



TO: Regulatory Programs Committee

FROM: Richard Weber, Deputy Director, Regulatory Programs

DATE: March 5, 2014

RE: Walker/Yuckel Variance (P2013-0257)

SUMMARY

Michael J. Walker and Janet Yuckel (collectively, "applicant") are the owners of a 0.85±-acre parcel located on Ranger School Road in the community of Wanakena, Town of Fine, St. Lawrence County, in an area classified as Resource Management on the Adirondack Park Land Use and Development Plan Map. The project site is essentially on a peninsula and has shoreline on two navigable bodies of water: "The Setback" and the Oswegatchie River. The site has approximately 220 feet of shoreline on "The Setback" and 234 feet of shoreline on the Oswegatchie River. The Oswegatchie River is not a designated river in this location. An excerpt from the Adirondack Park Land Use and Development Plan Map [part of Hearing Exhibit 14] is attached to this memorandum as Attachment 1 showing the location of the site.

The applicant's variance requests involve the expansion of a pre-existing 3-bedroom single family dwelling located partially within the 100 foot setback area of "The Setback" and entirely within the 100 foot setback area of the Oswegatchie River. The three elements of expansion are as follows:

- A 266-square foot addition on the easterly side of the dwelling to provide new universally-accessible living quarters on the first floor. This 2-story addition will not bring the dwelling closer to either shoreline, but requires a variance as a lateral expansion of the dwelling within 54 feet of the Oswegatchie River.
- A 45-square foot elevated wooden ramp on the northerly side of the dwelling to provide universal accessibility to the dwelling. The ramp requires a variance to allow expansion of the dwelling three feet closer to "The Setback" (from 95 feet to 92 feet from the MHWM). Even though the ramp will be on the opposite side of the dwelling from the

Oswegatchie River, it also requires a variance because it increases the dwelling's nonconformance within the shoreline setback of the Oswegatchie River.

- A 30-square foot covered staircase "entryway" on the northerly side of the dwelling. This entryway requires a variance to allow expansion of the dwelling seven feet closer to "The Setback" (from 94 feet to 87 feet from the MHWM). Even though the entryway will be on the opposite side of the dwelling from the Oswegatchie River, it also requires a variance because it increases the dwelling's nonconformance within the shoreline setback of the Oswegatchie River.

The second floor of the home will be reconfigured. No increase to the number of bedrooms will result from the proposal and the new construction will be no taller than the existing roofline. The variance requests are proposed so that Ms. Yuckel can provide universal access to the dwelling to accommodate her disabled mother who uses a wheelchair and resides with her.

A Survey Map [part of Hearing Exhibit 4] is attached as Attachment 2 to this memorandum, and a Site Plan (SP-1), Building Floor Plans (A-01), and Detailed Plan (D1) [all part of Hearing Exhibit 10] are attached as Attachments 3, 4 and 5 to this memorandum, respectively. Agency jurisdiction over the structure is limited to review of the variance requests under APA Act § 806. For the reasons described below, Agency staff recommends approval of the draft Order attached as Attachment 6 to this memorandum

PROCEDURAL HISTORY

On November 29, 2013, the Agency received an application from Adk Compliance, the applicant's consultant, seeking a variance involving an expansion of a pre-existing 3-bedroom single family dwelling located partially within the 100 foot setback area of "The Setback" and entirely within the 100 foot setback area of the Oswegatchie River [Hearing Exhibit 2]. On December 16, 2013, the Agency sent Adk Compliance a Request for Additional Information [Hearing Exhibit 8]. The supplemental information was received on December 23, 2013 [Hearing Exhibit 10].

A public hearing was held on January 31, 2014 at 11:00 am at the Town of Fine Town Offices. 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 consultant provided testimony in support of the application.

