

BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH

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DECISION

AUG 03 2017

CITY OF SAMMAMISH

FILE NUMBERS: SVAR2016-00517 and ZONV2016-00518

APPLICANTS: Chuck Yoong Chan and Mei-Chin Tsai
21626 SE 28th Street
Sammamish, WA 98075

TYPE OF CASE: Consolidated: 1) Shoreline Management Act Variance to reduce shoreline setback from 50 feet minimum to not less than 33 feet and to eliminate the 15-foot building setback line associated with a reduced stream buffer; and 2) Zoning variance to reduce street setback from 10 feet minimum to not less than 5 feet

STAFF RECOMMENDATION: Approve both applications subject to conditions

EXAMINER DECISION: GRANT shoreline setback variance subject to conditions; DENY stream buffer building setback line variance; GRANT zoning variance subject to conditions

DATE OF DECISION: August 1, 2017

INTRODUCTION¹

Chuck Yoong Chan and Mei-Chin Tsai (“Chan”²) seeks approval of 1) a Shoreline Management Act Variance (“Shoreline Variance”) to reduce shoreline setback from 50 feet minimum to not less than 33 feet and to eliminate the 15-foot building setback line (“BSBL”) associated with a reduced stream buffer and 2) a zoning variance to reduce street setback from 10 feet minimum to not less than 5 feet.

Chan filed Base Land Use Applications on December 5, 2016. (Exhibit 5³) The Sammamish Department of Community Development (“Department”) deemed the applications to be complete when filed. (Exhibit 6) The Department issued a Notice of Application on January 12, 2017. (Exhibit 7)

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.
² To simplify references to the applicants, they will be collectively referred to in the singular as “Chan,” the same simplified reference form used in some record documents. No disrespect is intended toward either applicant.
³ Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.

The subject property is located immediately north of 2927 East Lake Sammamish Parkway NE ("Parkway"), along the east shore of Lake Sammamish.

The Sammamish Hearing Examiner ("Examiner") viewed the subject property on July 25, 2017.

The Examiner held an open record hearing on July 27, 2017. The Department gave notice of the hearing as required by the Sammamish Municipal Code ("SMC"). (Exhibit 22)

Subsection 20.05.100(1) SMC requires that decisions on most land use applications, including those in this case, be issued within 120 net review days after the application is found to be complete. The Department testified that the Examiner's hearing was held within the 120-day review period. (Testimony)

The following exhibits were entered into the hearing record during the hearing:

- Exhibits 1 - 23: As enumerated in Exhibit 1, the Departmental Staff Report
- Exhibit 24: King County iMap, Critical Areas along the east shore of Lake Sammamish, submitted by Purcell, July 27, 2017
- Exhibit 25: King County Parcel Map (Annotated), submitted by Purcell, July 27, 2017
- Exhibit 26: Figures 3-2b and 3-2c, Critical Areas Map, East Lake Sammamish Master Plan Trail, North Sammamish Segment, submitted by Purcell, July 27, 2017
- Exhibit 27: Excerpts (pp. 3-30 and 4-3 – 4-6), Revised Critical Areas Study, East Lake Sammamish Master Plan Trail - North Sammamish Segment, submitted by Purcell, July 27, 2017
- Exhibit 28: Figure 3-1, Drainage Basins and Site Characteristics, submitted by Purcell, July 27, 2017
- Exhibit 29: SMP Handbook, page 20, rev. 8/13, submitted by Purcell, July 27, 2017
- Exhibit 30: Official Shoreline designation Map, Part 1 of 4: Northern Lake Sammamish, submitted by Purcell, July 27, 2017
- Exhibit 31: Notice of Revised Application, Paul Shoreline and Zoning Variance, June 5, 2017, submitted by Purcell, July 27, 2017
- Exhibit 32: Excerpts (pp. 1 – 4 and 50), United States Court of Appeals for the Ninth Circuit, Opinion, Cause No. 13-35474, submitted by Purcell, July 27, 2017
- Exhibit 33: Aurora Purcell hearing statement, with four photographs
- Exhibit 34: E-mail string, Cui – Renkor, March 10 – April 4, 2017

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner's knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. Chan wants to build a single-family residence on King County Assessor's Parcel 202506-9041 ("Parcel 9041")⁴. Parcel 9041 backs up to the east shore of Lake Sammamish and fronts on the west side of King County's East Lake Sammamish Trail ("ELST") right-of-way, which in turn abuts the west side of the Parkway right-of-way.⁵ Parcel 9041 contains 25,765 square feet ("SF") above the lake's ordinary high water mark ("OHWM"). Because Chan's proposed site plan does not comply with the 50-foot setback from Lake Sammamish and the 15-foot BSBL required under the City's adopted Shoreline Master Program⁶ ("SMP") regulations nor with the 10-foot street setback required under the City zoning regulations, Chan has made application for a variance from each: 33- v. 50-foot minimum lake setback, no BSBL, and 5- v. 10-foot ELST setback. (Exhibits 3 – 5)
2. Parcel 9041 lies within the jurisdictional area of the SMP. (Exhibit 30) Lake Sammamish is a designated Shoreline of Statewide Significance under the SMP.⁷ [SMC 25.05.030] The SMP assigns one of two "Environment" designations to all SMP-regulated shorelines within the City: Either Urban Conservancy ("UC") or Shoreline Residential ("SR"). [SMC 25.05.020(1)] Approximately 86% of the City's Lake Sammamish shoreline is designated SR; the remaining 14% is designated UC. The UC designation occurs in three pockets near the north end of the lake. Parcel 9041 is located within one of those pockets. (Exhibit 30; official notice)

The purpose of the urban conservancy environment is to protect and restore relatively undeveloped or unaltered shorelines to maintain open space, floodplains, or habitat, while allowing a variety of compatible uses. This designation shall apply to shorelines that retain important ecological functions, even if partially altered. These shorelines are suitable for low intensity development, uses that are a combination of water-related or water-enjoyment uses, including single-family residential use, or uses that allow substantial numbers of people to enjoy the shoreline.

⁴ All of the parcels referenced within this Decision have a ten-digit parcel number, the first six digits of which are the same: "202506." For simplicity, the Examiner will hereinafter refer to individual parcels using only their last four digits and, where appropriate to the context, the name of the owner.

⁵ As can most clearly be seen on Exhibit 3, Figure 1, the Lake Sammamish shoreline in the vicinity of Parcel 9041 is oriented along a more-or-less northwest-southeast axis. To simplify and standardize directional references, the following convention will be followed throughout this Decision: The lake shoreline is west; the ELST and Parkway lie to the east and the long axis of Parcel 9041 runs north to south.

⁶ The 15-foot BSBL from the outer edge of a stream buffer is a requirement of Chapter 21A.50 SMC, Environmentally Critical Areas. [SMC 21A.50.210] There is no mechanism within Chapter 21A.50 SMC by which a BSBL may be reduced or eliminated. Chapter 21A.50 SMC, on the other hand, provides an express mechanism by which stream buffer widths may be reduced. [SMC 21A.50.330(6)] Most provisions within Chapter 21A.50 SMC, including those relevant to this proceeding, have been incorporated by reference into the SMP. [SMC 25.01.070] Therefore, the BSBL is an SMP regulation for properties subject to the SMP and a request to reduce or eliminate the 15-foot BSBL must be handled as a Shoreline Variance for such properties.

