

THIS IS A TWO SIDED DOCUMENT

 <p>NEW YORK STATE OF OPPORTUNITY.</p> <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 2017-0106</p>
<p>In the Matter of the Application of TOWN OF ESSEX for a variance pursuant to Executive Law § 806</p>	<p>Date Issued: October 3, 2017</p> <p>To the County Clerk: This order must be recorded on or before December 4, 2017. Please index this Order in the grantor index under the following names: 1. Town of Essex</p>

SUMMARY AND AUTHORIZATION

The Town of Essex ("applicant" or "Town") is granted a variance, as conditioned herein, from the applicable 50-foot shoreline structure setback required by Section 806(1)(a)(2) of the Executive Law ("Adirondack Park Agency Act" or "APA Act"), to allow for the expansion of a water treatment facility with new recreational features approximately 17.5 feet from the mean high water mark of Lake Champlain, in an area classified Hamlet by the Official Adirondack Park Land Use and Development Plan Map in the Town of Essex, Essex County.

Nothing contained in this Order shall be construed to satisfy any legal obligations of the applicant to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

APPLICABLE LAWS

Section 806(1)(a)(2) of the APA Act establishes a minimum shoreline setback of 50 feet from the mean high water mark of Lake Champlain for all accessory structures and principal buildings greater than 100 square feet in size other than docks and boathouses. The applicants requested a variance from this structure setback requirement pursuant to § 806(3)(a) of the APA Act.

RELEVANT FACTS AND BACKGROUND

Variance Site

The variance site is a 2.23± acre parcel of land identified on the Town of Essex Tax Map as Section 40.73 Block 3, Parcel 22.004, and described in two deeds: a deed from Richard and Marion Spear to the Town of Essex, dated May 28, 1975, and recorded on June 20, 1975 in the Essex County Clerk's Office at Book 591, Page 258, and a deed from Donald Beggs to the Town of Essex, dated October 16, 1974, and recorded August 8, 1975 in the Essex County

Clerk's Office at Book 594, Page 225. The variance site is within Beggs Park, a municipal park owned by the Town of Essex on the shore of Lake Champlain. Beggs Park includes approximately 455 feet of shoreline.

In the mid-1970s, the Town of Essex purchased the two parcels that comprise the 2.23± -acre site. The Town submitted plans for the existing water treatment facility, a pumphouse and treatment plant, to the NYS Department of Health (DOH) in June 1975. DOH approved those plans and the Town built the water treatment facility at the same time it developed the park on the site. The facility is located at the south-eastern corner of Beggs Park, approximately 17.5 ft. from the mean high-water mark of Lake Champlain (99.8 feet above mean sea level).

Beggs Park features several amenities such as a dock, pavilion, playground, and grassy area. The park is on a promontory surrounded on several sides by Lake Champlain and private residential properties within the Essex Historic District. There was a horse stone nail factory on the site, built in the late nineteenth century, which burned down. After the fire, the site was filled in and some of the stone walls were retained. Nearby land uses include tourist cabins which are screened from view of park and water treatment facility by trees. Beyond the residential properties and tourist cabins to the north, the shore is developed with a restaurant and a ferry dock servicing ferries to and from Vermont. To the south is located a marina.

Variance Request

The applicant seeks a variance to expand the water treatment facility within the 50-foot set back. The existing water treatment facility measures 432± square feet in footprint, and the expanded facility will measure 783 ± square feet, an increase of 351± square feet. The expansion will bring the structure no closer to the shoreline than the existing structure. The expanded water treatment facility will be located 17.5 feet from the shoreline and therefore a 32.5-foot variance from the 50-foot shoreline setback is required.

DOH and US Environmental Protection Agency (EPA) have mandated that the Town upgrade the public drinking water system serving the hamlet of Essex, which includes approximately 170 households. As described in the application and during the public hearing, drinking water standards have become more stringent since the existing water treatment plant was constructed, requiring additional treatment to protect public health. The additional treatment requires more equipment, which in turn requires expansion of the building, and additional space to allow for the equipment and safe movement of staff.

The water system improvements include the use of two wells located in Beggs Park, as recommended by DOH. The wells will not provide sufficient water during times of peak demand, so the Town will continue to draw from surface water in Lake Champlain. The Town will use the upgraded water treatment facility authorized by this variance to treat the well water and also surface water from Lake Champlain during times of peak demand.

