



P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050

APA Order Granting
Variance
2012-58

Date Issued: August 17, 2012

In the Matter of the Application of

**MICHAEL J. CUNNINGHAM and
CONSTANCE D. CUNNINGHAM**

for a variance pursuant to § 806 of
the Adirondack Park Agency Act

To the County Clerk: This order
must be recorded on or before
October 17, 2012. Please index this
Order in the grantor index under the
following names.

- 1. Michael J. Cunningham**
- 2. Constance D. Cunningham**

SUMMARY AND AUTHORIZATION

Michael Cunningham and Constance Cunningham are granted a variance, on conditions, from the applicable shoreline restrictions pursuant to New York State Executive Law Section 806, in an area classified Moderate Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Schroon, Essex County.

This project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the Order is recorded. The Agency will consider the project in existence upon construction of the lateral expansion authorized herein.

Nothing contained in this Order shall be construed to satisfy any legal obligations of the applicants to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

AGENCY JURISDICTION

The variance application seeks Agency approval for a variance of 28 feet from the applicable 50-foot shoreline structure setback restriction pursuant to Section 806(1)(a)(2) and §806(3) of the Adirondack Park Agency Act (Executive Law, Article 27) to authorize construction of a 76-square-foot master bathroom 22 feet from the mean high water mark of Schroon Lake. Section 806(1)(a)(2) and 9 NYCRR

Part 575.1(e)(1) require a minimum shoreline setback of 50 feet measured from the mean high water mark for structures greater than 100 square feet in size.

Section 806(3) and 9 NYCRR Part 576 authorize procedures whereby an applicant may apply for a variance from the shoreline restrictions provided certain criteria cited in the statute and regulations are complied with, as further described below.

VARIANCE DESCRIPTION AS PROPOSED

The variance site is a 2.3±-acre parcel of land located on both sides of Adirondack Road (a/k/a East Shore Road and Red Wing Road) in the Town of Schroon, Essex County, in an area classified Moderate Intensity Use by the Adirondack Park Land Use and Development Plan Map, on 105± feet of shoreline of Schroon Lake. It is identified on Town of Schroon Tax Map Section 157.3, Block 1 as Parcel 25. The variance site is described in a Deed dated September 13, 2002 from Robert K. York and Joan E. York to Michael J. Cunningham and Constance D. Cunningham and recorded September 23, 2002 in the Essex County Clerk's Office in Liber 1335 of Deeds at Page 217.

A physical description of the variance site is given in Findings of Fact 5 through 11.

The variance as proposed and conditionally approved herein involves the lateral expansion of an existing single family dwelling (1,200± square feet in footprint) to add a 76-square-foot master bathroom 22 feet from the mean high water mark of Schroon Lake. The request is, therefore, for a 28-foot variance from the shoreline structure setback from Schroon Lake.

The variance is shown on:

- a site plan map titled "Map for Constance D. Cunningham and Michael J. Cunningham," drawn by James Nestor, LLS of Chestertown, NY and dated June 5, 2012;
- 4 sheets of building and elevation plans titled "Lake Residence," drawn by DC AP, PLLC of Brooklyn, NY, dated November 7, 2010, except as noted below including:
 - o Sheet A-00, Site Plan;
 - o Sheet A-10, Proposed Plan;
 - o Sheet A-20, W Facade: Proposed; and
 - o Sheet A-21, S Facade: Proposed
(last revised March 16, 2011).

A reduced-scale copy of the site plan map prepared by James Nestor, referenced above, is attached as a part of this Order for easy reference. The original, full-scale maps and plans referenced in this Order are the official plans for the project.

CONDITIONS

BASED UPON THE FINDINGS ABOVE AND INFORMATION CONTAINED IN THE PROJECT FILE, THE VARIANCE IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The project shall be undertaken as described in the completed application, the Variance Description as Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with this Order is a violation and may subject the applicants, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the Order.
2. This project may not be undertaken, and no transfer deed shall be recorded, until this Order is recorded in the Essex County Clerk's Office. This Order shall be recorded on or before October 17, 2012 in the names of all persons listed on the first page hereof and in the names of all owners of record of any portion of the variance site on the recordation date.
3. This Order is binding on the applicants, all present and future owners of the variance site and all contractors undertaking all or a portion of the project. Copies of this Order and all the approved maps and plans referred to herein shall be furnished by the applicants to all contractors prior to undertaking the project, and to all subsequent owners or lessees of the variance site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this Order shall contain references to this Order as follows: "The lands conveyed are subject to Adirondack Park Agency Order 2012-58 issued August 17, 2012, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
4. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.

