

**THIS IS A TWO-SIDED DOCUMENT**

 <p><b>NEW YORK</b> STATE OF OPPORTUNITY.</p> <p><b>Adirondack Park Agency</b></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 <b>2019-0042</b></p>
<p>In the Matter of the Application of</p> <p><b>SUMMER VIBES, LLC</b></p> <p>for a variance pursuant to Executive Law § 806</p>	<p>Date Issued: July 12, 2019</p> <p>To the County Clerk: This order must be recorded on or before September 10, 2019. Please index this Order in the grantor index under the following names:</p> <p><b>1. Summer Vibes, LLC</b></p>

**SUMMARY AND AUTHORIZATION**

Summer Vibes, LLC is granted a variance, as conditioned herein, from the applicable 75-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 construction of a deck/walkway structure approximately 55 feet from the mean high water mark of Upper Saranac Lake in an area classified Low Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Santa Clara, Franklin 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 75 feet from the mean high water mark of Upper Saranac Lake for all accessory structures and principal buildings greater than 100 square feet in size. The applicant 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 12.3±-acre parcel of land identified on Town of Santa Clara Tax Map Section 454, Block 1, as Parcel 1, and described in a deed from Pine Rock Camp, LLC to Summer Vibes, LLC., dated December 22, 2017, and recorded December 22, 2017 in the Franklin County Clerk's Office under Instrument Number 2017-6315.

The project site is improved by a single family dwelling constructed in the 1920s and located partially within 75 feet of the mean high water mark of Upper Saranac Lake. A front porch is attached to the shoreline side of the dwelling. The site is also improved by a bunkhouse that was constructed in 1926 and is located approximately 18 feet from the lake, a boathouse and tennis courts constructed in the 1950s, a gazebo, and a network of paths and boardwalks. A caretaker's cabin constructed in 1926 was removed from the site in 2017.

The variance site is located on a peninsula and contains approximately 1561± feet of shoreline, with 270-570± feet between the lake and the upland property boundary. Most of the shoreline of the site is forested, except for an area around the boathouse and a rock outcropping in front of the dwelling. The only areas not wooded on the property are the building sites, access driveway, and sporting courts. There are no wetlands on the site.

Access to the variance site is from Markham Point Road, which passes through New York State Forest Preserve in the Saranac Lakes Wild Forest. There are five properties on the peninsula that are not owned by the applicant. These parcels range in size from 3± acres to 8± acres, and are all improved by single-family dwellings.

Except for the boathouse, which is entirely visible, the existing structures on the site are all partially visible from the surrounding waters of Upper Saranac Lake, State Wild Forest Lands, and residential homes 1500± feet across the lake.

### **Variance Request**

The applicant proposes to construct a structure comprised of a deck and walkway that will be attached to the south side of the existing single family dwelling and will increase the footprint of the dwelling by 580 square feet within the 75-foot shoreline setback from Upper Saranac Lake. The structure is proposed to allow a centralized location for friends and family to gather and to allow easier exterior access to the existing front porch, as well as provide an outdoor eating deck adjoining the dwelling's kitchen.

The deck portion of the proposed structure will be 35 feet, 5 inches in length and 15 feet wide, and the walkway will be 22 feet, 6 inches in length and 4 feet, 7 inches wide. The structure will be supported by eight posts, 4 inches in diameter, either attached directly to bedrock or to sonotubes that extend 48 inches below grade or to bedrock. The structure will extend to 55 feet, 10 inches from the mean high water mark at its closest point, and will be constructed with the same style, materials, and color as the existing dwelling and front porch.

The deck/walkway will not increase the lakeside width or the height of the single family dwelling, and will not extend further toward the lake than the existing dwelling. The applicant will not cut any trees as part of the requested variance, and the proposed structure will be screened from the lake and adjoining properties by vegetation and the existing dwelling and boathouse.

The NYS Office of Parks, Recreation and Historic Preservation (OPRHP) issued a letter dated June 5, 2019 (#19PR02314) finding that the structure is eligible for listing in the State and National Registers of Historic Places. The OPRHP reviewed the effect of constructing the deck/walkway and concluded, “this new deck will have No Adverse Impact upon this historic building provided the new wood deck will match the existing front porch in style and appearance and will not have a food structure.”

The site of the proposed structure is constrained by the location of the pre-existing single family dwelling. A deck could be constructed on the north side of the dwelling, outside of the shoreline setback area, but would involve construction on an upward slope, and would likely require tree removal and the blasting of bedrock.

During the variance review process, the applicant modified the proposal to 580 square feet with no tree removal, from the original deck proposal of 1204 square feet and 16 trees to be removed.

