



TO: Regulatory Programs Committee

FROM: Richard Weber, Deputy Director, Regulatory Programs

DATE: September 28, 2012

RE: One Main on the Lake, LLC Variance
P2012-0084

SUMMARY

One Main on the Lake, LLC ("applicant") is the owner of a 0.1±-acre parcel located in the Village of Lake Placid, Town of North Elba, Essex County, on Main Street and the shoreline of Mirror Lake. John J. Nelson is the president of One Main on the Lake, LLC, and Robert E. Gessner ("authorized representative") has Durable Power of Attorney for the LLC. The 0.1±-acre parcel is located in an area classified Hamlet by the Adirondack Park Land Use and Development Plan Map, on 50 feet of shoreline of Mirror Lake.

The variance request involves the replacement of a recently removed structure, partially located within 50 feet of the mean high water mark of Mirror Lake, with a new larger structure that will be taller and slightly wider than the formerly existing structure. As proposed, the replacement building requires three variances from the Agency. The applicant has requested an Agency variance to (1) expand the existing building to connect with and stabilize the existing stone wall at the south edge of the adjoining Village Park property; (2) add a new second story deck; and (3) expand the formerly existing third story deck.

Agency jurisdiction includes review of the variance request under APA Act § 806 and review of a Class A Regional Project for a structure greater than 40 feet in height. This memorandum is limited to the variance request. For the reasons described below, Agency staff recommends approval of the draft Order attached as Attachment 1.

Procedural History

On May 15, 2012 the Agency received an application from the applicant seeking an Agency variance for the following [Hearing Exhibit 2]:

- (1) **Lateral Expansion:** The proposed new building will include a lateral expansion within the 50 foot shoreline setback area of a preexisting building. The lateral expansion will total 82.5 square feet (3' wide by 27.5' long).
- (2) **New Second Story Deck:** As proposed, the new building will include a 178.2 square foot lateral and shoreline expansion for a new second story deck.
- (3) **Expanded Third Story Deck:** The proposed new building will also include a shoreline and lateral expansion of the formerly existing third story deck of 118.2 square feet.

At or around the same time as the variance application, the pre-existing building was demolished when the Town of North Elba/Village of Lake Placid Code Enforcement Officer deemed the building to be beyond rehabilitation. Agency staff contacted the applicant's authorized representative after observing the structure had been removed and advised that no reconstruction activities requiring Agency approval could be undertaken unless and until the variances were granted. The applicant has complied with this request.

On June 8, 2012 the Agency sent the applicant a Request for Additional Information [Hearing Exhibit 3]. The additional information was received on August 9, 2012 [Hearing Exhibit 4]. A public hearing was held on September 18, 2012 at 2:00PM at the Village of Lake Placid Offices. APA Hearing Officer Keith McKeever conducted a variance hearing pursuant to APA Act § 806 and 9 NYCRR § 576.5.¹

At the hearing, Environmental Program Specialist ("EPS") Colleen Parker provided a brief overview of the application and project site. EPS Parker also discussed the Agency's review criteria and the variance factors set forth in 9 NYCRR § 576.1(c)(1)-(6).

¹ The variance hearing was held in conjunction with a legislative hearing convened pursuant to § 804(6) of the Adirondack Park Agency Act to provide information on the applicant's Class A Regional Project Permit application for a structure over 40 feet in height.

The applicant's authorized representative, Robert E. Gessner, also made a presentation and presented testimony on behalf of the application.

