



M E M O R A N D U M

TO: Richard Weber, Deputy Director, Regulatory Programs

FROM: Steve Brewer, Senior Attorney

DATE: February 8, 2012

RE: Fitzgerald Variance
P2010-144

The Agency received a request for a variance to construct a single family dwelling within a shoreline setback area on July 18, 2011 [Hearing Exhibit 11] from Peter Loyola of CLA SITE Landscape Architecture, Engineering & Planning, P.C. ("CLA"), on behalf of Joseph Fitzgerald ("applicant"). Subsequent information was received on July 27, 2011 and October 19, 2011 [Hearing Exhibits 12 & 14] for this project in the Town of Lake Pleasant, Hamilton County, on Lakeside Lane on the shoreline of Sacandaga Lake in a land use area designated as Moderate Intensity Use on the Adirondack Park Land Use and Development Plan Map. Specifically, the proposal calls for the construction of a new single family dwelling within 50 feet of the mean high water mark of Sacandaga Lake on a lawful, approved vacant lot.

The 1.2+-acre project site is part of a 44-lot subdivision known as Sacandaga Lake Estates, Inc., and is more particularly designated as Lot 5, as shown on the map of the Subdivision of Sacandaga Lake Estates, Inc. made by G.C. Sylvester, P.E. and L.S., Long Lake, New York, dated October 2, 1972, and filed in the Hamilton County Clerk's Office on September 19, 1973 [Hearing Exhibit 2]. A letter dated January 5, 1973 issued as part of Agency Interim Project I-83, subject to the provisions listed therein, approved the subdivision project [Hearing Exhibit 4]. The subdivision was also approved by the Department of Health ("DOH") which issued a Certificate of Approval for the realty subdivision by letter dated November 22, 1972 [Hearing Exhibits 1 & 2]. The Town of Lake Pleasant Planning Board approved the preliminary subdivision plat at its October 16, 1972 meeting [Hearing Exhibit 3]. The tax map number of the lot is

Memorandum to Richard Weber

February 8, 2012

Page 2 of 10

Section 112.019, Block 2, Parcel 5. The applicant does not require an Agency permit for the proposed single family dwelling; Agency jurisdiction over the structure is limited to review of the variance request under APA Act § 806. However, the applicant does require a freshwater wetlands permit from the Agency for the construction of a proposed on-site wastewater treatment system to serve the new single family dwelling. The system will be constructed within 100 feet of wetlands and is thus a wetlands project requiring an Agency permit pursuant to 9 NYCRR Sections 578.2 and 578.11. The leaching component of the on-site wastewater treatment system will be approximately 74.5 feet from the wetlands at its closest point.

The purpose of this memorandum is to summarize the facts from the record that are relevant to the Agency's consideration of the requested variance, P2010-144. An annotated aerial "Photo Location Map" of the project site [part of Hearing Exhibit 11] is attached as Attachment 1, and an Agency GIS "JIF1-APA Land Classification ..." map [part of Hearing Exhibit 17] is attached as Attachment 2.

PUBLIC HEARING

On November 29, 2011 at 10:30 am at the Town of Lake Pleasant Town Hall, APA Hearing Officer Keith McKeever conducted a hearing pursuant to APA Act § 806 and 9 NYCRR 576.5. Peter Loyola of CLA, authorized representative for the applicant, made a presentation and presented testimony on behalf of the applicant. The applicant also provided brief testimony.

Environmental Program Specialist Tracy Darrah made a brief statement at the hearing describing the variance process to date and the project. Tracy Darrah testified that it is staff's opinion the proposed project satisfies the factors set forth in 9 NYCRR 576.1 and will not adversely affect the natural and scenic resources of the shoreline, wetlands, or the adjoining water body, or otherwise result in adverse environmental impacts as long as conditions are included to provide for stormwater management and erosion control, and provided the project is undertaken in compliance with the approved plans.

Three members of the public attended the hearing and two people made comments, including Mr. Donald Leadley and Town of Lake Pleasant Deputy Chairwoman of the Planning Board Victoria Buyce. All of the public comments were in favor of approval of the variance.

