


THIS IS A TWO-SIDED DOCUMENT

 <p><b>NEW YORK</b> STATE OF OPPORTUNITY.</p> <p><b>Adirondack Park Agency</b></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 Order Granting Variance <b>2022-0216A</b></p>
<p>In the Matter of the Application of</p> <p><b>MICHAEL AQUINO CHERYL AQUINO</b></p> <p>for a variance pursuant to Executive Law § 806</p>	<p>Date Issued: February 20, 2024</p> <p>To the County Clerk: Please index this Order in the grantor index under the following names:</p> <ol style="list-style-type: none"><li><b>1. Michael Aquino</b></li><li><b>2. Cheryl Aquino</b></li></ol>

**SUMMARY AND AUTHORIZATION**

Michael Aquino and Cheryl Aquino (“applicants”) are granted a variance, as conditioned herein, from the applicable 75-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 a 7.8-foot+/- ridgeline height increase and a 50 square foot expansion of a pre-existing single family dwelling located within the 75-foot shoreline setback from Pleasant Lake, in an area classified Rural Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Stratford, Fulton 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.

This order amends and supersedes Order 2022-0216 in relation to the project site. The terms and conditions of Order 2022-0216 shall no longer apply to the project site.

**APPLICABLE LAWS**

Section 806(1)(a)(2) of the APA Act establishes a minimum shoreline setback of 75 feet from the mean high-water mark of Pleasant Lake for all 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 0.58±-acre parcel of land identified on Town of Stratford Tax Map Section 36.19, Block 1, as Parcel 4.5, and described in a deed from Albert Scalera and Alexandria Scalera to Michael Aquino and Cheryl Aquino, dated October 20, 2000, and recorded January 10, 2001 in the Fulton County Clerk's Office at Book 878, Page 201. The variance site is located in a residential neighborhood accessed from West Shore Road

and contains approximately 390 feet of shoreline on Pleasant Lake. The site is improved by a circa 1942 single family dwelling that is approximately 2,088 square foot in footprint and 23.75 feet in height, as well as docks, decks, patios, sheds and retaining walls along the shoreline.

The existing dwelling is located entirely within the 75-foot shoreline setback of Pleasant Lake. Large white pine, maple and other native trees and shrubs partially screen the existing structures from adjoining properties and Pleasant Lake.

### **Variance Request**

The variance request involves the construction of a 100-square foot lateral screened porch addition along the southern side of the existing dwelling away from the eastern shoreline and entirely within the 75-foot setback from Pleasant Lake. The second floor roof farthest from the eastern shoreline is proposed to be increased to 7.82 feet in height. The expansion will not increase the occupancy of the existing dwelling and will be no closer to the mean high water mark than the existing dwelling. The proposed expansion will be constructed in the style of the existing dwelling and a dark shade of green, gray or brown. No vegetative cutting is proposed and there will be minimal soil disturbance on the site resulting from the requested expansion. As proposed, the variance request results in a decrease in impervious surface area on the variance site.

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

- a plan titled "Aquino Residence Pleasant Lake Stormwater Plan and Details," prepared by SRA Engineers, dated December 6, 2022 and last revised December 22, 2023 (Stormwater Plan);
- two sheets labelled APA201 and APA202, titled "Aquino Residence Pleasant Lake," prepared by Verdant Architecture and received by the Agency on January 3, 2024 (Elevation Plan); and
- a diagram titled "Aquino Residence, Pleasant Lake," prepared by Verdant Architecture and received by the Agency on January 3, 2024 (Site Plan).

A reduced-scale copy of the Site Plan is 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 Agency regulations. On February 16, 2024, the Agency held a public hearing on the variance request. The hearing was attended by Agency staff, applicant Michael Aquino and the applicants' authorized representatives Peter Pesano and Timothy Wade. No members of the public attended the hearing and no comment letters regarding the proposal 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.**

The public purposes served by the Agency's structure setback requirements include protection of the water quality and aesthetics of Pleasant Lake.

Denial of the variance request would impact the applicant's ability to expand the pre-existing single family dwelling and meet their objective to increase the living area space of the pre-existing single family dwelling.

