 <p><b>NEW YORK</b> STATE OF OPPORTUNITY.</p> <p><b>Adirondack Park Agency</b></p> <p>P.O. Box 99 · Ray Brook, New York 12977 · Tel: (518) 891-4050 · Fax: (518) 891-3938 · www.apa.ny.gov</p>	<p>APA Order Granting Variance <b>2015-55</b></p>
	<p>Date Issued: June 15, 2015</p>
<p>In the Matter of the Application of</p> <p><b>SANDRA M. RICHARDS</b></p> <p>for a variance pursuant to 9 NYCRR Part 577</p>	<p>To the County Clerk: This order must be recorded on or before <b>August 13, 2015</b>. Please index this Order in the grantor index under the following names applicant and all landowners names:</p> <p><b>1. Sandra M. Richards</b></p>

**SUMMARY AND AUTHORIZATION**

Sandra M. Richards is granted a variance, as conditioned herein, from the applicable 150-foot shoreline structure setback required by Section 577.6(b)(3) of Agency regulations ("9 NYCRR") implementing Article 15, Title 27 of the Environmental Conservation Law ("New York State Wild, Scenic and Recreational Rivers System Act" or "Rivers Act"), to allow for the construction of a detached garage approximately 104 feet from the mean high water mark of the West Branch of the AuSable River, 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.

**APPLICABLE LAWS**

Section 577.6(b)(3) of Agency regulations implementing the Rivers Act establishes a minimum shoreline setback of 150 feet from the mean high water mark of the West Branch of the AuSable River, which is a designated as a recreational river under the Rivers Act, for all structures other than 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 applicant requested a variance from this structure setback requirement pursuant to 9 NYCRR Section 577.10.

## RELEVANT FACTS AND BACKGROUND

### Variance Site

The variance site is a 1.1±-acre parcel of land located on the west side of River Road (in the AuSable Acres subdivision) in the Town of Jay, Essex County, in an area classified Low Intensity Use by the Adirondack Park Land Use and Development Plan Map. The parcel is identified on Town of Jay Tax Map Section 17.23, Block 1, as Parcel 1. The variance site is described in a deed dated May 21, 2000 from Jeffrey Caudill and Jacqueline Caudill to David K. Richards and Sandra M. Richards, recorded May 26, 2000 in the Essex County Clerk's Office in Book 1249 at Page 254 as Instrument Number 002703. David K. Richards is deceased.

The entire variance site is located within ¼ mile of the West Branch of the AuSable River. Almost the entire variance site is located within 150 feet of the mean high water mark of the river.

The variance site contains an existing 4-bedroom single family dwelling constructed in approximately 1970. The dwelling has a footprint of 1,121± square feet (including attached structures, such as porches and decks) and a height of 25± feet.<sup>1</sup> The dwelling is served by municipal water, an on-site wastewater treatment system, and overhead utilities. A driveway providing access to the dwelling extends from a bend in River Road and then parallels River Road immediately west of the dwelling, between the dwelling and the river.

The variance site contains 203± feet of shoreline on the eastern shore of the West Branch of the AuSable River, which is a navigable water body. The mean high water mark of the river, where it adjoins the variance site, was confirmed by Agency staff during a site visit on March 31, 2015 as the top of the river bank and is shown on the Survey Map referenced below.

There are no wetlands on the variance site.

The proposed garage is located on gentle slopes, being part of a narrow plateau containing the existing dwelling and driveway. West of the garage, the land slopes downward to the river. East of the garage, the land slopes upward to the road. As shown in the Building Plans referenced below, the west/river side of the garage will be constructed at existing grade and the east/road side of the garage will be constructed 3± feet below existing grade.

Soils on the variance site consist of sandy glaciofluvial deposits mapped by the USDA Natural Resource Conservation Service as Adams loamy sand.

The "edge of existing clearing limits" is shown on the Survey Map referenced below. The variance site is wooded within 70± to 80± feet of the river, including hemlock trees between the garage site and the river, except where there is a clearing 40± to 50± feet wide in the middle of the variance site providing views from the dwelling of the river and landscape beyond.

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<sup>1</sup>Footprint is measured from the Survey Map. Height is reported in the application.

