



**Adirondack
Park Agency**

Shoreline Structures and Variances

An Overview

November 16, 2022

APA Shoreline Structure Provisions

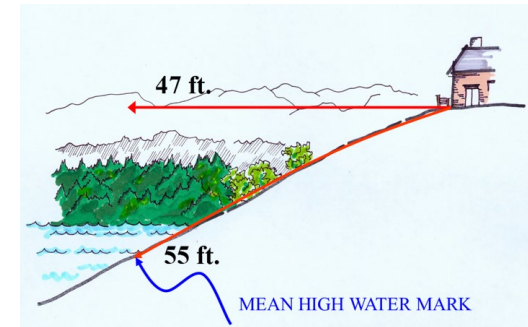
- Adirondack Park Agency Act
 - Executive Law §§ 806, 811
 - 9 NYCRR Part 575
- Wild, Scenic and Recreational River System Act
 - 9 NYCRR §§ 577.4(d), 577.6(b), 577.7

APA Act

APA Act – Basic Requirements

Other than docks and boathouses, all new accessory structures and principal buildings greater than 100 square feet in size must be set back from the mean high water mark of lakes, ponds, study rivers, and other navigable rivers and streams a distance of:

| | |
|-------------------------|----------|
| Hamlet: | 50 feet |
| Moderate Intensity Use: | 50 feet |
| Low Intensity Use: | 75 feet |
| Rural Use: | 75 feet |
| Resource Management: | 100 feet |



Section 806(1)(a)(2)

APA Act – Basic Requirements

What is subject to the structure setback?

- Accessory structures and principal buildings

(Examples: dwellings, sheds, stairs, decks, fences, walls)

- Exemptions:
 - Boathouses
 - Docks
 - Certain retaining walls
 - Certain vehicles



APA Act – Expansions

Structure replacement or expansion allowed, except that no expansion or replacement may result in an increase in non-compliance with the setback restrictions

Section 811(5)

Increase in non-compliance = expansion “in any direction within the shoreline setback area...”

9 NYCRR § 575.5(b)(2)

APA Act – Expansions

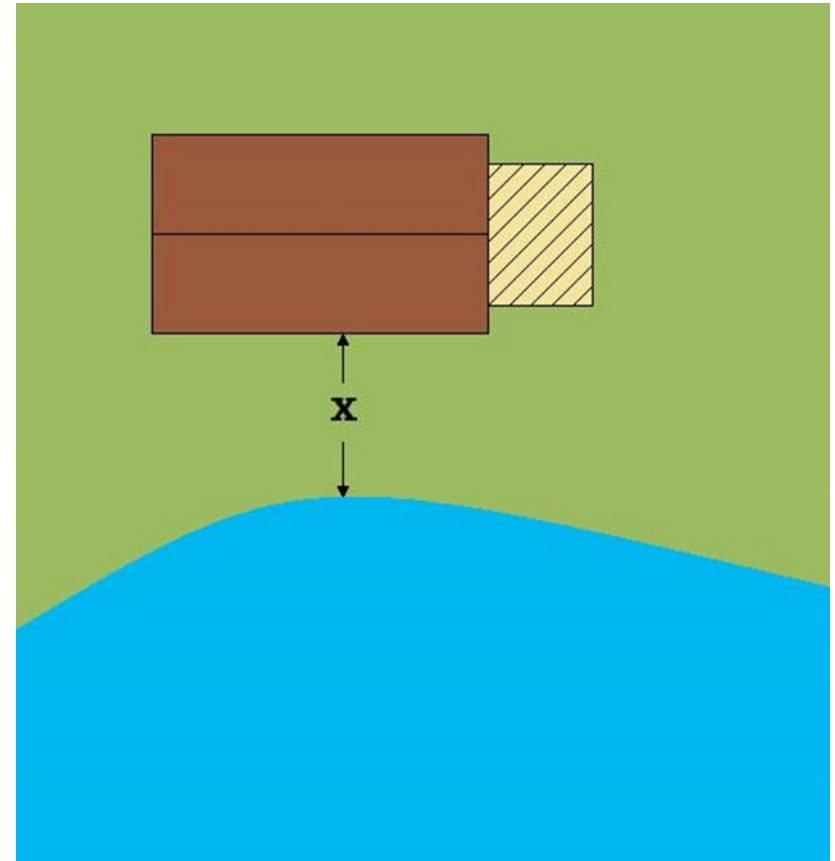
Four parameters:

- 1) No closer to the mean high water mark
- 2) Height
- 3) Footprint
- 4) Width

APA Act – Expansions

Parameter 1 (closer):

No portion of an expanded or replacement structure may be located closer to the mean high water mark than the closest point of the pre-existing structure



APA Act – Expansions

Parameter 2 (height):

