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May 1, 2014



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

APA Order Granting
Variances
2013-249

Date Issued:

In the Matter of the Application of

**ANTHONY CINCOTTA AND KATHERINE
CINCOTTA**

for a variance pursuant to 9 NYCRR Part 577

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

1. **Anthony Cincotta**
2. **Katherine Cincotta**

SUMMARY AND AUTHORIZATION

Anthony Cincotta and Katherine Cincotta ("applicants") are granted two variances, on conditions, from the applicable 150-foot shoreline restrictions required by 9 NYCRR Section 577.6(b)(3) of the New York State Wild, Scenic and Recreational Rivers System Act ("Rivers Act"), in an area classified Low Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Jay, Essex County.

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 applicants request variances from 9 NYCRR Section 577.6(b)(3) to allow the construction of a single family dwelling and garage within the applicable 150-foot setback area of the West Branch of the AuSable River as measured from the mean high water mark. The site of the requested variances is a lot determined to be part of a pre-existing subdivision known as "Au Sable Acres". Pursuant to 9 NYCRR Section 577.7(b)(2), one single family dwelling may be constructed without an

Agency permit, on any lot in such a pre-existing subdivision, provided that it complies with the restrictions and standards of 9 NYCRR Section 577.6. Section 577.6(b)(3) of Agency regulations requires a minimum shoreline setback of 150 feet measured from the mean high water mark for new structures, except for fences, poles, signs of less than two square feet in area, lean-tos, docks, boathouses, bridges and stream improvement structures for fishery management purposes. The single family dwelling and garage are located less than 150 feet from the mean high water mark of the West Branch of the AuSable River and accordingly require variances from the setback restriction.

VARIANCE SITE

The variance site is a 0.8± acre parcel of land located on River Road in the Town of Jay, Essex County, in an area classified Low Intensity Use by the Adirondack Park Land Use and Development Plan Map, on 188± feet of shoreline of the West Branch of the AuSable River. The parcel is identified on Town of Jay Tax Map Section 7.71, Block 1 as Parcel 1. The variance site is described in a deed from Joseph Cincotta and Josephine Cincotta to Anthony Cincotta and Katherine Cincotta dated October 25, 1989 which was recorded October 30, 1989 in the Essex County Clerk's Office in Liber 954 of Deeds at Page 260.

A physical description of the variance site is given in Findings of Fact 2 through 8.

DESCRIPTION OF VARIANCE REQUESTS

The variances, as requested and conditionally approved herein, involve: (1) the construction of a 30 foot by 50 foot three-bedroom single family dwelling, with an 8 foot by 38 foot covered porch and 6 foot by 20 foot covered entrance porch, located 107± feet at the closest point from the mean high water mark of the West Branch of the AuSable River; and (2) the construction of a 480 square foot garage located 138± feet at the closest point from the mean high water mark of the West Branch of the AuSable River.

The proposed single family dwelling will have a maximum height of 36 feet from existing grade/finished grade at the walkout basement to the top of a chimney which may extend two feet above the peak of the roofline and the free standing garage will be approximately 20 feet in height. An on-site wastewater treatment system is proposed to be installed 100 feet from the mean high water mark of the West Branch of the AuSable River. The single family dwelling will be served by municipal water supply.

The variance requests are shown on a site plan entitled "Map of Survey for Anthony Cincotta & Katherine Cincotta," drawn by Robert M. Marvin, Jr., and dated March 3, 2014 and 11 sheets of septic plans drawn by David W. Magurk, P.E. and dated January 15, 2014.

A reduced-scale copy of the Site Plan 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 these variance requests.

CONDITIONS

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

1. These variances shall expire four years from the date this Order is recorded. No construction of the single family dwelling or garage shall occur after that date unless pursuant to new variances or upon the variances being renewed by the Agency.
2. The single family dwelling and garage shall be undertaken as described in the completed application, and the Description of Variance Requests 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.
3. These variances may not be undertaken until this Order is recorded in the Essex County Clerk's Office. This Order shall be recorded on or before _____ 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.
4. 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 single family dwelling and garage. 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 variances, 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 2013-249 issued _____, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
5. 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

6. This Order authorizes the construction of single family dwelling and garage in the locations shown on the above-referenced, approved plans. The single family dwelling shall not exceed a footprint of 1,924 square feet, including the covered porches. The garage shall not exceed a footprint of 480 square feet. No structure shall exceed 36 feet in height. The height shall be measured from the highest point on the structure, including the chimney, to the lowest point of existing grade or finished grade, whichever is lower.
7. Within 60 days of completing construction of the dwelling and garage authorized herein, a qualified design professional shall provide written certification to the Agency that the structures were built in compliance with the approved plans.