### **AuSable Acres Subdivision – History and Character**

The variance site is Tract No. 6 on a map titled “AuSable Acres Section -4A”, prepared by K. E. Remele, LS, dated October 16, 1963, approved by the NYS Department of Health on October 17, 1963, and filed in the Essex County Clerk’s Office on October 18, 1963 as Map #1879. The Agency recognizes the lot as lawful and part of a pre-existing subdivision.<sup>2</sup>

The AuSable 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 (non-river) side of River Road. The lot adjoining the variance site to the north and the two lots across River Road to the east each contain a single family dwelling. The lot adjoining the variance site to the south is vacant residential property. The lot across the river to the west is also vacant, but taxed as forest land under NYS Real Property Tax Law Section 480-a.

The variance site is subject to a deed restriction, enforced by the AuSable Acres Property Owners’ Association (“POA”), 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. A separate deed restriction requires architectural review of any cottage, camp, fence, or other structures.

Within a 1-mile stretch of river corridor, including the variance site, there are 28 residential parcels, 17 of which are developed. Of those 17 developed parcels, 4 contain existing garages, which were constructed between 1970 and 1999 and range in size from 384 square feet to 640 square feet.

The Agency has granted other variances in the same neighborhood of the AuSable Acres subdivision, between the river and River Road. Variances were granted for distances of 12 to 48 feet from the 150-foot shoreline structure setback to allow for construction of single family dwellings and garages. Garages authorized in variances granted in 2013, 2003, and 2001 were 2-car garages having footprints ranging from 400 square feet to 480 square feet. None of the dwellings or garages authorized by these variances has been constructed.

An existing shed on the variance site will be removed pursuant to Agency Settlement Agreement E2015-0029 executed April 27, 2015.

### **Variance Request**

The objective of the applicant is to build a detached garage to provide storage from cold, windy, and icy winter conditions for vehicles, homeowner’s tools, gardening items, lumber, snow and lawn equipment, sports items (i.e., fly rods, skis, toboggans, sleds, day sailer), and “all the other stuff homeowners gather/own when living in a recreational, rural area.”

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<sup>2</sup> See Executive Law Section 811(3)

The variance request is shown on the following maps and plans:

- "Map of Survey of lands of David K. Richards and Sandra M. Richards," received April 17, 2015, prepared by Adirondack Surveying PLLC of Jay, NY, dated April 8, 2015, and signed and stamped by Ralph C. Schissler III, LS ("Survey Map"); and
- Building plans prepared by Jody Perkins for Upstate Builders of AuSable Forks, NY, received May 5, 2015 and consisting of 3 pages: cover letter, side view, and view from river ("Building Plans").

A reduced-scale copy of the Survey Map 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.

The variance request involves construction of a 1.5-story, detached two-car garage, 576 square feet in footprint, 22 feet in height, to be located 104 feet from the mean high water mark of the West Branch of the AuSable River. The request is for a 46-foot variance from the 150-foot structure shoreline setback described under "Applicable Laws," herein. The existing driveway will provide access to the garage. The exterior of the garage will be painted to match the existing dwelling, which is dark brown with dark green trim. A silt fence is shown on the "Survey Map" on the downslope side of the garage to control erosion and sediment during construction. No trees need to be cut for garage construction. No plumbing is proposed for the garage. No new exterior lighting is proposed.

### **PROCEDURAL HISTORY**

Following receipt of the variance application, the Agency notified all parties as required by the Agency regulations. On May 19, 2015, the Agency held a public hearing on the variance request in the Town of Jay. The hearing was attended by Agency staff and the applicant. No members of the public attended the hearing and no comment letters were received.

A completed Local Government Notice Form, signed by the Town of Jay Code Enforcement Officer on January 30, 2015, indicates that a local building permit is required for the garage, the town has no zoning, and the project is not prohibited by any local law or ordinance.

The project site is not within an archeologically sensitive area as mapped by the Office of Parks, Recreation and Historic Preservation. There are no structures greater than 50 years old on or visible from the project site. 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 §14.09 of the New York State Historic Preservation Act of 1980.

## DISCUSSION

The Agency may grant a variance where there are practical difficulties in carrying out the restrictions set forth in Section 577.6 of the Agency's regulations so that the spirit of the Rivers Act regulations are observed, public safety and welfare secured, and substantial justice done. In granting this variance, the Agency has considered the standards and factors set forth in 9 NYCRR Section 576.1(b)-(c).