For buildings – highest point of the highest roof ridgeline

For other structures – highest point of the structure



APA Act – Expansions

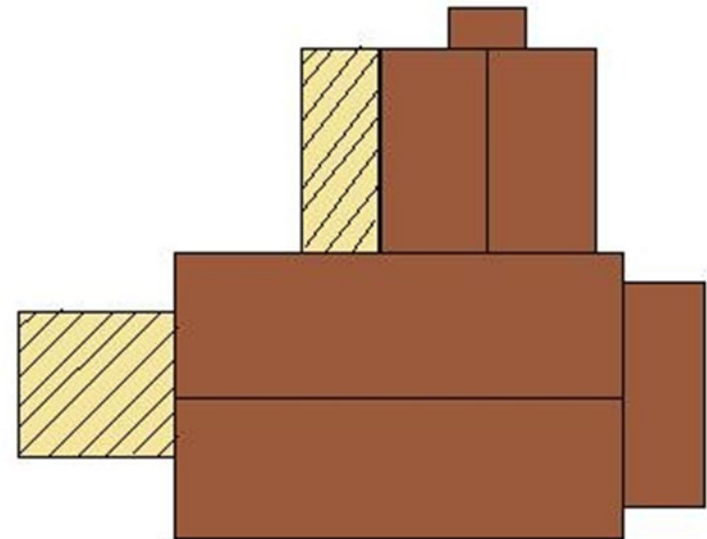
Parameter 3 (footprint):

All attached components are considered part of a single structure

9 NYCRR § 575.4(b)

Attached =

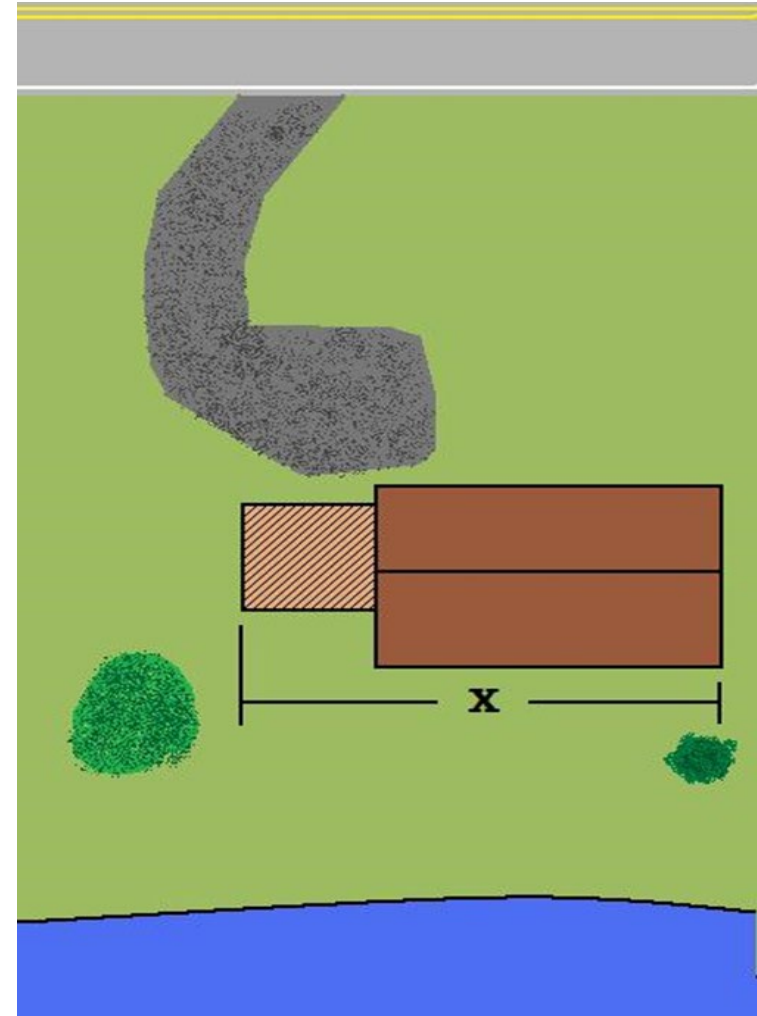
- Adjacent,
- Structurally attached, or
- Functionally attached (located in close proximity and used together)



APA Act – Expansions

Parameter 4 (width):

Maximum width measured parallel to the side facing the mean high water mark



APA Act – Expansions

Exceptions to the four part test:

- 1) Minor height expansion (9 NYCRR 575.5(b))
 - An increase of up to two feet in height for sfd, mobile homes, and certain other pre-existing structures
- 2) Minor rearward expansion (9 NYCRR 575.5(b))
 - An increase by up to 250 square feet to the non-shoreline side of an sfd or mobile home
 - An increase by up to 100 square feet to the non-shoreline side of certain other pre-existing structures
- 3) Dwelling access
 - < 25 square feet in size on a non-shoreline side

APA Act – Basic Requirements

What is subject to the structure setback?

