

VIA ELECTRONIC MAIL ONLY

Orange County Zoning Administrator
Kevin Canning, Contract Planner
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OC PUBLIC WORKS – COUNTY OF ORANGE

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Re: **Public Hearing on Planning Application PA22-0227 for a Coastal Development Permit, Variance Permit, Use Permit and Lot Line Adjustment
211 Emerald Bay, Laguna Beach (within the Fifth Supervisorial District)
Hearing scheduled for June 20, 2024**

Requested Action:

1. Consider the evidence presented, exercise your discretionary authority to determine 211 Emerald Bay is a historic resource under CEQA and deny the application of a Categorical Exemption;
2. Continue the hearing on this application until the State Office of Historic Preservation has completed its review of the Nomination of this property to the California Register of Historical Resources;
3. Determine that the proposed variance findings are inadequate because they fail to address the “disparity” between this property and others in the vicinity, which would make development under the applicable property development standards unduly difficult.
4. Deny the application and remand this project to Emerald Bay with direction to avoid destruction of the ocean view from 215 Emerald Bay.

Dear Gentilepersons:

This firm represents William Cooley, a long-time resident of Emerald Bay. Mr. Cooley owns the home at 215 Emerald Bay, next door to the proposed project at 211 Emerald Bay. Mr. Cooley opposes the proposed project on three primary grounds:

1. The County Planners urge the approval of this project using three Categorical Exemptions under CEQA. Categorical Exemptions, however, may not be used for projects that



will cause a substantial adverse change to a historic resource. [14 CCR 15300.2]. Evidence in the record is sufficient to support a finding that 211 Emerald Bay qualifies as a “historic resource” as defined in Pub. Res. Code Section 21084.1. (Attachment 9). 211 Emerald Bay was Nominated (the “Nomination”) to the California Register of Historical Resources (the “Register”) pursuant to and in conformity with Cal. Pub. Res. Code Section 5024.1. Notice of the Nomination was given to the County Clerk and the Orange County Historical Commission on July 11, 2023. No written comments were provided by the County within 90 days, as required, and the Nomination was submitted to the State Office of Historic Preservation, without comment, on October 18, 2023. The application is under consideration by the State Office of Historic Preservation (“State OHP”) and is pending. If the OHP determines this property is eligible for inclusion on the Registry, it will be a “mandatory” historic Resource under Pub. Res. Code Section 21084.1.

2. The County Planners failed to advise the Zoning Administrator of its obligations when substantial evidence is presented supporting a finding that the project may have a affect a “historic resource.” 14 CCR 15054.5 (a)(3) provides:

“Any object [or] building ... which a lead agency determines to be historically significant ... *may* be considered to be an historical resource, provided the lead agency’s determination is supported by substantial evidence in light of the whole record. Generally, a resource *shall* be considered by the lead agency to be ‘historically significant’ if the resource meets the criteria for listing on the California Register of Historical Resources including the following:

- (A) Is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage;
- (B) Is associated with the lives of persons important in our past;
- (C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
- (D) Has yielded, or may be likely to yield, information important in prehistory or history.”

The ESA Nomination materials submitted to the State Office of Historic Preservation and provided to the County (included within Attachment 9) set forth substantial evidence supporting criteria (A), (B) and (C) above. As a result, the lead agency should take the path forward ordered by the court in *Valley Advocates v City of Fresno* (2008) 160 Cal.App.4th 1039, 1063, as follows:

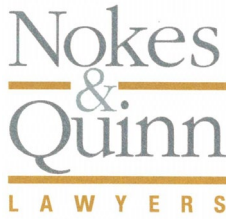


- (1) acknowledge the lead agency’s discretion to consider whether 211 Emerald Bay is an historic resource for purposes of CEQA,
- (2) expressly elect to exercise that discretion by considering the issue
- (3) evaluate the issue by, among other things, applying the criteria set forth in subdivision (a)(3) of 14 CCR 15064.5, and
- (4) determine that 211 Emerald Bay is an historic resource.

