



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

APA Order Granting  
Variance  
2013-227

Date Issued:

In the Matter of the Application of

**BENJAMIN A. and BETSY J. LeROY**

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

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. **Benjamin A. LeRoy**
2. **Betsy J. LeRoy**

SUMMARY AND AUTHORIZATION

Benjamin A. LeRoy and Betsy J. LeRoy ("applicants") are granted a variance, on conditions, from the applicable shoreline restrictions pursuant to New York State Executive Law §806 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.

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 applicants request a variance of 25 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 the placement of a single family dwelling and attached garage 25 feet from the mean high water mark of Mirror Lake. Section 806(1)(a)(2) and 9 NYCRR Part 575(e)(1) of Agency regulations require a minimum shoreline setback of 50 feet measured from the mean high water mark for structures greater than 100 square feet in size, other than docks and boathouses.

Executive Law Section 806(3) 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.

#### **VARIANCE SITE**

The variance site is a 0.32± acre parcel of land located on Mirror Lake Drive in the Village of Lake Placid, Town of North Elba, Essex County, with 158± feet of shoreline of Mirror Lake, in an area classified Hamlet by the Adirondack Park Land Use and Development Plan Map. It is identified on Town of North Elba Tax Map Section 42.0CL, Block 5 as Parcel 7. The variance site is described in a deed from Susan Sterne McCann to Benjamin A. LeRoy and Betsy J. LeRoy dated July 12, 2013 which was recorded July 16, 2013 in the Essex County Clerk's Office in Liber 1739 of Deeds at Page 316. A physical description of the variance site is provided in Findings of Fact 2 through 6.

#### **DESCRIPTION OF VARIANCE REQUEST**

The variance as requested and conditionally approved herein is for the construction of a single family dwelling and attached garage to be located 25 feet from the mean high water mark of Mirror Lake at its closest point. The two story, four bedroom single family dwelling will have a maximum height of 40 feet, with a first story walkout to Mirror Lake, and a second story walkout to Mirror Lake Drive. The dwelling will be served by municipal water and sewer; the stormwater management system includes collection of stormwater which will be directed to the municipal sewer system. The entire footprint of the dwelling will be 2,875 square feet, including a 576 square foot attached garage, and an attached 7.4 square foot retaining wall within the shoreline setback. A larger retaining wall to facilitate development of an off-street parking area and vehicle turnaround for the garage is located beyond the setback area. Approximately 2,285 square feet of the dwelling and attached garage, including the small attached retaining wall, will be within the 50 foot shoreline setback area. Vegetation clearing will not exceed the shoreline restrictions set forth in §806(a)(3), and a planting plan will be undertaken to ensure screening from lake, street, and neighbor views.

The variance request is shown on multiple plan sheets described below, all of which were prepared by Andrew Chary Architect, PLLC, under the general label "LeRoy Proposed Residence" unless otherwise identified.

- "Site Plan", drawing APA PHRAI3, dated April 22, 2014, herein referred to as the "Site Plan";

- Elevations consisting of: "Exterior Elevations: Front & Rear", drawing A200, dated September 3, 2013; and "Exterior Elevations: North & South", drawing A201, dated March 21, 2014;
- The "Grading Plan" consists of the following plan sheets: "Grading Plan", drawing APA SRAI1.0, dated March 21, 2014; "Ground Water Drainage Plan" and "Northeast Border Dimension", drawings PHRAI1 and 2, both dated April 16, 2014; "Inset1: Retaining Wall & Ground Water Drainage Strategy", with sections A-A, B-B, and C-C, drawings TRAI1, 2, 3, and SRAI1.1, all dated March 21, 2014;
- The "Planting Plan" referenced herein consists of the following plan sheets: "Vegetative Clearance Conformance Within 6' of Shoreline", drawing APA8.0, dated February 14, 2014; "Tree Cutting Conformance within 35' of Shoreline", drawing APA8.1, dated January 14, 2014; "Existing and New Trees within 35' of High Water Mark", drawing APA8.2, dated January 14, 2014; "Tree Proposal w/in 35' of high water mark", APA8.3 dated February 14, 2014, plus chart APA8.4 identifying trees existing and proposed, dated January 21, 2014; "Planting Plan", APA8.5 dated, plus chart APA8.6 identifying plant species and numbers, both dated February 14, 2014; "Summary 22 Trees to Remain, 9 Trees to be Removed", APA8.7, dated January 21, 2014; "Tree Protection", APA9.0, dated January 14, 2014; and "Proposed View From Lake", undated, received by the Agency October 11, 2013;
- "Stormwater Management System Engineering Report for LeRoy Residence" with "Stormwater Management Plan" drawing G-1, and "Erosion & Sediment Control", drawing numbers ESC-1, all prepared by Kevin L. Hastings and dated December 3, 2013, herein collectively referred to as the "Stormwater Plan";
- "Map of Survey For Benjamin A. LeRoy & Betsy J. LeRoy", prepared by Robert M. Marvin, Jr. LS, dated November 27, 2013.