### **Section 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 potential adverse consequences to the applicant resulting from denial would be the lack of storage and wintertime protection for vehicles and other possessions. The public purposes served by the Agency's structure setback requirements include protection of the water quality and aesthetics of the West Branch of the AuSable River. Weighing the factors considered herein, the adverse consequences to the applicant resulting from denial are greater than the public purposes served by the Agency's River Act setback requirements. The applicant's objective to have a two-car garage is reasonable and denial would adversely affect her ability to store vehicles and equipment on her property. While the difficulty is self-created and the variance requested is substantial, the impacts from the variance are minimal and the garage would be consistent with neighborhood character and precedent. The proposed conditions would limit impacts to the statutory goals of protecting water quality and shorelines.

### **Section 576.1(c)(1): Whether the application requests the minimum relief necessary.**

The applicant's objective is to provide storage for two vehicles and other equipment. The applicant testified that she intends to use the dwelling more frequently, and more often in the winter, than in the past.

The variance requested is substantial, in that it involves the construction of a garage to be wholly located within the 150-foot shoreline setback of the Ausable River. The applicant seeks to place the proposed garage 104 feet from the mean high water mark of the river, requiring a variance of 46 feet from the 150-foot shoreline setback.

No land exists on the variance site that is both outside the Agency's 150-foot shoreline setback and outside the POA's 50-foot front yard setback from the centerline of the road. The garage will be set back as far from the mean high water mark of the river as possible without violating the front yard setback deed restriction.

The proposed garage is further from the river than the existing single family dwelling, which is built on a gentle slope. To move the garage further from the river would require additional excavation, grading, and tree removal in addition to relief from the deed restriction mentioned above. A garage positioned closer to the road and the related loss of roadside trees would make the garage more visible from the road and neighboring properties and would not reduce its visibility from the river.

The size and height of the two-car garage is the minimum necessary to meet the applicant's objective.

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

The garage complies with the POA's side yard (25 feet) and front yard (50 feet) setbacks. Wooded land will remain between the garage and the river, adjoining property, and the road. The view of the proposed garage from the river and the opposite shore would be screened due to existing topography and vegetation. The neighbor's dwelling to the north is not visible from the garage site. From the neighbors across River Road, the garage will be no more visible than the existing dwelling and seen, if at all, through 20± feet of trees on either side of the road (40± feet of trees in total). Stormwater impacts associated with the proposed garage were evaluated and will not create a substantial detriment to adjoining or nearby landowners.

Within a 1-mile stretch of river corridor, including the variance site, there are 28 residential parcels, 17 of which are developed. Of those 17 developed parcels, 4 contain existing garages, which were constructed between 1970 and 1999 and range in size from 384 square feet to 640 square feet. The proposed garage, with a footprint of 576 square feet, fits within this character.

The variance site, its neighborhood, and the AuSable Acres subdivision are in a Low Intensity Use land use area, where residential development is appropriate and generally compatible.<sup>2</sup>

Granting the variance will not create a substantial detriment to adjoining or nearby landowners and is consistent with the neighborhood character.

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

On the variance site, a strip of land 20± to 24± feet wide exists that is outside the 150-foot shoreline structure setback and outside the edge of gravel of River Road. While a garage could technically fit – just barely – in this area, it would be inconsistent with the neighborhood character because it would violate the POA's front yard setback (which other Agency variances granted along River Road have honored), be on the edge of gravel (the shoulder) of River Road, and require more excavating, grading, and tree clearing along the road than the proposed location.

There is no alternative that would not require a variance from the Agency, other than building a garage upslope from the house at the edge of River Road or not building a garage at all. The applicant's objective is reasonable and these "no variance" alternatives are not practical. The difficulty cannot be obviated by a feasible method other than a variance.

