

ITEM # 2

OC DEVELOPMENT SERVICES REPORT

DATE: October 8, 2015
TO: Orange County Zoning Administrator
FROM: OC Development Service/Planning Division
SUBJECT: Public Hearing for a Variance and Use Permit (Planning Application PA150060)

PROPOSAL: Planning Application PA150060 is a request for Variance approval to allow an 18 foot front yard setback instead of the required 20 feet, and a rear setback of 5.75 feet instead of the required 25 feet, and a Use Permit approval to allow a driveway to exceed a -6% maximum slope gradient and a 5-foot retaining wall in the front yard setback area instead of the required 3 feet 6 inches.

GENERAL PLAN DESIGNATION: 1B "Suburban Residential"

ZONING: R1 "Single Family Residence", with a CD "Coastal Development" Overlay and an SR "Sign Restrictions" Overlay, within the Emerald Bay Local Coastal Program

LOCATION: The project is located in the community of Emerald Bay at 827 Emerald Bay, Laguna Beach, CA within the Fifth Supervisorial District.

APPLICANT: Greg and Laura Hart, Property Owners
Gary Sumberg, Agent

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

RECOMMENDED ACTION(S):

Staff recommends Zoning Administrator approval of a Variance and Use Permit as Planning Application PA150060, subject to the attached Findings and Conditions of Approval. OC Development Services recommends that the Commission:

- a) Receive staff report and public testimony as appropriate;

- b) Find that the proposed project is Categorically Exempt from the California Environmental Quality Act (CEQA), Class 3 (*New Construction or Conversion of Small Structures*) pursuant to Section 15303, as well as Class 5 (*Minor Alterations in Land Use Limitations*) pursuant to Section 15305.
- c) Approve Planning Application PA150060, a Variance for front and rear yard setbacks and Use Permit for an over-height retaining wall within the front setback and driveway grade exceeding the maximum slope gradient, subject to the attached Findings and Conditions of Approval.

BACKGROUND AND EXISTING CONDITIONS:

The subject property is located within the Emerald bay Local Coastal Program area and is designated R1 “Single-Family Residence” District with (CD) “Coastal Development” and (SR) “Sign Restriction” overlays on the inland side of in the unincorporated Emerald Bay community and immediately adjacent to the Shamrock Drive gated entry into the community. The site is currently developed with a 2,250 square foot residence and 399 square foot garage. The property is generally flat, and is 9,147 square feet in area. The applicant/owner currently resides in the home.

Proposed Project

The project is a proposed single-story master bedroom addition of 344 square feet at the rear of an existing home that would extend from a 12-foot rear yard setback (per approval of PA070066) to a 5.75 foot rear yard setback, as currently requested. Also proposed is the demolition and reconstruction of the garage and the raising of the garage finished floor elevation floor by 18 inches to address drainage issues. The rebuilt 2-car garage will be widened and a utility room included at a total of 559 square feet, or an increase of 160 square feet compared to the existing garage. The new utility room extension would be in line with the new garage frontage but would encroach by into the required 20-foot front yard setback by 2 feet (due to the curving of the street and front property line). The driveway will be regraded to address current drainage issues and the raised garage floor, but will exceed the maximum permitted -6% gradient for portions of the grade. A maximum 5 foot tall retaining wall is required to accommodate the raised driveway grade. The applicant will also be increasing the height of the existing wall along the easterly property, running parallel to the Shamrock Drive community entry. This existing retaining and privacy wall currently has a maximum height of 9 feet, however because it is located outside of the 5-foot side yard setback the additional height, in certain sections, of up to 2 feet is permitted.

As an addition to an existing structure located on the inland side of the first public road and also located more than 300 feet from the beach or mean high tide line, the proposed project qualifies for an exemption from a Coastal Development Permit (Zoning Code Section 7-9-118.5).

