

**BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH**

DECISION

FILE NUMBERS: SVAR2018-00724 & SSDP2018-00114

APPLICANT: Charles S. Merrin
2699 East Lake Sammamish Parkway SE
Sammamish, WA 98075

TYPE OF CASE: Consolidated: 1) Shoreline Management Act Variance from the requirement that new boat lifts installed between five and 15 feet of the side property line extended must be installed perpendicular to the shoreline; and 2) Shoreline Substantial Development Permit for installation of six (6) freestanding boat lifts at an existing shared-use dock

STAFF RECOMMENDATION: Approve both applications subject to conditions

EXAMINER DECISION: GRANT both applications subject to conditions

DATE OF DECISION: June 20, 2019

INTRODUCTION ¹

Charles S. Merrin (“Merrin”), as representative of the Lake Sammamish Estates Homeowners Association (“Association”), seeks approval of a Shoreline Management Act (“SMA”) Variance (“Shoreline Variance”) from the requirement that new boat lifts installed between five and 15 feet of the side property line extended must be installed perpendicular to the shoreline and a Shoreline Substantial Development Permit (“SSDP”) for installation of six (6) freestanding boat lifts at an existing shared-use dock.

Merrin filed a Shoreline Substantial Development Land Use Application on February 28, 2018. (Exhibits 1; 14²; and testimony) The Sammamish Department of Community Development (“Department”) deemed the application to be complete when filed. (Exhibit 15) The Department issued a Notice of Application on March 28, 2018. (Exhibit 16) That application came on for hearing on November 30, 2018, at which time the Examiner advised the participants that the proposed boat lift configuration could not be approved as it was inconsistent with the requirement that new boat lifts installed between five and 15 feet of the side property line extended must be installed perpendicular to the shoreline. The hearing was recessed before submittal of any evidence or testimony so that Merrin could submit a companion Shoreline Variance application..

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 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.

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Merrin filed a Shoreline Variance Land Use Application on December 6, 2018. (Exhibits 1; 17) The Department deemed that application to be complete when filed. (Exhibit 18) The Department issued a Notice of Application on January 14, 2019. (Exhibit 19)

The subject property is located at 2645 East Lake Sammamish Parkway SE.

The Examiner held an open record hearing on the consolidated SSDP and Shoreline Variance applications on June 13, 2019. The Department gave notice of the hearing as required by the Sammamish Municipal Code (“SMC”). (Exhibit 31)

Subsection 20.05.100(1) SMC requires that decisions on SSDP and Shoreline Variance applications be issued within 120 net review days after the application is found to be complete. The open record hearing was held after the 120th net review day. (Testimony). The SMC provides two potential remedies for an untimely decision: A time extension mutually agreed upon by the City and the applicant [SMC 20.05.100(2)] or written notice from the Department explaining why the deadline was not met [SMC 20.05.100(4)]. Merrin chose to extend the deadline. (Testimony)

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

- Exhibits 1 - 31: As enumerated in Exhibit 1, the May 13, 2019, Departmental Staff Report
- Exhibit 32: Notice of Public Hearing, issued September 13, 2018
- Exhibit 33: E-mail exchange, Cui (City) – Sandercock (Department of Ecology (“Ecology”)), June 3 & 4, 2019 (re: field verification of OHWM not required for installation of the proposed boat lifts on an existing dock)

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. The Association desires to install six boat lifts in six existing slips at a shared-use dock in Lake Sammamish that was expressly designed and constructed for such installation. The City’s Shoreline Management Master Program (“SMP”) contains a special requirement for such boat lifts: “No boat lift shall be located closer than five feet from the side property line extended. New boat lifts installed between five and 15 feet of the side property line extended must be installed perpendicular to the shoreline.” [SMC 25.07.050(2)(i)] The outer ends of the six slips, three angled 10-foot wide slips on each side of a 4-foot wide central dock, are precisely 15 feet from the side property lines extended. When the boat lifts are added, their “outboard” corners are slightly over nine feet from the side property lines extended. (Exhibit 2) Therefore, installation of the boat lifts requires issuance of a

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Shoreline Variance due to lack of compliance with SMC 25.07.050(2)(i). Installation of the six boat lifts will cost about \$60,000 - \$70,000. (Testimony) Therefore, installation of the boat lifts also requires issuance of an SSDP.