⁷ The current version of the SMP was adopted by Ordinance No. O2009-265 as amended by Ordinance No. O2011-308 and became effective on August 31, 2011, after approval by Ecology. The critical areas provisions within the SMP were amended by Ordinance No. O2016-410 and became effective on March 1, 2017, after approval by Ecology. Variance applications do not benefit from vested rights. Therefore, the current SMC provisions apply.

[SMC 25.05.020(1)(b), emphasis added]

3. Single-family residences are a permitted use in the UC designation. [SMC 25.07.010, Table 25.07.010-1] The single-family residential height limit, side setback requirement, shoreline setback requirement, and vegetation enhancement area (“VEA”) requirement are the same for both UC and SR designated areas: 35 feet maximum height, 15% of lot width with minimum side setback of 5 feet, minimum 50 foot shoreline setback, and 15 foot VEA, respectively. [SMC 25.06.020(9); 25.07.010, Table 25.07.010-2] The 50 foot shoreline setback may be administratively reduced to 20 feet under certain circumstances for all uses in the SR designation, but only for public uses in the UC designation. [SMC 25.06.020(11)]

“Single-family residential use is a preferred shoreline use and shall be permitted when consistent with this program and the Act, including the goal to ensure no net loss of shoreline ecological functions.” [SMC 25.07.080(1)] The undeveloped area requirement for parcels designated UC is essentially 60% of the lot area above the OHWM. [SMC 25.07.080(2)(d)]

4. Parcel 9041 is zoned R-4. (Exhibit 1, p. 3, § II.A) Single-family residences are a permitted use in the R-4 zone. [SMC 21A.20.030] The required “street” setback in the R-4 zone is 10 feet. [SMC 21A.25.030(A)]

All properties between the Parkway and Lake Sammamish from the northern City limit to the southern City limit are zoned R-4, as are most of the upland properties on the east side of the Parkway, including all properties in the vicinity of Parcel 9041. [Official notice, Official City zoning map, viewed at <https://www.sammamish.us/attachments/pagecontent/36868/17013.pdf>, last visited March 10, 2017]

5. Parcel 9041 is the southern-most of 13 parcels in the middle UC designation.⁸ It is, by far, the largest of the 13: It is more than twice as large as the next largest parcels. Three of those 13 parcels contain existing single-family residences whose lot coverage ranges from 2,103 SF to 3,484 SF (including garages). Two of the remaining parcels recently received Shoreline Variances and zoning variances to construct new single-family residences: Parcel 9085 (Ogren), Fig. 1 ID #6, was approved for a 1,844 SF residence (including garage); and Parcel 9071 (Baerwald), Fig. 1 ID #7, was approved for a 2,215 SF residence (including garage). (Exhibit 3, Figure 1; testimony; and official notice of Ogren and Baerwald Shoreline Variances) One of the remaining parcels is the subject of a Shoreline Variance/zoning variance application which has not yet come on for hearing: Parcel 9151 (Paul), Fig. 1 ID #2. (Exhibit 31)
6. Parcel 9041 (Chan) is a long, narrow parcel located between the ELST and the east shore of Lake Sammamish. Its north-south dimension is about 330 feet; its east-west depth between the OHWM

⁸ Evidence in recent Shoreline Variance cases in this area stated that there were 14 parcels in this UC-designated area. [Official notice] Evidence in this record states that there are only 13 UC-designated parcels in this area. The Examiner cannot explain the difference.

and the east property line varies from about 65 to 75 feet. The actual ELST (as opposed to its wider right-of-way) lies about 35 feet east of Parcel 9041. Vehicular access to Parcel 9041 is over a private road within the ELST right-of-way which crosses the ELST to intersect the Parkway about five parcels south of Parcel 9041. (Exhibits 4, Sheet 1; 7)

7. Parcel 9041 is undeveloped (except for a small lean-to type shed near the south property line). It is wooded; most of the overstory is composed of deciduous species. The understory includes significant invasive species such as Himalayan blackberry, English ivy, English holly, and morning glory. (Exhibit 10)

Parcel 9041 slopes gently from east to the lake shoreline. The site is bisected by a stream which flows from east to west. This stream is known as Stream 0143G and is a Type F stream with a potential for fish use. Stream 0143G crosses Parcel 9041 about 210 feet north of the south property line. (Exhibits 4, Sheet 1⁹; 26; 27) The standard buffer width for a Type F stream is 150 feet. [SMC 21A.50.330(1)] Stream buffers may be administratively reduced up to 50% if certain conditions are met. [SMC 21A.50.330(6)] Chan has proposed sufficient mitigation to achieve the maximum 50% buffer width reduction. (Exhibit 13, pp. 7 and 8)

Some exhibits in the record suggest that a second stream crosses the south edge of Parcel 9041. (See, for example, Exhibits 24, 25, and 30.) Those exhibits are based on regional mapping. Exhibits based on more precise investigations refer to this stream as Unnamed 3 or Unnamed #3 and clearly indicate that when it reaches the east side of the ELST it turns abruptly north to flow along the east side of the ELST until joining Stream 0143G. (Exhibits 4, Sheet 1; 26)

Stream 0143F, also a Type F stream, flows from east to west approximately 60 feet north of Parcel 9041. (Exhibits 4, Sheet 1; 26; 27)

8. The required 50 foot shoreline setback encumbers all but approximately the easterly 15 – 25 feet of Parcel 9041. The 150 foot buffer for Stream 0143F encumbers most of Parcel 9041 north of Stream 0143G. The 150 foot buffer for Stream 0143G encumbers all but approximately the southern 65 feet of Parcel 9041. The 15-foot BSBL encumbers an additional 15 feet beyond the stream buffer. The minimum 5-foot side setback encumbers the southerly 5 feet of Parcel 9041. The 10-foot front setback encumbers the easterly 10 feet of Parcel 9041. (Exhibit 4, Sheet 1)

The only portion of Parcel 9041 not encumbered by the above-described setbacks or buffers is an area approximately 15 feet by 35 feet (525 SF) located in the southeast corner of the property. (Exhibit 4, Sheet 1¹⁰)

⁹ This stream is labelled as “Stream 1” on this exhibit. The Examiner finds the naming convention in Exhibits 26 and 27 to be more reliable.

¹⁰ The “Net developable area” depicted on the exhibit presumes approval of the requested zoning variance to reduce the street setback from 10 to 5 feet. The totally unencumbered area before any variances are considered is actually smaller than shown on the exhibit.

Chan's environmental consultant argues that the buffer for Unnamed 3 need not be considered.¹¹ That argument is based on the prior version of SMC 21A.50.330(1)(a) which essentially provided that if a street or the ELST cut through a required buffer, the buffer could be truncated at the near edge of the street or the ELST if certain conditions were met. (Exhibit 13, p. 2) That section was changed by the code amendments that became effective on March 1, 2017. Those amendments, *inter alia*, removed the reference to the ELST. Since variance applications do not benefit from vested rights, the current version of the code, which does not include the ELST clause, applies. Stream Unnamed 3 is also a Type F stream. (Exhibit 27) Therefore, Parcel 9041 is also encumbered by part of that stream's 150 foot buffer. When that buffer is applied, the entirety of the previously delineated buildable area becomes encumbered by buffer, rendering the entire parcel encumbered by one or another buffer.

