



OC DEVELOPMENT SERVICES REPORT

DATE: June 20, 2024

TO: Orange County Zoning Administrator

FROM: OC Development Services/Planning

SUBJECT: Planning Application PA22-0227 for a Coastal Development Permit, Variance Permit, Use Permit and Lot Line Adjustment

PROPOSAL: A request for the approval of a Coastal Development Permit, Variance Permit, Use Permit and Lot Line Adjustment in conjunction with the demolition of an existing two-level single-family residence and its replacement with a new two-level single-family residence and associated site improvements.

The Coastal Development Permit is required for the demolition of the existing structure and construction of the replacement residence, along with the associated site grading and improvements.

The Variance Permit is requested to reduce the front and rear setbacks from standards required under the Zoning Code. The front setback for the main structure and entry gateway/gazebo would be a minimum of 5 feet from front property line and the rear setback would be 0 feet from the edge of the access easement. Both reduced setbacks would match existing nonconforming setback conditions of the residence to be demolished. The project also seeks approval of a Variance Permit to allow a (westerly) side yard setback of 2 feet 5 inches from the edge of the access easement for a portion of the pool house.

The Use Permit is required to permit specific proposed over-height structures. A privacy wall is proposed in the front setback area at 5 feet in height (with 6-foot pilasters) where Zoning requirement would limit the wall to 3 feet 6 inches in height.

The Lot Line Adjustment is requested to merge two existing legal building sites into one legal building site.

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 211 Emerald Bay, Laguna Beach, CA within the Fifth Supervisorial District.

APPLICANT: The B & K Slavik Family Trust, Property Owner
Anne Fox, MIG, Agent

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

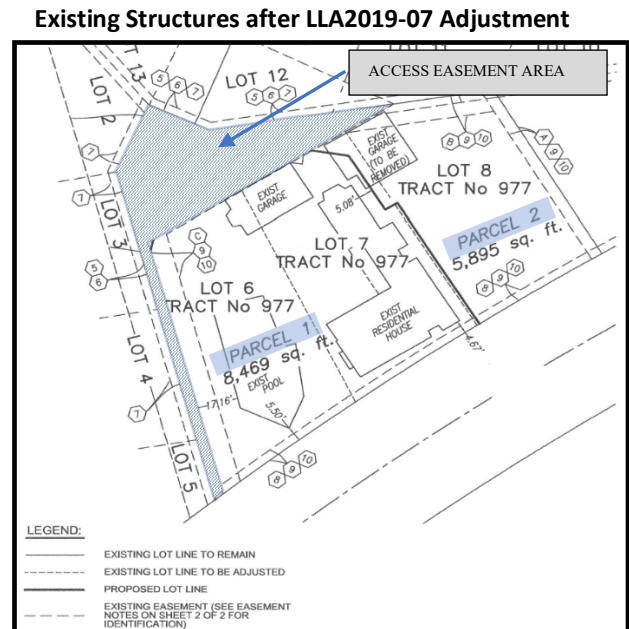
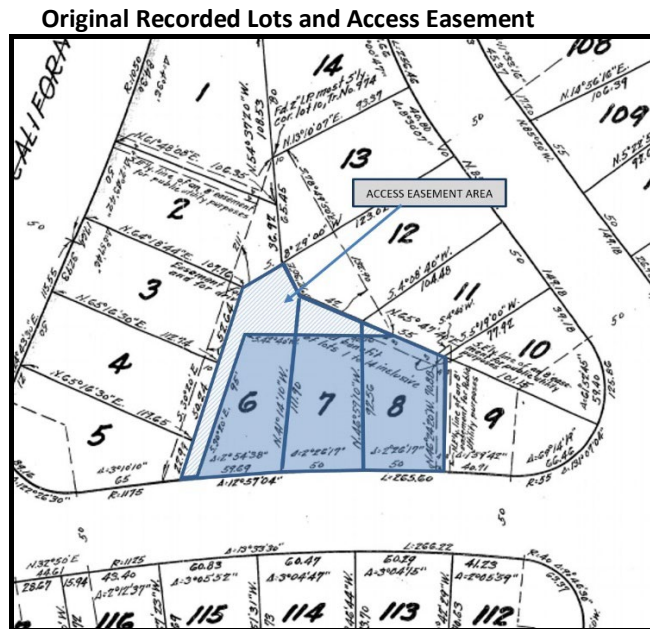
RECOMMENDED ACTIONS:

OC Development Services/Planning recommends the Zoning Administrator:

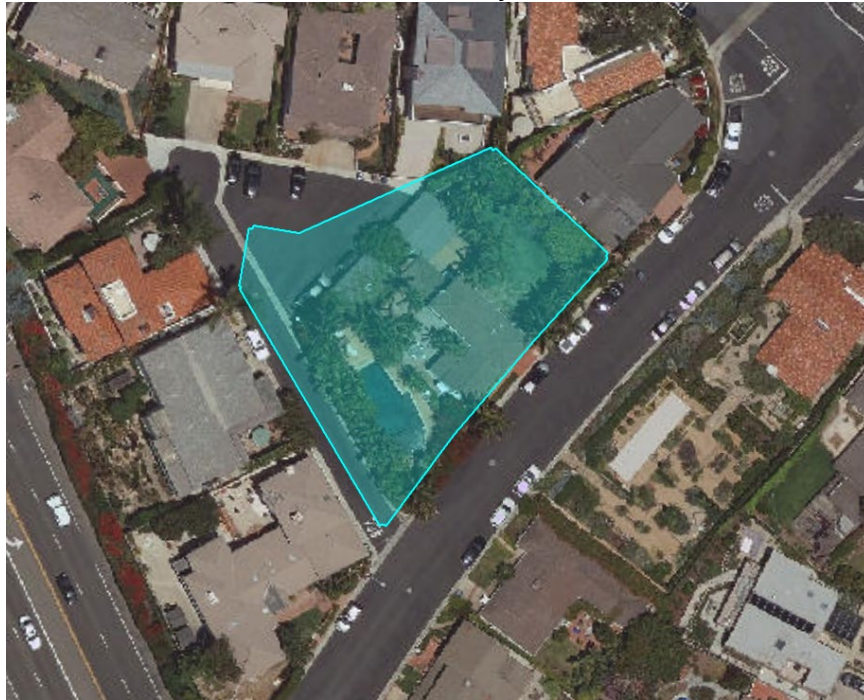
- a) Receive staff report and public testimony as appropriate; and,
- b) Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA), under the Class 1 (*Existing Facilities*), Class 2 (*Replacement or Reconstruction*) and Class 3 (*New Construction or Conversion of Small Structures*) exemptions pursuant to Sections 15301, 15302 and 15303 of the California Environmental Quality Act (CEQA) Guidelines and County of Orange procedures; and,
- c) Recommend for approval by the Planning Director Lot Line Adjustment LLA2023-17; and,
- d) Approve Planning Application PA22-0227 for a Coastal Development Permit, Use Permit and Variance Permit subject to the attached Findings and Conditions of Approval provided as Attachments 1 and 2 to this report.

BACKGROUND AND EXISTING CONDITIONS

The subject property was originally recorded in 1931 as Lots 6, 7 and 8 of Tract 977. The recorded map also included a shared rear-loaded auto court that provides vehicular access to ten residential lots (Lots 2 through 8 and Lots 11 through 13). In May 2019, Planning Application PA180033 was approved for the subject site. That application approved a Lot Line Adjustment (recorded as LLA2019-07) that merged the original three lots (Lots 6, 7 and 8) into two lots (shown as Parcels 1 and 2 in the diagram below). PA180033 also approved an addition to the existing residence and modifications to the detached garage and pool house that would place all the approved structures on Parcel 1 and leave Parcel 2 vacant for future development. Although the Lot Line Adjustment was recorded, none of the other improvements approved as part of PA180033 were constructed or modified, and PA180033 has since expired. Currently, a 2,566 square-foot residence and garage exists on Parcel 1 of LLA2019-07, an existing second garage structure straddles Parcels 1 and 2. Both garage entry doors directly abut the rear auto court easement area. All existing structures have nonconforming setbacks, and due to the age of the structures, constructed in the 1930s, there are no records of previous Variance approvals.



Aerial Views of Project Site



PROPOSED PROJECT

The project proposes the demolition of all the existing structures and merge existing Parcels 1 and 2 into a single building site to accommodate the construction of a new two-level single-family residence with 5,493 square feet of living area and an attached three-car garage, a detached pool house, and an ‘entry gate’ structure spread across the single lot (or building site). Because the current project proposes the removal of all existing structures and the merging of the lots into a single building site, for discussion

purposes below, the descriptions assume a single building site and does not differentiate between either the original three lots of Tract 977 or the reconfigured lots of LLA2019-07.

