



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

**APA Order Granting
Variance
2013-21**

Date Issued: [DATE]

In the Matter of the Application of

JOAN SYKES

for a variance pursuant to Executive Law §806

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

- 1. Joan Sykes**

SUMMARY AND AUTHORIZATION

Joan Sykes is granted a variance, as conditioned herein, from the applicable 75-foot shoreline structure setback required by Section 806(1)(a)(2) of the Executive Law, Adirondack Park Agency Act, to allow for the construction of a retaining wall zero feet from the mean high water mark of Hinckley Reservoir, in an area classified Low Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Russia, Herkimer 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.

APPLICABLE LAWS

Section 806(1)(a)(2) of the Adirondack Park Agency Act establishes a minimum shoreline setback of 75 feet from the mean high water mark of Hinckley Reservoir for all accessory structures and principal buildings greater than 100 square feet in size. The applicant requested a variance from this structure setback requirement pursuant to §806(3)(a) of the APA Act.

RELEVANT FACTS AND BACKGROUND

Variance Site

The variance site is a 0.5±-acre parcel of land identified on Town of Russia Tax Map Section 77.2, Block 2, as Parcels 10 and 11, and described in deeds from Claude Spry and Marion Spry to Joan Sykes, dated August 15, 1989, recorded August 28, 1989 (Parcel 10), and from Jennifer J. Haggerty, Herkimer County Treasurer to Joan M. Sykes dated September 12, 1994, recorded September 30, 1994 (Parcel 11), under Liber 768 of Deeds at Page 8, and Liber 818 at Page 112, respectively, both in the Herkimer County Clerk's Office.

The portion of the variance site upon which the retaining wall will be constructed contains 62± feet of shoreline on the south shore of Hinckley Reservoir, where the mean high water mark is 1,226.41 feet above mean sea level (MSL), and the spillway elevation is 1,225 feet above MSL. The elevation of the developed portion of this site is 1,265± feet above MSL, which is the highest point along this section of shoreline. There are no other water resources or wetlands on or immediately adjacent to this site.

The soil on the variance site is unconsolidated and loosely consolidated deep sand and clay. The exposed steep slope is easily eroded due to the type of soil, fluctuating water levels associated with the reservoir (e.g. wave action and lake water saturation), ice damage, more severe storms and rain water weeping through the soil strata at irregular rates. Vegetation at the top of the steep slope includes both deciduous and coniferous vegetation, and a maintained lawn surrounding the dwelling. Much of the woody vegetation that was at the top of the steep slope when the applicant purchased the property has eroded away, and under current conditions it is difficult for replacement vegetation to become established.

Parcel 10 contains a single family dwelling constructed in 2008 to replace a mobile home, served by an individual well (20± feet from the slope) also installed in 2008, and an onsite wastewater treatment system. Nearby land uses include small residential parcels with seasonal dwellings, a campground, and the hamlet of Grant located one mile to the southeast. Hinckley Reservoir dam is 1.75 miles southwest of the variance site, and the Adirondack Park Blue Line is approximately 1/8th mile north between the site and an uninhabited island in the reservoir.

Variance Request

A 75± foot variance from the minimum 75-foot setback to the mean high water mark of Hinckley Reservoir is requested for construction of a concrete retaining wall 14 feet in height, 60± feet in length, with a face area of 840± square feet, in order to alleviate an ongoing slope failure. On each end of the concrete wall gabion basket extensions, a maximum of 150 square feet in size, may be added to tie into the existing slope, as necessary. A total maximum of 1,140± square feet in face area is being sought through variance but may not be necessary depending on the actual number and size of gabions needed. All components of the structure will be located entirely within the 75 foot setback.

Concrete colorized to a medium tan/light brown shade will be used to blend the appearance of the wall with the existing exposed slope. A planting plan will be followed utilizing native plant species with deep roots and coir logs to further stabilize the rebuilt slope above the wall, and to mitigate visual impacts by providing for vegetation which will have the capacity to overhang the wall and soften its appearance. The base of the wall will be buried two feet into the substrate, leaving an actual exposed surface 12 feet in height. Boulders will be placed in front of the wall base to provide additional protection against wave action to avoid scouring.

