

THIS IS A TWO-SIDED DOCUMENT

 <p>NEW YORK STATE OF OPPORTUNITY.</p> <p>Adirondack Park Agency</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>APA Order Granting Variance 2018-0024</p>
<p>In the Matter of the Application of</p> <p>CHARLES ANDERS and LORI C. ANDERS</p> <p>for a variance pursuant to Executive Law § 806</p>	<p>Date Issued: September 13, 2018</p>
	<p>To the County Clerk: This order must be recorded on or before November 12, 2018. Please index this Order in the grantor index under the following names:</p> <ol style="list-style-type: none">1. Charles Anders2. Lori C. Anders

SUMMARY AND AUTHORIZATION

Charles and Lori C. Anders (applicants) are granted a variance, as conditioned herein, from the applicable 50-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 single-family dwelling approximately 24± feet from the mean high water mark of Fern Lake, in an area classified Moderate Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Black Brook, Clinton County.

Nothing contained in this Order shall be construed to satisfy any legal obligations of the applicants 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 APA Act establishes a minimum shoreline setback of 50 feet from the mean high-water mark of waterbody for all accessory structures and principal buildings greater than 100 square feet in size. 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 1.1± acre parcel of land located in a Moderate Intensity Use land use area and identified on the Town of Black Brook Tax Map Section 321.2, Block 1, as Parcel 10. The parcel is described in a deed from Martin R. Bourdeau to Charles and Lori C. Anders, dated September 22, 2010, and recorded September 30, 2010 in the Clinton County Clerk's Office as Instrument Number 2010-00235341.

The variance site contains 197± feet of shoreline on Fern Lake and 63± feet of frontage along Narrows Road. In the vicinity of the variance site, the northern portion of Narrows Road is forested and undeveloped. The northern shoreline of Fern Lake is predominantly designated as Moderate Intensity Use on the Adirondack Park Land Use and Development Plan Map. The eastern shoreline is designated Low Intensity Use, with the remainder of Fern Lake shoreline designated as Moderate Intensity Use. Shoreline parcels surrounding Fern Lake, including lots near the variance site, are predominantly developed with seasonal and year-round residential development. Existing structures on the variance site and on adjacent properties to the east and west of the variance site are visible from Fern Lake.

Structures on the variance site consist of an existing 908± square foot single-family dwelling with a 351 square-foot attached deck, having a combined footprint of 1,259 square feet and a maximum height of 21 feet. The dwelling was constructed in 1983, lawfully replacing a pre-existing single-family dwelling on the same footprint. Approximately 527± square feet of the existing dwelling is located more than 50 feet from the mean high water mark of Fern Lake. Two accessory structures, a 100 square foot shed and a 130 square foot shed, are both located on the non-shoreward side and southwest of the dwelling and outside the shoreline setback. The dwelling is served by on-site water supply and an existing on-site wastewater treatment system, replaced in 2015, with the leaching portion of the system located greater than 100 feet from the mean high-water mark of Fern Lake. Installation of the replacement septic system received approval from the Clinton County Department of Health.

Access to the site is along a 12-foot wide, 385± foot long gravel driveway originating from Narrows Road. The 197± feet of shoreline along Fern Lake contains a mix of vegetation comprised of 8-10 large coniferous trees ranging in height from 40 to 70 feet and shrubby vegetation. A three-foot-wide drainage swale is located adjacent to the east side of the driveway and drains into Fern Lake. A cove, constructed by a prior owner, is located where the drainage swale meets Fern Lake and comes approximately 30 feet inland. As a result of the cove, any expansion of the single-family dwelling on the eastern side of the structure is located within the 50-foot shoreline setback.

Existing slopes along the shoreline of Fern Lake and in the vicinity of the existing dwelling and expansion range from 0 to 3 percent, with slopes on the remainder of the lot ranging from 3 to 8 percent. Soils in the location of the dwelling expansion are in the Monadnock Soils Series according to the USDA Natural Resource Conservation Service SURGO Data. These soils consist of very deep well-drained soils on uplands, comprised of a fine sandy loam surface layer, and a mix of sandy loam and loamy sands. Vegetation in the area of the dwelling expansion consists of open lawn area. No vegetation will be removed as a part of the expansion. Other than the existing clearing associated with the dwelling, gravel parking area, and leaching portion of the on-site wastewater treatment system, the remainder of the site is predominantly vegetated with coniferous vegetation ranging in height from 40 to 70 feet. The expanded portion of the single-family dwelling will be backdropped by existing forested vegetation on the site. There are no wetlands in the vicinity of the new addition.

Variance Request

The variance request involves a 26-foot lateral expansion and a 753 square-foot increase in the footprint of an existing single-family dwelling, 24± feet from the mean high water mark (MHWM) of Fern Lake. The existing dwelling is 21 feet in height, with the height of the expansion to be 23 feet; thereby, requiring no variance for the height of the structure.

The addition will incorporate new interior space, as well as a 362 square foot access ramp and deck within the shoreline setback. The new access ramp is located on the north side of the dwelling and is adjacent to the existing gravel parking area. The new deck is approximately 260± square feet (10' x 26') and is located on the eastern face of the dwelling expansion. The main living area of the existing dwelling will be accessible by wheelchair or other mobility aid from the gravel access drive serving the dwelling on the variance site.

