



Adirondack Park Agency

THIRD VARIANCE INFORMATION REQUEST **APA Project No.: 2021-0249**

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| Project Sponsor: Andrew P. Hawkins & Lisa A. Walsh 50 East 72nd St. New York, NY 10021 | Authorized Representative: Michael Bird A.I.A. 30 Riverside Drive Saranac Lake, NY 12983 |
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Date Variance Application Received: October 19, 2021

Type of Variance: Shoreline Variance

Additional information received: February 16 and 17, 2022

Location of Variance: Town of Brighton, Franklin County
Land Use Area: Resource Management
Tax Map No.: 395.-1-4.100

Dear Andrew P. Hawkins, Lisa A. Walsh, and Michael Bird A.I.A.:

Thank you for the recent submission in relation to APA Project No. 2021-0249, received by the Agency on February 16 and 17, 2022. The submission provided important information in response to the Agency's December 20, 2021 Variance Information Request (VIR).

Please submit your response to this notice by e-mail to bart.haralson@apa.ny.gov and reference Project Number 2021-0249 in the subject line.

The following questions and clarification of the information submitted in response to the December 20, 2021 VIR is necessary to review your application.

In addition, as part of the review process, a public hearing for presentation and discussion of the requested variance will be scheduled by Agency staff. It is recommended that the hearing be scheduled after receipt of the information requested in this letter. Additional information on the variance process can be found in the attached summary.

The proposal may not be undertaken until the Agency has issued an approval Order. "Undertake" means any commencement of a material disturbance of land preparatory to the proposed project, including but not limited to road construction, grading, installation of utilities, excavation, clearing of building sites, or other landscaping, or in the case of subdivision, the conveyance of any lots.

If you have any questions regarding this VIR or the review process, please contact EPS **Bart Haralson**.

March 4, 2022
Date

/s/ Robert J. Lore
Robert J. Lore
Deputy Director, Regulatory Programs

Attachments: List of Requested Information

REQUESTED INFORMATION
APA Project No. 2021-0249

Please submit your response to this notice by e-mail to bart.haralson@apa.ny.gov
All application submissions should be in PDF or similar format and be legible.
Electronic copies of plans must be fully scalable.

1. As stated in the application materials, your proposed shoreline structure does not conform to the definition of a boathouse for Agency purposes. Lawfully existing non-conforming boathouses may not be expanded without an Agency variance. You propose to expand your lawfully existing non-conforming boathouse to a structure with a final footprint of over 1,200 square feet in size and a height of over 15 feet. Variances are exceptions to the law and accordingly, the standard for issuing a variance is significantly higher than for a permit. **Please be advised that staff's review indicates this proposal does not meet the criteria to be granted a variance under Agency law and staff cannot recommend approval for the shoreline structure expansion.** Accordingly, please consider other non-jurisdictional alternatives to the current proposal.
2. Although the photos submitted February 17, 2022, along with prior wetlands mapping, will alleviate the need for a summer site visit for the proposed shoreline structure expansion, they also appear to show wetlands along the shoreline where the proposed dock slightly overlaps with the shoreline. A spring site visit to the property will be necessary to verify the presence or absence of wetlands in this location. Alternatively, if the proposal can be shifted slightly away from shore, wetland impacts can be entirely avoided by the project. Please submit a revised proposal that avoids the potential for wetland impacts at the shoreline or contact Bart Haralson in the spring to schedule a site visit.
3. In order to facilitate a coordinated review with the NYS Department of Environmental Conservation (NYSDEC) and US Army Corps of Engineers (ACOE), please continue to provide documentation from each agency regarding their respective jurisdictional roles in this proposal, as well as the status of any required applications. Please provide any required future submissions and all supporting documentation to each entity simultaneously to enable a coordinated review.

cc: Rebecca Smith (DEC)

Enc: Variance Process Summary

VARIANCE PROCESS SUMMARY FOR APPLICANTS

The Adirondack Park Agency Act and Agency regulations implementing the NYS Wild, Scenic and Recreational Rivers System Act establish shoreline restrictions on lands associated with lakes, ponds, rivers, and streams. A variance must be obtained from the Agency before undertaking any development activity that does not comply with these restrictions.

The goal of the Agency's variance review process is to gather the information necessary to decide whether a variance may be granted. In order to determine whether a variance request can be approved, the Agency must conduct a thorough analysis of the proposal, including any viable alternatives and the potential for impacts. Specifically, Agency regulations require consideration of the following for each proposal:

- Potential adverse consequences to the applicant resulting from denial of the variance;
- Whether the application requests the minimum variance necessary;
- Whether granting the variance will create substantial detriment to adjoining or nearby landowners;
- Whether the need for a variance can be avoided;
- How the need for a variance arose;
- Whether granting the variance will adversely affect water quality or natural, scenic, or open space resources; and
- Whether the inclusion of conditions in a variance order would limit or minimize any adverse impacts.

