

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

DECISION

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CITY OF SAMMAMISH

FILE NUMBER: SVAR2016-00053 ¹

APPLICANT: Dennis Baerwald
7611 NE 198th Place
Kenmore, WA 98028

TYPE OF CASE: Consolidated: 1) Shoreline Management Act Variance to reduce shoreline setback from 50 feet minimum to not less than 20 feet and to reduce tree replacement standards; and 2) Zoning variance to reduce street setback from 10 feet minimum to not less than 2 feet

STAFF RECOMMENDATION: Approve both applications subject to conditions

EXAMINER DECISION: GRANT both applications subject to conditions

DATE OF DECISION: April 4, 2017

INTRODUCTION ²

Dennis Baerwald ("Baerwald") seeks approval of a Shoreline Management Act Variance ("Shoreline Variance") to reduce shoreline setback from 50 feet minimum to not less than 20 feet and to reduce tree replacement standards, and a zoning code variance to reduce street setback from 10 feet minimum to not less than two (2) feet.

Baerwald filed a Base Land Use Application on February 22, 2016. (Exhibit 2 ³) The Sammamish Department of Community Development (the "Department") deemed the applications to be complete when filed. (Exhibit 3)

¹ City staff testified that, at least in this one case, a single file number was used for both components of the application. (Testimony)

² Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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 working copy of Exhibit 2 in the record does not bear a received stamp nor does it have any check marks on the second page indicating the type(s) of permits for which application was made. The Examiner is relying on Exhibits 1 and 4 for the date of application submittal and on Exhibits 4 and 27 for the scope of the Base Land Use Application. The Base Land Use Application initially sought approval of a Shoreline Substantial Development Permit ("SSDP") for a dock

The subject property is located along the Lake Sammamish shoreline in approximately the 3200 block of East Lake Sammamish Parkway NE ("Parkway").

The Sammamish Hearing Examiner ("Examiner") viewed the subject property on March 2, 2017.

The Examiner held an open record hearing on March 27, 2017. The Department gave notice of the hearing as required by the Sammamish Municipal Code ("SMC"). (Exhibit 46)

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 open record hearing was most likely held after the 120th net review day. 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)]. Baerwald chose to extend the deadline. (Testimony)

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

- Exhibits 1 - 21: As enumerated in Exhibit 1, the Departmental Staff Report
- Exhibit 22: Decision, SVAR2015-00209 & ZONV2015-00208, Daniel & Marisa Ogren ("Ogren"), issued March 13, 2017
- Exhibit 23: E-mail, Snoqualmie Indian Tribe to City, August 4, 2016
- Exhibit 24: E-mail, Trishah Bull, King County Parks, to City, March 24, 2017
- Exhibit 25: E-mail string, Aurora Purcell ("Purcell") - City Code Enforcement, August 17, 2016 and March 22, 2017, with one page of photographs attached
- Exhibit 26: Five pages of photographs, submitted by Purcell on March 27, 2017
- Exhibit 27: Notice of Application, Baerwald application, submitted by Purcell on March 27, 2017
- Exhibit 28: Pages 48 and 49 from City of Sammamish SMP Update Internal Review Draft, August 2011, submitted by Purcell on March 27, 2017
- Exhibit 29: E-mail, Adam Merrill, ESA|Environmental Science Associates, July 8, 2016, submitted by Purcell on March 27, 2017
- Exhibit 30: Project Details, SVAR2016-00053, as of March 1, 2017, Parcel 2025069071, Applicant Baerwald, submitted by Purcell on March 27, 2017
- Exhibit 31: Pages 7 and 8 from Exhibit 22, submitted by Purcell on March 27, 2017
- Exhibit 32: Pages 1 – 3, Chapter 14, SMP ["Shoreline Master Program"] Handbook, Washington State Department of Ecology ("Ecology"), submitted by Purcell on March 27, 2017

for which a State Environmental Policy Act ("SEPA") threshold determination was required. (Exhibits 4; 27) Baerwald withdrew the SSDP dock application on February 14, 2017. (Exhibit 19) With that withdrawal, the need for a SEPA threshold determination was also eliminated. Those elements, having been withdrawn, will not be addressed further.

HEARING EXAMINER DECISION

RE: SVAR2016-00053 (Baerwald)

April 4, 2017

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- Exhibit 33: Erosion Hazards Near Sensitive Water Bodies map, City of Sammamish, submitted by Purcell on March 27, 2017
- Exhibit 34: Sammamish Street Map, submitted by Purcell on March 27, 2017
- Exhibit 35: King County Assessor parcel printout for Parcel 2025069134, submitted by Purcell on March 27, 2017
- Exhibit 36: King County Assessor parcel printout for Parcel 2025069071, submitted by Purcell on March 27, 2017
- Exhibit 37: King County ParcelViewer printout for Parcel 2025069071, submitted by Purcell on March 27, 2017
- Exhibit 38: ALTA Commitment for Title Insurance, Parcel 2025069135, submitted by Purcell on March 27, 2017
- Exhibit 39: Permit Details, BLD2004-00513, as of March 26, 2015, Parcel 2025069135, Applicant Saunders, submitted by Purcell on March 27, 2017
- Exhibit 40: Two pages of photographs, submitted by Purcell on March 27, 2017
- Exhibit 41: Figure 3-2c, Critical Areas Map, East Lake Sammamish Master Plan Trail – North Sammamish Segment, submitted by Purcell on March 27, 2017
- Exhibit 42: One sheet of photographs (duplicate of the attachment to Exhibit 25), submitted by Purcell on March 27, 2017
- Exhibit 43: King County GIS Center map showing parcel numbers and street addresses in the vicinity of the Baerwald parcel, submitted by Purcell on March 27, 2017
- Exhibit 44: Letter, King County Division of Parks and Recreation to City, May 5, 2016, (Duplicate of Exhibit 16.8), submitted by Purcell on March 27, 2017
- Exhibit 45: Letter, Adrian Garside to City, May 4, 2016 (Duplicate of Exhibit 16.6), submitted by Purcell on March 27, 2017
- Exhibit 46: Notice of Public Hearing, SVAR2016-00053, dated March 9, 2017, submitted by Purcell on March 27, 2017
- Exhibit 47: Notice of Application, Chan Shoreline and Zoning Variances, January 12, 2017, submitted by Purcell on March 27, 2017
- Exhibit 48: Notice of Application, Paul Shoreline and Zoning Variances, January 12, 2017, submitted by Purcell on March 27, 2017
- Exhibit 49: Liquefaction Susceptibility map, Washington State Department of Natural Resources, submitted by Purcell on March 27, 2017
- Exhibit 50: Notice of Public hearing, SVAR2016-00053, dated January 20, 2017 (Duplicate of one page in Exhibit 18), submitted by Purcell on March 27, 2017
- Exhibit 51: Project Details, PRA2015-00304, as of March 1, 2017, Parcel 2025069071, Applicant Baerwald, submitted by Purcell on March 27, 2017
- Exhibit 52: Pre Application Meeting Notes, PRA2016-00304, January 8, 2016, submitted by Purcell on March 27, 2017
- Exhibit 53: ALTA Commitment for Title Insurance, Parcel 2025069071, submitted by Purcell on March 27, 2017

Exhibit 54: (a) TESC Plan and (b) Site Preparation Plan, As-Built drawings, East Lake Sammamish Master Plan Trail – North Sammamish Segment, submitted by Purcell on March 27, 2017

The Examiner asked the Department during the hearing to provide textual material from East Lake Sammamish Master Plan Trail – North Sammamish Segment documents regarding Wetland 32A and its hydrology input and output. The Department said that it needed more time to find the material and make copies for the record. Therefore, the Examiner held the hearing record open until not later than April 3, 2017, for submittal of that information. The Deputy City Clerk advised the Examiner by e-mail on April 3, 2017, that the Department had not been able to find responsive documents.

