



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

**APA Order Granting
Variance
2013-140**

Date Issued: October 15, 2013

In the Matter of the Application of

ARTHUR R. GEORGE and MARY J. GEORGE

for a variance pursuant to 9 NYCRR Part 577

To the County Clerk: This order must be recorded on or before **December 16, 2013**. Please index this Order in the grantor index under the following names.

- 1. Arthur R. George**
- 2. Mary J. George**

SUMMARY AND AUTHORIZATION

Arthur George and Mary George are granted a variance, on conditions, from the applicable 150-foot shoreline setback restriction required by 9 NYCRR Section 577.6(b)(3) of the New York State Wild, Scenic and Recreational River System Act ("Rivers Act"), in an area classified Resource Management by the Official Adirondack Park Land Use and Development Plan Map in the Town of Franklin, Franklin 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 544-square-foot addition authorized herein.

Nothing contained in this Order shall be construed to satisfy any legal obligations of the applicant 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 41 feet from the applicable 150-foot shoreline structure setback restriction pursuant to 9 NYCRR Section 577.6(b)(3) and 9 NYCRR Section 577.7(b)(1) to authorize the lateral expansion of an existing dwelling 109 feet from the mean high water mark of Franklin Falls Pond.

Agency regulations implementing the New York State Wild, Scenic and Recreational River System Act, 9 NYCRR Section 577.10, authorize procedures whereby an applicant may apply for a variance from the structure setback restriction provided certain criteria cited in the statute and regulations are complied with, as further described below.

VARIANCE SITE

The variance site is a 0.8±-acre parcel of land located on the northeast side of Franklin Falls Road (County Route 48) in the Town of Franklin, Franklin County, in an area classified Resource Management by the Adirondack Park Land Use and Development Plan Map. The parcel does not contain any shoreline, but does contain land within 150 feet of the mean high water mark of Franklin Falls Pond. The parcel is identified on Town of Franklin Tax Map Section 386, Block 1 as Parcel 34. The variance site is described in a deed from Patricia A. Walker to Arthur R. George and Mary J. George dated April 15, 2010 and recorded April 16, 2010 in the Franklin County Clerk's Office as Document No. 2010-1927.

A physical description of the variance site is given in Findings of Fact 3 through 13.

VARIANCE DESCRIPTION AS PROPOSED

The variance as proposed and conditionally approved herein involves the lateral expansion of an existing single family dwelling (2,368 square feet in footprint, including an attached garage and decks) to add a 544-square-foot addition located 109 feet from the mean high water mark of Franklin Falls Pond. The request is, therefore, for a 41-foot variance from the 150-foot shoreline setback from Franklin Falls Pond.

The proposed single-story addition will have a maximum height of 14 feet. The exterior will match the dark brown color of the existing dwelling. The addition's foundation will be of concrete blocks or poured cement and have a dirt floor crawl space. The addition will contain a bedroom, full bathroom, closet, and living room. One new exterior light is proposed. It will be similar to the existing exterior lights: brass coach lantern style and 50 watts.

Temporary construction access to the site of the addition will be directly in front of (south) of the existing dwelling. No trees will be removed to establish the temporary construction access. Seven small trees (3 of which are greater than 8 inches in diameter at breast height) will be removed from the site of the addition.

The variance is shown on:

- a survey map titled "Map of Survey of lands of Arthur R. George and Mary J. George" (prepared by Schissler Land Surveying of Jay, NY and last dated June 18, 2013), showing property boundaries, existing development, setbacks, and a preliminary version of the proposed addition;
- a site profile titled "Profile of a portion of lands of Arthur R. George and Mary J. George" (prepared by Schissler Land Surveying of Jay, NY and last dated March 17, 2013), showing the existing height of the dwelling and proposed height of the addition;
- 3 sheets of plans showing hand-drawn floor plans of the existing dwelling and proposed addition (untitled and unattributed), stamped "Received July 25, 2013, Adirondack Park Agency;" and
- a site sketch plan titled "Revised Sketch Plan of Property" (dated 7/2013 and revised August 26, 2013 by A.R. George, stamped "Received August 27, 2013, Adirondack Park Agency"), showing features missing from the survey map (slopes, wetlands, and on-site wastewater treatment system) and the final proposed addition.

