



MEMORANDUM

TO: Barbara Rice, Executive Director

FROM: Robert J. Lore, Deputy Director-Regulatory Programs

DATE: May 31, 2022

RE: Hawkins Variance Application P2021-0249

Summary

Andrew P. Hawkins and Lisa A. Walsh request a 100-foot variance from the Adirondack Park Agency's shoreline restrictions to allow for the expansion of a lawfully existing non-conforming boathouse to construct a third covered boat slip in order to house a third antique wooden boat in an enclosed structure for both summer usage and winter storage. Taking the variance review factors into consideration, it is staff's opinion that the public purposes of the shoreline setback restrictions outweigh the adverse consequences to the applicant resulting from denial of the requested variance. Accordingly, staff recommend the Agency consider denying the requested variance.

Variance Site

The variance site is located on Spitfire Lake in the Town of Brighton, Franklin County,¹ in an area designated as Resource Management by the Official Adirondack Park Land Use and Development Plan Map.² The tax map number of the variance location is: Section 395, Block 1, Parcel 4.100.³ The variance site is accessible by boat,⁴ as well as a logging road.⁵ The variance site is developed with a single family dwelling,⁶ located approximately 75 feet from the shoreline of Spitfire Lake at its closest point,⁷ several accessory structures, including a cabin and a woodshed, as well as a lawfully existing non-conforming boathouse, lawfully existing non-conforming boat slip, and

¹ Variance Application, page 3.

² Agency Look Up System Map, attached as Exhibit 1 to this memorandum.

³ Variance Application, page 3.

⁴ Variance Application, Narrative.

⁵ See Audio of Variance Hearing at http://nysapa.granicus.com/ViewPublisher.php?view_id=2. (Note that while a video of the hearing is available, no participants or materials were presented visually other than the hearing notice.)

⁶ Variance Application, page 4.

⁷ Timothy and Michele Mullins Survey Map, part of Agency File J2010-0644, prepared by Leifheit Land Surveying, PLLC, attached as Exhibit 2 to this memorandum.

dock.⁸ The single family dwelling, cabin, and non-conforming boathouse are replacement structures for buildings that pre-dated the August 1, 1973 effective date of the Adirondack Park Agency Act.⁹ The existing shoreline structure is considered a lawfully existing non-conforming boathouse by the Agency because it is a replacement structure for a boathouse that pre-dated the August 1, 1973 effective date of the Adirondack Park Agency Act and does not meet the Agency's current boathouse definition.

The existing non-conforming boathouse is 25 feet 4 inches in height as measured from the boat berth floor to the top of an existing cupola, with a footprint of 1,029 square feet.¹⁰ Attached to the western side of the non-conforming boathouse is a non-conforming uncovered boat slip, and along the eastern side of the non-conforming boathouse is a dock approximately 35 feet in length.¹¹ The shoreline structure is green and brown in color and visible from Spitfire Lake.¹² The existing non-conforming boathouse contains two covered boat slips and the non-conforming boathouse and associated docks can accommodate four to five boats in covered and uncovered boat slips.¹³

Variance Request

The applicants seek a variance authorizing the expansion of a lawfully existing non-conforming boathouse to construct a third covered boat slip in order to house a third antique wooden boat in an enclosed structure for both summer usage and winter storage.¹⁴ The proposed expansion is for a width of 16 feet 3 inches parallel to the shoreline and a length of 26 feet 11 inches perpendicular to the shoreline on the eastern side of the existing non-conforming boathouse, for a total increase in footprint of 437.4 square feet of the existing shoreline structure.¹⁵ The height of the proposed expansion is 15 feet 5 inches, which is less than the total height of the existing structure.¹⁶

Public Hearing

On May 24, 2022, the Agency held a remote public hearing regarding the variance request.¹⁷ The hearing was attended remotely by Agency staff, the applicants, the applicants' representatives, and one member of the public. No public comments were received during the hearing. The Agency has received fifteen written comments; 14 in support of the project and one letter with concerns about the project. The adjoining

⁸ Site Plan, S-1.1, dated January 7, 2022, prepared by Adirondack Design.

⁹ Variance Application, page 4; Agency Jurisdictional File J2001-0298.

