

THIS IS A TWO-SIDED DOCUMENT

 <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 2019-0164</p>
<p>In the Matter of the Application of MARK AND KATHLEEN RUSHTON for a variance pursuant to Executive Law §806</p>	<p>Date Issued: February 18, 2020</p> <p>To the County Clerk: This order must be recorded on or before April 20, 2020. Please index this Order in the grantor index under the following names: 1. Mark Rushton 2. Kathleen Rushton</p>

SUMMARY AND AUTHORIZATION

Mark and Kathleen Rushton (the 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 pre-existing single family dwelling which is located approximately 16 feet from the mean high water mark of Third Lake, in an area classified Moderate Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Webb, 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 APA Act establishes a minimum shoreline setback of 50 feet from the mean high water mark in a Moderate Intensity Use land use area 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 0.52± acre parcel of land identified on Town of Webb Tax Map Section 038.81, Block 1, as Parcel 24, and described in a deed from John Jared Evans to Mark Rushton and Kathleen Rushton, dated February 22, 2013, and recorded March 7, 2013 in the Herkimer County Clerk's Office under Instrument Number 2013-00177339.

The variance site contains 65± feet of shoreline on Third Lake and is improved at the mean high-water mark with an existing timber retaining wall and dock. The site is also improved by a pre-existing, one-bedroom, single-family dwelling originally constructed in 1920 that is located approximately 16 feet from the mean high water mark of Third Lake at its closest point. The dwelling utilizes a well-point water supply and is currently served by an existing on-site wastewater treatment system consisting of a 1,000-gallon concrete tank with an unknown leaching component. The site is also developed by a small shed outside the setback area on the non-shoreline side of the dwelling approximately 60± feet from the shoreline of Third Lake.

Several mature trees are located on the variance site within 50 feet of the mean high water mark of Third Lake, along the southwest property boundary, and in proximity to the dwelling. The property is generally narrow, being between 60± and 32± feet in width and slopes up gently from the shoreline of Third Lake to Tuttle Road. The property is accessed by a 300±-foot long gravel driveway extending from Tuttle Road to the non-shoreline side of the existing dwelling.

The variance site is located along a portion of shoreline on Third Lake that is similarly developed, including other pre-existing non-conforming shoreline structures. The opposite shore of Third Lake is approximately one-half mile from the variance site and contains similar residential development.

Variance Request

The applicants propose to expand the pre-existing one-story, one-bedroom dwelling on the site to contain two bedrooms on the first floor, each less than 100 square feet in size, and a 150-square-foot open loft bedroom area. The footprint of the dwelling will be expanded by 250 feet to the rear (non-shoreline side), and the overall height of a portion of the dwelling will increase by 5 feet 6 inches, from 16 feet 6 inches to 22 feet. The expanded dwelling will be no wider as viewed from Third Lake, and no closer to the mean high water mark.

As part of their proposal, the applicants submitted plans for the implementation of new stormwater and erosion controls, including a rain garden, and for the installation of a new on-site wastewater treatment system greater than 300 feet from the lake. No vegetation will be removed as part of the dwelling expansion.

The variance proposal is shown on an eight-sheet set of plans titled, "Rushton Cottage, 197 Tuttle Road, Old Forge," prepared by Onsite Engineering, PLLC, dated as last revised November 1, 2019, and a four-sheet set of plans titled, "Mark and Kathleen Rushton Camp Renovations," prepared by Zangrilli Engineering, PLLC, dated as last revised October 21, 2019 and collectively referred to herein as the Project Plans.

A reduced-scale copy of Sheet C-2 and Sheet 1 of the Project Plans showing the site plan, stormwater and erosion control measures, and elevation drawings for the project are 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 December 23, 2019, the Agency held a public hearing on the variance request in the Town of Webb. The hearing was attended by Agency staff and Mark Rushton. No members of the public were present, and no comments were received. Prior to the hearing Agency staff received one telephone call from a nearby landowner in support of the project.

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.

