



OC DEVELOPMENT SERVICES REPORT

ITEM # 1

DATE: March 2, 2023

TO: Orange County Zoning Administrator

FROM: OC Development Services / Planning

SUBJECT: Continued Public Hearing on a Coastal Development Permit and Variance (Planning Application PA22-0104)

PROPOSAL: A request for a Coastal Development Permit and Variance in conjunction with 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.
The Coastal Development Permit is required for the demolition of the existing home and construction of the new home with associated site grading. The Variance is requested 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) of the Zoning Code.

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 52 Emerald Bay, Laguna Beach, CA within the Fifth Supervisorial District. (APN 053-060-92)

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

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:

- 1) Receive staff report and project update; and,
- 2) Reopen the previously continued public hearing, and receive public testimony as appropriate; and,

- 3) Deny the request for a further continuance; and,
- 4) 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,
- 5) Approve Planning Application PA22-0104 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 2,500 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 adjacent Parcel 2 as a panhandle lot. The home on Parcel 2 is served by a narrow access to the street, however there is a parking and access easement recorded over a portion of the subject lot to preserve access to this rear lot.

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.

PREVIOUS ACTIONS AND CONSIDERATIONS

The subject application was originally heard by the Zoning Administrator at the meeting of December 1, 2022. At that time, staff had recommended approval of the project subject to certain findings and conditions of approval. At that hearing, Robert Labbe, an attorney representing Neel and Sharlene Grover, neighbors to the subject site, submitted a letter (Attachment 7) outlining several objections against the proposed project. Mr. Labbe also informed the Zoning Administrator that the Grovers had petitioned the Emerald Bay Community Association (EBCA) for a mediation to discuss their concerns and possibly modify the proposed project, and that EBCA had agreed to the mediation meeting. Staff had contacted EBCA and confirmed their agreement to the mediation. Because there was a possibility that the mediation could result in a modification to the project, and therefore, to EBCA's review and comment on the project (required by the Emerald Bay Local Coastal Program), the item was continued without discussion to January 19, 2023.

At the January 19th hearing, the Zoning Administrator was informed that the mediation meeting had not yet occurred but had been scheduled for February 6. In order to allow for the mediation meeting to occur, the item was continued without discussion to the March 2nd hearing.

Staff has been informed by the parties involved (the applicant, EBCA, and the Grover's attorney) that the February 6th mediation meeting was held, and that it resulted in no changes to the project.

Request for Additional Continuance

Since that time, Mr. Labbe, the Grover's attorney, has informed staff that they have submitted a Revised Request for Resolution to EBCA, which is in essence, a request for additional post-mediation settlement conversations. However, because the EBCA Board is not able to consider this request until its meeting of March 7, Mr. Labbe has now requested an additional continuance (Attachment 8) in order to determine if the EBCA will accept this request and continue further project discussions.

Staff Summary

At the December 1st hearing, staff supported the request for a continuance because EBCA had agreed to the mediation and therefore there was a possibility that the project might be modified and/or that EBCA's review and comment on the project would change from the Board's May 3, 2022, approval action. Similarly, staff supported the January 19th continuance because the mediation meeting had not yet occurred.

At this time, staff is not in support of an additional continuance given the circumstances that 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.

Neighbor Objections/Concerns

Because the two previous Zoning Administrator considerations resulted in continuances without any public hearing or testimony on the merits of the project or the neighbor concerns, below is a

summary of the concerns raised with staff responses. These concerns are as stated in Mr. Labbe's letter of November 30, 2022 (Attachment 7), and the page numbers he references are as in the December 1, 2022 staff report (Attachment 10). The letter has not been replicated in its entirety and certain portions have been highlighted and the subject application number has been corrected by staff.

From Mr. Labbe's letter...

**Background and Existing Conditions are Ambiguous and Incomplete
(Staff Report pp. 2 and 3 of 8)**

The Staff Report at p. 2 refers to the recordation of LLA 99-041 (the "Lot Line Adjustment") of 2002 establishing the subject 52 EB site as Parcel 3 and the two adjacent lots (Parcel 2, #50 EB and Parcel 1, #31 EB, owned by our client) and mentions that: "The home on Parcel 2 is served by a narrow access to the street, however there is a parking and access easement recorded over a portion of the subject lot to preserve access to this rear lot." The Staff Report identifies the 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, and parking on the three (3) closely proximate cul-de-sac lots. By way of illustration, Parcel 2 (#50) is only approximately 18 inches in width where it intersects with the street, and Parcel 1 (#31) is directly adjacent. All are affected by access, egress, and parking easements. The Staff Report does not discuss whether the parking and access easement it refers to conflicts with and impacts the other easements affecting Parcels 1 and 2, with Parcel 1 (#31), being owned by our client. This omission is material because the applicants parking, as it is currently presented, is impractical, and will likely negatively impact, impede and restrict the use by the neighboring properties (#31 and #50) of their driveways for ingress, egress, and parking purposes.