The hearing record closed on April 3, 2017, without the requested documents having been produced.

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. Baerwald wants to build a single-family residence on King County Assessor's Parcel 202506-9071 ("Parcel 9071"⁴). Parcel 9071 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 9071 contains 7,858 square feet ("SF") above the lake's ordinary high water mark ("OHWM"). Because Baerwald's proposed site plan does not comply with the 50-foot setback from Lake Sammamish or the 2:1 significant tree replacement ratio required under the City's adopted Shoreline Master Program ("SMP") regulations nor with the 10-foot street setback required under the City zoning regulations, Baerwald has made application for a variance from each: 20- v. 50-foot lake setback, 11 v. 30 significant trees, and 2- v. 10-foot ELST setback.⁶ (Exhibits 2; 5 – 12; 22) Baerwald consulted with Ecology and King County as early as

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." In some record documents the first six digits are separated from the last four with a "-" (e.g.: Exhibit 36); in other documents there is no separation (e.g.: Exhibit 37). 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 43, the Lake Sammamish shoreline in the vicinity of Parcel 9071 is oriented along a more-or-less northwest-southeast axis. This angled axis has led to directional confusion among participants in this process. To simplify and standardize directional references, the following convention was used during the hearing and will be followed throughout this Decision: The lake shoreline is west; the ELST and Parkway lie to the east and run north to south; Parcel 9135 lies to the north; and Parcel 9085 lies to the south. (See Exhibit 43 for parcel locations.)

⁶ Participants Purcell and Vince Mendillo ("Mendillo"; collectively "Purcell/Mendillo"), Schumacher, Kurz, and Hamilton (Exhibits 16.1 – 16.5; 16.7) believe that Baerwald's proposal also requires a variance from the SMP's setback requirement for the north property line. They believe that the SMP requires a 25.5 foot setback from both the north and south property lines. They are misreading the unambiguous language of the applicable code: "Lake Sammamish. Interior setbacks within shoreline jurisdiction shall total 15 percent of the width of the lot, with a minimum setback of five feet on

2014 in the development of his proposal. (Testimony) A more detailed summary description of Baerwald's proposal will be found in Finding of Fact 13, below.

2. Parcel 9071/Baerwald is bordered on the north by Parcel 9135. (Exhibit 43) Ownership of Parcel 9135 is divided into seven shares, held by six parties (one of whom owns two shares): Schumacher, Mendillo, Hamilton, Kurz, Stothers, and Garside. (Exhibit 38) Parcel 9135 is commonly referred to as "Eagle Shores," as four of the owners are residents in a short subdivision located on the east side of the Parkway which is called Eagle Shores.⁷ (Testimony) Parcel 9135/Eagle Shores is used as a community recreation lot. It has a fire pit, a grassy area, and a dock. In tax year 2016 it's assessed value was \$281,000 (\$200,000 land and \$81,000 improvements). (Exhibits 1, p. 13, Figure 10 and p. 15, Figures 14 and 15; 38; and testimony) The land area of Parcel 9135 is 4,605 SF according to King County records. [King County Parcel Viewer 2 website (gismaps.kingcounty.gov/parcelviewer2), last visited on March 30, 2017]
3. Parcel 9071/Baerwald is bordered on the south by Parcel 9085. (Exhibit 43) Parcel 9085 is owned by Daniel and Marisa Ogren ("Ogren"). Parcel 9085/Ogren contains about 5,760 SF of upland. It has a width (north-south) of approximately 100 feet and a depth which varies from about 43 to about 75 feet. On March 13, 2017, the undersigned approved Shoreline Variances and a zoning variance, similar to those sought by Baerwald, for construction of a two-story, single-family residence on Parcel 9085. (City file numbers SVAR2015-00209 and ZONV2015-00208.⁸) The approved structure will have a 1,844 SF footprint, consisting of 1,360 SF for the residence and 484 SF for an attached garage. It will have a setback from the lake of not less than 20 feet. (Exhibit 22)

either side of the lot." [SMC 25.07.080(4)(a), emphasis added] They claim that the minimum side setback "for both the northern and southern property lines would be 25.5 feet" based on a lot width of 170 feet. (Exhibit 16.1, undated Mendillo letter, unnumbered p. 9) (Fifteen percent (15%) of 170 is 25.5.) Unfortunately, they are completely misreading the code, leaving out important words. First, it is the "total" width of side setbacks which must equal or exceed 15% of lot width, not each side setback. Second, the code establishes 5 feet as the minimum side setback. Thus a setback of 5 feet on one side is perfectly legal under the code so long as the total of the two side setbacks is not less than 15% of the width of the lot.

Purcell submitted two pages from the 2011 Draft SMP Update. (Exhibit 28) Draft documents are completely irrelevant. Draft versions of proposed legislation are not law and may not be considered. But even if the draft version could be considered, it would not support Purcell *et al.*'s interpretation. The entry for side setbacks along Lake Sammamish in that draft document reads "15% of lot width, minimum setback 5 feet". (Exhibit 28, p. 48) Even as a draft, the City contemplated a 5 foot minimum.

⁷ Both Parcel 9071/Baerwald and Parcel 9135/Eagle Shores include abutting shorelands. Purcell pointed out that the title to each of those parcels includes a special exception: "Question of location of lateral boundaries of said second class tidelands or shorelands." (Exhibits 38, p. 5; 53, p. 5) That "question" apparently stems from the fact that the area's lot lines tend to run at right angles to the lake shoreline while historical government lot lines do not, leaving in doubt whether the boundary of the shorelands is an extension into the lake of the property lines or an extension into the lake at an angle representative of the old government lot lines. That "question" is irrelevant here as Baerwald's application does not include any activity within the wetted perimeter of Lake Sammamish.

⁸ There is a substantial similarity in conditions between Parcel 9085/Ogren and Parcel 9071/Baerwald. Portions of the Ogren Decision have been modified as required and incorporated herein where similarity in conditions makes such use prudent.