SURROUNDING LAND USE

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

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

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(s)	7,200 square feet	14,365 square feet
Maximum Building Height	35 feet maximum	24 feet
Structural Front Setback (minimum)	18.4 feet ¹	5 feet ²
Structural Rear Setback (minimum)	15 feet ³	0 feet ²
Structural Side Setback (minimum)	5 feet	2.5 feet (westerly side)
Wall heights in front setback	3 feet 6 inches maximum	Pilasters up to 6 feet Wall up to 5 feet in height ⁴
Parking	3 spaces 2 covered	3-car garage (2 standard spaces, 1 substandard) plus 2 covered spaces

¹ Zoning Code Section 7-9-128.2 (Shallow lot) – 91.8 feet avg. depth x 0.20 = 18.4 feet

² Indicates Variance requested by the applicant.

³ Zoning Code Section 7-9-24.7 permits lots backing onto an alley or private street to use one-half the accessway width as rear yard setback but setback of no less than 15 feet.

⁴ Indicates Use Permit requested by the applicant for over-height structures.

Coastal Development Permit

The approval of a Coastal Development Permit would allow the demolition of all the existing structures and the construction of a new residence with attached garage and other accessory structures. Within the Coastal Development Overlay zone, and specifically within the Emerald Bay Local Coastal Program (LCP), the demolition and the construction of a structure, with the associated site grading, requires the approval of a Coastal Development Permit. 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. The project is compatible with surrounding development in its size, design, and massing. The subject property is not within the ‘appealable jurisdiction’ area of the LCP.

Lot Line Adjustment (LLA)

As noted, the subject property previously recorded a Lot Line Adjustment to modify the project site from the original three lots to two lots. For the current project, LLA.2023-17 has been filed with OC Survey and is being reviewed to merge the two lots into a single 14,365 square foot lot. Should the Zoning Administer recommend approval of the LLA and following compliance with any OC Survey comments or corrections, OC Development Services/Planning would issue a certificate of compliance and the document would be recorded.

Variance Permit – Front, Rear and Side Setbacks

The new residence is proposed to match the existing nonconforming condition with a minimum 5-foot front setback. As the frontage street curves slightly away from the property, the front setback increases slightly on the westerly side of the property. The project design also includes a gazebo-like gated entry structure at about the midpoint of the lot’s frontage which would also have a minimum 5-foot setback. The Zoning Code would otherwise require a minimum front setback of 20 feet or further reduced to 18.4 feet because the subject lot qualifies as a shallow lot (Zoning Code Section 7-9-61.12).

As noted, the rear lot area of all three original lots 6, 7, and 8 included an easement “...for public utility purposes and for driveway for use and benefit of owners of lots 1 to 14 inclusive.” This easement also overlays portions of lots 6, 7, and 8 (or parcels 1 and 2 of the more recent lot line adjustment). This area serves a purpose similar to that of an alley or private street. In similar situations, the Zoning Code (Section 7-9-24.7) allows a rear setback to be reduced by up to one-half of the width of the alley/private street, but in no case may the rear setback be reduced to less than 15 feet. The applicant requests that the rear setback be established at 0 feet, placing the garage at the edge of the access easement, which matches the existing nonconforming setback. In justification and included within Attachment 6, the applicant has provided diagrams of the necessary turning movements for vehicles exiting the proposed garage. These diagrams have been reviewed and approved as safe and adequate by OC Traffic Engineering.

The required side yard setback within the R1 zoning district is 5 feet. The project meets this criterion except for a small projection of the corner of the proposed pool house along the westerly side yard area. This encroachment (projection) would extend to within 2.5 feet of the edge of the access easement and approximately 3.5 feet from the edge of the existing curb and would generally be in line with the proposed 5-foot wall (with 6-foot pilasters) that runs along this portion of the property. Along this side property line, the proposed wall height is permitted as proposed. The minor encroachment of the corner of the pool house would not obstruct vehicular line of sight. It is also noted that the existing condition in this area includes a 6-foot landscape hedge that extends to the very edge of the access easement. The proposed project would replace this with lower growing landscaping for improved sight lines.