Reduced-scale copies of the Site Plan and Planting Plan (drawing APA8.7) are attached as a part of this Order for easy reference. The original, full-scale maps and plans are the official plans for the variance.

CONDITIONS

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

1. This variance shall expire four years from the date this Order is recorded. No construction of the single family dwelling shall occur after that date unless pursuant to a new variance or unless the Order is renewed by the Agency. The Agency will consider the single family dwelling in existence upon completion of the foundation, framing, and roof of the dwelling authorized herein.
2. This variance may not be undertaken until this Order is recorded in the Essex 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 variance site on the recordation date.
3. The single family dwelling 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 applicants, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the Order.
4. 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 single family dwelling. 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 variance, and to all subsequent owners or lessees of the variance 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 2013-227 issued \_\_\_\_\_, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
5. 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**

6. This Order authorizes the construction of a single family dwelling in the location shown on the plans referenced in the Description of Variance Request above and as modified by the Conditions stated herein. The dwelling shall not exceed a total footprint of 2,875 square feet including the attached garage, all covered and uncovered attached porches, decks, exterior stairs, and retaining wall within the shoreline setback area. The structure shall not exceed 40 feet in height. The height shall be measured from the highest point on the structure, including the chimney, to the lowest point of existing grade or finished grade, whichever is lower. 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**

7. All exterior building materials, including roof, siding and trim, used to surface the exterior of the dwelling authorized herein and all accessory use structures on the variance site shall be of a natural earth-tone color which blends with the existing vegetation. The Agency will, upon request, advise whether any particular proposal complies with this condition.

**Outdoor Lighting**

8. Any new free-standing and building mounted outdoor lights on the variance site shall employ full cut-off fixtures; 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, Mirror Lake Drive, or neighboring properties, and shall be installed at a height no greater than 12 feet above finished grade or walkway surfaces.

**Visual/Open Space Protection/Vegetation**

9. No vegetation shall be cut, culled, trimmed, or pruned beyond that as described in the application and as identified on the Planting Plan. Protective measures described in the Planting Plan shall be installed in the vicinity of the proposed dwelling prior to undertaking any ground disturbance activities to protect all existing trees scheduled to remain as shown on the Planting Plan, and shall be maintained throughout the construction process to ensure protection of existing vegetation and its root systems. Vegetation not identified for removal which does not survive or

becomes damaged/diseased shall be replaced annually until such time as all of the trees or shrubs have been established in a healthy growing condition.

10. The Planting Plan plantings shall be implemented in the spring or fall, whichever comes first, immediately following the construction of the single family dwelling authorized herein. The Agency shall be notified in writing within 30 days of the completion of the Planting Plan in order for a site visit to be arranged to conduct a visual analysis. This analysis will determine at what locations additional vegetation may be required to be planted, if necessary, to substantially screen the single family dwelling from public view as seen from Mirror Lake and to comply with the "Proposed View From Lake". Within 60 days of the visual analysis, a revised planting plan, if determined necessary, shall be submitted to the Agency for approval showing the proposed locations of the planting and types and sizes of vegetation to be planted. The approved plan shall be implemented the next spring or fall, whichever comes first. Any dead or diseased trees shall be replaced annually until successfully established.
11. In the event of any natural causes such as blow-downs, ice storms, disease, or events that result in the loss of vegetation on the variance site, the Agency may require the applicants, their heirs, assigns, or successors in interest to replant the area(s) within one year to a tree density and species composition similar to prior existing vegetation. In addition, should any dead, diseased, rotten or damaged or wind thrown vegetation or any vegetation that presents a safety or health hazard be removed that results in the dwelling authorized herein becoming more visible at any time, the Agency may require said vegetation to be replaced within one year of removal.

These conditions 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.

#### **Erosion and Sediment Control/Stormwater Management**

12. The variance site construction methods, erosion control devices and stormwater management system facilities shall be properly installed in accordance with the approved plans described herein. All erosion control devices, including silt fence, and any temporary stormwater management facilities shall be constructed before any other ground disturbance takes place and shall remain in place until all disturbed areas have been stabilized. Prior to seeking a Certificate of Occupancy, the applicants, their agents, assigns, or successors in interest, shall submit to the Agency for review and written approval, documentation from a qualified

professional (i.e., New York State Licensed Professional Engineer, Certified Professional in Erosion Control, or Certified Professional in Stormwater Quality) that all temporary and permanent stormwater and erosion and sediment control practices have been completed in accordance with the plans referenced herein. If Agency staff determines the variance as undertaken is not compliant with the approved plans, remediation may be required to bring the site into compliance.