SURROUNDING LAND USE:

The project site is a residential use and is surrounded by residential uses. The zoning 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	“Open Space”(OS)(CD)(SR) District	Private entry street and private park
East	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling
West	“Single-Family Residence” (R1)(CD)(SR) District	Single-Family Dwelling

Aerial of Project Site



REFERRAL FOR COMMENT AND PUBLIC NOTICE:

A copy of the planning application and a copy of the proposed site plan were distributed for review and comment to County Divisions; OC Development Services (Planning, Building/Grading Plan Check, Building Official), OC Infrastructure Programs (Traffic Engineering) and Orange County Fire Authority. Through focused meetings and collaborative effort with County staff, the applicant has adequately addressed all comments. All comments received from County Divisions have been addressed in the recommended Conditions of Approval. 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 September 25, 2015. Additionally, a notice was posted at the site, at the County Hall of Administration, at 333 W. Santa Ana Boulevard and at 300 N. Flower (HGO Building), as required by County public hearing posting procedures.

The Emerald Bay Community Association approved the proposed project on July 14, 2015. The applicant has provided a copy of the EBCA-stamped plans.

CEQA COMPLIANCE:

CEQA allows categorical exemptions for projects that have been determined not to have a significant effect on the environment. The proposed project is consistent with a Class 1 Categorical Exemption, *Existing Facilities* (Section 15301). The Class 1 exemption consists of additions to existing structures that will not result in an increase of 50 percent of the existing floor area or 2,500 square feet, whichever is less. Additionally, the project is consistent with a Class 5 Categorical Exemption, *Minor Alterations in Land Use Limitations* (Section 15305). The Class 5 exemption consists of minor alterations in land use limitations, such as set back variances not resulting in any change in land use or density.

The proposed project is eligible for Class 3 and Class 5 exemptions because it consists of the construction of a 184 square foot bedroom addition and a 106 square foot garage expansion to an existing single-family residence and related improvements including swimming pool, patio and fences/walls. The project will not result in a cumulative impact, significant environmental effect or damage scenic or historic resources. Standard conditions of approval applied by the County for all construction projects of this nature will address any short-term construction related impacts.

DISCUSSION/ANALYSIS:

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

Project Comparison with R1 “Single-Family Residence” District Site Development Standards

STANDARD	PERMITTED	PROPOSED
Building height	35' maximum	10'7" for addition 13'3" for rebuilt garage
Structural Front Setback	20'	18' ¹
Structural Side Setback	5'	6' and 20'
Structural Rear Setback	12' ²	
Parking	2 covered spaces minimum	2 covered

Walls in Structural Setback Limits	3'6" inches maximum height in front setback area	5'0" inches maximum ³
Maximum grade of driveway	-6%	-12.5% ³

