



TO: Regulatory Programs Committee

FROM: Richard Weber, Deputy Director, Regulatory Programs

DATE: August 6, 2014

RE: Town of Wilmington Variance (P2014-80)

SUMMARY

The Town of Wilmington ("Town") seeks a variance for the construction of a 24 foot by 31 foot universally-accessible fishing deck which will extend 7 feet over the mean high water mark of the West Branch AuSable River. The deck will be constructed to comply with Americans with Disabilities Act (ADA) standards for accessible design and will accommodate up to four persons in wheelchairs. The variance site is a 5.8± acre parcel of land located in the Town of Wilmington, Essex County, in a Hamlet land use area. The site has been developed with Town beach facilities for more than 50 years. The deck requires a variance because it will be located within the 50 foot shoreline setback area of the river. The deck will be placed in the location of a 20 foot by 30 foot existing asphalt sitting area with railing, which will be demolished and removed from the site. The deck will be partially cantilevered over the river with no disturbance to the river bed and no elements of the deck will be located in the water. The railing will be 34 inches in height and extend around three sides of the deck.

Attached is an "Overall Plan" showing an aerial view of the project site and project details (Hearing Exhibit 4), as well as an excerpt of the Adirondack Park Land Use and Development Plan Map (Hearing Exhibit 11) showing the location of the site.

The Town received public funding for the project from a Department of State Local Waterfront Program grant which includes grant money for the universally-accessible fishing deck. Construction must be completed this fall to meet a March 2015 funding deadline.

STAFF ANALYSIS

The Town's objective is to provide universal fishing access from the shoreline. There is no location on the property, or on any other public property in the Town, that provides ADA-compliant fishing access.

In arriving at its determination whether to grant a variance, the Agency must consider in its deliberations the standards and factors set forth in 9 NYCRR §576.1, though it is not necessary to make a finding on each. For the Agency's consideration during its deliberations, staff's discussion of these standards and factors can be found in the "Discussion" on pages 3 through 5 of the Draft Order.

From staff's perspective, the most important considerations with respect to this application are the discussion of alternatives and whether the request will adversely affect the natural, scenic, and open space resources of the Park. With respect to alternatives, there is no feasible alternative that will not require a variance. Due to the steepness of the slopes and the existing rip rap located along the river bank, locating opportunities for a universally accessible fishing area is difficult and very limited.

Concerning adverse impacts, it is staff's opinion that no resources will be adversely affected by the granting of this variance provided the project is undertaken as authorized and conditioned in the Draft Order. Since the variance site is already substantially developed and is not highly visible from off-site locations, the proposed fishing deck will not change the existing aesthetic character of the shoreline. In addition, the imposition of conditions requiring the installation of silt fencing and the pre-washing of all equipment brought to the site will prevent any potential adverse impacts to water quality.

Based on its analysis of the Town's request, staff recommends that the Agency grant the requested variance. Denial of this variance would effectively preclude the Town from providing universally-accessible fishing access. Granting the variance, as conditioned in the Draft Order, will have no adverse impacts on the water quality or aesthetic character of the shoreline.