



Adirondack Park Agency

KAREN FELDMAN
Acting Chair

TERRY MARTINO
Executive Director

MEMORANDUM

TO: Terry Martino, Executive Director

FROM: Sarah Reynolds, Acting Counsel *SR*
Kathleen Regan, Deputy Director of Planning *KOR*

DATE: August 28, 2018

RE: Town of Caroga Variance Z2018-06
David & Lisa Dolen: Reversal Determination
APA LV2018-0061

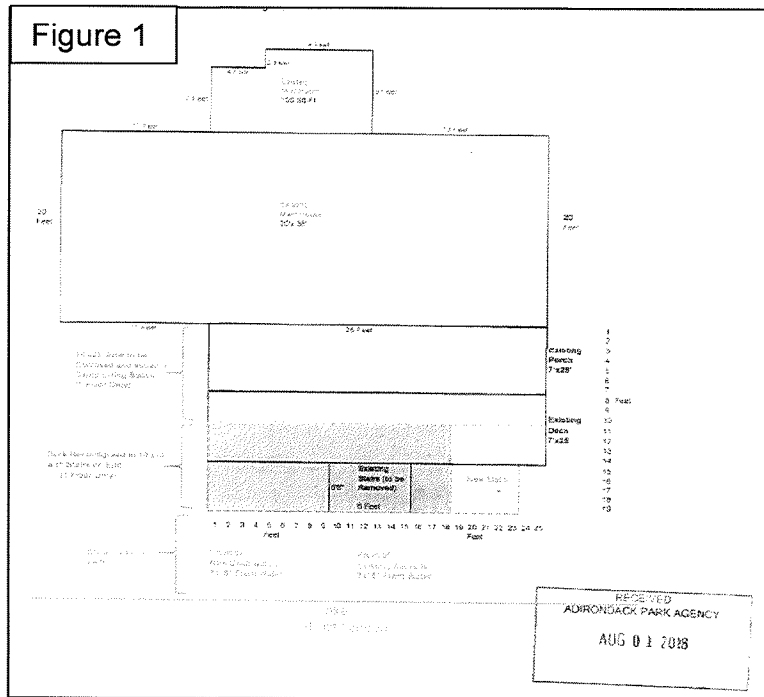
This memorandum provides the rationale for Adirondack Park Agency (Agency) reversal, pursuant to Section 808(3) of Executive Law, Article 27 (APA Act), of a shoreline variance granted by the Town of Caroga Zoning Board of Appeals (ZBA) to David and Lisa Dolen on May 24, 2018. The variance granted by the ZBA would allow the Dolens to construct stairs on the shoreline side of a non-conforming single-family dwelling within the shoreline setback of East Caroga Lake.

The complete record of the ZBA's determination is identified in the attached Appendix and was received by the Agency on August 1, 2018 (Record).

Variance Site

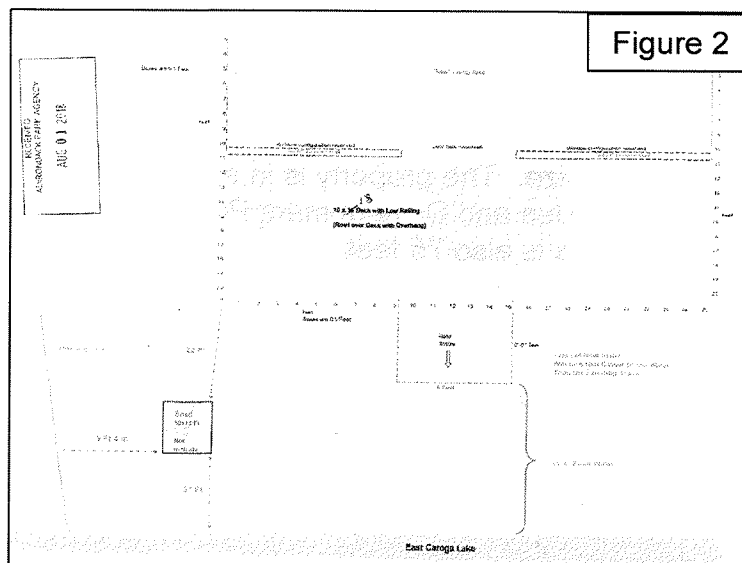
The Dolens' property is located at 129 Seven Oaks Road, with frontage on East Caroga Lake, Tax Map Parcel # 83.13-2-3 in the Town of Caroga, Fulton County. The property is located within the Town's Lakefront Residential (LF-2.5) zoning district, where 75 feet is the minimum shoreline setback for all principal buildings and accessory structures more than 100 square feet in size. The property is in a Low Intensity Use land use area on the Adirondack Park Land Use and Development Plan Map, where the minimum shoreline setback for structures is also 75 feet.

The 0.3-acre parcel is improved by a non-conforming single-family dwelling with a footprint of ± 1200 square feet and existing, attached stairs that are located ± 71.5 feet from the shoreline of East Caroga Lake. In 2017, the applicants received approval from the Town of Caroga Planning Board to construct a deck and stairs on the dwelling no closer to the shoreline than the existing stairs (indicated in green as "to be removed" on Figure 1 below).