A reduced-scale copy of the Sketch Plan (revised August 26, 2013), is attached as 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 the 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 Franklin County Clerk's Office. This Order shall be recorded on or before December 16, 2013 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 project 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 project 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 2013-140 issued October 15, 2013, 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. The addition to the existing single family dwelling shall be constructed in the location shown on the August 26, 2013 Sketch Plan and shall not exceed a footprint of 544 square feet including all covered and uncovered attached porches, decks, exterior stairs and accessory structures. The authorized addition shall not exceed 14 feet in height. The height shall be measured from the highest point of the addition, including any chimney, to the lowest point of existing grade or finished grade, whichever is lower.
6. Any changes to the location(s), size(s), or dimensions of the addition will require a new or amended Agency Order. Within 60 days of completing construction of the addition authorized herein, a qualified design professional shall provide written certification to the Agency that the addition was built in compliance with the approved plans.

Silt Fencing

7. Prior to any construction activity resulting in land disturbance, silt fence shall be properly installed parallel to the existing contours between the construction site and Franklin Falls Pond. The silt fence shall be embedded into the earth a minimum of six inches and shall be a minimum of 50 feet from surface water bodies. The silt fence shall be maintained throughout construction and shall not be removed until after all disturbed

soils are stabilized to prevent siltation of the water resources. The applicants or their successors in interest shall inspect the fabric at least once a week and after every major storm event to ensure the fabric and supports are intact and to remove accumulated sediments so as to maintain the fence in a functional manner.

Building Color

8. All exterior building materials, including roof, siding and trim, used to surface the exterior of the addition authorized herein shall match the dark brown color of the existing dwelling. Should the applicants or their successors ever wish to change the exterior color of their dwelling/addition, then the exterior of both the dwelling and addition shall be an earth-tone color that blends with the existing vegetation. Agency staff will, upon request, advise whether any particular proposal complies with this condition.

Outdoor Lighting

9. Any new free-standing or building-mounted outdoor lights shall employ full cut-off fixtures, that is, they shall be fully shielded to direct light downward and not into the sky. The fixtures shall be oriented so as to not cast light toward Franklin Falls Pond, the Saranac River, Franklin Falls Road, or adjoining property.

Wetlands

10. No "regulated activity" as defined in the Agency's Freshwater Wetland Regulations (9 NYCRR Part 578) shall occur on the project site without prior Agency approval. Such activities include, but are not limited to, new land use or development in, subdivision of, clearcutting more than three acres within, or dredging or filling of a wetland, or any other activity, whether or not occurring within the wetland, which pollutes it or substantially impairs its functions, benefits or values.

Wastewater Treatment

11. Prior to any increase in the number of bedrooms (beyond two bedrooms) or any alteration, repair, or replacement involving the existing subsurface absorption field, a written evaluation of the existing on-site wastewater treatment system shall be performed by a New York State licensed design professional to determine compliance with applicable New York State Department of Health,

Agency and local standards and any upgrades required. The evaluation shall be submitted to the Agency for review. The Agency may require mitigative measures as deemed appropriate.

**Wild, Scenic and Recreational Rivers Special Provisions:
Vegetation Removal**

12. On the variance site and within 100 feet of the mean high water mark of Franklin Falls Pond (i.e., between the single family dwelling and the road), no trees or other vegetation shall be harvested, cut, culled, removed, thinned or otherwise disturbed without prior Agency review and approval, except for continued maintenance of the existing driveway and associated clearing. Forest management activities between 100 feet from the mean high water mark of the river and one-quarter mile shall meet the standards and conditions of the Agency's river regulations (9 NYCRR Section 577.6).