As proposed, the project will protect the water quality of Pleasant Lake as there will be a decrease in impervious surface area from the dwelling expansion. The quality of the shoreline will be protected as the expansion will be backdropped by the existing dwelling and vegetation when viewed from Pleasant Lake. The quality of the shoreline will be further protected as the proposal involves no vegetative cutting and minimal soil disturbance.

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

The project will not increase the occupancy of the existing dwelling and will be no closer to the mean high water mark than the existing dwelling.

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

Single family dwellings and residential uses characterize the area surrounding the variance site. The applicants have designed the height increase and expansion of the single family dwelling in a manner that retains the character and appearance of the residential shoreline by keeping the structure the same distance from the shoreline and maintaining a majority of existing vegetation. Although the porch expansion and height increase will be visible from the lake, the height expansion will be backdropped by the existing dwelling when viewed from Pleasant Lake and both expansions will be partially screened from adjoining properties by the existing dwelling and vegetation. The height increase will not impact views of the lake from neighboring properties.

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

There are no non-jurisdictional alternatives for expanding the footprint or increasing the height of the existing dwelling since the dwelling is located entirely within the 75 foot shoreline setback of Pleasant Lake.

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

The existing single family dwelling was constructed circa 1942, prior to the effective date of the Adirondack Park Agency Act and is entirely within the shoreline setback. The applicants purchased the property in 2000.

**§ 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 single family dwelling expansion and height increase will require no vegetative cutting and minimal soil disturbance. The proposal will also decrease the impervious surface area on the variance site by 14 square feet through implementation of the Stormwater Plan which includes permanent removal of 241 square feet of existing gravel driveway. The proposed expansion will be constructed in the style of the existing dwelling and will be a dark shade of green, gray or brown, and partially screened from Pleasant Lake and adjoining properties by the existing dwelling and retained vegetation.

The Stormwater Plan also includes a post-construction stormwater management feature consisting of gutter downspouts directed to a rain garden with a capacity of 419 gallons, providing an environmental benefit by treating approximately 279 square feet of existing impervious surface area. The rain garden will be planted with species native to the region.

Construction of the dwelling without restrictions on vegetative cutting, exterior lighting, and building color could result in impacts to the aesthetic character of the shoreline of Pleasant Lake. Changes to the variance site over time could alter the potential for adverse effects from construction of the expanded single family dwelling. Imposition of a five-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 and aesthetics of Pleasant Lake will be ameliorated by compliance with the following conditions:

1. This authorization shall expire unless recorded in the Fulton County Clerk's Office within 60 days of the date of issuance.
2. This order is binding on the applicants, all present and future owners of the project site, and all persons undertaking all or a portion of the project
3. The authorization to undertake construction of the height increase and expansion of the existing single family dwelling shall expire five years from the date this Order is recorded in the Fulton County Clerk's office, unless construction of the structure has been completed in accordance with the Site Plan, Elevation Plan and Stormwater Plan by that date or written authorization has been obtained from the Agency extending the deadline for construction.
4. The project 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.
5. Any new free-standing or building-mounted outdoor lights associated with the expanded single family dwelling authorized herein shall employ full cut-off fixtures that are fully shielded to direct light downward and not into the sky or toward Pleasant Lake or adjoining property.
6. All exterior building materials, including roof, siding and trim, of the single family dwelling authorized herein shall be a dark shade of green, grey, or brown.



7. Within 50 feet of the expanded single family dwelling, 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 dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.

**CONCLUSION**

The Agency has considered all 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.

ORDER issued this 20<sup>th</sup> day  
of February, 2024.

ADIRONDACK PARK AGENCY

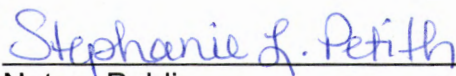
BY: 

David J. Plante, AICP CEP  
Deputy Director, Regulatory Programs

STATE OF NEW YORK  
COUNTY OF ESSEX

On the 20<sup>th</sup> day of February in the year 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared David J. Plante, 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

  
Notary Public