4. The lots in the vicinity of Parcel 9071/Baerwald which lie between Lake Sammamish and the ELST are, generally speaking, shallow (east to west) and served by private roads which cross the ELST at various points and then extend north – south within the ELST right-of-way to reach the individual lots. (Exhibits 22, Finding of Fact 4; 34)

Such is the case with Parcel 9071/Baerwald. An ELST crossing is located immediately east of Parcel 9085 which becomes a gravel road which breaks to the north and south immediately after crossing the trail. That road extends south to serve the parcel south of Parcel 9085, Parcel 9042/Glover, and north to serve Parcel 9085/Ogren, Parcel 9071/Baerwald, and Parcel 9135/Eagle Shores. (Exhibits 1, pp. 12 and 13, Figures 9 and 10; 40, reverse side; 43)

5. Parcel 9071/Baerwald is approximately 170 feet wide (measured along the edge of the ELST right-of-way).⁹ Its depth from the east property line to the Lake Sammamish OHWM varies from about 37 to about 60 feet, with the widest point near the north end of the parcel and the narrowest point about 45 feet from the south end of the parcel. Its upland area is approximately 7,858 SF. Only about 168 SF in the northeast corner of the parcel lies outside the SMP-required 50 foot shoreline setback. Application of the required 10-foot zoning setback from the ELST right-of-way would eliminate all usable area. (Exhibits 5; 9, p. 5; areas calculated by the Examiner¹⁰)
6. Lake Sammamish is a designated Shoreline of Statewide Significance under the SMP.¹¹ [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. About 40% of the UC-designated shoreline is owned by the City. (Testimony)

⁹ Comparison of all the record documents depicting the dimensions of Parcel 9071 leads to the conclusion that the depiction of the common boundary between Parcels 9071 and 9135 is incorrectly shown on Exhibits 54(a) and 54(b). Those exhibits depict Parcel 9071 as being only about 130 feet wide. The south boundary of Parcel 9071 is accurately depicted: All record documents indicate that it cuts through the northern edge of a shelter, the majority of which is on Parcel 9085/Ogren. The northern boundary is depicted about 40 feet south of its actual location. (Were this depiction not an error, the culverted outlet from Wetland 32A which is of such concern to the owners of Parcel 9135/Eagle Shores would discharge onto Parcel 9135 some 15 to 20 feet north of the common property line. It is clear from the record that nobody believes that to be the case.)

¹⁰ Exhibit 9 states that 129 SF of useable land exists “outside of the shoreline setback, the side yard setback, and the reduced street setback.” (p. 5, emphasis added) Exhibit 9’s author assumed approval of the zoning variance (2-foot instead of 10-foot ELST setback) when calculating buildable area. The Examiner’s calculations do not make that assumption.

¹¹ 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.

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.

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

7. Parcel 9071/Baerwald is within a string of 14 contiguous UC-designated parcels along the Lake Sammamish shoreline. (Table 1 on page 5 of Exhibit 1 provides a statistical summary of the 14 parcels.) Of those 14 parcels, seven are located north of Parcel 9071 and the remaining six are located south of Parcel 9071. Four or five of the parcels to the north are developed as recreational parcels jointly owned by groups of residents whose homes are on the east side of the Parkway. (Exhibits 1, p. 4, Figure 1; 9, p. 7, Figure 1; 41) To the south within the UC-designated area, Parcel 9085/Ogren has received variances for construction of a single-family residence (See Finding of Fact 3, above.), the next three parcels each contain a single family residence, and the last two have applications pending for variances to construct a single-family residence:
 - A. South of Parcel 9085/Ogren is Parcel 9042/Glover. The Glover residence was built in 1977 and remodeled in 2013. The Glover residence has a 2,730 SF building footprint (1,860 SF house plus 870 SF attached garage). It is a two-story residence with 3,720 SF of living area. It has a 240 SF open porch. The Glover residence has a minimum shoreline setback of 17 feet and a total impact area of 5,140 SF. The current tax value of Parcel 9042 is \$2.7 million of which the land value is \$1.7 million. (Exhibit 22, Finding of Fact 9.A)
 - B. Parcel 9030/Azelby. The Azelby residence was built at some time prior to 1982, demolished in 2007, and reconstructed in 2008. The Azelby residence has a 2,930 SF building footprint (2,190 SF house plus 740 SF attached garage). It is a two-story residence with 5,010 SF of living area. It has a 250 SF deck and a 300 SF open porch. The Azelby residence has a minimum shoreline setback of 18 feet and a total impact area of 4,879 SF. The current tax value of Parcel 9030 is \$3.8 million of which the land value is \$1.9 million. (Exhibit 22, Finding of Fact 9.B)
 - C. Parcel 9073/Selitretnnikoff. The Selitretnnikoff residence was built at some time prior to 1982, demolished in 2000, and reconstructed in 2001. The Selitretnnikoff residence has a 1,720 SF building footprint (1,070 SF house plus 650 SF attached garage). It is a two-story residence with 3,770 SF of living area. It has a 380 SF deck. The Selitretnnikoff residence has a minimum shoreline setback of 12 feet and a total impact area of 5,009 SF. The current tax value of Parcel 9073 is \$2.3 million of which the land value is \$1.9 million. (Exhibit 22, Finding of Fact 9.C)

- D. Parcel 9151/Paul. Parcel 9151 is immediately south of Parcel 9073/Selitretnnikoff. Paul seeks a Shoreline Variance and a zoning variance to construct a single-family residence.¹² (Exhibits 43; 48)
- E. Parcel 9041/Chan. Parcel 9041 is immediately south of Parcel 9151/Paul. Chan seeks a Shoreline Variance and a zoning variance to construct a single-family residence.¹³ (Exhibits 43; 47)
8. 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. [SMC 25.06.020(9); 25.07.010, Table 25.07.010-2] The 50 foot shoreline setback may be 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)]
- Whenever a reduced shoreline setback is allowed along Lake Sammamish, significant trees¹⁴ that must be removed to utilize the reduced setback must be replaced on site at a 2:1 ratio. [SMC 25.06.020(11), Table 25.06.020] VEA regulations require planting of “one tree for every 500 square feet” of VEA area. [SMC 25.06.020(10)(b)]
9. Parcel 9071/Baerwald is zoned R-4. (Exhibit 1, p. 3, § II.A) Single-family residences are a permitted use in the R-4 zone. [SMC 21A.20.0030] 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 9071/Baerwald. [Official notice, Official

¹² The included graphic (Exhibit 48) is not sufficiently legible to enable detailed description of Paul’s proposal.

¹³ The included graphic (Exhibit 47) is not sufficiently legible to enable detailed description of Chan’s proposal.