9. Chan proposes to construct a single-family residence in the southeast corner of Parcel 9041. The proposed structure would be 5 feet from the south property line, 5 feet from the ELST (east) property line, not less than 33 feet from the lake's OHWM, and 75 feet from Stream 0143G. (Exhibit 2¹²) The northeast corner of the proposed residence would intrude into a 75 foot buffer for stream Unnamed 3 by between 5 and 10 feet. (Determined from Exhibit 4, Sheet 3)

The proposed residence would be served by a 1,390 SF permeable driveway, mostly located within the ELST right-of-way. (Exhibit 2)

Extensive mitigation is proposed throughout the site, not just near the proposed residence. All invasive species will be removed, including those in the ELST right-of-way adjacent to Parcel 9041. A total of 15 trees would be removed, including five within the ELST right-of-way. 27 replacement trees would be planted. 8,490 SF of vegetation mitigation will be provided for the 1,780 SF of shoreline setback reduction; 16,680 SF of vegetation mitigation will be provided for the 6,445 SF of reduced Stream 0143G buffer. (Exhibits 2; 4; 13)

10. The review criteria for a Shoreline Variance depend upon where the proposal is located. Chan's proposal is located landward of the OHWM and any associated wetland. For a proposal located landward of the OHWM and landward of any associated wetland, the criteria are contained in WAC 173-27-170(1), (2), (4), and (5) "Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect." [WAC 173-27-170(1)] The criteria in WAC 173-27-170(2), (4), and (5) and the facts relating to each are as follows:

¹¹ The consultant incorrectly names this stream "0143G." As previously noted, the Examiner is relying on Exhibit 26 for stream naming.

¹² Exhibit 2 depicts a "NEW DOCK (UNDER SEPARATE PERMIT)". Consideration of a dock is not part of the current application. (Testimony)

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- A. “That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;” [WAC 173-27-170(2)(a)]

Facts: As explained in Finding of fact 8, above, the combination of required shoreline setback, stream buffers, and BSBL associated with Lake Sammamish, Stream 0143G, and stream Unnamed 3 encumber the entirety of Parcel 9041 and render it unbuildable.

- B. “That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;” [WAC 173-27-170(2)(b)]

Facts: Neither Chan nor any prior owner of Parcel 9041 did anything to create the hardship: The hardship is entirely due to the requirements of the SMP and the natural features of the parcel. It is the size and shape of the property, combined with the required 50-foot shoreline setback and stream buffer/BSBL requirements, which causes the hardship. (Exhibits 4; 13)

- C. “That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;” [WAC 173-27-170(2)(c)]

Facts: The proposed residence, whether measured by the total finished area of the residence or by total lot coverage will be bigger than any other house within the near vicinity, in many cases by a factor of nearly 2:1. But Parcel 9041 is also much bigger in area, also by a factor of 2:1 or more. (Exhibit 3, Figs. 1 and 2) The proposed shoreline setback of not less than 33 feet is greater than that of recently approved Shoreline Variances and of most, if not all, existing residences in the area which were constructed prior to the current regulations. (Exhibit 26; and testimony)

The area’s R-4 zoning matches the adopted Comprehensive Plan’s goal for this area: Single-family residences. The SMP’s UC designation of Parcel 9041 (and the adjoining parcels along this stretch of the lake shoreline) specifically allows single-family residential use. Chan is not asking for any relief from use provisions of either the zoning code or the SMP. (Exhibit 1)

Chan’s proposal includes significant mitigation. The immediate shoreline area of the parcel will be restored to ensure no net loss of shoreline ecological functions. The mitigation plan proposes mitigation actions on virtually the entire parcel. All invasive species will be removed. Native species will be planted throughout the entire parcel; there will be no lawn. Preliminary plans indicate that 34 trees, 350 shrubs, 700 groundcover plants, and 1,080 emergents will be planted on Parcel 9041. An additional 15 trees, 94 shrubs, and 469

groundcover plants will be planted within the ELST right-of-way. (Exhibit 4, sheets 3 – 15)
The end result will be a better shoreline habitat than presently exists. (Exhibit 13)

- D. “That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;” [WAC 173-27-170(2)(d)]

Facts: Of the 13 parcels in this segment of UC-designated shoreline, three have homes that existed prior to adoption of the SMP, two have recently approved Shoreline Variances for single-family residential construction, one is the subject of a pending Shoreline Variance application, and most of the rest are so narrow as to render any residential development extremely problematic. (Exhibits 3, Fig. 1; 31; and testimony)

The following table compares the recently approved Shoreline Variances (Parcel 9085/Ogren and Parcel 9071/Baerwald) with the Chan proposal (Parcel 9041):

	Code	Parcel 9085	Parcel 9071	Parcel 9041
Lot area (above OHWM)		5,760	7,858	25,765
Lot depth		43' - 75'	37' – 60'	65' – 75'
Non-encumbered area		143 SF	0 SF	0 SF
Street setback	10'	1'	2'	5'
Shore setback	50'	20' – 44'	20'	33' min.
Building footprint		1,844 SF	2,215 SF	3,561 SF
Residence footprint		1,360 SF	1,735 SF	2,251 SF
Garage footprint		484 SF	480 SF	886 SF
Covered patio		n/a	n/a	424 SF
Total impervious area		2,271 SF	3,223 SF	6,959 SF

Sources: Parcel 9041 – Exhibit 2; Parcels 9085 and 9071 – official notice

Neither Parcel 9085 nor Parcel 9071 involved a stream buffer and associated BSBL. [Official notice]

- E. “That the variance requested is the minimum necessary to afford relief;” [WAC 173-27-170(2)(e)]

Facts: Chan seeks approval of a residence that will be about 117 feet long (including a 35-foot long, three-bay garage) by between 28 and 32 feet wide. The structure is proposed to have a 14 foot by 24 foot covered patio with free-standing outdoor fireplace at its north end touching the edge of the reduced 75-foot stream buffer. The residence will enclose 4,995 SF of living area on two floors. (Exhibit 2)

The 5-foot street setback has been negotiated with King County, the agency which controls the ELST right-of-way. The 33-foot shoreline setback will place the west edge of the

structure outside of the lake's regulatory floodplain. The proposed first floor elevation will be 1.5 feet above the elevation of the regulatory flood plain. (Exhibit 2)

- F. "That the public interest will suffer no substantial detrimental effect." [WAC 173-27-170(2)(f)]

Facts: The existing shoreline is degraded and restoration of the shoreline environment is a high public priority that would be addressed by this project. Because utilities such as sewer, water, and electricity are nearby or already serve the site, and because partial street access is already provided, there will be no additional burden to the public from construction of a single-family residence. Leaving the parcel in its existing degraded condition would not further the interests of the public because restoration of the shoreline would not be accomplished. In addition, the proposed development will fit in with surrounding developed land uses within the immediate vicinity. Therefore, the Department concludes that no substantial detrimental effect to the public interest will result from the proposed project. (Exhibit 1, p. 29)

A Shoreline Restoration Plan was developed as part of the City's recent update of its SMP. The plan calls for restoration along portions of the Lake Sammamish shoreline, both voluntarily and as mitigation for development impacts. A concurrent Cumulative Impacts Analysis was prepared that concluded that although additional development would occur along the Lake Sammamish shoreline, the net effect of development combined with the standards prescribed by the SMP, other regulations, and mitigation efforts would prevent a net loss in shoreline ecological functions. (Exhibit 1, pp. 31 and 32)

- G. "In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment." [WAC 173-27-170(4)]

Facts: Chan's proposal will impact about 20% of Parcel 9041's area. $((3,631 \text{ SF structure area} + 1,449 \text{ SF patios and walks}) \div 25,765 \text{ SF lot area above the OHWM} = 0.197 \text{ or } 20\%)$ 20% lot impact is likely much less than might occur if and when other parcels within the UC-designated area develop. That is in large measure because of the size of Parcel 9041.