2. The property upon which the existing dock is and proposed boat lifts will be located is the smallest, at only 50 feet wide, of nine parcels comprising the Association. (Exhibit 4) A basic understanding of the history of the Association is fundamental to the proper evaluation of the requested Shoreline Variance. The recitation which follows is based upon Exhibits 3, 4, and 8, and the testimony of Merrin and Gregory Ashley (“Ashley”), the agent for the several property owners during the processing of the dock and boat lift applications.³ Specific citations will be given only for direct quotes from source documents. Merrin testified that the current owners refer to the nine parcels using their street address numbers rather than their King County Tax Account Parcel Numbers or any other numbering system. The Examiner will follow that convention.

At some time prior to 2012, Robert Rundle (“Rundle”) owned about 3.5 acres between the east shoreline of Lake Sammamish and East Lake Sammamish Parkway SE (“Parkway”) which were bisected in a more-or-less north-south direction by the East Lake Sammamish Trail (“ELST”) right-of-way (a former Burlington Northern Railroad right-of-way). The 3.5 acres consisted of three parcels along the lake shoreline (the “shoreline parcels”: 2641, 2645, and 2649) and six parcels between the ELST and Parkway rights-of-way (the “upland parcels”: 2619, 2623, 2637, 2653, 2675, and 2699). In 2012, Rundle, signing as Managing Member of Lake Sammamish Home (“LSH”) 1, LLC (“LSH1”), obtained approval from the City of a Boundary Line Adjustment (“BLA”) (PLN2012-00018) which altered the six upland parcels into their current configuration; the BLA did not include nor alter the configuration of the three shoreline parcels. The nine parcels are depicted in their current configuration in the following sketch from King County’s on-line Parcel Viewer.



³ The Examiner has not gone outside the record of this hearing (except to obtain a sketch of the nine parcels from the King County Parcel Viewer, to take official notice of the recorded 2012 BLA, and for legal research) in preparing this recitation.

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By 2017 ownership of the nine parcels was held by three LLCs: LSH1, whose Managing Member was then Upinder Dhinsa (“Dhinsa”), which owned the six upland parcels plus 2649; LSH2, LLC (“LSH2”), whose Managing Member was Rundle, which owned 2645 (the subject property); and LSH3, LLC (“LSH3”), whose Managing Member was also Rundle, which owned 2641.

In 2017, LSH1, LSH2, and LSH3 formed the Association, consisting of all nine parcels. The Association’s Declaration of Covenants, Conditions and Restrictions (“CC&Rs”) set aside 2645 as a “Recreation” lot for the recreational use of the owners of all nine parcels. The CC&Rs required LSH2 (Rundle) to build a dock⁴ in the lake in front of 2645 for the shared use of only the six upland parcels. The CC&Rs required LSH2 to deed 2645 and its dock to the Association “[n]o later than the completion and sale of the homes to be constructed on the six BLA lots”. (Exhibit 4, § 1.5.14) Merrin testified that the current owners of the six upland parcels acquired their properties with the understanding that Rundle would build the shared-use dock in front of 2645 at his expense and that they would be responsible for addition of boat lifts at their expense. Merrin also testified that the Association now owns 2645.

