



P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050

APA Permit and  
Order Granting Variance  
**2012-84**

Date Issued: October 12, 2012

In the Matter of the Application of

**ONE MAIN ON THE LAKE, LLC**  
**ROBERT E. GESSNER and**  
**JOHN J. NELSON**

for a permit pursuant to §809 of the Adirondack Park Agency Act and a variance pursuant to § 806 of the Adirondack Park Agency Act

To the County Clerk: This order must be recorded on or before December 12, 2012. Please index this Order in the grantor index under the following names.

- 1. One Main on the Lake**
- 2. Gessner Nelson Revocable Trust**
- 3. Robert E. Gessner**
- 4. John J. Nelson**

**SUMMARY AND AUTHORIZATION**

One Main On The Lake, LLC is granted on conditions, a permit and variance from the applicable Section 806 shoreline restrictions for the replacement of a structure partially located within 50 feet of the mean high water mark of Mirror Lake in an area classified Hamlet by the Official Adirondack Park Land Use and Development Plan Map in the Village of Lake Placid, Town of North Elba, Essex County.

This project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date this Permit and Order is recorded. The Agency will consider the project in existence when the new building as authorized herein is constructed.

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.

**AGENCY JURISDICTION**

Variance

The variance application seeks Agency approval for a variance from the applicable 50 foot shoreline structure setback restriction pursuant to Section 806(1)(a)(2) and Section 806(3) of the Adirondack Park Agency Act (Executive Law, Article 27 to authorize expansion of structure partially located within 50 feet from the mean high water mark of Mirror Lake. Section 806(3) of the Adirondack Park Agency Act and 9 NYCRR Part 576 authorize procedures whereby an applicant may apply for a variance from the shoreline restrictions provided certain criteria cited in the statute and regulations are complied with, as further described below.

Agency Enforcement investigation E2011-139, resulted in a letter dated September 20, 2011 which determined that with regard to the former building which existed on the project site, no expansion of the porch or upper level balcony - which were "unlawfully" constructed within 50 feet of the mean high water mark, by a prior landowner in the late 70s, early 80s - could be undertaken without an Agency variance.

Class A Regional Project

A portion of the proposed new building (located outside of the 50 foot shoreline setback) will exceed 40 feet in height as measured from the highest point of a structure to the lower of either natural or finished grade and as such requires an Agency permit in a Hamlet land use area as a Class A Regional Project pursuant to Sections 810(1)(a)(4) and 809(2)(a) of the Adirondack Park Agency Act. No portion of the building being expanded to greater than 40 feet tall is located within 50 feet of mean high water mark, and thus the height expansion is not part of the variance request.

**PROJECT SITE**

The site is a 0.1 acre parcel of land located on Main Street and the shoreline of Mirror Lake in the Village of Lake Placid, Town of North Elba, Essex County, in an area classified Hamlet by the Adirondack Park Land Use and Development Plan Map. The parcel includes 29± feet of shoreline on Mirror Lake. It is identified on Town of North Elba Tax Map Section 42.0EL, Block 1, Parcel 1. The site is described in a deed from Mildred P. Johnson Revocable Trust to Camp Clampet, LLC dated December 2, 2010 which was recorded December 21, 2010 in the Essex County Clerk's Office in Liber 1655 of Deeds at Page 6. The sole member of the LLC is the Gessner Nelson Revocable Trust, of which John J. Nelson is Trustee. Robert E. Gessner was granted Durable

Power of Attorney for the LLC on December 13, 2010. On August 16, 2011 Camp Clampet, LLC applied for and received from NYS Secretary of State a name change to One Main on the Lake, LLC.

### PROPOSAL

The project as proposed and conditionally approved herein consists of replacing 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 former building, and will include a new second story deck and an expanded third story deck, on the lakeside of the building. The former building included one restaurant/bar on the lake level, one retail store on the main level and two apartments on the upper level. The proposed new building will include two separate restaurants; one encompassing the lake level and main level floors, and a separate restaurant on the upper level floor. No retail or residential use is proposed in the new building.