Silt Fencing

8. Prior to any construction activity resulting in land disturbance, a silt fence shall be properly installed parallel to the existing contours as shown on the site plan referenced herein. The silt fence shall be embedded into the earth a minimum of six inches. 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 dwelling and garage authorized herein and all accessory use structures on the variance site shall be of a natural earth-tone color which blends with the existing vegetation. The Agency will, upon request, advise whether any particular proposal complies with this condition.

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 the shoreline or the waters of the West Branch of the AuSable River,

River Road or adjoining property. The intent of this condition is to reduce nighttime light pollution (glare, light trespass and sky glow).

Special Variance Conditions

Wastewater Treatment

10. The proposed on-site wastewater treatment system shall be constructed in complete conformity with the location and design shown on the plans referenced herein. Installation of the system shall be under the supervision of a licensed design professional (licensed Professional Engineer, Registered Architect, or exempt Licensed Surveyor). Within 30 days of complete system installation and prior to use, the design professional shall provide the Agency with written certification that the system was built in compliance with the approved plans.

Wild, Scenic and Recreational Rivers Special Provisions

11. Inside and within 100 feet of the mean high water mark of the West Branch of the AuSable River, no trees or other vegetation shall be harvested, cut, culled, removed, thinned or otherwise disturbed without prior Agency review and approval. 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

12. Other than the variances approved herein for a single family dwelling and garage, 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 the West Branch of the AuSable River.

Legal Interests of Others

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

Review of Future Development

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

FINDINGS OF FACT

Background/Prior History

1. As of the May 22, 1973 enactment date of the Adirondack Park Land Use and Development Plan Map, the variance site was not part of a larger parcel of land.

Existing Environmental Setting/Character of the Area

2. The variance site is less than one acre in size with 187± feet of shoreline frontage on the eastern shoreline of the West Branch of the AuSable River, and is within a designated recreational river area as specified in 9 NYCRR Appendix Q-6. The river in this area is a wide and shallow navigable river which flows south to north and is a popular non-motorized boating route.
3. The variance site is subject to a deed covenant requiring any building constructed on the site to be set back a minimum of 50 feet from the centerline of the road, a minimum of 25 feet from the adjoining property boundaries, and a minimum of 25 feet from the rear property boundary. The dwelling will be set back as far from the mean high water mark of the river as practicable without violating the front yard setback deed covenant.
4. There are no wetlands on the variance site. The mean high water mark (MHW) of the river with respect to the subject lot was confirmed by Agency staff during a site visit in November 2013. This feature is shown on the survey/site plan map, and follows the property boundary other than within a 50 foot segment where it curves into the property approximately five feet. The existing toe of slope varies, and is approximately 5 to 10 feet from the top of bank.
5. Slopes in the location of the proposed single family dwelling, garage and on-site wastewater treatment system are 8 to 10 percent.
6. Soils on the variance site consist of fine sandy loams and cobbly sands.

7. As depicted on the survey/site plan map, the single family dwelling is set back 107 feet from the mean high water mark of the West Branch of the AuSable River and the proposed garage is set back 138 feet from the mean high water mark of the West Branch of the AuSable River.
8. Au Sable Acres Subdivision is developed with seasonal use and year-round single family dwellings on small lots. The area in the immediate vicinity of the variance site is developed with dwellings on 1-acre lots along the river and on the opposite side of River Road. The lot adjoining the variance site to the east is improved by an existing single-family dwelling. The lot adjoining the variance site to the west is vacant. The lot south of and immediately adjacent to the variance site on the other side of River Road is improved by an existing single family dwelling. Lands north of the variance site located on the other side of the West Branch of the Au Sable River consist of forested lands along the shoreline of the river. There are no docks or boathouses in the immediate vicinity of the variance site.

Public Notice and Comment

9. The Agency notified all parties as required by the Adirondack Park Agency Act and Agency regulations. One comment letter was received from an adjoining landowner with concerns regarding the location of the proposed single family dwelling in relation to the landowner's residence.

Public Hearing

10. On March 28, 2014, a public hearing on the variance request was held in the Town of Jay. The hearing was attended by Agency staff and the applicants' representatives. No one from the public attended or provided comment at the public hearing.

Other Regulatory Permits and Approvals

11. The Agency has been advised by the Town of Jay in a completed Local Government Notice Form that no municipal approval is required for the requested variances.

Wetlands

12. There are no wetlands on the site based upon an Agency staff site visit. However, this may not identify all wetlands adjacent to the variance site.

Water Resources

13. The onsite wastewater treatment system meets all applicable New York State Department of Health standards and the Agency's standards set forth in Appendix Q-4 of the Agency's regulations. Adverse impacts to the West Branch of the AuSable River, surface waters, and groundwater will be avoided provided the onsite wastewater treatment system is installed as proposed.

