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APA Order Granting
Variances
2013-257

Date Issued: March 19, 2014

In the Matter of the Application of

**JANET ELIZABETH YUCKEL and
MICHAEL J. WALKER**

for variances pursuant to §806 of the APA Act

To the County Clerk: This order must be recorded on or before **May 19, 2014**. Please index this Order in the grantor index under the following names.

- 1. Janet Elizabeth Yuckel**
- 2. Michael J. Walker**

SUMMARY AND AUTHORIZATION

Michael J. Walker and Janet Elizabeth Yuckel (collectively, "applicant") are granted variances, on conditions, from the applicable shoreline restrictions pursuant to Executive Law Section 806, in an area classified Resource Management by the Official Adirondack Park Land Use and Development Plan Map in the Town of Fine, St. Lawrence County.

The variances granted for expansion of the applicant's preexisting single family dwelling 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 when the 266 square foot addition to the dwelling is framed and roofed.

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 project site has shoreline on two navigable bodies of water: one water body is named "The Setback" and is a pond located on the northerly side of Ranger School Road, and the second water body is the Oswegatchie River. The variance application seeks Agency approval for variances from the applicable 100-foot shoreline structure setback restriction pursuant to Sections 806(1)(a)(2) and 806(3) of the Adirondack Park Agency Act (Executive Law, Article 27) to authorize the expansion of a preexisting single family dwelling as follows: (1) a 266-square foot addition 54 feet from the mean high water mark ("MHWM") of the Oswegatchie River; (2) a 45-square foot ramp 77 feet from the MHWM of the Oswegatchie River and 92 feet from the MHWM of "The Setback;" and (3) a 30-square foot "entryway", 70 feet from the MHWM of the Oswegatchie River and 87 feet from the MHWM of "The Setback."

VARIANCE DESCRIPTION AS PROPOSED

The project site is located in the Town of Fine, St. Lawrence County, on a 0.85-acre parcel designated as Resource Management land use area on the Adirondack Park Land Use and Development Plan Map. The tax map number is Section 225.64, Block 1, Parcel 4. The property is described in a deed from Sandra Broadway Ward and Nathan V. Ward to Janet Elizabeth Yuckel and Michael J. Walker dated June 14, 2013 which was recorded June 20, 2013 in the St. Lawrence County Clerk's Office as Instrument No.R-2013-00009615. The property has approximately 234 feet of shoreline on the Oswegatchie River and 220 feet of shoreline on "The Setback."

The variance requests as proposed and granted herein involve an expansion of the preexisting single family dwelling on the project site, which is 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 the proposed 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 at this point on the dwelling). 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 MHW). 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 and renovated. When finished, the second floor will have two bedrooms, a bathroom and a small office space in the hallway. No increase to the number of bedrooms (total of three) will result from the proposal and the new construction will be no taller than the existing roofline.

The requested variances are shown on the following maps and plans:

- A survey of the project site entitled, "Map of the Land of Sandra Broadway Ward and Nathan V. Ward to be Conveyed to Janet Yuckel", dated May 27, 2013, last revised June 4, 2013, prepared by David M. Strack, L.S.;
- A site plan sketch entitled, "Site Plan, Sheet SP-1" dated Dec. 2013, prepared by Timothy J. Westbrook;
- A site plan sketch entitled, "Detailed Plan, Sheet D-1" dated Dec. 2013, prepared by Timothy J. Westbrook;
- A building plan entitled, "Existing Conditions, Sheet E-01" dated Nov. 2013, prepared by Timothy J. Westbrook;
- Building floor plans entitled, "Schematic Plan, Sheet A-01" dated Dec. 2013, prepared by Timothy J. Westbrook;
- Building elevation drawings entitled, "Schematic Elevations, Sheet A-02" dated Dec. 2013, prepared by Timothy J. Westbrook.

Copies of the Site Plan (SP-1) and the Schematic Plan (A-01) are 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 VARIANCES ARE APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The expansion of the single family dwelling 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 applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the Order.
2. The expansion of the single family dwelling may not be undertaken, and no transfer deed shall be recorded, until this Order is recorded in the St. Lawrence County Clerk's Office. This Order shall be recorded on or before May 19, 2014 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 applicant, all present and future owners of the project site and all contractors undertaking all or a portion of the expansion of the single family dwelling. Copies of this Order and all the approved maps and plans referred to herein shall be furnished by the applicant(s) to all contractors prior to undertaking any construction, 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 2013-257 issued March 14, 2014, 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 preexisting single family dwelling shall be constructed in the location shown on the Schematic Plan (A-01) and shall not exceed a footprint of 266 square feet; the entryway shall be constructed in the location shown on the Schematic Plan (A-01) and shall not exceed a footprint of 30 square feet; and the ramp shall be constructed in the location shown on the

Schematic Plan (A-01) and shall not exceed a footprint of 45 square feet. The addition shall not exceed 22 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, size, or dimensions of the variances granted herein will require a new or amended Agency Order. Within 60 days of completing construction of the addition, the entryway and ramp authorized herein, a qualified design professional shall provide written certification to the Agency that they were built in compliance with the approved plans.

