Adirondack
parkagency

Agency Review of Variance Referrals from Approved Local Land Use Programs 2008 Rule Making

The Agency 2008 Rule Making will not change shoreline variance procedures in towns with Agency-approved local land use programs (LLUP). These towns are:

Arietta	Day	Lake George (t)
Bolton	Edinburg	Lake George (v)
Caroga	Hague	Newcomb
Chester	Horicon	Queensbury
Chesterfield	Indian Lake	Westport
Colton	Johnsburg	Willsboro

All approved LLUP towns have shoreline setback criteria at least as restrictive as the APA Act. They all have a variance procedure to address land use and development that will not comply with these setbacks. All have a procedure to refer a variance approval to the Agency for review pursuant to Section 808 of the APA Act.

Local administration of these provisions varies, and in light of prior Agency regulations, the Agency did not view expansion within the shoreline setback area as involving the APA Act unless the Agency would also require a variance. Because of the 2008 regulation change, the Agency will now examine the variance record for the following:

- Expansion of a structure closer to the shoreline or increased in height, within the shoreline setback area;
- Lateral expansion toward lot sidelines within the shoreline setback area;
- Addition of bedrooms (or their equivalent) to a non-conforming structure that would involve an on-site wastewater system; and
- Impact on shoreline vegetation within the vegetation protection area related to the non-conforming structure expansion.

What follows is a brief review of the general procedures used by the Agency for review of APA Act shoreline variances administered by approved LLUP's.

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Local zoning standards that involve the APA Act, like variances to shoreline setback rules, are governed by provisions of a number of laws. A Town or Village with an Agency-approved LLUP has the authority to grant variances from its provisions, including the shoreline setback standards of APA Act Section 806 that are incorporated in the LLUP. However, certain variances are subject to Agency review pursuant to APA Act Section 808(3) and Section 582.6 of the Agency Regulations. Agency review of certain local variances applies outside of Hamlet classified areas and includes four types of variances: area variances from the shoreline restrictions and from intensity guidelines, use variances for uses not included on the compatible uses list, and other variances involving the Private Land Use and Development Plan.

The APA Act and the Agency Regulations require that the local government give written notice to the Agency within fifteen days of receipt of an application and provide pertinent information to the Agency. For those variances subject to Agency review, following decision by the Town, the decision and full record must be forwarded to the Agency. There is a thirty-day waiting period after the receipt by the Agency of a full record of a local variance approval during which the Agency may reverse or modify the variance; if no action is taken by the Agency within thirty days, the variance shall take effect.

The Agency tracks its review in its Master Action Data Base. The Local Government Services Unit will promptly identify any missing but essential part of the record, and may ask for an explanation of the materials received from the chairman of the zoning board of appeals, the local code administrator, or such other local officials. Review procedures and the types of variances issued by local government pursuant to an Agency-approved local land use program that must be reviewed by the Agency are stated in Part 582.6.

Agency Review of Approved Local Land Use Program Area Variances

Since variance review by zoning boards of appeals is governed by Town and Village Law, Agency staff review of an approved land use program variance works with the record developed under Town Law to determine whether the determination used the appropriate statutory basis as required by the APA Act.

In granting an area variance, Town Law, Section 267-b(3)(b), requires a record addressing the following five considerations and a sixth bolded below:

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
2. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance. Are there any feasible alternatives that would eliminate the need or minimize the size of the variance sought?
3. Whether the requested area variance is substantial.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

Town Law requires the zoning board of appeals must take each one of the factors into account. The zoning board of appeals may also decide that a lesser variance than the one requested would be appropriate, or may decide that there are alternatives available to the applicant which would not require a variance. **When granting a variance, a zoning board of appeals may only grant the *minimum* variance that it deems necessary and adequate, while at the same time preserving and protecting the character of the neighborhood and the health, safety and welfare of the community**.

Town and Village Law empower the board of appeals to impose reasonable conditions and restrictions which are directly related to and incidental to the proposed use of the property. Conditions should minimize the impacts of a project to water quality, the character of the neighborhood or the visibility of the structure. Conditions should also require on-site wastewater facilities meet current standards, planting to screen expanded structures, and/or natural plant buffers to protect water quality.

The review of a use variance has a similar set of considerations and requirements that are not reiterated in this document. See Town Law, Section 267-b(2).

Additional State Publications and Information Available through the Department of State and Adirondack Park Agency:

NYS Department of State James A. Coon Government Technical Series:

- Zoning Board of Appeals Procedures
- Guidelines for ZBA Applicants
- Conducting Public Meetings and Hearings
- Record Keeping Tips

Available on their web site at: www.dos.state.ny.us/lgss/