Meanwhile, in 2014 Rundle applied to the City for an exemption from the requirement to obtain an SSDP to build the dock (STD2014-00276). According to Ashley, who was assisting Rundle in the permitting process, Rundle said he wanted to avoid the time delay that he perceived would be caused by the SSDP process. Ashley’s estimate of the dock cost at the time was between \$10,000 and \$20,000; adding six boat lifts would have increased the cost by another ± \$60,000. Rundle was apparently advised by a former City staffer that if the dock cost less than \$20,000, it would be exempt from the SSDP requirement. Thus, Rundle eliminated the boat lifts on the plans submitted to the City. On March 20, 2015, the former City staffer issued a letter of SSDP exemption based on the dock (without boat lifts) costing less than \$20,000.⁵

Sometime in or after April, 2015, Rundle applied to the United States Army Corps of Engineers (“USACE”) “to construct a pier and install six boatlifts [*sic*] in Lake Sammamish” (NWS-2015-341). (Exhibit 8, p. 1, ¶ 1) USACE approved that application on December 16, 2016, subject to an upland planting mitigation requirement.

The dock was built after the SSDP Exemption letter and the USACE permit were issued.

⁴ The CC&Rs refer to the structure as a “pier.” The parties in this proceeding refer to it as a “dock.” The Examiner will use the latter term for consistency.

⁵ As best the Examiner can tell, the former staffer erred in his reading of the SSDP exemption threshold for docks in fresh water bodies. The SSDP exemption thresholds are contained in WAC 173-27-040. According to the Washington State Register, the fresh water dock exemption threshold between February 2, 2007, and September 7, 2017, was \$10,000, not \$20,000. [WSR 07-02-086, Ord. 05-12, § 173-27-040(2)(h)(ii); WSR 17-17-06, Ord. 15-06, § 173-27-040, (2)(h)(ii)] Effective September 7, 2017, the fresh water dock threshold was increased to \$20,000 for replacement of an existing dock, but remained at \$10,000 for all other docks. [WSR 17-17-06, Ord. 15-06, § 173-27-040, (2)(h)(ii)] The Examiner has been unable to find the source of the purported quote from WAC 173-27-040 contained in the former staffer’s exemption letter.

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At an unstated time during the above sequence of events, most likely in or prior to 2015, Rundle approached the City desiring to undertake a BLA to widen 2645, which was and still is only 50 feet wide. According to Ashley's testimony, Rundle told him that the City would not approve such an application because a stream crosses the northern edge of 2641 and any reduction in the width of that parcel would adversely affect the available stream buffer. Thus 2645 remains at its 50-foot width.

3. Lake Sammamish and shorelands within 200 feet of the lake's OHWM are within the jurisdictional area of the SMA. The City's Shoreline Master Program ("SMP") designates the subject property Shoreline Residential. A private dock is a preferred water-oriented and water-dependent use under the SMP. An SSDP is required because the dock's estimated cost exceeds the established threshold requiring a permit. (Exhibit 1)
4. The SMP contains extensive design and location standards for docks, referred to by the Department as the "Dock Design Requirements." [SMC 25.07.050] The existing dock as built complies with all applicable provisions of the Dock Design Requirements. However, as noted, the boat lifts which are the subject of this SSDP application will not comply: They will be less than 15 feet from the side property lines extended of 2645 and they will not be perpendicular to the shoreline. (Exhibits 1; 2)
5. The SMP requires establishment of a Vegetation Enhancement Area ("VEA") along a property's shoreline whenever a project will disturb uplands within the established SMA setback area. [SMC 25.06.020(10)] The USACE permit for the existing dock required installation of vegetation mitigation plantings. (Exhibit 8, especially p. 2, ¶ f, and the last two sheets in the exhibit) The mitigation plantings have yet to be installed. (Mirren testimony)
6. No testimony was entered into the record by the general public either in support of or in opposition to the application. Dhinsa and Rundle, as Managing Members of LSH1 and LSH3, respectively, have presented written statements of no objection to installation of the boat lifts less than 15 feet from their side property lines extended. (Exhibit 24)

The King County Department of Natural Resources & Parks, Capital Planning & Land Management Section ("King County"), sent the Department two e-mails during the review of these applications. On September 19, 2018, it stated that it "was unable to find record of access to the property across [the ELST]." It went on to state that if the boat lifts were not going to be installed via the water, a King County Special Use Permit ("SUP") would be "required both for temporary construction access and long term pedestrian access" across the ELST right-of-way. (Exhibit 11, sheet 1) On January 15, 2019, King County said much the same thing, but omitted the statement that an SUP would not be needed if construction were to occur via water access. (Exhibit 11, sheet 2)