Staff Response: 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.

*This ambiguity concerning the easements affecting ingress, egress and parking is an important omission from the Staff Report in its **Background and Existing Conditions** discussion because restrictions affecting on-site parking for the adjoining properties render the limited offsite parking available in the subject cul-de-sac that much more important to the owners of all cul-de- sac and adjacent property owners.*

The 52 EB Project plans provide for 3 of the 5 required parking spots to be located on the east end of the lot, adjacent to Parcel 1 (#31) and Parcel 2 (#50). The 3 spots consist of 2 off-street parking spots situated side by side and stacked in front of a single car garage. This parking plan would appear to require encroachment by the owner of #52

onto the driveways of #50 and #31 for ingress and egress maneuvering, and also make the single car garage spot essentially unusable and highly impractical. Again, #50 only has approx. 18 inches of street frontage and #31 is directly adjacent.

Staff Response: The Zoning Code requirement for the proposed residence is three off-street vehicles, which the design provides for in a two-car garage and a single car garage. The reference to “5 required parking spaces” is the parking requirement under the Emerald Bay community guidelines. The County does not regulate or enforce EBCA standards. The project complies with the County Zoning Code. The lot with #50 does have only an 18 inch front property line along the street, as approved by LL 99-041. However, this property, as well as the other two properties, still benefit from the 20-year old easement which provides for vehicular and pedestrian ingress and egress over a much wider area more than approximating the width of normal driveways. Again, the access conditions that have existed for the last 20 years will remain unchanged.

The remaining 2 required parking spots are proposed to consist of a 2-car garage at the west end of the subject lot. To accommodate the driveway for this 2-car garage, the 52 EB Project plans propose the elimination of at least one on-street parking spot (and likely reduction of the remaining 2 spots on that side of the street) available to cul-de-sac residents as well as significant landscaping that currently exists. Elimination of an on-street parking spot would result in reducing available street parking for at least 7 cul-de-sac homes by 25% (reducing the street spots from 4 to 3). The various objections to the planned parking are set forth in May 3, 2022 letter to the EBCA Board of Directors attached as Exhibit “A”, incorporated herein by reference.

Staff Response: The Emerald Bay community has private street, regulated by the Board of Directors. This includes the authority to grant access improvements within or to the private street and to regulate the locations where on-street parking is allow, limited, or prohibited. The decisions regarding the approval and location of curb cuts are the purview of EBCA, who considered the concerns and objections of the neighbor at multiple hearings before the EBCA Architectural Review Committee and Board of Directors, and also at an additional mediation hearing.

Objections to Mass & Scale

Our clients submit that the EBCA Board of Directors erred in finding that the 52 EB Project plans consistent with their local architectural and design criteria. The 52 EB Project is in fact not compatible with surrounding developments in terms of size, design, and massing as set forth in the Staff Report at p. 4 of 8, which therefore errs on this issue. 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.

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 that the 52 EB Project planned development fails to conform to these objectives and provide additional grounds for our client's objections to PA22-0104.

Staff Response: Within these two paragraphs, Mr. Labbe clearly states that these are objections and disagreements with the EBCA Board of Directors and that Board's interpretations of the EBCA Design Guidelines. The County does not evaluate development proposal using the EBCA Design Guidelines. The proposed project conforms with the County's Zoning Code regulations regarding building height

Variance for Front and Rear Setback / No Special Privileges Finding is Erroneous

It is submitted that the Staff Report at p. 5 of 8 errs in indicating that as required by Zoning Code Section 7-9-125.6 there have been "No special privileges" and that 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. It is submitted that approval of the 52 EB Project application will in fact constitute a grant of special privileges to the applicant since the installation of a 2nd driveway constitutes a prohibited Grant of Exclusive Use to one homeowner, since the removal of the EBCA's street curb and the elimination of a community parking space would grant one EBCA member, the applicant, exclusive use of EBCA property which would deprive the entire ECBA membership of the benefit of the use of the ECBA community parking space. Moreover, certain mandatory procedural requirements were not met by the EBCA Board prior to the grant of exclusive use of EBCA property to the applicant. This erroneous finding as to no special privileges having been granted which are inconsistent with the limitations placed upon other properties in the vicinity is raised as further grounds for our client's objections to PA22-0104.

