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 <p>NEW YORK STATE OF OPPORTUNITY.</p> <p>Adirondack Park Agency</p> <p>P.O. Box 99, 1133 NYS Route 86 Ray Brook, New York 12977 Tel: (518) 891-4050 Fax: (518) 891-3938 www.apa.ny.gov</p>	<p>APA Order Granting Variance 2015-62</p>
<p>In the Matter of the Application of PETER E. DAY for a variance pursuant to Executive Law § 806</p>	<p>Date Issued:</p> <p>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. Peter E. Day</p>

SUMMARY AND AUTHORIZATION

Peter E. Day 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 an elevated one-story covered porch approximately 22 feet from the mean high water mark of Mirror Lake, in an area classified Hamlet by the Official Adirondack Park Land Use and Development Plan Map in the Village of Lake Placid, Essex County.

This Order does not convey any right to trespass upon the lands or interfere with the riparian rights of others in order to undertake the authorized activity, nor does it authorize the impairment of any easement, right, title or interest in real or personal property. 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 Mirror Lake for all accessory structures and principal buildings greater than 100 square feet in size. The applicants requested 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 0.14± acre parcel of land identified on Village of Lake Placid Tax Map as Section 42.OEL, Block 1, as Parcel 2, and described in a deed from Mary C. Cayea to Peter E. Day, dated October 1, 2007, and recorded October 2, 2007 in the Essex County Clerk's Office at Book 1552, Page 122.

The variance site is located on Main Street in the Village of Lake Placid and contains 51± feet of shoreline along Mirror Lake. The site is improved by a pre-existing building located 30± feet from the mean high water mark of the lake. The building is 40 feet wide, facing Mirror Lake and Main Street, and currently contains mixed residential and commercial uses with office space and a portion rented as the Black Bear Restaurant. The restaurant faces Mirror Lake, with windows along approximately three-quarters of the floor to ceiling height. Restaurants have operated on the site for approximately 10 years, with no available outdoor seating.

The variance site is located in a Hamlet land use area along the most densely developed portion of the highly developed shoreline of Mirror Lake. This section of shoreline is characterized by small lots with commercial and residential structures that either adjoin or are located within a few feet of each other. Directly to the south of the variance site is a 0.1± acre parcel with a commercial and residential building containing a retail store. The building to the south is adjacent to the building on the variance site. Directly to the north of the site is a 0.1± acre parcel with a mixed commercial and residential building that includes a restaurant and was the subject of Agency Permit and Order 2012-84. The building to the north is separated from the building on the variance site by a few feet. Other nearby and adjoining uses include restaurants, commercial office space, retail stores, tourist attractions, tourist accommodations, a public park, and residential uses characteristic of the business district of the Village of Lake Placid. The variance site is visible from public use areas, including Mirror Lake and Main Street.

Variance Request

The applicant has requested a variance of 28 feet from the 50-foot setback requirement to allow for the construction of an 8 foot by 40 foot elevated one-story covered porch attached to the first floor of a lawfully pre-existing building located partially within the shoreline setback of Mirror Lake. The porch will extend 8 feet closer toward Mirror Lake than the existing structure and will be located 22 feet from the mean high water mark of Mirror Lake at its closest point. Access to the covered porch will occur from the interior of the building, with emergency egress also through the building. The porch is to serve the existing restaurant, and the applicant's objective is to provide approximately 20 outdoor seats for restaurant patrons. Specifically, the applicant requested the porch to allow five 4-person tables to be located in a single line facing the lake, with the size of the porch being the "most narrow...to accommodate small tables, patrons and staff safely." Stormwater runoff generated by the porch will be treated on-site, and the existing vegetated buffer will be maintained. No new retail or expanded residential use was proposed.

The variance proposal is shown on the following plans, prepared by ADK Drafting Services, and dated April 9, 2014, with a final revision date of March 1, 2016:

Sheet 1 - Title Sheet
Sheet 2 - Site Plan
Sheet 3 - 1st Floor Plan
Sheet 4 - Lake Elevation
Sheet 5 - Foundation Plan
Sheet 6 - 1st Floor Framing Plan
Sheet 7 - 2nd Floor Framing Plan
Sheet 8 - Roof Framing Plan
Sheet 9 - Building Sections 1-1
Sheet 10 - Building Sections 1-2
Sheet 11 – Building Sections 1-3
Sheet 12 – Main Street View
Sheet 13 – Side Elevation
Sheet 14 – Electrical Plan

The proposal is also shown on the *Stormwater Pollution Prevention Plan*, dated March 4, 2016, and Drawing No. C1 prepared by Thomas J. LaBombard, P.E.

Reduced-scale copies of Sheets 2, 3, and 4 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

1. Following receipt of the variance application, the Agency notified all parties as required by Agency regulations. No written comment letters were received during Agency review of the variance application.
2. On May 4, 2016, the Agency held a public hearing on the variance request in the Village of Lake Placid. The hearing was attended by Agency staff, the applicant, and the tenant/owner of the Black Bear Restaurant. At the hearing, the applicant provided testimony that while his building overlooks Mirror Lake, the tenant operating the Black Bear Restaurant has difficulty drawing patrons into the restaurant during the warmer weather months because outside dining is not available. Nearby and adjoining restaurants offer outside seating, and potential patrons choose to dine where outdoor seating is available. The applicant stated that current and previous restaurant tenants had requested the ability to provide outdoor dining “in order to grow their business” and “to remain competitive” with these other restaurants. The applicant indicated that an eight foot area would provide a reasonable amount of space for restaurant service to each four-person table on the porch and would allow for ADA compliance. Finally, the applicant discussed the fact that his initial proposal had included a patio in addition to the covered porch, but that the patio was no longer part of the proposal.

