



M E M O R A N D U M

TO: Richard E. Weber, Deputy Director
Regulatory Programs

FROM: Beth Phillips, Senior Attorney

DATE: February 7, 2012

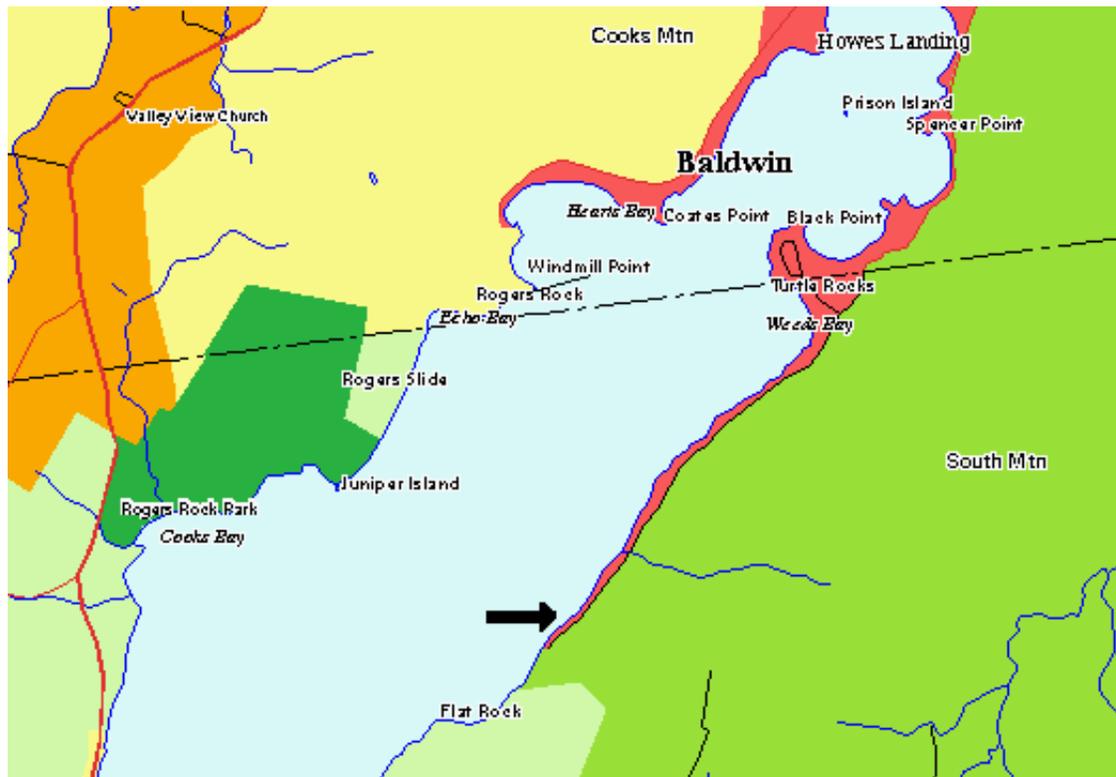
RE: Patricia Stafford's Request for Variance
P2003-0265

INTRODUCTION

The applicant Patricia Stafford seeks a variance from the shoreline restrictions of APA Act § 806 in order to construct a single family dwelling within an area designated Resource Management on the Adirondack Park Land Use and Development Plan Map, a class B regional project requiring an Agency permit pursuant to §810(2)(d)(1) of the Adirondack Park Agency Act. The applicant originally submitted a variance application in 2002(Exhibit 1) and submitted additional information on August 6, 2006 (Exhibit 5), October 7, 2009 (Exhibit 7), September 30, 2009 (Exhibit 8), February 14, 2011 (Exhibit 12), August 11, 2011 (Exhibit 17) and September 26, 2011 (Exhibit 14).

The variance application seeks Agency approval for a variance of 20 feet from the applicable 100-foot Resource Management shoreline structure setback pursuant to §806(1)(a)(2) of the Adirondack Park Agency Act (Executive Law, Article 27) to authorize placement of a single family dwelling 80 feet from the mean high water mark of Lake George. Section 806(1)(a)(2) and 9 NYCRR Part 575 require a minimum shoreline setback of 100 feet measured from the mean high water mark for structures greater than 100 square feet in size in a Resource Management land use area. The project also requires a Class B permit, pursuant to §810(2)(d)(1) of the Adirondack Park Agency Act, as it consists of the construction of a single family dwelling within an area designated Resource Management on the Adirondack Park Land Use and Development Plan Map. This memo is focused on the variance application.

