

**THIS PERMIT AND ORDER IS A REISSUANCE AND REPLACES UNRECORDED PERMIT
AND ORDER 2010-144 ISSUED ON FEBRUARY 17, 2012
THIS IS A TWO-SIDED DOCUMENT**



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**APA Permit and Order
Granting Variance
2010-144**

Date Issued: February 23, 2012

In the Matter of the Application of

JOSEPH FITZGERALD

for a permit pursuant to §809 of the Adirondack Park Agency Act and 9 NYCRR Part 578 and a variance from the shoreline restrictions of Executive Law §806 and 9 NYCRR Part 575

To the County Clerk: This Permit and Order must be recorded on or before **April 23, 2012** Please index this Permit and Order in the grantor index under the following names.

1. Joseph Fitzgerald

SUMMARY AND AUTHORIZATION

Joseph Fitzgerald is granted (i) a permit, on conditions, authorizing the construction of a single family dwelling and an on-site wastewater treatment system and (ii) a variance, on conditions, from the applicable shoreline restrictions pursuant to New York State Executive Law § 806, in an area classified Moderate Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Lake Pleasant, Hamilton County.

This project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the Permit and Order is recorded. This Permit and Order shall expire unless so recorded on or before April 23, 2012 in the names of all persons listed on the first page hereof and in the names of all owners of record of any portion of the project site on the recordation date. The Agency will consider the project in existence upon construction of the foundation, framing, and roof of the single family dwelling authorized herein.

Nothing contained in this Permit and 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.

AGENCY JURISDICTION

The project 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.

The variance application seeks Agency approval for a variance of fourteen feet from the applicable fifty foot shoreline structure setback restriction pursuant to §806(1)(a)(2) and §806(3) of the Adirondack Park Agency Act (Executive Law, Article 27) to authorize placement of a single family dwelling 36 feet from the mean high water mark of Sacandaga Lake.

Section 806(1)(a)(2) and 9 NYCRR Part 575 requires a minimum shoreline setback of fifty feet measured from the mean high water mark for structures greater than 100 square feet in size. Section 806(3) and 9 NYCRR Part 576 authorize procedures whereby an applicant may apply for a variance from the shoreline restrictions provided certain criteria cited in the statute and regulations are complied with, as further described below.

SITE DESCRIPTION

The variance site is a 1.2+-acre parcel of land located on Lakeside Lane in the Town of Lake Pleasant, Hamilton County, in an area classified Moderate Intensity Use by the Adirondack Park Land Use and Development Plan Map, containing 310 feet of shoreline along the mean high water of Sacandaga Lake with 79 feet of navigable shoreline. It is identified on Town of Lake Pleasant Tax Map Section 112.019, Block 2 as Parcel 5. The variance site is described in a deed from Sacandaga Lake Estates, Inc. to Joseph Fitzgerald dated October 4, 1982 which was recorded November 9, 1982 in the Hamilton County Clerk's Office in Liber 183 of Deeds at Page 531.

PROJECT AND VARIANCE DESCRIPTION AS PROPOSED

The project and variance as proposed and conditionally approved herein is summarized as follows: construction of a new four-bedroom single family dwelling on the northerly side of Lakeside Lane on Lot 5 of a 44-lot subdivision known as Sacandaga Lake Estates, Inc, which was approved by Agency Interim Project I-83. The dwelling will be located 36 feet from the mean high water mark of Sacandaga Lake at its closest point and approximately 200 feet from the navigable shoreline. The mean high water mark extends approximately 310 feet from the navigable shoreline into a wetland located on the project site. 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 dwelling will be served by an on-site water supply and on-site wastewater treatment system. The leaching component of the on-site wastewater treatment will be located in the southwestern corner of the property approximately 74.5 feet from the wetlands at its closest point.

The proposed limits of clearing, grading and erosion control measures are shown on the project plans referenced below.

PROJECT AND VARIANCE PLANS

The project and variance is shown on:

- Six sheets of plans entitled "Fitzgerald Residential Layout," drawn by CLA Site Landscape Architecture, Engineering & Planning, P.C., and dated June 17, 2010, last revised October 14, 2011.
- Four sheets of architectural drawings entitled "Northgate Homes/Fitzgerald" drawn by Future Home Technology, Inc., and dated May 6, 2010.

The CLA Site plans include an existing condition map, a site plan map and plans for grading, building setbacks and clearing limits, wastewater treatment, and erosion and sediment control. The Northgate Homes plans show elevations and floor plans of the single family dwelling.

A reduced-scale copy of Sheet L-100 "Site Plan," drawn by CLA Site and last dated October 14, 2011 is attached as a part of this Permit and Order for easy reference. The original, full-scale maps and plans referenced in this Permit and Order are the official plans for the project.