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(Examples: dwellings, sheds, stairs, decks, fences, walls)

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 - Certain vehicles



APA Act – Exemption: Retaining Walls

9 NYCRR § 575.4(f): A retaining wall is not subject to the setback requirement if the wall meets all of the following

- Is smaller than 200 square feet in size
- Is constructed of dry laid stone or untreated natural logs
- Does not exceed two feet in height above the mhw
- Is designed to control an on-going erosion problem
- Is limited to the area necessary to control the erosion, and
- Follows the existing natural elevation and contour of the shoreline



APA Act – Exemption: Vehicles

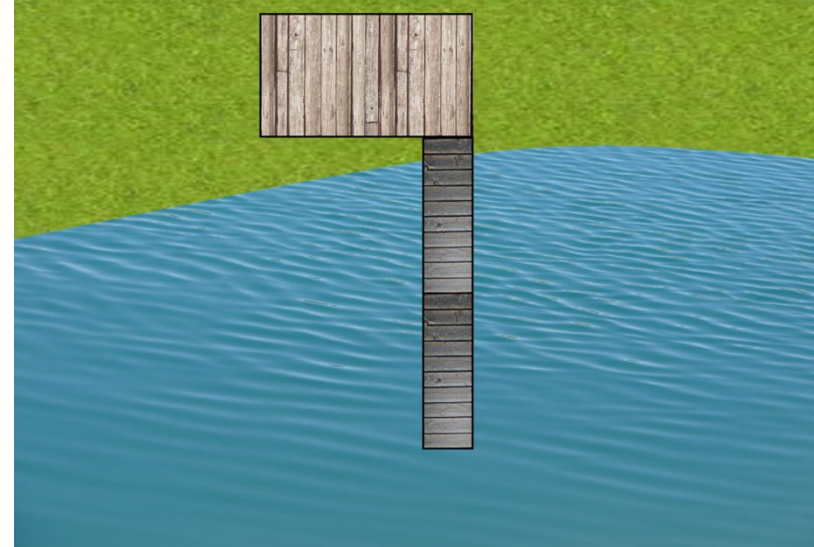
Vehicles are not considered principal buildings or accessory structures if they are either:

- 1) Motorized vehicles for transport on land or water that are
 - registered with the Department of Motor Vehicles,
 - have a current inspection sticker, and
 - are not connected to permanent sanitary facilities; or
- 2) Trailers or other non-motorized vehicles that are
 - registered with the DMV,
 - have a current inspection sticker,
 - are not carrying or serving as a base or support for a structure that is greater than 100 square feet in size, and
 - are not connected to permanent sanitary facilities

APA Act – Exemption: Docks

Definition:

- A floating or fixed structure
- That extends horizontally (parallel with the water surface) into or over a lake, pond, or navigable river or stream
- From only that portion of the immediate shoreline or boathouse necessary to attach the floating or fixed structure to the shoreline or boathouse,
- Is no more than eight feet in width, or in the case of interconnected structures intended to accommodate multiple watercraft or other authorized use, each element of which is no more than eight feet in width, and
- Is built or used for the purposes of securing and/or unloading water craft and/or for swimming or water recreation



APA Act – Exemption: Boathouses

Definition 9/21/10 – present:

- A covered structure with direct access to a navigable body of water which (1) is used only for the storage of boats and associated equipment;(2) does not contain bathroom facilities, sanitary plumbing or sanitary drains of any kind; (3) does not contain kitchen facilities of any kind; (4) does not contain a heating system of any kind; (5) does not contain beds or sleeping quarters of any kind; (6) does not exceed a single story in that the roof rafters rest on the top plate of the first floor wall, and all rigid roof surfaces have a minimum pitch of 4 on 12, or, alternatively, 1 flat roof covers the entire structure; and (7) has a footprint of 1,200 square feet or less measured at the exterior walls (or in the absence of exterior walls, at the perimeter of the roof), and a height of 15 feet or less. For the purposes of this definition, the height of a boathouse shall be measured from the surface of the floor serving the boat berths to the highest point of the structure. The dimensional requirements specified herein shall not apply to a covered structure for berthing boats located within the Lake George Park, provided the structure is built or modified in accordance with a permit from the Lake George Park Commission and is located fully lakeward of the mean high-water mark of Lake George.



APA Act – Exemption: Boathouses

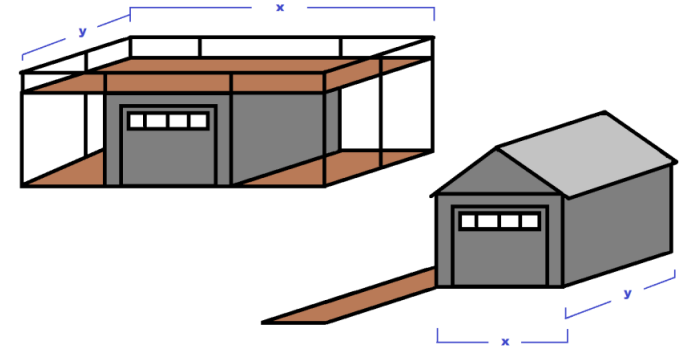
Current definition:

- A covered structure
- with direct access to a body of water
- that is used only for the storage of boats and associated equipment,
- does not contain sanitary plumbing of any kind,
- does not exceed a single story in that the roof rafters rest on the top plate of the first floor wall,
- and has a footprint of 1200 square feet or less and
- a height of 15 feet or less.