### REQUESTED VARIANCES

The variances as proposed and conditionally approved herein are summarized as follows: (1) expand the existing building to connect with and stabilize the existing stone wall at the edge of the adjoining Village Park property; (2) add a new second story deck; and (3) expand the formerly existing third story deck.

1. **Basement (lake level):** The proposed new building will include a lateral expansion (within the 50 foot shoreline setback area) totaling 82.5 square feet (3' wide by 27.5' long) to connect with and stabilize the existing stone wall at the south edge of the adjoining Village Park property.
2. **Main floor (Street level):** The second story (Main level floor) of the proposed new building will include a new 178.2 square foot deck (7.2' by 24.7') on the lakeside involving a shoreward expansion of the second story by 7.2'.
3. **Upper level (Third Story):** The third story of proposed new building will expand the former upper level deck on the lakeside of the building shoreward and laterally by 118.2 square feet. The total square footage of the new upper level deck will be the same as the main floor deck, 178.2 square feet, but then, subtracting the 60 square foot size of the former upper level deck results in net expansion of 118.2 square feet, including a shoreward expansion of the third story by 4 feet.

Class A Regional Project

The Class A Regional project as proposed and conditionally approved herein is summarized as follows:

The preexisting structure measured approximately 38 feet in height from the highest point of a structure to the lowest grade. The proposed expanded structure will measure from the lowest grade, 43 feet 2 inches in height to the highest point on the structure, which is that portion of the ridgeline located near Main Street and more than beyond 50 feet from the mean high water mark. No portion of the structure over 40 feet in height will be located within 50 feet of the mean high water mark.

The proposed project is shown on 38 sheets of project plans entitled "2407 Main Street, Lake Placid" prepared by R.E. Hanpeter, AIA, dated 08-08-11 and last revised 07-23-12, except for Sheets C-15, (Elevations) and Sheets C-20, C-21, and C-22, (Simulations) revised copies of which were submitted to the Agency on 09-12-12.

Reduced-scale copies of Plan sheets, C-15, C-20, DD-1, and S-2 are attached as a part of this Order for easy reference. The original, full-scale maps and plans referenced in this Order are the official plans for the project.

CONDITIONS

BASED UPON THE FINDINGS ABOVE AND INFORMATION CONTAINED IN THE PROJECT FILE, THE VARIANCE IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The project shall be undertaken as described in the completed application, the Variance Description as Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the Order is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the Order.
2. This project may not be undertaken, and no transfer deed shall be recorded, until this Order is recorded in the Essex County Clerk's Office. This Order shall be recorded on or before December 12, 2012 in the names of all persons listed on the first page hereof and in the names of all owners of record of any portion of the project site on the recordation date.
3. This Order is binding on the applicant(s), all present and future owners of the variance site and all contractors undertaking all or a portion of the project. Copies of this Order and all the approved maps and plans referred to herein shall be furnished by

the applicant(s) to all contractors prior to undertaking the project, and to all subsequent owners or lessees of the project site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this Order shall contain references to this Order as follows: "The lands conveyed are subject to Adirondack Park Agency Permit and Order 2012-84 issued October 12, 2012, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."

4. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.

#### **Structure Location and Size**

5. This Permit and Order authorizes the construction of the building in complete conformity with the project plans authorized herein, in the location shown on the project plans and to the size and dimensions shown on the project plans. Any changes to the location, size, dimensions or height will require a new or amended Agency Permit and Order. Within 60 days of completing the structure authorized herein, a qualified design professional shall provide written certification to the Agency that the structure was built in compliance with the approved plans.