Approximately twenty members of the public attended the hearing and four people commented on the proposal. James E. Morganson, the Village of Lake Placid/Town of North Elba Code Enforcement Officer, spoke in support of the project. Morganson stated that he requested the previous building be removed due to public safety concerns and the new structure will enhance public safety. The General Manager of the High Peaks Resort also spoke; however, his comments mainly addressed the Resort's concerns with the Class A Regional Project portion of the applicant's proposal. The High Peaks Resort did comment the proposal will result in increased pressure on parking for their guests. An adjoining landowner to the south then spoke at length regarding his concerns with the variance proposal. The landowner stated that the addition of the decks to the shoreline will detrimentally block the view from his property looking parallel to the shore of Mirror Lake. The landowner also questioned the merits of allowing an expansion above a structure built in violation of the Adirondack Park Agency Act. Finally, a local Lake Placid community member spoke in favor of the project, highlighting the project's aesthetic appeal and her hope that the project is ultimately approved.

STAFF ANALYSIS

In arriving at its determination whether to grant a variance the Agency must consider the criteria set forth in 9 NYCRR § 576.1. It is staff's opinion that this application is approvable under these criteria. Staff's discussion of the decision factors is found in Finding of Fact number 12 of the attached draft Order.

I. Lateral Expansion Proposal

The applicant's first request is for an 82.5 square foot lateral expansion to connect with and stabilize the existing stone wall at the south edge of the adjoining Village Park property. This request is the minimum relief necessary to accomplish the applicant's objective. See 9 NYCRR § 576.1(c)(1). The lateral expansion does not cause the building to be located closer to the shoreline of Mirror Lake and it is staff's opinion this variance will not cause adverse impacts to the natural, scenic, and open space resources of the Park. See 9 NYCRR § 576.1(c)(5). Granting the variance will ameliorate a public safety hazard for without the proposed lateral expansion a one-

story drop will exist between the applicant's building and the adjacent Village Park property. Accordingly, it is Agency staff's opinion that this request is approvable.

II. New Second Story Deck and Expanded Third Story Deck Proposal

When reviewing the applicant's variance request for a second and third story deck it is important to consider the Agency's prior involvement with this site. In 2011, upon receiving information from a complainant, the Agency determined that a *prior* owner had constructed unlawful additions to the structure formerly located on the project site. Specifically, the third floor balcony was added sometime after 1977 and the first floor addition was added in 1979. The current landowner, One Main on the Lake, LLC, purchased the building without knowledge of these violations with the intention to remodel. After investigation, the Agency indicated by letter dated September 20, 2011 that no enforcement action would be taken with respect to these violations and the existing building could be replaced in-kind; however, expansion in any direction would require an Agency variance [Hearing Exhibit #1].

The applicant's request seeks to go **up** from the first floor addition and expand the third story addition laterally and shoreward. It is Agency staff's opinion that this proposal requests the minimum relief necessary from the shoreline setback requirements. See 9 NYCRR § 576.1(c)(1). The applicant's deck proposals do not cause the structure to be located closer to the shoreline of Mirror Lake than what previously existed. Furthermore, the deck proposals do not increase the height of the building by more than two feet, and do not increase the footprint or width of the building.² Therefore, under Agency Rules and Regulations § 575.5 this request would be non-jurisdictional. The only reason the applicant needs to comply with the Agency's variance criteria for this portion of the proposal is for resolution of the prior violation discussed above.

There is also real practical difficulty associated with the applicant's objective. See 9 NYCRR § 576.1(a). This mainly pertains to the physical constraints of the project site. The lot itself is bounded by Main Street to the rear and Mirror Lake to the front shoreward facing side. An adjacent building and

² This analysis is specific only to the applicant's request for the second and third story decks and does not take into account the separate request for a lateral expansion or Class A Regional Project Permit.

the Village Park bound the property on either side. The footprint of the former building, constructed prior to the enactment date of the Adirondack Park Agency Act, is located within the shoreline setback area and occupies most of the buildable lot. The only opportunities for expansion exist upwards and laterally, which the applicant has proposed, and closer towards the shore, which has not been proposed.

It is also important to consider the alternatives in this application. See 9 NYCRR § 576.1(c)(3). The only realistic alternative in this case would be to replace the building in kind and forego the new and expanded decks. However, the applicant's authorized representative stated that this is not a feasible alternative, does not meet the applicant's business objectives and that the applicant's current lease agreement is contingent upon the variances for the decks being granted. In support of the applicant's objectives, Mr. Gessner noted that the variance would result in a significant gain in seating area thereby enhancing the economic viability of the proposal.