- H. "Variances from the use regulations of the master program are prohibited." [WAC 173-27-170(5)]

Facts: No relief from the SMP's use regulations has been requested.

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11. The review criteria for zoning variances are contained in SMC 21A.110.030. “A variance shall be granted by the City, only if the applicant demonstrates” compliance with each of 12 criteria. [SMC 21A.110.030] The criteria and the facts relating to each are as follows:

- A. “The strict enforcement of the provisions of this title creates an unnecessary hardship to the property owner;” [SMC 21A.110.030(1)]

Facts: If the required 10-foot setback from the ELST right-of-way were applied, either the structure would be five feet closer to the lake shoreline or its depth would have to be reduced by five feet. Since the near edge of the actual ELST is about 37 feet east of the edge of the right-of-way, the lake setback is more sensitive than is the “street” setback. (Exhibit 2) The house could be narrowed, but that would create an even skinnier structure for little to no gain.

- B. “The variance is necessary because of the unique size, shape, topography, or location of the subject property;” [SMC 21A.110.030(2)]

Facts: Parcel 9041 is located directly adjacent to the Lake Sammamish shoreline and is entirely encumbered with the standard 50-foot shoreline setback and the 150-foot stream buffers. A separate Shoreline Variance is required to reduce the shoreline setback. (The BSBL elimination request affects the north-south dimension of the proposed structure, not the east-west dimension. Therefore, that element of the Shoreline Variance has no effect on the street setback.) However, even with the reduction of the shoreline setback, there is not adequate room for a reasonably sized residence when complying with the 10-foot street setback. (Exhibits 1; 2)

- C. “The subject property is deprived, by provisions of this title, of rights and privileges enjoyed by other properties in the vicinity and under an identical zone;” [SMC 21A.110.030(3)]

Facts: The R-4 zone applies to the entire surrounding area, both lots sandwiched between the lake shoreline and the ELST and those located east of the Parkway. This criterion requires comparison of Parcel 9041 with all of those similarly zoned lots, not just with those between the lake and the ELST. Once that code requirement is considered in its proper context, it is evident that Parcel 9041 is deprived of the right to have a reasonably sized house because of the extreme shallowness of the lot. The requirement for a large shoreline setback only exacerbates the problem. (Exhibits 1; 2)

- D. “The variance does not create health and safety hazards, is not materially detrimental to the public welfare or is not unduly injurious to property or improvements in the vicinity;” [SMC 21A.110.030(4)]

Facts: The garage is positioned at the south end of the structure to minimize the length of the driveway and, thus, minimize impervious surfaces. The house and garage will be 40 or more feet from the actual edge of the ELST. Substantial landscaping will be planted between the residence and the ELST. (Exhibits 2; 4)

- E. “The variance does not relieve an applicant from any of the procedural provisions of this title;” [SMC 21A.110.030(5)]

Facts: Chan has not requested any relief from the procedural requirements of Title 21A SMC. (Exhibit 1)

- F. “The variance does not relieve an applicant from any standard or provision that specifically states that no variance from such standard or provision is permitted;” [SMC 21A.110.030(6)]

Facts: Street setback variances are not prohibited by Title 21A.

- G. “The variance does not relieve an applicant from conditions established during prior permit review or from provisions enacted pursuant to SMC 21A.50.225, Erosion hazards near sensitive water bodies [EHNSWB] – Special district overlay, SMC 21A.50.322, Wetland management area – Special district overlay, or SMC 21A.50.355, Lake management areas – Special district overlay;” [SMC 21A.110.030(7)]

Facts: The record does not disclose any “conditions established during prior permit review.” Chan will have to comply with any and all applicable provisions of the listed regulations; the setback variance does not seek relief from any of those provisions. Parcel 9041 is not located within the EHNSWB overlay area, is not within a wetland management area, and is not in a lake management area.¹³ (Testimony)

- H. “The variance does not allow establishment of a use that is not otherwise permitted in the zone in which the proposal is located;” [SMC 21A.110.030(8)]

Facts: This is not a use variance. Parcel 9041 is zoned R-4. Single-family residences are a permitted use in the R-4 zone.

- I. “The variance does not allow the creation of lots or densities that exceed the base residential density for the zone by more than 10 percent;” [SMC 21A.110.030(9)]

¹³

Exhibit 24, a map produced by the King County iMap system, appears to indicate that the subject property does lie within the EHNSWB overlay zone. Given the unreliability of some iMap information, the Examiner finds the testimony by the Department’s Deputy Director that the site is not within the EHNSWB overlay to be more credible. Further, review of the official EHNSWB map on the City’s web site clearly shows that the EHNSWB overlay area does not extend west of the Parkway in this portion of the City.

[Official notice, <https://www.sammamish.us/attachments/pagecontent/36875/16113.pdf>, last visited August 1, 2017.]

Facts: The proposed variance is not creating or altering any lot.

- J. “The variance is the minimum necessary to grant relief to the applicant,” [SMC 21A.110.030(10)]

Facts: A lesser street setback zoning variance would require a larger Shoreline Variance in order to accommodate a reasonably sized residence given the shallow depth of Parcel 9041. Given the sensitivity of the lake and the substantial distance (40± feet) between the east face of the proposed residence and the actual ELST, the requested zoning setback variance is the minimum necessary for reasonable relief. (Exhibits 1; 2)

- K. “The variance from setback or height requirements does not infringe upon or interfere with easement or covenant rights or responsibilities; and” [SMC 21A.110.030(11)]

Facts: The record contains no evidence of any easements or covenants affecting Parcel 9041.

- L. “The variance does not relieve an applicant from any provisions of Chapter 21A.50 SMC, Environmentally Critical Areas, except for the required building setbacks set forth in Chapter 21A.50 SMC.”

Facts: The requested setback variance does not seek any relief from the requirements of Chapter 21A.50 SMC.