¹⁰ Existing Plan, A-1.1A, dated November 10, 2021, prepared by Adirondack Design

¹¹ Existing Plan, A-1.1A, dated November 10, 2021, prepared by Adirondack Design

¹² View at 450 ft from Southeast, dated October 2, 2021, prepared by Adirondack Design

¹³ Existing Plan, A-1.1A, dated November 10, 2021, prepared by Adirondack Design

¹⁴ Variance Application, Narrative; See also Audio of Variance Hearing at http://nysapa.granicus.com/ViewPublisher.php?view_id=2.

¹⁵ Floor Plan, A-1.0, dated January 7, 2022, prepared by Adirondack Design

¹⁶ Elevation Plan, A-2.0, dated January 7, prepared by Adirondack Design

¹⁷ http://nysapa.granicus.com/ViewPublisher.php?view_id=2.

landowner to the west sent a comment letter of support for the proposal. A comment letter was not received from the adjoining landowner to the east.

Applicable Law

Executive Law § 806 establishes shoreline restrictions “to provide adequate protection of the quality of the lakes, ponds, rivers and streams of the park and the qualities of their shorelines.”¹⁸ In Resource Management land use areas, Executive Law § 806(1)(a)(2) requires that all principal buildings and accessory structures in excess of one hundred square feet in size be set back at least 100 feet from the shoreline of any lake. Boathouses and docks as defined in § 570.3(c) and (j) of Agency regulations are exempted from this shoreline setback requirement. As described in the definitions, boathouses cannot be taller than 15 feet or have a footprint greater than 1,200 square feet,¹⁹ and docks cannot be wider than eight feet.²⁰ Lawfully existing non-conforming boathouses and docks either pre-date the shoreline restrictions or were built in compliance with prior regulations. Lawfully existing boathouses and docks may be expanded within the setback provided they do not exceed the parameters of the current definitions; non-conforming boathouses and docks may be replaced but may not be expanded.²¹

Executive Law §806(3)(a) 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 §806(1)(a)(2). Agency regulations provide 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.”²² In determining whether to vary the restrictions, the Agency must consider the following factors:

- (1) whether the application requests the minimum relief necessary;
- (2) whether 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) above.²³

¹⁸ Executive Law § 806(1).

¹⁹ These provisions have been included in the “boathouse” definition since August 1, 2010.

²⁰ This provision has been included in the “dock” definition since May 1, 2002.

²¹ See 9 NYCRR § 575.5.

²² 9 NYCRR § 576.1(b).

²³ 9 NYCRR § 576.1(c).

In addition, the potential for setting a precedent may be considered when reviewing a variance application.²⁴

Variance Criteria

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

The applicants seek a variance to expand a boathouse that already does not comply with Agency regulations. The variance being sought would authorize an increase in footprint of the non-conforming boathouse by 437.4 square feet, 16 feet 3 inches in width and 25 feet 11 inches in length, and would result in an overall structure that is 1,466.4 square feet and 25 feet 4 inches in height entirely within the shoreline setback of Spitfire Lake. The height of the existing non-conforming boathouse on the variance site is 10 feet 4 inches taller than any boathouse allowed under Agency law, and the proposed expansion would result in a structure that is also 266.4 square feet in footprint larger than a boathouse allowed under Agency law. The variance request is for 100 hundred feet, the entire setback distance, allowing for placement of the structure at the shoreline of Spitfire Lake.

The applicants' original proposal for this variance request, included in an April 2021 Jurisdictional Inquiry Form submission, requested a total footprint increase of the non-conforming boathouse of 276.5 square feet, 160.9 square feet smaller than the variance request.²⁵ During the variance hearing, the applicants' representative stated that the applicants pursued a larger variance request in order to more comfortably accommodate the applicants' boats, but that it may be possible to reduce the size. The applicants stated that the increased size was necessary due to the length of a recently acquired boat.²⁶

The record does not demonstrate that the application requests the minimum relief necessary.