The tenant/owner of the Black Bear Restaurant also spoke at the hearing, confirming the applicant's statement that allowing for outdoor dining would improve his restaurant business.

3. On December 9, 2015, The Town of North Elba/Village of Lake Placid Zoning Board of Appeals approved a variance for the covered porch, with conditions requiring APA approval and that the porch not be enclosed with solid walls. No public comments were received during the municipal review of the proposal.
4. Pursuant to a letter dated December 21, 2015, New York State Office of Parks, Recreation, and Historic Preservation advised that the covered porch will have no impact on archaeological and/or historic resources listed in or eligible for the New York State and National Registers of Historic Places.

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 of the Agency's regulations. 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.

If the requested variance were denied, the applicant and his tenants would be denied the ability to provide outdoor restaurant seating. The applicant provided testimony that the ability for the restaurant to remain economically competitive is reduced without outdoor seating.

The public purposes of the shoreline restrictions are to protect water quality and the qualities of Adirondack shorelines. Granting the variance will minimally impact these public purposes. Water quality will be protected because any stormwater generated from the covered porch will be treated on site and the existing vegetated buffer will be maintained. The quality of the shoreline of Mirror Lake will not be impacted because the covered porch is consistent with the densely developed, business district portion of the shoreline of Mirror Lake, and the porch will be backdropped by existing development.

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

During the public hearing, the applicant provided testimony that an 8 foot area would provide a reasonable amount of space for restaurant service to each four-person table on the porch and would allow for ADA compliance. As the existing building is 40 feet wide, the 8 foot by 40 foot deck will allow for one line of five, 4-person tables along the covered porch. In addition, the initial variance proposal requested a patio as well as the covered porch, but the patio was later deleted from the proposal.

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

No negative comments were received during the Agency's review of the variance request. There were also no negative comments received during the review of the project at the municipal level.

Because the variance site is located in a Hamlet land use area along an intensely developed section of shoreline and the covered porch will be backdropped by existing development, construction of the porch would not create a substantial detriment to landowners looking across Mirror Lake toward the project site. Review of the application materials and photographs of the site and adjacent land uses indicates that construction of the porch would also not result in any impacts on the views of Mirror Lake that adjoining landowners currently have when looking toward the lake from their properties. The only potential visual impact to an adjoining landowner would be that the landowner to the south could see the porch when looking toward the north end of Mirror Lake while leaning out of a window or porch.

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

It is not possible to expand the existing restaurant to the north or south due to the existing buildings on the neighboring properties. It is not possible to expand the building to the west, because the building is adjacent to Main Street. Eastward toward Mirror Lake is the only available land owned by the applicant.

The applicant has already installed 3/4 length windows to maximize views of Mirror Lake while seated inside the restaurant. Alternatives that were considered instead of the covered porch were the installation of floor to ceiling windows or articulating windows (garage door style). These alternatives were rejected because they would not provide the targeted atmosphere of dining outside. In support of its rejection of these alternatives, the applicant testified that the ability for the restaurant to remain economically competitive is reduced without outdoor seating.

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

The variance site is a 0.14± acre parcel bound by commercial uses to the north and south, the shoreline of Mirror Lake to the east, and Main Street to the west. The existing building is already lawfully non-compliant with the shoreline restrictions, and any further expansion could only occur within the 50 foot setback area because of the physical limitations to the north, south, and west.

§ 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.

Granting the variance will not adversely affect the natural, scenic, and open space resources of the Park and or the adjoining water body, or aesthetic character of the area, provided there is compliance with erosion control and stormwater management measures, compatible exterior colors, shielded outdoor lighting, and no removal of shoreline vegetation.

§ 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 water quality, aesthetic impacts, and nearby and adjoining landowners 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 authorization to undertake installation of the covered porch shall expire four years from the date this Order is recorded in the Essex County Clerk's office, unless construction of the porch has been completed in accordance with the plan sheets by that date or written authorization has been obtained from the Agency extending the deadline for construction.
3. The covered porch shall be constructed as depicted on the plan sheets referenced herein. Within 60 days of completing the covered porch authorized herein, a qualified design professional shall provide written certification to the Agency that the structure was built in compliance with the approved plans.

Any changes to the locations, sizes, dimensions, or other aspects of the covered porch shall require a new or amended Agency Order or a letter of compliance. Construction of any additional structure within the shoreline setback area, including any patio, shall also require a new or amended Agency Order or a letter of compliance.

Color

4. The exterior surface of the covered porch shall be maintained in the colors depicted in the perspective sketches on Sheet 3 of the project plans referenced herein.

Outdoor Lighting

5. All new free-standing and building mounted outdoor lights associated with the covered porch shall employ full cut-off fixtures that are fully shielded to direct light downward and not into the sky or toward Mirror Lake or adjoining property.

Erosion and Sediment Control/ Stormwater Management

6. Prior to any land disturbance associated with construction of the covered porch, silt fence shall be installed along the entire length of shoreline on the project site and maintained until construction is complete. The silt fence shall be installed in accordance with the standard included in the current edition of the New York State Standards & Specifications for Erosion and Sediment Control.
7. Stormwater runoff shall be managed in accordance with the *Stormwater Pollution Prevention Plan*, dated March 4, 2016, and Drawing No. C1 prepared by Thomas J. LaBombard, P.E.

Shoreline Cutting

8. No shoreline vegetation shall be cut, culled, trimmed or removed without prior Agency review and approval. This condition 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.

Other Regulatory Permits and Approvals

9. Prior to use of the covered porch, the applicant shall obtain all necessary approvals from Town of North Elba, the Village of Lake Placid and the New York State Department of Health.

CONCLUSION

The Agency has considered all of the standards and factors for issuance of a variance as set forth in 9 NYCRR Parts 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 , 2016.

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 2016, 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:VY:slp