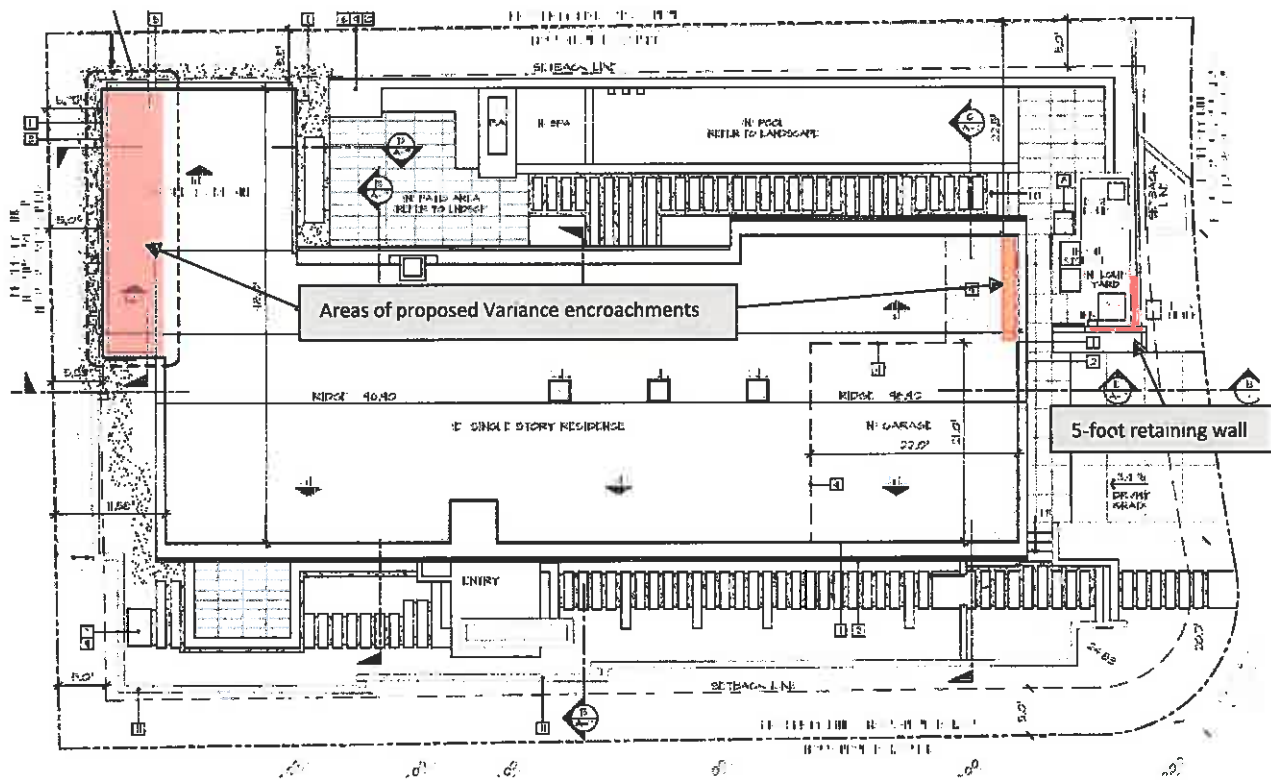
1 - Proposed front setback for a portion of new utility room, remainder at 20' or greater

2 - Rear setback as approved by Variance 3147 for main residence and by PA070066 for a previous addition

3 - Indicates Use Permit requested by the applicant (Zoning Code Sections 7-9-145.2 and 7-9-145.7)

The applicant requests approval of a Variance to allow a master bedroom addition to have a rear yard setback of 5.75 feet instead of the required 25 feet, and also to allow the utility room addition to have a front yard setback of 18 feet instead of the required 20 feet. The exhibit below depicts the areas of encroachment.

Proposed Variance Encroachments and Over Height Retaining Wall



The property is limited in the areas where a room addition can be located due to the applicant's desire, consistent with Emerald Bay Community Association architectural restrictions, to avoid view blockage impacts to other existing homes. Because a second story addition could more significantly impact views, the applicant is proposing the small addition at the rear of the home to within 5.75 feet of the rear property line. It is also noted that the addition is design with a flat roof, differing from the existing house, but as an accommodation to view preservation. There exists a considerable barrier of landscaping along this property line that functionally separates the area of this encroachment from the adjacent property which is approximately 10-foot lower than the subject property. These conditions and property limitations are similar to those recognized for Variance 3147 which approved a 12-foot

rear yard for the original construction of the house in 1957, as well as PA070066 that approved an addition at the same 12-foot setback.

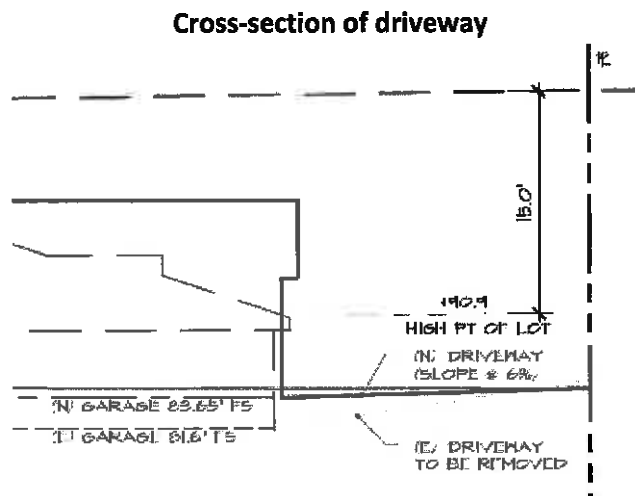
A second variance request is requested to allow a utility room area, proposed to be included in the reconstruction and raising of the finished floor of the garage. This room area would be in line with the front wall of the rebuilt garage, which will have a 20 to 22-foot setback. However, due to the curving of the fronting street and the corner location of the property, the front property line also 'bends into' the lot thereby creating a constraint. Because the utility room area will be designed and constructed in line with the garage frontage, there will be no perceived encroachment into the front setback.