²⁴ *Pecoraro v Bd. of Appeals of Town of Hempstead*, 2 N.Y.3d 608, 615 (2004) (Board entitled to consider that granting a variance for an illegally substandard parcel could set a precedent such that landowners of oversized parcels could illegally subdivide their land and seek an area variance to improve the substandard plot with the idea that two parcels with two houses are worth more than one parcel with one house). See also, *Tall Trees Const. Corp. v Zoning Bd. of Appeals of Town of Huntington*, 97 N.Y.2d 86, 94 (2001) (relying in part on petitioner's evidence that the Board had previously granted a similar variance in the neighborhood); *Daneri v. Zoning Bd. of Appeals of Town of Southold*, 98 A.D.3d 508, 510 (2d Dep't 2012) (citations omitted) ("The record revealed that the community average for side yard setbacks was nonconforming and that the Zoning Board of Appeals of the Town of Southold ... had recently approved a substantially similar application"); *Johnson v. Town of Queensbury Zoning Board of Appeals*, 8 A.D.3d 741, 743 (3d Dept. 2004) (Zoning Board had legitimate concern that granting a variance for an oversized addition would lead to overcrowded community becoming more congested); *Matter of Simon Davydov v. Mammina*, 97 A.D.3d 678 (2d Dep't 2012) (impact of a decision to grant a variance upon the "effectiveness of the zoning ordinance" was a relevant consideration).

²⁵ See Agency file J2021-0117.

²⁶ See audio of Agency Variance Hearing at http://nysapa.granicus.com/ViewPublisher.php?view_id=2.

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

The shoreline of Spitfire Lake is comprised of mainly private lands and one State land parcel. There are 35 privately-owned shoreline lots, of which 11 are undeveloped.²⁷ Boathouses, docks, and upland structures are visible from the shoreline on many of the developed shoreline parcels. The majority of the shoreline is comprised of trees and vegetation.

Adjacent to the variance site are private residential lands with associated shoreline structures.²⁸ The proposed expansion would be located 250 feet from the nearest dock/boathouse, located on adjoining property,²⁹ and would not extend further into the lake than the existing shoreline structure.³⁰ However, the proposed expansion would be visible from Spitfire Lake, and screening would not be possible due to the location of the proposed expansion.

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

Under Agency regulations, the existing non-conforming boathouse cannot be expanded in any direction without an Agency variance. As stated in the variance application and by the applicants during the variance hearing, the applicants' objective is to expand the existing non-conforming boathouse by constructing a third covered boat slip attached to the current non-conforming boathouse in order to house a third antique wooden boat in an enclosed structure for both summer usage and winter storage.

There are feasible alternatives to the variance request that would not require a variance. The existing non-conforming boathouse could be replaced and expanded to the parameters established in § 570.3(c) of Agency regulations, with a footprint no greater than 1,200 square feet and a height of no more than 15 feet. During the review process, staff asked the applicants to consider whether the existing shoreline structure could be modified to meet the Agency's boathouse definition.³¹ Doing so would require the applicants to reduce the height of the overall structure, but also allow for a 171 square foot expansion. The applicants responded that doing so would require the entire structure to be rebuilt and would not be practical or cost effective.³² This alternative would not require an Agency variance.

²⁷ See Agency Aerial Photo of Spitfire Lake, attached as Exhibit 3 to this memorandum; see *also* Franklin County property records available at <https://franklin.sdgny.com/search.aspx>.

²⁸ See Agency Aerial Photo of Variance Site, attached as Exhibit 4 to this memorandum; see *also* Franklin County property records available at <https://franklin.sdgny.com/search.aspx>.

²⁹ See Exhibit 4.

³⁰ Floor Plan, A-1.0, dated January 7, 2022, prepared by Adirondack Design.

³¹ 1st Variance Information Request, dated November 5, 2021.

³² Response to Variance Information Request, 1a, dated December 2, 2021.