The variance site is in the Town of Putnam, Washington County, on the east shore of Lake George on Black Point Way. A map showing the general location is below:



The applicant owns a 1.43 parcel of land bisected by Black Point Way. Black Point Way is the boundary between the Moderate Intensity Use area and the Resource Management area. A 0.26±-acre portion of the parcel is located on the northwesterly (shoreline) side of Black Point Way and is classified Moderate Intensity Use area and includes 316± feet of shoreline on Lake George. The 1.17±-acre portion located on the southeasterly side of the road where the single family dwelling is proposed is classified Resource Management.



As depicted on the map above, all of the applicant's shoreline is on the Moderate Intensity portion of the parcel. On the northern edge of the Moderate Intensity portion, the distance from the shoreline to Black Point Way is approximately 50 feet. Towards the southern edge of the Moderate Intensity portion, the distance from the shoreline to Black Point Way is as little as 18 feet. (For a more precise depiction of the area between the shoreline and Black Point Way, see Exhibit 15). The Moderate Intensity portion of the parcel does not include a single family dwelling building location which complies with the 50 foot structure setback.

DESCRIPTION OF THE REQUESTED VARIANCE

The variance as proposed would allow for construction of a new 2400-square foot 4-bedroom single family dwelling on the east side of Black Point Way in the Resource Management area. The dwelling will be located 80 feet from the mean high water mark of Lake George at its closest point. It will be 33 feet from Black Point Way at its closest point, and 40 feet from the road at the farthest point. The footprint of the proposed single family dwelling will be approximately 30 feet by 70 feet, including a 20-foot by 30-foot open deck, and a two-stall garage underneath the first floor. The structure will be 34 feet 6 inches tall as measured from the lowest grade to the highest point.

Memorandum to Richard E. Weber
P2002-265
February 7, 2012
Page 4

The dwelling will be connected to the municipal wastewater system. A 90-foot-long driveway will provide access from Black Point Way to the garage located in the basement of the dwelling.

A 4-foot-wide, 45±-foot-long wood chip path will provide access from Black Point Way to the shoreline of Lake George. One dock will be located at the shoreline. The proposed dock will be a U-shaped dock attached to the shoreline of Lake George via one 8-foot-wide by 2-foot-long section. Each arm of the U-shaped dock will be no wider than 8 feet in width. The dock is shown on a sketch plan attached to the Lake George Park Commission permit #5346-6-11, a copy of which was received at the Agency on October 11, 2011. (Exhibit 10).

PUBLIC HEARING

On Monday, November 7, 2011 at 1:30 pm at the Putnam Town Hall in Washington County, APA Hearing Officer Keith McKeever conducted a hearing pursuant to APA Act § 806 and 9 NYCRR 576.5. The hearing was noticed in the Glens Falls Post Star on October 21, 2011 and notice of the hearing was sent to the applicant and her representative, landowners within 500 feet of the variance site, the Town of Putnam, Washington County and the Local Government Review Board on October 19, 2012 (Exhibits 18 and 19). The applicant Patricia Stafford attended with Rich Jacobs, her husband, Michael Muller, her attorney, and Thomas Jarrett, the consulting engineer and authorized representative. Also present at the hearing were Colleen Parker, Environmental program Specialist, Ariel Lynch, Environmental Program Specialist, Shaun LaLonde, APA Engineer, and Senior Attorney Elizabeth Phillips. There were several members of the public present. Subsequent to the hearing the applicant, through her attorney, agreed to an extension of time to bring this variance application before the Agency.

Thomas Jarrett testified that it would be impractical to build the single family dwelling 100 feet from the shoreline. The house location is on a plateau or bench in front of a slope. He testified that building the house further back at the same elevation would require cutting into the slope which would cause soil disturbance and a new retaining wall. To build at a higher elevation would make the house more visible from the lake. The proposed house

Memorandum to Richard E. Weber

P2002-265

February 7, 2012

Page 5

location is on a level area (which the applicant's contractor had cut and graded in approximately 1999). The house would be served with a driveway and a dock permitted by the Lake George Park Commission (LGPC). There is an existing sewer line and a private well. The applicant's Stormwater Management Plan was also approved by the LGPC.