¹⁴ By code definition, a “significant tree” is “a tree that is in a healthy condition and is a noninvasive species, including those trees defined as a heritage tree and landmark tree, that is: (1) A coniferous tree with a diameter of eight (8) inches or more DBH; or (2) A deciduous tree with a diameter of twelve (12) inches or more DBH.” [SMC 21A.15.1333]

City zoning map, viewed at <https://www.sammamish.us/attachments/pagecontent/36868/17013.pdf>, last visited March 10, 2017]

10. Parcel 9071/Baerwald is presently undeveloped except for a small portion of a dilapidated shelter (which intrudes from Parcel 9085/Ogren along the south edge of the property). The parcel drops about 6 – 8 feet from east to west, with most of the elevation change occurring near the east edge of the parcel. The majority of the parcel lies below the base flood level (“100-year” flood level) of Lake Sammamish. There are no significant trees on the upland portion of the parcel within 20 feet of the OHWM. The middle of the parcel has been partially cleared of scrub trees and invasive species such as blackberry and ivy. Dominant tree species above the OHWM on Parcel 9071 are bigleaf maple, cottonwood, Pacific madrone, and Oregon ash; significant trees on the ELST right-of-way between Parcel 9071 and the access road include Oregon ash, big-leaf maple and American chestnut. Understory vegetation includes Oregon grape and salal. (Exhibits 5, Sheets W1 and W7; 6, pp. 4 and 5; 42)
11. There are no wetlands on the upland portion of Parcel 9071/Baerwald. There is an aquatic bed wetland located wholly below the OHWM across the width of Parcel 9071. “The dominant vegetation in the lake shore wetland is hardstem bulrush and garden loosestrife. Willows are also present ... below the OHWM.” (Exhibit 6, p. 4) Two large cottonwoods are also found at the northern end of the aquatic wetland. (Exhibit 5, Sheets W1 and W7) Aquatic bed wetlands are not regulated separately from the water body in which they are located. [SMC 25.06.020(3)]

There is a wetland between the east edge of the ELST and the west edge of the Parkway (Wetland 32A). Wetland 32A was delineated and rated as a Category III wetland during the planning for the ELST. Wetland 32A is fed by drainage water flowing from development on the east side of the Parkway which is collected in roadside ditches, passes beneath the Parkway in a culvert, passes northerly through the wetland in a ditch alongside the ELST, flows westerly through a culvert beneath the ELST, and flows westerly across the gravel road in a shallow ditch to enter Parcel 9071/Baerwald as sheet flow about 20 feet from its northeast corner. The water then apparently meanders westerly as unconstrained surface flow across Parcels 9071 and 9135/Eagle Shores before entering Lake Sammamish. (Exhibits 1; 6; 22; 40; 54(a) or (b))

The standard buffer for a Category III wetland is 50 feet. (Exhibit 6, p. 7) A 50-foot wetland buffer measured from the east edge of the ELST would cross the private access road, but would not extend onto Parcel 9071/Baerwald. (Exhibit 54(a)) However, “Where a legally established and constructed street transects a wetland buffer,” the buffer may be truncated at the near edge of the street “if the isolated part of the buffer does not provide additional protection of the wetland and provides insignificant biological, geological or hydrological buffer functions relating to the wetland.” [SMC 21A.50.290(2)(a)] A “street” is “a public or recorded private thoroughfare providing pedestrian and vehicular access through neighborhoods and communities and to abutting property.” [SMC 21A.15.1245] The ELST is not a street for purposes of SMC 21A.50.290(2)(a): The words “or the East Lake Sammamish Trail” were removed from that code provision in the 2016 amendments.

Removal of an express provision means that the remaining text excludes that which was removed. But the access road within the ELST right-of-way is a legally established private road providing vehicular and pedestrian access to Parcels 9042/Glover, 9085/Ogren, 9071/Baerwald, and 9135/Eagle Shores. The area west of the ELST provides none of the attributes that would have to be present in order for the buffer to extend across the ELST. Therefore, the west edge of the Wetland 32A regulatory buffer ends at the east edge of the access road. (Exhibits 6; 12)

12. Whether the discharge from the north end of Wetland 32A is or is not a stream has been disputed by hearing participants. Water from the north end of Wetland 32A flows beneath the ELST in a 24" concrete pipe culvert located at approximate ELST Station 533+80. (Exhibit 54(b)) The flow then used to pass beneath the private road in a plastic PVC pipe.¹⁵ At some point around the time the ELST was being upgraded to its current configuration, someone replaced that plastic pipe with a corrugated black plastic pipe which ended more or less at the east end of the common property line between Parcel 9071/Baerwald and Parcel 9135/Eagle Shores. (This work happened before Baerwald purchased Parcel 9071 in 2015.) The result was that flows spread out over both parcels, with water ponding in the southwest portion of Parcel 9135. That corrugated pipe has now been removed and a very shallow trench has been dug across the private road by parties unidentified in this hearing record. The result is that flows are again directed toward Parcel 9071. There is no evidence in the record of any stream channel crossing Parcel 9071 (or Parcel 9135 for that matter). (Exhibits 16.1; 26; and testimony)

Purcell/Mendillo/ believe that the flow from Wetland 32A is a stream. Exhibits 41 (Figure 3-2c from the 2013 King County Revised Critical Areas Study for the ELST) and 54(b) indicate that Parcel 9071/Baerwald is located approximately between ELST Stations 531+35 and 534+05.¹⁶ Exhibits 41 and 54(b) indicate that stream "Unnamed #4" flows within the ELST project area between Stations 535+50 and 539+00, where it is joined by Tributary 0143D which is flowing south at that point from about ELST Station 542+00, both then crossing beneath the trail at approximately Station 539+00. Unnamed stream #4 flows through Wetlands 32B and 32C (not Wetland 32A), both of which are at least 150 feet north of the north edge of Parcel 9071. The trail crossing at Station 539+00 is approximately 500 feet north of Parcel 9071. The outlet from the north end of Wetland 32A crosses beneath the ELST at approximate Station 534+00. The nearest stream to the south of Parcel 9071 is Tributary 0143F which crosses beneath the ELST at about Station 528+00 – over 400 feet south of Parcel 9071. In fact, it appears from Exhibit 48 that Tributary 0143F passes through Parcel 9151/Paul.

¹⁵ Purcell identified the white pipe in Exhibit 42 (second row of photographs from the top, left-hand photograph) as the pipe that used to be beneath the private road. White plastic drain pipes are made of PVC.

¹⁶ In Footnote 9 of Exhibit 22 the Examiner stated that the north line of Parcel 9085/Ogren was located approximately at ELST Station 532+50. The only document available to the Examiner at that time was a smaller version of current Exhibit 41. The Examiner did not have the detail that is present in Exhibit 54(a) and (b). With the larger scale and more detailed evidence now available, the Examiner can refine the stationing estimates.

The City's wetland/stream consultant (Kahlo of The Watershed Company) visited the site in preparation for the hearing. He testified that Wetland 32A is fed by storm water runoff collected on the east side of the Parkway and piped beneath the Parkway. He testified that flows through Wetland 32A are not constant: There was no flow on March 27, 2017. He testified that there is no evidence of an historic stream in the area nor across Parcel 9071/Baerwald. (Testimony)

The northern outlet from Wetland 32A is not a regulated stream; it is a drainage course not subject to critical areas regulations.

13. Baerwald proposes to construct a two-story, single-family residence with a detached garage on Parcel 9071. The buildings have been placed to take advantage of the widest part of the parcel. The garage will maintain an 11-foot setback from the north (Parcel 9135/Eagle Shores) property line. The south setback will be about 55 feet; a deck attached to the south end of the building will maintain about a 45 foot setback from the south property line. (Exhibit 5, Sheet W2) Those setbacks meet all applicable codes.