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

- “Pine Rock Camp – Hera Property” Sheets 1, 2, 3, and 4, prepared by Sarah Gordon Drake Architect, LLC, and dated May 22, 2019 (Site Plan). A reduced-scale copy of the Site Plan is attached as a part of this Order for reference.
- “Map of Survey prepared for Hera Property Management”, prepared by Ralph C. Schissler III, L.S., and dated December 27, 2017 and revised April 15, 2019 (Survey Plan).

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. On June 24, 2019, the Agency held a public hearing on the variance request in the Town of Santa Clara. The hearing was attended by Agency staff and one member of the public. No comments were received.

### **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 public purposes served by the Agency’s structure setback requirements include protection of the water quality and aesthetics of Upper Saranac Lake.

The variance involves the construction of 580 square feet of deck/walkway space on the southern side of the existing single family dwelling and entirely within the 75-foot setback from the mean high water mark of Upper Saranac Lake. The proposed structure will not increase the height or width of the single-family dwelling and will not extend further towards the lake than the dwelling. The structure will match the color, architecture, and materials of the existing attached porch, and will be backdropped by the single family dwelling. Existing vegetation and structures on the site will completely screen the new deck/walkway from the lake and adjoining properties. Construction of the deck/walkway will not add any impermeable surface to the variance site.

If the variance request were denied, the applicant would not be able to construct a deck/walkway in a centralized location with access to the kitchen area and allowing easier access to the existing front porch from the dwelling.

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

The deck/walkway will increase the footprint of the existing dwelling by 580 square feet, but will not increase the height or width of the dwelling and will not extend the structure further towards the lake.

During the variance review process, the applicant modified the proposal to 580 square feet from 1204 square feet. The original proposal was to remove 16 trees in the vicinity of the deck, and the current proposal will have no further tree removal. The variance request could be further minimized by constructing the deck without the walkway connecting it to the front porch. People would then have to walk through the dwelling to access the front porch, and there would be no porch access from the kitchen.

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

The deck/walkway will be screened from the water and adjoining properties by the existing vegetation, dwelling, and boathouse, and will not add any impervious surface to the site. No comments were received in relation to the variance request.

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

A deck could be constructed on the north side of the dwelling, outside of the shoreline setback area, but would involve construction on an upward slope, and would likely require tree removal and the blasting of bedrock. A variance would be required for construction of a walkway to connect a deck on the north side of the dwelling to the existing front porch.

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

The applicant purchased the property in 2017. The site has not substantially changed since the 1950s when the boathouse and tennis courts were constructed; the single family dwelling, bunkhouse, and caretaker cabin (now demolished) were constructed in the 1920s.

**§ 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.**

Construction of the deck/walkway will involve minimal ground disturbance and will not involve any tree cutting or removal. Provided the structure is not enclosed, it will not increase surface water runoff into Upper Saranac Lake, or allow for any increased occupancy or associated wastewater generation. The deck/walkway will be in the same style and color as the existing front porch and will complement the architecture of the existing structures on the site.

**§ 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 Upper Saranac Lake will be ameliorated by compliance with the following conditions:

1. This Order shall be recorded in the Franklin County Clerk's Office by September 10, 2019.
2. The authorization to undertake the construction of a deck/walkway shall expire four years from the date this Order is recorded in the Franklin 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 structure shall require a new or amended Agency Order or a letter of compliance.
4. Trees shown on the Site Plan between the single family dwelling and the shoreline of Upper Saranac Lake shall be retained. Within 75 feet of the mean high water mark of Upper Saranac Lake, no trees, depicted on Sheet 3 of the Site Plan may be cut, culled, trimmed, pruned, or otherwise removed or disturbed on the project site without prior written Agency authorization, except for the removal of dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.
5. Any vegetation within 75 feet of the mean high water mark of Upper Saranac Lake depicted on Sheet 3 of the Site Plan which is destroyed by natural occurrences shall be replaced in kind with native vegetation. Replanting of vegetation shall occur no later than the first spring or fall planting season after the destruction. Trees and shrubs that do not survive shall be replaced annually until established in a healthy growing condition.
6. The applicant shall not enclose the deck/walkway without a new or amended Agency Order.

- 7. The deck/walkway shall be constructed to match the color, materials, and architecture of the existing front porch.
- 8. Any new free-standing or building-mounted outdoor lights associated with the deck/walkway on the project site shall employ full cut-off fixtures that are fully shielded to direct light downward and not into the sky or toward Upper Saranac Lake or adjoining property.

**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 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                    ,                    .

ADIRONDACK PARK AGENCY

BY: \_\_\_\_\_  
Terry Martino, Executive Director

STATE OF NEW YORK  
COUNTY OF ESSEX

On the        day of                    in the year        , before me, the undersigned, a Notary Public in and for said State, personally appeared Terry Martino, 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

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