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BEFORE the HEARING EXAMINER for the
CITY of SAMMAMISH

CITY OF SAMMAMISH

CORRECTED DECISION ¹

FILE NUMBER: SVAR2013-00240

APPLICANT: Charlotte and John Campanella
501 292nd Avenue SE
Fall City, WA 98024

TYPE OF CASE: Shoreline Management Act Variance to reduce shoreline setback from 50 to 11 feet, to reduce a stream setback from 150 to 14 feet, and to reduce a stream buffer building setback from 15 feet to 5 feet

STAFF RECOMMENDATION: Approve subject to conditions

EXAMINER DECISION: GRANT subject to conditions

DATE OF CORRECTED DECISION: August 31, 2016

INTRODUCTION ²

Charlotte and John Campanella (collectively the Campanellas) seek approval of a Shoreline Management Act Variance (Shoreline Variance) to reduce shoreline setback from 50 to 11 feet, to reduce a stream setback from 150 to 14 feet, and to reduce a stream buffer building setback from 15 feet to 5 feet.

The Campanellas filed a Base Land Use Application on December 13, 2013. (Exhibit A ³) The Sammamish Department of Community Development (the Department) deemed the application to be complete on or about February 25, 2014. (Exhibit B)

¹ This written Decision memorializes and expands upon an oral decision rendered on the record at the close of the August 24, 2016, pre-decision hearing.

This version also contains minor clerical corrections on pages 9 and 11 made pursuant to Rule of Procedure 508. (Some copies of the original Decision also had a pathname error in the footer on each page. The Examiner has no idea how that error occurred as every electronic and paper copy of the original Decision in the Examiner's possession has the correct pathname.)

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 subject property is located just north of 2023 East Lake Sammamish Parkway NE in the NW 1/4 of Section 29, Township 25 Range 06 East, W.M. It bears King County Assessors Tax Parcel No. 7525900095. (Exhibit 1)

The Sammamish Hearing Examiner (Examiner) viewed the subject property on August 23, 2016.

The Examiner held an open record hearing on August 24, 2016. The Department gave notice of the hearing as required by the Sammamish Municipal Code (SMC). (Exhibit J)

Subsection 20.05.100(1) SMC requires that decisions on Type IV applications be issued within 120 net review days after the application is found to be complete. The open record hearing was held well after net review day 120. 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(3)]. The Campanellas chose to extend the deadline. (Testimony)

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

Exhibit 1: Departmental Staff Report ⁴
Exhibits A – J: As enumerated in Exhibit 1

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

FINDINGS OF FACT

1. The Campanellas desire to construct a single-family residence for their use on an extremely shallow lot along the east shore of Lake Sammamish. Because of the extreme shallowness of the lot, even a modestly sized residence cannot be constructed without relaxation of zoning, shoreline, and stream setbacks. ⁵

⁴ The Campanellas filed a related zoning variance application (ZONV2014-00017). Zoning variances are Type 2 applications. Type 2 applications are administrative in nature, with the Department having the authority to render the decision (unless the application is consolidated with a higher numbered application). [SMC 20.10.020(1), Exhibit A] The Campanellas did not elect to consolidate their two applications. The Departmental Report was structured to serve as both a recommendation on the Shoreline Variance and as a decision document for the zoning variance. (Exhibit 1) All portions of Exhibit 1 dealing with the zoning variance will be ignored in this Decision (other than to note the purpose for and approval of the zoning variance).

⁵ The related zoning variance (See Footnote 4, above.) was granted by the Department on July 20, 2016. It reduced the lot's front (east side) setback from 10 to zero feet. (Exhibit 1, pp. 4 – 13)

2. The Campanellas's lot is located between Lake Sammamish and the right-of-way for the East Lake Sammamish Trail (ELST), which in turn is bordered on its east by the right-of-way for East Lake Sammamish Parkway NE (Parkway). The lot measures approximately 100 feet in north-south dimension, but only about 28 – 34 feet in east-west dimension. A small Type F stream flows from east to west immediately north of the north Campanella property line. The stream is piped beneath the ELST and for most of its run along the Campanella property; only the last few feet are day-lighted. A lake fringe wetland exists along the property's shoreline frontage. A separate wetland (Wetland 31A) is located east of the ELST between the ELST and the Parkway. (Exhibits F – H)
3. The Campanellas's lot is designated Shoreline Residential by the adopted Shoreline Master Program (SMP). (Exhibit 1, p. 4) The SMP requires a 50-foot shoreline setback and a 150-foot Type F stream buffer (plus an additional 15-foot building setback). The lake fringe wetland is entirely below the lake's ordinary high water mark (OHWM) and is, therefore not differentiated from the lake under the SMP. The required buffer for Wetland 31A does not extend onto the Campanellas's lot. The SMC provides mechanisms to reduce the shoreline setback to 20 feet and to reduce the stream buffer to 75 feet with a 15 foot building setback. (Exhibit 1, especially p. 10)
4. The Campanellas propose to construct a 15.5 foot wide residence on the lot, paralleling and abutting the east property line. The residence's footprint will be 1,230 square feet (SF); the total impact area within the shoreline setback will be about 1,660 SF. The structure will be a three story (approximately 30 feet tall) modular structure erected on a concrete pile foundation.⁶ Shoreline setback will vary from about 18 to as little as 11 feet. The stream buffer will be 14 feet and the associated structural setback will be 5 feet. Extensive mitigation (removal of an existing bulkhead, revegetation of the site, etc.) is proposed. (Exhibits 1; and F – H)
5. Subsection 25.08.050(1) SMC adopts the WAC 173-27-170 Shoreline Variance review criteria. The review criteria for a Shoreline Variance depend upon where the proposal is located. The Campanellas'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)]

