


THIS IS A TWO-SIDED DOCUMENT

 <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 www.apa.ny.gov</p>	<p>APA Permit and Order Granting Variance 2016-0133</p>
<p>In the Matter of the Application of</p> <p>FARLEY P. TIERNEY, III and KERRIE TIERNEY Permittees</p> <p>for a permit pursuant to § 809 of the Adirondack Park Agency Act and for a variance pursuant to Executive Law § 806</p>	<p>Date Issued: January 5, 2023</p> <p>To the County Clerk: Please index this Order in the grantor index under the following names applicant and all landowners names:</p> <ol style="list-style-type: none">1. Farley P. Tierney, III2. Kerrie Tierney

SUMMARY AND AUTHORIZATION

Farley P. Tierney, III and Kerrie Tierney (applicants) are granted a permit, as conditioned herein, authorizing the construction of a single family dwelling, and an Order, as conditioned herein, authorizing a variance from the applicable 200-foot minimum shoreline lot width required by Section 806(1)(a)(1) of the Executive Law (Adirondack Park Agency Act or APA Act) to allow for the construction of a single family dwelling on a lot with less than 200 feet of shoreline on Lake George in an area classified Resource Management by the Official Adirondack Park Land Use and Development Plan Map in the Town of Ticonderoga, Essex County.

This authorization shall expire unless recorded in the Essex County Clerk's Office within 60 days of issuance of a signed and notarized permit and order. The signed and notarized Permit and Order shall be recorded in the names of all persons listed above and in the names of all owners of record of any portion of the project and variance site on the recordation date.

The project and variance shall not be undertaken or continued unless the project and variance authorized herein are in existence within five years from the date the permit and order is recorded. The Agency will consider the project and variance in existence when this permit and order is recorded.

The project and variance shall be undertaken in compliance with all conditions stated herein. Failure to comply with this Permit and Order is a violation and may subject the permittee, successors, and assigns to civil penalties and other legal proceedings.

This permit and 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 project and variance, nor does it authorize the impairment of any easement, right, title or interest in real or personal property.

Nothing contained in this permit and 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.

PROJECT AND VARIANCE SITE

The project and variance site is the Resource Management portion of a 2.44±-acre parcel of land located on Black Point Road in the Town of Ticonderoga, Essex County. The project and variance site is a portion of Tax Map Section 160.35, Block 1, Parcel 6.2 (Parcel 6.2), and is described in a deed from Timothy C. Kingsley to Farley P. Tierney, III and Kerrie Tierney and recorded in the Essex County Clerk's Office as Instrument Number 2018-1164. The project and variance site boundaries are depicted on "Map of Survey Lands of Timothy C. Kingsley" dated May 17, 2012, and recorded in the Essex County Clerk's Office as Instrument Number 2012-3333.

The project and variance site is located east of the centerline of Black Point Road. Parcel 6.2 also contains Moderate Intensity Use lands located west of the centerline of Black Point Road. Parcel 6.2 contains 55±-feet of shoreline on Lake George. The project and variance site is vacant. Within the existing limits of vegetation clearing on the project and variance site, slopes are between 0 and 5%; and east of the existing limits of vegetation clearing and the existing overhead utility easement is forested undeveloped land that contains slopes between 15 to 34 percent.

West of the centerline of Black Point Road and north and south of Parcel 6.2, adjoining and nearby properties are developed by docks and residential structures within a Moderate Intensity Use land use area. East of the centerline of Black Point Road and north and south of the project and variance site, adjoining and nearby properties are developed by residential and accessory structures within a Resource Management land use area.

The project and variance site constituted a portion of a larger property on the May 22, 1973, enactment date of the Adirondack Park Land Use and Development Plan, and was created by subdivisions from the Resource Management portion and the Moderate Intensity Use portions of the larger property in 1976 and 1995. As these subdivisions occurred on Resource Management lands, it appears that an Agency permit was required for their undertaking. Agency records indicate that no permit was obtained. By issuance of this permit, the project and variance site shall be recognized as lawful for Agency purposes.

PROJECT AND VARIANCE REQUEST

The project as conditionally approved herein involves the construction of a single family dwelling approximately 167 feet east of the mean high water mark of Lake George on the project and variance site.

The variance request involves construction of a single family dwelling on a lot without the minimum required shoreline lot width of 200 feet in a Resource Management land use area on the project and variance site.

The project and variance request are depicted and described on the following maps and plans:

- “Tierney Site,” in two sheets prepared by North Woods Engineering, PLLC; dated September 22, 2022, and received by the Agency on September 28, 2022 (Site Plans);
- “325 Black Point Rd.-Ticonderoga, NY / Tierney,” in three sheets, received by the Agency on November 10, 2021 (Structure Plans); and
- an unnamed annotated photograph received by the Agency on August 29, 2022, and an unnamed annotated photograph received by the Agency on October 11, 2022 (Visual Plans).