Mr. Leadley is an adjoining landowner who is a retired builder and retired Code Enforcement Officer for the Town of Speculator. He supports the applicant's variance application. Mr. Leadley noted that other nearby shore owners on Sacandaga Lake have their homes much closer to the actual shoreline than the applicant is proposing and believes, in fairness to the applicant, that the Agency should allow him to build his home closer to the lake than requested in the variance application.

Ms. Victoria Buyce indicated, on behalf of the Planning Board, that the Board has no objection to the requested variance. She, like Mr. Leadley, indicated that the Board would have no objection even if the applicant was proposing to build his home much closer to the navigable shoreline than requested in the variance application.

OVERVIEW OF VARIANCE REQUESTED

The proposed project involves the construction of a new 1,144 square foot, two-story, single family dwelling on the northerly side of Lakeside Lane on Lot 5, which is a lawful, approved vacant lot in the Sacandaga Lake Estates, Inc. subdivision. The current owner and applicant purchased the property in 1982. The variance application seeks Agency approval for a variance of 14 feet from the applicable 50 foot shoreline structure setback restriction pursuant to APA Act §806(1)(a)(2) and §806(3) to authorize placement of the single family dwelling 36 feet from the mean high water mark of Sacandaga Lake.

Although the dwelling will be located 36 feet from the mean high water mark of Sacandaga Lake at its closest point, it will be located over 200 feet from the navigable shoreline of the lake. The mean high water mark of Sacandaga Lake is a set elevation of 1729.3 amsl which turns from the navigable shoreline and extends approximately 310 feet into the applicant's property into a jurisdictional wetlands area on the project site. An annotated aerial photo of the project site with a yellow dashed line showing the location of the

mean high water mark and a blue dashed line showing the approximate location of the 50-foot mean high water mark setback on Lot 5 [part of Hearing Exhibit 11] is attached as Attachment 3. The photo also depicts an outline of the proposed dwelling footprint located completely within the 50-foot setback area as originally proposed by the applicant [see Attachment 3]. The footprint of the proposed single family dwelling will be approximately 26 feet by 56 feet, including a 12-foot by 13-foot open deck and 12-foot by 13-foot enclosed porch located along the northern end of the dwelling. The structure will be 34 feet tall as measured from the lowest grade to the highest point.

The current proposed project is shown on six sheets of plans entitled "Fitzgerald Residential Layout" dated June 17, 2010, last revised October 14, 2011 [part of Hearing Exhibit 14], and four sheets of architectural drawings entitled "Northgate Homes/Fitzgerald" dated May 6, 2010 [part of Hearing Exhibit 11]. The current proposed location of the single family dwelling is displayed on the "Site Plan" plan sheet "L-100" [part of Hearing Exhibit 14], which is attached as Attachment 4. The building setbacks are shown on the "Building Setbacks & Clearing Limits" plan sheet "ATT-F" [part of Hearing Exhibit 14] which is attached as Attachment 5.

The project, as indicated previously, also consists of the construction of an on-site wastewater treatment system within 100 feet of wetlands, a wetlands project requiring an Agency permit pursuant to 9 NYCRR Sections 578.2 and 578.11.

APPLICABLE LAW

Executive Law § 806 requires that all principal buildings and accessory structures in excess of 100 square feet in a Moderate Intensity Use land use area be set back at least 50 feet from the shoreline. The Adirondack Park Agency may, pursuant to 9 NYCRR 576.1(a), vary the restrictions if the applicant establishes that there are practical difficulties or unnecessary hardships in carrying out the strict letter of the restrictions. The Agency regulations provide that a variance will be granted when "the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the shoreline restriction." 9 NYCRR 576.1(b). The purpose of the shoreline restrictions is the protection of water quality in the lake and the quality of the shoreline itself. APA Act § 806(1).

In determining whether to vary the restrictions, the Agency, pursuant to 9 NYCRR 576.1(c), considers the following factors:

- (1) whether the application requests the minimum relief necessary;
- (2) whether the variance will create a substantial detriment to adjoining or nearby landowners;
- (3) whether the difficulty can be obviated by a feasible method other than a variance;
- (4) the manner in which the difficulty arose;
- (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; and
- (6) whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects referred to in paragraph (5) above.

The burden is on the applicant to establish that the proposed project satisfies the above factors.