APA Act – Exemption: Boathouses

Footprint of 1,200 square feet or less

- A boathouse with a pitched roof is measured at the perimeter of the walls.
- A boathouse with no walls or a flat roof is measured at the perimeter of the roof.

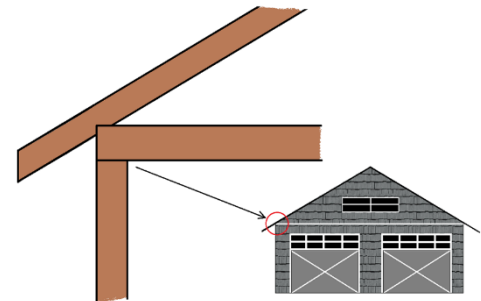


Height of 15 feet or less

- Measured from floor to highest point.

Single story only

- Roof rafters must rest on the top plate of the first floor wall

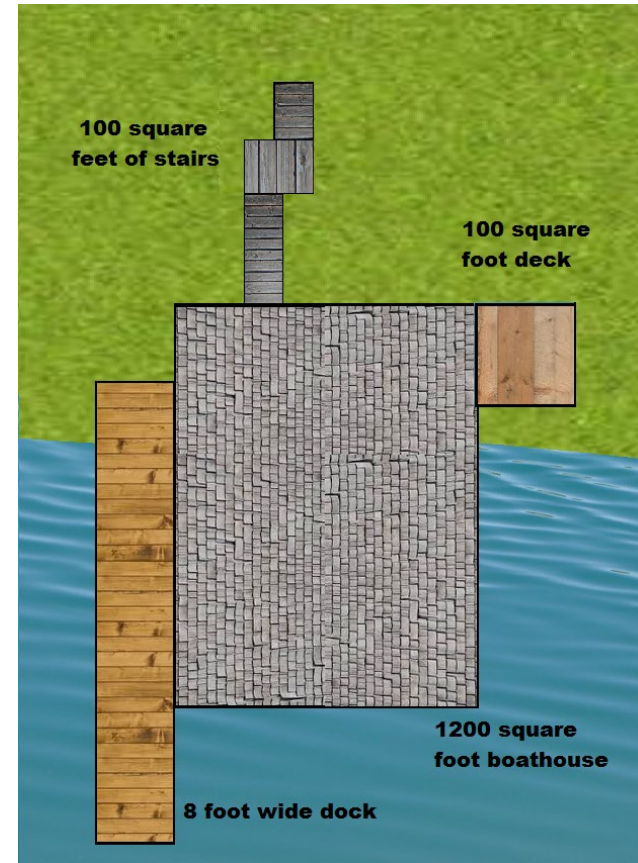


APA Act – Exemption: Boathouses

Footprint of 1,200 square feet or less

Structures can be attached to a boathouse without affecting the boathouse footprint measurement:

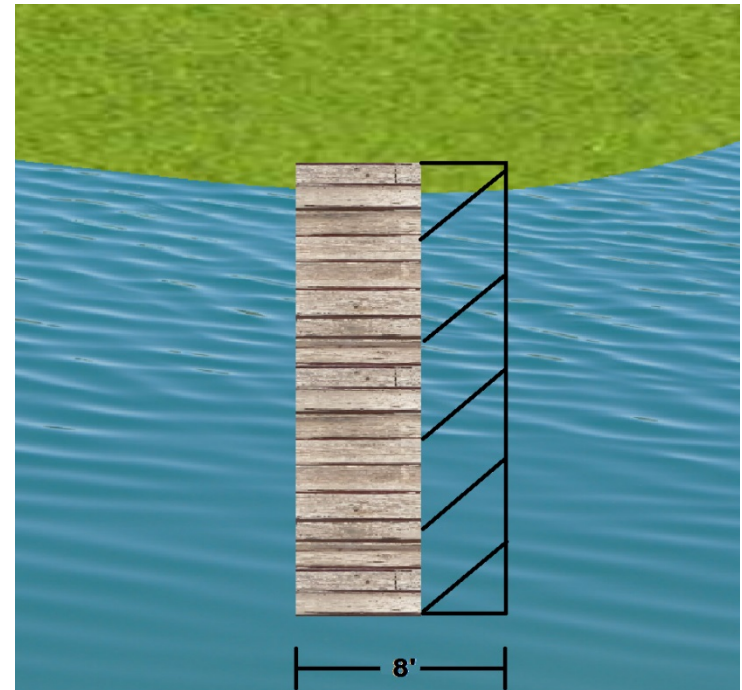
1. 100 square feet of combined deck and porch footprint, provided these decks and porches are not adjacent to structures allowed under 2 or 3
9 NYCRR § 575.4(c)
2. An additional 100 square feet of combined footprint of structures other than decks and porches
3. Docks



APA Act – Existing Boathouses and Docks

A structure is a boathouse or dock if it meets the current definition, regardless of when constructed

- May be expanded in size to the limits of the current definition.