Environmental Program Specialist Suzanne McSherry also provided testimony and discussed each of the variance factors set forth in 9 NYCRR § 576.1(c)(1)-(6). Ms. McSherry stated that it was staff's opinion that the project, as proposed, meets the criteria for approval and would have no adverse impacts on water quality or on the aesthetic character of the shoreline. No public comment has been received.

STAFF ANALYSIS

In deciding whether to grant a variance, the Agency must consider the criteria set forth in 9 NYCRR § 576.1. It is staff's opinion that this application is approvable under these criteria. Staff's discussion of the decision factors is found in Finding of Fact 15 of the attached draft Order.

The applicant's objective is to expand and reconfigure the 2-1/2 story pre-existing single family dwelling to accommodate Ms. Yuckel's mother who resides with her and uses a wheelchair. To accomplish this objective, the applicant proposes to construct a 266± square foot addition on the easterly side of the dwelling which will include a new universally-accessible living quarters on the first floor for Ms. Yuckel's mother, a ramp on the northerly side of the dwelling to facilitate wheelchair access to the addition, and a new entryway on the northerly side of dwelling to allow access to the dwelling for the applicant.

The practical difficulty associated with this objective includes the location of the dwelling on a 0.85-acre project site that has shoreline on two navigable bodies of water. Because the dwelling is located wholly within the setback area of the Oswegatchie River and partially within the setback area of "The Setback," and because of the configuration of the lot relative to the water bodies, there is effectively no "rearward" side to the dwelling. Therefore, other than a height increase of two feet or less, any expansion of the dwelling requires a variance.

From staff's perspective, the most important considerations with respect to this application are the discussion of alternatives and whether the request will adversely affect the natural, scenic, and open space resources of the Park. See 9 NYCRR § 576.1(c)(3) and 9 NYCRR § 576.1(c)(5). With respect to alternatives, there is no feasible alternative that will not require a variance. Other than a minor height increase, any expansion of the dwelling will require a variance. Only a small area in the northeasterly corner of the site (approximately 40 feet by 70 feet) is greater than 100 feet from the bodies of

water. This area has been designated by the applicant as the location for a replacement wastewater treatment system at such time as the current system must be replaced. The consultant also explored several options for reconfiguring the interior floor plan, none of which proved feasible to provide first floor living space for the Ms. Yuckel's disabled mother.

Concerning adverse impacts, it is staff's opinion the proposed expansions will result in no adverse impacts. No resources will be adversely affected by the granting of this variance provided it is undertaken as authorized and conditioned as proposed in the draft order (Attachment 6). The expansions are modest in size and in keeping with the scale of the dwelling and lot. The wheelchair ramp and entryway are very small and increase the non-compliance by only 45 square feet and thirty square feet, respectively. The addition is also modestly-sized and is sited in the only location that will not bring the dwelling closer to either of the water bodies. The imposition of conditions found in the draft order regarding vegetation removal, planting and lighting will prevent any potential adverse impacts to the aesthetic character of the shorelines or water quality. With the retention of existing shoreline vegetation and the proposed plantings, the proposed expansions will not be visible from the Oswegatchie River and will be well-screened from "The Setback." See shoreline photo [part of Hearing Exhibit 5] attached as Attachment 7 to this memorandum.

CONCLUSION

In determining whether a variance is appropriate, the Agency must consider whether the adverse consequences from denial of this request would outweigh the public purpose to be served, i.e., protection of the aesthetic character of the shorelines and water quality. Denial of this variance would effectively preclude Ms. Yuckel from constructing a universally-accessible home for her disabled mother. Staff has concluded that the construction of the addition, ramp and entryway will have no identifiable impacts on the water quality or aesthetic character of the shorelines. Thus, staff believes it would be reasonable for the Agency to find that the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the shoreline restrictions.

It is staff's position that the variance meets the factors set forth in 9 NYCRR § 576.1(c), and that on balance and taking into consideration all of the relevant factors, the proposal will result in no adverse impacts. Therefore, staff finds that the Agency could reasonably grant the variance request.