12. The Chan application is categorically exempt from the threshold determination requirements of the State Environmental Policy Act (“SEPA”). (Exhibit 1, p. 1) Further, construction of a single-family residence for the applicant’s own use is categorically exempt from the requirement to obtain a Shoreline Substantial Development Permit (“SSDP”). [RCW 90.58.030(3)(e)(vi)] Had the dock remained a component of the application, then an SSDP and a SEPA threshold determination would likely have been required.¹⁴
13. A “seismic hazard area” is defined by the SMC as “those areas mapped as moderate to high and high liquefaction susceptibility and peat deposits on the Liquefaction Susceptibility Map of King County, Washington, Washington Division of Geology and Earth Sciences, OFR 2004-20, Palmer et al., September, 2004, as revised.” [SMC 21A.15.1045] Exhibit 24 indicates that Parcel 9041 is in a seismic hazard area, but it provides no indication as to whether Parcel 9071 is considered to have Very Low or Moderate to High liquefaction potential.
14. Section 21A.50.270 SMC requires development within seismic hazard areas to comply with all building code requirements and either to provide a study demonstrating that the site is not located in

¹⁴ The word “likely” is used as there is a cost threshold below which an SSDP is not required for a private dock.

a seismic hazard area or to provide mitigation to minimize hazards to life and limb from liquefaction or settlement, presumptively prior to issuance of a building permit.

15. In addition to the plans which have been referenced throughout these Findings of Fact, Chan submitted studies and analyses supporting the application. (Exhibits 8 – 15; 20; 21; 23; and testimony)
16. The Department's Staff Report (Exhibit 1) contains a recitation of the facts of this application in greater detail than summarized above. The following additions/clarifications/corrections were made to Exhibit 1 during the hearing:
 - A. Page 5. Figure 1 ID #6 is the Ogren parcel; Figure 1 ID #7 is the Baerwald parcel. (Testimony)
 - B. Page 9, Figure 3. The 424 SF figure for "covered porches & decks" includes the covered patio at the north end of the proposed residence and a covered entry. (Testimony)
 - C. Page 9, next to last paragraph. The second sentence which begins "In addition, there species ..." should begin "In addition, these species" (Testimony)
 - D. Page 14, § 3. The 456 SF figure for "covered patios, balconies and canopies" is for lot coverage, not structure footprint, and includes roof overhangs. (Testimony)
 - E. Page 16, § 23. In the third line from the end of the paragraph, the word "over" should be "cover." (Testimony)
 - F. Page 18, § 1. the 746 SF figure in this paragraph represents the available area outside all required buffers and setbacks. ¹⁵ (Testimony)
 - G. Page 19, § 10. The "33 sf patio" is a typographical error. The actual footprint size of the covered patio at the north end of the residence is 14 feet by 24 feet or 336 SF. (Testimony)

The Findings and Analysis in the Staff Report were not challenged. Therefore, except to the extent they may conflict with this Decision, the Findings and Analysis contained in Exhibit 1 are incorporated herein by reference as if set forth in full.

17. The Department recommends approval of both the Shoreline Variance and the zoning variance, each subject to recommended conditions. (Exhibit 1, pp. 20, 21, 35, and 36) Chan has no objection to any of the Department's recommended conditions. (Testimony)

¹⁵ As has been previously noted, the Department did not factor in any buffer associated with stream Unnumbered 3. There is no buildable area when that additional buffer is factored in.

18. The Snoqualmie Indian Tribe (“Snoqualmie Tribe”) objects to the size of the proposed Chan residence. The Snoqualmie Tribe notes that the total square footage of the proposed residence “is over twice the 2015 median size for a single family residence in the United States”. (Exhibit 19.1, ¶ 2) The Snoqualmie Tribe believes that a reduced footprint “would have a reduced impact to the multiple aquatic area buffers present on the property.” (*Ibid.*) The Snoqualmie Tribe posits that human behaviors must change if fish such as the Lake Sammamish kokanee are to be saved from extinction. Finally, the Snoqualmie Tribe urges the use of native plants in all restoration work on the site. (Exhibit 19.1 and 19.4)
19. Aurora Purcell (“Purcell”) and Vince Mendillo (“Mendillo”) oppose the requested variances.¹⁶ (Exhibits 19.2; 19.3; 24 – 33; and testimony) Purcell is concerned about a particular culvert beneath the ELST. (Exhibit 19.2) That culvert, however, is located near the north end of Parcel 9071 (Baerwald), hundreds of feet north of Parcel 9041. [Official notice]

Purcell asserts that the zoning variance does not meet approval criterion SMC 21A.110.030(7). (Exhibit 33; and testimony) As noted in Footnote 12, above, the site is not located in the EHNSWB overlay area. Nor is it located in a wetland management area or a lake management area. The assertion is without merit.

Purcell asserted in her testimony that King County re-routed stream Unnamed 3 to join Stream 0143G during its work on the ELST. She claims that Unnamed 3 flowed across the southern end of Parcel 9041 prior to King County’s actions. (Testimony) Whether King County altered the course of Unnamed 3 is irrelevant to the Chan application: This is the wrong forum in which to accuse King County of taking an action on an adjacent property; there is absolutely no evidence that Chan did anything to alter the course of Unnamed 3.

Purcell’s hearing testimony discussed a Shorelines Hearings Board (“SHB”) case relating to expansion of a nonconforming residence subject to a local (not Sammamish) SMP. (Exhibits 29; 33) The SHB concluded that nonconforming uses should be phased out and that their expansion should be limited. (Exhibit 29) The present application is not a nonconforming use case.

As she has in previous hearings, Purcell expressed concern about the cumulative impact of approving Shoreline Variances to parcels designated UC. (Exhibit 33; and testimony)

Mendillo’s letter contains several inaccuracies. He suggests that the Ogren, Baerwald, Chan, and Paul applications included requests for private docks. (Exhibit 19.3, ¶ 1) That is factually untrue: None of the four applications included a request for a dock. (Exhibit 31; official notice)

Mendillo asserts that Parcel 9041 has 475 feet of lake shoreline. (Exhibit 19.3, ¶ 1) That is inaccurate: Parcel 9041 has about 325 feet of lake shoreline. (Exhibit 2)

¹⁶ Purcell and Mendillo also opposed the Ogren and Baerwald applications. [Official notice]

Mendillo states that Stream 0143F flows through the parcel south of Parcel 9041. (Exhibit 19.3, ¶ 1) That is also untrue; Stream 0143F flows through the parcel north of Parcel 9041. (Exhibit 2)

Mendillo states that the parcel to the south of Parcel 9041 has a salmonid egg incubator. (Exhibit 19.3, ¶ 4) That is also untrue: One of the documents submitted by Purcell states that the salmonid egg incubator is on Stream 0143F, which would put it on the parcel to the north. (Exhibit 27)

Mendillo mentions a “federal case against Washington State” regarding culverted streams. (Exhibit 19.3, ¶ 5) Mendillo is most likely referring to the Ninth Circuit Court’s 2016 decision, an excerpt from which was submitted by Purcell. (Exhibit 32) That case specifically addressed the problem of old culverts which were found to not make adequate provisions for salmonids to pass through them. The Ninth Circuit supported the District Court’s conclusion that “correction of human-caused barriers is recognized as the highest priority for restoring salmon habitat in the” state. (Exhibit 32, document p. 50) There are no culverts or other “human-caused barriers” to fish passage on Parcel 9041. Chan is not proposing to install any culverts or such barriers on Parcel 9041. (Exhibit 2)

Finally, Mendillo worries about the effect of the proposed project on “the homes on the other side of the trail”. (Exhibit 19.3, ¶ 5 (the portion at the top of the second page)) The “homes on the other side of the trail” are at least 160 feet east of the east edge of Parcel 9041, across both the ELST and the Parkway. The record is devoid of any evidence to suggest that construction of the proposed residence would have any effect whatsoever on the residences on the hillside east of the Parkway.

