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STAFF DRAFT NOT APPROVED BY AGENCY**

 <p>Adirondack Park Agency</p> <p>P.O. Box 99, 1133 NYS Route 86 Ray Brook, New York 12977 Tel: (518) 891-4050 Fax: (518) 891-3938 www.apa.ny.gov</p>	<p>APA Order Granting Variance 2015-204</p>
<p>In the Matter of the Application of</p> <p>WILLIAM DAVIDOW, CHERYL DAVIDOW AND KEVIN DAVIDOW</p> <p>for a variance pursuant to Executive Law § 806</p>	<p>Date Issued: ???</p>

SUMMARY AND AUTHORIZATION

William Davidow, Cheryl Davidow, and Kevin Davidow (“applicants”) are granted a variance from the 50 foot shoreline structure setback required by Section 806(1)(a)(2) of the Executive Law (“Adirondack Park Agency Act” or “APA Act”) for construction of a single family dwelling approximately 30 feet from the mean high water mark of Lake George in an area classified Moderate Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Dresden, Washington County.

APPLICABLE LAWS

Section 806(1)(a)(2) of the APA Act requires that all principal buildings and accessory structures in excess of 100 square feet in size be set back at least 50 feet from the shoreline of any lake. Section 575.5(b)(2) of 9 NYCRR provides that the dimensions of a lawfully existing structure located within the shoreline setback area may not be expanded in any direction within the setback without a variance, other than a minor rearward expansion or a minor height expansion. An expansion by 250 square feet to the non-shoreline side of a dwelling within a setback area is considered a minor rearward expansion, and an expansion by 2 feet or less from the highest ridgeline within a setback area is considered a minor height expansion.

Section 806(3)(a) of the APA Act authorizes the Agency to grant a variance from the shoreline restrictions if the applicant establishes that there are practical difficulties in carrying out the restrictions set forth in Section 806(1)(a)(2). Section 576.1(b) of Agency regulations provides that 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 shoreline restriction.” In determining whether to grant a variance, the Agency must consider the factors established in 9 NYCRR § 576.1(c).

RELEVANT FACTS AND BACKGROUND

Variance Site

The variance site is a 0.22± acre parcel of land identified on Town of Dresden Tax Map Section 23.20, Block 1, as Parcel 3, and described in a deed from Roberta C. Kavan, as Executrix of H. Richard Kavan, Sr., a/k/a Henry Richard Kavan, deceased, to William M. Davidow and Cheryl M. Davidow and Kevin Davidow, dated March 31, 1995, and recorded March 31, 1995 in the Washington County Clerk's Office at Book 729, Page 317. The site is located in Huletts Landing, on the eastern shoreline of Lake George. The northern boundary of the site contains approximately 119 feet of shoreline on the lake. The southern boundary contains approximately 98.5 feet along Albert Way, a private road. The site is served by water from Lake George and a community wastewater treatment system.

The site is developed with a three-bedroom single family dwelling constructed in approximately 1956. This dwelling is 1,253.58± square feet in footprint, with 526± square feet of the footprint located within the 50-foot shoreline setback area. The dwelling has a width of 32 feet facing Lake George and a height of approximately 20 feet 6 inches. The dwelling is 30 feet from the mean high water mark of Lake George at its closest point, and is 2± feet from the southern property boundary along Albert Way. Because of its configuration, there is no possibility for a minor rearward expansion of this dwelling.

The site also contains a 100-square foot shed, a 326-square foot patio/walkway, and a 42-square foot concrete pad. The patio/walkway and a portion of the shed are located within the shoreline setback area. In total, the site contains 917 square feet of existing structure footprint and approximately 1,027 square feet of impervious surfaces, including roof areas, within the shoreline setback. The site also contains a boathouse with an attached dock.

The site is relatively flat, with slopes of approximately 2.5% from Albert Way to the lake. Soils are well drained, with adequate infiltration of stormwater. There are wetlands along the eastern property boundary as shown on the "Survey Site Plan" map described below. There is little vegetation between Lake George and the structures on the site.

Environmental Setting

Lake George is a navigable water body with a mean high water mark of 320.2 feet above mean sea level. Albert Way has an elevation of approximately 323 feet above mean sea level.

Huletts Landing occupies 3.5 miles of the eastern shoreline of Lake George, approximately in the center of the lake. The variance site is located in the south-central section of Huletts Landing, which is developed with seasonal and year-round residences along the shoreline and inland, as well as a marina and golf course.

