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November 6, 2012

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APA Order Granting
Variance
2012-153

Date Issued:

In the Matter of the Application of

**TOWN OF HARRIETSTOWN and NEW YORK
STATE DEPARTMENT OF TRANSPORTATION**

for a variance pursuant to the shoreline restrictions of
Executive Law §806 and 9 NYCRR Part 575 and an order
pursuant to §814 of the Adirondack Park Agency Act and 9
NYCRR Section 4.150

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

- 1. Town of Harrietstown**
- 2. New York State Department of
Transportation**

SUMMARY AND AUTHORIZATION

The Town of Harrietstown and New York State Department of Transportation are granted a 50 foot variance, on conditions, from the applicable 50 foot shoreline setback restrictions pursuant to New York State Executive Law § 806 authorizing replacement and expansion of an existing retaining wall within 50 feet of the mean high water mark of the Saranac River, in an area classified Hamlet by the Official Adirondack Park Land Use and Development Plan Map and installation of a new section of wall and access ramp on lands owned by the State of New York in the Village of Saranac Lake, Town of Harrietstown, Franklin County.

This project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the Order is recorded. The Agency will consider the project in existence upon replacement of the retaining wall authorized herein.

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

The variance application seeks Agency approval for a variance of 50 feet from the applicable 50 foot shoreline structure setback restriction pursuant to § 806(1)(a)(2) and § 806(3) of the Adirondack Park Agency Act (Executive Law, Article 27) to authorize replacement and expansion of a 105± foot long retaining wall within 50 feet of the mean high water mark of the Saranac River. In a Hamlet land use area, § 806(1)(a)(2) requires a minimum shoreline setback of 50 feet measured from the mean high water mark for structures greater than 100 square feet in size.

Section 806(3) authorizes 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.

The proposal also seeks the installation of a 15 foot long, 3 foot tall new wall section and the installation of a 90± square foot access ramp to be partially located on lands under the administration of the New York State Department of Transportation, which constitutes "new land use or development" as defined in § 802 of the Adirondack Park Agency Act. Pursuant to § 814 of the Act, 9 NYCRR Section 579.1(b), and 9 NYCRR § 4.150 (Executive Order 150) new land use or development on State land requires Agency review.

SITE DESCRIPTION

The variance site is a 0.584±-acre parcel of land located on Main Street in the Village of Saranac Lake, Town of Harrietstown, Franklin County, in an area classified Hamlet by the Adirondack Park Land Use and Development Plan Map, on 108.6± feet of shoreline of the Saranac River and adjoining lands owned by the State of New York. The 0.584± acre parcel is identified on Village of Saranac Lake Tax Map Section 447.77, Block 3 as Parcel 22. The variance site is described in the following deeds:

- A deed from Van Buren Miller and Sara E. Miller to the Town of Harrietstown dated August 18, 1889 which was recorded August 29, 1889 in the Franklin County Clerk's Office in Liber 85 of Deeds at Page 471.
- A deed from Frederick Miller Morris, Herbert Brook Morris, Marguerite Helen Miller and Herbert Dwight Miller to the Town of Harrietstown dated June 17, 1904 which was recorded July 15, 1904 in the Franklin County Clerk's Office in Liber 122 of Deeds at Page 39.

- A deed from Sarah E. Miller, Seaver A. Miller, Helen M. Miller, Laura Miller Rice, Walter O. Rice, Elmer P. Miller, Sarah Miller and Frederick G. A. Morris to the Town of Harrietstown dated May 28, 1904 which was recorded July 15, 1904 in the Franklin County Clerk's Office in Liber 122 of Deeds at page 41.
- A deed from Clinton J. Ayres and Lilla B. Ayres to the Town of Harrietstown dated July 14, 1927, which was recorded in the Franklin County Clerk's Office in Liber 194 of Deeds at Page 382.
- Lapan Highway Bridge crossing of the Saranac River and lands thereunder are administered by the New York State Department of Transportation. The property is described in a map filed in the Franklin County Clerk's Office.

PROJECT AND VARIANCE DESCRIPTION AS REQUESTED

The variance as requested involves the replacement and expansion of an existing 105± foot long retaining wall located adjacent to the Saranac River, a river designated as a recreational river under the New York State Wild, Scenic and Recreational Rivers System Act. Since the retaining wall site is located in a Hamlet land use area, this is not a rivers project, and only the shoreline restrictions set forth in §806 of the Adirondack Park Agency Act apply.