Baerwald's proposal relies on a 2-foot setback from the ELST right-of-way and a 20-foot setback from the lake's OHWM. Both of those setbacks require issuance of variances. The resulting building is an irregular polygon: The residence will be about 75 feet long; its width tapers from about 32 to 12 feet. The garage will vary in width from about 20 to 24 feet and in depth from about 18 to about 24 feet, including a small storage area. The front, east wall of the residence will be 2 feet from the near edge of the ELST right-of-way, will range from 15 to 25 feet from the near edge of the private road, and will be no closer than 45 feet from the near edge of the actual ELST. (Exhibit 5, Sheets W2 and W3)

The footprint of the buildings will be 2,215 SF (1,735 SF house footprint and 480 SF garage footprint). A pervious pavement driveway will cover 851 SF (including the part of the driveway within the ELST right-of-way). The deck will cover 111 SF. The total coverage of the proposal will be 3,223 SF of which 2,816 SF will be located within the standard 50-foot lake setback. (Exhibits 1, pp. 6 and 7; 5, Sheets W2 and W3; 9) 3,223 SF represents approximately 41% of the lot area above the OHWM ($3,223 \div 7,858 = 41\%$). The minimum yard¹⁷ requirement for UC-designated areas is 60%. [SMC 25.07.010, Table 25.07.010-2] The current proposal, assuming the deck at the south end of the residence will be more than 18 inches above grade, exceeds the limit by 80 SF (40% of 7,858 SF = 3,143 SF; $3,223 \text{ SF} - 3,143 \text{ SF} = 80 \text{ SF}$).

All 10 significant trees and one of two catalogued but non-significant trees will have to be removed from the site. One of the trees noted for removal is a 9" diameter Pacific madrone located about 20 feet from the house and 10 feet from the deck (Tree 800). The two cottonwoods in the aquatic bed wetland will be preserved. In addition, three of the five significant trees and one of the three

¹⁷ The term yard as used within the SMP means "any surface area that is not structured or hardened. Yard areas may be landscaped, contain uncovered decks of less than 18 inches above grade, or artificial turf, but do not include areas covered by pervious concrete or other similar materials." [SMC 25.07.080(2)(d)]

catalogued but non-significant trees within the ELST right-of-way will be removed. All in all, 11 of 12 catalogued trees within Parcel 9071 and four of eight catalogued trees within the ELST right-of-way will have to be removed. (Exhibit 5, Sheets W2 and W7)

14. Baerwald proposes extensive shoreline vegetation enhancement, well in excess of the VEA requirements of the SMC. Approximately 4,230 SF of the site will be enhanced with new native species and large woody debris. The shoreline will not be bulkheaded; there will be no lawn. Baerwald verbally offered to not use herbicides or pesticides on the property. All proposed plantings will be native and chosen for their location on the property. Eight Western hemlock trees will be planted within the ELST right-of-way, a 2:1 ratio for the four trees to be removed. Five Pacific madrone, three paper birch, one shore pine, and two Pacific willow trees will be planted on the site. Those 11 trees represent a planting density in excess of the one tree for every 500 SF required within a VEA. Approximately 200 native shrubs representing 11 different species will be planted throughout the site; eight different types of groundcover will be planted throughout the area. The new plantings will be monitored for five years. (Exhibits 5; 6)
15. The review criteria for a Shoreline Variance depend upon where the proposal is located. Baerwald'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:
 - 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: The site is encumbered with the standard 50-foot shoreline setback from Lake Sammamish. Within the UC environment, the setback cannot be reduced without a shoreline variance. The standard setback encumbers the entire parcel, with the exception of a small, triangular area, totaling about 168 SF, near the northeast corner of the parcel. Compliance with a ten-foot street setback would completely eliminate all buildable area. Therefore, the required 50-foot shoreline setback for the subject parcel significantly interferes with reasonable use of the property. (Exhibits 1; 5; 9; and testimony)

With regard to tree replacement, the subject parcel cannot accommodate both a reasonably-sized residence and provide adequate room for replacement trees at a 2:1 ratio. This number of replacement trees is not practical due to space constraints. The mitigation area is generally located between the future residence and the Lake Sammamish shoreline. Planting 22 - 30 trees in an area approximately 4,200 SF in size would not meet general best practices for tree

spacing within mitigation areas. This is supported by the City's VEA standards, which require one tree for every 500 SF of mitigation plantings. This equates to eight trees for the subject site. Baerwald is proposing to plant 11 trees within Parcel 9071 and an additional eight trees within the adjoining ELST right-of-way. Therefore, a shoreline variance is necessary to deviate from the tree replacement standards. (Exhibits 1; 5; 6; 9; and testimony)

- 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 Baerwald nor any prior owner of Parcel 9071 did anything to create the hardship: The hardship is entirely due to the requirements of the SMP and the irregular shape of the parcel. The subject parcel is small, with 7,858 SF of upland area. The parcel is oddly shaped, varying in depth from about 30 to about 60 feet. The contour of the shoreline results in an irregular shaped parcel with a "pinched waistline" near its south end. Because of this, the standard 50-foot shoreline setback encumbers all but 168 SF near the northeast corner of the parcel located outside of the shoreline setback. However, this area would be totally encumbered when the standard street setback is applied. The parcel, and adjoining portion of King County's ELST right-of-way, also includes a total of about 15 significant trees within the shoreline setback. It is the unique size and shape of the property, combined with the required 50-foot shoreline setback and tree replacement regulations, which causes the hardship. (Exhibits 1; 5; 6; 9)

- 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 residential footprint (including detached garage) is 2,215 SF, 2,144 SF of which will occur within the standard shoreline setback. Approximately an additional 675 SF of impact to the lake shoreline setback area will result from construction of a small deck at the south end and the driveway at the north end of the building. The total development footprint for the parcel only (within and outside of the standard setback) is 3,223 SF. This includes the home, driveway, pathways, and deck. A total of 15 significant trees within the standard shoreline setback will be removed or snagged. (Exhibits 1; 5; 6; 9)

The proposal will have a smaller footprint than the three existing residences in the immediate vicinity. (Exhibits 9, p. 6, Table 1; 22) The proposal will have a larger (approximately 42% larger) total footprint than recently approved for Parcel 9085/Ogren. The proposed residence footprint, excluding the garage, will be approximately 28% larger than that approved for Parcel 9085. (Exhibit 22) The area above the OHWM of Parcel 9071 is about 36 % larger than Parcel 9085. $(7,858 \text{ SF} - 5,760 \text{ SF} = 2,098 \text{ SF}, 2,098 \text{ SF} \div 5,760 \text{ SF} = 36\%)$

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 9071/Baerwald (and the adjoining parcels along this stretch of the lake shoreline) specifically allows single-family residential use. Baerwald is not asking for any relief from use provisions of either the zoning code or the SMP. (Exhibit 1)

Baerwald'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 4,232 SF of shoreline enhancement, approximately 86% more than provided by the approved Parcel 9085/Ogren plan. The dilapidated shelter (most of which is located on Parcel 9085) and all invasive species will be removed. Native species will be planted throughout the area between the residence and the shoreline; there will be no usable lawn. Preliminary plans indicate that 18 trees, 200 shrubs, and over 1,200 groundcover plants will be planted. As stated previously, Baerwald has committed to not use herbicides or pesticides on the property. Woody debris will be placed along the shoreline to enhance habitat opportunities. The end result will be a better shoreline habitat than presently exists. (Exhibits 5; 6; 9; 22; and testimony)