20. No other testimony or evidence was entered into the record by the general public either in support of or in opposition to the applications.
21. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ¹⁷

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A Shoreline Variance is a Type 4 procedure. A Type 4 land use application requires an open record hearing before the Examiner. According to the SMC, the Examiner makes a final decision on Type IV applications which is subject to the right of reconsideration and appeal to the State Shorelines Hearings Board. [SMC 20.05.020, 20.10.240, 20.10.260, and 25.35.080(1)] However, state law requires that the local action on a Shoreline Variance (and Shoreline Conditional Use Permit) is technically subject to approval by the Washington State Department of Ecology (WSDOE), whose decision may be appealed to the Shorelines Hearings Board, a state quasi-judicial review board. [RCW 90.58.140(10)]

¹⁷ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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A zoning variance is normally a Type 2 procedure in which the Department acts administratively. [SMC 20.05.020, Exhibit A] An appeal from the Department's action on a Type 2 land use application requires an open record hearing before the Examiner. The Examiner makes a final decision on the appeal which is subject to the right of reconsideration and appeal to Superior Court. [SMC 20.05.020, 20.10.240, 20.10.250, and 20.10.260]

When applications are consolidated for processing, they follow the highest numbered process type; in this case, Type 4. [SMC 20.05.020(2)] However, neither WSDOE nor the Shorelines Hearings Board have any jurisdiction over zoning variances. Therefore, the Examiner's Decision on the zoning variance portion of this consolidated application is final subject to the right of reconsideration and appeal to Superior Court.

The Examiner's decision may be to grant or deny the application or appeal, or the examiner may grant the application or appeal with such conditions, modifications, and restrictions as the Examiner finds necessary to make the application or appeal compatible with the environment and carry out applicable state laws and regulations, including Chapter 43.21C RCW and the regulations, policies, objectives, and goals of the interim comprehensive plan or neighborhood plans, the development code, the subdivision code, and other official laws, policies and objectives of the City of Sammamish.

[SMC 20.10.070(2)]

Review Criteria

Section 20.10.200 SMC sets forth requirements applicable to all Examiner Decisions:

When the examiner renders a decision ..., he or she shall make and enter findings of fact and conclusions from the record that support the decision, said findings and conclusions shall set forth and demonstrate the manner in which the decision ... is consistent with, carries out, and helps implement applicable state laws and regulations and the regulations, policies, objectives, and goals of the interim comprehensive plan, the development code, and other official laws, policies, and objectives of the City of Sammamish, and that the recommendation or decision will not be unreasonably incompatible with or detrimental to affected properties and the general public.

Subsection 25.08.050(1) SMC adopts the WAC 173-27-170 Shoreline Variance review criteria. The review criteria for a Shoreline Variance depend upon whether the proposal is located landward or waterward of the OHWM. [WAC 173-27-170] The applicable criteria have been set forth in Finding 10, above.

The review criteria for zoning variances are set forth in SMC 21A.110.030. The applicable criteria have been set forth in Finding 11, above.

Vested Rights

Sammamish has enacted a vested rights provision.

Applications for Type 1, 2, 3 and 4 land use decisions, except those that seek variance from or exception to land use regulations and substantive and procedural SEPA decisions shall be considered under the zoning and other land use control ordinances in effect on the date a complete application is filed meeting all the requirements of this chapter. The department's issuance of a notice of complete application as provided in this chapter, or the failure of the department to provide such a notice as provided in this chapter, shall cause an application to be conclusively deemed to be vested as provided herein.

[SMC 20.05.070(1), emphasis added] Therefore, this application has no vested rights

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [SMC 25.08.050(4) and City of Sammamish Hearing Examiner Rule of Procedure 316(a)]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. When considering whether a requested variance meets the "minimum relief" criterion, one must relate that criterion to the nature of the relief requested. Here, Chan seeks relief from the lake shore setback requirement, the Stream 0143G buffer BSBL requirement, and the ELST setback requirement. Chan does not seek relief from the lot area coverage requirements, requirements which typically regulate the area of the lot that may be covered (in other words, the size in square feet of the building). In fact, the very large size of Parcel 9041 (two to three times the area of neighboring lots) means that the proposed lot coverage percentage is very small (20%). When considering the setback variance requests, the question is whether the extent of setback relief requested is the minimum required to afford reasonable relief, not whether the resulting building envelope meets some arbitrary notion of an appropriately-sized residence.
2. Each of the variance elements will be addressed separately. The Snoqualmie Tribe argues, as it has in previous Shoreline Variance cases, that a wider shoreline setback should be preserved along the lake shoreline. (Exhibits 19.1; 19.4) However, the SMP specifically allows as little as a 20 foot lake shoreline setback for properties within the SR zone. Those properties account for the vast majority of the City's Lake Sammamish shoreline. It is thus apparent that the City's legislative officials believed that a 20 foot Lake Sammamish shoreline setback was generally adequate. The efficacy of that legislative policy cannot legally be challenged in the context of this quasi-judicial permit process.

Further, the only existing significant tree which will be removed within 20 feet of the lake's OHWM is one hazardous tree which, because of its location, provides little, if any, shade to the lake. The extent and density of shoreline enhancement exceeds that required for reduction of the lake setback to 20 feet in the areas designated SR. While some lawn area is allowed in the SR designated area with a setback reduction, none is proposed here. The preponderance of the evidence demonstrates that the functional values of the shoreline will be enhanced substantially over the present condition.

Finally, the shoreline setback proposed here is 50% greater than that proposed and allowed for Parcel 9071 and 50% greater than the minimum allowed for Parcel 9085. This is in part a reflection of the larger size of Parcel 9041, but is also a reflection of an application that is not "pushing the envelope" towards the lake shoreline.

3. Complete elimination of the Stream 0143G BSBL is a different situation entirely. Chan's proposal already relies on administrative approval of the maximum stream buffer reduction allowed – 50%. Now that the buffer is reduced from 150 feet to 75 feet, Chan wants to further reduce stream protection by eliminating the BSBL. The proposal places the north edge of the covered patio and the free-standing outdoor fireplace precisely on the southern edge of the reduced stream buffer. (Exhibit 2) Chan states that King County's desire for a 5-foot minimum setback from the ELST right-of-way necessitated that he "stretch the house out to the north, which is the reasoning for the 0 foot stream buffer variance request." (Exhibit 9, unnumbered p. 2) There is another alternative: Reduce the north-south dimension of the building footprint. Chan's proposal is for a 117 foot long structure housing a 2,251 SF first floor, an 886 SF garage, and a 2,744 SF second story, with an additional 14 feet added on to the north end containing a 336 SF covered patio. With that amount of area to work with, reducing the north-south length of the structure should be easy. This is not a small house where forcing further reduction would cause a hardship.