CONDITIONS

BASED UPON THE FINDINGS BELOW AND INFORMATION CONTAINED IN THE PROJECT FILE, THE VARIANCE IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The project shall be undertaken as described in the completed application, the Project and Variance Description as Proposed and the Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the Permit and Order is a

violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the Permit and Order.

2. This project may not be undertaken, and no transfer deed shall be recorded, until this Permit and Order is recorded in the Hamilton County Clerk's Office. This Permit and Order shall be recorded on or before April 23, 2012 in the names of all persons listed on the first page hereof and in the names of all owners of record of any portion of the project site on the recordation date.
3. This Permit and Order is binding on the applicant, all present and future owners of the variance site and all contractors undertaking all or a portion of the project. Copies of this Permit and Order and all the approved maps and plans referred to herein shall be furnished by the applicant to all contractors prior to undertaking the project, and to all subsequent owners or lessees of the project site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this Permit and Order shall contain references to this Permit and Order as follows: "The lands conveyed are subject to Adirondack Park Agency Permit and Order 2010-144 re-issued February 23, 2012, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
4. The Agency may conduct such on-site investigations, examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.

Projected Remaining Building Density

5. After the construction of the one single family dwelling authorized herein, no additional principal building shall be allowed on the project site unless the overall intensity guidelines of the Adirondack Park Agency Act or the Park Plan Map are amended or, pursuant to the adoption of an Agency-approved local land use program, refined so as to permit additional principal building(s).

Building Location and Size

6. This Permit and Order authorizes the construction of a single family dwelling in the location shown on the project plans. The single family dwelling shall not exceed a footprint of 1600 square feet including all covered and uncovered attached porches, decks, exterior stairs and accessory structures (such as an attached garage). No structure shall exceed 35 feet in height.

The height shall be measured from the highest point on the structure, including the chimney, to the lowest point of existing grade or finished grade, whichever is lower.

7. Any changes to the location(s), size(s), or dimensions will require a new or amended Agency Permit and Order. Within 60 days of completing the construction of the single family dwelling authorized herein, a qualified design professional shall provide written certification to the Agency that the single family dwelling was built in compliance with the approved plans.

Building Color

8. All exterior building materials, including roof, siding and trim, used to surface the exterior of the dwelling authorized herein and all accessory use structures on the project site shall be of a natural earth-tone color which blends with the existing vegetation. The Agency will, upon request, advise whether any particular proposal complies with this condition.

Outdoor Lighting

9. Any new free-standing and building mounted outdoor lights shall employ full cut-off fixtures, that is, they shall be fully shielded to direct light downward and not into the sky. The fixtures shall be oriented so as to not cast light toward the shoreline or the waters of Sacandaga Lake. The intent of this condition is to reduce nighttime light pollution (glare, light trespass and sky glow).

Wetlands

10. Beyond that authorized herein, no "regulated activity" as defined in the Agency's Freshwater Wetland Regulations (9 NYCRR Part 578) shall occur on the project site without prior Agency approval. Such activities include, but are not limited to, new land use or development in, subdivision of, clearcutting more than three acres within, or dredging or filling of a wetland, or any other activity, whether or not occurring within the wetland, which pollutes it or substantially impairs its functions, benefits or values.

Driveway

11. Removal of existing vegetation for construction of the driveway shall be limited to the minimum amount necessary to install the driveway as shown on the project plans. The area along the

driveway shall remain as natural as possible to avoid impacts to the wetlands. The driveway shall be constructed as a gravel

driveway as shown on the project plans. Addition of any pavement to the driveway or parking surface areas shall require prior Agency review and approval in the form of an amended permit.

Wastewater Treatment

12. The proposed on-site wastewater treatment system shall be constructed in complete conformity with the location and design shown on the plans referenced herein. Installation of the system shall be under the supervision of a licensed design professional (licensed Professional Engineer, Registered Architect, or exempt Licensed Surveyor). Within 30 days of complete system installation and prior to utilization, the design professional shall provide the Agency with written certification that the system was built in compliance with the approved plans.

Erosion & Sediment Control and Stormwater Management

13. All erosion control devices as proposed, including silt fence, shall be installed, and all temporary and permanent stormwater management facilities, including stormwater infiltration trenches and siltation basins, shall be constructed as shown on the project plans before any other ground disturbance takes place.
14. All proposed sedimentation and erosion control measures (i.e. silt fences) shall be in place prior to commencing excavation for installation of the proposed conduits and shall remain in place until all disturbed areas have been stabilized.
15. All disturbed areas shall be temporarily mulched or turf shall be immediately reestablished by the contractor to eliminate potential impacts to wetlands. The permanent reestablishment of turf shall include the placement of erosion control geotextile fabric and seeding. Under no condition shall any area exposed by clearing and grubbing be left in an unprotected condition longer than two days.