Zoning Code Section 7-9-150.3 provides that variance requests may be approved subject to the following findings:

- 1) *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; and,*
- 2) *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 these findings can be made and provides recommendations within Attachment A.

A Use Permit is requested to exceed the maximum driveway grade of -6% established Zoning Code Section 7-9-145.2. The street fronting the property is falling across the frontage at approximately 10%, which causes occasional flooding problems as storm run-off from the street crests the driveway and flows down to the garage which is up to 4 feet below street grades. The applicant proposes to demolish the garage and raise the floor level by 18 inches. A regraded driveway would include an increased crest near the curb line to block storm flows and would then slope down to the new raised finished floor. However, due to the existing cross slope of the street, portions of the new driveway would exceed the Zoning Code's maximum -6% slope. The existing driveway also exceeds a -6% slope. OCPW Traffic Section has reviewed the request and has no objection to its approval.



Zoning Code Section 7-9-145.7 states that alternatives to any off-street parking provision may be permitted subject to the approval of a Use Permit, provided that the following two findings can be made by the approving authority:

- 1) *Applicable off-street parking requirements are excessive or inappropriate due to the nature of the specific use involved or because of special circumstances applicable to the property; and*
- 2) *The proposed off-street parking facilities comply with the intent of these regulations as specified by Section 7-9-145.1.*

Staff finds that these two findings can be made and recommends approval of specific findings of fact as included within Attachment A.

A Use Permit is also requested for an over-height retaining wall within the front 20 foot setback area of the lot where the maximum height would normally be limited to 3 feet 6 inches. The retaining wall is necessary due to the grading to raise the level of the garage finished floor and improved the slope gradient of the driveway. The subject retaining wall would be as high as 5' at one point, but would quickly taper off to a height of less than 3 feet 6 inches.

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:

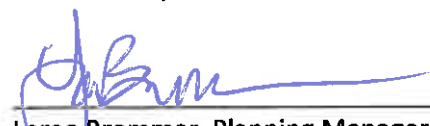
- 1) *That the height and location of the fence or wall as proposed will not result in or create a traffic hazard.*
- 2) *That the location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental or incompatible with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

The 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 A.

CONCLUSION:

Staff has reviewed the applicant's request for a Coastal Development Permit and Use Permits and found it to be compliant with the Emerald Bay Local Coastal Program. It is an allowed Principle Permitted Use in the "Single-Family Residence" District and has been found to be compatible with adjacent residential uses, including previous approvals and use permit requests. Staff recommends Zoning Administrator approval of Planning Application PA150060 for a Variance and Use Permit subject to the attached Recommended Findings and Conditions of Approval.

Submitted by:



Laree Brommer, Planning Manager
OC Development Services

Concurred by:



Colby Cataldi, Deputy Director, Manager
OC Development Services

ATTACHMENTS:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Applicant's Letter of Explanation
- D. Environmental Documentation – NOE PA150060
- E. Site 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 filing deposit of \$500 filed at the Development Processing Center, 300 N. Flower 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 Division.

8 NCCP NOT SIGNIFICANT PA150060

That the proposed project will not have a significant unmitigated impact upon Coastal Sage Scrub habitat and therefore, will not preclude the ability to prepare an effective subregional Natural Communities Conservation Planning (NCCP) Program.