Staff Response: As above, Mr. Labbe clearly states that these are objections regarding the EBCA Board's decisions over regulatory matters that the Board, not the County, has authority over.

Objections to Findings (pp. 1 and 2 of 2 of Attachment 1 Findings)

Compatibility. At #3, the Staff Report finds "That the location, size, design and operating characteristics of the proposed use will not create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity." We submit this is an erroneous finding as the proposed use would in fact create unusual conditions or situations that may be incompatible with other permitted uses in the vicinity since the 52 EB Project is in fact not compatible with surrounding developments in terms of size, design, and massing and the removal of the EBCA's street curb and the elimination of a community parking space would grant one EBCA member, the applicant, exclusive use of EBCA property which would deprive the entire ECBA membership of the benefit of the use of the ECBA community parking space. This is raised as an additional basis for our client's objections to PA22-0104.

Staff Response: Mr. Labbe here again is using the EBCA Design Guidelines as a basis for a County determination. The highlighted phrase comes from the Design Guidelines. The County's comparison criteria are based on the Zoning Code, i.e., the basis for comparison of a is to other properties within the R1 Single Family zoning district.

Variance 2. At #15, the Staff Report finds “That 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, in that the proposed additions are in conformance with the pattern of development within the community.” We submit this is an erroneous finding as approval would in fact constitute a grant of special privileges which are inconsistent with the limitations placed upon other properties. This is raised as an additional basis for our client’s objections to PA22-0104.

Staff Response: Without providing any specifics regarding what special privileges are being granted, this paragraph is a simple statement of disagreement.

The remainder of this staff report assess the project for compliance with applicable County regulations, the Zoning Code and the Emerald Bay Local Coastal Program.

DISCUSSION/ANALYSIS

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	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling
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

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	4,598 square feet (existing)
Maximum Building Height	35 feet maximum	31 feet

STANDARD	REQUIRED	PROPOSED
Structural Front Setback	8 feet 4 inches ¹	5 feet ²
Structural Rear Setback	8 feet 4 inches ¹	5 feet ²
Structural Side Setback	5 feet minimum	5 feet minimum
Off-street parking	3 covered spaces	3 covered spaces

¹ Under Zoning Code Sec. 7-9-61.2 setbacks on a shallow lot – 55'8" average depth x 15% = 8.34'

² 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.

Variance for Front and Rear Setback

The subject lot has an average depth of 55 feet 8 inches (see lot calculations on Sheet A057 in the Plan Set) and therefore qualifies as a shallow lot under Zoning Code Section 7-9-61.2, which prescribes that the front and rear setbacks may be reduced to 15% of the average depth, or in this case to 8 feet 4 inches. The project proposes a 5-foot setback for both front and rear property lines.

Projects requesting 5-foot setbacks within this community have been requested and approved on many occasions in the past. 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 often limits the options and opportunities for home designs in Emerald Bay that would be available to properties under similar zoning on 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 noted that there is a 5-foot public utility easement running across the front of the subject lot which would function as an additional setback from the private street right-of-way. This easement helps to mitigate the streetscape of the project.

Proposed Front Elevation



ROBERT KIRK INC./CDI

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.

REFERRAL FOR COMMENT AND PUBLIC NOTICE

For the initial project hearing on December 1, 2022, 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 November 17, 2022. Additionally, a notice was

published in a newspaper of general circulation in the area affected by the proposed project. Since that hearing, the item has been continued to a date certain on two occasions.

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 May 2022. Additionally, the Association met with concerned neighbors in a mediation session on February 6, 2023, and no revisions or modifications to previous Board actions were made as a result of that effort.

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 residence 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 the applicant's request for a Coastal Development 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 in land use and intensity 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
7. November 30, 2022, letter from Robert Labbe
8. February 16, 2023, email from Robert Labbe
9. Exhibit of Portion of Tract 940
10. Lot Line Adjustment LL 99-041
11. December 1, 2022, Staff Report

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.