In addition, the development will be a low intensity use of the site, utilizing several low impact development techniques, including pervious pavers, no significant lawn, and natural infiltration of stormwater runoff with amended soils and native plantings. In fact, the usage of the site could be considered an equivalent, or perhaps lower intensity, than nearby recreational parcels. That is, many of the recreational parcels are community beach parcels that are shared by numerous upland homeowners. The parcels are heavily utilized in the summer months with little to no area preserved on-site for meaningful protection or restoration.¹⁸ While continued use of those parcels for recreational purposes would prevent construction of residences, it would not necessarily result in fewer impacts, as it would not generally allow for meaningful restoration or enhancement to occur adjacent to the shoreline. (Exhibits 1; 5; 6; 9; and testimony)

- 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: This area of UC-designated parcels is approximately one-third of a mile long and includes 14 separate parcels, three of which are currently developed with single-family residences. Parcel depths range from 11 feet to 97 feet. The three developed parcels maintain an average setback of 15.6 feet, far less than the required standard setback of 50 feet and also less than approved for Parcel 9085/Ogren or requested by Baerwald. Therefore, all of the

¹⁸ For example, Parcel 9135/Eagle Shores contains significant mown, grassy areas both adjacent to the lake shoreline and within the abutting ELST right-of-way. Little native vegetation exists within 20 feet of the OHWM. (Exhibit 1, pp. 13 and 15, Figures 10 and 14)

adjacent developed properties located within the same environment designation include non-conforming structures. In addition, of the other 10 potentially developable parcels within the subject UC environment, including Parcel 9071, the average parcel depth is 60 feet. Therefore, it is unlikely that any of the other parcels can be developed without a Shoreline Variance, as there would not be enough area outside of the standard 50-foot shoreline setback to place reasonably sized residences. Some of those parcels are so shallow that development of any structure at all is doubtful. (Exhibits 1; 9; 43; and testimony)

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

Facts: The “minimum relief necessary” criterion most assuredly requires a subjective judgment call. The proposed residence has been pushed as far from the lake shoreline as practical. The house is narrow (about 13 to 33 feet wide; only one room wide for the most part) and irregularly linear to conform with the irregular linear shape of the property. The design fully utilizes the reduced 20-foot setback: The 20-foot minimum is used for the entirety of the structure. (Exhibit 5, Sheet W3)

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

Facts: The existing shoreline is degraded; restoration of the shoreline environment is a high public priority, which would be addressed by this project. Shoreline restoration activities, such as the proposed plan includes, are specifically identified in the Final Lake Washington/Cedar/Sammamish Watershed (WRIA 8) Chinook Salmon Conservation Plan (July 2005). (Exhibits 1; 9)

Because the site is already served with sewer, water, electricity, and private street access, 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, no substantial detrimental effect to the public interest will result from the proposed project. (Exhibits 1; 9; and testimony)

- 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: Baerwald's proposal will impact 3,223 SF of the site, or about 41% (exceeding the 40% maximum allowed under the SMP). It is reasonable to expect that five of the remaining undeveloped UC-designated parcels along this stretch of the lake shoreline (including Parcel 9085/Ogren) may be developed in the future. If that occurred, total impacts would be about 18,715 SF. In each case one must assume that mitigation similar in type and scope to that proposed by Baerwald would be required; shoreline treatment like that on Parcels 9042, 9030, and 9073 would not be allowed. One must also presume that a similar shoreline setback would be observed. (It is worth noting that a 20-foot setback can be realized in the SR environment designated areas as a matter of right with appropriate mitigation.) No significant overstory vegetation exists in immediate proximity to the shoreline; removal of the existing overstory vegetation will not significantly decrease shoreline shading. (Exhibits 1; 5; 9)

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)

- 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.

16. 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: Baerwald has worked with King County and Ecology in developing his proposed site plan and its associated setbacks. The result of this work is a request for a 2-foot setback for the residence with a greater than 10-foot garage setback from the ELST right-of-way. Even assuming approval of the full shoreline setback relief requested, the house would range in depth from about 3 to about 23 feet if no zoning setback relief were granted. These are not practical dimensions for a modern residence, especially not in this area. Without the ability to reduce the setback, it would not be possible to situate a reasonably sized home on the parcel. (Exhibits 1; 5; 10)

- 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 9071/Baerwald is located directly adjacent to the Lake Sammamish shoreline and is nearly entirely encumbered with the standard 50-foot shoreline setback. A separate Shoreline Variance is required to reduce the shoreline setback from 50-feet to 20-feet. 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; 5; 10)

- 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 9071/Baerwald 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 9071 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; 10)

- 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 north end of the structure to take advantage of the widest part of the lot. The north setback of 11 feet, though not part of the requested variance, provides a greater-than-code-required separation between the residence and Parcel 9135/Eagle Shores. The setback will allow for a 28-foot long driveway between the garage and the edge of the private access road within the ELST right-of-way, thus allowing cars to park in the driveway without impeding traffic flow on the private road or on the ELST. The actual trail will be some 60+ feet from the nearest face of the garage as proposed. The active part of the residence will be away from Parcel 9135/Eagle Shores. (Exhibit 5)

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

Facts: Baerwald has not requested any relief from the procedural requirements of Title 21A SMC. (Exhibits 1; 10)

- 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 – 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.” The record discloses that a number of persons over the past 10 ± years held pre-application conferences with Department staff to discuss the development potential of Parcel 9071 and other nearby parcels (See Exhibits 16.1; 22, Finding of Fact 15.), but there is absolutely no evidence that any of those pre-application meetings ever went beyond that step to become an actual permit application. Further, there is absolutely no evidence that any conditions were ever imposed on development of Parcel 9071 during any prior permit approval. Statements made by Department staff during a pre-application meeting do not constitute “conditions established during prior permit review.”

Baerwald 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.

- 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 9071/Baerwald 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)]

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, irregular depth of Parcel 9071/Baerwald. Given the sensitivity of the lake and the substantial distance (45± 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; 5; 10)

- 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 9071/Baerwald.

- 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.