The variance site is located on the north side of Albert Way. The two dwellings closest to the variance site are both located to the south of Albert Way, more than 50 feet from the mean high water mark. The dwelling located across Albert Way to the southwest of the variance site has views of Lake George through an undeveloped and largely non-vegetated strip of property

west of the variance site that is not owned by the applicants, and also across the applicants' property. Trees partly block views of Lake George from the dwelling located across Albert Way to the southeast of the variance site, but non-vegetated areas between the applicants' existing shed and the tree line allow for corridors of view from a patio adjacent to the western side of this dwelling. These neighbors wrote letters to the Agency in support of the variance.

Variance Request

The applicants seek to construct a single family dwelling large enough to accommodate their growing family while limiting infringement on views from the two neighboring dwellings across Albert Way. On December 22, 2015, the applicants submitted an Application for Variance from Shoreline Restrictions to the Agency, requesting a 20 foot variance from the shoreline restrictions of Executive Law § 806 for construction of a dwelling.

The proposal involves replacing the existing single family dwelling located approximately 30 feet from the mean high water mark of Lake George with a two-story, five-bedroom single family dwelling also located 30 feet from the mean high water mark. The proposed dwelling would have a footprint of 779± square feet within the setback area, a width of ±43 feet within the setback area, and a height of approximately 30 feet 6 inches at the highest roof ridgeline within the setback area. The total footprint of the proposed dwelling, including the areas outside the setback area, would be 1,964 ± square feet, the total width would be ±43 feet, and the total height would be 35 feet 7 inches.

Within the setback area, the proposed dwelling would be 253 square feet larger, 12 feet wider, and 8 feet taller than any lawful replacement dwelling. During review of the proposal, the applicants moved the proposed dwelling approximately 4 feet to the west, eliminated a proposed set of exterior stairs, and decreased the size of the corners closest to the lake to keep the structure a minimum of 30 feet from the shoreline.

The proposed dwelling would be located approximately 24 feet from the closest point of the wetlands; silt fence would be installed between the wetland and any disturbed soils on the site. The proposal also includes implementation of a stormwater management plan, which incorporates rain gardens for stormwater infiltration.

As part of the proposal, the applicants would remove the existing shed, patio/walkway, and concrete pad from the site. The shed and patio/walkway are located to the east of the existing dwelling, and their footprints are partially covered by the proposed dwelling. The concrete pad is located outside the footprint of the proposed dwelling. In total, the site would contain approximately 978 square feet of impervious surfaces, including roof area, within the shoreline setback area if the proposed dwelling were constructed and the existing structures removed.

The proposed dwelling would be 4 feet wider to the west and 8 feet wider to the east than the existing dwelling. However, because the existing shed would be removed, the site would contain 3 feet 6 inches less structural width to the east. As part of their proposal, the applicants submitted plans entitled "View Corridor – Proposed," labeled as Drawing Number SP 704 and "(1) Photo Locations for APA Submission" labeled as Drawing Number APA 800 dated September 15, 2016, which depicts the corridors alongside the applicants' existing

structures through which the neighboring dwellings to the southwest and southeast currently have views of Lake George. Drawings numbered SP 705, SP 705.1, SP 706, and SP 706.1, also submitted by the applicants, depict diagonal views of Lake George from these neighboring properties across the variance site under existing and proposed conditions, and show the increase in proposed dwelling size within the shoreline setback area.

During the review process, staff suggested that the applicants consider alternative dwelling plans that would minimize or obviate the need for a variance. In response, the applicants submitted plans for an alternative dwelling that would not increase the existing dimensions within the setback area. These plans depict an alternative dwelling within the footprint and no taller than the existing structure inside the setback area. However, outside the setback area, this alternative dwelling would be 12 feet wider than the existing structure and 8 feet wider than the proposed structure to the west, and 20 feet wider than the existing structure and 12 feet wider than the proposed structure to the east, for a total width of 64 feet. The alternative structure would contain two stories and be approximately 4 feet shorter than the proposed dwelling.

The applicants also evaluated a three story alternative dwelling option. However, this alternative would not be feasible because the property is encumbered by deed covenants limiting any dwelling to two stories in height.

The variance proposal is shown on the following maps and plans:

- a. Sheet S-1, titled "Map of a Survey made for William and Cheryl Davidow," prepared by VanDusen and Steves, Land Surveyors, dated March 31, 2013, and last revised November 25, 2015.
- b. Sheet SP 101, titled "Survey Site Plan," prepared by Andrew Chary Architect, P.L.L.C., dated December 17, 2015, and revised February 23, 2016.
- c. Sheet APA.1, titled "Plans, First and Second Floor Plans," prepared by Andrew Chary Architect, P.L.L.C., dated December 17, 2015, and revised February 23, 2016.
- d. Sheet APA.2 101, titled "Plans, Roof Plan," prepared by Andrew Chary Architect, P.L.L.C., dated December 17, 2015, and revised February 23, 2016.
- e. Sheet APA.3, titled "Exterior Building Elevations, Northwest, South and East," prepared by Andrew Chary Architect, P.L.L.C., dated December 17, 2015, and revised February 23, 2016.
- f. Sheet L-1, titled "Engineering Site Plan and Details," prepared by Kevin L. Hastings, P.E., dated February 18, 2016, and last revised June 27, 2016.