APA Act – Existing Boathouses and Docks

A structure that does not meet either definition may be considered a lawfully-existing, non-conforming dock if it:

- Extends horizontally from the shoreline or a boathouse
 - Is used for swimming or water recreation, and
 - Was constructed before May 1, 2002.
-
- Cannot be added to or expanded

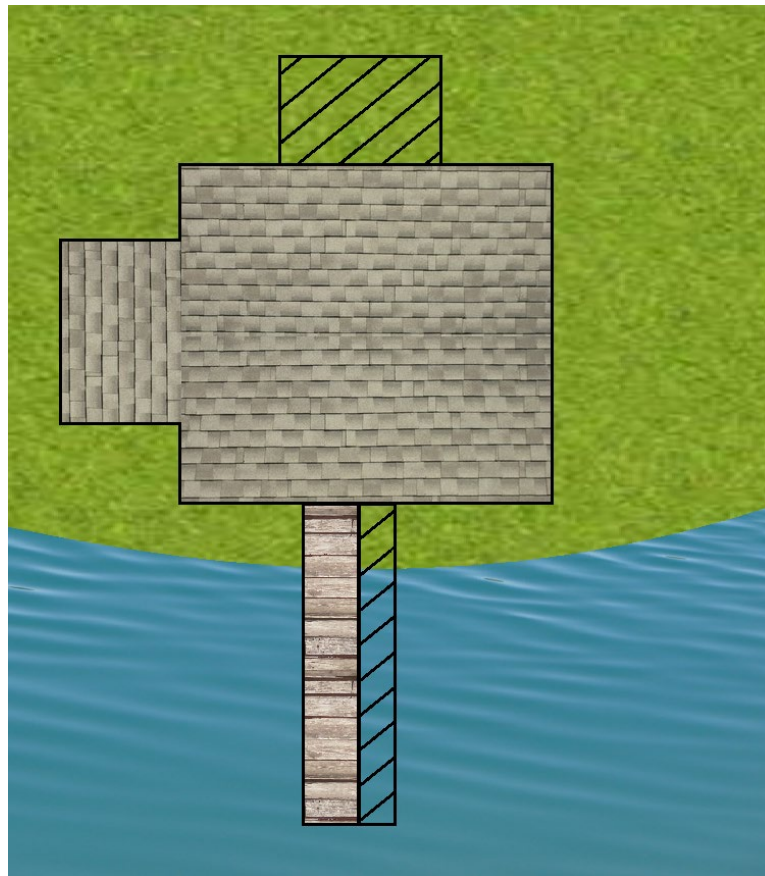
APA Act – Existing Boathouses and Docks

A structure that does not meet either definition may be considered a lawfully-existing, non-conforming boathouse if it:

- Is a covered structure
- With direct access to a navigable body of water,
- Is used for the storage of boats and associated equipment, and
- Either
 - was constructed before October 15, 1982,
 - was constructed between October 15, 1982, and May 2, 2002, and has no bathroom or kitchen facilities, or
 - was constructed between May 2, 2002, and September 21, 2010, and has no bathroom or kitchen facilities and does not exceed a single story
- Cannot be added to or expanded

