

NEW YORK STATE  
**Adirondack**  
parkagency

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

**APA Order Granting  
Variance  
2014-1**

**Date Issued: November 18, 2014**

In the Matter of the Application of

**TOWN OF INLET**

for a variance pursuant to Executive Law §806

To the County Clerk: This order must be recorded on or before **January 19, 2015**. Please index this Order in the grantor index under the following names:

- 1. Town of Inlet**

**SUMMARY AND AUTHORIZATION**

The Town of Inlet ("applicant") is granted a variance, as conditioned herein, from the applicable 50-foot shoreline structure setback to allow for the construction of a two-story structure measuring 30 ft. by 40 ft. (1,200 sq. ft. of floor space) at the shoreline (for canoe and kayak storage at the boardwalk level), 30 ft. by 40 ft. (1,200 sq. ft. of floor space) on the main level (public use level at grade with the park), with a roof measuring 40 ft. by 20 ft. (800 sq. ft.) and within 50 feet of the mean high water mark of Fifth Lake Outlet, in an area classified Hamlet by the Official Adirondack Park Land Use and Development Plan Map in the Town of Inlet, Hamilton 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 Executive Law ("Adirondack Park Agency Act" or "APA Act") establishes a minimum shoreline setback of 50 feet from the mean high water mark of Fifth Lake Outlet for all accessory structures and principal buildings greater than 100 square feet in size other than docks and boathouses. The applicant requested a variance from this shoreline structure setback pursuant to §806(3)(a) of the APA Act.

**RELEVANT FACTS AND BACKGROUND**

**Variance Site**

The variance site is located in the Town of Inlet, Hamilton County, on a 6.2±-acre property owned by the Town of Inlet known as Arrowhead Park in an area designated as Hamlet on the Adirondack Park Land Use and Development Plan Map. The tax map number of the property is: Section 59.015, Block 1, Parcel 33, and described in a deed from Carrie E. O'Hara and Bernard B. O'Hara to the Town of Inlet, dated June 9, 1963, and recorded in the Hamilton County Clerk's Office at Book 125, Page 426.

The structure will be located in a public town park, on the shoreline of Fifth Lake Outlet which flows from Fifth Lake to Fourth Lake in the Fulton Chain of Lakes. Fifth Lake Outlet is approximately 85 feet wide at the variance site and the proposed structure will be located on the shoreline approximately 130 feet upstream from Fourth Lake. There is a pre-existing boardwalk along Fifth Lake Outlet that is approximately 10 feet wide. The mean high water mark of Fourth Lake and Fifth Lake Outlet is under the boardwalk, approximately at its midpoint extending towards and over the water.

Arrowhead Park was once the grounds of a private inn which included several shoreline and boathouse structures on the boardwalk. The Town seeks to rebuild a structure which was removed in 1938, in roughly the same footprint. The pictures of the historical structure show it to be three stories above the water, with a roof.

The shorelines of the Outlet and Fourth Lake in the vicinity of the variance site are classified Moderate Intensity Use and Hamlet characterized by dense residential and commercial development. In the immediate vicinity of Arrowhead Park there are both commercial uses, such as the marina on Fifth Lake Outlet, The Woods Inn, Fays Marine Services, many rental cottage colonies and residential uses.

The residential uses on Fourth Lake in the vicinity of Arrowhead Park have structures, boathouses, or docks located at the shoreline. The structure will be located in the channel of Fifth Lake Outlet and will not be highly visible from residences along the shoreline of Fourth Lake. The shoreline in this area is well developed and includes structures similar in character and scale to the proposed structure. It will be visible from the waters of Fourth Lake immediately northwest of the opening of Fifth Lake Outlet and from boats close to Arrowhead Park, boats docked at the boardwalk and visitors to the Town Park and beach.

The Town of Inlet owns and rents three residences within Arrowhead Park that are along the northeast property boundary and located approximately 150 to 200 feet from the proposed variance site. The new structure will be visible from the rental units.

There are no wetlands in the vicinity of the proposed variance.