#### **Building Color / Architectural Style**

6. The building shall be constructed in accordance with the architectural style and colors depicted on the elevation plans and visual simulations referenced herein. All exterior building materials, including roof, siding and trim, used to surface the exterior of the structure authorized herein shall be of a color which blends with the surrounding environment and character of the area. The Agency will, upon request, advise whether any particular proposal complies with this condition.

#### **Outdoor Lighting**

7. All new free-standing and building mounted outdoor lights shall employ full cut-off fixtures, that is, they shall be fully shielded to direct light downward and not into the sky. The fixtures shall be oriented so as to not cast light toward Mirror Lake or adjoining property. The intent is to reduce nighttime light pollution (glare, light trespass and sky glow).

**Wastewater Treatment**

8. All wastewater generated from the project site shall be conveyed to the municipal wastewater collection and treatment system.

**Erosion and Sediment Controls**

9. The "Erosion & Sediment Control Plan" prepared by Kevin L Hastings and dated June 14, 2012 shall be installed and maintained until after the building is completed and site stabilized.

**Signage**

10. All new signs on the project site shall comply with 9 NYCRR Appendix Q-3 of the Adirondack Park Agency Regulations.

**Shoreline Cutting**

11. No shoreline vegetation shall be cut, culled, trimmed or removed without prior Agency review and approval. This condition shall not be deemed to prevent the removal of dead or diseased vegetation or of rotten or damaged trees or of other vegetation that presents a safety or health hazard.

**Energy Conservation**

12. At a minimum, the development authorized herein shall be designed and constructed to comply with the Energy Conservation Construction Code of New York State, 2010 (ECCCNYS-2010), or whatever subsequent version is in effect at the time when the building is constructed. This will include adherence to properly selected, installed and inspected insulation, high performance windows, tight building envelope construction and duct work and efficient heating and cooling equipment.

All buildings and facilities shall use the highest rated Energy Star products (current at the time of construction), including light fixtures, appliances, and equipment to the maximum extent possible.

**Legal Interests of Others**

13. This Permit/Order does not convey to the permittees any right to trespass upon the lands or interfere with the rights of others in order to undertake the authorized project, nor does it authorize the impairment of any easement, right, title or interest in real or personal property held or vested in any person.

**Other Regulatory Permits and Approvals**

14. Prior to operating any new restaurant, the applicant shall obtain all necessary approvals of the New York State Department of Health.

**Review of Future Development**

15. No further land use and development shall occur on the property without first obtaining a jurisdictional determination and, if necessary, a new permit or order from the Agency.

**FINDINGS OF FACT**

**Background/ History**

1. The former building on the project site was constructed in the 1920s, well before the May 22, 1973 enactment date of the Adirondack Park Land use and Development Plan. In 1977, the Agency issued a non-jurisdictional determination letter which allowed the shoreline side of the preexisting building to be expanded 13 feet closer to the mean high water mark of Mirror Lake, bringing it flush with the attached building to the north, but no closer to the shoreline than the attached building. As a result of that non-jurisdictional expansion the former building was located approximately 30 feet from the mean high water mark. Then, in the late 70s early 80s further expansions of the building were done by a prior landowner, adding a lower level porch on the shoreline side of the structure and an upper level, third floor balcony. The 7± foot wide porch brought the lower level of the building to within 23± feet of the mean high water mark.

Agency Enforcement case E2011-139, investigated information received from a complainant in 2011, and determined that the lower level porch on the shoreline side of the structure and the upper level balcony that were added in the late 70s, and early 80s by a prior owner were unlawful additions to the former structure. The current landowner, One Main on the Lake, LLC, purchased the building without knowledge of these violations and

with the intention to remodel. After investigation, the Agency issued a letter dated September 20, 2011 stating 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 within the shoreline setback would require an Agency variance.