17. The Baerwald 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.¹⁹
18. 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] Given the small scale of the map in this record (Exhibit 49), it is hard to say definitively whether Parcel 9071 is mapped as Very Low or Moderate to High liquefaction potential: Much, but not all of the land between the Lake shoreline and the Parkway is mapped as Moderate to High liquefaction potential.
19. 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 a seismic hazard area or to provide mitigation to minimize hazards to life and limb from liquefaction or settlement.
20. Each of the owners of Parcel 9135/Eagle Shores has some objection to Baerwald’s proposal:
- A. Purcell/Mendillo oppose the size of the proposed residence. They believe that anything with a footprint larger than a few hundred square feet is inappropriate. They believe that the words “Outfall to stream – Dump no pollutants” on a catchbasin grate (See Exhibit 40.) means definitively that the catchbasin leads to a stream or that the water flowing through the catchbasin is a stream (not true). They believe that if a person is told by a staffer that he/she cannot do something, that person is no longer eligible to even apply for a variance to do that

¹⁹ The word “likely” is used as there is a cost threshold below which an SSDP is not required for a private dock.

something (not true). They believe that the aquatic bed wetland along the frontage of Parcel 9071 was “created by the water leaving the culvert” beneath the ELST that is the outlet from Wetland 32A. They believe that the water flowing through Wetland 32A “is likely a tributary from stream 0143F”. They believe that the minimum side setback is 25.5 feet (misunderstanding of the code). They believe that no setback variance should be granted from the north property line (none is being requested). They believe that the number of opponents affects whether a variance is approved (totally untrue: The facts and the law/regulations determine the outcome of any given case, not the number of opponents or supporters). (Exhibits 16.1; 16.3; testimony)

- B. Schumacher believes that no variance should be granted to allow the structure to be within five feet of the common property line (a misunderstanding of the code). (Exhibit 16.2)
 - C. Stothers objects to reduction of the north setback from 10 to 2 feet (a misunderstanding of the setback variance request) and opposes the shoreline setback reduction as it would reduce the views from Parcel 9135/Eagle Shores. (Exhibit 16.4)
 - D. Kurz supports Purcell/Mendillo’s position. (Exhibit 16.5)
 - E. Garside objects to reducing the side setback from 25 to five feet (a misunderstanding of the code) and believes that Wetland 32A’s outlet is a stream. (Exhibit 16.6)
 - F. Hamilton has no objection to the requested zoning variance. Hamilton has no objection to the requested shoreline setback variance if Baerwald maintains a 25 foot setback from the Parcel 9135/Eagle Shores property line. Hamilton objects to a reduction from 25 feet to a five foot setback from Parcel 9135 (a misunderstanding of the code). (Exhibit 16.7)
- 21. In May, 2016, King County objected to the setback variance. (Exhibit 16.8) In February, 2017, King County changed its position to support the setbacks as proposed. (Exhibit 21) In March, 2017, King County advised that it will be working with Baerwald to resolve the water course which exits Wetland 32A. (Exhibit 24)
 - 22. The Snoqualmie Indian tribe opposes the 20 foot shoreline setback and believes that the tree replacement ratio should be greater than 1:1. It also takes issue with certain technical aspects of the mitigation plan performance standards. (Exhibit 23)
 - 23. The Department recommends approval of all requested variances subject to conditions. (Exhibit 1) Baerwald has no objection to any of the recommended conditions. (Testimony)
 - 24. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK²⁰

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 ("Ecology"), whose decision may be appealed to the Shorelines Hearings Board, a state quasi-judicial review board. [RCW 90.58.140(10)]

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 Ecology 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

²⁰ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

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 15, above.

The review criteria for zoning variances are set forth in SMC 21A.110.030. The applicable criteria have been set forth in Finding 16, 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 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. It is unfortunate that confusion about the directional frame of reference has led to misunderstanding by the families who share ownership of Parcel 9135/Eagle Shores about the nature of Baerwald's requested variances. Baerwald is not seeking any variance from any code provision relating to setback from the north line of Parcel 9071 (the common boundary between Parcels 9071 and 9135).

Baerwald's proposal meets or exceeds every setback requirement in the SMC relating to that property line.

2. It is equally unfortunate that a fundamental mis-reading of the SMP's side setback requirement has led several of the owners of Parcel 9135/Eagle Shores to the erroneous conclusion that Baerwald's proposal violates side setback requirements. Nothing could be further from the truth. The unambiguous language of the SMP (quoted in Footnote 5 in Finding of Fact 1, above.) requires that neither side setback be less than 5-feet and that the total of the two side setbacks (the sum of those setbacks) be not less than 15% of the width of the lot. Baerwald's proposal has a minimum north side setback of 11 feet – more than twice the allowed minimum - and a total, combined setback of about 57 feet (measured from the garage on the north and the edge of the deck on the south), which is about 34% of the 170-foot width of Parcel 9071. Trying to balance the two side setbacks – something that is not required by the SMC – would not make much sense because of the “pinch” in the property's depth which is located essentially at the south end of the proposed residence.
3. When considering whether a requested variance meets the “minimum relief” criterion, one must relate that criterion to the nature of the relief requested. Here, Baerwald seeks relief from the lake shore setback variance, the significant tree replacement ratio, and the ELST setback requirement. Baerwald does not seek relief from the lot area coverage requirements, requirements which regulate the area of the lot that may be covered (in other words, the size in square feet of the building). 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.
4. The 30 foot reduction in setback (from 50 to 20 feet) is a reasonable minimum for the residence *per se*. It allows for a building depth ranging from about 13 to about 33 feet – not excessive depth by any reasonable measure, especially when the necessary tapering is considered: The average depth of the residence is only 23 feet.

However, the 30 foot reduction in setback for the detached garage is not the minimum needed to provide a reasonable garage. As proposed, the east face of the garage is about 28 feet from the near edge of the private road. Twenty-eight feet is about one-and-one-half car lengths, way more than needed to safely park vehicles on the driveway without endangering traffic on the private road. The minimum setback relief needed for a reasonable detached garage is 25 feet, which will leave a driveway about 23 feet long, still long enough to allow a vehicle to safely park on it without endangering traffic on the private road.

5. No local land use entitlement can be approved which does not comply with applicable local land use regulations, except for those regulations covered by a variance application. Here, the evidence indicates that the current proposal exceeds the 40% maximum lot coverage limit within the SMP. Table 25-07.010-2 in SMP 25.07.010 requires a minimum yard area of 60%. Increasing the garage

setback to 25 feet from the OHWM will reduce the building/hardscape coverage by about 120 SF, thus ensuring compliance with the SMP's 60% yard requirement.

6. Most of the Parcel 9135/Eagle Shores owners' objections have been addressed directly or indirectly previously in this Decision. As has been noted, several of the objections are simply misunderstandings of the facts and/or the SMC. The "I won't object to your shoreline setback so long as you give me a much greater-than-required setback from our common property line" argument amounts to a barter demand. Variances are not "traded" for some other consideration. In any event, Baerwald's proposed north side setback is already more than twice the minimum width required by the SMC (11 feet v. 5 feet).
7. It is both a fact (Finding of Fact 12, above.) and a Conclusion of Law that the water flowing beneath the ELST from the north end of Wetland 32A is not a stream. There is no stream flowing into Wetland 32A; there is no stream flowing out of Wetland 32A. Both the in-flow and the out-flow are simply drainage courses. They are not streams nor modified former streams. The outlet from Wetland 32A is not regulated as an Environmentally Critical Area by the SMC.

The question of who made the changes to that drainage course west of the ELST culvert is not clear from the hearing record, nor need it be. This is not the proper forum in which to seek to punish someone for allegedly making unauthorized changes to that drainage course. The preponderance of the evidence indicates that the drainage course once discharged as sheet flow onto Parcel 9071/Baerwald. The disposition of that drainage course is not really related to either the requested Shoreline Variances or to the zoning variance. However, because of the sensitivity of its course to all parties interested in this case, the Examiner believes it appropriate to include a condition requiring that the outflow not be diverted onto Parcel 9135/Eagle Shores.

