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**Adirondack
Park Agency**

P.O. Box 99, 1133 NYS Route 86
Ray Brook, New York 12977
Tel: (518) 891-4050
www.apa.ny.gov

DRAFT
APA Order Denying
Variance
2021-0249

Date Issued: XXXX

In the Matter of the Application of

ANDREW P HAWKINS
LISA A WALSH

for a variance pursuant to Executive Law §806

SUMMARY AND DENIAL

Andrew P. Hawkins and Lisa A. Walsh are denied a variance from the applicable 100-foot shoreline structure setback required by § 806(1)(a)(2) of the Executive Law (Adirondack Park Agency Act or APA Act) for the expansion of a lawfully existing non-conforming boathouse by 437.4 square feet to add a third covered boat slip on the shoreline of Spitfire Lake in an area classified Resource Management by the Official Adirondack Park Land Use and Development Plan Map in the Town of Brighton, Franklin County.

APPLICABLE LAW

Executive Law § 806 establishes shoreline restrictions “to provide adequate protection of the quality of the lakes, ponds, rivers and streams of the park and the qualities of their shorelines.” In Resource Management land use areas, Executive Law § 806(1)(a)(2) requires that all principal buildings and accessory structures in excess of one hundred square feet in size be set back at least 100 feet from the shoreline of any lake.

Boathouses and docks as defined in § 570.3(c) and (j) of Agency regulations are exempted from this shoreline setback requirement. As defined under § 570.3(c) a boathouse has a footprint of 1,200 square feet or less and a height of 15 feet or less. Pursuant to 9 NYCRR § 575.5, lawfully existing non-conforming boathouses may be replaced in kind in the same location, but may not be expanded in any direction without an Agency variance.

Executive Law § 806(3)(a) authorizes the Agency to grant a variance from the shoreline restrictions if the applicant establishes that there are practical difficulties in carrying out the restrictions set forth in Executive Law § 806(1)(a)(2). Section 576.1(b) of Agency regulations provides that a variance will be granted when “the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the shoreline

restriction.” In determining whether to grant a variance, the Agency must consider the factors established in 9 NYCRR § 576.1(c).

RELEVANT FACTS AND BACKGROUND

Variance Site

The variance site is a 7.02±-acre parcel of land classified Resource Management by the Official Adirondack Park Land Use and Development Plan Map, and is identified on the Town of Brighton Tax Map as Section 395, Block 1, Parcel 4.100. The site is described in a deed from Timothy Mullins and Michele Mullins to Andrew P. Hawkins and Lisa A. Walsh, dated June 28, 2016, and recorded July 1, 2016 in the Franklin County Clerk's Office under Instrument Number 2016-3218.

The variance site is developed with a single family dwelling constructed circa 2003, a cabin constructed circa 2002, a woodshed, and the lawfully existing non-conforming boathouse further described below. The single family dwelling and cabin are replacement structures for buildings that pre-dated the August 1, 1973 effective date of the Adirondack Park Agency Act. The lot is primarily wooded, except for the areas occupied by the buildings on the lot. The single family dwelling is located approximately 75 feet from the mean high water mark of Spitfire Lake at its closest point and is partially screened by vegetation.

The variance site is accessible by boat, as well as a logging road during at least the winter season, and contains approximately 275 feet of shoreline frontage on Spitfire Lake on the southern portion of the property. The shoreline consists of coniferous and deciduous trees, as well as fringe wetlands along the shore. The shoreline of the property is improved by a 1,029±-square-foot non-conforming boathouse, 25 feet 4 inches in height constructed circa 2002-2003. Attached to the western side of the non-conforming boathouse is a non-conforming uncovered boat slip, and along the eastern side of the non-conforming boathouse is a dock approximately 35 feet in length. The structure is considered a lawfully existing non-conforming boathouse by the Agency because it is a replacement structure for a boathouse that pre-dated the August 1, 1973 effective date of the Adirondack Park Agency Act, and is non-conforming because it does not meet the Agency's definition of a boathouse due to its height. The existing non-conforming boathouse is green and brown in color and contains two covered boat slips. The non-conforming boathouse and uncovered slip and docks can accommodate four to five boats in covered and uncovered boat slips, and is visible from Spitfire Lake.

Background/Property History

On June 20, 2001, the Agency issued jurisdictional determination J2001-0298 finding that the conveyance of the property, and the replacement of the single family dwelling and associated accessory structures in existence as of August 1, 1973, including a boathouse, could be replaced in kind in the same location.