⁶ The foundation work (drilled concrete piles) will take a couple of months to complete. While that work is occurring, the residence will be constructed off-site in modules. The modules will be stacked on the foundation by crane in a process expected to be completed in one day. (Testimony)

Facts: The required 50-foot shoreline buffer completely encumbers the entire lot as does the required 150-foot stream setback. Even if the stream buffer and shoreline setback were reduced to the maximum extent allowed by the SMP, the developable area of the property would consist of about a 10' x 10' square in the far southeast corner of the lot. (Exhibits F and H)

- 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: The hardship is entirely due to the narrowness of the lot, a reality over which the Campanellas had no control.

- 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: Neighboring properties within the area vary in size, shape, and extent of existing development. The Shoreline Residential environment designation in which the subject parcel is located extends approximately 100 feet to the north, and approximately 5 miles to the south (ending at the city limits). The subject parcel is part of a grouping of 10 parcels that are similarly situated (north of these 10 parcels is the Urban Conservancy shoreline designation; south of these 10 parcels average lot size jumps considerably). Existing houses in the area exhibit similar shoreline setbacks. (Exhibits 1 and H)

The Campanellas propose extensive site restoration: removal of an existing concrete bulkhead along the lot's shoreline, establishment of 975 SF of native plantings on the lot, and establishment of 1,360 SF of native plantings on the abutting ELST property. (Exhibits F – H)

Proposed vegetative plantings will help to filter stormwater before it reaches the stream or lake, attenuate wave energy, and provide an increase in habitat. Specifically, water quality functions will increase due to a substantial increase in woody plant material immediately adjacent to the shoreline. Introduction of rigid vegetation will slow surface water flowing towards the stream or lake and help filter and capture sediments. Hydrologic functions will improve with the installation of dense, rigid shrubs and herbaceous vegetation that can withstand surface flows. Habitat functions will also improve through a reduction of nonnative species and an increase in richness of native plant species and structure. Increased vegetation structure will add cover and forage opportunities for wildlife. Additionally, some of the trees to be removed will be retained and used along the shoreline as large woody

debris. This will provide additional habitat diversity and interspersions of habitat types on the parcel. (Exhibits 1; G; and H)

The Campanellas have received permits from King County, Washington State Fish and Wildlife, and the U.S. Army Corps of Engineers for the proposed work. (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: The subject parcel is part of a grouping of 10 parcels that are similarly situated (north of these 10 parcels is the Urban Conservancy shoreline designation; south of these 10 parcels average lot size jumps considerably). There is a 13-foot average structure setback on the adjacent parcels, just exceeding the 11-foot structure setback of the proposed project. Furthermore, the 1,230 SF of structure area for the proposed residence is just 56 percent of the average structure area for adjacent residences; 2,180 SF. Finally, the average adjacent parcel includes 42 percent structure area, whereas the proposed project would include 41 percent structure area. (Exhibits 1 and H)

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

Facts: Even with the relief requested, the residence will be only 15.5 feet wide – one room wide. Given the neighborhood and surrounding development, this constitutes minimum relief. (Exhibits 1; F; and H)

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

Facts: The existing shoreline has been altered. Restoration of the shoreline environment is a high public priority: Shoreline restoration activities such as those that the proposed project includes are specifically identified in the Final Lake Washington/Cedar/Sammamish Watershed (WRIA 8) Chinook Salmon Conservation Plan (July 2005). The Campanellas’s restoration activities will further that objective. (Exhibits 1; F; and G)

The site is already served with sewer, water, electricity, and street access; there will be no additional burden to the public from construction of a single family residence. Leaving the lot in its existing condition would not further the interests of the public because restoration of the shoreline or the stream buffer would not occur. In addition, the proposed development would fit in with surrounding developed land uses within the immediate vicinity. (Exhibits 1; and H)

- 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: The area is substantially built out: There are only two undeveloped parcels in close proximity to the Campanellas’s lot. Development of those lots would also likely require shoreline variances because of their shallowness. (Exhibit 1)

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

Facts: Single-family residences and appurtenances are permitted uses in the Shoreline Residential environment. [SMC Table 25.07.010-1] Therefore, the proposed project is consistent with the use regulations of the SMP.