Mr. Jarrett stated that moving the house back twenty feet would exacerbate groundwater conditions because the slope is steep and contains groundwater, and cutting into the slope will create an increased need to control the groundwater's impact on the house and on erosion close to the shore.

The applicant's husband Rich Jacobs testified that when he bought the property to build a home he obtained a permit from the Town of Putnam and hired a contractor to clear the land in 1999. Mr. Jacobs received a call regarding excessive clearing and put the project on hold. He subsequently hired another contractor and applied for a permit and variance from the agency. He transferred the property to his wife, who is now the owner of record. He also testified that he paid \$5,000 for a plan for a septic system, which was not approved by the Agency.

Both Mr. Jacobs and the applicant testified that they would agree to deed covenants prohibiting any conveyance of the Moderate Intensity portion of the lot separate from the Resource Management portion and restricting development on the Moderate Intensity portion.

EPS Colleen Parker testified regarding the history of this application. She testified that the plans have been changed over the years, and that the proposed house is smaller than earlier proposals. Staff had suggested that the house could be smaller than the current proposal and need a lesser variance (Exhibit 13), but the applicant did not want to further reduce the size of the house. She stated that the onsite waste water treatment system plans submitted were not approvable under APA and Department of Health Standards. There is now a municipal waste water system available at the variance site. She also testified that the variance would not have a substantial detriment to adjoining landowners or adversely affect existing resources if conditions are included to provide for storm water management, connecting to the municipal waste water

system, vegetative screening, limitation of size, height and color of structure, lighting limitations, and deed restrictions limiting subdivision of the parcel and development on the 0.26+-acre Moderate Intensity portion of the parcel.

Jane Breisheit submitted a comment letter at the close of the hearing opposing the variance (Exhibit 23). She expressed concern regarding the urbanization of the Lake George shoreline. She noted that the new sewer line on Black Point Way was intended to maintain the quality of lake, not to encourage new development.

Joseph Rota, a former Town Supervisor and Executive Director for the Adirondack Local Government Review Board, also spoke and stated that he felt that the project was approvable although he originally opposed it.

APPLICABLE LAW

Executive Law § 806 requires that all principal buildings and accessory structures in excess of one hundred square feet in a Resource Management area be set back at least one hundred feet from the shoreline of a lake. The Adirondack Park Agency may vary the restrictions if the applicant establishes that there are practical difficulties or unnecessary hardships in carrying out the strict letter of the restrictions. 9 NYCRR 576.1(a). The Agency regulations provide 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." 9 NYCRR 576.1(b). The purpose of the shoreline restrictions is protection of water quality and the quality of the shoreline itself. APA Act § 806(1). The variance regulations provide that "[t]he agency will not deny a variance, or refuse to consider proof of significant economic injury, on the sole ground that the practical difficulty or alleged economic injury is self-created." 9 NYCRR §576.4.

The parcel in question is one parcel, although it is divided by the road into Moderate Intensity and Resource Management Land Use Areas. "A subdivision of land solely along a land use area boundary does not require an agency permit," 9 NYCRR § 573.4(a). Therefore, without the proposed deed restrictions agreed to by the applicant, the

0.26±-acre Moderate Intensity portion could be subdivided without a permit. The Moderate Intensity portion is a long narrow strip of land between the road and the lake, with 316 feet of shoreline, ranging from 18 to 50 feet from the shoreline to the road.

The Adirondack Park Agency may vary the shoreline restrictions if the applicant establishes that there are practical difficulties or unnecessary hardships in carrying out the strict letter of the restrictions. Here, the applicants' objective is to construct a single family home on a lot with steep slopes. The practical difficulty associated with this objective is that building outside of the setback would require further cutting into the slope and/or building the house higher in a location more visible from the lake.