Shoreline Setbacks

13. Apart from the addition approved by the variance contained herein, all new buildings, decks and other structures (except for fences, poles, lean-tos, docks, boathouses, bridges, and stream improvement structures for fishery management purposes) shall be set back a minimum of 150 feet from the mean high water mark of Franklin Falls Pond (the Saranac River).

Legal Interests of Others

14. This order does not convey to the applicants, or their successors in interest, 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 0.8±-acre project site constituted a portion of a larger property. The project site was created by subdivision from this larger property in 1980. As this subdivision occurred on Resource Management lands and within a designated river area, it appears that an Agency permit was

required. A review of Agency records indicates that no permit was obtained. However, an Agency letter dated May 7, 2013 (for files E2013-0041 and J2013-0158) confirms that the Agency is not pursuing any potential subdivision violation. By issuance of this order, Town of Franklin tax parcel 386.-1-34 shall be recognized as a lawful parcel for Agency purposes.

2. The Agency letter dated May 7, 2013 (referenced above) describes that the current dwelling was constructed in 1992 and appears to be a lawful replacement of a pre-existing single family dwelling in the same location. The letter confirms that expansion of the single family dwelling, within 150 feet of the designated Recreational River, requires a variance.
3. The location of a 1,000 gallon septic tank is known and is shown on the project plans. It was last pumped out in the spring of 2010. However, the location and design of the absorption field shown on the project plans is approximate, but is within 100 feet of wetlands and a stream (east of the project site). The existing on-site wastewater treatment system does not exhibit any signs of failure.
4. The existing on-site water supply, a well, is located beneath the existing deck on the front of the dwelling as shown on the survey map.
5. Existing structures on site include a single family dwelling (816± square feet in footprint) with attached decks (528± square feet in footprint) and an attached garage (1,024± square feet in footprint), having a combined footprint of 2,368 square feet and a maximum height of 29 feet. There are also three smaller accessory structures on the site, two sheds and an enclosed lean-to. The dwelling and attached decks are located within 150 feet of the mean high water mark of Franklin Falls Pond. The attached garage and accessory structures are located greater than 150 feet from the mean high water mark.

Existing Environmental Setting/Character of the Area

6. The variance site has no shoreline but does contain land within 150 feet of the mean high water mark of Franklin Falls Pond (an impoundment of the Saranac River), which is a navigable water body and is also a designated Recreational River under the New York State Wild, Scenic and Recreational River Act. The mean high water mark of Franklin Falls Pond is shown and labeled on the survey map and on the project plans. Across Franklin Falls Road from the variance site is a narrow strip of private land owned by others on the shoreline of Franklin Falls Pond.

7. There is a permanent, non-navigable stream off the property to the east and in the wetland east of the driveway.
8. There are wetlands located east of and down a steep slope from the existing driveway. The addition, as proposed, is located greater than 80 feet from these wetlands.
9. Existing slopes are 3 to 10 percent in the location of existing development (i.e., structures, driveway, and on-site wastewater treatment system) and of the proposed addition. Existing slopes are 8 to 10 percent between the dwelling and the road. East of the driveway, there is a steep hill sloping downward to a stream and wetland.
10. The area on the variance site and within 100 feet of the mean high water mark of Franklin Falls Pond is primarily vegetated with existing trees and shrubs, including a number of mature white pines, except for the area of the driveway. The dwelling has a filtered view of Franklin Falls Pond through this vegetation and is barely, if at all, visible from the Pond. The addition is also not likely to be visible from a nearby boat launch on Franklin Falls Pond.
11. To the north, the variance site adjoins lands of the State of New York designated Wild Forest and managed as part of the Taylor Pond Wild Forest. To the east, the site adjoins private land owned by Erie Boulevard Hydropower.
12. At the northern end of Franklin Falls Pond and within one-third mile of the variance site, the western shoreline is primarily forested (privately owned) and there are 4 waterfront dwellings/camps on the eastern shoreline that are clearly visible from the water. Within 250 feet of the variance site are Franklin Falls Road, some roadside signs, a public boat launch, and a bridge with guiderails, which are also visible from the water.
13. The variance site is 7± miles northeast of the Hamlet of Bloomingdale.