LEGAL ISSUES

The applicant's objective is to construct a new single family dwelling and on-site wastewater treatment system on a legal, approved lot purchased as a buildable lakefront lot in 1982. The lot was originally subdivided and determined to be a buildable lakefront property prior to August 1, 1973. According to the applicant, when he purchased the property in 1982, the existing grass driveway and a small area for the home were already cleared with the understanding that the parcel was suitable for building a waterfront home with access and waterfront views. The cleared building pad is located approximately 60 feet from the navigable shoreline.

The practical difficulty associated with this objective includes the size and location of the applicant's approved lot. The lot is a modest 1.2± acre parcel, and the jurisdictional wetland on the property limits the full development of the lot. In addition, the imposition of the elevation 1729.3 amsl as the mean high water mark for Sacandaga Lake is another restriction on the development of the lot. The 1729.3 elevation turns from the navigable shoreline and extends south approximately 310 feet into the

applicant's property into a wooded wetland [see Attachment 3]. As such, a large majority of the property is eliminated from the buildable area and presents a substantial difficulty to the applicant's intended reasonable use of the property. As a practical matter, after allowing for the construction of an on-site wastewater treatment system in the southwest corner of the lot, the construction of the new single family dwelling will require a variance.

In determining whether a variance is appropriate under these circumstances, the Agency must consider whether the adverse consequences from denial of this request would outweigh the protection of the shoreline and water quality of the lake. Denial of this variance would prohibit the applicant from building a single family dwelling with an on-site wastewater treatment system on his approved lot, and would significantly limit the use and value of the property. The construction of the dwelling could potentially adversely impact water quality, absent conditions to prevent or mitigate impacts. With appropriate conditions as proposed, the Agency could find that the adverse consequences to the applicant resulting from denial of this variance are greater than the public purpose sought to be served by the shoreline restriction. In arriving at its determination whether to grant a variance, the Agency must consider the relevant factors discussed below:

1. Whether the application requests the minimum relief necessary.

The applicant contends that the proposal is the minimum necessary to allow for the construction of his single family dwelling. The original proposal called for the dwelling to be approximately 75 feet from the navigable shoreline and entirely within the 50-foot shoreline setback requiring a shoreline variance of 37 feet. Under the current proposal [see Attachments 4 & 5], the dwelling will be over 200 feet from the navigable shoreline, is set back as far as possible from the mean high water mark without violating the Town of Lake Pleasant building setback limits, and requires a shoreline variance of 14 feet. In addition, the dwelling footprint size is oriented so the narrowest width is parallel to the mean high water mark. The wastewater treatment system is located in the southwest corner of the applicant's

property in the only feasible location on the property for an on-site system, other than one located closer to wetlands or within 100 feet of the mean high water mark (which would require a variance). As such, the only feasible location for the dwelling is as currently proposed.

2. Whether the variance will create a substantial detriment to adjoining or nearby landowners.

The adjoining and nearby landowners include Mr. Donald Leadley, and several other private landowners. The shoreline area near the variance site contains a boat launch for Sacandaga Lake Estates subdivision and numerous lakefront single family dwellings. The applicant's proposed dwelling will be visually similar to the properties and dwellings of nearby landowners. The proposed dwelling will be set back over 200 feet from the navigable shoreline, farther than the dwellings of most nearby lakefront owners which are typically located approximately 50-60 feet back from the navigable shoreline of the lake. In addition, the applicant's dwelling will be well screened. The project site contains dense deciduous vegetation between the proposed dwelling and Sacandaga Lake, and only a minimum amount of vegetative cutting is proposed between the dwelling and the lake. The proposed dwelling complies with the Town's building setback limits and will be set back approximately 16 feet from the property boundary of the adjoining landowner (Mr. Leadley) to the west and 32 feet from the adjoining landowner's leach field. As such, staff testified during the variance hearing that the granting of the variance would not create a substantial detriment to adjoining or nearby landowners. The Agency has not received any public comments in opposition to this proposal. On the contrary, Mr. Leadley and Ms. Buyce believe that the Agency, in fairness to the applicant, should allow the applicant to build even closer to the navigable shoreline than currently proposed.