In determining whether a variance is appropriate under these circumstances, the Agency must consider whether the adverse consequences from denial of this request would outweigh the protection of the shoreline and water quality. In balancing these two considerations and determining whether to vary the restrictions, the Agency must consider the following factors:

- (1) whether the application requests the minimum relief necessary;
- (2) whether the variance will create a substantial detriment to adjoining or nearby landowners;
- (3) whether the difficulty can be obviated by a feasible method other than a variance;
- (4) the manner in which the difficulty arose;
- (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; and
- (6) whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects referred to in paragraph (5) above.

9 NYCRR 576.1(c). Each of these factors is discussed below:

1. Whether the application requests the minimum relief necessary

The proposed house is smaller than originally proposed and the applicant removed a deck in the front to minimize the required variance. The applicant's engineer testified as to the impracticality of moving the house further back towards the slope. As now proposed, the back of the house is approximately 10-14 feet from the toe of the slope. On the other hand, the applicant could build a smaller house requiring less of a variance. Staff requested the applicant to consider a smaller house, or a house set back further. (See Letter from Richard E. Weber III to Michael J. Muller, Esq., dated March 14, 2011, Exhibit 13). The applicant's attorney responded:

The applicants seek a minimum 20-foot variance which will allow the placement of a moderately sized dwelling in proper apportionment between the developable land that is available on this parcel distant from the shoreline while appropriately spaced from the substantial rise in land situate at the rear of the building lot. Consideration had been given to "sliding" the dwelling house location back into the slope, however, this would actually result in the main living level (within the interior of the house) having a back wall so close into the hillside that ventilation would be compromised and the possible path of emergency access vehicles for fire protection would be a concern. Relocating the proposed dwelling house slightly away from the natural slope so as to allow the rear of the house to be nominally 10 to 14 feet from the higher grade will allow a reasonable location on the lot. A requirement that the house be moved back into the existing slope by 20 feet, although it creates a "no variance" situation, would result in the rear facade of the dwelling along the entire basement as well as the second/main floor of the residence having no interior ventilation, no windows or doors and would prohibit emergency ingress and egress from the premises. Moreover, if situated "inside" the slope, taking into account snow load and snow accumulation, the house would create a potentially destructive ice and snow impoundment. The preferred scenario would be to provide for a 10-foot to 14-foot access at the rear of the dwelling, which reasonably

necessitates the 20-foot imposition upon the shoreline setback. The applicants verily believe that the variance sought is appropriate for more than mere esthetics.

Letter from Michael J. Muller to Richard E. Weber, III dated August 10, 2011 (Exhibit 17).

2. Whether the variance will create a substantial detriment to adjoining or nearby landowners.

EPS Colleen Parker testified that given Moderate Intensity classification of the shoreline and the level of the existing shoreline development, any detriment to adjoining landowners could be avoided by conditions such as vegetative screening, lighting restrictions, and restrictions on finish colors. The Visual Impact Overlay presented by the applicant (Exhibit 8) and aerial photography of the site (Exhibits 20 and show that the shoreline is heavily developed, with houses and accessory structures closer to the shoreline than this proposed dwelling. Also the proposed deed covenants would protect the shoreline portion of the applicant's lot to a greater degree than it would otherwise be protected.

3. Whether the difficulty can be obviated by a feasible method other than a variance.

The alternative of building further back may at this point create more environmental problems than granting the variance, based on the engineer Tom Jarrett's testimony regarding the impacts on groundwater conditions from cutting further into the slope. Staff found this testimony to be credible and persuasive. Mr. Jarrett also testified that raising the house would require a longer driveway, increasing impervious surface near the lake, and would be more visible from the lake. Another alternative would be to build a smaller house. In response to that suggestion from staff, the applicant's attorney wrote:

What is feasible involves economic practicality. In good faith, the applicants have, since 2002, created several variations of a plan for a year-round home situate on the subject parcel covering several configurations that attempt to balance

location, shoreline distance, existing vegetation, natural grade and overall size of a proposed residence. The applicants have reduced their expectations as to the overall size and shape of a residence. At the request of the APA, they have reconfigured the location of a primary deck area that would have been situated at the front facade of the residence appropriate to maximizing a lake view and logical ingress and egress from the front of their proposed home. In reconsidering all feasible alternatives and properly balancing their reasonable expectation that a lakefront home should have outdoor decking and outdoor living amenities, the applicants have logically removed the front facade design of a deck and have limited outdoor decking to a side area remaining in-line with the front facade of the dwelling. By doing so, the applicants have substantially reduced the setback relief that would have been required to encompass a larger deck at the front facade.