7. 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 where the proposal is located. Mirren's proposal is located waterward of the OHWM. For a proposal located waterward of the OHWM or within any associated wetland, the criteria are contained in WAC 173-27-170(1) and (3) – (5)

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“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(3),⁶ (4), and (5) and the facts relating to each are as follows:

- A. “That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes all reasonable use of the property;” [WAC 173-27-170(3)(a)]

Facts: The Association, created by Rundle and Dhinsa, not by the current owners of the six upland parcels, grants to each owner of an upland parcel the right to use of a shared-use dock. On Lake Sammamish a boat lift is a common component of a dock. (Exhibit 1; and testimony) With a 50-foot parcel width and six shared users, there is no way that six slips could be arranged perpendicular to the lake shoreline, even if the dock had not already been built following a different design.

- 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) by reference from WAC 173-27-170(3)(b)]

Facts: The Examiner admits that one could argue that Rundle and Dhinsa created this hardship by granting a right of use to too many parcel owners given the 50-foot width of 2645. But they did it and, apparently, former City staff implicitly or explicitly assured Rundle that boat lifts could be added after the dock was constructed. Further, when Rundle tried to solve the problem by widening 2645 (and commensurately reducing the width of 2641 and 2649), he was told by the former staffer that the City would not approve that action because of future adverse effect on a stream which crosses 2641. The Association had nothing to do with all those actions: It came into being after the dust settled, so to speak. (Testimony)

- 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) by reference from WAC 173-27-170(3)(b)]

Facts: The docks on 2641 to the north and 2649 to the south each have a boat lift. (Exhibit 2) The proposed boat lifts in front of 2645 will allow six pleasure boats to be stored out of water, thus incrementally improving water quality in the lake. (Exhibit 1)

⁶ Which incorporates by reference certain subsections of WAC 173-27-170(2).

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- 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) by reference from WAC 173-27-170(3)(b)]

Facts: The docks on 2641 to the north and 2649 to the south each have a boat lift. (Exhibit 2)

- E. “That the variance requested is the minimum necessary to afford relief;” [WAC 173-27-170(2)(e) by reference from WAC 173-27-170(3)(b)]

Facts: The only way to make the six Association members with right to use the dock whole is to allow six boat lifts. Six boats will be docked in the six slips regardless. Boat lifts will make their storage safer. (Exhibit 1)

- F. “That the public interest will suffer no substantial detrimental effect.” [WAC 173-27-170(2)(f) by reference from WAC 173-27-170(3)(b)]

Facts: Six boats will be docked in the six slips regardless. Boat lifts will make their storage safer. (Exhibit 1)

- G. “That the public rights of navigation and use of the shorelines will not be adversely affected.” [WAC 173-27-170(3)(c)]

Facts: The outer-most boat lifts will not extend appreciably beyond the current outer end of the docks on 2641 and 2649. The boat lifts associated with the docks on 2641 and 2649 are located on their north and south sides, respectively, thus separating the boat traffic associated with the three docks. (Exhibit 2) The proposed boat lift placement will not affect navigation.

- H. “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: It seems highly unlikely that the circumstances here present will repeat elsewhere along the Lake Sammamish shoreline. Therefore, cumulative impact concerns are moot.

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

Facts: This is not a use variance application: Boat lifts are allowed on Lake Sammamish. (Exhibit 1)

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8. Sammamish's State Environmental Policy Act ("SEPA") Responsible Official issued a threshold Determination of Nonsignificance ("DNS") for the boat lift installation project on September 13, 2018. (Exhibit 9) The DNS was not appealed. (Exhibit 1, p. 7, § 1.15)
9. The Department staff report (Exhibit 1) contains a thorough analysis of the project's compliance with SMA and SMP requirements. The Department's written recommendation is for approval of the SVAR and SSDP subject to 11 conditions. (Exhibit 1, p. 13)
10. Staff submitted Exhibit 33, documenting correspondence with Ecology, which shows that Recommended Condition 3 (regarding delineation of the OHWM) is unnecessary in this case since the dock has already been built under a prior exemption.