The variance proposal is shown on the following maps and plans (Variance Plan Set):

- A survey titled “Map of Survey of certain lands of Charles Anders and Lori C. Anders” (Survey), prepared by Adirondack Surveying of Jay, NY, dated 9-8-14 with a revision date of 10-27-17. The Survey depicts the property boundary, existing development, setbacks, and a preliminary version of the proposed addition.
- Two plans sheets titled “Site Plan and Details” and “IST Plans”, prepared by Thomas J. LaBombard, P.E., dated February 5, 2018. The Site Plan and Details sheet depicts a stormwater management plan and the IST Plans depict the existing on-site wastewater treatment system.
- A set of six plan sheets, titled “Anders Residence, Addition to 318 Narrows Road, Ausable Forks, NY”, prepared by Michels & Waldron Associates, LLC of River Vale, NJ, dated 3-27-17, and includes:
 - Sheet A-101, Foundation and Floor Plan;
 - Sheet A-102, Roof Plan and Roof Framing;
 - Sheet A-201, Building Elevations;
 - Sheet A-301, Building Sections;
 - Sheet C-1, Site Plan; and
 - Sheet E-1, Rendering Exhibit.

A reduced-scale copy of the Survey 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 15, 2018, the Agency held a public hearing on the variance request in the Town of Black Brook. The hearing was attended by Agency staff and one member of the public, a neighboring landowner, who commented in support of the variance request. No comment letters were received.

DISCUSSION

The Agency may grant a variance where there are practical difficulties in carrying out the restrictions set forth in § 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 public purposes of the shoreline restrictions are the protection of the water quality of Fern Lake and the aesthetic quality of the shoreline of the lake.

The variance request is to expand the existing one-story single-family dwelling, requiring a variance of 24± feet from the MHW of Fern Lake. The objective of the applicants is to expand the existing dwelling in order to safely accommodate mobility-assisted access within the dwelling and to the dwelling, with the least impact to the environment and neighboring properties.

The variance site parcel is constrained to the south by Fern Lake and its respective shoreline structure setback and to the north by the location of the on-site wastewater treatment system, and to the east and west by the adjacent property boundaries. The portion of the expanded dwelling within the shoreline setback area will be wider and larger in footprint than the existing dwelling, but will not go closer to the MHW of Fern Lake than the existing dwelling.

Water quality will be protected by implementation of the approved stormwater management plan. Expansion of the dwelling in accordance with the Variance Plan Set will result in no adverse impacts to the resources of the Park and adjoining water body. The dwelling is in a developed area of the shoreline and will be consistent with the overall character of the neighborhood, helping to protect the character of Fern Lake.

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

During the variance review process, the applicants modified the proposal to reduce the height increase of the dwelling to two feet so that a variance is not required for the height increase of the structure.

The new addition will result in a 26-foot lateral expansion and 753 square-foot increase in footprint of the existing single-family dwelling within the shoreline setback. The addition includes a 10-foot-wide deck on the eastern face of the dwelling expansion. During review of the variance application, the applicants stated that a 10-foot wide deck was necessary for maneuverability and safety. The applicants submitted information and testified at the public hearing that a 6-foot or 8-foot deck would be possible, but expressed concerns over safety and maneuverability.

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

The shoreline of Fern Lake is almost entirely developed with residential structures. Lots near the variance site vary in size with development located along the shoreline, and the new addition will not impact existing vegetated buffers to neighboring parcels. The expanded single-family dwelling maintains the water quality and aesthetic character of the shoreline and does not infringe on adjoining landowners' view of Fern Lake, and does not have an adverse visual or aesthetic impact on the shoreline and character of Fern Lake.

A nearby landowner stated his full support of the proposal at the public hearing.

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

Constructing an addition outside the setback area on the southwest side of the dwelling would encroach upon town side-yard setback requirements, require substantial reconfiguration inside of the existing dwelling at a significant cost, and result in the removal of 7 trees of 4' diameter or bigger and 12 saplings of 3" in diameter or under. Within the setback, the applicants' objectives cannot be achieved through continued use, renovation, or replacement of the existing single-family dwelling.

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

As a result of the cove and the existing wastewater treatment system components, there is a limited buildable area outside the shoreline structure setback for an expansion of the dwelling that would meet setback requirements. If the cove was not present, an additional 225± square feet of the dwelling expansion would have been located outside of the shoreline setback, and would not have required a variance.

§ 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 expansion of the dwelling results in a larger footprint and increases the width of the single-family dwelling. The existing vegetation on the variance site, behind the new addition, will aid in screening the expanded dwelling from Fern Lake and adjacent property. The variance site is located within a developed section of shoreline, and the dwelling is consistent with the overall character of the shoreline.

The dwelling expansion will result in an increase in total impervious area on the variance site. However, water quality will be protected by implementation of the stormwater management plan. In addition, the existing on-site wastewater treatment system will adequately serve the dwelling expansion. The dwelling is in a developed area of the shoreline and is consistent with the overall character of Fern Lake.

§ 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 water quality and aesthetics of Fern Lake will be ameliorated by compliance with the following conditions:

1. This Order shall be recorded in the Clinton County Clerk's Office by November 13, 2018.
2. The authorization to undertake construction of the expansion of the existing dwelling shall expire four years from the date this Order is recorded in the Clinton 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 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.
4. Within 30 days of completion of the single-family dwelling expansion, the stormwater management plan shall be implemented in accordance with the Site Plan and Details sheet prepared by Thomas J. LaBombard, P.E., dated February 5, 2018.
5. All exterior building materials, including roof, siding, and trim, of the single-family dwelling authorized herein shall be a dark shade of green, grey, or brown.
6. Any new free-standing or building mounted outdoor lights associated with the single-family dwelling authorized herein on the variance site shall employ full cut-off fixtures that are full shielded to direct light downward and not into the sky or toward Fern Lake or adjoining property.

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 , 2018.

ADIRONDACK PARK AGENCY

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

STATE OF NEW YORK

COUNTY OF ESSEX

On the day of in the year 2018, 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:VY:slp