



**TO:** Regulatory Programs Committee  
**FROM:** Richard Weber, Deputy Director, Regulatory Programs  
**DATE:** May 1, 2014  
**RE:** LeRoy Variance (P2013-0227)

### SUMMARY

Benjamin and Betsy LeRoy ("applicants") are the owners of a 0.3± acre property located in the Village of Lake Placid, Town of North Elba, Essex County, on Mirror Lake Drive and the shoreline of Mirror Lake. The 0.3± acre parcel is located in an area classified Hamlet by the Adirondack Park Land Use and Development Plan Map.

The variance request involves the construction of a single family dwelling with an attached garage within the 50 foot setback from the mean high water mark of Mirror Lake. The Agency has jurisdiction over the proposal pursuant to §806(1)(a)(2) and 9 NYCRR Part 575(e)(1) which set forth the minimum setback of all principal buildings and accessory structures in excess of one hundred square feet, other than docks or boathouses, to be fifty feet from the mean high water mark in Hamlet land use areas. Agency review of the variance request is pursuant to §806(3) of the APA Act and part 576 of Agency regulations. For the reasons described below, Agency staff recommends approval of the draft Order attached as Attachment 1.

### Procedural History

On December 8, 1986, the Agency issued Variance P86-3V authorizing a single family dwelling on this property [Hearing Exhibit 1]. On October 2, 2013, Agency staff issued a letter determining the applicants' proposal to constitute a material change to the prior variance [Hearing Exhibit 2]. On October 11, 2013, the Agency received a variance application from the applicants and the applicants' architect and designated representative, Andrew Chary, p.l.l.c., seeking an Agency variance for the construction of a single family dwelling and attached garage within the shoreline setback [Hearing Exhibit 3].

On October 28, 2013, the Agency sent the applicants and their designated representative a Request for Additional Information [Hearing Exhibit 4]. The supplemental information was received on January 14, 2014, with additional information received on January 21, 2014 [Hearing Exhibit 5]. On January 31, 2014, Agency staff sent the applicants and their designated representative a second Request for Additional Information [Hearing Exhibit 6]. The supplemental information was received on February 20, 2014 [Hearing Exhibit 7]. On March 7, 2014, Agency staff sent the applicants and their designated representative a third Request for Additional Information [Hearing Exhibit 8]. The supplemental information was received on March 21, 2014 [Hearing Exhibit 9]. An Environmental Program Specialist letter was sent to the applicant on April 10, 2014 seeking clarification on certain issues before the public hearing [Hearing Exhibit 10]. The answers to these questions were received on April 16, 2014 [Hearing Exhibit 11].

A public hearing on the requested variance was held on April 22, 2014 at 1:00 p.m. at the Town of North Elba offices in Lake Placid, New York. APA Hearing Officer Keith McKeever conducted the hearing pursuant to 9 NYCRR §576.5 of the Agency's regulations. Benjamin LeRoy, the applicants' designated representative, and the applicants' engineer provided testimony at the public hearing in support of the application. Jim Morganson, the Town of North Elba Code Enforcement Officer, submitted a letter at the public hearing detailing the municipality's support of the variance. See Exhibit 21.

Three members of the public attended the hearing, which included a municipal official and two members of the Town of North Elba/Village of Lake Placid Joint Review Board (JRB). Michael Orticelle, Town of North Elba/Village of Lake Placid Joint Review Board member, spoke in support of granting the variance. Orticelle stated that he spoke for the JRB in expressing the JRB's approval of the proposal, particularly as it takes into account the character of the area and the environmental issues associated with the property. Orticelle continued that the single family dwelling, as presented and approved by the JRB, adds a beautiful development to a desirable neighborhood, will add to the tax roll of the Town/Village and saves the Town/Village a costly road construction project. Orticelle asked the Agency to consider the fact that the proposed single family dwelling is on residential property in a residential neighborhood. Orticelle also requested the Agency to consider whether denying the requested variance would be equitable and serve the public in a way that a public agency is supposed to.

### Staff Analysis

In arriving at its determination whether to grant a variance, the Agency must consider the criteria set forth in 9 NYCRR §576.1. All of the factors are to be taken into consideration, on balance, when making this determination. It is not required that the proposal meet each criteria. It is the staff opinion that this application is approvable as, on balance, the factors in 576.1 can be resolved in the applicant's favor. The staff discussion of the decision factors is found in Finding of Fact number 17 on pages 10-13 of the attached draft Order [Attachment 1].

The applicants currently live in Maryland and are intending to relocate to Lake Placid, NY full-time. To accomplish this objective, the applicants are seeking a variance for a 2,875 square foot single family dwelling, 40 feet in height, with an attached garage. Most of the dwelling and garage will be located within the 50 foot setback. The closest point of the structure will be 25± feet from the mean high water mark of Mirror Lake.