Agency staff's role is to assist the applicant in creating a record that will allow for a final decision based on analysis of the criteria listed above.

THE VARIANCE APPLICATION PROCESS

The first step in the variance process should always be a site visit or a pre-application meeting with staff. This site visit or meeting should occur even before an application is submitted, and will help determine what information needs to be submitted. Site visits and pre-application meetings may be scheduled by calling the Agency's Regulatory Programs Division.

The next step in the variance process is submission of an application to the Agency. Upon receipt of the application, Agency staff will review the information submitted, and may ask the applicant for additional information.

THE VARIANCE HEARING PROCESS

Agency regulations require a public hearing for each requested variance. Staff will publish a Notice of Variance Hearing in a local newspaper. The Notice of Variance Hearing will contain information about the requested variance and variance process, and list the hearing date and location. A copy of this notice will be mailed to the applicant, the property owner (if different than the applicant), landowners within 500 feet of the property, the Adirondack Local Government Review Board, the local planning board chairperson, and the town supervisor or village mayor. The hearing date will be at least 10 days from the date that the notice is published in the local newspaper. The Notice of Variance Hearing also establishes an official time period for the public to provide written comment on the variance request, although comments may be submitted at any point during the review process.

There are two types of public hearings the Agency may hold on a variance request. A hearing held under § 576.5 of Agency regulations is conducted either by an Agency staff member who is not involved in the review of the requested variance or an independent Administrative Law Judge. At the hearing, the applicant or their authorized representative will be asked to describe the variance request and explain how the request relates to the variance decision criteria. Agency staff may ask the applicant questions and may also present additional factual testimony and exhibits relating to the factors to be considered in the decision. The applicant may then ask Agency staff questions regarding their presentation. At the end of the hearing there will be an opportunity for any member of the public to make a statement regarding the variance proposal. The applicant will have the opportunity to respond to public comment, but is not required to do so.

A hearing conducted under § 576.6 of Agency regulations is held when the Deputy Director – Regulatory Programs intends to recommend approval of the variance and staff have no further questions. These “mini hearings” are run by the Project Review Officer, and in some cases the Agency’s Public Hearing Officer. The hearing is conducted solely to receive public comment. If new significant issues are raised during public comment, the Deputy Director – Regulatory Programs is required to schedule an additional hearing to address them.

All variance hearings are recorded and become part of the variance record.

AGENCY BOARD ACTION ON THE VARIANCE REQUEST

Most variance requests are decided by the Agency Board at a scheduled monthly meeting. In limited circumstances, the Board has delegated authority to the Deputy Director of Regulatory Programs to approve certain variance applications. In all cases, Agency action on the requested variance must occur within 45 days of the close of the hearing (generally the date of the hearing or close of public comment), unless a longer period of time is agreed to between Agency staff and the applicant. In most cases, Agency staff will prepare a written analysis of the variance request to the Agency Board. Agency staff may also use the written analysis to provide the Agency Board with a recommendation concerning the variance request, including a draft order granting or

denying the requested variance. The applicant will have an opportunity to submit a written response to staff's analysis and recommendation.

Prior to Agency Board consideration of the requested variance, Agency staff will send the information gathered through the application and hearing process to the Board, including hearing exhibits and a recording of the hearing, along with written public comments and any written statements from the applicant or Agency staff. The public may obtain copies of this information from the Agency through the Freedom of Information Law process.

The Agency Board considers and makes decisions on variance requests during its monthly meeting at the Agency's headquarters in Ray Brook, New York. The meeting and the Agency Board's deliberations concerning the requested variance are open to the public and can be viewed via webcast on the Agency's website at www.apa.ny.gov.

During the Agency meeting, the record for the requested variance is presented by Agency staff to the Agency Board's Regulatory Programs Committee. Committee members discuss the request, ask staff questions, and vote on a recommendation as to how the variance request should be decided. After the Committee meeting concludes, the full Agency Board convenes to consider and make a decision on the requested variance. Staff may be called upon again to present the record to the Agency Board and to respond to additional questions. The Agency Board then votes on whether to approve or deny the requested variance and will direct staff to issue an order consistent with its decision.

A copy of the Agency Board's Order will be sent to the applicant and to any other formal party to the hearing. The public may obtain copies of the Order pursuant to the Freedom of Information Law.