13. Any areas of disturbed soils that are not subject to active construction for a period of seven days shall be temporarily stabilized with ryegrass and mulch.

#### **Accessory Uses and Structures**

14. Except for the structure authorized by the variance contained herein, all structures, except docks and boathouses, greater than 100 square feet in size 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 Mirror Lake.

#### **Review of Future Development**

15. Any alterations to the single family dwelling authorized herein resulting in an increase of the external dimensions of the structure within the shoreline setback shall require a new Agency variance.
16. Construction of a dock or boathouse on the site shall not be undertaken without first obtaining a jurisdictional determination and, if necessary, a permit from the Agency.

#### **Legal Interests of Others**

17. 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 variance, nor does it authorize the impairment of any easement, right, title or interest in real or personal property held or vested in any person.

#### **FINDINGS OF FACT**

##### **Background/Prior History**

1. As of the May 22, 1973 enactment date of the Adirondack Park Land Use and Development Plan Map, the variance site was not part of a larger parcel of land, nor did the owner on that date own any adjoining parcels. An application from a prior landowner requesting a 25 foot shoreline setback variance to construct a

single family dwelling, Agency variance P79-18V, was denied in 1979. A similar variance, P86-3V, was authorized with conditions by Order dated December 8, 1986.

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

2. The variance site is a 0.32± acre parcel of land with 158± feet of shoreline on Mirror Lake, and 149± feet of frontage on Mirror Lake Drive, located in the Village of Lake Placid. Mirror Lake is a navigable waterbody almost entirely surrounded by land classified Hamlet, with a highly developed shoreline. Land uses in the vicinity of the site range from small residential lots to large scale tourist accommodations and the Village's commercial business district, with many structures located at or within the shoreline setback area.
3. The variance site is undeveloped except for an aging retaining wall built decades ago to support Mirror Lake Drive and its associated walkway. The wall is overgrown with vegetation, beginning to fail, and in need of replacement according to the Village of Lake Placid.
4. Vegetation on the site consists of a mix of deciduous and coniferous trees and shrubs, including paper birch, red maple, white pine, and balsam, some of which are in poor condition.
5. Soils on the site are rocky sandy loams, well-drained, consistent with the Monadnock soil consociation description, with slopes ranging from 3 percent near the shoreline to greater than 30 percent near the road. The slope near the road is artificially steep due to prior land disturbance and construction of the old retaining wall.

**Water Resources/Navigable Shoreline**

6. The mean high water mark of Mirror Lake is identified as 1,855.67 feet above mean sea level. The waters of Mirror Lake are classified as B(T), best suited for contact recreation, non-contact recreation, and aesthetics, and capable of supporting a trout population.

**Public Notice and Comment**

7. The Agency notified all parties as required by the Adirondack Park Agency Act and Agency regulations. No comments were received on the variance request in response to this notice.



**Public Hearing**

8. On April 22, 2014, a public hearing on the variance request was held in the Town of North Elba, Essex County. The hearing was attended by Agency staff, one of the applicants, three authorized representatives, and three members of the public. One attendee representing the Village of Lake Placid/Town of North Elba Joint Review Board spoke in support of the proposal, and no questions or objections were raised during the hearing. The Town of North Elba Code Enforcement Officer submitted a letter in support of the variance.

**Other Regulatory Permits and Approvals**

9. The Village of Lake Placid/Town of North Elba Joint Review Board issued approval for the proposed single family dwelling, with conditions, on November 8, 2013.
10. The Village of Lake Placid (Village) Department of Public Works Superintendent issued a letter dated September 10, 2013 stating municipal water and sewer connections are available to the proposed dwelling, and the Village has adequate capacity to serve this dwelling. The letter also provided approval for the fill and road stabilization plans on the variance site.
11. The Village Board of Trustees reviewed the plans for fill and stabilization within the highway right-of-way on September 23, 2013, and required the applicants to sign an "Indemnification" instrument to protect the Village against any loss, claim, liability or damages relative to the work.

**Wetlands**

12. No wetlands, streams, or other water resources were observed on the variance site during a site visit October 31, 2013 upland of the mean high water mark of Mirror Lake. However, wetlands may exist within the mean high water mark that can only be determined when fully vegetated during the warmer part of the growing season. Any future boathouse or dock plans will require a wetland site inspection to determine the existence of wetlands and potential impacts to any identified wetlands prior to Agency review and approval of said plans.