On June 28, 2016, the applicants purchased the variance site, as described in a deed from Timothy Mullins and Michele Mullins to Andrew P. Hawkins and Lisa A. Walsh, and recorded on July 1, 2016 as Instrument Number 2016-3218.

On April 6, 2021, the Agency issued jurisdictional determination J2021-0117 finding that the proposed expansion of the existing non-conforming boathouse on the variance site requires an Agency variance.

On October 19, 2021, the applicants submitted an application to the Agency seeking a variance from the shoreline restrictions for the expansion of the existing non-conforming boathouse.

Environmental Setting

Spitfire Lake is a navigable water body that has approximately 3.3 miles of shoreline. The variance site is one of approximately 36 parcels with shoreline frontage on Spitfire Lake. These shoreline parcels range in size from 1 acre to 442 acres, with shoreline frontage between 200 feet and 2,800 feet. The entire lakefront is classified as Resource Management, with the exception of one 2.2±-acre lot comprised of state land. Of the 35 privately-owned parcels on the shoreline, only 11 of the parcels are vacant. The lots with development have a mix of pre-existing and newer single family dwellings with shoreline structures, including docks and boathouses. The shoreline parcels within the vicinity of the variance site to the east are developed with single family dwellings, boathouses, and docks. The shoreline parcels within the vicinity of the variance site to the west are developed with single family dwellings, but the shoreline remains primarily undeveloped, except for docks.

Variance Record

The record for this variance request consists of the variance application, plans, maps, photographs, documents, other staff review materials, the recording of the public hearing, the applicants' submissions, a memorandum from Agency staff, XXX, and the staff presentation of the variance request to the Agency.

Variance Request

On October 19, 2021, the applicants submitted an Application for Variance from Shoreline Restrictions to the Agency, requesting a 100-foot variance from the shoreline restrictions of Executive Law § 806 to expand the existing non-conforming boathouse on the shoreline of Spitfire Lake. The applicants seek a variance authorizing the expansion of a lawfully existing non-conforming boathouse in order to house a third antique wooden boat in an enclosed structure for both summer usage and winter storage.

The proposed expansion is for a width of 16 feet 3 inches parallel to the shoreline and a length of 26 feet 11 inches perpendicular to the shoreline on the eastern side of the existing non-conforming boathouse, for a total increase in footprint of 437.4 square feet to the existing shoreline structure. The height of the proposed expansion is 15 feet 5 inches, which is less than the total height of 25 feet 4 inches of the existing non-conforming boathouse as measured from the boat berth floor to the top of an existing cupola.

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

- "Site Plan," prepared by Adirondack Design, and dated January 7, 2022 (Site Plan).

- “Hawkins Boathouse Addition Sheet A-2.0,” prepared by Adirondack Design, and dated January 7, 2022 (Elevation Plan).
- “Hawkins Boathouse Addition Sheet A-1.0,” prepared by Adirondack Design, and dated January 7, 2022 (Floor Plan).

A reduced-scale copy of the Floor 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 May 24, 2022, the Agency held a remote public hearing regarding the variance request. The hearing was attended remotely by Agency staff, the applicants, the applicants’ representatives, and one member of the public. No public comments were received during the hearing. The Agency has received fifteen written comments, fourteen in support of the project and one letter with concerns about the project.

The entire record as of XXX was forwarded to the Agency on XXX, along with a draft Order. Staff presented the variance request to the Agency’s Regulatory Programs Committee on XXX.

DISCUSSION

The Agency has reviewed the variance record and considered the standards and factors set forth in 9 NYCRR §576.1(b) and (c) and makes the following findings:

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

The variance being sought would authorize an increase in footprint of the non-conforming boathouse by 437.4 square feet, 16 feet 3 inches in width and 25 feet 11 inches in length, and would result in an overall structure that is 1,466.4 square feet and 25 feet 4 inches in height entirely within the shoreline setback of Spitfire Lake. The height of the existing non-conforming boathouse on the variance site is 10 feet 4 inches taller than any boathouse allowed under Agency law, and the proposed expansion, while not increasing the height of the overall structure, would result in a shoreline structure that is 266.4 square feet in footprint larger than any lawful new or replacement boathouse on this parcel.

The applicants originally submitted a smaller proposal with their April 2021 Jurisdictional Inquiry Form submission. The original proposal, as submitted in J2021-0117, requested an increase in width of 14.25 feet and an increase in length of 19.4 feet of the non-conforming boathouse, resulting in a total increase in footprint of 276.5 square feet. The original proposal is smaller in footprint than the request sought in the variance application by 160.9 square feet. During the variance hearing, the applicants’ representative stated the applicants pursued a larger variance request in order to more comfortably accommodate the applicants’ boats, but that it may be possible to reduce the size. The applicants stated that the increased size was necessary due to the length of a recently acquired boat.