Variance Request

In their variance request to the ZBA, the applicants proposed to widen the deck approved by the Planning Board and to attach stairs to the shoreline side of the deck (Figure 2). The proposed stairs would be ± 33 square feet in size and extend ± 5.5 feet closer to the shoreline (± 65.5 feet from the shoreline) than the existing stairs. The applicants also sought a variance to construct a 120-square foot shed ± 37 feet from the shoreline.



ZBA Proceedings

The ZBA held a public hearing on May 24, 2018 to consider the Dolens' requested shoreline variances. The Dolens did not provide any rationale for the variance requested for the stairs beyond a preference over what the Planning Board had previously approved.

The applicants also explained their need for a shed to store lawn equipment and a snow-blower. The ZBA and the Dolens agreed to a reduction of the size of the shed to 100 square feet so that it would no longer require a variance from the shoreline restrictions.

ZBA Determination

The ZBA, by a vote of 5-0, approved the requested variance for the stairs and made the following findings:

- 1) Granting of the requested variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties;
- 2) The benefit sought by the applicant cannot be achieved by some other method feasible for the applicant to pursue, other than a variance;
- 3) The requested variance is not substantial;
- 4) The requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- 5) The alleged difficulty is not self-created.

In addition, the ZBA approved construction of the shed upon the condition that it does not exceed 100 square feet in size.

Legal Requirements

New York Town Law requires the ZBA to consider several factors before granting an area variance. The ZBA "shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant." Town Law § 267-b(3)(b). In addition, the ZBA must also consider: "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; 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; and 5) whether the alleged difficulty was self-created.” Town Law § 267-b(3)(b). The ZBA must “grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.” Town Law § 267-b(3)(c).

Both Town Law and the Town of Caroga’s Zoning Ordinance authorize the ZBA “to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this chapter and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood, community or natural resources.” Town of Caroga Zoning Ordinance §10.020; See also, Town Law § 267-b(4).

Section 808(3) of the APA Act requires the ZBA to give notice to the Agency of receipt of “an application for a variance from any provisions of an approved local land use program involving land in any land use area other than hamlet.” If, within thirty days after receiving information pertinent to a variance granted by a ZBA, the Agency “determines that such variance involves the provisions of the [Adirondack Park] land use and development plan as approved in the local land use program ... and was not based upon the appropriate statutory basis of practical difficulties or unnecessary hardships,” the Agency may “reverse the local determination.”

Discussion

Agency staff do not believe that the Record supports the ZBA's decision to grant a variance for the construction of new stairs closer to the shoreline of East Caroga Lake than the non-conforming single-family dwelling for the following reasons:

- (1) The benefit sought by the Dolens can be achieved by an alternative that does not require a variance. In 2017, the Dolens sought and obtained approval from the Town of Caroga Planning Board for a deck and stairs that did not bring the single family dwelling any closer to the shoreline. There is nothing in the Record that provides a basis for the ZBA's conclusion that there is not a feasible alternative to granting a variance for stairs that bring the structure closer to the shoreline; and
- (2) There is nothing in the Record explaining the basis for the ZBA's conclusion that the alleged “difficulty” is not self-created. Again, the Dolens received approval from the Planning Board in 2017 for a deck and stairs that it determined to comply with the shoreline restrictions. In its consideration of this variance factor, it is also relevant for the ZBA to consider whether an applicant should have known of the existence of the shoreline restrictions when they became owners of a shoreline property.

- (3) Since there is an alternative to the requested variance that would not require a variance, Agency staff do not believe that the ZBA authorized the “minimum variance” that is necessary and adequate.

Conclusion

For the reasons discussed above and based on review of the Record, Agency staff recommend reversal of the shoreline setback variance granted by the ZBA to the Dolens on May 24, 2018 for new stairs that would be closer to the shoreline of East Caroga Lake than their non-conforming single-family dwelling. Agency reversal of the variance granted by the ZBA for the stairs will not prevent the Dolens from constructing their proposed shed, which is not subject to the shoreline restrictions so long as it is no more than 100 square feet in size.

APPENDIX

APA LV2018-0061 Dolen: Reversal Determination Town of Caroga Variance Z2018-06

Received July 23, 2018

- 1) Variance Referral cover sheet sent July 19, 2018 and received by the Agency on July 23, 2018.
- 2) Town of Caroga Notice of Decision form dated July 18, 2018.
- 3) Town of Caroga ZBA Public Hearing Notice dated June 25, 2018.
- 4) Town of Caroga Denial Notice dated June 19, 2016.
- 5) Town of Caroga ZBA Application dated June 18, 2018.
- 6) Deed conveying the parcel for Zambri to Dolen dated October 25, 2016.
- 7) Minutes from the May 24, 2018 ZBA Meeting.
- 8) Undated, unsigned, black and white copy of site plan.

Received July 30, 2018

- 9) Undated, unsigned, color copy of site plan showing 10 x 15-foot deck in yellow.

Received August 1, 2018

- 10) Color photo of existing dwelling, deck and stairs dated July 17, 2016.
- 11) Undated, unsigned, color copy of site plan showing 10 x 18 (the number 15 is crossed out and 18 added in pen) foot deck in yellow.
- 12) Undated, unsigned, color copy of site plan showing 10 x 25-foot porch areas in blue and 10 x 18 foot deck area in green.