### PROPOSAL

2. The pre-existing building was recently demolished as it was deemed to be a safety hazard and beyond rehabilitation. The new building is proposed in the same general footprint as the former building, but 3 feet wider. At its closest point, as measured from the shoreline side of the lower level porch (circa 1979±), the former structure was approximately 23 feet from the mean high water mark of Mirror Lake. No portion of the new building will be located closer than 23 feet from the mean high water mark. The exterior main wall of the proposed new building will be located in the same area as the preexisting building and setback 30± feet from the mean high water mark. To match the lower level deck, the proposed second and third story decks on the new building will be located 23 feet from the mean high water mark at their closest point, but no closer to the shoreline than was the former porch. Although the proposed second and third story decks will not be located any closer to the mean high water mark than was the closest point of the former porch, the deck expansions still require a variance as a result of the enforcement matter.

The entire lower level of the new building will be also expanded laterally by 3 feet to connect with and stabilize the stone wall on adjoining Village property.

As shown on the project plans, the overall footprint of the proposed new structure is approximately 1,760 square feet; 3 feet wider than the footprint of the former building but no closer to the shoreline than the former building footprint. The total floor space associated with the three floors of restaurant space is approximately 5010 square foot; 1670 square feet of space per floor. The total building footprint within the 50 foot shoreline setback is approximately 711 square feet.

On the upper level of the proposed new building, the main wall on the shoreline side will be setback further from the shoreline than was the preexisting building and the new upper level wall be located approximately 52 feet from the mean high water mark. This portion of the structure will be approximately 43 feet 2 inches tall, as measured from the lowest grade (shoreline side of building) to the highest point on the building. As measured

from Main Street, however, the building will be approximately 31

feet tall. The entire portion of the structure taller than 40 feet in height will be located outside of the 50 foot shoreline setback area<sup>1</sup>. Further, the original plans submitted to the Agency proposed the structure to be 47 feet 2 inches in height to the new ridgeline, and 50 feet to the top of the chimney vent (highest point on structure). In response to comments from the adjacent landowner (see Finding 7 below) and in an attempt to minimize impacts, the height of the ridgeline was reduced to 43'2" and the chimney was removed. As explained in the application materials, mechanical equipment, heat and air conditioning exchangers, kitchen vents, and other ventilation equipment will be housed in the top of the building. Thus the peaked design is proposed to accommodate this plan, and the height could not be further reduced.

The exterior finish of the proposed new building will be a light green/off white colors with dark green and brown trim.

#### **Existing Environmental Setting/Character of the Area**

3. The 0.1±-acre project site with 29± feet of shoreline on Mirror Lake is located in a Hamlet land use area on the Adirondack Park Land Use and Development Plan Map. There are no jurisdictional wetlands or other statutory "critical environmental areas" on the property. The grade of the site drops at slopes of approximately 15-20 percent from Main Street to behind the former building. Then the site levels at slopes of less than 8 percent in the area (approximately 20 feet wide) directly behind the building. At the shoreline the land drops again steeply at slopes greater than 25 percent. An existing stone wall and dock complex with steps are located at the shoreline.
4. The project site is located on Main Street Lake Placid Village, an area intensely developed with commercial uses, restaurants, retail stores, tourist accommodations, tourist attractions, and residential uses. A public village park directly adjoins the project site to the north, Mirror Lake to the east, Main Street to the west and directly to the south is a privately owned structure containing a restaurant and apartments. The project site is visible from public use areas - including Mirror Lake, the Village Park and Main Street.

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<sup>1</sup> For the purposes of Agency jurisdiction, height is measured from the highest point of a structure to the lower of either natural or finished grade. The Town of North Elba, Village of Lake Placid local code measures height differently and thus no local height variances were required for the structure.

**Other Regulatory Permits and Approvals**

5. The Town of North Elba Village of Lake Placid Joint Review Board approved the proposed project in September 2011, but determined that the lakeside decks would require a local variance from the Zoning Board of Appeals.

On August 6, 2012, The Town of North Elba/Village of Lake Placid Zoning Board of Appeals approved the necessary variances for the proposed decks on the shoreline side of the structure, conditional upon the open decks not being enclosed.