The 0.584±-acre variance site is currently developed with a 12,000± square foot Town Hall structure served by municipal water and sewer, a 130± square foot concrete pad, fence and roof structure housing a generator, an elevated wooden boardwalk, an asphalt parking area, concrete sidewalks and a retaining wall which includes: (1) a 105± foot section running north and south along the shoreline of the Saranac River, (2) a section at the north end which extends 10 feet to the east and (3) a section at the south end which extends 10 feet to the east for a total of 125± feet.

The proposed new retaining wall will include: (1) a 105± foot section in the same location as the existing retaining wall, (2) a section at the north end which extends 5 feet to the east, (3) a section at the south end which extends 18 feet to the east and (4) a new section that will extend 9 feet to the south to the edge of the existing NYS Route 3 bridge abutment for a total of 137± feet. The height of the new retaining wall will be approximately 3 to 4 feet taller than the existing retaining wall to provide a 42 inch tall guard along the top of the wall. This increased height will allow the retaining wall to meet current building code and will serve to minimize the potential for future flood waters breaching the wall.

There is approximately 215 feet of existing stone rip rap located at the base of the river side of the retaining wall. Additional rip rap is located along a jetty extending out into the river from the retaining wall. Approximately 400± square feet of additional stone rip rap will be placed along the river side of the retaining wall to prevent scour damage to the wall.

A 90± square foot concrete access ramp with 42 inch tall metal railings is proposed to be installed from the existing sidewalk located south of the Town Hall leading down to the existing paver stone walkway located under the NYS Route 3 Bridge. This paver stone walkway is part of the Village of Saranac Lake "River Walk," which has been the subject of prior Agency variance orders. A utility pole located just north of an on-site generator pad will be relocated approximately 35 feet further to the north and the utility line serving the Town Hall from that pole will be placed underground, eliminating the need for the utility pole located at the south end of the property, which will be removed.

The variance is shown on a five sheet set of plans and details entitled "Town of Harrietstown Saranac River Retaining Wall Placement Saranac Lake, NY," drawn by North Woods Engineering, PLLC and dated June 15, 2012 last revised November 1, 2012.

A reduced-scale copy of Sheets C-1 and C-2 of the above referenced plans 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 Franklin County Clerk's Office. This Order shall be recorded on or before _____ 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 applicants, 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 applicants 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 Order 2012-153 issued _____, 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 Order authorizes the construction of a new retaining wall, installation of stone rip rap, and an access ramp on the variance site located, sized, and designed as shown on the project plans referenced in the Project and Variance Description as Requested and as modified by the Conditions stated herein.

Special Variance Conditions

Wetlands

6. No "regulated activity" as defined in the Agency's Freshwater Wetland Regulations (9 NYCRR Part 578) shall occur on the project site without prior Agency approval. Such activities include, but are not limited to, new land use or development in, subdivision of, clearcutting more than three acres within, or dredging or filling of a wetland, or any other activity, whether or not occurring within the wetland, which pollutes it or substantially impairs its functions, benefits or values.

Erosion and Sediment Control/Stormwater Management

7. All erosion control devices and stormwater pollution prevention devices including silt fence, turbidity curtains, and cofferdams shall be installed and maintained as described in the plans referenced in Project and Variance Description as Requested herein and shall remain in place until all disturbed areas have been stabilized with geotextile filter fabric and seeded.

Shoreline Cutting

8. With regard to the shoreline of all navigable water bodies on the variance site including the Saranac River, the following shoreline vegetative cutting restrictions apply:
- a. Within 35 feet of the mean high water mark not more than 30 percent of the trees in excess of six inches diameter at breast height (4-1/2 feet above ground level) existing at any time may be cut over any 10 year period.
 - b. Within six feet of the mean high water mark no existing vegetation of any kind may be removed, except that up to a maximum of 30 percent of the shorefront may be clear of vegetation on any individual lot. This requirement applies in addition to (a) above.

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 or to prevent continued maintenance of the existing lawn area.

Shoreline Setbacks

9. Except for the retaining wall and access ramp approved by this Order, all structures, except docks and boathouses, 100 square feet in size or greater, including attached decks, shall be set back a minimum of 50 feet, measured horizontally, from the closest point of the mean high water mark of the Saranac River.