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

The shoreline of Spitfire Lake is comprised mainly of private lands and one State land parcel. There are 35 privately-owned shoreline lots of which eleven are undeveloped. Boathouses, docks, and upland structures are visible from the shoreline on many of the developed shoreline parcels. The majority of the shoreline on Spitfire Lake is comprised of trees and vegetation. Adjacent to the project site are private residential lands. The three parcels to the west of the project site contain only docks along the shoreline. The three parcels to the east of the project site have two boathouses and a boat shelter, with one property containing a boathouse and boat shelter, another a boathouse, and the third being vacant. The adjoining landowner to the west sent a comment letter of support for the proposal. A comment letter was not received from the adjoining landowner to the east.

The proposed expansion would be five feet from the nearest property line and 250 feet from the nearest dock/boathouse, located on adjoining property. The expanded structure would not extend further into the lake than the existing shoreline structure.

The proposed shoreline structure will be visible from Spitfire Lake, and screening is not possible due to the location of the proposed expansion.

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

Under Agency regulations, the existing non-conforming boathouse cannot be expanded in any direction without an Agency variance. As stated in the variance application, the applicants' objective is to expand the existing non-conforming boathouse by constructing a third covered boat slip attached to the current non-conforming boathouse in order to house a third antique wooden boat in an enclosed structure for both summer usage and winter storage.

During the variance review process, staff asked the applicants to consider whether the existing shoreline structure could be modified to meet the Agency's boathouse definition of a structure 1,200 square feet in size or less with a height of 15 feet or less and reduce the existing dock to a maximum of 8 feet wide. Doing so would require the applicants to reduce the height of the overall structure, but also allow for a 171-square-foot expansion. While this alternative would not require a variance, the applicants responded that doing so would require the entire structure to be rebuilt and would not be practical or cost effective.

During the review process, the applicants were asked if they could use off-site covered boat storage facilities for their additional boat storage goals. The applicants responded that off-site storage would not allow the landowner to leave their boat-access only property in the event that "one or more" of the landowners' boats broke down. During the variance hearing the applicants conveyed that they are able to reach their property during the winter via a logging road. It is not clear whether this road is available or to what extent the road is usable during the summer season. Additionally, the record indicates that the applicants own at least three operational boats located on the variance site, such that all three boats would have to break down before access from the variance site using their own boats could not occur. In addition,

applicants indicated that a fourth boat is being refurbished and will be housed on the property.

The applicants were also asked to consider the construction of an on-site dry covered boat storage facility outside of the shoreline structure setback or to consider whether the entire height of the existing non-conforming boathouse could be raised to the existing ridgeline thereby providing two-tiered dry storage within the existing shoreline structure. While both of these alternatives would not require a variance, the applicants responded that these alternatives are “impractical.”

The applicants state that if the variance is not granted they will construct a second boathouse structure on the property that meets Agency requirements. According to the applicants, due to the configuration of the shoreline and water depth on the variance site, such a structure would have to extend almost 60 feet into the lake and, according to the applicants, require approvals from the New York State Department of Environmental Conservation and the Army Corps of Engineers. The applicants were asked to consider constructing a second boathouse on the property that is located closer to the existing non-conforming boathouse. The applicants simply responded that there is not another suitable location for a boathouse on the variance site other than the location of the existing non-conforming boathouse. Based on Agency records, a boathouse closer to the existing boathouse that extends less than 60 feet into the lake may be possible.

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

Since August 1, 2010, construction of a new or expansion of an existing covered shoreline structure to a height of more than 15 feet or a footprint greater than 1,200 square feet has been prohibited under Agency regulations, even if the structure will be used to store boats. The applicants purchased the property with the existing non-conforming boathouse in 2016, after this regulation was in place. Therefore, the applicants were on constructive notice prior to the purchase that the shoreline restrictions constrained their ability to expand the non-conforming boathouse.

The current lawfully existing non-conforming boathouse was constructed circa 2003 to replace a boathouse that was constructed prior to August 1, 1973, and was used by a prior landowner until the property was sold to the applicants in 2016. The applicants have used the existing non-conforming boathouse since their purchase of the property in 2016.