**Public Hearing**

6. A public hearing was held on September 18, 2012 at 2:00PM at the Village of Lake Placid Offices. The hearing served as the required variance hearing pursuant to APA Act §806 and 9 NYCRR Section 576.5 and also served as a legislative/informational hearing pursuant to APA Act Section 804(6) with regard to the applicant's Class A Regional Project Permit application for a structure over 40 feet in height. At the hearing, Agency staff provided a brief overview of the application and project site, and discussed the Agency's review criteria and the variance factors set forth in 9 NYCRR § 576.1(c)(1)-(6). Robert E. Gessner, and Richard Hanpeter, AIA attended the hearing on behalf of the applicant; Robert E. Gessner also made a presentation and presented testimony.

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, and his comments mainly addressed the Resort's concerns with the Class A Regional Project portion of the applicant's proposal, such as visual impacts from the increased height of the building and increased pressure on parking, potentially resulting in unauthorized use of the Resort's parking area. 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. 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.

### Public Notice and Comment

7. In addition to the public hearing, the Agency notified all parties as required by the Adirondack Park Agency Act and Agency regulations. Fourteen letters and 8 emails have been received providing comment on the project.

Three letters (two from the same entity) express concerns and objection to the proposal. The two letters from the High Peaks Resort (tourist accommodation/restaurant) located across Main Street express concerns over the height of the new building and the impact the increased height will have on the view from their establishment. These two letters were received prior to the building height being reduced, from 50 feet to 43 feet 2 inches, but at the hearing the General Manager of High Peaks Resort still voiced concerns regarding potential impacts. The third letter of objection came from the adjoining landowner to the south who also spoke at the hearing and states that he strongly opposes granting of the variance citing that: the new decks will obstruct views from his adjacent property; the decks will be located near his right-of-way; precedent will established for adjoining commercial buildings to apply for variances creating a "ripple effect"; and the proposal is expansion of an unlawful structure.

The remaining 11 letters and 8 emails all expressed support of the project and asked the Agency to grant approval, citing reasons such as: improved aesthetics of the new building; employment opportunities; improvement to Main Street; asset to the community; energy efficiency; economic boost to the area; and replacement of an "eyesore" and safety hazard. Of the 10 support letters, one was submitted by the applicant, Robert Gessner and addressed comments made in the letters of objection as well as provided his justification for why the variance should be granted. One of the letters came from the Project Architect describing the efforts made to minimize impacts and refuting claims made in opposition to the project. Another letter came from the project Construction Contractor also refuting claims made by the adjacent landowner and speaking in support of the project. A letter from the local Code Enforcement Officer also refuted some claims made by the adjacent landowner regarding the local review process and confirmed that all required local approvals for the project have been issued.

**Project Impacts**

**Economic/Fiscal Factors**

8. The Project Sponsor expects the project to employ 8-10 full-time workers as well as five subcontractors during the project's construction phase. The Project Sponsor expects 14 full-time equivalent employees to occupy the building's two restaurant spaces upon completion.

**Natural Resources**

9. If undertaken in compliance with conditions herein such as limiting the location, maximum height, size and dimension of the new structure, use of erosion control measures, compatible exterior colors, shielded outdoor lighting, and no removal of shoreline vegetation, then the project authorized herein will not adversely affect the natural, scenic, or water resources of the Park; primarily because the new structure replaces a recently removed building within the same general footprint and will not result in new ground disturbance any closer to the mean high water mark of Mirror Lake. Further connection to the municipal wastewater system and compliance with Village of Lake Placid effluent discharge requirements will further ensure protection of water resources. Also, replacement of the preexisting building with an energy efficient structure in compliance with current Energy Conservation Construction Codes of New York State, and use of the highest rated Energy Star products will further protect natural resources.