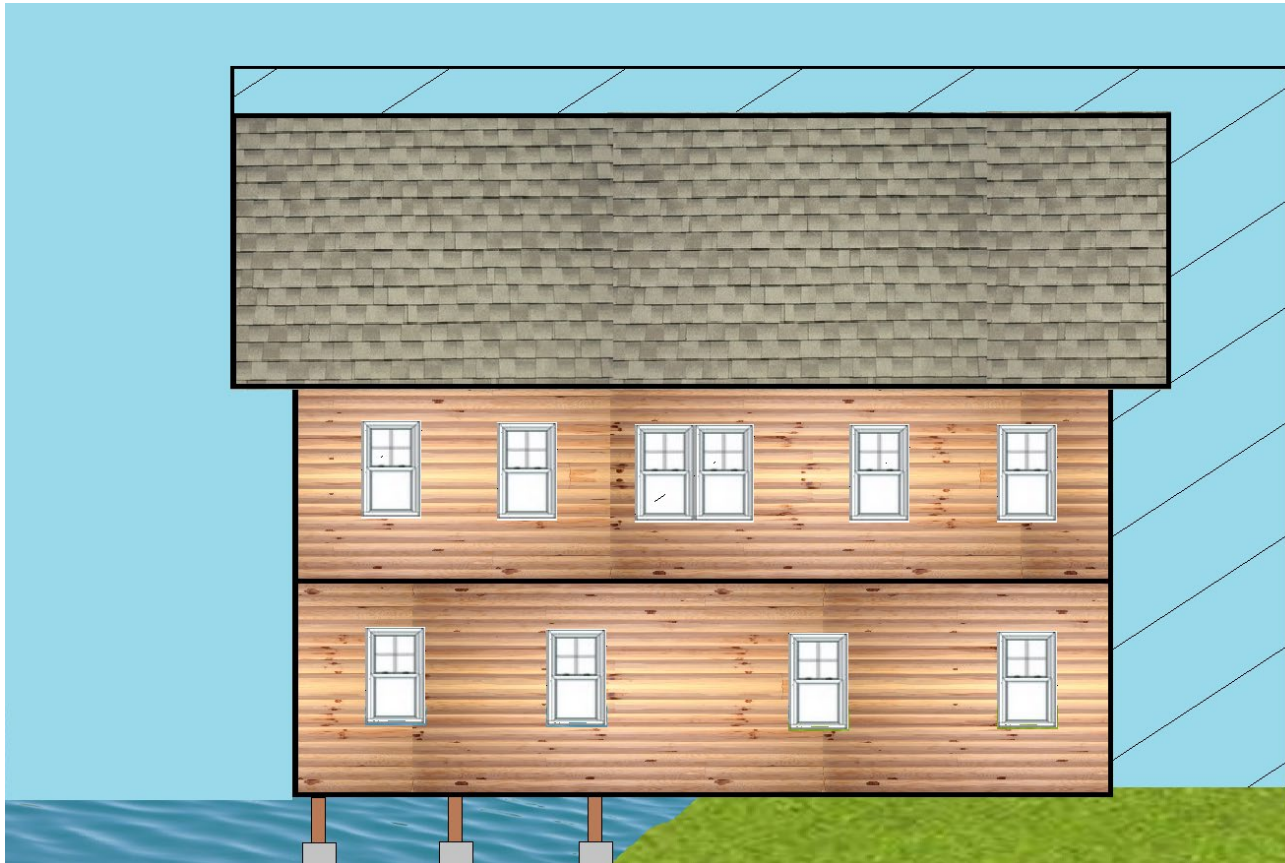
APA Act – Existing Boathouses and Docks

Analyzed separately from other structures for expansion purposes



APA Act – Existing Boathouses

Lawfully-existing, non-conforming boathouses that are part of another structure on the interior are considered only as the other structure, and not as a boathouse



Wild, Scenic, and Recreational Rivers System Act

Rivers Act – Basic Requirements

All new structures must be set back from the mean high water mark of the river a distance of:

| | |
|---------------------|----------|
| Recreational river: | 150 feet |
| Scenic river: | 250 feet |

9 NYCRR 577.6(b)



- Exceptions: fences, poles, signs < 2 ft², docks, boathouses (recreational only), bridges, stream improvement structures for fishery management purposes

Variances – Application Process and Review

Variances – Background

“a person... seeking... a variance in a land use area not governed by an approved local land use program... shall make application therefor to the agency... Upon such application, and after public hearing thereon... the agency shall, where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the restrictions, have authority to vary or modify the application of such restrictions relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of such restrictions shall be observed, public safety and welfare secured and substantial justice done.”

APA Act 806(3)(a)

“Where there are practical difficulties in carrying out the strict letter of the provisions of the plan or the shoreline restrictions, the agency may, after public hearing, vary or modify their application so that their spirit is observed, public safety and welfare secured and substantial justice done.”

9 NYCRR 576.1(a)



Variance Application Process

[Services](#)[News](#)[Government](#)[Adirondack Park Agency](#)[About](#)[Property Owners](#)[Local Govern](#)[Home](#) > [Forms](#) > [Shoreline Variance Form](#)

Shoreline Restrictions Variance

Use this form to apply for a variance to the Adirondack Park Agency Shoreline Restrictions.

Download Form

[Application for Variance from Shoreline Restrictions](#)

Help Information

[Variance Process Summary for Applicants](#)

Additional Forms

Contact the Agency for projects not listed below.

[Appendix A - Expansion of an existing single family dwelling within the shoreline setback.](#)

[Appendix B - Expansion of an existing structure other than a single family dwelling within the shoreline setback.](#)

[Appendix C - Construction of a new structure within the shoreline setback \(other than a retaining wall or other structure for shoreline stabilization\).](#)

[Appendix D - Construction of a retaining wall or other structure for shoreline stabilization.](#)

[Appendix E - Construction of a single family dwelling without the minimum required shoreline lot width.](#)

[Appendix F - Construction of a wastewater absorption field within 100 feet of a water body.](#)

[Appendix G - Removal of shoreline vegetation in excess of Agency standards.](#)

Forms available on APA website:

- Application
- Appendix to application specific to type of proposal
- Variance Process Summary for Applicants



**Adirondack
Park Agency**

Variance Application Process

“Hearings shall be informal and legislative in nature.”