Future Subdivision and Development

14. In addition to the existing single family dwelling, no additional principal building will be allowed on the 0.8±-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.

15. Any future new land use and development on or subdivision of the variance site will likely require a permit or variance from the Agency pursuant to 9 NYCRR Part 577, because the entire parcel is located within the recreational river area of the Saranac River (being within one-quarter mile of the mean high water mark of Franklin Falls Pond).

Public Notice and Comment

16. The Agency notified all parties as required by the Adirondack Park Agency Act and Agency regulations. One comment letter was received from the Supervisor of the Town of Franklin. It stated that the variance "is reasonable and should be granted." No other comment letters were received.

Public Hearing

17. On September 11, 2013, a public hearing on the variance request was held in the Town of Franklin. The hearing was attended by five members of Agency staff, the applicants, the applicants' consultant, and one member of the public. The one member of the public, a resident of the Town of St. Armand, offered public comment describing the visual context of the variance site and supporting granting of the variance.

Other Regulatory Permits and Approvals

18. A Local Government Notice Form signed June 25, 2013 by the Town of Franklin Code Enforcement Officer indicates that the variance is not prohibited by any local law or ordinance, and that the Town does not have land use controls.

IMPACT FINDINGS

Water Resources

19. Provided prior Agency review and approval is received for any alteration, replacement or upgrade of the on-site wastewater treatment system, and prior to any increase in the number of bedrooms beyond the existing and proposed two bedrooms, then groundwater and nearby surface water resources and wetlands will be protected.

20. Provided (a) the addition is constructed in the proposed location and does not exceed 544 square feet in footprint, (b) silt fencing is installed as described in condition 7, and (c) no trees are removed from within 100 feet of the mean high water mark of Franklin Falls Pond, then there will be no impacts to the water quality of Franklin Falls Pond.

Open Space/Aesthetics/Shoreline Character

21. Provided (a) the addition is constructed in the proposed location and does not exceed 544 square feet in footprint and 14 feet in height, (b) the exterior materials and colors of the addition match the dark brown color of the existing dwelling or are of earth tone colors, and (c) no trees are removed from within 100 feet of the mean high water mark of Franklin Falls Pond, then the addition authorized herein will not be noticeable from Franklin Falls Pond.
22. Requiring any new outdoor lights to employ full cut-off fixtures will reduce nighttime light pollution (glare, light trespass and sky glow).

Wetlands

23. No impacts to the wetlands will result from construction of the addition.

Historic Sites or Structures

24. There are no structures greater than 50 years old either on the variance site or visible from the variance site. Based on the New York State Office of Parks, Recreation, and Historic Preservation's (OPRHP) Geographic Information System for Archeology and the National Register, the site is within an archeologically sensitive area. However, letters dated August 7, 2013 (OPRHP #13PR03567) and August 28, 2013 (OPRHP #13PR03930) determined that the variance will have no impact upon cultural resources in or eligible for inclusion in the State and National Register of Historic Places. Therefore, 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

25. 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 single family dwelling is located almost entirely within 150 feet of the mean high water mark of Franklin Falls Pond. There is limited available space behind the 150-foot shoreline setback due to the small triangular shape of the property, and existing development on the property (including accessory structures, the driveway, and the on-site wastewater treatment system) occupies much of this space. There are also steep slopes, a stream, and wetland east of the dwelling.

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

Denial of this variance would, in effect, force the applicants to choose between (a) having a garage and no additional first-floor living space or (b) having no garage and incurring additional expense to turn the garage into a first-floor bedroom, full bathroom, and additional living room space. The lateral expansion of the dwelling would have minimal, if any, impacts upon the water quality or aesthetic character of the shoreline of Franklin Falls Pond. Thus, the adverse consequences to the applicant resulting from denial of this variance are greater than the public purpose sought to be served by the shoreline restrictions.