All distances specified in the shoreline restrictions are measured horizontally. Building setback restrictions are measured along the shortest line between any point of the structure and any point on the mean high water mark. Porches, decks and other structures physically attached to single family dwellings or other structures subject to the building setback restrictions are part of the structure for the purpose of applying building setback restrictions.

Legal Interests of Others

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

Review of Future Development

11. No expansion of the retaining wall or access ramp authorized herein or other existing structures within 50 feet of the shoreline, except in-kind replacement, on the same footprint, shall be undertaken on the variance site within the shoreline setback of the Saranac River without first obtaining a jurisdictional determination and, if necessary, a new or amended permit and order from the Agency.

FINDINGS OF FACT

1. The variance record for the variance portion of the application consists of the variance request, hearing record, hearing exhibits, and supporting materials.

Background/Prior History

2. The variance site was the subject of Agency Orders 95-56 and 95-56A for the construction of an elevated boardwalk within 50 feet of the Saranac River as part of the Village of Saranac Lake "River Walk" and Jurisdictional Determinations J2004-546 and J2012-354. Jurisdictional Determination J2012-354 stated that the replacement and expansion in height of the existing retaining wall would require a variance from the shoreline restrictions pursuant to NYCRR Part 575(b)(2) and that the relocation of the generator pad and associated structure would not require Agency review and approval.

Existing Environmental Setting/Character of the Area

3. The variance site is located in a Hamlet land use area on the Adirondack Park Land Use and Development Plan Map and on adjoining lands located within the highway right-of-way north of NYS Route 3. The variance site contains 108.6± feet of shoreline on the Saranac River, a designated recreational river under the New York State Wild, Scenic and Recreational Rivers System Act. There are no statutory "critical environmental areas" on the property.
4. The property is north of a hydro dam located at the outlet of Lake Flower which controls the water level of the Saranac River flowing to the northeast. The site is elevated approximately five feet above the ordinary high water mark of the Saranac River. The level of the river in this area is determined by the NYS DEC's control of the Lower Locks flood gates and the Village of Saranac Lake's control of the Lake Flower Dam flood gates. The difference between the existing

ground elevation on the river side of the retaining wall and the existing ground elevation on the building side of the retaining wall is greater than 4 feet for at least 100 feet.

5. The Town of Harrietstown Town Hall is located at the intersection of NYS Routes 3 & 86 on the corner of the main street, which is the center of activity within the town. Nearby land uses include numerous commercial uses along the main street, the village parking lot, the village park, the hydro dam, the village police station, the elementary school, and a number of year-round residential uses. Both sides of the Saranac River in this location are developed with residential structures located within 50 feet of the mean high water of the river, many of which have retaining walls along the shoreline.

Visibility

6. The retaining wall is located between a previously authorized elevated wooden walkway and the Town of Harrietstown Town Hall building, and is currently not readily visible except when standing immediately adjacent to the wall. Increasing the height and length of the retaining wall will make the wall somewhat visible above the boardwalk and more visible in the open area south of the boardwalk. Since the new retaining wall will be constructed of materials designed to look like rocks and there are rock retaining walls on nearby properties, the wall will blend in with the natural surroundings and the existing character of the area.

Navigable Shorelines/Water Resources

7. The mean high water mark of the Saranac River, a navigable watercourse, is shown on the project plans. Proper installation and maintenance of the proposed turbidity curtain and coffer dam prior to and during construction, coupled with prompt and successful restoration of disturbed soil areas, will serve to protect the shoreline and water quality of the Saranac River from degradation.

Other Regulatory Permits and Approvals

8. A Joint Application for Permit was provided to the United States Army Corps of Engineers (USACE) and the New York State Department of Environmental Conservation (NYSDEC) in mid-June. As of the date of this Order, the NYSDEC is reviewing the application. The USACE nationwide permit was issued on September 27, 2012.

Historic Sites or Structures

9. A letter dated September 24, 2012 was received from the New York State Office of Parks, Recreation and Historic Preservation stating that the project would have No Impact upon cultural resources in or eligible for inclusion in the State and National Register of Historic Places. 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 § 14.09 of the New York State Historic Preservation Act of 1980.

Public Notice and Comment

10. The Agency notified all parties as required by the Adirondack Park Agency Act and Agency regulations. No comments have been received.