The stormwater management plan for the variance site is described in a document titled "Summary Report of Stormwater Management Engineering Design for Davidow Residence," prepared by Kevin L. Hastings, P.E., and dated February 23, 2016.

A reduced-scale copy of the "Survey Site Plan," prepared by Andrew Chary Architects, P.L.L.C., dated December 17, 2015, and revised February 23, 2016, is attached as a part of this Order for reference. The original, full-scale maps and plans described in this paragraph are the official plans for the variance, with copies available upon request from Adirondack Park Agency headquarters in Ray Brook, New York.

PROCEDURAL HISTORY

Following receipt of the variance application, the Agency notified all parties as required by Agency regulations. The application included letters of support, and additional comment letters were received by the Agency prior to the public hearing. A total of seven letters were received in support of the proposal. Letters from both neighboring land owners across Albert Way wrote in support of the variance, noting that the proposal had been designed to minimize infringement on their views of Lake George. The Huletts Landing Property Owners Civic Association, Inc. also wrote in support of the variance request. Two other letters were received that raised concerns about parking for the site: one of these letters also expressed concerns about potential conflicts with deed covenants prohibiting the construction of dwellings more than two stories in height or within 6 feet of Albert Way.

On July 6, 2016, the Agency held a public hearing on the variance request in the Town of Dresden. The hearing was attended by Agency staff, the Town of Dresden Supervisor, two of the applicants and their consultants, members of the applicants' families, and one member of the public. Questions were asked to clarify some questions regarding the variance. No members of the public commented. The hearing record was closed on July 6, 2016.

Pursuant to a letter dated July 6, 2016, the New York State Office of Parks, Recreation, and Historic Preservation advised that the proposal will have no impact on archaeological and/or historic resources listed in or eligible for the New York State and National Registers of Historic Places.

By letter dated August 31, 2016, including attachments, the applicants and their consultants provided additional information regarding the project. Following a meeting with Agency staff on September 13, 2016, the applicants and their consultants provided additional information requested by staff, received by the Agency on September 20, 2016.

DISCUSSION

The Agency has reviewed the record and considered the standards and factors set forth in 9 NYCRR § 576.1.

§ 576.1(c)(1): Whether the application requests the minimum relief necessary.

The applicants propose to construct a structure that is 253 square feet larger in footprint, 11 feet wider, and 10 feet taller within the setback area than the existing structure, and 8 feet taller than could lawfully be constructed. During review of the proposal, the applicants moved the proposed dwelling approximately 4 feet to the west, eliminated a proposed set of exterior stairs, and decreased the size of the corners closest to the lake to keep the structure a

minimum of 30 feet from the shoreline. The proposed structure has been designed to provide sleeping space for the family in a dwelling that does not disrupt the views from the neighbors' properties or the lake. The bedrooms measure only 12 feet by 13 feet, with the master bedroom measuring 13 feet 8 inches by 14 feet 10 inches, and do not contain walk-in closets or their own bathrooms. The proposal does not include a fitness area, separate dining room, bar, office or den.

The applicants considered alternative expansion designs that may not have required a variance, but these alternative designs were rejected because of their impacts to the views of adjoining owners and because of design and aesthetic concerns.

§ 576.1(c)(2): Whether granting the variance will create a substantial detriment to adjoining or nearby landowners.

The variance site is located in a developed portion of Huletts Landing, and there are several shoreline and non-shoreline residences and other structures in the vicinity. Seven letters were received in support of the proposal, including letters from the two landowners closest to the site, who noted appreciation for the applicants' efforts to preserve their views of the lake. The proposal maintains the water quality and aesthetic character of the shoreline. In contrast, the record demonstrates that a two-story alternative that would not require a variance would result in a substantial detriment to the lake views of adjoining landowners across Albert Way.

Two letters were received raising concerns related to parking for the proposed dwelling, to which the applicants responded that there will be no change in the number of people using the dwelling.

§ 576.1(c)(3): Whether the difficulty can be obviated by a feasible method other than a variance.