Denial of the variance would impact the applicants' ability to increase the occupancy of the existing one-bedroom dwelling. The public purposes served by the Agency's structure setback requirements include protection of the water quality and aesthetics of Third Lake. As designed, the expanded dwelling will not alter the character of Third Lake and as proposed the project will protect water quality through the implementation of stormwater and erosion controls and the installation of a new on-site wastewater treatment system.

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

The expanded dwelling will contain two bedrooms on the first floor, each less than 100 square feet in size, and an open loft bedroom area with less than 150 square feet of floor space. The expanded dwelling will be no wider as viewed from Third Lake and will be no closer to the mean high water mark.

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

An expanded dwelling with an increase in overall height could alter existing views of the waterbody from neighboring properties. The applicants have designed the expansion to retain the character and appearance of the shoreline, and no vegetation will be removed. The width of the entire structure will remain the same and the increase in overall height will only occur over one portion of the existing dwelling.

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

Construction of a second single-family dwelling outside the 50-foot shoreline structure setback on the variance site would not comply with the Agency's overall intensity guidelines for a Moderate Intensity Use land use area.

An equivalent expansion of the pre-existing dwelling within the shoreline setback area without an increase in height of more than 2 feet above the existing ridgeline would require a footprint expansion of more than 250 square feet and would therefore result in a greater increase in impervious surface area within the setback.

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

The applicants purchased the property in 2013 with knowledge of the size of the pre-existing dwelling and its location entirely within the 50-foot shoreline structure setback. The variance site is 0.52-acres within a Moderate Intensity Use land use area, and therefore does not contain sufficient acreage to allow for construction of a second dwelling outside of the 50-foot shoreline setback.

§ 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.

Issuance of a variance could cause erosion and runoff of untreated stormwater into Third Lake, along with potential impacts to the aesthetic character of the shoreline. Requiring the conditions listed below will minimize or ameliorate these potential adverse effects.

§ 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 shoreline of Third Lake will be ameliorated by compliance with the following conditions:

1. This Order shall be recorded in the Herkimer County Clerk's Office by April 20, 2020.
2. The authorization to undertake the expanded dwelling 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 Project Plans 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 dwelling or other infrastructure shall require a new or amended Agency Order or a letter of compliance.

Wastewater Treatment

4. The on-site wastewater treatment system shall be replaced in conformance with the location and design shown on the Project Plans. There shall be no more than three bedrooms in the expanded dwelling. Construction of the system shall be supervised by a New York State design professional (licensed engineer or registered architect). Within 30 days of complete system installation and prior to its utilization, the design professional shall provide written certification to the Agency that the system was built in compliance with the approved plans.

No on-site wastewater treatment system shall be installed on the variance site more than five years after the date of issuance of this order except pursuant to written authorization from the Agency.

Outdoor Lighting

5. Any new free-standing or building-mounted outdoor lights on the variance site shall employ full cut-off fixtures that are fully shielded to direct light downward and not into the sky, or toward Third Lake or adjoining property.

Building Color

6. All exterior building materials, including roof, siding and trim of the replacement dwelling, shall be a dark shade of green, grey, or brown.

Tree Cutting/Vegetation Removal

7. No trees greater than 6 inches in diameter at breast height within 50 feet of the mean high water mark of Third Lake may be cut or otherwise removed from the variance site without prior written Agency authorization, except for dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.

Plantings

8. The rain garden depicted on the Project Plans and any other proposed plantings related to the dwelling expansion shall be perennial native species and planted no later than the first spring or fall planting season after final grading related to the dwelling expansion on the variance site. Any rain garden plantings that do not survive shall be replaced annually until established in a healthy growing condition.

Erosion and Sediment Control

9. The project shall be undertaken as shown on the Erosion and Sediment Control Plan included on Sheet C-2 of the Project Plans referenced herein.

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 , 2020.

ADIRONDACK PARK AGENCY

BY: _____
Robert J. Lore
Deputy Director (Regulatory Programs)

STATE OF NEW YORK
COUNTY OF ESSEX

On the day of in the year 2020, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert J. Lore 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