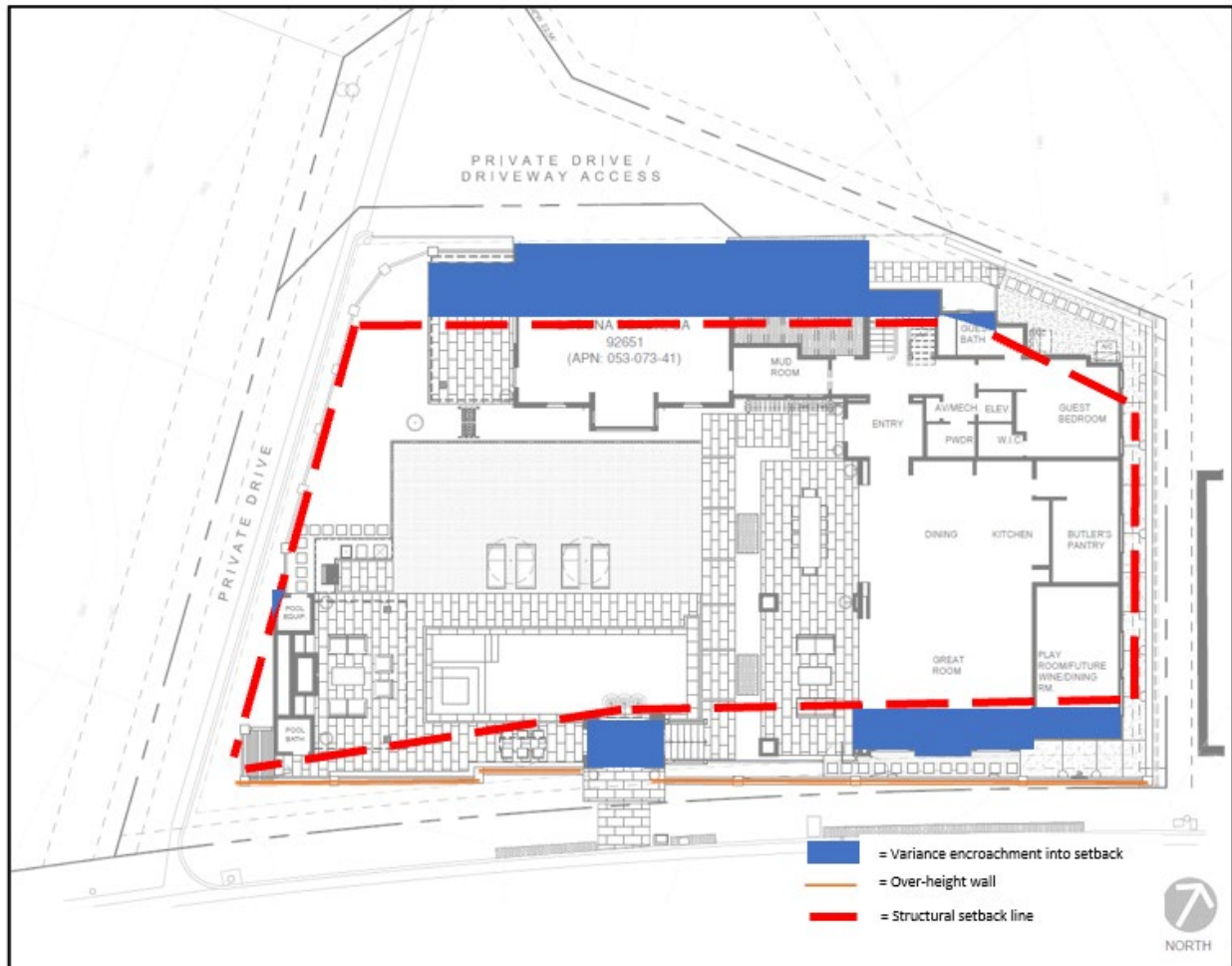
Zoning Code Section 7-9-126.4 requires that certain findings be made to approve a Variance Permit request, as follows:

- 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.

Setback Variances and Over-Height Walls



Staff finds that the special circumstances relating to the property include its shape, its constraints with the rear access easement, 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 unincorporated County.