8. The Snoqualmie Indian Tribe argues that a 20 foot shoreline setback is "far too narrow a buffer" along the lake shoreline. (Exhibit 23) 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 existing significant vegetation which will be removed is all more than 20 feet from the lake's OHWM and 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.

9. Baerwald is not seeking comparability with the shoreline setback and setback area treatment evident on the three parcels south of Parcel 9085/Ogren. Those houses were built and/or remodeled either

before the SMA was enacted and/or before the current version of the SMP was adopted. Baerwald is not seeking – and should not expect to receive – comparability with those three houses and yards.

10. The Examiner's records indicate that he has previously approved four Shoreline Variances in the City for properties on Lake Sammamish:

	SVAR2013-00240	SVAR2014-00139	SVAR2014-00170	SVAR2015-00209
Zone	R-4	R-4	R-4	R-4
Environment Designation	SR	SR	SR	UC
Lot area		6,029 SF	5,782 SF	5,760 SF
Lot depth	28' – 34'	66' – 94'	64' – 71'	43' – 75'
Building footprint	1,230 SF	1,611 SF	995 SF	1,360 SF
Number of stories	3	2	3	2
Lake setback (minimum)	11'	35'	30'	20'
Other factors	Type F stream adjacent to north lot line	Category IV wetland upland of OHWM	Type Np stream along south edge; Category IV wetland in southeast corner	

If nothing else, those four cases demonstrate that each case is judged on its own merits. Each was a very different property; each was judged by the property's characteristics. The Baerwald application is not out of line with the four previously approved Shoreline variances.

11. The preponderance of the evidence, summarized in Finding of Fact 15, above, demonstrates compliance with all criteria for approval of a Shoreline Variance. (The reader is referred to Exhibits 1 and 9 for more in-depth analyses of criteria compliance than presented in Finding of Fact 15.)

A word or two about the "cumulative impact" criterion (See Finding of Fact 15.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. (Exhibit 22, Conclusion of Law 5) The evidence in this case clearly demonstrates a net gain of 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.

12. The recommended conditions of approval for the Shoreline Variance as set forth in Exhibit 1 at pages 54 and 55 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 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. Baerwald’s commitment to not use herbicides or pesticides on the property constitutes a voluntary offer. Voluntary offers should be reflected in the conditions of approval to ensure that they are not forgotten. This condition would be a good place to locate that commitment.
- D. Recommended Condition 7. This indemnification condition is something 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.
- E. It makes little sense to save an alder (Tree 802) that is about 10 feet from the proposed building footprint while removing a Pacific madrone (Tree 800) which is located about 20 feet from the building footprint. Baerwald’s agent testified that that madrone was not in good condition. However, the arborist’s data, as depicted in Exhibit 5 at Sheet W7, indicates its condition to be the same as several trees that will be preserved. Baerwald should be required to save Tree 800 unless it truly is in the way of construction. A condition to that effect will be added.
- F. 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.

13. The preponderance of the evidence, summarized in Finding of Fact 16, above, demonstrates compliance with all criteria for approval of a zoning variance. (The reader is referred to Exhibits 1 and 10 for more in-depth analyses of criteria compliance than presented in Finding of Fact 16.)
14. The recommended conditions of approval for the zoning variance as set forth in Exhibit 1 at pages 36 and 37 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 something 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.

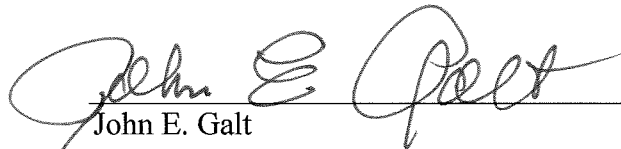
15. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

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 SVAR2016-00053 from SMC 21A.25.030(A) to relax the street setback **SUBJECT TO THE ATTACHED CONDITIONS.**
- B. **GRANTS** City approval of the requested Shoreline Variances under file number SVAR2016-00053 from SMC 25.06.020(9) and 25.07.010, Table 25.07.010-2 to relax the shoreline setback and from SMC 25.06.020(11), Table 25.06.020 to relax the tree replacement ratio **SUBJECT TO CONDITIONS SET FORTH WITHIN THE ATTACHED PERMIT.**

Decision issued April 4, 2017.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ²¹

Sung Lee
Dennis Baerwald
Ryan Kahlo

Kenny Booth
Aurora Purcell

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)]

²¹ The official Parties of Record register is maintained by the City's Hearing Clerk.

**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.

**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.

<p>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.”</p>

**CONDITIONS OF APPROVAL
SVAR2016-00053
DENNIS BAERWALD**

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 2 feet for the residence depicted on Exhibit 5. 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. Cultural resources help define human history, remind us of our interdependence with the land, and show how cultures change over time. Structures, artifacts, objects and other cultural resources are found throughout Washington in locations where people have lived and thrived. These resources are evidence of how people lived, where important events occurred, and where traditional, religious and ceremonial activities took place. Cultural resources are varied in their nature and may include any number of materials, objects or sites that are considered to have significant cultural or historic value to the people. It is not uncommon for cultural resources to have private, ceremonial, sacred and/or spiritual qualities that might require confidentiality for their protection. 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.

CITY of SAMMAMISH

**SHORELINE MANAGEMENT ACT
VARIANCE**

File No.: SVAR2016-00053

Applicant: Dennis Baerwald
7611 NE 198th Place
Kenmore, WA 98028

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 from SMC 25.06.020(11), Table 25.06.020 to relax the tree replacement ratio, both as reflected in Hearing Exhibit 5 and as further restricted herein.

This variance applies to the property legally described in Exhibit 13 which is generally located in the 3200 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 Variances granted herein are limited solely to those requested, to wit: 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 20 feet for the proposed residence and to not less than 25 feet for the proposed detached garage, and relief from the SMC 25.06.020(11), Table 25.06.020 tree replacement ratio, both as generally depicted on Exhibit 5. (The 25 foot garage setback is not depicted on Exhibit 5.) No other variance is either expressed or implied. The mitigation/enhancement depicted by Exhibit 5 is an integral element of this approval; PROVIDED, that every possible effort shall be taken to preserve Tree 800 (See Exhibit 5, Sheet W2) during development of the site.
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.
4. A notice on title shall be recorded for this property that prohibits the 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. The non-stream water course which enters the subject property near its northeast corner shall not be diverted or allowed to flow onto the adjoining property to the north.
6. 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.
7. Cultural resources help define human history, remind us of our interdependence with the land, and show how cultures change over time. Structures, artifacts, objects and other cultural resources are found throughout Washington in locations where people have lived and thrived. These resources are evidence of how people lived, where important events occurred, and where traditional, religious and ceremonial activities took place. Cultural resources are varied in their nature and may include any number of materials, objects or sites that are considered to have significant cultural or historic value to the people. It is not uncommon for cultural resources to have private, ceremonial, sacred and/or spiritual qualities that might require confidentiality for their protection. 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 April 4, 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)