6. Variances are categorically exempt from the State Environmental Policy Act (SEPA) threshold determination process pursuant to WAC 197-11-800(6)(e).⁷ (Exhibit 1, p. 9, §IV.6)
7. The Campanellas submitted detailed plans, a critical areas study, and detailed analysis of the Shoreline Variance criteria. (Exhibits F – H) The Department also prepared a detailed analysis of the Shoreline Variance criteria. (Exhibit 1)
8. The Campanellas do not object to any of the conditions recommended by the Department. (Testimony)
9. No testimony or evidence was entered into the record by the general public either in support of or in opposition to the application.
10. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK⁸

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

Authority

⁷ That notwithstanding, Sammamish’s SEPA Responsible Official issued a threshold Determination of Nonsignificance (DNS) for the proposal on July 20, 2016. (Exhibit 1, p. 2) The DNS was not appealed. (Testimony)

⁸ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

HEARING EXAMINER CORRECTED DECISION

RE: SVAR2013-00240 (Campanella)

August 31, 2016

Page 7 of 12

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

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

[SMC 20.10.070(2)]

Review Criteria

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

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

The review criteria for a Shoreline Variance have been set forth in Finding 5, 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 is vested to the development regulations as they existed on or about February 25, 2014.

Standard of Review

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

Scope of Consideration

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

CONCLUSIONS OF LAW

1. The preponderance of the evidence (in fact the totality of the evidence) clearly demonstrates that a Shoreline Variance is necessary in order to make any use of the Campanellas's lot and that the proposal presented herein is an extremely reasonable approach to use of the lot, an approach which minimizes impacts and maximizes shoreline restoration.
2. The preponderance of the evidence (in fact the totality of the evidence), as summarized in Finding of Fact 5, above, also demonstrates compliance with all applicable Shoreline Variance criteria.
3. The Campanellas and the Department have both accurately and thoroughly evaluated the criteria for approval of a Shoreline Variance. (Exhibits 1 and H, respectively) Those analyses were not challenged. Therefore, those analyses are incorporated herein by reference as if set forth in full; PROVIDED, that the statement in § IV.29 of Exhibit 1 at page 11 that the Shoreline Variance was consolidated with the zoning variance for processing is incorrect and is not incorporated herein; and PROVIDED FURTHER, that the statement on page 17 of Exhibit 1 that the "City Council Final Draft 2015 Comprehensive Plan" is applicable to the proposal is incorrect and is not incorporated.
4. The recommended conditions of approval as set forth in Exhibit 1 are reasonable, supported by the evidence, and capable of accomplishment with the following changes:
 - A. A Shoreline Variance embodies the concept of approval of a specific development proposal. A Shoreline Variance evaluation is based upon the specific development plans submitted by the applicant. It is appropriate, therefore, that the conditions of approval clearly identify the plans which are being approved. The Department's recommendation as drafted does not do so. Both the Campanellas and the Department agree that Exhibit F constitutes the plans which should be approved. Reference to that exhibit will be incorporated into a new condition.

- B. Recommended Condition 1: The Examiner will replace the word “applicant” with “Permittee.” A land use permit “runs with the land.” Thus, the current applicants may not always be the persons benefitting from the permit. The word “applicant” might lead some to think that a condition requiring something of the “applicant” applied only to the original permit applicant. While that possibility may be remote, it can be easily avoided by using a word other than “applicant.” “Permittee” clearly means the party benefitting from the permit.
- C. Recommended Condition 4: The Department testified that this condition pertains to the zoning variance, not the Shoreline Variance. While it may be important in the context of the zoning variance, it is irrelevant and, thus, inappropriate as a Shoreline Variance condition. It will be eliminated.
- D. Section 173-27-190 WAC contains certain content and format requirements for any SVAR which is issued:

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

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

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

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

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

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, and the testimony and evidence submitted at the open record hearing, the Examiner **GRANTS** City approval of the requested Shoreline

Variance reduce shoreline setback from 50 to 11 feet, to reduce a stream setback from 150 to 14 feet, and to reduce a stream buffer building setback from 15 feet to 5 feet **SUBJECT TO THE ATTACHED CONDITIONS.**

Corrected Decision issued August 31, 2016.



John E. Galt
Hearing Examiner

HEARING PARTICIPANTS⁹

Kenny Booth
Ryan Harriman

Gustavo Penengo

NOTICE of RIGHT of RECONSIDERATION

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

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

NOTICE of RIGHT of APPEAL

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

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."

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

**CONDITIONS OF APPROVAL
CHARLOTTE and JOHN CAMPANELLA
SVAR2013-00240**

This Shoreline 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. Exhibit F is the approved plan set for this Shoreline Variance.
2. The Permittee 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 and stream buffer boundaries, as well as reflects information about the mitigation project required for development of this property.
4. 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.

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

**DEPARTMENT OF ECOLOGY REVIEW
of
SHORELINE VARIANCE**

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

COMMENTS/ADDITIONAL CONDITIONS: _____

(Name)

(Title)

(Date)