Two options:

- 9 NYCRR §576.5
 - ALJ or Agency staff member presides
 - Opportunity for presentation by applicant and staff
 - Sworn testimony is taken
 - Public comment
- 9 NYCRR §576.6 (“mini hearing”)
 - Staff attend “solely to receive objections to the granting of the variance”
 - Public comment
 - No presentation or sworn testimony

Variance Review

“Practical difficulties... so that [the spirit of the shoreline restrictions] shall be observed, public safety and welfare secured and substantial justice done.”

- Over many years, courts defined “practical difficulties” as a series of balancing tests and factors
- In 1979, APA adopted 9 NYCRR §576.1(b) and (c), codifying case law definitions of the term
- In 1992, Town Law was revised to do the same thing

Variance Review

9 NYCRR §576.1(b): A variance will be granted when the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restriction.

9 NYCRR §576.1(c): In determining whether a variance shall be granted, the agency will consider, among other relevant factors:

1. whether the application requests the minimum relief necessary;
2. whether granting the variance will create a substantial detriment to adjoining or nearby landowners;
3. whether the difficulty can be obviated by a feasible method other than a variance;
4. the manner in which the difficulty arose;
5. whether granting the variance will adversely affect the natural, scenic, and open space resources of the park and any adjoining water body, due to erosion, surface runoff, subsurface sewage effluent, change in aesthetic character, or any other impacts which would not otherwise occur; and
6. whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects referred to in paragraph (5) of this subdivision.

Variance Review Criteria – 576.1(b)

“A variance will be granted when the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restriction.”

Staff Conclusion

Adverse
consequences
to applicant



Purposes of
shoreline
restrictions

Staff Recommendation

Staff recommend that the Agency consider approving the requested variance.

Staff Conclusion

Purposes of
shoreline
restrictions



Adverse
consequences to
applicant

Staff Recommendation

Staff recommend that the Agency consider denying the requested variance.

Purposes of the shoreline restrictions:

1. Protection of water quality
2. Quality of the shoreline
 - Often viewed as aesthetics, but could be other qualities as well

Variance Review

9 NYCRR §576.1(c): In determining whether a variance shall be granted, the agency will consider, among other relevant factors:

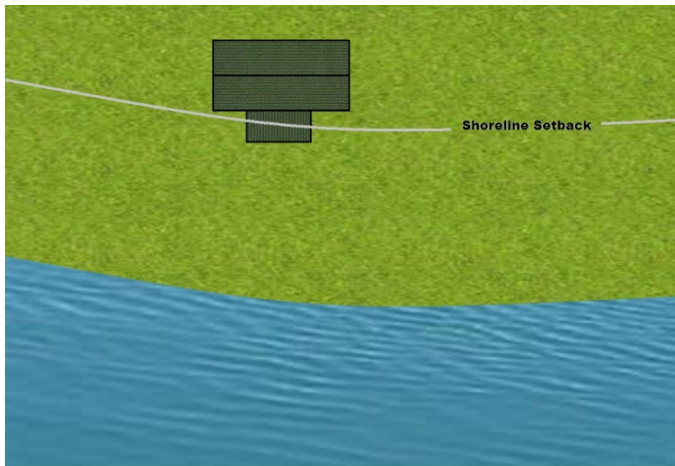
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6. whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects referred to in paragraph (5) of this subdivision.

Variance Review Criteria – 576.1(c)(3)

“Whether the difficulty can be obviated by a feasible method other than a variance.”

Requires analysis of

- Reasonable alternatives that would not require a variance
- Possible impacts from non-jurisdictional alternatives



Staff generally do not recommend approval of variances if there is a reasonable non-jurisdictional alternative that would *not* cause additional negative impacts

****negative visual impacts usually not considered in this analysis****

Variance Review Criteria – 576.1(c)(1)

“Whether the application requests the minimum relief necessary.”

Requires analysis of

- Whether the proposed structure size is the minimum necessary to achieve the applicant’s objectives safely
- Whether the structure could be located any further from the shoreline
- The footprint, height, and width of the proposed structure
- Also, for expansion proposals, the extent to which there would be an increase in the footprint, height, or width of the existing structure

May also include analysis of changes made during Agency review to help to minimize the request

- Some variance requests may be minimal as initially proposed

Variance Review Criteria – 576.1(c)(2)

“Whether granting the variance will create a substantial detriment to adjoining or nearby landowners.”