First, it is important to discuss the manner in which the difficulty arose. See 9 NYCRR §576.1(c)(4). The variance site is a pre-existing lot of record for which the Agency issued a variance for a single family dwelling in 1986. The existing variance is specific to the plans authorized at that time. The Village of Lake Placid also issued a variance for a single family dwelling on this property in 1986.<sup>1</sup> However, unlike the Agency's variance, the local variance was not contingent upon specific plans and only required a single family dwelling to be set back 25 feet from the shoreline of Mirror Lake. During review of the current application, it became apparent that the local impression was the Agency's variance only required the single family dwelling to be setback 25 feet from the shoreline of Mirror Lake. The applicant testified that he was advised by various professionals, including his local real estate agent, a local real estate attorney, and Village/Town officials that his proposal would meet the requirements imposed by the variances on his property. Although this does not obviate the due diligence of the applicant or his advisors to contact the Agency, it does show the applicants were aware of the Agency's shoreline restrictions and bought the property in good faith, believing they could construct the single family dwelling they are proposing.

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<sup>1</sup> The local variance remains in effect.

When evaluating the current proposal, the Agency must consider whether the application requests the minimum relief necessary. See 9 NYCRR §576.1(c)(1). The applicants have stated that the 1986 plans are not sufficient to meet their needs and the current proposal is the minimum necessary to meet their personal objectives. Compared to the single family dwelling authorized in P86-3V, the current proposal increases non-conformance within the shoreline setback. However, the current proposal does not encroach further upon the shoreline than that previously authorized. Furthermore, a significant portion of the increase in structure size of the current proposal includes a one-car garage and parking area, which the 1986 variance does not account for. This is important as on-street parking in this area is limited and the current proposal will allow a vehicle to pull in and turn around while on the property. This remedies a parking and safety issue in the existing variance.

With respect to alternatives, there is no alternative other than a variance to construct a single family dwelling on this property. See 9 NYCRR §576.1(c)(3). The lot is very steep and narrow and only a 6-14 foot wide strip of land can be built upon without violating the Agency's shoreline setback restrictions or the municipal setback from the road. The fact that there is an existing variance on this property suggests a feasible alternative. However, based upon review of the P86-3V file, staff have concerns regarding implementation of the 1986 variance and is not comfortable recommending this as a feasible alternative. In addition, the applicants' consultants raised serious issues during the variance process regarding construction of P86-3V, the ability to access the 1986 single family dwelling, and potential safety concerns over the design approved in P86-3V.

Approving the applicants' variance request will not create a substantial detriment to adjoining or nearby landowners. See 9 NYCRR §576.1(c)(2). The adjoining neighbor to the south, John Taylor, voiced his support of the proposal at the September 4, 2013 JRB meeting. See Exhibit 20. In addition, neighbors Ed and Lisa Weibrecht, owners of the Mirror Lake Inn Resort & Spa, have documented their support of the proposal. See Exhibit 19. In addition, the Town of North Elba/Village of Lake Placid is an adjacent landowner to the LeRoy property. The Town and Village have also expressed their support for the variance.

In addition, the retaining wall adjacent to the LeRoy property is failing. This retaining wall holds up Mirror Lake Drive and the Village sidewalk. The applicants' proposal includes the placement of a considerable amount of fill, outside of the shoreline setback, to serve as the foundation wall for the

proposed single family dwelling. In addition, the fill will also stabilize the Mirror Lake Drive retaining wall and road surface. This will be done at no cost to the Village, alleviates the municipality of the task of rebuilding an existing, failing retaining wall, and remedies a public safety concern.

Finally, staff have determined that granting the variance will not adversely affect existing resources. See 9 NYCRR §576.1(c)(5). There will be no impacts from the proposed wastewater treatment system as it will be connected to the municipal system. Staff have also determined the proposed stormwater and groundwater plans are sufficient to protect water quality. With respect to aesthetic impacts, the LeRoy's proposal is within the character of the shoreline and adjacent area. The shoreline of Mirror Lake is highly developed, including the vicinity of the LeRoy's property. However, portions of the proposed single family dwelling and attached garage will be visible from Mirror Lake and, as such, will result in some aesthetic impacts. However, staff have determined the proposed planting and screening plan to be acceptable and, if implemented as proposed, will equal or exceed the level of screening typical of development on Mirror Lake. Additionally, the applicant has agreed to a condition that will allow the Agency to evaluate the proposal after it has been completed and require more planting if necessary to mitigate the visual impacts of the variance. Staff are satisfied that the proposed vegetation plan and the imposition of this condition will ameliorate any potential adverse visual impacts of the proposal. See 9 NYCRR §576.1(c)(6).

Finally, it is also important to consider that this proposal is located in a Hamlet land use area on a highly developed shoreline. The land use area classification from the Adirondack Park Land Use and Development Plan states that hamlets "are the growth and service centers of the Park where the Agency encourages development." Further, the administrative body responsible for reviewing and approving or denying land uses in this locale fully supports the proposal and has determined the proposal to be compliant with the Town of North Elba/Village of Lake Placid land use code. This is a significant aspect to consider as the Agency reviews this proposal.

### **Conclusion**

In determining whether a variance is appropriate, the Agency must consider whether the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restrictions, i.e. protection of the

aesthetic character and water quality of Mirror Lake. The factors set forth in 9 NYCRR §576.1(c) are to be considered, on balance, when making this determination.

Staff have concluded the construction of the single family dwelling and attached garage, as proposed, will not have an adverse impact on the water quality or aesthetic character of Mirror Lake. Additionally, the proposal is located in a Hamlet Land Use area, is within the character of this highly developed shoreline, and is supported by the local municipality. Staff believes the Agency can find the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the shoreline restrictions. As such, it is the staff opinion that the Agency may reasonably grant the requested variance.