Public Hearing

11. On September 24, 2012, a public hearing on the variance request was held in the Town of Harrietstown. The hearing was attended by Agency staff, the applicant, the applicant's representatives, and town officials. No other members of the public were in attendance. No objections were made to the proposal during the hearing.

Alternatives

12. Two alternatives for the proposal which may not require a variance were considered, and were deemed not feasible by the applicants as follows:
 - a. Repairing or replacing the retaining wall without expanding the height and/or the length of the existing retaining wall would not be feasible since (1) both of these options would require upgrading the structure to meet building code, which requires a 42 inch guard if the height difference from the finish grade on the building side to the finish grade on the river side is more than 30 inches and (2) would not protect the Town Hall from future flooding events.
 - b. Utilizing a different type of guard such as an open timber rail or metal guard rail would not be feasible since the first option would not withstand a 500 pound lateral force as required by the building code and neither option would contribute to flood protection.

VARIANCE IMPACTS AND FACTORS

13. The following findings evaluate the variance proposal pursuant to the factors set forth in 9 NYCRR 576.1(c).

(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;**

The variance requested is the minimum relief necessary to achieve the applicant's goals to provide a safe, functional retaining wall. The new retaining wall will be built within the same footprint as the existing retaining wall in so much as possible, will be extended in length the minimum distance to fill in the gap in current flood protection, and will be extended in height the minimum amount to meet NYS building code and to provide the necessary flood protection. Furthermore, the addition of the access ramp will allow continued use of the existing sidewalk to access the Riverwalk in compliance with ADA standards.

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

The increase in the height and length of the retaining wall will improve the protection of the public property, which provides significant benefits to the community. Installing the concrete ramp and retaining the elevated boardwalk adjacent to the retaining wall will insure continued access to the "River Walk" from this location. The retaining wall will be designed to blend with the natural environment and the existing character of the area. There should be no impacts to adjoining landowners from this proposal.

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

Replacement and expansion of the retaining wall requires a variance. Not replacing the retaining wall is not a feasible option since the wall has

been damaged beyond repair. Replacing the existing retaining wall in-kind has been determined by the applicant's authorized representative to not be feasible as it does not provide adequate flood protection. Thus, alternatives to expanding the retaining wall were found to be infeasible methods to accomplish the applicant's objectives and meet the NYS Building Code.

(4) The manner in which the difficulty arose;

In the Spring of 2011, a major flood event occurred breaching the retaining wall on the property and causing significant damage to the wall and the property. During Tropical Storm Irene, the River level was essentially at the top of the existing retaining wall. To provide adequate flood protection and repair the damage caused by the flood events, the retaining wall needs to be replaced with a new wall expanded in both height and length.

(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 variance site is located within a Hamlet land use area. The lands surrounding the Saranac River in this Hamlet location are already developed with a number of structures including the NYS Route 3 bridge, the hydro dam, the Village parking lot, numerous retaining walls, commercial uses and residential structures. Many of these structures and uses can already be viewed from the shoreline or while utilizing the River or "River Walk" for recreational purposes. The retaining wall will help control and alleviate both ongoing and future flooding and erosion problems and therefore serve to protect the water quality of the Saranac River. Any negative impacts to water quality would be temporary and occur only during construction. These potential impacts could be controlled by the imposition of conditions. Furthermore, the retaining wall is consistent with the character of the adjacent area and the applicant has designed the proposal to blend in with the surroundings.

- (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.**

Appropriate erosion and stormwater control measures will be put in place prior to and during construction to protect the Saranac River. Any adjacent disturbed areas will be revegetated. The retaining wall is designed to blend into the location and soften any visual impacts. The conditions included in this Permit and Order will ameliorate any potential adverse effects.

CONCLUSIONS OF LAW

The Agency has considered all statutory and regulatory criteria for project approval as set forth in § 806 of the Adirondack Park Agency Act (Executive Law, Article 27) and 9 NYCRR Part 576.1. The Agency hereby finds that the variance is approvable, provided it is undertaken in compliance with the conditions herein. The variance, pursuant to §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.

The Agency has considered all statutory and regulatory criteria for project approval as set forth in § 814 of the Adirondack Park Agency Act (Executive Law, Article 27) and 9 NYCRR Part 579. The Agency hereby finds that the project is approvable provided it is undertaken in compliance with the conditions herein.

