



TO: Regulatory Programs Committee

FROM: Richard Weber, Deputy Director, Regulatory Programs

DATE: October 24, 2012

RE: P2012-0153 - Town of Harrietstown and New York State Department of Transportation

SUMMARY

The variance site is a 0.584±-acre parcel located on Main Street in the Village of Saranac Lake, Town of Harrietstown, Franklin County, in an area classified as Hamlet by the Adirondack Park Land Use and Development Plan Map, on 108.6± feet of shoreline of the Saranac River and adjoining lands owned by the State of New York. The 0.584±-acre parcel is identified on the Village of Saranac Lake Tax Map as Section 447.77, Block 3, Parcel 22.

The Town of Harrietstown ("the Town" or "applicant") has requested an Agency variance for the replacement and expansion of an existing retaining wall located adjacent to the Saranac River, a recreational river under the New York State Wild, Scenic and Recreational Rivers Systems Act.¹ The existing retaining wall suffered significant damage during the spring 2011 flooding during which the wall was breached in at least one location. The new 105± foot replacement retaining wall is to be located in the same location as the existing 105± foot section. The applicant's proposal also seeks the installation of a 15 foot long, 3 foot tall new section of retaining wall that will extend to the existing NYS Route 3 bridge abutment and the installation of a 90± square foot access ramp.

Agency jurisdiction over the structure is limited to review of the variance request under APA Act § 806 and review of the portion of the project occurring on lands of the New York State Department of Transportation under § 814. For the reasons described below, Agency staff recommends approval of the draft Order attached as Attachment 1.

¹ The retaining wall site is located in a Hamlet land use area and therefore this project is not considered a rivers project.

Procedural History

On August 30, 2012, the Agency received an application from Joseph A. Garso, P.E. on behalf of the Town of Harrietstown, seeking a variance for the replacement and expansion of an existing 105± foot retaining wall, a new 15 foot section of retaining wall extending to the NYS Route 3 bridge abutment, and a 90± square foot concrete access ramp. A complete description of the variance proposal is found in the "Project and Variance Description as Requested" on pages 3-4 of the attached draft Order (See Attachment 1).

A public hearing was held on September 24, 2012 at 10:00 a.m. in the Town of Harrietstown Town Hall auditorium in Saranac Lake, N.Y. APA Hearing Officer Keith McKeever conducted a hearing pursuant to APA Act § 806 and 9 NYCRR § 576.5 of Agency Rules and Regulations. The applicant's authorized representative, Joseph Garso, made a presentation and presented testimony on behalf of the Town of Harrietstown's application.

Environmental Program Specialist Tracy Darrah also provided testimony at the hearing and discussed her review of the application and the variance factors set forth in § 576.1(c)(1)-(6) of the Adirondack Park Agency Rules and Regulations. Darrah stated that it is staff's opinion the project as proposed would not have adverse effects on the water quality of the Saranac River and would address ongoing erosion problems. Darrah also stated that, in staff's opinion, the proposal would not adversely affect the shoreline character of the surrounding area.

There was no public comment.

STAFF ANALYSIS

Pursuant to 9 NYCRR 576.1(b), the Board must determine whether the adverse consequences to the applicant resulting from denial of the requested variance are greater than the public purpose sought to be served by the shoreline restrictions. In arriving at this determination, the Agency must consider the factors set forth in 9 NYCRR §576.1(c). Staff's discussion of these factors is found in Finding of Fact number 13 on page 9 of the attached draft Order.

In evaluating the requested variance, staff considers the most important factors to be:

- Whether there are feasible alternatives that do not require a variance?
- Whether the requested variance is the minimum relief necessary?
- Whether granting the variance will adversely impact the natural, scenic, and open space resources of the Adirondack Park.

See 9 NYCRR § 576.1(c)(1), (3), and (5).

With respect to alternatives, 9 NYCRR §576.1(c)(3) requires consideration of "whether the difficulty can be obviated by a feasible method other than a variance." Replacement and expansion of the retaining wall requires a variance. Not replacing the retaining wall is not a feasible option since the wall has been damaged beyond repair. Replacing the existing retaining wall in-kind has been determined by the applicant's authorized representative to not be feasible as it does not provide adequate flood protection. Thus, alternatives to the applicant's proposal were found to be infeasible methods to accomplish the applicant's objectives and meet the NYS Building Code.

It is also staff's opinion that the application requests the minimum relief necessary from the shoreline restrictions as articulated in 9 NYCRR § 576.1(c)(1). The new retaining wall will be built within the same footprint as the existing retaining wall in so much as possible, will be extended in length the minimum distance to fill in the gap in current protection, and will be extended in height the minimum amount to meet NYS building code and to provide the necessary flood protection. Furthermore, the addition of the access ramp will allow continued use of the existing sidewalk to access the Riverwalk in compliance with ADA standards.

Finally, it is staff's opinion that granting this variance will not adversely impact the natural, scenic, and open space resources of the Adirondack Park as set forth in 9 NYCRR § 576.1(c)(5). The lands surrounding the Saranac River in this Hamlet location are already developed with a number of structures including the NYS Route 3 bridge, the hydro dam, the Village parking lot, numerous retaining walls, commercial uses and residential structures. The retaining wall will help control and alleviate both ongoing and future flooding and erosion problems and therefore serve to protect the water quality of the Saranac River. Any negative impacts to water

quality would be temporary and occur only during construction. These potential impacts could be controlled by the imposition of conditions. See Variance Impacts and Factors (c)(6) in the Attached Draft Order. Furthermore, the retaining wall is consistent with the character of the adjacent area and the applicant has designed the proposal to blend in with the surroundings.

CONCLUSION

The Agency's shoreline restrictions are intended to protect both the water quality and shoreline of the Adirondack Park. The applicants have demonstrated protection of these resources in their project design in that the finished project will limit and control erosion and the wall is designed to blend into the existing shoreline by using natural looking materials. Any potential impacts to water quality during the construction phase of this project can be mitigated by the proposed conditions.

The retaining wall serves a valid public purpose by providing flood protection to the Town of Harrietstown Town Hall and adjacent land. As it is not feasible to repair the existing structure, it is prudent to replace the structure to current building code standards and expand the structure to fill in existing gaps.

It is staff's position that the variance meets the factors set forth in 9 NYCRR § 576.1(c) and that the proposal, with conditions, will result in no adverse impacts. Therefore, staff believes that the Agency could reasonably grant the requested variance from the shoreline restrictions.

JLM:PVC:REW:mlr