

ADIRONDACK PARK AGENCY

July 15, 2009

REGULATORY IMPACT STATEMENT SUMMARY 2009 Rulemaking GORR #0905080

The Adirondack Park Agency proposes to revise definitions of "boathouse," 9 NYCRR 570.3(c), and "dock," 9 NYCRR 570.3(j). The Regulatory Impact Statement is summarized below.

1. Statutory authority:

The Adirondack Park Agency Act (APA Act), Executive Law Article 27, Section 804(9), authorizes the Agency "to adopt, amend and repeal...such rules and regulations...as it deems necessary to administer this article and to do any and all things necessary or convenient to carry out the purposes and policies of this article...." Similar authority is also found in the NYS Wild, Scenic and Recreational Rivers System Act (ECL Section 15-2709) and in the NYS Freshwater Wetlands Act (ECL Section 24-0801). The statutory and regulatory language addressed in the proposed regulations are: Executive Law Article 27, Section 806(1)(a)(2) which addresses both docks and boathouses; 9 NYCRR Section 570.3(c) boathouse definition and 570.3(j) dock definition; 9 NYCRR Section 577.4(b)(3)(ii) which regulates construction of docks and boathouses within areas designated under the NYS Wild, Scenic and Recreational Rivers System Act. In addition, SAPA Section 207 requires an agency to review on five-year intervals any regulation passed since 1997. The existing boathouse and dock regulations are in that category and the proposed regulations are intended to fulfill that requirement.

2. Legislative objectives:

The shoreline restrictions in Section 806 of the APA Act impose special protections on the shorelines of all Adirondack lakes and ponds and navigable rivers and streams. Section 806 shoreline structure setback requirements only exclude very small structures and "docks" and "boathouses" which of necessity must be on the shoreline. A variance is required to deviate from these requirements. The scientific literature clearly

supports the need to minimize shoreline development and preserve natural, undeveloped buffers between development and the water.¹ The proposed regulations mitigate unintended consequences of definitions established effective May 1, 2002.

3. Needs and benefits:

The construction of *any* structure located within the shoreline setback area or in the water causes an adverse impact to water quality and wildlife habitat, and may also create impacts to the aesthetics of the natural shoreline character, also a matter of importance under the APA Act. Hence, for these reasons, the Agency has determined that the setback requirements must be strictly followed.

The APA Act contains a significant exemption from the structure setback requirements for “dock” and “boathouse.”² Thus, it is critical to clearly and specifically define those types of structures. Distinguishing these excepted structures from other structures has created problems in the past, as people desiring structures immediately on the shoreline for habitation and recreation have tried to design them as part of a boathouse or dock. The proposed boathouse regulation will substitute fixed exterior measurements for the term "single story" to improve consistency and simplify administration of that provision. The proposed regulation also eliminates the potential for construction of a flat roof on a boathouse.³ With the 2002 elimination of the potential for construction of a second story, many boathouses are being designed with a large elevated deck with surrounding “safety” railing (or glass enclosure); sometimes with entertainment amenities like a stone fireplace serving the

¹ The Agency has relied in part on a document entitled Regulatory and Educational Opportunities for Shoreland Protection in the Adirondack Park, dated June 2003, by Sean Conin, PhD., the Agency’s former Freshwater Analyst. This comprehensive research paper discusses in detail the scientific evidence for the protection of natural vegetated buffers along shorelines.

² The setback requirement for structures in excess of 100 square feet in size ranges from 50 to 100 feet, depending on the classification of the applicable property on the Adirondack Park Land Use and Development Plan Map. (Note that larger setback requirements apply to the shorelines of rivers designated under the NYS Wild, Scenic and Recreational Rivers System Act.)

³ The proposed definition requires rigid roof structures to meet the slope requirement. This is to allow for fabric or plastic roofed structures which may not meet to slope requirement because they are arched in design.

deck. Construction of a deck to serve as the roof of a boathouse evades the setback requirement and subverts its purpose.⁴

The proposed dock regulation addresses large metal-framed structures which serve as a dock in the summer, but are hoisted into the air and suspended at an angle over the water for winter storage. These structures are prohibited unless they are 100 square feet in size or less, or if a variance is obtained. Lawfully existing dock structures may remain.

4. Costs:

There are no costs associated with the proposed regulations. The construction of a boathouse or a dock is entirely discretionary and a matter of choice. If a landowner chooses to build either structure, he or she must meet the regulatory definition. Both proposed regulations impose size limitations on the structure which could reduce its cost. Moreover, both provide specific performance criteria which will clarify design options. This is an improvement over the repeated submissions which have become the pattern due to the lack of definitive standards in the current definitions. Some landowners will argue that the hoist system for a dock is the only alternative for their shoreline situation. However, this proposed regulation does not preclude the use of a hoist; it just requires that the structure hoisted be no larger than 100 square feet in size, or that a variance be obtained. A 25-foot by 4-foot dock would meet this requirement without a variance.

5. Paperwork:

The proposed regulations should reduce the current pattern of multiple filings with the Agency in order to reach a determination that a boathouse or dock project is non-jurisdictional. This is because of the greater clarity of design requirements in the proposed regulations. In addition, the proposed regulations will not create any new filings or forms.

6. Local government mandates:

⁴ There are also noise and lighting issues associated with shoreline decks.

The proposed regulations will not impose any new responsibilities on local government entities.

7. Duplication:

The proposed regulations do not duplicate requirements administered by state or local government.

8. Alternatives:

Before adoption of the 2002 amendments, the Agency seriously discussed various size and height limitations. It noted that many municipal laws have height limitations for boathouses. These specific limitations were rejected in favor of the “single story” language. Since the 2002 revision, the Legal Affairs Committee has discussed the issues that have arisen with that new definition, and the Agency determined that the only option to ensure that shoreline structures would be limited to the single purpose of the storage of boats and boating equipment was via size and height limitations. To the extent structures of significant size have been allowed under the old definitions, portions of such structures have routinely been converted and used for purposes other than boat and boat equipment storage.

The Technical Advisory List (TAL) is a multi-disciplinary and multi-interest volunteer group consisting of members of the Task Force on Expediting Adirondack Park Agency Operations and Simplifying its Procedures and representatives of fifteen groups having special and diverse interests in the Adirondacks. The TAL met with the Agency on November 17, 2008 to comment on the proposed regulations which had been circulated to all its members. This broad-based group provided valuable advice and their comments have been taken into consideration when drafting the proposed regulations. For the proposed boathouse regulation, the only significant comment was that the proposed measurement methodology would not work; this prompted a minor change to the proposed regulation. Alternatives reviewed in the course of this dialogue have included different size and height limits and roof pitches. A larger height limit would allow steeper roof pitches, but would also reintroduce the “attic” vs. living space issue.

The proposed regulation should provide clear parameters that can be readily evaluated based on external observations of the resulting structure. Some have argued that a larger footprint size should be allowed for those with significant length of shoreline, to accommodate larger boats, and/or for situations where large estates or shared facilities would require storage of many boats. The proposed regulation would accommodate a one-to three-stall boathouse typical of those found on many Adirondack lakes. Special situations requiring larger boathouses can be accommodated through the variance process. This would provide a permit-style review and approval process where circumstances justify a variance. The proposed regulation would end the practice of allowing flat roofs that can be used as entertainment decks unrelated to the storage of boats. For docks, the proposed regulation is narrowly tailored to address the specific problem of hoisted structures.

9. Federal standards:

The proposed regulations do not involve any federal statutory authority or standards.

10. Compliance schedule:

The proposed regulations will apply prospectively, effective immediately upon approval and filing.