



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

**APA Order Granting
Variance
2014-80**

Date Issued: ???

In the Matter of the Application of

THE TOWN OF WILMINGTON

for a variance pursuant to Executive Law §806

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

1. Town of Wilmington

SUMMARY AND AUTHORIZATION

The Town of Wilmington ("applicant" or "Town") is granted a variance, as conditioned herein, from the applicable 50-foot shoreline structure setback required by Section 806(1)(a)(2) of the Executive Law ("Adirondack Park Agency Act" or "APA Act"), to allow for the construction of a 24 foot by 31 foot accessible fishing deck with railing extending approximately 7 feet over the mean high water mark of the West Branch AuSable River, in an area classified Hamlet by the Official Adirondack Park Land Use and Development Plan Map in the Town of Wilmington, 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.

APPLICABLE LAWS

Section 806(1)(a)(2) of the APA Act establishes a minimum shoreline setback of 50 feet from the mean high water mark of the West Branch AuSable River for all accessory structures and principal buildings greater than 100 square feet in size except docks and boathouses. The applicant requests a variance from this structure setback requirement pursuant to §806(3)(a) of the APA Act.

RELEVANT FACTS AND BACKGROUND

Variance Site

The variance site is a 5.8±-acre parcel of land identified on Town of Wilmington Tax Map Section 26.6, Block 5, as Parcel 75, and described in a deed from Wilmington Fish, Game and Sports Club, Inc. to the Town of Wilmington, dated September 23, 1961, and recorded November 9, 1961 in the Essex County Clerk's Office at Book 394, Page 319.

The variance site has been developed with Town beach facilities for more than 50 years. The shoreline of the West Branch AuSable River on the variance site is currently developed with a sandy beach area, a concrete boat launch facility, an asphalt sitting area, a pavilion, bathroom facilities and picnic facilities. There is a steep bank down to the shoreline along the northern portion of the variance site. This steep bank has been stabilized with rock rip-rap. The remainder of the shoreline contains a concrete boat launch ramp, a removable floating dock and a sandy beach area. The western shoreline of the river is mostly wooded with one single family dwelling located just north of the variance site. The eastern shoreline of the river is also mostly wooded, but contains docks and accessory structures associated with single family dwellings located along Springfield Road. There is a vegetated island in the middle of the river immediately east of the variance site and vegetated peninsulas located south and north of the variance site.

Variance Request

On May 21, 2014, the applicant submitted a request for a variance to allow construction of a fishing deck within the mean high water mark of the West Branch AuSable River on the variance site. Specifically, the applicant requests authorization to construct a 24 foot by 31 foot universally-accessible fishing deck to extend 7 feet over the mean high water mark of the river. The deck will be designed to comply with Americans with Disabilities Act (ADA) standards for accessibility. Construction of the deck will be completed by town work crews under the supervision of the town code enforcement officer. The deck will be placed in the location of an existing 20 foot by 30 foot impervious asphalt sitting area with railing, which will be demolished and removed from the site. The removal of the asphalt will create approximately 2 cubic yards of waste, which will be disposed of in a nearby reclamation pit which is approved as a waste disposal area. New York State Department of Environmental Conservation issued a General Permit on May 1, 2014 for stream disturbance, excavation and fill navigable waters and water quality

certification. The deck will be cantilevered over the river with minimal disturbance to the river bed and no elements of the deck will be located in the water. The railing, as proposed, will be 34 inches in height and extend around three sides of the deck.

The variance proposal is shown on the following maps and plans: eight sheets of plans, prepared by Essex County Department of Public Works, and dated June 18, 2014 including sheets entitled "Overall Plan," and "Elevations," and ten sheets of plans prepared by AES Northeast and dated September 20, 2010 and October 16, 2012 including a sheet entitled "As-Built Record Plan". A reduced-scale copy of the "Overall Plan," the "Elevations" plan and the "As-Built Record Plan" are attached as a part of this Order for reference. The original, full-scale maps and plans described in this paragraph are the official plans for the variance, with copies available upon request from Adirondack Park Agency headquarters in Ray Brook, New York.

PROCEDURAL HISTORY

Following receipt of the variance application, the Agency notified all parties as required by the Agency regulations. On July 23, 2014, the Agency held a public hearing on the variance request in the Town of Wilmington. The hearing was attended by Agency staff and by the Town Supervisor. There were no members of the public at the hearing and no comment letters have been received.

DISCUSSION

The Agency may grant a variance where there are practical difficulties in carrying out the restrictions set forth in Section 806(1)(a)(2) of the APA Act. The Agency has considered the standards and factors set forth in 9 NYCRR §576.1(b)-(c).

§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.