#### Variance Request

The variance request involves the construction of a two-story structure measuring 30 ft. by 40 ft. (1,200 sq. ft. of floor space) at the shoreline (for canoe and kayak storage at the boardwalk level), 30 ft. by 40 ft. (1,200 sq. ft. of floor space) on the main level (public use level at grade with the park), with a roof measuring 40 ft. by 20 ft. (800 sq. ft). The structure height measured from the highest point on the roof to the deck of the existing boardwalk structure will be 28 ft. The structure does not meet the definition of a boathouse under the Agency regulations, 9 NYCRR 570.3(c). The structure will be located at and partially within 50 feet of the mean high water mark of Fifth Lake Outlet. Therefore, a 50-ft. setback variance is requested from the 50-ft. shoreline structure setback of Executive Law §806 and 9 NYCRR 575.1(e)(1).

The variance proposal is shown on the following maps and plans:

Final Site Plans for Proposed Casino Boathouse Reconstruction, Arrow Head Park, Inlet NY 13360, dated September 23, 2014, received September 29, 2014, including:

- SP-1: Partial Site and Project Location Plan
- SP-2: Property Survey Map, Master Plan Map and Aerial Location Map
- SP-3: Landscaping and Stormwater Pollution Prevention Plan (SWPPP) Details, Notes and Schedules

Final Building Plans for Proposed Casino Boathouse; Arrow Head Park, Inlet NY 13360, dated July 16, 2014, received July 22, 2014, including:

- Drawing 1: Casino Boathouse- Proposed Exterior Elevations
- Drawing 2: Casino Boathouse-Pavilion Level and Roof Plan; Casino Boathouse - Dry Boat Storage Plan

Reduced-scale copies of Sheets SP-2 (Property Survey Map) and Sheet 1 (Casino Boathouse Proposed Exterior Elevations) are attached as a part of this Order for reference. The original, full-scale maps and plans described above are the official plans for the variance, with copies available upon request from Adirondack Park Agency headquarters in Ray Brook, New York.

Construction of the structure, referred to in the application as the "Casino Boathouse", is part of an approved Local Waterfront Revitalization Program Master Plan ("Master Plan") developed with the assistance of the NYS Department of State, Office of Planning and Development, Local Waterfront Revitalization Program. The NYS Department of State has awarded \$248,000.00 to the Town of Inlet for work to be done at Arrowhead Park, including the construction of this structure. The Town will provide matching funds for the project. The Master Plan shows the design of the waterfront, shoreline boardwalk, parking areas, buildings, walkways and open space elements such as lawn areas, ballfields and tennis courts for the 6.2 acre park. A key element of the Master Plan includes the re-establishment of a locally important historic structure known as the "Casino Boathouse" at the shoreline in the same character and footprint of the original structure. The design of lawn areas for passive recreation and events and the maintenance of an open sight-line from the street (NY Route 28) to the water have also been identified as important elements of the plan.

#### **PROCEDURAL HISTORY**

The Town of Inlet submitted an application for a variance on January 3, 2014. Following receipt of the variance application, the Agency notified adjoining landowners and other interested parties. The Town provided additional requested information to the Agency through September 29, 2014, and a public hearing on the variance application was held in the Town of Inlet Town Hall on October 22, 2014. The hearing was attended by Agency staff. The Town of Inlet Supervisor John Frey and Nicholas Rose, the Executive Director of CAP-21, attended to represent the Town of Inlet. Seven members of the public attended the hearing, and all public comment received was in support

of the variance request. Two comment letters were hand delivered at the Hearing by the Town from the Town of Inlet Parks Department and the Inlet Historical Society supporting the granting of the variance.

### 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.

**§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.**

If the variance is not granted the Town of Inlet could build a non-jurisdictional boathouse at the building location and build an upland pavilion that complies with the shoreline setbacks of §806 of the Adirondack Park Agency Act for events. It could also forego the boathouse and only build the upland pavilion. While construction of an upland pavilion is possible, it is not the Town's preferred alternative and Town representatives have stated that they do not want to build a second structure. If an upland pavilion is the only alternative there would be at least four adverse consequences to the Town. They are as follows:

- a. the construction of the upland pavilion structure would obstruct the view of Fourth Lake as viewed from areas within Arrowhead Park, the Inlet shopping district, and NY Route 28, thereby defeating a design concept of the Master Plan for Arrowhead Park;
- b. the Town's objective of rebuilding a locally important historic structure in the same shoreline location would be defeated by denial of the variance;
- c. the non-jurisdictional boathouse option would hinder the use of the existing boardwalk to carry pedestrian traffic along the shoreline.