3. The findings proposed by Staff to justify the variances do not meet the requirements of Government Code Section 65906. The Court in *Orinda Assn. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1166 [227 Cal.Rptr. 688, 701–702] observed that:

“... the language of both the Zoning Ordinance and Government Code section 65906 “*emphasizes disparities between properties, not treatment of the subject property’s characteristics in the abstract. [Citations.] It also contemplates that at best, only a small fraction of any one zone can qualify for a variance. [Citation.]*” (*Topanga Assn. for a Scenic Community v. County of Los Angeles, supra, 11 Cal.3d at p. 520, 113 Cal.Rptr. 836, 522 P.2d 112*, original emphasis.) *The facts set forth in the required findings must address “the critical issue whether a variance was necessary to bring the [owner of the subject parcel] into substantial parity with other parties holding property interests in the zone. [Citation.]” ... Thus, data focusing on the qualities of the property and Project for which the variance is sought, the desirability of the proposed development, the attractiveness of its design, the benefits to the community, or the economic difficulties of developing the property in conformance with the zoning regulations, lack legal significance and are simply irrelevant to the controlling issue of whether strict application of zoning rules would prevent the would-be developer from utilizing his or her property to the same extent as other property owners in the same zoning district. (Ibid; Broadway, Laguna etc. Assn. v. Board of Permit Appeals, supra, 66 Cal.2d at pp. 773–781, 59 Cal.Rptr. 146, 427 P.2d 80.)*” [Emphasis added.]

Staff’s analysis fails to set forth characteristics of this property, a combination of three flat lots with ample street access on two sides, that would qualify it as a property presenting a “substantial hardship” when following the property development standards of Emerald Bay or the County. Under Staff’s analysis, applicants should simply disregard the property development standards,



and design all properties through use of variances. The end seems to justify the means, rather than enforcing the standards set forth for the vicinity.

4. Finally, the proposed structure on three lots destroys all existing ocean views from 215 Emerald Bay, as illustrated in the attached photos. It is, therefore, incompatible with other permitted uses in the vicinity. As noted in the staff report:

“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.”*

Emerald Bay approved a structure for 211 Emerald Bay which annihilated the existing ocean and sunset views for 215 Emerald Bay. Mr. Cooley acknowledges that process but believes the Zoning Administrator must ensure that the goals were followed, lest there be no check on Emerald Bay. At a minimum, Mr. Cooley wishes to preserve this objection for a court challenge, in the event the Zoning Administrator does not feel it can remedy the problem.

CONCLUSION

William Cooley respectfully requests that the Zoning Administrator consider the evidence before it and determine that 211 Emerald Bay property satisfies the criteria set forth in 14 CCR 15064.5 (a)(3). Mr. Cooley requests that this property be deemed an historic resource by the Zoning Administrator using the process set forth in *Valley Advocates v City of Fresno*, cited above.

In the alternative, Mr. Cooley requests that this hearing be continued until the State OHP completes its consideration of the Nomination of the property to the Register. Approval of the project with Categorical Exemptions would render a subsequent determination of historicity by the State OHP an aspirational gesture only and would result in a loss that would not be



correctable, as an historic resource would be forever destroyed. On the other hand, if the State OHP determines the home is not eligible for inclusion, the lead agency may consider its eligibility for recognition by the County or proceed with the application.

In the event the Zoning Administrator refuses to continue the matter to allow the Nomination process to be completed, Mr. Cooley requests that this project be denied as submitted, as it is not compatible with the surrounding homes, and blocks views from 215 Emerald Bay. Further, the "findings" for the variance are legally deficient and not supported by substantial evidence. There is no evidence that this property suffers from disparities that preclude its construction in conformity with the existing zoning codes and property development standards.

Thank you for your time and consideration.

Very truly yours,

Laurence P. Nokes

LPN/dkc
Attachments

cc: Client