**Compatibility**

10. The project as authorized herein is compatible with the character of the Hamlet land use area in which is located, and consistent with the character of the heavily developed shoreline. The adjacent properties include commercial, retail, and tourist accommodation structures, some of which are taller than the structure authorized herein and many of which are located closer to the shoreline than the structure authorized herein. These factors, considered together, justify in part the issuance of the variances associated with this project.

**Adequacy of Public Services**

11. A letter dated June 5, 2012 from the local Code Enforcement Officer confirms that the Village infrastructure will serve the proposed new building, as it had the former building.

A letter dated June 6, 2012 from the Superintendent of the Village of Lake Placid Department of Public Works confirmed that the Village Municipal Water and Sewer Department has adequate capacity to service the new building.

**Historic Sites or Structures**

12. The New York State Office of Parks, Recreation and Historic Preservation (OPRHP) issued a letter dated June 21, 2012 which determined that the project as authorized herein would have "No Impact" upon cultural resources in or eligible for inclusion in the National Registers of Historic Places. As such, the project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Section 426.2 for the purposes of implementing Section 14.09 of the New York State Historic Preservation Act of 1980.

**VARIANCE IMPACTS AND CRITERIA**

13. The following findings evaluate the variance proposal pursuant to the standards and criteria set forth in 9 NYCRR 576.1.

**(a) Whether there are practical difficulties in carrying out the strict letter of the shoreline restrictions**

The applicant has demonstrated that there are practical difficulties present on the site due to the physical constraints and size and configuration of the parcel in relation to the shoreline, road, and adjacent land uses. The lot is only 3,500± square feet (0.1± acres) in size, approximately 29 feet by 122 feet. The lot is bounded by Main Street to the west and Mirror Lake to the east, an adjacent building to the south and the Village Park to the north. 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. Also, the prior landowner's unlawful expansion, resulting in the 2011 Agency Enforcement action require that any expansion of the building within the shoreline setback requires a variance.

**(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 project site is located in a Hamlet land use area along a highly developed shoreline. The applicant is seeking to expand laterally to help remedy a public safety hazard and stabilize an adjoining stone wall. The applicant has requested to construct a second story deck over a structure that has existed for over 30 years and expand a 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. As such, the variances if granted will not negatively impact the aesthetic character and water quality of Mirror Lake. The applicant's proposal is consistent with the existing aesthetic character of the developed shoreline of Mirror Lake along Main Street. Thus, the public purpose of the shoreline restrictions will not be compromised by issuance of the requested variances. Further, the local zoning boards have approved the project and granted necessary local variances.

Adverse consequences to the applicant from denial of the requested variances would include: having to reduce the size and seating capacity of the proposed restaurants, potentially jeopardizing the economic feasibility of the project; and inability to shore up the new building with the adjoining village wall to address public safety concerns.

**(c) In determining whether a variance shall be granted, the agency will consider, among other relevant factors:**

**(1) Whether the application requests the minimum relief necessary.**

As a result of the enforcement action, and as set forth in the Agency's September 20, 2011 Agency letter, any expansion of the building within the shoreline setback would require a variance. The applicant's request seeks to go up from the first floor addition and 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 building footprint. The lateral variance is the minimum necessary to connect the new building to the adjoining stone wall and stabilize the wall. Any lateral

expansion by less than the proposed 3 feet would not resolve the safety issues associated with the unstable wall or the gap between the wall and building.

The applicant's original proposal included stairs proposed off the back of the structure closer to the shoreline. To minimize the variance being requested, the applicant move the proposed stairs to the side of the structure and no closer to the shoreline than the back deck.

The applicant's proposal involves moving the third floor main wall of the new building further from the shoreline than was the main wall of the (lawful) preexisting building. Thus the mass of the new building within the shoreline setback area will be less, as the third floor of the new building will include more open deck area.