Potential adverse consequences resulting from denial are that there would not be universal fishing access at the Town Beach facilities. The public purposes served by the Agency's structure setback requirements include protection of the water quality and aesthetics of the AuSable River. The variance as proposed and as conditioned herein will have no adverse impact to the water quality of the river. Since the site is already substantially developed and is not highly visible from off-site locations, the variance as proposed would not negatively impact the aesthetics of the river.

§576.1(c)(1): Whether the application requests the minimum relief necessary.

The Town's objectives are to provide fishing opportunities for up to four individuals in wheel chairs to be able to drop a fishing line into the river from a raised deck with railing over the river to avoid snagging on the existing rip rap shoreline. Alternatives that were considered included installation of a dock instead of a deck or not improving the existing facilities. The applicant has stated that a dock would not meet ADA building code requirements and/or would be subject to being washed away during high water events. The existing facilities do not provide adequate universal fishing access to the water.

§576.1(c)(2): Whether granting the variance will create a substantial detriment to adjoining or nearby landowners.

The universally-accessible fishing deck will not be highly visible from off-site locations due to the vegetated island in the middle of the river and the vegetated peninsulas north and south of the variance site. The variance site is already a highly developed public use facility and the installation of the deck will not change the existing character of the variance site. Therefore, there should be no detriment to adjoining or nearby landowners.

§576.1(c)(3): Whether the difficulty can be obviated by a feasible method other than a variance.

There is no location on the property that currently provides universal fishing access. Due to the steepness of the slopes adjacent to the river and the existing rip rap located along the shoreline, fishing from the shoreline is difficult. The applicant's objective is to provide universal fishing access from the shoreline. The proposed fishing deck has been designed to comply with the building codes listed in the Americans with Disabilities Act. There is no other feasible method which does not require a variance.

§576.1(c)(4): The manner in which the difficulty arose.

The variance site has been maintained by the Town of Wilmington as a recreational beach facility for over 50 years. The Town sought grant funding for improvements to local waterfront areas, including the proposed fishing access deck. There are currently no ADA compliant fishing decks at any location in the Town of Wilmington.

§576.1(c)(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.

There is a potential for impacts to the water quality of the West Branch AuSable River due to land disturbance associated with construction activities and potential introduction of invasive species on construction vehicles. Removal of the existing 20 foot by 30 foot impervious asphalt sitting area will allow for additional infiltration of stormwater runoff into the soils at the proposed accessible fishing deck location. Since the variance site is already substantially developed as a public facility and is not highly visible from off-site locations, the granting of the variance as proposed will not have an adverse impact on the resources or aesthetic character of the area.

§576.1(c)(6): Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects noted above.

The potential for adverse effects to the West Branch AuSable River will be ameliorated by compliance with the following conditions:

1. This Order shall be recorded in the Essex County Clerk's Office by _____.
2. The variance shall be undertaken as depicted on the plan sheets referenced herein. Any changes to the locations, sizes, dimensions, or other aspects of the structures shall require a new or amended Agency Order or a letter of compliance.
3. Within 60 days of completion of the structures authorized herein, a qualified design professional shall provide written certification to the Agency that the structures were built in compliance with the approved plans.
4. Before being brought on the site, all equipment, including but not limited to trucks, excavators, tractors, and hand excavation tools such as shovels, rakes, and picks, shall be pressure washed with hot water, clean, and free of soil, mud, and other material that may contain invasive plant materials, seeds, or other propagules.
5. Prior to undertaking any earthwork on the site within 50 feet of the West Branch AuSable River, silt fence shall be properly installed parallel to the existing contours between the construction site and these water resources. The silt fence

shall be embedded into the earth a minimum of six inches and shall be a minimum of 5 feet from the wetland or surface water bodies, wherever possible. The silt fence shall be maintained throughout construction and shall not be removed until after all disturbed soils are stabilized to prevent siltation of the water resources. The applicants or their successors in interest shall inspect the fabric at least once a week and after every major storm event to ensure the fabric and supports are intact and to remove accumulated sediments so as to maintain the fence in a functional manner.

CONCLUSION

The Agency has considered all of the standards and factors for issuance of a variance as set forth in 9 NYCRR Part 576. The Agency hereby finds that the applicant's variance request meets the approval criteria, provided the authorized activities are undertaken as described herein and in compliance with the conditions set forth above.

A variance of the terms of the Executive Law is not personal and runs with the land. Recording of this Order is intended to provide notice to subsequent owners of the variance site.

ORDER issued this day
of , 2014.

ADIRONDACK PARK AGENCY

BY: _____
Richard E. Weber III
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, III 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:TJD:SEL:SLB:mlr