

**THIS IS A TWO SIDED DOCUMENT**  
**Staff draft - not approved by Agency**

 <p><b>NEW YORK</b> STATE OF OPPORTUNITY.</p> <p><b>Adirondack Park Agency</b></p> <p>P.O. Box 99, 1133 NYS Route 86 Ray Brook, New York 12977 Tel: (518) 891-4050 Fax: (518) 891-3938 www.apa.ny.gov</p>	<p style="text-align: center;">APA Order Granting Variance <b>2016-0008</b></p>
<p>In the Matter of the Application of</p> <p><b>PAUL G. &amp; ALICE SCHIELKE</b></p> <p>for a variance pursuant to Executive Law § 806</p>	<p>Date Issued: ???</p> <p>To the County Clerk: This order must be recorded on or before <b>DATE</b>. Please index this Order in the grantor index under the following names:</p> <ol style="list-style-type: none"><li><b>1. Paul G. Schielke</b></li><li><b>2. Alice Schielke</b></li></ol>

**SUMMARY AND AUTHORIZATION**

Paul G. and Alice Schielke (“applicants”) are 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” or “APA Act”), to allow for the expansion of a pre-existing single family dwelling located approximately 36.5± feet from the mean high water mark of Long Lake, in an area classified Rural Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Long Lake, Hamilton 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. This Order does not convey any right to trespass upon the lands or interfere with the riparian rights of others in order to undertake the authorized activity, nor does it authorize the impairment of any easement, right, title or interest in real or personal property.

**APPLICABLE LAWS**

Section 806(1)(a)(2) of the APA Act establishes a minimum shoreline setback of 75 feet from the mean high water mark of Long Lake for all accessory structures and principal buildings greater than 100 square feet in size in a Rural Use land classification. The applicants 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 2± acre parcel of land identified on Town of Long Lake Tax Map Section 19.013, Block 3, as Parcel 2, and described in a deed from Georgiana P. Schielke to Paul G. Schielke, dated December 27, 1976, and recorded January 7, 1977 in the Hamilton County Clerk's Office at Book 169 of Deeds, Page 683.

The variance site contains 260± feet of shoreline on Long Lake. The mean high water mark of the lake is identified as 1,633 feet above mean sea level as listed under Appendix Q-2 of 9NYCRR, and is shown on the Survey Map described herein. Vehicular access to the site is via a gravel driveway from Sawmill Way.

The site is developed with a pre-existing, single story, three bedroom, single family dwelling with an unfinished walkout basement, and a removable dock for access to the lake. The dwelling is served by an on-site wastewater treatment system located more than 100 feet from the lake, and by water pumped from the lake.

The existing dwelling is 24 feet 9± inches in height as measured from the top of the roof to the lowest point of finished grade adjoining the structure, with a total footprint both in and outside the shoreline setback area of 1,145± square feet, including 830± square feet of enclosed space, 286± square feet of exterior deck, and exterior stairs and a chimney. Approximately 1,070 square feet of the existing footprint is within the shoreline setback area, including 758 square feet of interior space, 298 square feet of deck and stairs, and 14 square feet of chimney. The deck extends to 36.5± feet from the mean high water mark of Long Lake at its closest point. Neighboring properties are similarly developed with single family dwellings. State land within the High Peaks Wilderness management unit lies east across Long Lake, and the hamlet of Long Lake is two and one-quarter miles south of the variance site.

The variance site is mostly wooded, with deciduous and coniferous trees between the dwelling and the road providing a backdrop for the structure. Additional trees and shrubs located between the dwelling and the lake provide a visual screen of the dwelling as viewed from the lake. There are no wetlands on the variance site or within 100 feet of the proposed development. The site slopes upward from the shoreline of Long Lake to the road, varying from 5 to over 20 percent.

### **Variance Request**

The variance request involves an expansion of the pre-existing single family dwelling to add 645 square feet of additional footprint (465± square feet of interior space and 180± square feet of exterior deck) within the setback area. The dwelling will be widened from 28.5± feet to 48± feet, as viewed from Long Lake.

The purpose of the expansion is to allow for one additional bedroom, one additional bathroom, improved kitchen facilities, and installation of a wood stove for heating to better accommodate immediate family members. The kitchen improvements will occur within the footprint of the existing deck, reducing the existing deck size by 60 square feet. The proposed 180± square-foot deck expansion will be constructed to the same 8 foot depth as the existing deck. The request requires a 38.5-foot variance from the 75 foot shoreline setback from the mean high water mark of Long Lake.