In addition to housing the water treatment equipment, the expanded facility will also include public ADA-accessible restrooms, a public water fountain, and a new safety railing on the roof of the building, since people have used the flat roof as a viewing deck.

On July 13, 2017, the Town of Essex Town Board passed a resolution finding that the proposed expansion of the drinking water treatment plant and the appurtenant enhancements to Beggs Park are exempt from the requirements of the Town's zoning regulations. The Town is not required to obtain a zoning permit or any variance for the expanded water treatment facility or related enhancements at Beggs Park.

The variance proposal is shown on the following maps and plans prepared by Cedarwood Engineering Services PLLC:

Revised 7/2017, stamped as received by the Agency July 24, 2017:

- Existing Site Plan (G-1)
- Proposed Site Plan (G-2) ("Site Plan")
- Proposed Floor Plan (G-3)
- Proposed Isometric (G-4)
- Proposed Building (G-5)
- Proposed Rain Garden (G-7) ("Rain Garden Plan")
- Erosion and Sediment Control (G-8) ("Erosion and Sediment Control Plan")
- Site Photographs and Reference Table (R-1)
- Site Photographs (R-2)

Revised 9/2017, stamped as received by the Agency September 15, 2017:

- Proposed Plantings (G-6) ("Planting Plan")

Revised 9/14/17, stamped as received by the Agency September 15, 2017 (collectively "Revised Visual Impact Simulations"):

- Pre-Screening View 1 (G-6.1)
- Proposed Tree Screening View 2 (G-6.2)
- Pre-Screening View 2 (G-6.3)
- Proposed Tree Screening View 2 (G-6.4)

Together, the above maps and plans constitute the "Final Plan Set". Reduced-scale copies of the Site Plan (Sheet G-2) and Planting Plan (Sheet G-6) are 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 the Agency regulations. On September 7, 2017, the Agency held a public hearing on the variance request in the Town of Essex. The hearing was attended by the Town of Essex Town Supervisor and other Town of Essex staff, the applicant's engineering consultants and authorized representative, NYS Department of Health (DOH) staff, Agency staff and five members of the public. The NYSDOH representative related the Town's efforts to comply with the DOH mandates and the efforts to locate a new water supply outside Beggs Park and the shoreline setback. The Agency received eight public comment letters: seven were in favor of the proposal and one letter expressed concern regarding the financial viability of the project.

At the hearing, four persons commented in favor of the project and one member of the Town Water committee suggested that the planting plan be revised to maintain a view of Lake Champlain from the parking lot and so as not to interfere with access to a fire hydrant. The applicant requested an opportunity to revise the proposed plantings in response to this comment and the Agency received a revised Planting Plan and Revised Visual Impact Simulations on September 15, 2017.

DISCUSSION

The Agency may grant a variance where there are practical difficulties in carrying out the restrictions set forth in Section 806(1)(a)(2) of the APA Act. The Agency has considered the standards and factors set forth in 9 NYCRR § 576.1(b)-(c).

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

The adverse consequences include the potential that the Town of Essex will continue to be in violation of DOH and EPA requirements for drinking water. This consequence carries public health implications if the drinking water supply for the Town of Essex is not safe.

The public purposes served by the Agency's structure setback requirements include protection of the water quality and the qualities of Adirondack shorelines, including aesthetics. This variance, as conditioned, will not have a negative impact on the lake's water quality, will improve the current aesthetic impact of the water treatment facility on the shoreline within Beggs Park, and will serve other public purposes. Implementation of the Erosion and Sediment Control Plan and Rain Garden plan included in the Final Plan Set will serve to protect water quality. In addition, the proposed Planting Plan included in the Final Plan Set and the architectural design of the building improvements will improve upon existing aesthetic impacts and limit visual impacts from the variance. The public purposes served by the variance include upgrading the public drinking water treatment system as required by NYSDOH, providing public recreational enhancements, specifically an ADA-compliant bathroom and safe and secure roof viewing platform with a railing for park visitors, and providing waste water treatment for the facility.

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

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

The applicant's primary objective is to provide safe and healthy drinking water for the public. The Town also seeks to enhance the recreational assets of Beggs Park with accessible restrooms, a safe viewing deck, and enhanced plantings near the shoreline. The applicant will be using well water for the public water supply but the wells are insufficient to meet peak demand in the summer. Both the well water and the surface water need to go through the same treatment process. To continue to use surface water from Lake Champlain and newly installed groundwater wells on the project site for drinking water, the Town needs to locate the facility close to the lake. This variance will not bring the structure any closer to the lake.