(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;

The applicants have already minimized the variance by (i) eliminating an 8-foot by 10-foot deck from the shoreline side of the addition, (ii) reducing the size of the addition by 96 square feet (from 640 square feet to 544 square feet), and (iii) moving the addition back from the shoreline by 2 feet. Moving the addition any further from the shoreline would interfere with the existing heating system, which includes both an intake and an exhaust vent on the same side of the dwelling as the addition. The applicants also eliminated the need

for a temporary access drive, which would have required removal of vegetation within 100 feet of the shoreline. Minimizing the size of the addition any further would not achieve any additional, substantial environmental benefit.

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

There will be no change in the nature or character of use of the property as a result of this variance. The scale of the addition is modest, it will be well-screened by existing vegetation and color, and there are no nearby residences (adjoining landowners are NY State, Erie Boulevard Hydropower, and the county road). Therefore, there will be no adverse impacts to adjoining or nearby landowners as a result of this variance.

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

The applicants have thoroughly evaluated all reasonable alternatives that would not have required a variance. The applicants considered the possibility of creating a first-floor bedroom, full bathroom, and living room within the existing attached garage or by building an addition to the garage. They explained that renovating the interior of the garage would require raising the garage floor at least 20 inches - to preserve the purpose of having the living space on the first floor of the dwelling - and would result in a ceiling height of 6-feet 9-inches in the converted area. Raising the roof of the garage and digging up a portion of the garage's concrete floor to install plumbing would add to the construction costs of the project. Plus, converting the garage to living space would mean that the applicants would then have no garage on the property, and a new garage would likely require an Agency variance. Building an addition adjacent to the garage is not practical due to the locations of the existing on-site wastewater treatment system, driveway, steep slopes, wetlands, and property lines.

(4) The manner in which the difficulty arose;

The difficulty arose from a combination of factors, including: (i) the fact that the existing dwelling, a lawful replacement of a pre-existing dwelling, is located almost entirely within the 150-foot shoreline setback specified in the Agency's River Regulations; and, (ii) the existing dwelling lacks a first-floor

bedroom and full bathroom and additional living room space, which the applicants would like to have.

- (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**

Construction of the addition would have minimal, if any, impact upon the water quality or aesthetic character of the shoreline of Franklin Falls Pond. Construction of the addition will require the removal of 7 small trees, 3 of which are greater than 8 inches in diameter at breast height. The proposed location for the addition has slopes of approximately 3 to 10 percent. There are no sensitive resources immediately adjacent to the location of the proposed addition that could be harmed by any minimal erosion or surface runoff during construction. There is no proposed increase in the number of bedrooms in the dwelling, and so no change to the existing capacity and treatment of wastewater.

The proposed addition is one-story tall and would be dark brown in color to match the existing two-story dwelling. Photos and simulations show how well-screened the property is from Franklin Falls Pond by existing vegetation that will remain. The addition is not likely to be visible at all from a nearby boat launch.

- (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 will ameliorate any potential adverse effects to the aesthetic character of the shoreline of Franklin Falls Pond. The substance of three conditions is already part of the applicants' proposal: (i) requiring the exterior colors and materials of the addition to match those of the existing dwelling, which is wood and dark brown, (ii) limiting the height of the addition to the single story proposed, and (iii) restricting the removal of vegetation from within 100 feet of the mean high water mark of Franklin Falls Pond. An additional condition requiring evaluation of the existing on-site wastewater treatment system and any appropriate upgrades prior to any increase in bedrooms or alteration, repair, or

replacement of the existing system will ensure that water quality is protected.

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 9 NYCRR Part 576 and 9 NYCRR Section 577.10, observes the spirit of the Act, secures public safety and welfare, and does substantial justice.

A variance of the terms of the Wild, Scenic, and Recreational Rivers System 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 , 2013

ADIRONDACK PARK AGENCY

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

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

On the day of in the year 2013, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber, 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:MJG:mlr