The total footprint of the dwelling both in and outside the setback area will be 1,925 square feet, including 410± square feet of exterior deck. The height of the dwelling will be increased by 1 foot 8 inches, to a total of 26 feet 5 inches. The expanded deck will be 410± square feet in size. The existing on-site wastewater treatment system will be upgraded to serve the increased number of bedrooms within the dwelling. Two trees 10 inches in diameter at breast height will be removed from the site of the structure expansion, and additional vegetation will be cleared behind the dwelling for the wastewater treatment system upgrade. Construction access will be along the existing gravel drive and parking area.

The applicants considered alternative dwelling plans that would minimize or obviate the need for a variance, including expanding the dwelling to the rear and outside the setback area without the need for a variance. This alternative design was rejected by the applicants due to extensive costs, and because it would require additional land disturbance and vegetation removal. In addition, this alternative design would require re-location of the on-site wastewater treatment system, eliminating the potential for installation of a potable well on the site. The applicants also considered expanding the height of the existing dwelling to reduce the increase in footprint, but this alternative would also require a variance and would increase visibility of the structure.

During the public hearing, the applicants stated that the proposed deck portion of the expansion could possibly be reduced from 8 feet to 5 feet in depth, reducing the footprint of the variance request.

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

- “Map of Survey Showing Certain Lands of Paul G. Schielke,” prepared by John Deming, dated March 10, 2016, and stamped received by the Agency June 14, 2016, referred to herein as the “Survey Map”;
- “Schielke Lake Residence,” Sheet S-1 dated June 3, 2016, Sheet S-2 dated November 17, 2013 and most recently revised July 7, 2016, both drawn by MAK, stamped by Wiley W. Lavigne, PE, with an untitled, hand-written trench sizing stormwater calculation sheet, all stamped received by the Agency July 8, 2016, referred to collectively herein as the “Stormwater Plan”;
- Two plan sheets labeled “Location of Proposed Sanitary System 196 Sawmill Way, Long Lake, NY,” and “Plan Sanitary System 196 Sawmill Way,” both prepared by Wiley W. Lavigne, PE, dated April 8, 2016, and stamped received by the Agency June 14, 2016, referred to herein as the “OSWTS Plan”; and

- “Schielke Lake Residence,” Sheet SD-1 dated November 17, 2013, most recently revised August 23, 2015, depicting the existing and proposed floorplan, referred to herein as the “Floorplan,” and Sheet SD-2 dated November 17, 2013, most recently revised August 22, 2015, depicting the proposed exterior elevation views of the expanded dwelling as seen from the lake (south) side and the driveway (north) side, referred to herein as the “Elevations,” both drawn by MAK.

A reduced-scale copy of Sheet S-1 of the Stormwater 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 Agency regulations. On August 22, 2016, the Agency held a public hearing on the variance request in the Town of Long Lake. The hearing was attended by Agency staff and the applicants. No members of the public attended, and no comments letters have been received.

### **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 potential adverse consequence to the applicants resulting from denial would be the inability to expand their dwelling to accommodate their immediate family.

The public purposes of the shoreline restrictions are to protect water quality and the qualities of Adirondack shorelines. Water quality will be protected because any stormwater generated from the expanded dwelling will be treated on site and the existing vegetated buffer will be maintained. The quality of the shoreline of Long Lake will not be impacted because the expanded dwelling will be screened from the lake and neighboring properties, and is consistent with the character of the neighborhood.

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 setback requirements.

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

The applicants' objective is to expand the pre-existing single family dwelling in order to accommodate use by a larger number of immediate family members. The expansion will allow for additional space for the family to congregate, an additional sleeping area, improved kitchen

facilities, and installation of a wood stove for heating. The applicants considered alternative expansion designs that may not have required a variance, but these alternative designs were rejected because of their extensive costs, and because they would require additional vegetation removal and relocation of the on-site wastewater treatment system, eliminating the potential for installation of a potable well on the site.