Wastewater Treatment

7. Prior to any increase in the number of bedrooms (beyond three bedrooms) or any alteration, repair, or replacement involving the existing subsurface absorption system, 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 mitigation measures as deemed appropriate.
8. No earth disturbance or placement of structures shall occur in the northeasterly corner of the variance site other than that which would be compatible with preservation of ample, suitable area for installation of a replacement on-site wastewater treatment system to serve the dwelling.

Outdoor Lighting

9. Any new free-standing and 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 any public road or adjoining property. The intent is to reduce nighttime light pollution (glare, light trespass and sky glow).

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.

Vegetative Planting

11. The tree planting shall be undertaken as shown on Sheet SP-1, Site Plan. The approved plan shall be implemented in the spring or fall, whichever comes first, immediately following the construction of the single family dwelling expansion authorized herein. Any trees which do not survive or become diseased shall be replaced annually until such time as all of the trees have been established in a healthy growing condition.
12. Within 90 days of completion of the planting authorized herein, the permittee shall submit to the Agency photographs showing that the planting has been successfully completed.

Shoreline Cutting

13. Along the Oswegatchie River shoreline, between the existing dug well and the southeasterly property corner, no trees, shrubs or other woody-stemmed vegetation within 20 feet of the MHWMM shall be cut, culled, trimmed or pruned without prior Agency review and approval. 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.
14. With regard to the remainder of the Oswegatchie shoreline and the shoreline of "The Setback," the following minimum shoreline vegetative cutting restrictions shall apply:
 - a. within 35 feet of the MHWMM, 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 MHWMM, 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.

Review of Future Development

15. No further land use and development shall occur on the project site without first obtaining a jurisdictional determination and, if necessary, a permit or order from the Agency.

Legal Interests of Others

16. This order does not convey to the applicant 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. The project site is a preexisting lot of record developed by a preexisting 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.

Existing Environmental Setting/Character of the Area

2. The 0.85-acre project site has shoreline on two navigable bodies of water: "The Setback" and the Oswegatchie River. The Oswegatchie River is not a designated river in this location. Ranger School Road divides the property into two parcels. It is developed by a 2-1/2 story preexisting single family dwelling and four outbuildings. The dwelling is 22 feet in height, according to the Schematic Elevations (A-02). There is a dock and a boathouse on the Oswegatchie shoreline. At its closest points, the dwelling is currently located 42± feet from the MHWM of the Oswegatchie River and 94± feet from the MHWM of "The Setback." As shown on the site plan map (SP-1), most of the variance site is located within the 100 foot shoreline setback area. Only a small area (approximately 40 feet by 70 feet) in the northeasterly corner is more 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.
3. The site is located in the community of Wanakena, on the south side of Ranger School Road. Approximately 40 small shoreline lots developed by modest-sized single family dwellings exist in

this area which is classified as Resource Management. Lands on the north side of Ranger School Road in this area consist of large forested tracts owned by NYS College of Environmental Science and Forestry. On the opposite side of the Oswegatchie River, the shoreline is characterized by small, residential lots in an area classified as Moderate Intensity Use.

Future Subdivision and Development

4. No additional principal buildings will be allowed on the 0.85±-acre project 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 buildings.
5. Any future new land use and development on or subdivision of the project site will likely require a permit or variance from the Agency because the entire parcel is located within a Resource Management land use area and almost all of the site is located within 100 feet of the Oswegatchie River and/or "The Setback."

Notice and Comment

6. The Agency notified all parties as required by the Adirondack Park Agency Act and Agency regulations. No comment letters have been received.

Public Hearing

7. On January 31, 2014, a public hearing on the variance requests was held in the Town of Fine. The hearing was attended by Agency staff, the applicant's representative, and one other person. No comments or objections were made to the requested variances during the hearing.