3. Whether the difficulty can be obviated by a feasible method other than a variance.

As indicated previously, the applicant originally proposed to construct the dwelling approximately 75 feet from the navigable shoreline of Sacandaga Lake and, as such, the entire dwelling was within the 50-foot setback and required a shoreline variance of 37 feet. In addition, the original proposal called for the construction of a retaining wall to be located approximately 5 feet from the edge of

jurisdictional wetlands on the property. After discussions with Agency staff, the applicant revised his proposal in order to locate the dwelling farther from the navigable shoreline of Sacandaga Lake and farther from wetlands. Under the current proposal [see Attachments 4 & 5], the dwelling will be over 200 feet from the navigable shoreline, is set back as far as possible from the mean high water mark without violating the Town's building setback restrictions, and requires a shoreline variance of 14 feet. In addition, the grading plan was revised to take into consideration the existing topography of the lot and the proposed retaining wall was eliminated and replaced with a vegetated slope. The new location provides for a 16 to 20 foot vegetated buffer to the wetlands after the grading plan, stormwater plan and erosion control measures have been completed. Please refer to the "Site Grading" plan, sheet "L-200" [part of Hearing Exhibit 14], which is attached as Attachment 6.

The applicant considered constructing the dwelling a few feet farther to the south of the current proposed location on the lot. But this approach would also require a shoreline variance for the dwelling, would place the dwelling closer to the wetlands, and would require a greater cut into the side slope towards the adjoining neighbor's property line with a retaining wall. It is also conceivable the applicant could have sought a variance from the Town for relief from the 15-foot building setback requirements. However, under that approach, the proposed dwelling would still require a shoreline variance, would be located even closer to the adjoining neighbor's property, and would result in a deeper cut into the side slope towards the adjoining property.

In short, the applicant has no feasible alternative to the proposed project that would not require a variance. The applicant has demonstrated that there are unique practical difficulties present on the lot based on the location of the wetlands and the mean high water mark that, absent a variance, will prevent the applicant from achieving his reasonable objective of constructing a single family dwelling and on-site wastewater treatment system.

4. The manner in which the difficulty arose.

The difficulty in this matter arose because of the inability of the applicant to construct a single family dwelling and on-site wastewater treatment system on this approved lot. The applicant purchased the property in 1982 with the

intention and reasonable expectation of building a waterfront home, when economically feasible, within the clearing already established on the property at the time of purchase. The lot was created by the Sacandaga Lake Estates subdivision which received Agency approval in January 1973, and DOH and Town approvals in 1972. The relatively small size of the 1.2± acre approved lot, the location on the property of jurisdictional wetlands, and the location of the mean high water mark at a set elevation of 1729.3 asml, which extends 310 feet into the property into heavily wooded jurisdictional wetlands, make the lot a difficult site and essentially prevent the applicant from building a home without a variance.

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.

Staff testified at the variance hearing that the granting of the variance for the project will not adversely affect existing resources, including wetlands and the lake, provided the work is undertaken in compliance with appropriate conditions as described below. The erosion control plan, grading plan, and stormwater management plan will serve to protect wetlands and the lake. Any disturbed areas from construction will be revegetated to create a minimum 16 to 20 foot vegetated buffer between the project and the wetlands. The stormwater management measures include infiltration trenches and snow storage locations to protect the wetlands and the lake from runoff. In addition, the proposed wastewater treatment system maximizes distances to wetlands, and the proposed single family dwelling will be set back over 200 feet from the navigable shoreline and well screened by existing vegetation.

6. Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects referred to in paragraph (5) above.

Requiring written certification that the single family dwelling is constructed in compliance with approved plans, requiring written certification that the on-site wastewater treatment system is installed according to approved plans, requiring erosion control measures and stormwater management

Memorandum to Richard Weber

February 8, 2012

Page 10 of 10

measures, requiring Agency review of any proposed addition of pavement to the driveway or parking area, requiring reseeding of disturbed areas, and prohibiting the cutting, trimming or disturbance of trees and shrubs outside of the building envelope will serve to ameliorate any potential adverse impacts.

CONCLUSION

It is staff's position that the requested variance will not adversely affect the natural, scenic or open space resources, or the adjoining water body, provided conditions are included as set forth above.