Structure Location and Size

5. This Order authorizes the construction of a lateral expansion of the single family dwelling in the location shown on the project plans. The lateral expansion shall not exceed a footprint of 76 square feet. The expansion shall not exceed 21.5 feet in height. The height shall be measured from the highest point of the expansion (i.e., the dormer ridge) to the lowest point of existing grade or finished grade, whichever is lower.
6. Any changes to the location(s), size(s), or dimensions will require a new or amended Agency Order. Within 60 days of completing the lateral expansion authorized herein, a qualified design professional shall provide written certification to the Agency that the expansion was built in compliance with the approved plans.

Building Color

7. All exterior building materials, including roof, siding and trim, used to surface the exterior of the expansion authorized herein shall be of a natural earth-tone color which blends with the existing vegetation. Matching the expansion's exterior building materials and colors to that of the existing dwelling would satisfy this condition. The Agency will, upon request, advise whether any particular proposal complies with this condition.

Shoreline Cutting

8. Within 20 feet of the mean high water mark of Schroon Lake and between the "wood walk and steps" and the southern property line (as shown on the James Nestor site plan map), no trees, shrubs or other woody-stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed. This condition shall not be deemed to prevent the removal of dead or diseased vegetation or of rotten or damaged trees or of other vegetation that presents a safety or health hazard.
9. Elsewhere on the project site, with regard to the shoreline of Schroon Lake, the following minimum shoreline vegetative cutting restrictions shall apply:
 - a. within 35 feet of the mean high water mark, not more than 30% of trees in excess of six inches diameter at breast height shall be removed over any 10-year period, and

- b. within 6 feet of the mean high water mark, no vegetation shall be removed, except that up to a maximum of 30% of the shorefront may be cleared of vegetation on any individual lot.

This condition shall not be deemed to prevent the removal of dead or diseased vegetation or of rotten or damaged trees or of other vegetation that presents a safety or health hazard.

Shoreline Setbacks

10. Except for the expansion approved by the variance contained herein, all structures, except docks and boathouses, 100 square feet in size or greater, including attached decks, shall be set back a minimum of 50 feet, measured horizontally, from the closest point of the mean high water mark of Schroon Lake.

Legal Interests of Others

11. This order does not convey to the applicants any right to trespass upon the lands or interfere with the riparian rights of others in order to undertake the authorized project or subdivision, nor does it authorize the impairment of any easement, right, title or interest in real or personal property held or vested in any person.

FINDINGS OF FACT

Background/Prior History

1. As of the May 22, 1973 enactment date of the Adirondack Park Land Use and Development Plan, the landowners of the 2.3±-acre project site, Edward and Bertha Wormuth, did not own any adjoining property.
2. The single family dwelling on the variance site was constructed c. 1960 and lawfully expanded c. 1990. On December 18, 1989, the Agency issued Jurisdictional Determination J89-300 confirming that a proposed expansion of the existing single family dwelling, no closer to the shoreline, did not require an Agency variance or permit.
3. On February 6, 2012, the Agency issued Jurisdictional Determination J2012-0036 confirming that the proposed lateral expansion to the existing single family dwelling requires an Agency variance.

4. In 2011, the applicants replaced the on-site wastewater treatment system on the property. The old system was a 500 gallon steel septic tank located 50± feet from the shoreline of Schroon Lake. The new system involves pumping the wastewater across Adirondack Road, through a distribution box, to an absorption field located 220± feet from the lake.