The variance proposal is more specifically described in the application materials and is shown on the following maps and plans:

1. A survey map titled "Topographic Map of a Portion of Lands of Joan Sykes" prepared by Cornerstone Land Surveying and dated August 14, 2013, herein referred to as the "Survey Map";
2. A set of plans consisting of four sheets prepared by Donald D. Ehre, P.E., P.L.L.C., and dated January 14, 2014, revised as noted below, and collectively referred to herein as the "Retaining Wall Plan":
 - a. "Plan & Detail", sheet 1 of 4, last revised August 4, 2014, which shows an overview of the variance site, description of the retaining wall, construction sequence, and wall detail;
 - b. "Planting Plan", sheet 2 of 4, last revised June 25, 2014, which details the area to be planted above the wall;
 - c. "Slope Profile", sheet 3 of 4, last revised March 21, 2014, which shows a cross-section profile of the site with the retaining wall; and
 - d. "Details", sheet 4 of 4, last revised June 25, 2014, which includes silt fence specifications, planting schedule, and typical planting detail.

A reduced-scale copy of sheet 1 of the Retaining Wall Plan is attached as a part of this Order for reference. The original, full-scale maps and plans described in this paragraph are the official plans for the variance, with copies available upon request from Adirondack Park Agency headquarters in Ray Brook, New York.

PROCEDURAL HISTORY

Following receipt of the variance application, the Agency notified all parties as required by the Agency regulations. On September 23, 2014, the Agency held a public hearing on the variance request in the Town of Russia. The hearing was attended by Agency staff, the applicant, and her consulting engineer. One letter supporting the variance was previously received from the adjoining landowner.

DISCUSSION

The Agency may grant a variance where there are practical difficulties in carrying out the restrictions set forth in Section 806(1)(a)(2) of the APA Act. The Agency has considered the standards and factors set forth in 9 NYCRR §576.1(b)-(c).

§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 adverse consequences of denial include significantly limiting the applicant's ability to preserve her property resulting in loss of use of her property, potential loss of her deep drilled well, an ongoing safety hazard, and resultant economic injury to the value of her property.

The public purposes served by the Agency's structure setback requirements include protection of the water quality and aesthetics of Hinckley Reservoir.

As proposed and conditioned herein, construction of the retaining wall and slope will not adversely impact the water quality or aesthetic character of the shoreline of Hinckley Reservoir. Water quality will be improved by reducing sediment entering the waterbody through erosion. The proposed plantings and concrete wall design colored to blend with the surroundings will soften the potential visual impact of the new wall on the aesthetic character of the shoreline. Granting the variance serves the public purpose of the shoreline restrictions while achieving the applicant's objectives.

§576.1(c)(1): Whether the application requests the minimum relief necessary.

The proposed retaining wall is the minimum relief necessary to accomplish the applicant's goals of real property protection and safety. Alternative designs and methods for preventing further slope failure (e.g. stepping the slope with gabion baskets, vegetation alone) were evaluated and determined to be more disruptive to the existing property, less effective for preventing further erosion, and/or prohibitively expensive.

§576.1(c)(2): Whether granting the variance will create a substantial detriment to adjoining or nearby landowners.

Public comment and the hearing revealed no opposition to the proposed retaining wall. The adjoining shoreline neighbor supports the project. The consulting engineer advises that there should be no detriment, and perhaps some protection, to the shoreline of the adjoining property resulting from the installation of the retaining wall on the applicant's property. Use of colored concrete intended to mimic the existing slope and use of native vegetation which will overhang the wall will mitigate visual impacts. Due to the geography of the area, the wall will be visible only to boaters on Hinckley Reservoir, limited surrounding shoreline areas, and from sites outside the Adirondack Park, not from adjoining or nearby dwellings.