9 ALTERNATIVE PARKING STANDARD 1 PA150060 CUSTOM

That the applicable off-street parking requirements for driveway grades are excessive or inappropriate due to the nature of the specific use involved or because of special circumstances applicable to the property, specifically the sloping grades of the adjacent street and the topography and pattern of development within the Emerald Bay community.

10 ALTERNATIVE PARKING STANDARD 2 PA150060 CUSTOM

That the proposed off-street parking facilities, specifically the driveway with portions designed with an increased maximum slope, do comply with the intent of the Zoning Code off-street parking regulations as specified by Section 7-9-145.1.

11 FENCE AND WALL 1 PA150060 CUSTOM

That the height and location of the front retaining wall will not result in or create a traffic hazard.

12 FENCE AND WALL 2 PA150060 CUSTOM

That the height and location of the front retaining wall as proposed will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.

13 VARIANCE 1 PA150060 CUSTOM

That 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, specifically its location and the community benefit of the avoidance of view blocking construction.

14 VARIANCE 2 PA150060 CUSTOM

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 and will avoid blocking existing ocean views.

County may, at its sole discretion, participate in the defense of any action, but such participation shall not relieve applicant of his/her obligations under this condition. Applicant shall reimburse the County for any court costs and attorney's fees that the County may be required to pay as a result of such action. The County shall promptly notify the applicant of any such claim, action or proceeding.

6 BASIC/APPEAL EXACTIONS PA150060

Pursuant to Government Code Section 66020, the applicant is hereby informed that the 90-day approval period in which the applicant may protest the fees, dedications, reservations or other exactions imposed on this project through the conditions of approval has begun.

7 GEOLOGY REPORT PA150060

Prior to the issuance of a grading permit, the applicant shall submit a geotechnical report to the Manager, Building and Safety Division, for approval. The report shall include the information and be in the form as required by the Grading and Excavation Code and Grading Manual.

8 CONSTRUCTION NOISE PA150060

A. Prior to the issuance of any grading permits, the project proponent shall produce evidence acceptable to the Manager, Building and Safety Division, that:

(1) All construction vehicles or equipment, fixed or mobile, operated within 1,000 feet of a dwelling shall be equipped with properly operating and maintained mufflers.

(2) All operations shall comply with Orange County Codified Ordinance Division 6 (Noise Control).

(3) Stockpiling and/or vehicle staging areas shall be located as far as practicable from dwellings.

B. Notations in the above format appropriately numbered and included with other notations on the front sheet of the project's permitted grading plans, will be considered as adequate evidence of compliance with this condition.

9 EROSION AND SEDIMENT CONTROL PLAN PA150060

Prior to the issuance of any grading or building permit, the applicant shall submit an Erosion and Sediment Control Plan (ESCP) in a manner meeting approval of the Manager, Building and Safety Division, to demonstrate compliance with the County's NPDES Implementation Program and state water quality regulations for grading and construction activities. The ESCP shall identify how all construction materials, wastes, grading or demolition debris, and stockpiles of

soil, aggregates, soil amendments, etc. shall be properly covered, stored, and secured to prevent transport into local drainages or coastal waters by wind, rain, tracking, tidal erosion or dispersion. The ESCP shall also describe how the applicant will ensure that all BMPs will be maintained during construction of any future public right-of-ways. The ESCP shall be updated as needed to address the changing circumstances of the project site. A copy of the current ESCP shall be kept at the project site and be available for County review on request.

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DRAINAGE FACILITIES

PA150060

Prior to issuance of grading or building permits, drainage studies that demonstrate the following shall be submitted to and approved by Manager, Building and Safety Division:

1. All surface runoff and subsurface drainage directed to the nearest acceptable drainage facility, as determined by the Manager, Building and Safety Division
 2. Drainage facilities discharging onto adjacent property shall be designed to imitate the manner in which runoff is currently produced from the site and in a manner meeting the satisfaction of the Manager, Permit Services. Alternatively, the project applicant may obtain a drainage acceptance and maintenance agreement, suitable for recordation, from the owner of said adjacent property. All drainage facilities must be consistent with the County of Orange Grading Ordinance and Local Drainage Manual.
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