The public purposes served by the Agency's structure setback requirements include protection of the water quality and aesthetics of the shoreline of Fifth Lake Outlet and Fourth Lake. The applicant has prepared a stormwater management plan that adequately addresses potential water quality impacts. As addressed more fully below, the structure will not have significant impact on the aesthetics of Fifth Lake Outlet or Fourth Lake.

The Town intends to use the lower level of the structure for temporary storage of canoes and kayaks brought to the site by the public and for public events. This structure developed for multiple public park purposes in a park setting will be owned and maintained by the Town. These considerations distinguish this proposal from other variance requests. The adverse consequences of denial would be borne by the public. Therefore, the adverse consequences of denial are greater than the public purpose sought to be served by the shoreline restriction in this case.

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

The Town of Inlet's objective is to rebuild a historical structure in the same footprint within Arrowhead Park for multiple public uses in all weather conditions. The footprint is within 50 feet of the mean high water mark, but the structure was removed in 1938. Moving the structure away from the shore will encroach upon existing recreational uses and open space areas within the park and will negatively impact the sight lines to Fourth Lake from other public use areas. In particular, the Town's Master Plan focused on maintaining a view of Fourth Lake through the Arrowhead Park from the Inlet shopping district and the park entrance on State Route 28. A structure that complies with the shoreline setbacks of §806 of the Adirondack Park Agency Act will interfere with that view.

Additionally, the topography where the structure is proposed has an approximate grade change of eight feet from the upper grade in the park to the top of the boardwalk. The design of the structure takes into consideration the grade change which leads to construction of a two story structure. If the variance site was flat, a larger one story structure, including a roof, might be possible.

The Town intends to use the lower level of this structure for storage of small boats, for which access to the water is important. However, it also wants to have a roof over a second story to be able to use the structure for public events throughout the year. A boathouse with a temporary canvas roof would be susceptible to the strong winds off of Fourth Lake, which the Town considers unsafe.

The proposed structure is the minimum variance necessary to achieve the Town's objective of rebuilding a historical structure for multiple public uses in all weather conditions.

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

The structure will be located in a public park in a developed Hamlet land use area with existing development and ongoing uses, as elaborated above in the Variance Site description. This shoreline structure is consistent with the character of surrounding development on and close to the shoreline. The proposed structure is at least 375± feet from the nearest neighbor on the same shore, excepting the Town's three rental structures located in Arrowhead Park. There is also a boathouse approximately 250 feet southeast of the proposed structure on the opposite shoreline. The nearest dwelling southwest of the proposed structure is located approximately 390 feet away and there is a 280-foot-wide forested area between the proposed structure and the existing dwelling. Due to intervening vegetation the proposed structure will not be visible from this residence, provided the vegetation remains intact. The nearest residential structure to the northwest of the proposed structure, excluding the Town's three rental structures, is 250± feet away. There was no public comment received from neighbors, or anyone else, in opposition to this variance. The applicant stated that the adjoining landowners were involved in the development of the Master Plan. The project will not create a substantial detriment to adjoining or nearby landowners.

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

The applicant considered three non-jurisdictional alternatives:

1) constructing a structure that complies with the Agency definition of a boathouse and building a second structure outside the 50-foot shoreline setback;

- 2) constructing a structure that complies with the Agency definition of a boathouse and using a temporary structure for events; and
- 3) locating the structure outside the setback.

These alternatives would not meet the Town's objective of reconstructing the historic structure removed from the site in 1938 with boat storage accessible from the boardwalk and a covered platform for events. The Town plans to build a multi-use structure that can accommodate temporary storage of canoes, kayaks and other water craft brought to the site by the public with a platform or deck and a roof to accommodate public events. A structure that complies with the Agency definition of a boathouse would not allow for a second story with a roof.

The Town rejected the alternatives that included locating a permanent structure outside the 50-foot setback because those alternatives would require building the structure in existing open space recreational areas of the park. A structure in the open space area or in the tennis court location would block the intended sight line from the park entrance to Fourth Lake. Any alternative locating a pavilion outside the 50-foot shoreline setback would not provide boat storage near the water.