§576.1(c)(3): Whether the difficulty can be obviated by a feasible method other than a variance.

There are no means other than a variance to allow for a retaining wall large enough to resolve the ongoing steep slope failure. The use of non-jurisdictional alternatives will result in further loss of real property, possible loss of the water well, loss of remaining vegetation and possibly the water well, and further negative impacts to water quality. A retaining wall sized to be non-jurisdictional would be inadequate to resolve the issue. A professional plantsman consulting for the applicant advised that vegetation planting and preservation alone cannot prevent further slope failure under the existing environmental conditions which include loosely consolidated soils, severe storms and lake water saturation. Agency staff engineer agrees with this assessment.

§576.1(c)(4): The manner in which the difficulty arose.

The shoreline slope is failing through no fault of the landowner. The applicant's property is the highest elevation along this section of shoreline, in an area of loosely consolidated soils on steep slopes. Wave and ice action almost continuously undercut sections of slope causing erosion and slope failure. Severe storms in recent years damaged vegetation, causing further blowdown, erosion, and accelerated slope failure. The slope failure is now approaching and endangering developed portions of the project site (deep water well) and damaging vegetation which had been providing a safety barrier.

§576.1(c)(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.

Construction of the authorized retaining wall with the required planting plan and erosion/sediment controls will prevent additional slope failure at the variance site that could adversely affect water quality. Implementation of the planting plan plus use of colored concrete will mitigate potential adverse impacts to the aesthetic character of the shoreline as viewed from the waterbody. Due to the potential for changes to environmental conditions associated with the authorized retaining wall, the imposition of a four year time limit on the requested variance will allow for further review of opportunities to best mitigate potential impacts, should the wall not be constructed within the four year time frame.

§576.1(c)(6): Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects noted above.

The potential for adverse effects to Hinckley Reservoir will be ameliorated by compliance with the following conditions:

1. This Order shall be recorded in the Herkimer County Clerk's Office by [DATE].
2. The authorization to undertake construction of the retaining wall described herein shall expire four years from the date this Order is recorded in the Herkimer County Clerk's office, unless construction of the structure has been completed in accordance with the plan sheets by that date or written authorization has been obtained from the Agency extending the deadline for construction.

3. The project shall be undertaken as depicted on the Retaining Wall Plan referenced herein, and as described in the application materials. Any changes to the location, size, dimensions, or other aspects of the structure shall require a new or amended Agency Order or a letter of compliance.
4. All erosion control devices, including silt fence, for containment of ground disturbance on the site during construction, shall be installed before any other ground disturbance takes place and shall remain in place until all disturbed areas have been stabilized. Silt fence shall be properly installed parallel to the existing contours between the construction site and Hinckley Reservoir, embedded into the earth a minimum of six inches. The applicant, her agents, or her 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. Silt fence shall not be installed or maintained below the water level of Hinckley Reservoir.
5. Concrete colorized to a medium tan/light brown shall be used to construct the retaining wall such that it resembles the color of the natural slope.
6. The planting plan shall be implemented immediately upon final grading associated with the retaining wall, or in the spring immediately following completion of the wall, if construction is undertaken in late fall or winter. Only native species shall be planted. Shrubs and vines that do not survive shall be replaced annually until established in a health growing condition.
7. Construction of the retaining wall and all associated activities authorized herein shall occur above the water level of the Hinckley Reservoir. No construction activities shall be allowed to negatively affect the water quality of Hinckley Reservoir.

CONCLUSION

The Agency has considered all of the standards and factors for issuance of a variance as set forth in 9 NYCRR Parts 576. The Agency hereby finds that the applicant's variance request meets the approval criteria, provided the authorized activities are undertaken as described herein and in compliance with the conditions set forth above.

A variance of the terms of the Executive Law is not personal and runs with the land. Recording of this Order is intended to provide notice to subsequent owners of the variance site.

ORDER issued this day
of , 2014.

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 2014, 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:MJG:GAB:SHP:mlr