The applicants evaluated alternatives that would not have required a variance. The applicants could construct a dwelling 22 feet 6 inches in height, 32 feet in width, and 526 square feet in footprint within the setback area, and up to 40 feet in height outside of the setback area, without the need for a variance or other approval from the Agency. The two-story alternative plans submitted by the applicants depict a dwelling that would meet these criteria. However, outside the setback area, this alternative dwelling would be 12 feet wider than the existing structure and 8 feet wider than the proposed structure to the west, and 20 feet wider than the existing structure and 12 feet wider than the proposed structure to the east, for a total width of 64 feet. Accordingly, this alternative would infringe on adjoining land owners views of Lake George, and could have an adverse visual and aesthetic impact on the shoreline and character of Huletts Landing and Lake George.

The applicants also evaluated a three-story alternative dwelling option. However, this alternative would not be feasible because the property is encumbered by deed covenants limiting any dwelling to two stories in height.

§ 576.1(c)(4): The manner in which the difficulty arose.

The variance site is 0.22 acres in size, with approximately half of the lot located within the shoreline setback area. The applicants purchased the property in 1995 and, according to the application, planned to replace and expand the dwelling in the future. The applicants' family has grown in number since 1995 and the circa 1956 dwelling is not adequate to accommodate the growing family.

§ 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.

The requested variance would result in a replacement dwelling larger in footprint, wider, and taller than the existing dwelling, and would be potentially more visible from the lake than the existing dwelling. However, the variance site is located within a developed section of shoreline, and the dwelling would be consistent with the overall character of the shoreline. In addition, the requested variance would protect the lake views of neighbors located to the rear of the applicants' dwelling, and the portion of the proposed dwelling located within the setback area will be back dropped by the taller portion of the dwelling located outside of the setback area, for which no Agency review is required.

Implementation of the proposed stormwater management plan would help to alleviate any impacts to the water quality of Lake George. With the removal of the patio/walkway, the variance proposal would result in less impervious surface inside the setback area.

§ 576.1(c)(6): Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects noted above.

The potential for adverse effects to Lake George will be ameliorated by compliance with the following conditions:

1. This Order shall be recorded in the Washington County Clerk's Office by DATE.
2. The authorization to undertake construction of the single family dwelling shall expire four years from the date this Order is recorded in the Washington County Clerk's office, unless construction of the structure has been completed in accordance with the plan sheets by that date or written authorization has been obtained from the Agency extending the deadline for construction.
3. The project shall be undertaken as depicted on the plan sheets referenced herein. Any changes to the locations, sizes, dimensions, or other aspects of the structures shall require a new or amended Agency Order or a letter of compliance.
4. All exterior building materials, including roof, siding and trim, of the single family dwelling authorized herein shall be a dark shade of green, grey, or brown.

5. Any new free-standing or building-mounted outdoor lights associated with the single family dwelling authorized herein on the variance site shall employ full cut-off fixtures that are fully shielded to direct light downward and not into the sky or toward Lake George, Albert Way or adjoining property.
6. The stormwater management plan shall be undertaken in strict compliance with Sheet L-1, the "Engineering Site Plan and Details," prepared by Kevin L. Hastings, P.E., dated February 18, 2016, and last revised June 27, 2016, and the document titled "Summery Report of Stormwater Management Engineering Design for Davidow Residence" prepared by Kevin L. Hastings, P.E., and dated February 23, 2016, both referenced above.

§ 576.1(b): Whether the adverse consequences to the applicants resulting from denial are greater than the public purpose sought to be served by the restriction.

The harm to the applicants resulting from denial of the variance request would be that the applicants' dwelling replacement and expansion would adversely impact the lake views of their neighbors, and would arguably not be as aesthetically pleasing from Lake George as their preferred alternative.

The public purposes of the shoreline restrictions are to protect water quality and the qualities of Adirondack shorelines. Water quality will be protected by implementation of the stormwater management plan. The quality of the shoreline of Lake George will be protected because the expanded dwelling will be in a developed area of the shoreline and will be consistent with the overall character of the neighborhood. The lake views of neighbors located to the rear of the applicants' dwelling will be protected. The portion of the dwelling located within the setback area will be back dropped by the taller portion of the dwelling located outside of the setback area, for which no Agency review is required.

Weighing the factors considered herein, the adverse consequences to the applicants resulting from denial are greater than the public purposes served by the shoreline setback requirements.

CONCLUSION

The Agency has considered all of the standards and factors for issuance of a variance as set forth in 9 NYCRR Part 576. The Agency hereby finds that the applicants' variance request meets the approval criteria, provided the authorized activities are undertaken as described herein and in compliance with the conditions set forth above.

A variance of the terms of the Executive Law is not personal and runs with the land. Recording of this Order is intended to provide notice to subsequent owners of the variance site.

ORDER issued this day
of , 2016.

ADIRONDACK PARK AGENCY

BY: _____
Richard E. Weber III
Deputy Director (Regulatory Programs)

STATE OF NEW YORK
COUNTY OF ESSEX

On the day of in the year 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber III, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

REW:TES:slp