Staff testified that Recommended Conditions 5 and 9, regarding mitigation plantings, do not relate to impacts associated with installation of the boat lifts. Rather, staff included them because of the conditions on the USACE permit.

Merrin testified that the mitigation plan notice required by Recommended Condition 6 has already been recorded against the property. He did not provide a copy of the referenced document.

11. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK ⁷

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

Authority

A Shoreline Variance and an SSDP are both Type 4 procedures. 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 ("Ecology"), whose decision may be appealed to the Shorelines Hearings Board, a state quasi-judicial review board. [RCW 90.58.140(10)]

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

⁷ 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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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 25.08.020(2) SMC requires that a proposed Substantial Development be “consistent with the policies and procedures of Chapter 90.58 RCW, the provisions of Chapter 173-27 WAC, and [the City of Sammamish shoreline master program].”

The review criteria for a Shoreline Variance have been set forth in Finding of Fact 7, 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)] Therefore, this SSDP application is vested to the development regulations as they existed on February 28, 2018. The SVAR has no vested rights under SMC 20.05.070(1).

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. The most appropriate sequence by which to evaluate a consolidated SVAR and SSDP application is to analyze the SVAR application first: If the variance cannot be approved, then the SSDP which relies on that variance cannot be approved. That sequence has been followed here.
2. This is essentially an uncontested case in which there is no challenge to the Department's analysis nor to most of the Recommended Conditions as contained in Exhibit 1. Lengthy, detailed Conclusions of Law are, therefore, unnecessary. Rather, the Examiner adopts the Department's analysis contained in Exhibit 1 by reference as if set forth in full.

That analysis, coupled with the information in Finding of Fact 7, above, demonstrates compliance with the criteria for approval of the SVAR. That analysis also demonstrates compliance with the criteria for approval of the SSDP.

3. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. Recommended Condition 3 will be omitted for reasons explained previously.
 - B. Recommended Conditions 5 and 9 will be omitted because they relate to impacts from a wholly different and separate permit process: The boat lifts have nothing to do with impacts from construction of the dock several years ago. USACE is the agency with authority to enforce conditions on permits which it issues.
 - C. Section 173-27-190 WAC contains certain content and format requirements for any SSDP and SVAR 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 SVAR and SSDP. 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 SVAR and SSDP and supporting exhibits to the state as required by Chapter 90.58 RCW.

D. Two additional provisions are needed in the conditions. First, an SSDP embodies the concept of approval of a specific development proposal. An SSDP evaluation is based upon the specific development plans submitted by the applicant. It is appropriate, therefore, that the conditions of approval clearly identify the plans which are being approved. The Department's recommendation as drafted does not explicitly do so. Exhibit 2 constitutes the plan for the boat lifts which should be approved.⁸ Reference to exhibit 2 will be incorporated into a new Condition 1.

Second, a variance is never open-ended; it is always for specific relief from a certain requirement. The limitation on a variance needs to be clearly set forth in the conditions. An additional condition will be added to do so.

E. A few minor, non-substantive structure, grammar, and/or punctuation revisions to Recommended Conditions 2, 6, and 7 will improve parallel construction, clarity, and flow within the conditions. Such changes will be made.

4. The King County SUP requirement does not impact the SSDP process itself. The Examiner would go so far as to conclude that it has nothing to do with SSDP approval criteria. The Examiner believes that the King County e-mail is essentially an FYI for construction permits. By inclusion of Exhibit 11 in the record and discussion of it in this Decision, Merrin is now on notice of King County's position regarding SUPs. No condition is warranted on this SSDP (nor did the Department recommend one).