As planned, the dwelling house calls for an overall linear measurement of the width of the premises (from eave to eave) at 34 feet. Deducting the exterior width of each soffit (front and rear), the overall width between front and rear facade is a total 30 feet. Within the structure after deduction for the thickness of each exterior wall, the overall interior width is nominally 28.5 feet. Local and state building codes require a 42 inch minimum width for interior hallways. By rough calculation, there is approximately 25 feet of interior width available for spacial arrangement of open spaces (living room, family room, kitchen, dining room, etc) and private spaces (bathrooms, bedrooms, etc.). The applicants verily believe that the interior room layout and spacing are essentially moderate and the overall width between front and rear facades (i.e., 30 feet) is neither inappropriate nor excessive. Overall, the width of the house is a substantial reduction from the applicants' original expectation for opportunity for development, and this plan is the product of substantial compromise in order to "fit" the house on the lot with a reasonable setback from the shoreline. Relocating the entire house into the

steep grade in order to achieve a "no variance" scenario is not an acceptable or feasible proposition as noted in Criteria b. above.

Letter from Michael J. Muller to Richard E. Weber, III dated August 10, 2011 (Exhibit 17).

4. The manner in which the difficulty arose.

The difficulty faced by the applicant is based in part on the purchase of a lot which is difficult to build on, given the narrow strip of Moderate Intensity land and the shoreline setback for the Resource Management portion of the lot. The difficulty was increased by the grading done in 1999, which created a bench or plateau within the setback. However, the variance regulations provide that a variance should not be denied on the sole basis that the difficulty is self-created. The existing bench is now the most suitable building location on the parcel.

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.

During the course of review of this variance and Class B permit, staff had concerns regarding the effects of this proposed variance and permit on the natural, scenic, and open space resources of the Park and on Lake George. Those concerns have been addressed by the applicant through the Storm Water Management Plan approved by the Agency and the LGPC, the existence of a municipal wastewater collection and treatment system, vegetative cutting restrictions and screening requirements, and agreement to a restrictive deed covenant which would protect the shoreline portion of the property.

6. Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects referred to in paragraph (5) above.

The applicant Patricia Stafford testified that she would be amenable to a deed covenant that the shoreline parcel would not be conveyed separately or developed. If the variance

is granted, the 0.26±-acre portion on the shoreline side of the road shall be deed restricted to prohibit the construction of any dwelling or other structure greater than 99 square feet in size. This would protect the quality of the shoreline and the water quality of the lake, because without those restrictions the shoreline portion could be conveyed and the new owner could then seek a variance to build even closer to the shoreline.

Mr. Jarrett testified that the house would be painted in muted earth-tone colors and that vegetative cutting restrictions and erosion control would be implemented. As noted above, the Lake George Park Commission has granted a Storm Water Management Permit for the project as proposed. Staff testified at the hearing that the variance would not adversely affect existing resources if conditions are included to provide for storm water management, connecting to the municipal waste water system, vegetative screening, limitation of size, height and color of structure, lighting limitations, and deed restrictions limiting subdivision of the parcel and development on the 0.26±- acre Moderate Intensity portion of the parcel.

CONCLUSION

Staff believes that the requested variance would not adversely affect the natural and scenic resources of the shoreline and the adjoining water body or otherwise result in a substantial detriment to the adjoining or nearby landowners as long as conditions are included to provide for storm water management, connecting to the municipal waste water system, vegetative screening, limitation of size, height and color of structure, lighting limitations, and deed restrictions limiting subdivision of the parcel and development on the 0.26±-acre Moderate Intensity portion of the parcel. Staff testified at the hearing that the determination of whether the application requests the minimum relief necessary and whether the difficulty could be reasonably obviated by a feasible method other than a variance would be deferred to the Agency Board. However, given the protection to the shoreline which would be afforded by the restrictive deed covenants, staff recommends protection of the shoreline and water quality does not outweigh the adverse consequences from denial of this variance and that the variance should be granted with the conditions described above.