Chan's environmental consultant argues that "[o]ne of the primary purposes of a building setback is to allow maintenance of the structure without intrusion into the buffer." (Exhibit 13, p. 8) The consultant notes that locations other than within the stream buffer will be available from which to reach the covered patio roof for maintenance. (*Ibid.*) Maintenance may well be one reason for a BSBL requirement,¹⁸ but it is most certainly not the only reason. The Examiner would posit that an even more important reason for a BSBL is to keep building construction impacts from intruding into the protected buffer. It would be a practical impossibility to set forms for a slab patio and fireplace foundation, pour and surface the concrete, construct a masonry-clad fireplace, and construct a roof over the patio without setting foot across the buffer line which would be immediately abutting the north edge of the structure being built. The Examiner does not find that hardship has been shown to justify eliminating the 15-foot BSBL. There is sufficient room available to alter the plan or the house can be slightly reduced in size to accommodate the required 15-foot BSBL.

¹⁸

The record contains no legislative history of the adoption of that requirement, so we can't say for certain why the City Council adopted the BSBL requirement.

Chan's agent argued during the hearing that the stream buffer would be disturbed anyway during the removal of invasive species and that house/covered patio construction disturbance would be no different. The Examiner disagrees. The former disturbance is for a beneficial purpose (removal of invasive species and planting native species), the latter disturbance would be solely for convenience. Workers doing the invasive species removal would be expected to be environmentally considerate of desirable species, workers building the residence/covered patio could not be presumed to have such considerations in mind.

The BSBL elimination definitely does not meet the "minimum relief" criterion and likely other criteria as well. The BSBL elimination request must be denied.

4. The ELST setback reduction is justified if only because it allows for a greater lake shore setback.
5. The preponderance of the evidence, summarized in Finding of Fact 10, above, demonstrates compliance with all criteria for approval of a Shoreline Variance for lake shore setback (and, if necessary, buffer width for stream Unnamed 3). (The reader is referred to Exhibits 1 and 13 for more in-depth analyses of criteria compliance than presented in Finding of Fact 10.)

A word or two about the "cumulative impact" criterion (See Finding of Fact 10.G, above.) is warranted here. The Department's Deputy Director testified in the recent Ogren hearing that the Department insists that shoreline permit applicants demonstrate "no net loss" of shoreline habitat and functions, and encourages applicants to achieve a net gain of shoreline habitat and functions. [Official notice] The evidence in this case clearly demonstrates a net gain in shoreline habitat and functions from the proposed enhancement/mitigation. If every development along the shoreline met that objective, then the cumulative impact would be beneficial, not detrimental. Given that the UC environment designation specifically allows single-family residences, it is neither logical nor legally defensible to argue that single-family residences should not be allowed on UC-designated parcels.

6. The recommended conditions of approval for the Shoreline Variance as set forth in Exhibit 1 at pages 35 and 36 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. Recommended Condition 1. The Examiner believes that all variance approvals should verbally state the limits of the approval. This condition relies on a reference to Exhibit 2 to provide that specificity. That would normally be adequate. But, in this case the Examiner is denying one part of the request (the BSBL elimination variance) which will necessitate some alterations to the site plan. Therefore, some textual specificity is also required. The condition will be revised to do so.
 - B. Recommended Condition 2. The Examiner does not like to use the word "applicant" in permit conditions. "Applicant" may be read by some to refer only to the party which initially applied for the variance. Land use permits run with the land; that is, the permit remains valid

even if title to the property changes hands. In order to avoid any future misunderstanding, the Examiner prefers to use words such as “owner,” “developer,” etc. depending upon context. In this case the Examiner will substitute “owner/developer” for “applicant.”

- C. Recommended Condition 4. A minor wording change will improve readability of this condition: The phrase “prohibits the shoreline stabilization” would read better if it said “prohibits shoreline stabilization”. That change will be made.
- D. Recommended Condition 7. This indemnification condition is relatively new. The Department testified that it had not consulted with the City Attorney prior to deciding to recommend imposition of this condition on all variance applications. The Department’s justification is in part a concern that lot owners may seek financial redress from the City in the event climate change causes problems with the property in the future. The Examiner concludes that imposition of a legally complex and important indemnification condition on a whole class of permits should be preceded by review by the City Attorney and, possibly, the City Council. The Examiner declines to set a precedent by imposing the condition on this permit.
- D. Section 173-27-190 WAC contains certain content and format requirements for any Shoreline Variance which is issued:

(1) Each permit for a substantial development, conditional use or variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140(5)(a) and (b).

(2) Permits for substantial development, conditional use, or variance may be in any form prescribed and used by local government including a combined permit application form. Such forms will be supplied by local government.

(3) A permit data sheet shall be submitted to the department with each shoreline permit. The permit data sheet form shall be as provided in Appendix A of this regulation.

Subsection (2) allows this Decision to serve as the Shoreline variance. Subsection (1) requires that an additional condition be added. The data sheet required by Subsection (3) will be prepared by the Department when it transmits the Shoreline Variance and supporting exhibits to the state as required by Chapter 90.58 RCW.

7. The preponderance of the evidence, summarized in Finding of Fact 11, above, demonstrates compliance with all criteria for approval of a zoning variance. (The reader is referred to Exhibits 1 and 14 for more in-depth analyses of criteria compliance than presented in Finding of Fact 11.)
8. The recommended conditions of approval for the zoning variance as set forth in Exhibit 1 at pages 20 and 21 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. Recommended Condition 1. The Examiner believes that all variance approvals should verbally state the limits of the approval. This condition will be revised to do so.
 - B. Recommended Conditions 2 and 3. The Examiner does not like to use the word “applicant” in permit conditions. “Applicant” may be read by some to refer only to the party which initially applied for the variance. Land use permits run with the land; that is, the permit remains valid even if title to the property changes hands. In order to avoid any future misunderstanding, the Examiner prefers to use words such as “owner,” “developer,” etc. depending upon context. In this case the Examiner will substitute “owner/developer” for “applicant.”
 - C. Recommended Condition 6. This indemnification condition is relatively new. The Department testified that it had not consulted with the City Attorney prior to deciding to recommend imposition of this condition on all variance applications. The Department’s justification is in part a concern that lot owners may seek financial redress from the City in the event climate change causes problems with the property in the future. The Examiner concludes that imposition of a legally complex and important indemnification condition on a whole class of permits should be preceded by review by the City Attorney and, possibly, the City Council. The Examiner declines to set a precedent by imposing the condition on this permit.
9. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

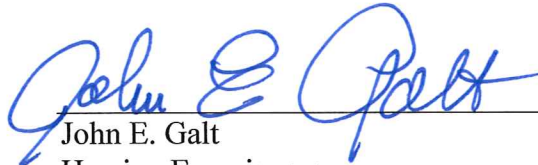
DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner:

- A. **GRANTS** the requested zoning variance under file number ZONV2016-00518 from SMC 21A.25.030(A) to relax the street setback **SUBJECT TO THE ATTACHED CONDITIONS**.
- B. **GRANTS** City approval of the requested Shoreline Variance under file number SVAR2016-00517 from SMC 25.06.020(9) and 25.07.010, Table 25.07.010-2 to relax the shoreline setback (and, if

necessary, buffer width for stream Unnamed 3) **SUBJECT TO CONDITIONS SET FORTH WITHIN THE ATTACHED PERMIT**; and **DENIES** City approval of the requested Shoreline Variance under file number SVAR2016-00517 from SMC 21A.50.210 to eliminate the required 15-foot building setback line from the reduced Stream 0143G buffer.