The applicants state in their submissions that the variance site is boat access only and three covered boat slips are desired to store the landowners’ three boats and ensure the landowners can leave the property in event of breakdowns on “one or more” boats. The record indicates that the property can be accessed by a logging road during the winter, although it is unclear if this logging road is usable during other seasons. The record fails to demonstrate why three covered boat slips are necessary to exit the property in the event of mechanical breakdowns of the landowners’ boats as there is currently space for four to five boats to be docked on the variance site; two in covered boat slips in the existing non-conforming boathouse and an additional two to three boats in dock slips.

According to the applicants’ statements made during the hearing, the difficulty arose due to the recent acquisition of an antique wooden boat that needs to be protected from the weather in an

enclosed structure. The applicants own two additional wooden boats that are already stored in the existing non-conforming boathouse. This difficulty, as presented by the applicants, is self-created.

§ 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 public purposes of the shoreline restrictions are to protect water quality and the qualities of Adirondack shorelines. Section 806 of the Adirondack Park Agency Act establishes shoreline setback restrictions that apply regardless of whether an Agency permit is required for a new land use or development or subdivision in order to protect the Park's shorelines. However, a structure that constitutes a boathouse as described in Agency regulations is not subject to the Agency's setback requirements. The Agency adopted its definition of the term "boathouse" in 2010 to further the purposes of the Agency's shoreline restrictions, in effect preventing the construction of large new shoreline structures and the associated water quality and visual impacts. Approving the applicants' request to expand an already non-conforming boathouse to a shoreline structure both taller in height and larger in footprint than allowed under Agency regulations would set a precedent for allowing structures larger than allowed under Agency regulations along Adirondack shorelines, undermining the Agency's ability to protect water quality and shoreline quality in the Park. The proposed shoreline structure would be visible from Spitfire Lake and screening of the structures is not possible. Approving the variance request would also exacerbate the visual and water quality impacts of the already non-conforming boathouse and single family dwelling located within the shoreline setback on the variance site.

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

Conditions restricting the structure to earth tone colors, requiring that all exterior lights be fully shielded and directed downward, and other limitations could be included to reduce some, but not all, adverse visual impacts of the proposed structure. Impacts to water quality could be reduced, but not eliminated, by requiring implementation of an approved erosion and sediment control plan, minimizing sediment runoff during construction.

§ 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 applicants' objective is to expand the existing non-conforming boathouse on the variance site by constructing a third covered boat slip in order to house a third antique wooden boat in an enclosed structure for both summer usage and winter storage.

The variance request would result in a shoreline structure that is 10 feet 4 inches taller and 266.4 square feet in footprint larger than any lawful new or replacement boathouse allowed under Agency law. The applicants originally submitted a smaller proposal with their Jurisdictional Inquiry Form. The record does not demonstrate that the variance request is for the minimum relief necessary.

There are alternatives to the proposal that would not require a variance, including replacing and expanding the existing non-conforming boathouse to the parameters allowed under Agency regulations; constructing a dry covered boat storage facility outside of the shoreline setback; utilizing off-site covered boat storage facilities; and constructing a second boathouse on the property in compliance with Agency regulations. The record demonstrates that there are feasible non-jurisdictional alternatives to the variance request that could meet the applicants' goals.

Applicants have clarified their objective in seeking the requested variance is to construct a third covered boat slip in order to store a third antique wooden boat in an enclosed structure. The record demonstrates that the existing shoreline structure has been used by the applicants since 2016 and a prior owner since its construction in 2003. The difficulty, as presented by the applicants, is self-created.

The requested variance would exacerbate the visual and water quality impacts of the already non-conforming boathouse and single family dwelling located within the shoreline setback on the variance site.

There are no conditions that could be imposed that would eliminate the adverse visual and water quality impacts of the proposed structure.

The harm to the applicants from denial of the variance request would be minimal as the difficulty is self-created, feasible non-jurisdictional alternatives exist, and the requested variance is not the minimum relief necessary. Granting the request has the potential to impact water quality and shoreline quality and to set a precedent for large shoreline structures Park-wide. Without the variance the applicants can still access and achieve reasonable use of their property and their shoreline. Therefore, the adverse consequences to the applicants resulting from denial of the variance are not greater than the public purposes of the Agency's shoreline setback restrictions.

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 applicants' variance request does not meet the approval criteria, and that the imposition of conditions will not sufficiently ameliorate the potential for adverse effects to the resources of the Park.

ORDER issued this day
of , 2022.

ADIRONDACK PARK AGENCY

BY: _____
Robert J. Lore
Deputy Director, Regulatory Programs

STATE OF NEW YORK
COUNTY OF ESSEX

On the day of in the year 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert J. Lore, 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.

Notary Public