The alternative of constructing a flat-roofed boathouse in compliance with the Agency's definition of a boathouse and installing a temporary or removable tent-like structure outside the shoreline setback was rejected by the Town because such a structure could be subject to strong winds coming off Fourth Lake and could be unsafe for public events. A non-jurisdictional boathouse would also require enclosure of the boardwalk to allow direct access to the water, thereby blocking the public from walking along the shoreline on the boardwalk

Considering the unique nature of this public proposal in a Hamlet land use area, the applicant's objective can only be accomplished by a variance which allows it to rebuild a structure similar to the historic structure removed from the variance site in 1938.

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

Since the Town acquired the land in 1963, the public use of Fifth Lake Outlet for canoeing and kayaking has increased, and the boardwalk has created a focal point for the public to access Arrowhead Park and the hamlet of Inlet from the waters of Fifth Lake Outlet and Fourth Lake. The Town has developed other public facilities in the park such as a playground, youth center building, a



picnic pavilion, public beach, baseball field, rest rooms, tennis courts, walkways and other open space uses, all of which occupy physical space within the park.

**§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.**

The Town of Inlet, with the assistance of the NYS Department of State, Office of Planning and Development, Local Waterfront Revitalization Program, evaluated and considered natural resources, open space, shoreline and water quality and aesthetic protection in developing the Arrowhead Park Master Plan. The needs of the community of Inlet and the public were taken into consideration during the development of the plan.

The shoreline structure located on Fifth Lake Outlet away from the shoreline of Fourth Lake, along with the landscaping and stormwater management plans will protect the water quality of the adjoining water bodies and will be compatible with the aesthetic qualities and character of the shorelines. The Town's Visual Impact Assessment (VIA) depicts the potential visual and aesthetic impacts the structure may create. The VIA includes photographs depicting the existing conditions and simulations of the proposed structure. The proposed structure will not produce any substantial change in the character of the shoreline and will replace a historic structure footprint and will fit within the character of the Master Plan.

The preferred alternative mitigates potential visual and aesthetic impacts by locating the proposed structure out of the open space areas of the Park and using dark natural tones on the siding, roofing and trim of the structure which will blend with the surrounding vegetation and other existing structures. The structure will provide a variety of additional benefits to the public while not impacting the resources of the Adirondack Park.

Implementation of the proposed stormwater management plan and an Agency approved final erosion control plan during construction, will result in no adverse impacts to the resources of the Park and adjoining water bodies.

Changes to the variance site over time could alter the potential for adverse effects from construction of the proposed structure. In addition, advances in technology could further mitigate impacts associated with the authorized structure. Imposition of a four year time limit on the requested variance will mitigate these potential impacts.

**§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 water quality of Fifth Lake Outlet and Fourth Lake and aesthetic impacts to the shorelines of both waterbodies will be ameliorated by compliance with the following conditions:

1. The authorization to undertake construction of the proposed structure shall expire four years from the date this Order is recorded in the Hamilton County Clerk's office, unless construction of the structure has been completed in strict accordance with the site plans and construction plan sheets described herein by that date or written authorization has been obtained from the Agency extending the deadline for construction.
2. The proposed structure shall be constructed as depicted on the site plans, Stormwater Pollution Prevention Plan and the building floor plans and elevations referenced herein. Any changes to the locations, sizes, dimensions, plant species or other aspects of the structure or stormwater management plan shall require a new or amended Agency Order or a letter of compliance.
3. Prior to undertaking any earth work related to this variance, the applicant shall submit final detailed building construction plans and erosion control plans that address the detailed construction plans to the Agency for review and approval. The erosion control plan shall show all proposed erosion control measures necessary to protect the water quality of Fifth Lake Outlet and Fourth Lake. All approved erosion control measures shall remain in place and be maintained in a functional state throughout the construction project and remain in place until all disturbed soils are stabilized with growing vegetation.