Decision issued August 1, 2017.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ¹⁹

Roger McPherson
Aurora Purcell
John Altman
Vince Mendillo

Tracy Cui
David Pyle
Simone Oliver

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file with the Examiner (in care of the City of Sammamish, ATTN: Lita Hachey, 801 228th Avenue SE, Sammamish, WA 98075) a written request for reconsideration within 10 calendar days following the issuance of this Decision in accordance with the procedures of SMC 20.10.260 and Hearing Examiner Rule of Procedure 504. Any request for reconsideration shall specify the error which forms the basis of the request. See SMC 20.10.260 and Hearing Examiner Rule of Procedure 504 for additional information and requirements regarding reconsideration.

A request for reconsideration is not a prerequisite to judicial review of this Decision. [SMC 20.10.260(3)]

NOTICE of RIGHT of JUDICIAL REVIEW ZONING VARIANCE

The zoning variance portion of this Decision is final and conclusive subject to the right of review in Superior Court in accordance with the procedures of Chapter 36.70C RCW, the Land Use Petition Act.. See Chapter 36.70C RCW and SMC 20.10.250 for additional information and requirements regarding judicial review.

¹⁹ The official Parties of Record register is maintained by the City's Hearing Clerk.

**NOTICE of RIGHT of APPEAL
SHORELINE VARIANCE**

The ultimate decision by the Washington State Department of Ecology on the Shoreline Management Variance portion of this Decision is final subject to the right of appeal to the State Shorelines Hearings Board. Please see RCW 90.58.180 and Chapter 173-27 WAC for guidance regarding Hearings Board appeal procedures.

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation."

**CONDITIONS OF APPROVAL
ZONV2016-00518
CHUCK YOONG CHAN AND MEI-CHIN TSAI**

This Zoning Variance is subject to compliance with all applicable provisions, requirements, and standards of the Sammamish Municipal Code, standards adopted pursuant thereto, and the following special conditions:

1. The zoning variance granted herein is limited solely to that requested, to wit: Reduction of the SMC 21A.25.030(A) street setback from 10 feet to not less than 5 feet for the residence as generally depicted on Exhibit 2. No other variance is either expressed or implied.
2. The owner/developer shall comply with all federal, state, or local statutes, ordinances, rules, or regulations applicable to this project, including obtaining any additional required permits.
3. The owner/developer shall comply with the payment of street impact fees, impact fees for park and recreational facilities, and school impact fees in accordance to SMC Chapters 14A.15, 14A.20, and 21A.105, respectively.
4. A notice on title shall be recorded for this property that reflects the zoning variance and designated setback.
5. If cultural resources are unearthed during the development process, immediately cease and desist ALL operations and contact the City of Sammamish, the Washington State Department of Archeology and Historic Preservation (DAHP) Historic Preservation Officer, regional Native American Tribes, and King County concerning the appropriate treatment of archaeological and

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historic resources. Do not resume work until appropriate approvals are received and the City of Sammamish has authorized development to resume.

CITY of SAMMAMISH

**SHORELINE MANAGEMENT ACT
VARIANCE**

File No.: SVAR2016-00517

Applicants: Chuck Yoong Chan and Mei-Chin Tsai
21626 SE 28th Street
Sammamish, WA 98075

A Shoreline Management Variance is **GRANTED** pursuant to the Shoreline Management Act of 1971 [Chapter 90.58 RCW] from SMC 25.06.020(9) and 25.07.010, Table 25.07.010-2 to relax the shoreline setback (and, if necessary, buffer width for stream Unnamed 3) as generally reflected in Hearing Exhibit 2 and as further restricted herein.

A Shoreline Management Variance is **DENIED** pursuant to the Shoreline Management Act of 1971 [Chapter 90.58 RCW] from SMC 21A.50.210 to eliminate the required 15-foot building setback line from the reduced Stream 0143G buffer.

This variance applies to the property legally described in Exhibit 16 which is generally located in the 2900 block of East Lake Sammamish Parkway NE between the East Lake Sammamish Trail and the shoreline of Lake Sammamish in Section 20, Township 25 N, Range 6 E, W.M..

This variance is subject to all applicable regulations of the Sammamish Shoreline Master Program. In addition, this permit is subject to the following **SPECIAL CONDITIONS**:

1. The Shoreline Variance granted herein is limited solely to reduction of the SMC 25.06.020(9) and 25.07.010, Table 25.07.010-2 shoreline setback from 50 feet to not less than 33 feet for the proposed residence (and, if necessary, buffer width for stream Unnamed 3) as generally depicted on Exhibit 2. (The requested variance from SMC 21A.50.210 having been denied, the depiction of the structure's footprint on Exhibit 2 is not approved in so far as its setback from the southern edge of the Stream 0143G 75-foot buffer is concerned.) No other variance is either expressed or implied.
2. The owner/developer shall comply with all federal, state, or local statutes, ordinances, rules, or regulations applicable to this project; including obtaining any additional required permits.
3. A notice on title shall be recorded for this property that reflects the reduced shoreline setback, as well as reflects information about the mitigation project required for development of this property.

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4. A notice on title shall be recorded for this property that prohibits shoreline stabilization through the use of hard structural stabilization or a bulkhead. The owner may use bio-engineering shoreline stabilization techniques only. The notice shall also prohibit use of herbicides or pesticides on the property. Final language shall be submitted to the City of Sammamish for review and approval prior to recording.
5. A bond quantity worksheet must be supplied for city review. A performance bond must be posted to ensure completion of mitigation work. After mitigation installation, the project biologist must document installed mitigation in an as-built report and plan that is supplied for City review. After the City accepts the as-built condition, the performance bond will be released and the mitigation project will shift into the required 5-year mitigation monitoring period after a maintenance and defect bond is posted to replace the performance bond.
6. If cultural resources are unearthed during the development process, immediately cease and desist ALL operations and contact the City of Sammamish, the Washington State Department of Archeology and Historic Preservation (DAHP) Historic Preservation Officer, regional Native American Tribes, and King County concerning the appropriate treatment of archaeological and historic resources. Do not resume work until appropriate approvals are received and the City of Sammamish has authorized development to resume.

EXCEPT AS PROVIDED IN RCW 90.58.140(5)(a) AND (b), CONSTRUCTION PURSUANT TO THIS PERMIT SHALL NOT BEGIN AND IS NOT AUTHORIZED UNTIL TWENTY-ONE DAYS FROM THE DATE THIS PERMIT IS FILED WITH THE WASHINGTON STATE DEPARTMENT OF ECOLOGY AND ATTORNEY GENERAL AS REQUIRED BY RCW 90.58.140(6) AND WAC 173-27-130, OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN TWENTY-ONE DAYS FROM THE DATE OF SUCH FILING HAVE BEEN TERMINATED.

VARIANCE issued August 1, 2017.


John E. Galt
Hearing Examiner

DEPARTMENT OF ECOLOGY REVIEW

The above variance is **APPROVED** _____ / **APPROVED WITH ADDITIONAL CONDITIONS**
_____ **DENIED** _____ pursuant to WAC 173-27-200.

COMMENTS/ADDITIONAL CONDITIONS: _____

(Name)

(Title)

(Date)