(2) **Whether granting the variance will create a substantial detriment to adjoining or nearby landowners**

The adjoining landowner to the south contends that if the variances are granted then the new decks will obstruct his view of Mirror Lake and create a detriment to him. The applicant disagrees with this contention. Other correspondence submitted to the Agency suggests that the awning on that adjoining landowner's own building is more of an obstruction than would be the proposed decks on the adjacent building.

Agency staff's review of the application materials and photographs of the site and adjacent land uses, concludes that while there may be a minor visual impact to the adjoining property to the south, the impact would not create a substantial detriment. Any potential visual impacts to the adjoining landowner would be to views the landowner has to the north end of Mirror Lake as they lean out of their window or porch and look north. There will be no impacts on the views of Mirror Lake that adjoining landowner currently has when looking directly out at the lake from their property. It is therefore staff's opinion that the potential impact does not rise to a *substantial* detriment.

Additionally, it should be noted that the adjoining landowner to the north, the Village of Lake Placid, is supportive of the proposed variance request. 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.

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

As a result of the enforcement action, and as set forth in the Agency's September 2011 letter, any expansion of the building within the shoreline setback would require a variance. The only alternative to the variance would be to replace the building in kind and forego any new or expanded decks or lateral expansion to help stabilize the village wall. The applicant has stated that foregoing the new decks is not a feasible alternative, as it does not meet the applicant's business objectives and does not provide the economic return needed to support replacement of the dilapidated structure. In support of the requested variances, the applicant noted that new decks would result in a significant gain in restaurant seating area thereby enhancing the economic viability of the proposal. Also, the applicant's current lease agreement with the prospective tenant of the first two levels of the building is contingent upon the variances for the decks being granted.

There is no feasible alternative to help stabilize the stone wall on adjoining village property and eliminate the gap between the new building and the stone wall without obtaining a variance for the 3' foot lateral expansion.

(4) **The manner in which the difficulty arose.**

The difficulty arose due to the small size of the project site in relation to the shoreline of Mirror lake, the location of the preexisting building, and the violation which resulted from the prior landowner's construction of a porch and balcony without first obtaining required Agency approval. The difficulty also arose in part from the necessity of having to demolish the old building and reconstruct it, as opposed to merely rehabilitating it.

- (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.

Granting the variances will not adversely affect natural, scenic, and open space resources of the Park and or the adjoining water body, or aesthetic character of the area, provided there is compliance with erosion control measures, compatible exterior colors, shielded outdoor lighting, and no removal of shoreline vegetation.

- (6) Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects referred to in paragraph (5) of this subdivision.

The conditions included in this Order and Permit will ameliorate any potential adverse effects.

#### CONCLUSIONS OF LAW

##### Variances

- A. There are practical difficulties in the way of carrying out the strict letter of the shoreline restrictions.
- B. The adverse consequences resulting from denial of this request are greater than the public purpose sought to be served by the restrictions.
- C. The factors set forth in 9 NYCRR § 576.1(c) have been considered:
- (1) whether the application requests the minimum relief necessary;
  - (2) whether there will be a substantial detriment to adjacent or nearby landowners;
  - (3) whether the difficulty can be obviated by a feasible method other than the variance;

- (4) the manner in which the difficulty arose;
- (5) whether granting the variance will adversely affect the resources of the Park; and
- (6) whether the conditions noted herein will ameliorate any adverse effects.

The variance, pursuant to Section 806 of the Adirondack Park Agency Act and 9 NYCRR Part 576 observes the spirit of the Act, secures public safety and welfare, and does substantial justice. A variance of the terms of the APA Act is not personal and runs with the land. Recording of this Order Granting Variance is intended to provide notice to subsequent owners of the land.

Class A Project

The Agency has considered all statutory and regulatory criteria for project approval as set forth in: Section 809(10) of the Adirondack Park Agency Act (Executive Law, Article 27) and 9 NYCRR Part 574. The Agency hereby finds that the Class A project is approvable and complies with the above criteria, provided it is undertaken in compliance with the conditions herein.