Staff asked the applicants if they could use off-site covered boat storage facilities for their additional boat storage needs.³³ The applicants responded that off-site storage would not allow the landowner to leave their boat-access only property in the event that “one or more” of the landowners’ boats broke down. During the variance hearing the applicants conveyed that they are able to reach their property during the winter via a logging road.³⁴ It is not clear whether this road is available or usable during the summer season. Additionally, the record indicates that the applicants own at least three operational boats located on the variance site,³⁵ such that all three would have to break down before access from the variance site using their own boats could not occur. In addition, the applicants indicated that a fourth boat is being refurbished and will be housed on the property.³⁶

The applicants were also asked to consider the construction of an on-site dry covered boat storage facility outside of the shoreline structure setback or to consider whether the entire height of the existing non-conforming boathouse could be raised to the existing ridgeline thereby providing two-tiered dry storage within the existing shoreline structure.³⁷ While both of these alternatives would not require a variance, the applicants responded that these alternatives are “impractical.”³⁸

The applicants could also lawfully construct a second boathouse on their property that meets Agency requirements. The applicants state that such a structure would need permitting from the New York State Department of Environmental Conservation and Army Corps of Engineers, and due to the configuration of the shoreline and water depth on the variance site would have to extend almost 60 feet into the lake.³⁹ Based on Agency records, a boathouse closer to the existing boathouse that extends less than 60 feet into the lake may be possible.⁴⁰

There are alternatives to the variance request that would allow for covered storage of the applicants’ boats without varying the Agency’s shoreline restrictions.

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

Since August 1, 2010, construction of a new or expansion of an existing covered shoreline structure to a height of more than 15 feet or a footprint greater than 1,200 square feet has been prohibited under Agency regulations, even if the structure will be used to store boats. The applicants purchased the property with the existing non-

³³ 1st Variance Information Request, dated November 5, 2021.

³⁴ See audio of Variance Hearing at http://nysapa.granicus.com/ViewPublisher.php?view_id=2.

³⁵ Applicant Photo submitted February 17, 2022 and attached as Exhibit 5 to this memorandum.

³⁶ See audio of Variance Hearing at http://nysapa.granicus.com/ViewPublisher.php?view_id=2.

³⁷ 1st Variance Information Request, dated November 5, 2021.

³⁸ Response to Variance Information Request, 3a and 4a, dated December 2, 2021.

³⁹ Response to Variance Information Request, 5a, dated December 2, 2021.

⁴⁰ See Agency photos from Enforcement File E2002-0054 showing a former dock closer to the existing boathouse on the variance site, attached to this memorandum as Exhibits 6 and 7; see also Agency 2003 air photo of variance site attached to this memorandum as Exhibit 8.

conforming boathouse in 2016, after this regulation was in place.⁴¹ Therefore, the applicants were on constructive notice prior to the purchase that the shoreline restrictions constrained their ability to expand the non-conforming boathouse.

The current lawfully existing non-conforming boathouse was constructed circa 2003 to replace a boathouse that was constructed prior to August 1, 1973,⁴² and was used by a prior landowner until the property was sold to the applicants in 2016. The applicants have used the existing non-conforming boathouse since their purchase of the property in 2016.

The variance application states the landowners desire three covered boat slips to store the landowners' boats and ensure the landowners can leave the property in event of breakdowns of "one or more" boats.⁴³ The record indicates that the property can be accessed by a logging road at least during the winter⁴⁴, although it is unclear if this logging road is usable during other seasons. The record also fails to demonstrate why three covered boat slips are necessary to exit the property in the event of mechanical breakdowns of the landowners' boats as there is currently space for four to five boats to be docked on the variance site, two in covered boat slips in the existing non-conforming boathouse and an additional two to three boats in dock slips.

According to the applicants' statements made during the hearing, the need for three covered boat slips on the variance site is due to the landowners' recent acquisition of an antique wooden boat that needs to be protected from the weather in an enclosed structure.⁴⁵ The applicants own two additional wooden boats that are already stored in the existing non-conforming boathouse.⁴⁶

This difficulty, as presented by the applicants, is self-created.

§ 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 public purposes of the shoreline restrictions are to protect water quality and the qualities of Adirondack shorelines. Section 806 of the Adirondack Park Agency Act establishes shoreline setback restrictions that apply regardless of whether an Agency permit is required for new land use or development or subdivision in order to protect the

⁴¹ Deed from Timothy Mullins and Michelle Mullins to Andrew P. Hawkins and Lisa A. Walsh, dated June 28, 2016, recorded July 1, 2016.

⁴² See Agency File J2003-0145.