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<sup>2</sup> NYS Executive Law § 805(3)(e)(2)

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

The Agency recognizes the AuSable Acres subdivision as a pre-existing subdivision. The lot was created by subdivision in 1963 and the subdivision deed restrictions were put in place with the creation of the POA. The Rivers Act went into effect in 1976 and its regulations were applied to this shoreline lot. From the mean high water mark of the river, the lot is 188± feet wide at its widest point, and 14± feet of that distance is part of River Road. The difficulty existed when the applicant purchased the property in 2000, with no land outside both the River Area setback and the POA deed restriction's road setback. The applicant now intends to use the dwelling more frequently than in the past, and more often in the winter, contributing to the objective of wanting a garage. Therefore, the difficulty may be considered self-created.

**Section 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.**

The garage will be well-screened as seen from the river corridor, due to existing evergreen trees between the garage and the river and the change in elevation between the river (downslope) and the garage (upslope). Loss of existing trees or vegetation between the garage and the river could increase the visual impact of the garage on the river corridor and could lead to adverse changes in the water quality of the river (due to erosion and surface runoff). Loss of existing trees or vegetation elsewhere on the property could lead to adverse visual impacts for adjoining or nearby neighbors.

Construction of the garage in a location other than shown on the Survey Map or with colors and exterior lighting other than described in the application could result in adverse impacts to the aesthetic character of the river corridor.

Construction of the garage without the associated erosion controls shown on the Survey Map could result in erosion or surface runoff and lead to adverse changes in the water quality of the river.

The proposed location of the garage structure and any other future structure could restrict replacement of the on-site wastewater treatment system and compliance with applicable horizontal setbacks to the River potentially resulting in groundwater and surface water impacts.

The installation of internal plumbing within the garage could potentially exceed the design usage of the on-site wastewater treatment system and increase the likelihood of failure potentially resulting in impacts to water quality. Additional flow into the on-site wastewater treatment system was not been evaluated during the review of this variance.

Changes to the variance site over time could alter the potential for adverse effects from construction of a garage. Imposition of a four year time limit on the requested variance will mitigate these potential impacts.

**Section 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 the aesthetic character and water quality of the West Branch of the AuSable River will be ameliorated by compliance with the following conditions:

1. This Order shall be recorded in the Essex County Clerk's Office by August 13, 2015.
2. The authorization to undertake this variance shall expire four years from the date this Order is recorded in the Essex County Clerk's office, unless construction of the garage has been completed 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 Survey Map and Building Plans referenced herein. Any changes to the locations, sizes, dimensions, or other aspects of the garage shall require a new or amended Agency Order or a letter of compliance.
4. Outside of the "edge of existing clearing limits" shown on the Survey Map, no trees, shrubs or other woody-stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed on the variance site without prior written Agency authorization, except for (a) maintenance of the existing clearings shown on the Survey Map and (b) dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard. Forest management activities within one-quarter mile of the West Branch of the AuSable River shall comply with the requirements of Section 577.6(c)(2) of Agency regulations.
5. All exterior building materials of the garage, including roof, siding and trim, shall be a dark green, grey, or brown color. The colors proposed by the applicant comply with this condition.
6. Any new free-standing or building-mounted outdoor lights shall employ full cut-off fixtures that are fully shielded to direct light downward and not into the sky or toward the West Branch of the AuSable River or adjoining property.
7. Prior to undertaking any earthwork on the site, silt fence shall be properly installed in the location shown on the Survey Map, between the construction site and the West Branch of the AuSable River. 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 applicant or her successor 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.



8. No structures shall be constructed on the area south of the existing dwelling and east of the existing driveway. This area shall be reserved for replacement of the on-site wastewater treatment system, if and when replacement is necessary.
9. No plumbing shall be installed for the garage without prior Agency review and written approval. Agency review will include review of the capacity and adequacy of the existing on-site wastewater treatment system if there is a potential increase in occupancy.

### **Other Relevant Factors – Precedent**

The Agency has granted other variances in the same neighborhood of the AuSable Acres subdivision, between the river and River Road. Variances were granted for distances of 12 to 48 feet from the 150-foot shoreline structure setback to allow for construction of single family dwellings and garages. Garages authorized in variances granted in 2013, 2003, and 2001 were 2-car garages having footprints ranging from 400 square feet to 480 square feet. None of the structures authorized by these variances were within 50 feet of the centerline of River Road (the POA's setback imposed by deed restriction). This variance is, therefore, consistent with other Agency variances granted for properties on River Road.