4. All exterior building materials, including roofing, siding and trim, used to surface the exterior of the authorized structure shall be of a color which blends with the existing vegetation. The Agency will, upon request, advise whether any particular proposal complies with this condition.
5. Any new free-standing and building mounted outdoor lights shall employ full cut-off fixtures; that is, 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 any public road, adjoining property, or directly onto the surface of Fifth Lake Outlet or Fourth Lake. The intent is to reduce nighttime light pollution (glare on surface waters, light trespass and sky glow).
6. The landscaping plan and stormwater pollution prevention plan authorized herein shall be undertaken as shown on the variance site plans referenced herein. The approved plans shall be implemented in the Spring or Fall, whichever comes first, immediately following the completion of the structure authorized herein. Any trees or shrubs which do not survive or become diseased shall be replaced annually until such time as all of the trees and shrubs have been established in a healthy growing condition.

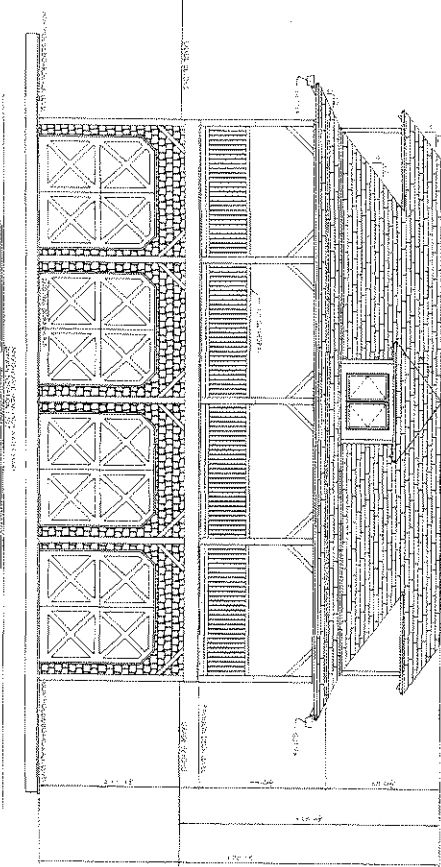
Immediately after the completion of the landscaping and stormwater pollution prevention plan authorized herein, the applicant shall submit to the Agency photographs showing that the plantings and stormwater management practices have been successfully completed.

7. 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.
8. This Order shall be recorded in the Hamilton County Clerk's Office by January 19, 2015.

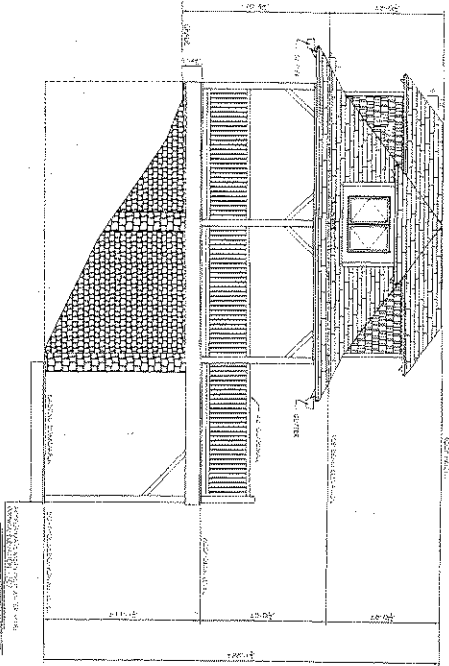
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Casino Bathhouse - Lakeside Elevation



Casino Bathhouse - Side Elevation

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<p><b>Wolf Engineering</b>        R. J. Acry, P.E.</p> <p>2000 Orange Street, Suite 100        Albany, NY 12242-1000 • Phone: 518-437-1177        Fax: 518-437-1178</p>	<p>NEW YORK STATE          DEPARTMENT OF STATE</p>	<p>PROJECT: Casino Bathhouse Reconstruction        ADDRESS: Adirondack Park Agency        1000 Orange Street, Suite 100        Albany, New York 12242</p> <p>DATE: 04/23/04</p> <p>EXHIBIT: 11</p>	<table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> </tr> <tr> <td>1</td> <td>04/23/04</td> <td>ISSUED FOR PERMIT</td> </tr> </table>	NO.	DATE	DESCRIPTION	1	04/23/04	ISSUED FOR PERMIT
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