A reduced-scale copy of the Site Plans for the project and variance is attached as a part of this permit and order for easy reference. The original, full-scale maps and plans described in this paragraph are the official plans for the project and variance, with copies available upon request from Adirondack Park Agency headquarters in Ray Brook, New York.

AGENCY JURISDICTION/APPLICABLE LAWS

Pursuant to Section 809(2)(a) of the Adirondack Park Act, a permit is required from the Adirondack Park Agency prior to any subdivision in a Resource Management land use area in the Adirondack Park.

Pursuant to Section 809(2)(a) of the Adirondack Park Act, a permit is required from the Adirondack Park Agency prior to the construction of any single family dwelling on Resource Management lands in the Adirondack Park.

Section 806(1)(a)(1) of the Adirondack Park Act establishes a minimum lot width of 200 feet for construction of a single family dwelling in a Resource Management land use area that involves shoreline. The applicants requested a variance from this minimum lot width requirement pursuant to § 806(3)(a) of the Adirondack Park Act.

CONDITIONS

THE VARIANCE AND PROJECT ARE APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. This authorization shall expire unless recorded in the Essex County Clerk's Office within 60 days of the date of issuance.
2. This permit and order is binding on the permittee, all present and future owners or lessees of the project and variance site, and all persons undertaking all or a portion of the project and variance. Copies of this permit and order, the Site Plans and the Structure Plans shall be furnished by the permittee to all subsequent owners or lessees of the project and variance site prior to sale or lease, and by the permittee and/or any subsequent owner or lessee to all persons undertaking any development activities authorized herein.
3. The authorization to undertake the construction of the single family dwelling on the project and variance site shall expire five years from the date this permit and order is recorded in the Essex County Clerk's office, unless the construction of the single family dwelling has been completed in compliance with the Site Plans and the Structure Plans by that date or written authorization has been obtained from the Agency extending the deadline for construction.

4. In addition to complying with all terms and conditions of this permit and order, all future activities on the project and variance site shall be undertaken in compliance with the requirements of New York State's Adirondack Park Agency Act, Freshwater Wetlands Act, and the Adirondack Park Agency's implementing regulations [9 NYCRR §§ 570-588].
5. All deeds conveying all or a portion of the lands subject to this Permit and Order shall contain references to this Permit and Order as follows: "The lands conveyed are subject to Adirondack Park Agency Permit and Order Granting Variance 2016-0133, issued January 5, 2023, the conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
6. The project and variance site shall not be conveyed separately from the Moderate Intensity Use portion of Parcel 6.2.
7. Subject to the conditions stated herein, this permit and order authorizes the construction of the "Proposed Dwelling" and the "Proposed Mechanical Building" on the project and variance site in the location and footprint depicted on the Site Plans; and the height depicted and described on the Structure Height Plans. Any change to the location or dimensions of any authorized structure shall require prior written Agency authorization.
8. Construction of any additional structure on the project and variance site shall require prior written Agency authorization.
9. Pursuant to the Adirondack Park Agency Act, new structures greater than 100 square feet in size are prohibited on the Resource Management portion of the project and variance site within 100 feet, measured horizontally, of the mean-high water mark of Lake George.
10. Pursuant to the Adirondack Park Agency Act, structures greater than 100 square feet in size are prohibited on the Moderate Intensity Use portion of Parcel 6.2 site within 50 feet, measured horizontally, of the mean-high water mark of Lake George. Boathouses and docks, as defined under 9 NYCRR § 570.3, are excepted from this requirement.
11. All wastewater treatment infrastructure on the project and variance site shall be connected to and served by the municipal wastewater treatment system.
12. The project and variance shall be undertaken in compliance with the stormwater design and the erosion and sediment control depicted and described on the Site Plans.
13. Prior to undertaking any ground disturbance on the project and variance site, "Tree Protection Fence" shall be installed in compliance with the Site Plans.
14. When brought from off-site, all equipment, including but not limited to trucks, excavators, tractors, etc., and hand excavation tools such as shovels, rakes, and picks, to be used on the project and variance site shall be clean and free of soil, mud, or other similar material. If washed on the project and variance site, equipment shall be washed in one location to prevent the distribution of propagules among different wash sites.

15. Any new free-standing or building-mounted outdoor lights shall employ full cut-off fixtures that are fully shielded to direct light downward and not into the sky or toward Lake George, Black Point Road or adjoining properties.
16. All exterior building materials, including roof, siding, and trim, of any structure on the project and variance site shall be a dark shade of green, grey, or brown.
17. Inside the "Wooded Area" as depicted on the Site Plans and on the remainder of the project and variance site not depicted on the Site Plans, no trees, shrubs or other woody-stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed without prior written Agency authorization, except for the removal of trees for firewood for use on the project and variance site; and dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.
18. Between April 1 and October 31, no trees shall be removed or disturbed on the project and variance site without prior written Agency authorization.
19. The undertaking of any activity involving wetlands shall require a new or amended permit.
20. There shall be no more than one principal building located on the project and variance site at any time. The proposed single family dwelling authorized herein constitutes a principal building.