When determining whether the requested variances are appropriate, the Agency must find that the adverse consequences from denial of this request would outweigh the public purpose to be served, i.e. protection of the aesthetic character and water quality of Mirror Lake. See 9 NYCRR § 576.1(b). It is staff's opinion that if the project is undertaken in compliance with the conditions set forth in the attached draft order these variance requests will not adversely affect the natural, scenic, and open space resources of the Park as the new structure replaces a recently removed building within the same footprint and will not result in ground disturbance closer to the mean high water mark of Mirror Lake. The applicant has stated that denial of these variances will cause identifiable adverse impacts, such as loss of potential revenue from loss of seating area and the inability to expand the former structure to meet the current owner's objectives. As such, it would be reasonable for the Agency to find that the adverse consequences to the applicant resulting from denial of this variance are greater than the public purposes sought to be served by the shoreline restrictions.

Finally, it is important for the Agency to consider whether granting the variance will create a substantial detriment to adjoining or nearby landowners. See 9 NYCRR § 576.1(c)(2). The applicant stated in response to the Agency's Request for Additional Information that the expansion of the third level deck "would not impede the view" of the neighboring property to the south [Hearing Exhibit 4]. At the variance hearing, the

adjoining landowner to the south did not agree with this statement and is of the opinion the decks will compromise his view of Mirror Lake.

Agency staff's review of the materials indicates the applicant's proposal will not have adverse impacts on the views of Mirror Lake that any adjoining landowner currently has when looking directly out at the lake from their property. It is staff's opinion that any potential visual impacts to the adjoining landowner to the south of the project site would be of views the landowner has to the north end of Mirror Lake as they lean out of their window or porch and look north. It is staff's opinion that this does not arise to a *substantial* detriment as set forth in 9 NYCRR § 576.1(c)(2) as one factor to take into consideration when reviewing a variance request. Additionally, it should be noted that the landowner to the north, the Village of Lake Placid, is supportive of the proposed variance request.³ Furthermore, the shoreline in this area is heavily developed and the structure would be consistent with the aesthetic character of the adjacent land uses as well as an improvement over the visual impact of the formerly existing structure.

CONCLUSION

In determining whether a variance is appropriate, the Agency must find that (1) there are practical difficulties in carrying out the strict letter of the shoreline restrictions and (2) the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restriction, i.e. protection of the aesthetic character and water quality of Mirror Lake. The factors set forth in 9 NYCRR § 576.1(c) are to be considered, on balance, when making this determination.

The project site is located in a Hamlet land use area along a highly developed shoreline. First, the applicant is seeking to expand laterally to remedy a public safety hazard. Secondly, the applicant has requested to construct a second story deck over a structure that has existed for over 30 years and expand a

³ During a September 26, 2011 Town of North Elba/Village of Lake Placid Zoning Board of Appeals Meeting a board member expressed the sentiment that decks, specifically, are appropriate for the back side of buildings on Main Street, Lake Placid that face Mirror Lake and the Review Board encourages these types of architectural structures. During the Review Board's July 30, 2012 meeting minutes it was also stated in reference to this project that "[t]he back side of this building looks great architecturally..." and [the improvements] make the building much more attractive" [Hearing Exhibits 2 and 4].

third story structure that has also existed for over 30 years. The variance requests, if granted, will not encroach any further towards the shoreline of Mirror Lake than the footprint of the former building. Staff is of the opinion that the applicant's proposal is consistent with the existing aesthetic character of the developed shoreline of Mirror Lake along Main Street and will not result in negative impacts to the water quality of Mirror Lake. Therefore, staff finds that the Agency could reasonably grant these requested variances in their entirety.

JLM:PVC:mlr