject of that Variance, however because the applicable development standards in 1989 were the same as they are today, it can reasonably be assumed that the Variance was for the rear yard setback. However, in order to properly document the construction, the current Variance request was included.

**Existing and Proposed Rear Setback**



Zoning Code Section 7-9-150.3 requires that certain findings be made in order 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.)*

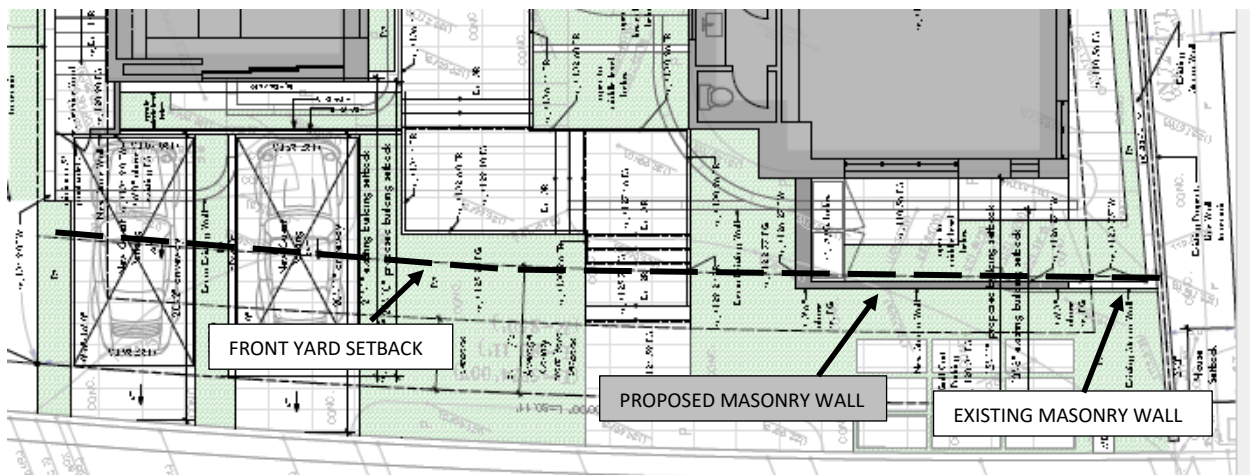
*b. No special privileges. Approval of the application will not constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties in the vicinity and subject to the same zoning regulations, when the specified conditions are complied with.*

Staff finds that the special circumstances relating to the property include its existing “nonconforming status”, its proposed reduction of this “nonconformity”, its sloping 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. That so many other properties within the Emerald Bay community have been developed with reduced rear yard setbacks due to similar circumstances and constraints is evidence that approval of the subject request would not be a grant of special privileges.

#### Use Permit – Over-Height Wall

The project design includes a proposal to maintain an existing side wall that wraps around across the front yard. Due to the sloping topography this wall extension would be up to 6 feet three inches in height where zoning would require a maximum height of 3 feet 6 inches. This new wall extension would be minimally within the front yard setback, less than one foot. This over-height area is shown on the exhibit below.

#### **Proposed Over-Height Wall**



Zoning Code Section 7-9-137.5(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 wall will be located above and parallel to property lines along 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.

### **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 on April 6, 2023. A notice was posted at the project site and a notice was published in a newspaper of general circulation in the area affected by the proposed project. 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 on September 8, 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. 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, Class 3, and Class 4 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.

#### **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:*

- (1) Demolition and removal of individual small structures listed in this subdivision;*
- (1) One single-family residence...*

The project includes the remodel of an existing 7,822 sf residence and attached 1,112 sf garage at 193 Emerald Bay. The proposed remodel contemplates a reduction of 298 sf of habitable area and an increase in 1,052 sf of subterranean garage and mechanical space, and the addition of a new upper-level cantilevered balcony. The project involves a negligible expansion of the use beyond the existing use (increase in square footage).

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 proposes demolition and new construction for portions of the existing

residence. The project proposes to add a pool to the existing middle-level deck and replace existing landscape, hardscape, and the driveway, consistent with 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, a portion of the existing residence will be demolished and constructed with substantially the same footprint as shown on the attached site plan (Architectural Drawing Sheet SP1). 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 project proposes demolition and new construction for portions of the existing house resulting in a 198 sf reduction in habitable area and an increase in 1,052 sf of subterranean garage. The renovation of the residence is consistent with the Class 2 Exemption because the new residence will have substantially the same purpose and capacity as the existing structure.

### *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 walls/fences are specifically included in the list of examples. The project proposes demolition and new construction for portions of the existing residence resulting in a 198 sf reduction in habitable area and an increase in 1,052 sf of subterranean garage. The project also proposes replacement of existing landscape, hardscape, driveway, and the addition of a new pool, consistent with the Class 3 exemption.

### *Class 4 Categorical Exemption*

*The Class 4 (Section 15304) exemption consists of minor public or private alterations in the condition of land, water, and/or vegetation which do not involve removal of healthy, mature, scenic trees except for forestry and agricultural purposes. Examples include but are not limited to:*

- (a) Grading on land with a slope of less than 10 percent, except that grading shall not be exempt in a waterway, in any wetland, in an officially designated (by federal, state, or local government action) scenic area, or in officially mapped areas of severe geologic hazard such as an Alquist-Priolo Earthquake Fault Zone or within an official Seismic Hazard Zone, as delineated by the State Geologist.*

The proposed project is eligible for a Class 4 exemption because a limited amount of grading is proposed with the project. The project proposes 389 CY of raw cut, 217 CY of raw fill, and 372 CY of net export. The proposed grading would not be on land with a slope greater than 10 percent, in



a waterway, wetland, or located in an area officially mapped as a geologic hazard, designated scenic area, or a seismic hazard zone.

Section 15300.2 of the Guidelines includes criteria where, if applicable to a project, would except a project from a Class 3 exemption. None of the exceptions listed in Section 15300.2, such as location in a sensitive environment, etc., apply to the project. Each component of the project meets criteria outlined in the exemption class listed. 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 project subject to the Findings and Conditions of Approval provided as Attachments 1 and 2.

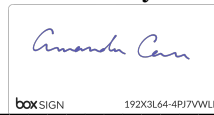
Submitted by:



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Justin Kirk, Land Use Manager  
Planning, OC Development Services

Concurred by:



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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. 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 deposit of \$500 filed at the Development Processing Center, 601 North Ross St., Santa Ana. If you challenge the action taken on this proposal in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this report, or in written correspondence delivered to OC Development Services / Planning.