During the public hearing, the applicants stated that the proposed deck portion of the dwelling could be reduced from 8 feet to 5 feet in depth, minimizing the footprint of the variance request. However, they maintained that reducing the size of the deck would not fulfill their purpose of replacing the outdoor deck space that will be lost to the kitchen expansion while maintaining enough deck space for immediate family members. In addition, Agency analysis of the proposal indicates that reduction in depth of the deck from 8 feet to 5 feet would not decrease any possible impacts to water quality or aesthetics of the shoreline.

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

The single family dwelling on the variance site pre-dates the Adirondack Park Agency Act. Minimal vegetation will be removed for the expansion, and the expansion will be screened from the lake and neighboring properties. Stormwater impacts associated with the increase in impervious surface on the variance site will be mitigated by stormwater management facilities. The expanded structure is consistent with the character of the neighborhood, and no comment letters were received in relation to the proposal.

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

The applicants evaluated alternatives that would not have required a variance. The pre-existing single family dwelling could remain “as is,” which would not serve the applicants’ objective of accommodating additional family members. A rearward expansion of the dwelling would not require a variance, but would be at a prohibitively higher cost, would involve more disturbance to vegetation, and would preclude the installation of a well. Expansion upward with a second story would require a variance, and would increase visibility of the expanded structure.

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

The variance site has been owned by the applicants’ family since 1962, and the pre-existing dwelling was constructed that same year. Since 1962, the applicants’ immediate family has grown in size.

**§ 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.**

Granting the variance will not adversely affect the natural, scenic, and open space resources of the Park and or the adjoining water body, or aesthetic character of the area, provided there is compliance with erosion control and stormwater management measures, compatible exterior colors, shielded outdoor lighting, and maintenance of screening vegetation. Limiting the deck to five feet in depth instead of 8 feet in depth will not reduce or eliminate any impacts, as the deck will be screened from the lake and from neighboring properties, and the change in depth would not alter the Stormwater Plan.

**§ 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 Long Lake will be ameliorated by compliance with the following conditions:

1. This Order shall be recorded in the Hamilton County Clerk's Office by **DATE**.
2. The authorization to undertake the single family dwelling expansion within the shoreline setback of Long Lake shall expire four years from the date this Order is recorded in the Hamilton County Clerk's office, unless expansion 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 plan sheets referenced herein. Any changes to the locations, sizes, dimensions, or other aspects of the structures shall require a new or amended Agency Order or a letter of compliance. Construction within the shoreline setback area of any additional free-standing structure greater than 100 square feet in size, or any addition to an existing structure, shall also require a new or amended Agency Order.
4. Within 50 feet of the mean high water mark of Long Lake and beyond the limits of clearing shown on Sheet S-1 of the Stormwater Plan, no trees shall be cut, culled, trimmed or pruned without prior Agency review and approval, except for the vegetation identified for removal and for trees necessary for maintenance of the existing drive, parking area, and pathways. No trees shall be cut, culled, trimmed or pruned more than 50 feet from the mean high water mark of Long Lake and beyond the limits clearing shown on Sheet S-1 of the Stormwater Plan without prior written Agency approval, except for trees necessary for maintenance of the existing drive, parking area, and pathways.

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.

5. In the event of any loss of trees within 50 feet of the mean high water mark of Long Lake, the area shall be re-planted within one year to a density and species composition similar to prior existing vegetation. Any replacement trees that do not survive shall be re-planted annually, until healthy replacements are established.
6. Prior to any land disturbance associated with expansion of the dwelling, silt fence shall be installed between the disturbed area and the shoreline of Long Lake as shown on the plans referenced herein.
7. Stormwater shall be managed in compliance with the Stormwater Plan.
8. The exterior of the single family dwelling, including the new roof, shall be maintained in shades of dark brown, green, or grey.
9. All new free-standing and building mounted outdoor lights associated with the development on the site shall employ full cut-off fixtures that are fully shielded to direct light downward and not into the sky or toward Long Lake or adjoining property. Light fixtures shall be installed at a height no greater than 15 feet above existing grade.
10. When brought from off-site, all equipment, including but not limited to trucks, excavators, tractors, etc., and hand excavation tools such as shovels, rakes, and picks, to be used on the project site shall be clean and free of soil, mud, or other similar material. If washed on the project site, equipment shall be washed in one location to prevent the distribution of invasive species propagules among different wash sites.

### **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                           , 2016.

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 2016, 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.

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Notary Public

REW:SLB:SHP:slp