Although there is no record of any previous setback Variance being granted for the existing structures (due to the age of the construction), the community of Emerald Bay has had many previous variance requests approved for reduced yard setbacks, due to the preponderance of existing lots being under the R1 zoning district minimum standard of 7,200 square feet and the existence of many nonconforming setbacks resulting from the timing of construction before current standards were established. The proposed rear setback variance would not be a special privilege as it remains consistent with the originally approved mapping and development of this area of Emerald Bay. Since 1994, approximately 72% of the discretionary development application requests (about 230) within the Emerald Bay LCP area

have included either a front yard setback variance, a rear yard variance, or both a front and rear yard variance. The requested side yard setback would also be consistent with existing patterns of development within the community. This setback area would not abut any structure but rather the edge of a 20-foot wide access easement that serves the ten lots to the rear of the subject site. The westerly property along this side is 12 feet from the edge of the pool house, which would also align with the permitted 6-foot wall that will be along this side of the property.

Use Permit - Over-Height Wall in Front Setback

The applicant proposes a privacy wall at 5 feet in height with 6-foot pilasters within the front yard setback area. The existing condition has a 6 to 8-foot high hedge along approximately half of the property's frontage.

Existing frontage landscaping



Existing side yard landscaping



Zoning Code Section 7-9-64(f) 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) The height and location of the fence or wall as proposed will not result in or create a traffic hazard.
- 2) 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 over-height portions of the walls will be parallel to the roadway and would 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. OC Traffic Engineering had no comment on the proposed wall height. 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 and all occupants of dwelling units within 100 feet of the site (Coastal Development Permit Requirement) on June 5, 2024. Additionally, a notice was posted at the project site, published in a newspaper of general circulation in the area affected by the proposed project (OC Reporter), and made available at the posting kiosk at the County Administration buildings located in Santa Ana. 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 (OCFA), and the Emerald Bay Community Association (EBCA). All comments received have been addressed through incorporation of proposed Conditions of Approval provided as Attachment 2. The project received the approval from the EBCA Board at its September 9, 2022, Board meeting. The EBCA Board's approvals are valid for a one-year period. The applicant received an extension of this approval on September 7, 2023, from the EBCA Board, and their project approval is now valid until September 8, 2024.

Neighbor Comments and Concerns

Staff was contacted by the neighbor to the east of the subject site, Mr. William Cooley. This neighbor had also voiced their concerns regarding the previously approved project, PA180033. Mr. Cooley expressed his concerns regarding the currently proposed project during the required community-level review process by appearing before both the Emerald Bay Architectural Committee and the EBCA Board.

Mr. Cooley's objects that the project does not conform to the intent and requirements of the Emerald Bay LCP, primarily in the areas of view blockage and preservation of historic (architectural, archaeological and paleontological) resources. The discussion below addresses and disproves his contentions.

Regarding view blockage, the discussions within the approved Emerald Bay LCP include separate provisions for public views and private views. The Land Use Plan/Resource Component (Page II-2) states: "*New development must be sited and designed such that views to and along the ocean and scenic coastal areas are preserved...*"(emphasis added). Page II-3 states, "*Protection and enhancement of existing views to and along the ocean and other scenic vistas; measures to ensure that new development will be visually compatible with surrounding areas and will minimize alteration of natural landforms.*" (emphasis added).

These provisions concern public views and scenic vistas to and across the Emerald Bay development both to the Pacific Ocean and to the natural, undeveloped park and open space areas inland from the community.

The LCP requires that all discretionary projects must be referred to the EBCA for review and comment. It is through this local review process that private landowner views are addressed for conformity to the LCP and the community's architectural standards. LCP specifically recognizes the community's architectural guidelines and standards. Page II-8 of the LCP, states:

“Much of the existing community character is a reflection of pre-1930s development in Emerald Bay and community-imposed architectural standards. All new development is monitored and influenced by the Emerald Bay Community Architectural Committee. The committee, which comprises members of the Emerald Bay Board of Directors and architects, reviews construction and landscape plan proposals to:

- o Ensure project conformity with recorded restrictions;*
- o Ensure project compatibility with the architectural design and character of the community; and*
- o Ensure that existing ocean views of surrounding property owners within the community are preserved.”*

The community's architectural review process more specifically addresses potential impacts to private views than the County's Zoning regulations, including the required placement of story poles prior to approval and construction to visually represent potential view impacts, more specific design parameters such as roof massing, and more restrictive height regulations, etc.

The subject project was reviewed by the community's Architectural Review Committee and recommended to the EBCA Board for approval. The EBCA Board of Directors then approved the project on September 8, 2022. That approval was later extended on September 7, 2023, for another year from that date (Attachment 4) Mr. Cooley participated in those processes and made his concerns known. The proposed project lowers the existing grade by approximately four feet to achieve some additional elevational difference between the subject lot and that of Mr. Cooley's to the east. Thus, the provisions of the LCP regarding views, both public and private, have been addressed as required.