The applicant's consulting engineers testified that the expanded building was the minimum size necessary to accommodate the required equipment for the water treatment system, and allowing safe access (of three feet) between the equipment for staff to maneuver. By expanding on the existing foot print and using portions of the existing facility, the applicant is conserving public resources.

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

The adjoining and nearby residential landowners have been located close to a public park and public water treatment facility for more than four decades. The nearby Lake Champlain shoreline is developed with public and commercial facilities including a waterfront restaurant, a ferry dock, and a marina. As demonstrated in the Revised Visual Impact Simulations, the aesthetic impact of the project as viewed from nearby properties and the lake will be positive, replacing the existing plant with a more attractive building, with landscaping and stormwater management features.

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

The applicant explored several alternatives for providing safe drinking water, including 1) drilling wells on private lands with an adequate groundwater supply, 2) drilling wells on Town property outside the shoreline setback, 3) buying water from a neighboring town, and 4) moving the treatment plant outside the setback.

Regarding the first alternative, the Town was unable to locate a willing private owner with enough water to supply the Town. According to the NYSDOH, the Town considered 20 sites for new wells.

The Town does not own property outside the shoreline setback with an adequate groundwater supply in proximity of the water distribution system. Therefore, the second alternative was not feasible. However, the Town is proposing to use two wells located in Beggs Park near the authorized water treatment facility, as recommended by NYSDOH. The wells will not provide sufficient water during times of peak demand, so the Town will continue to draw from surface water in Lake Champlain. The Town will use the upgraded water treatment facility authorized by this variance to treat the well water and also surface water from Lake Champlain during times of peak demand.

The cost of connecting to another Town's water supply and contracting with that town would exceed the Town's grant and user fees. Therefore, the Town could not pursue the third option.

Regarding the fourth alternative, the Town considered a location adjacent to the Town's water tower and outside the shoreline setback. This location did not have the acreage to accommodate a new treatment plant and any construction would have involved significant ground disturbance, including blasting bedrock. Also, the Town does not have sufficient funds to re-locate the water treatment facility and to decommission the old treatment plant in Beggs Park.

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

The Town of Essex assumed ownership of and responsibility for the original three private water systems serving the hamlet in the 1970s. Subsequently, the Town acquired land at Beggs Point to construct a community water system and a park with public shoreline access. After obtaining approval from the NYSDOH, the Town built the water treatment facility contemporaneously with the development of a park at the same location. The existing water treatment facility has been located within the shoreline setback area for over 40 years.

NYSDOH and EPA have mandated that the Town upgrade the public drinking water system serving the Essex water district, which includes approximately 170 households. Since the existing water treatment plant was constructed, the drinking water standards have become more stringent, requiring additional treatment to protect public health. The additional treatment requires more equipment, which in turn requires expansion of the building.

§ 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.

Upon completion of the project, wastewater from the bathroom, water fountain, and treatment process (backwash) will be collected and treated using the existing municipal wastewater system. Through the installation of the treatment system, the direct outfall of backwash effluent into Lake Champlain can be eliminated from the site.

Construction of the expanded water treatment facility without the associated Erosion and Sediment Control Plan and the Planting Plan included in the Final Plan Set could cause additional erosion or surface runoff and lead to adverse changes to the aesthetic character of the waterbody. Implementation of the Erosion and Sediment Control Plan with the Proposed Rain Garden Plan and the Planting Plan along with the structural activities will not result in adverse impacts to the resources of the Park and Lake Champlain.

Changes to the variance site over time could alter the potential for adverse impacts to water quality or shoreline character. Imposition of a four-year time limit to undertake the requested variance will mitigate these potential impacts.

§ 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 Champlain will be ameliorated by compliance with the following conditions:

1. This Order shall be recorded in the Essex County Clerk's Office by December 4, 2017.

2. The authorization to undertake construction of the water treatment facility shall expire four years from the date this Order is recorded in the Essex County Clerk's office, unless construction of the structure has been completed in accordance with the Final Plan Set 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 Final Plan Set 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.

CONCLUSION

The Agency has considered all of the standards and factors for issuance of a variance as set forth in 9 NYCRR Parts 576. The Agency hereby finds that the applicant's 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 , 2017.

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 2017, 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 executed the instrument.

Notary Public

REW:CCP:EAP:SEL:TSF:slp