PROCEDURAL HISTORY (VARIANCE REQUEST)

Following receipt of the variance application, the Agency notified all parties as required by the Agency regulations. On November 8, 2022, the Agency held a public hearing on the variance request. The hearing was attended by Agency staff, the applicant Farley P. Tierney, III and two members of the public. One public comment was received during the hearing asking questions about the proposed variance. The Agency received two written public comments expressing objections to the variance request.

DISCUSSION (VARIANCE REQUEST)

The Agency may grant a variance where there are practical difficulties in carrying out the restrictions set forth in Section 806(1)(a)(1) 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.

The public purpose served by the Agency's shoreline restrictions include protection of the water quality and aesthetics of Lake George.

Denial of the variance request would impact the applicant's ability to construct a single family dwelling on the project and variance site.

As proposed, the project and variance request will protect the water quality of Lake George by stormwater and erosion and sediment control measures that will be installed during

construction of the Shallow Grassed Retention Area, Proposed Dwelling and Proposed Mechanical Building as depicted and as described on the Site Plans. The proposed single family dwelling will be located within existing limits of vegetation clearing in a relatively flat area. The quality of the shoreline will be protected as the proposed single family dwelling will be located between existing adjacent and nearby dwelling footprints to minimize visibility, and will be approximately 167 feet from the mean high water mark of Lake George, with an intervening road between the proposed dwelling and Lake George. The quality of the shoreline will be further protected by limiting vegetation removal on the project site.

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

As proposed, the single family dwelling is located approximately 167 feet from the mean high water mark of Lake George, thereby avoiding the need for a shoreline structure setback variance. The level topography west of the Wooded Area will minimize visibility of the proposed structures from Lake George relative to the more visible high topography east of the Wooded Area as depicted on the Site Plans. The location of the proposed single family dwelling minimizes the visual impacts from adjoining and nearby landowners, Lake George and Black Point Road by utilizing existing limits of vegetation clearing.

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

As proposed, the location of the single family dwelling is oriented to maximize the setback distances to adjoining northern and southern lots. The proposed single family dwelling will be partially screened from nearby landowners by existing residential and accessory structures located on adjoining and nearby lots. The construction of the proposed single family dwelling in this location is consistent with structures located on adjoining and nearby lots.

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

The applicants were unable to acquire additional adjoining lands to increase their shoreline lot width and avoid the need for a variance. There is no currently available alternative to the proposed dwelling location or design on the project and variance site that would obviate the need for a variance.

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

The difficulty on the project and variance site arose when the lot was created by subdivision after August 1, 1973, without an Agency permit by a prior owner.

§ 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.

Construction of the proposed single family dwelling in non-compliance with the approved plans, without stormwater and erosion and sediment control measures, and without vegetation cutting limits could cause erosion and surface runoff, and lead to adverse changes to water quality of Lake George and the aesthetic character of Lake George. In addition, construction

of the proposed single family dwelling without restrictions on vegetative cutting, exterior lighting, and building color could result in impacts to the aesthetic character of the shoreline of Lake George.

Adherence to the variance as depicted and as described on the Site Plans and the Structure Plans and as conditioned herein will minimize visibility of the proposed dwelling to the greatest extent feasible and protect the resources of the Park and adjoining water bodies.

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

The conditions included in this Order will ameliorate any potential adverse effects from the requested variance. Conditions regarding wastewater, stormwater, vegetation cutting, and erosion and sediment control, and adherence to the approved plans will ensure that there will be no adverse effects from the granting of the variance.

CONCLUSIONS OF LAW

Class B Project

The Agency has considered all statutory and regulatory criteria for project approval set forth in the Adirondack Park Agency Act and 9 NYCRR Part 574. The Agency hereby finds that the project as conditioned herein:

- a. will be consistent with the land use and development plan;
- b. will be compatible with the character description and purposes, policies, and objectives of the Resource Management and Moderate Intensity Use land use areas;
- c. will be consistent with the overall intensity guidelines for the Resource Management and Moderate Intensity Use land use areas;
- d. will comply with the shoreline restrictions of § 806 of the Adirondack Park Agency Act except as approved in the variance granted herein;
- e. will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project.

Variance

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.

ORDER issued this 5th day
of January, 2023.

ADIRONDACK PARK AGENCY

BY: B Rice
Barbara Rice, Executive Director

STATE OF NEW YORK
COUNTY OF ESSEX

On the 5th day of January in the year 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared Barbara Rice, 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 they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Stephanie L. Petith
Notary Public, State of New York
Reg. No 01PE6279890
Qualified in Franklin County
Commission Expires April 15, 2025

Stephanie L. Petith
Notary Public