### **CONCLUSION**

The Agency has considered all of the standards and factors for issuance of a variance as set forth in 9 NYCRR Part 576. Based on Agency deliberations as reflected in the findings set forth above, the Agency makes the following conclusions of law:

1. The public purposes sought to be served by the shoreline restrictions are less than the adverse consequences to the applicant resulting from denial of the variance request;
2. The requested variance is substantial, but is the minimum relief necessary to meet the applicant's objective;
3. The requested variance will not cause a substantial detriment to the surrounding neighborhood and open space character;
4. Practical alternatives to the requested variance do not exist;
5. The applicant's difficulty was self-created;
6. The requested variance could adversely affect the natural, scenic, and open space resources of the Park or the West Branch of the AuSable River; and
7. Conditions imposed upon the granting of a variance will ameliorate such adverse effects.

Accordingly, the applicants have established that practical difficulties exist pursuant to APA Act Section 806(3)(a) and their variance request is therefore granted.

A variance of the terms of the Agency's regulations implementing the Rivers Act 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 15 day  
of June, 2015.

ADIRONDACK PARK AGENCY

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

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

On the 15 day of June in the year 2015, 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:ADL:EAP:PVC:SEL:mlr

MARY L. REARDON  
Notary Public - State of New York  
Qualified in Franklin County  
No. 01RE6114798  
Commission Expires, August 23, 2016

**Map Notes:**

1. Unauthorized alteration or addition to a survey map bearing a Licensed Land Surveyor's seal is a violation of section 7208, sub-section 2, of the New York State Education Law.
2. This map was prepared by a Licensed Professional Land Surveyor and the seal and signature of the surveyor are hereby certified to be true and correct. Any other seal or signature appearing on this map is unauthorized and void. (Professional seal and signature of the surveyor are hereby certified to be true and correct.)
3. Certifications indicated hereon signify that this survey was prepared in accordance with the existing Code of Practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors, Inc. The certification is limited to the professional seal and signature of the surveyor and does not constitute a warranty or endorsement of the accuracy of the information shown on this map. The certification is not transferable to subsequent owners.
4. This map may not be used in connection with a "Survey Affidavit" or similar document.
5. This map is not to be used for the purpose of determining the location of utility lines or other encroachments.
6. Copyright 2015, Adirondack Surveying PLLC. All rights reserved.
7. The location of underground improvements or encroachments are not always known and often must be estimated. If any underground improvement or encroachment is shown on this map, the improvements or encroachments are not covered by this certification.
8. Building setbacks as shown on this map, are not to be used for construction purposes.
9. Subject to any findings of an accurate abstract of title or those discoverable by inspection.
10. Subject to any findings of an accurate abstract of title or those discoverable by inspection.
11. "COT" 15" - denotes lot numbers of Reference Maps #1 and #2.
12. River Road used for highway purposes.
13. Parcel is located within the "Low Intensity" Adirondack Park Agency Land Use Classification.
14. Riparian rights, if any, have not been established as a result of this survey.

**Reference Deed:**

Jeffrey Caudill and Jacqueline Caudill to David K. Richards and Sandra M. Richards by deed dated May 21, 2015, recorded in the Essex County Clerk's Office as deed map # 17-23-1-2.

**Reference Maps:**

1. "Au Sabie Acres Section 4N" prepared by K.E. Renelle, L.S. dated October 16, 1983 and filed in the Essex County Clerk's Office as deed map # 17-23-1-2.
2. "River Haigh, A Subdivision of Au Sabie Acres, Inc." prepared by Norman D. Briggs, L.S. dated August 08, 1987 and filed in the Essex County Clerk's Office as deed map # 2062.