Existing Environmental Setting/Character of the Area

5. The variance site has 105± feet of shoreline on Schroon Lake. There are no other water bodies or wetlands on the 0.29±-acre portion of the variance site between the road and the lake.
6. The mean high water mark of Schroon Lake is defined in Appendix Q-2 of the Agency's Rules and Regulations, pursuant to 9 NYCRR Part 571.3, as 811.00 feet above mean sea level.
7. The variance site slopes upward and away from Schroon Lake. Existing slopes between the lake and the dwelling are 60± percent. The house sits on a relative plateau with 20± percent slopes. Between the house and the driveway and road, existing slopes are between 30± and 40± percent. Existing slopes on the non-shoreline side of the road are generally greater than 30± percent.
8. Soils on the variance site and on either side of the road are mapped by the Natural Resource Conservation Service as Monadnock fine sandy loam and Monadnock-Tunbridge Complex, which are both very bouldery and well drained. Soils further upslope and away from the road are mapped as Lyman-Knob Lock Complex, being very rocky, very bouldery, and somewhat excessively drained.
9. The variance site is primarily forested, other than the area containing and immediately surrounding existing development. Mature coniferous trees exist between the dwelling and the lake. The southern side of the house (where the expansion is proposed) is not visible from Schroon Lake. The northern side of the house, including the porch, is partially screened by vegetation and has a filtered view of the lake.
10. To the east, the variance site adjoins lands of the State of New York designated Wilderness and managed as part of the Pharoah Lake Wilderness. A portion of the variance site east of the road is within one-eighth mile of the Wilderness Area and is therefore designated a Critical Environmental Area (CEA) by the Agency. However, none of the variance site west of the road, where the dwelling is located, is within the CEA.

11. In the vicinity of the variance site along Adirondack Road, there are many lake-side dwellings and camps in both directions. The pattern of ownership consists of narrow rectangular lots, each having a narrow piece of shoreline. The variance site is 1.5± miles north of the Hamlet of Adirondack. Both sides of Schroon Lake in this location are designated Moderate Intensity Use on the Adirondack Park Land Use and Development Plan Map.

Future Subdivision and Development

12. In addition to the existing single family dwelling, not more than 1 additional principal building will be allowed on the 2.3±-acre variance site unless the overall intensity guidelines of the Adirondack Park Agency Act or the Park Plan Map are amended or, pursuant to the adoption of an Agency-approved local land use program, refined so as to permit additional principal building(s). Due to site limitations, the Agency makes no assurances the maximum development mathematically allowed can be approved.
13. Any future new land use and development on or subdivision of the variance site will likely require a permit from the Agency pursuant to Section 810(1)(b)(1)(d) of the Adirondack Park Agency Act, because most of the vacant portion of the variance site is within one-eighth mile of forest preserve land classified wilderness.

Public Notice and Comment

14. The Agency notified all parties as required by the Adirondack Park Agency Act and Agency regulations. No comment letters were received. One member of the public spoke at the July 26, 2012 public hearing. She is a resident of Schroon Lake and indicated her belief that the variance request will have no adverse impacts on the lake and should be granted, with a condition protecting shoreline vegetation.

Public Hearing

15. On July 26, 2012, a public hearing on the variance request was held in the Town of Schroon. The hearing was attended by four members of Agency staff, the applicants, and one member of the public. No objections were made to the proposal during the hearing.

Other Regulatory Permits and Approvals

16. The Town of Schroon issued a building permit dated March 3, 2011 for the master bathroom lateral expansion, as well as interior kitchen renovations.

Water Resources

17. Provided the expansion is built on piers as shown on the project plans, then there will be no adverse impact to the water quality of Schroon Lake.

Open Space/Aesthetics/Shoreline Character

18. Provided the exterior materials and colors of the lateral expansion are of earth tone colors and provided no trees are removed from the area specified by Condition 8, then the expansion authorized herein will not be noticeable from Schroon Lake.

Historic Sites or Structures

19. The original dwelling is 52± years old, but the portion to be expanded was built after 1989. Based on the New York State Office of Parks, Recreation, and Historic Preservation's Geographic Information System for Archeology and the National Register, the site is not within an archeologically sensitive area. The variance as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Section 426.2 for the purposes of implementing Section 14.09 of the New York State Historic Preservation Act of 1980.

VARIANCE IMPACTS AND CRITERIA

20. The following findings evaluate the variance proposal pursuant to the standards and criteria set forth in 9 NYCRR 576.1.

(a) Whether there are practical difficulties in carrying out the strict letter of the shoreline restrictions

The entirety of the existing single family dwelling is within the shoreline structure setback of Schroon Lake and the master bedroom is on the lake side of the dwelling. Therefore, the exterior addition of a master bathroom, or any expansion of the dwelling toward the lake or laterally, would require an Agency

variance. Also, the dwelling sits at the base of a steep slope with a 30-40% grade, which presents a practical difficulty for any rearward expansion as described in Finding 20(c)(4).

(b) Whether the adverse consequences to the applicants resulting from denial are greater than the public purpose sought to be served by the restriction.