5. Recommended Condition 6 will be retained, notwithstanding Merrin's testimony to the effect that it has already been fulfilled. The problem is that no evidence was submitted to substantiate the testimony. It is not that the Examiner finds Merrin's testimony to lack credibility, but rather that whatever document has been recorded may not in actuality fulfill the specific requirement of this Recommended Condition. All Merrin has to do is provide the Department with a copy of the document about which he testified. If it fulfills the requirement, then nothing more will be necessary for compliance with this condition.

⁸ Topographical information is normally required by WAC for an SSDP. Here, however, the SSDP is solely for placement of six boat lifts in six slips of a previously constructed dock. Other than the topography of the lake bed in the area of the dock, which is depicted on Exhibit 2, no additional topographic information would be relevant.

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6. 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 **GRANTS** City approval of the requested 1) Shoreline Variance from the requirement that new boat lifts installed between five and 15 feet of the side property line extended must be installed perpendicular to the shoreline; and 2) Shoreline Substantial Development Permit for installation of six (6) freestanding boat lifts at an existing shared use dock, both **SUBJECT TO THE ATTACHED CONDITIONS**.

Decision issued June 20, 2019.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS⁹

Gregory Ashley, for the Applicant
Tracy Cui, for the Department

Charles Merrin, Applicant

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 APPEAL
SHORELINE VARIANCE**

⁹ The official Parties of Record register is maintained by the City's Hearing Clerk.

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The ultimate decision by the Washington State Department of Ecology on the Shoreline Management Variance is final subject to the right 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.

**NOTICE of RIGHT of APPEAL
SUBSTANTIAL DEVELOPMENT PERMIT**

The portion of this Decision regarding the Shoreline Management Act Substantial Development Permit is final and conclusive subject to the right of review before the State Shorelines Hearings Board in accordance with the procedures of Chapter 90.58 RCW, the Shoreline Management Act of 1971. See SMC 20.35.080, Chapter 90.58 RCW, and Washington Administrative Code regulations adopted pursuant thereto for further 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
MERRIN SHARED-USE DOCK BOAT LIFTS
SVAR2018-00724 & SSDP2018-00114**

This Shoreline Substantial Development Permit and Shoreline Variance Permit are 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. **Exhibit 2** is the approved project plan set.
2. The Shoreline Variance granted hereby is expressly limited to relief from SMC 25.07.050(2)(i) to allow six boat lifts to be installed as shown on **Exhibit 2** within the six slips of an existing dock which are neither perpendicular to the shoreline nor at least 15 feet from the side property lines extended. No other variance is either expressed or implied.
3. The Permittee shall comply with all city codes and regulations in effect on February 28, 2018, the vesting date of the subject SSDP application.
4. Final construction plans showing the proposed boat lifts shall be in substantial conformance with **Exhibit 2**.
5. No significant tree removal is allowed.

HEARING EXAMINER DECISION

RE: SVAR2018-00724 & SSDP2018-00114 (Merrin Shared-Use Boat lifts)

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6. Prior to installing the first boat lift:
 - a. a notice on title shall be recorded for this property that reflects information about the shoreline variance granted for the development of this property.
 - b. a notice on title shall be recorded for this property that reflects information about the mitigation plan required for development of this property.
7. Site disturbance shall be the minimum necessary to accommodate the scope of work.
8. The Permittee shall notify the Washington State Department of Archaeology and Historic Preservation if artifacts are discovered.
9. Pursuant to WAC 173-27-090, construction shall be commenced on the proposed boatlifts within two (2) years of the date that the SSDP is issued (or becomes final following any reconsideration or appeal periods, if applicable). Authorization to conduct development activities under the SSDP shall terminate five (5) years after the effective date of this permit. The City may authorize a single extension for a period not to exceed one (1) year based on a showing of good cause to the Community Development Department Director of reasonable factors, if a request for extension has been filed before the expiration date, and notice of the proposed extension is given to parties of record and the City.

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.

DEPARTMENT OF ECOLOGY REVIEW
of
SHORELINE VARIANCE

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

COMMENTS/ADDITIONAL CONDITIONS: _____

HEARING EXAMINER DECISION

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(Name)

(Title)

(Date)