**Tax Map Reference:**

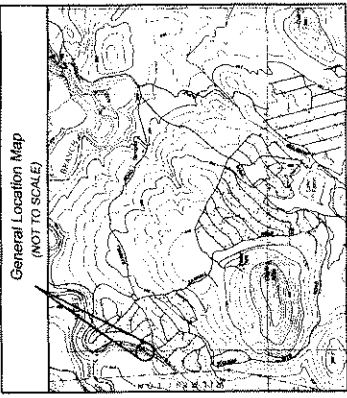
Sections 17-23, Block 1, Lot 1, Town of Jay - County of Essex

**Certification:**

I hereby certify to the parties of interest below that this survey was prepared from deeds and maps of record and from a survey performed on April 02, and 07, 2015

David K. and Sandra M. Richards

*Ralph C. Schisler III*  
Ralph C. Schisler III, L.S. NYS License #600400



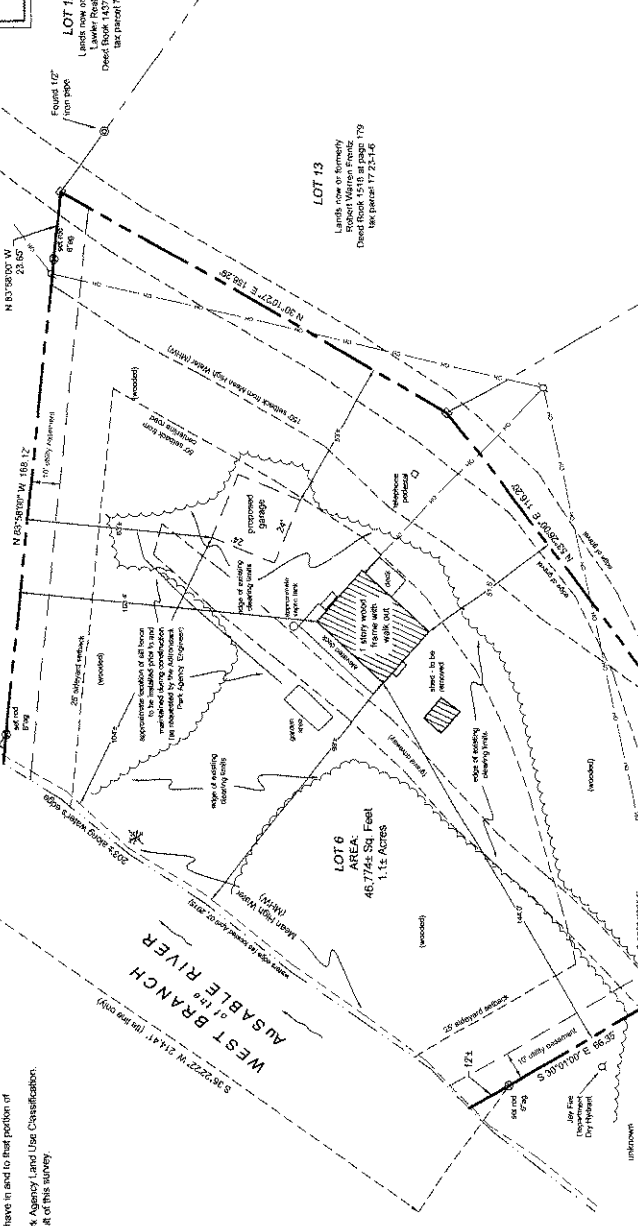
**Legend:**

- ⊙ 50' x 50' iron rod with stake
- ⊙ 1/4" x 1/4" x 1/4" survey cap
- ⊙ Found (Private) Evidence (see note below)
- Computed corner
- ⊙ Water valve
- ⊙ Utility pole
- ⊙ Stone grade
- ⊙ Aerial grade
- ⊙ Property line
- ⊙ Overlaid utility line
- ⊙ Railroad lines (as indicated)
- ⊙ Edge of clearing limits
- ⊙ Sit Fence (Impounded)
- ⊙ Wooden fence

Scale: 1 inch = 30 Feet

APR 17 2015

ADIRONDACK PARK AGENCY



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**Map of Survey**  
of lands of  
**DAVID K. RICHARDS**  
and  
**SANDRA M. RICHARDS**

~ Situated ~  
Lot 6, Section 4A, of the Au Sabie Acres Subdivision  
Town of Jay  
Essex County  
State of New York

Project # 2015-011  
Scale 1" = 30'  
Surveying METHODS R.C.S.  
Field NAME 2015-011  
Checked by R.C.S.

ADIRONDACK PARK AGENCY  
FINAL PLANS  
DATE: 04/17/2015

**ADIRONDACK PARK AGENCY**  
APR 17 2015

**Scale: 1 inch = 30 Feet**

ADIRONDACK SURVEYING PLLC