⁴³ Response to Variance Information Request, 2a, dated December 2, 2021

⁴⁴ http://nysapa.granicus.com/ViewPublisher.php?view_id=2.

⁴⁵ http://nysapa.granicus.com/ViewPublisher.php?view_id=2.

⁴⁶ Applicant provided photo, attached to this memorandum as Exhibit 5.

Park's shorelines. However, a structure that constitutes a boathouse or a dock as described in Agency regulations is not subject to the Agency's setback requirements.

The Agency adopted its definition of the term "boathouse" in 2010 to further these purposes,⁴⁷ in effect preventing construction of large new shoreline structures and the associated water quality and visual impacts. Importantly, since the 2010 rulemaking no variance has been issued by the Agency expanding a boat storage structure on a residential lot. Therefore, staff believe that approving the applicant's request to expand an already non-conforming boathouse to a shoreline structure both taller in height and larger in footprint than allowed under Agency regulations would set a precedent for allowing large boat storage structures along Adirondack shorelines, undermining the Agency's ability to protect water quality and shoreline quality in the Park.

The proposed shoreline structure would be visible from Spitfire Lake and screening of the structure is not possible. Approving the variance request would also exacerbate the visual and water quality impacts of the already non-conforming boathouse and single family dwelling located within the shoreline setback on the variance site.

Granting the variance request would adversely affect the natural, scenic, and open space resources of the Park.

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

Conditions could be imposed to reduce some, but not all, of the adverse visual impacts of the proposed structure. Specifically, conditions restricting the structure to earth tone colors, requiring that all exterior lights be fully shielded and directed downward, and other limitations could be included in an Agency variance order. Impacts to water quality could also be reduced, but not eliminated, by requiring implementation of an approved erosion and sediment control plan, minimizing sediment runoff during construction.

§ 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 applicants' objective is to expand the existing non-conforming boathouse on the variance site by constructing a third covered boat slip in order to house a third antique wooden boat in an enclosed structure for both summer usage and winter storage.

The variance request would result in a shoreline structure that is 10 feet 4 inches taller and 266.4 square feet in footprint larger than any lawful new or replacement boathouse allowed under Agency law. The applicants originally submitted a smaller proposal with

⁴⁷ Notice of Proposed Rulemaking, October 20, 2009, Regulatory Impact Statement, p. 2 attached as Exhibit 9 to this memorandum.

their Jurisdictional Inquiry Form. The record does not demonstrate that the variance request is for the minimum relief necessary.

There are alternatives to the proposal that would not require a variance, including replacing and expanding the existing non-conforming boathouse to the parameters allowed under Agency regulations; constructing a dry covered boat storage facility outside of the shoreline setback; utilizing off-site covered boat storage facilities; or constructing a second boathouse on the property in compliance with Agency regulations. The record demonstrates that there are feasible non-jurisdictional alternatives to the variance request that could meet the applicants' goals.

Applicants clarified during the variance hearing that their objective in seeking the requested variance is to construct a third covered boat slip in order to store a third antique wooden boat in an enclosed structure. The record demonstrates that the existing shoreline structure has been used by the applicants since 2016 and a prior owner since its construction in 2003. The difficulty, as presented by the applicants, is self-created.

The requested variance would exacerbate the visual and water quality impacts of the already non-conforming boathouse and single family dwelling located within the shoreline setback on the variance site.

There are no conditions that could be imposed that would eliminate the adverse visual and water quality impacts of the proposed structure.

The harm to the applicants from denial of the variance request would be minimal as the difficulty is self-created, feasible non-jurisdictional alternatives exist, and the requested variance is not the minimum relief necessary. Granting the request has the potential to impact water quality and shoreline quality and to set a precedent for large shoreline structures Park-wide. Without the variance the applicants can still access and achieve reasonable use of their property and their shoreline. Therefore, staff believe that the adverse consequences to the applicants resulting from denial of the variance are not greater than the public purposes of the Agency's shoreline setback restrictions.

Conclusion

Taking into consideration the factors set forth in § 576.1(c), staff believe that the balancing test in Section 576.1(b) favors the public purposes of the shoreline restrictions over the applicant's proposed request to expand a non-conforming boathouse. Accordingly, staff recommend that the Agency consider denial of the requested variance.