Other Regulatory Permits and Approvals

8. A Local Government Notice Form signed by the Town of Fine Supervisor and dated November 25, 2013 indicates that the proposed expansion of the single family dwelling is not prohibited by any local law or ordinance.

Wetlands

9. Wetlands are located along the project site's shoreline on "The Setback." No impacts to or loss of wetlands will result from the expansion of the single family dwelling.

10. Wetlands described herein are intended to alert landowners and others that wetlands are present on the project site. However, this may not identify all wetlands on or adjacent to the project site.

Water Resources

11. 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 three bedrooms, groundwater and nearby surface water resources and wetlands will be protected.

Open Space/Aesthetics/Shoreline Character

12. Provided that: (a) the addition is constructed in the proposed location and does not exceed 266 square feet in footprint and 22 feet in height; and (b) no trees are removed between the mean high water mark of Oswegatchie River and the 2-story addition, as specified in Condition 13, the 226-square foot addition authorized herein will not be visible from the Oswegatchie River. In addition, tree plantings, as specified in Condition 11, will effectively screen the addition, the ramp and the entryway from "The Setback."
13. Requiring any new outdoor lights to employ full cut-off fixtures will reduce nighttime light pollution (glare, light trespass and sky glow).

Historic Sites or Structures

14. By letter dated December 18, 2013, the NYS Office of Parks, Recreation and Historic Resources determined that the project 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 §14.09 of the New York State Historic Preservation Act of 1980.

VARIANCE IMPACTS AND CRITERIA

15. The following findings evaluate the variance requests 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

With water bodies on three sides and the location of the dwelling wholly within the 100 foot setback area of the Oswegatchie River and partially within the 100 foot setback area of "The Setback," any expansion of the dwelling, other than a height increase of two feet or less, would require a variance from the shoreline restrictions.

(b) Whether the adverse consequences to the applicant 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 restrictions for structures 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 applicant resulting from denial of the variances would be to preclude the proposed use of the dwelling to provide universally-accessible living quarters for Ms. Yuckel's mother, who uses a wheelchair.

(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 proposed entryway and ramp on the north side of the dwelling are minor in size. They extend only to the extent necessary (seven feet and three feet, respectively) closer to the MHWM of "The Setback," and otherwise only represent a minor increase in the nonconformance of the dwelling (on the side of the dwelling that does not face the Oswegatchie River) within the setback of the Oswegatchie River. The 226-square foot addition on the easterly side of the dwelling is modestly-sized to fulfill the proposed use of providing universally-accessible living quarters on its first floor. The addition does not extend closer to either water body, representing a lateral expansion within the MHWM of the Oswegatchie River.

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

There will be no detriment to adjoining or nearby landowners as the proposed expansion will not be visible from the Oswegatchie River and will be well-screened from Ranger School Road and "The Setback." The use of the property will not change; it will continue to be residential. The two closest dwellings are more than 300 feet from the Yuckel dwelling and

the Oswegatchie River is more than 600 feet wide in this location. The expansions are modest in size and in keeping with the scale of the dwelling and lot.

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

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 no "rearward" side to the dwelling. Therefore, other than a height increase of two feet or less, there is no opportunity to expand this dwelling in any direction without a variance. The applicant's consultant explored several options for reconfiguring the interior floor plan, none of which proved feasible to provide universally-accessible first floor living space for Ms. Yuckel's mother.

(4) The manner in which the difficulty arose;

The applicant purchased the property in June, 2013. The difficulty arose because Ms. Yuckel, who is the primary caregiver for her mother, seeks to expand the dwelling to provide universally-accessible living quarters for her mother.

(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

No resources will be adversely affected by the granting of the requested variances provided they are undertaken as authorized and conditioned herein. The expansion of the single family dwelling is modest in nature and, with retention of existing shoreline vegetation and the proposed planting, will be screened from off-site viewpoints. There will be no net increase in the number of bedrooms (total of three) which would increase sewage flows. Should the existing septic system need to be replaced, the applicant has reserved the only area on the project site outside the 100-foot setback for a replacement system, therefore protecting water quality.

(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.

Requiring the planting of trees as proposed on the north side of the dwelling and strictly limiting any cutting along the Oswegatchie shoreline of the property will assure screening of the expansions and protect water quality.

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 the variance requests are greater than the public purpose sought to be served by the shoreline 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.

Accordingly, the Agency concludes that granting the requested variances pursuant to §806 of the Adirondack Park Agency Act and 9 NYCRR Part 576, will observe the spirit of the Act, secure public safety and welfare, and provide substantial justice.