Requires analysis of potential impacts from the proposed structure on adjoining and nearby properties; includes consideration of visual and other impacts of the structure on

- Neighboring properties
- Neighborhood character

Public
comments/
input from
neighbors
very important



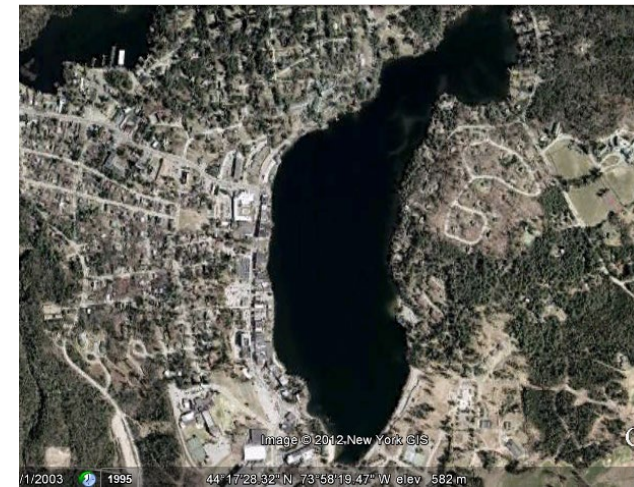
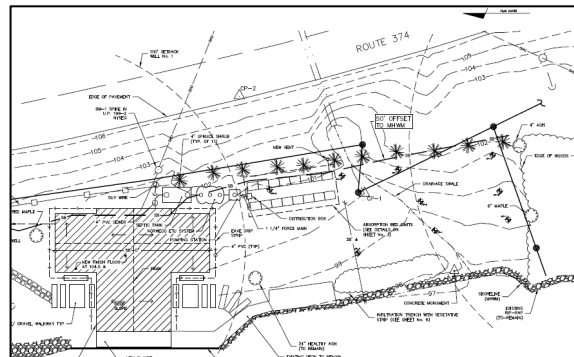
Variance Review Criteria – 576.1(c)(4)

“The manner in which the difficulty arose.”

Pursuant to § 576.4, this factor cannot be the “sole ground” for denial

Requires analysis of

- Whether the landowner acquired the variance site before enactment of the law
- Whether the property is a pre-existing lot of record
- Configuration of the lot
- Whether there has been a physical change in the property, such as erosion or a landslide
- Whether the proposal involves a business in Hamlet



Variance Review Criteria – 576.1(c)(5)

“Whether granting the variance will adversely affect the natural, scenic, and open space resources of the park and any adjoining water body, due to erosion, surface runoff, subsurface sewage effluent, change in aesthetic character, or any other impacts which would not otherwise occur.”

Requires analysis of potential adverse impacts, including impacts to:

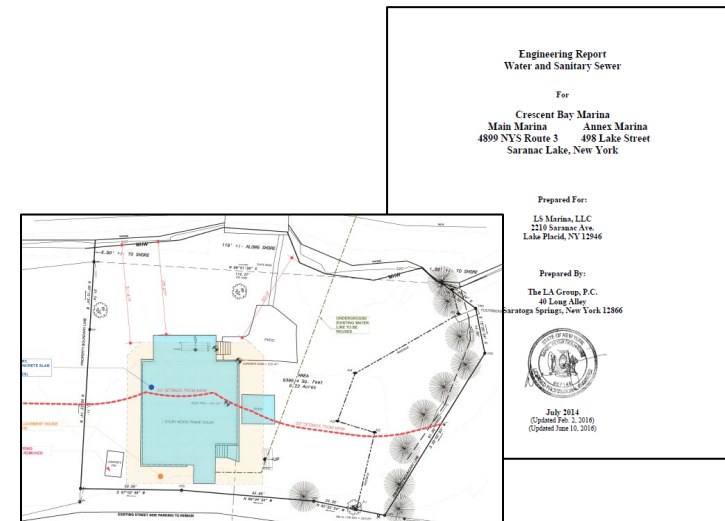
- Water quality
- Aesthetic value of the shoreline
- Anything else!

Variance Review Criteria – 576.1(c)(6)

“Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects.”

Requires analysis of whether adding conditions to a variance order could prevent potential adverse impacts, such as:

- Stormwater, erosion and sediment controls
- Invasive species controls
- Downward-facing lighting
- No-cutting provisions/planting plans
- Structure color
- Time limit for construction



- May also involve conditions involving improvement of existing conditions
 - Removal of existing structures within the setback
 - Stormwater management of existing impervious areas
 - Upgrading of existing wastewater treatment systems
 - Screening of existing structures

Variance Review Criteria – 576.1(b)

“A variance will be granted when the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restriction.”

Staff Conclusion

Adverse
consequences
to applicant



Purposes of
shoreline
restrictions

Staff Recommendation

Staff recommend that the Agency consider approving the requested variance.

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Purposes of
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Shoreline Structures and Variances

Questions?