**Open Space/Aesthetics/Vegetation/Shoreline Character**

13. The single family dwelling will be substantially in keeping with the existing development of the surrounding area. Compliance with standard shoreline cutting restrictions coupled with an aggressive planting plan around the proposed development, the use of earthtone or natural colors, structure height limitations, and shielded downward-directed lighting will serve to screen and mitigate visual impacts of the dwelling as viewed from Mirror Lake, as well as mitigate nighttime light pollution (glare, light trespass and sky glow).
14. Requiring a revised planting plan or replacement plantings will mitigate adverse visual impacts should the existing and proposed vegetation for the authorized development be determined to be inadequate once the structure is built, or if vegetation losses result in the dwelling becoming significantly more visible.

**Historic Sites or Structures**

15. The variance as requested 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.

**Change of Circumstances**

16. The potential for changes in environmental conditions on the variance site and/or advances in technology that could further mitigate impacts associated with the proposed variance supports the imposition of the four-year time limit on the requested variance unless it is renewed or a new variance is authorized by the Agency.

**VARIANCE IMPACTS AND CRITERIA**

17. The Agency may grant a variance where there are practical difficulties in carrying out the strict letter of the provision of the plan or the shoreline restrictions. The following findings evaluate the variance request pursuant to the standards and factors set forth in 9 NYCRR 576.1(b)-(c).

**9 NYCRR 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 public purpose sought to be served by the shoreline restrictions for structures includes protection of water quality and the aesthetic character of the shoreline. As proposed, with stormwater controls and a planting plan, construction of this single family dwelling with an attached garage will not significantly impact the water quality or aesthetic character of the shoreline of Mirror Lake, particularly in a Hamlet land use area where the local municipality supports and has reviewed and approved the proposed development. As such, the adverse consequences resulting from denial are greater than the public purpose sought to be served by the shoreline restrictions. Granting the variance serves both the public purpose of the shoreline restrictions and the applicants' goals. They are not in conflict.

**9 NYCRR 576.1(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 existing 1986 variance allows for the construction of a single family dwelling 25 feet from the shoreline of Mirror Lake pursuant to the plans approved in that application. The variance authorized herein does not encroach further upon the shoreline than the dwelling previously authorized. Further, a one-car garage and parking area in the current proposal represents a significant portion of the increase in structure size, which was not included in the 1986 variance and will remedy a parking/safety issue inherent in that variance.

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

Adjoining landowners support the variance request as voiced during municipal review and documented through comment letter. In addition, the Village of Lake Placid/Town of North Elba have already approved the proposal, and stand to receive a public benefit in that the single family dwelling plus other site developments will act to stabilize this section of Mirror Lake Drive, alleviating the municipality of the task of rebuilding an existing, failing retaining wall for that purpose.

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

Without a variance and in consideration of local controls, a building envelope of only 6± to 14± feet in depth would be allowed on this site, which is inadequate to support construction of a single family dwelling at this location.

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

The variance site is a pre-existing lot of record. In 1986 the Agency approved a 25 foot variance request for a single family dwelling to be constructed on this property, which was not undertaken. The current owners purchased the property in good faith, believing they could construct the single family dwelling as proposed herein based on the 1986 variance and municipal variance. However, the 1986 variance is specific to the plans authorized at that time, to which the current plans do not conform. The current proposal increases the lateral nonconformance within the shoreline setback.

**(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;**

Staff determined the proposed stormwater plans to be sufficient to protect water quality. There will be no impacts from onsite wastewater treatment, as the dwelling will be served by the municipal system, with treatment occurring offsite. Aesthetically, the proposal is in keeping with the character of the shoreline in the vicinity, which is already highly developed. Although portions of the single family dwelling and attached garage will be visible from Mirror Lake, staff determined the proposed planting and screening plan to be acceptable in conjunction with additional conditions.

- (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.**

Conditions requiring strict adherence to the plans authorized herein, and providing for post-construction visual analysis with additional vegetation for screening to be planted as necessary will ameliorate adverse effects of the proposal.

**CONCLUSIONS OF LAW**

The Agency has considered all of the criteria for issuance of a variance as set forth in Executive Law § 806 and 9 NYCRR Part 576. The Agency hereby finds that the applicants' variance request complies with these criteria, provided the variance is undertaken as described herein and in compliance with the conditions set forth above.

A variance of the terms of the Adirondack Park Agency 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.

ORDER issued this            day  
of                            , 2014.

ADIRONDACK PARK AGENCY

BY: \_\_\_\_\_  
Richard E. Weber  
Deputy Director (Regulatory Programs)

STATE OF NEW YORK )  
                          ) ss.:  
COUNTY OF ESSEX )

On the            day of            in the year 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

REW:PVC:JLM:SHP:slp