The public purpose sought to be served by the shoreline structure setback in Section 806 of the Adirondack Park Agency Act includes protection of water quality and the aesthetic character of the shoreline. The adverse consequences to the applicants resulting from denial would be the continued use of the dwelling with one bathroom, no master bathroom, and no washer/dryer facilities, because they have indicated that they will not add a master bathroom unless they can build it in the proposed variance location.

(c) In determining whether a variance shall be granted, the agency will consider, among other relevant factors:

(1) Whether the application requests the minimum relief necessary;

Recognizing that the goal of the applicants is to have a master bathroom, i.e., a new bathroom off the existing master bedroom, then the south-wall location chosen for this expansion is preferable to an expansion off the west side of the bedroom, which would be closer to the lake. The proposal does not encroach further upon the shoreline of Schroon Lake than the existing dwelling. The design of the bathroom itself minimizes the width of the lateral expansion by orienting the length of the bathroom (13 feet 7 inches) along the existing exterior wall. Only the width of the expansion (5 feet 7 inches) would face Schroon Lake. The interior of the bathroom is efficiently designed and minimizes the overall size of the expansion to 76 square feet.

(2) Whether granting the variance will create a substantial detriment to adjoining or nearby landowners;

There will be no adverse impacts to adjoining or nearby landowners as a result of this project.

(3) Whether the difficulty can be obviated by a feasible method other than a variance;

A bathroom could be added to the rear of the existing dwelling without a variance, however this rearward

alternative would require more earthwork, the potential removal and/or damage to trees, the construction of an access road for excavation equipment, be more expensive than the proposed location, and would not achieve the applicants' objective of adding a bathroom to the existing master bedroom. A bathroom could be added to the interior of the existing dwelling, within the existing footprint, however the most likely location for this option would result in the loss of at least half of the existing porch. The porch is integral to the applicants' use and enjoyment of the dwelling. They indicated that most meals are eaten on the porch and that it is used extensively for sitting and entertaining. For the reasons given, neither alternative represents a practical or feasible option.

(4) The manner in which the difficulty arose;

The difficulty arose from the fact that the dwelling is wholly within the shoreline setback area, the location of the master bedroom, the applicants' desire to have a master bathroom, and their analysis that building off the rear of the dwelling or inside the existing footprint would not meet their objectives in a practical or feasible manner.

(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

Granting the variance as proposed will have no adverse effects on water quality due to the small size of the expansion, the fact that there will be no foundation below the expansion (it will be on posts or piers), and the fact that no vegetation needs to be removed to construct the expansion. Granting the variance as proposed will have no adverse effect on the aesthetic character of shoreline as viewed from Schroon Lake, given the presence of vegetation that will fully screen the expansion from the lake.

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

The imposition of conditions 7 and 8, regarding exterior color and vegetation removal, will prevent any potential future adverse effects to the aesthetic character of the shoreline of Schroon Lake.

Specifically, these conditions limit the exterior color of the expansion to earth tone colors and restrict the removal of woody vegetation from between the expansion and the shoreline. Matching the existing house color in this case would satisfy the color condition.

CONCLUSIONS OF LAW

- A. There are practical difficulties in the way of carrying out the strict letter of the shoreline restrictions.
- B. The adverse consequences resulting from denial of this request are greater than the public purpose sought to be served by the restrictions.
- C. The factors set forth in 9 NYCRR § 576.1(c) have been considered:
 - (1) whether the application requests the minimum relief necessary;
 - (2) whether there will be a substantial detriment to adjacent or nearby landowners;
 - (3) whether the difficulty can be obviated by a feasible method other than the variance;
 - (4) the manner in which the difficulty arose;
 - (5) whether granting the variance will adversely affect the resources of the Park; and
 - (6) whether the conditions noted herein will ameliorate any adverse effects.

The variance, pursuant to §806 of the Adirondack Park Agency Act and 9 NYCRR Part 576, observes the spirit of the Act, secures public safety and welfare, and does substantial justice.

A variance of the terms of the APA Act is not personal and runs with the land. Recording of this Order Granting Variance is intended to provide notice to subsequent owners of the land.

ORDER issued this day
of , 2012.

ADIRONDACK PARK AGENCY

BY: _____
Richard E. Weber, III
Deputy Director (Regulatory Programs)

STATE OF NEW YORK)
) ss.:
COUNTY OF ESSEX)

On the day of in the year 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber, III 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

REW:ADL:SLB:JLM:mlr