Regarding the protection of potential archaeological and paleontological resources, the LCP addresses this by noting the County's standard condition of approval which requires that appropriately trained and County-certified professionals in these sciences be retained to be on-site monitors to observe and protect/preserve any such resources which may be uncovered during grading. Conditions of Approval Nos. 16 and 17 have been included in Attachment 2, Recommended Conditions of Approval, to address this issue.

Finally, the issue of preservation of potential historic architectural resources was also raised by Mr. Cooley. This concern has also been addressed and is discussed more fully below under the Government Code Section 15330.2 Exceptions.

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. It is noted that the previously approved project, PA180033, was approved and a Notice of Exemption was filed finding the project exempt under Class 1, 2 and 3. Staff recommendation for the current project is consistent with this previous finding, with appropriate additional discussion regarding Section 15300.2 Exceptions to Exemptions, specifically regarding potential historical resources.

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, 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 structures will be demolished and a new residence, attached garage and accessory structures will be constructed. The construction 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, pool, patio, and fences are specifically included in the list of examples of small facilities to which the exemption applies.

Section 15300.2 Exceptions

Section 15300.2 of the Guidelines includes criteria where, if applicable to a project, would except (or prohibit) the use of a Class 3 exemption. None of the exceptions listed in Section 15300.2, such as location in a sensitive environment, cumulative impact, significant effect, scenic highways, hazardous waste sites, or historic resources apply to the project, however further discussion and explanation of the inapplicability of the historic resource exception is appropriate due to neighbor concerns.

Section 15300.3, Subsection (f) provides: *Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.*

The easterly neighbor, Mr. William Cooley and/or his agents, have submitted information to staff that suggests that the subject residence is qualified to be designated as an historic architectural structure, and thus the use of a Categorical Exception for the project would be inappropriate. This information is collectively included within Attachment 9. This information includes a completed

application/nomination form prepared by Mr. Cooley’s agent to the State Department of Parks and Recreation’s Office of Historic Preservation requesting to designate the existing residence at 211 Emerald Bay as a California Historic Landmark or a California Point of Historical Interest. This nomination form was sent to OC Development Services in May 2023 along with a statement that it was submitted to the appropriate state and local agencies for review and consideration. However, upon investigation by staff, we noted that the form did not include the nominated property owner’s signature (as the state form requires), nor could we verify that it had been properly submitted to either the state or any local County of Orange agencies, as required by the state’s process for historic designation. We also note that the applicant objects to the listing of his property as an historic site.

The LCP does mention an architectural historic resources survey of “*Mediterranean Revival style dwellings built circa 1930*” (as is the existing subject residence) conducted by the Environmental Coalition of Orange County in 1981 (Page II-8). While this survey included five Emerald Bay residences, but it did not include the subject property.

Finally, in order to ensure compliance with applicable regulations, the project applicant commissioned their own Historical Resource Analysis Report (HRAR) (February 2024). Where the historical assessment submitted by Mr. Cooley in May 2023 was, in essence, only a ‘windshield survey’, i.e., only a survey of the structure as viewed externally from the adjacent street, the February 2024 HRAR was conducted fully in compliance with applicable professional standards and state procedures with full access to the structure and the property. The February 2024 HRAR prepared by the applicant and included as Attachment 8, concluded that the structure did not qualify under the applicable standards as an historic structure. Thus, the use of a Category 3 Exemption is permitted under the CEQA Guidelines.

CEQA Compliance Summary

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, Lot Line Adjustment, Variance Permit and Use Permit and found the proposed project in compliance with the Emerald Bay LCP. The proposed project is an allowed use in the R1 “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:

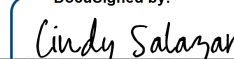
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Kevin Canning, Contract Planner
OC Development Services/Planning

Concurred by:

DocuSigned by:



Cindy Salazar, Planning Division Manager
OC Development Services/Planning

ATTACHMENTS:

1. Recommended Findings
2. Recommended Conditions of Approval
3. Applicant's Letter
4. EBCA Board Approval and Extension (September 2022 and September 2023)
5. Site Photos
6. Project Plans – Architectural and Site Plans
7. Project Plans – Landscape and Grading Plans
8. Historical Resource Analysis Report (Urban Preservation & Planning, February 2024)
9. William Cooley (neighbor) submittals

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 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.