Open Space/Aesthetics/Shoreline Character

14. Vegetation on the variance site consists of a mix of mature and second growth coniferous and deciduous vegetation consisting of white pine, balsam, poplar, and paper birch. The average height of these trees ranges between 40 to 50 feet. Due to sandy soils, there is very little undergrowth. The elevation difference between the proposed dwelling site and the river is approximately 30 feet. The architectural standards of AuSable Acres require the structure to be of a natural materials and of earth tone colors. Requiring that the dwelling be of a natural earth-tone color which blends with the existing vegetation will ensure that it will not be visible from the river or adjoining residences. Given the modest size of the structures and provided the 100 foot vegetative buffer from the mean high water mark of the West Branch of the Ausable River remains, there will be no undue adverse impacts to the open space or aesthetics of the project site or the shoreline of the West Branch of the Ausable River.
15. New exterior lighting on either of the structures authorized herein has the potential to be visible from the waters of the West Branch of the Ausable River and create nighttime light pollution (glare, light, trespass and sky glow) unless it is fully shielded to direct light downward.

Historic Sites or Structures

16. The variance site does not include any areas identified on the New York State Archeological Sensitivity Map. Further there are no structures on the site or within the view-shed of the proposed building sites which are more than 50 years old. Thus, the variances as 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.

17. The entire project site is located within ¼ mile of the AuSable River, a recreational river under the New York State Wild, Scenic and Recreational Rivers System. Most of the project site is also located within 150 feet of the mean high water mark of the river. Almost all new land use and development on the property would require an Agency permit or a variance from the shoreline setback restrictions set forth in 9 NYCRR Part 577. Requiring that no new land use and development shall occur on the site prior to obtaining a jurisdictional letter, permit or order will ensure compliance with the Adirondack Park Agency Act and the Adirondack Park Rules and Regulations.

Change of Circumstances

18. The potential for changes in environmental conditions on the variance site and/or advances in technology that could further mitigate impacts associated with the proposed variances support the imposition of the four-year time limit on the requested variances unless they are renewed or new variances are authorized by the Agency.

VARIANCE IMPACTS AND CRITERIA

19. The Agency may grant a variance where there are practical difficulties in carrying out the strict letter of the provisions of the plan or the shoreline restrictions. The following findings evaluate the variance requests pursuant to the standards and factors set forth in 9 NYCRR 576.1(b)-(c).

9 NYCRR 576.1(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 includes protection of water quality and the aesthetic character of the shoreline. Denial of this variance would effectively preclude construction of a single family dwelling and garage on this property. In addition, construction of a single family dwelling and garage will have no identifiable impacts on the water quality or aesthetic character of the shoreline of the West Branch of the AuSable River. As such, the adverse consequences resulting from denial are greater than the public purpose sought to be served by the shoreline restrictions.

9 NYCRR §576.1(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 single family dwelling and garage are modest in size and have been designed for year-round residential use. The dwelling is proposed to have a 1500 square foot footprint with an additional 424 square feet for a covered entrance porch and a covered deck. The garage is proposed to be 480 square feet and will be used for storage. The design of the structures is in keeping with the styles of adjacent homes and with the guidelines of the AuSable Acres Property Owners Association (AAPOA).

- (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 dwelling and garage comply with the architectural requirements of the AuSable Acres Property Owners Association (AAPOA) and meet the building setback and vegetative buffer requirements of the deed restrictive covenants. The dwelling and garage will be set back more than 100 feet from the AuSable River and will be adequately screened from the river by existing vegetation.

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

Because there is only a five foot to ten foot wide strip of land located outside the 150 foot setback and outside the 50 foot front property line building setback, variances would be necessary for any dwelling and garage to be built on the property.

- (4) The manner in which the difficulty arose;**

The 0.8±-acre lot was created by a 19-lot subdivision in 1965 (Section 4B of a 900+ lot subdivision undertaken in sections) and approved by the New York State Department of Health on February 25, 1965. The deed conveying the lot contains numerous deed restrictive covenants including building setback requirements and vegetative buffer requirements.

- (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. With the retention of existing shoreline vegetation, the single family dwelling and garage will be screened from off-site viewpoints. The proposed septic system is located outside the 100-foot setback area and is designed to limit impacts to the waterbody, 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.

The conditions included in this Order will ameliorate any potential adverse effects.

CONCLUSIONS OF LAW

The Agency has considered all of the criteria for issuance of a variance as set forth in 9 NYCRR Part 576. The Agency hereby finds that the applicants' variance requests comply with these criteria, provided the variances are undertaken as described herein and in compliance with the conditions set forth above.

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 Variances is intended to provide notice to subsequent owners of the land.

ORDER issued this day
of , 2014.

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 2014, 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:TJD:JLM:PVC:mlr