Shoreline Vegetative Cutting

16. No trees, shrubs or other woody-stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed outside of the proposed building envelope and access driveway shown on the above described site plan except for that which is necessary for the installation of underground utilities without prior Agency review and approval in the form of a vegetative cutting plan to allow filtered views of the lake. 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.

Shoreline Setbacks

17. Except for the single family dwelling approved by the variance contained herein, all structures, except docks and boathouses, 100 square feet in size or greater, including attached decks, shall be set back a minimum of 50 feet, measured horizontally, from the closest point of the mean high water mark of Sacandaga Lake.

Boathouses and Docks

18. There shall be no boathouse installed on the project site without prior Agency review and approval.
19. This Permit and Order authorizes the installation of one dock less than 20 feet long to be located and constructed at the end of the existing pathway leading down to the shoreline. The dock may extend into or over the lake from only that portion of the immediate shoreline necessary to attach the floating or fixed structure to the shoreline. The dock shall be no wider than eight feet in width or in the case of interconnected structures intended to accommodate multiple watercraft or other authorized use, each element shall not be more than eight feet in width. The dock shall only be used for the purposes of securing and loading or unloading watercraft and for swimming or water recreation.

Legal Interests of Others

20. This Permit and Order does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to undertake the authorized project or subdivision, nor does it authorize the impairment of any easement, right, title or interest in real or personal property held or vested in any person.

Review of Future Development

21. There shall be no further land use and development on the project site without a new or amended permit or order. Any expansion in the footprint, height or number of bedrooms in the authorized single family dwelling shall require prior Agency review and approval.

FINDINGS OF FACT

Background/Prior History

1. By telephone conversation on February 22, 2012, a typographical error regarding the siting of the project plans was noted. This permit and order corrects that error and is a reissuance replacing the unrecorded permit and order issued on February 17, 2012.
2. The variance record for the variance portion of the application consists of the variance request, hearing record, hearing exhibits, and supporting materials.
3. The 1.2± acre project site is part of a 44-lot subdivision known as Sacandaga Lake Estates, Inc., and being more particularly designated as Lot 5, as shown on the "Map of the Subdivision of Sacandaga Lake Estates, Inc." prepared by G. C. Sylvester, P.E. and L.S., dated October 2, 1972 and filed on September 19, 1973 in the Hamilton County Clerk's Office. A letter dated January 5, 1973 issued as part of Agency interim project I-83 found that, subject to provisions listed therein, the project was approved. The project site has been owned by the current landowner, Joseph Fitzgerald, since October 4, 1982. Agency Jurisdictional Determination J2010-154 issued on March 30, 2010 determined that a permit was needed for the installation of an on-site wastewater treatment system within 100 feet of wetlands.
4. The New York State Department of Health issued a Certificate of Approval for the realty subdivision by letter dated November 22, 1972. The Town of Lake Pleasant approved the preliminary subdivision plat at its October 16, 1972 Planning Board meeting.
5. The current landowner has owned the property since 1982. He purchased the property with the understanding that the parcel was suitable for building a home with waterfront access. When he purchased the property, the existing grass drive and a small area for the home were already cleared. A survey map was prepared for the property to submit to the Agency for the project application. The mean high water for Sacandaga Lake is understood to be at 1729.3 amsl. With the imposition of the mean high water mark extending into the property approximately 310 feet from the navigable shoreline of the lake and the location of the wetlands on the property, a large majority of the property is eliminated from the buildable area.

Existing Environmental Setting/Character of the Area

6. The project site is located in a Moderate Intensity Use land use area on Adirondack Park Land Use and Development Plan Map. The

project site contains shoreline on Sacandaga Lake, which has a set elevation of 1729.3 feet above mean sea level. Based upon this set elevation, the project site contains 310 feet of shoreline which extends southerly into the project site into a wetland area from the navigable shoreline of Sacandaga Lake. The project site contains 79 feet of shoreline along the navigable shoreline of Sacandaga Lake. Other than jurisdictional wetlands, there are no statutory "critical environmental areas" on the property.

7. The wetlands on the project site are a deciduous forested and shrub-scrub wetland with a preliminary value rating of "2." Wetlands shown on the plans and/or described herein are intended to alert landowners and others that wetlands are present on the project site. However, this may not identify all wetlands on or adjacent to the project site.
8. Other than a 12 foot wide grass driveway and open field area 60 feet from the navigable shoreline of Sacandaga Lake, the property is primarily forested with a mixture of coniferous and deciduous trees.
9. The property slopes from west to east downwards towards the wetlands. Slopes in the areas of the proposed single family dwelling development are less than 15% and in the areas of the proposed wastewater treatment system and driveway are less than 8 percent.
10. Soils in the area of the proposed on-site wastewater treatment system are Becket Soils, with a percolation rate of 2 minutes per inch. There is no evidence of seasonal high groundwater within the top 52 inches of soil depth and the site is suitable for the installation of a conventional wastewater treatment system.
11. Land uses along Lakeside Lane in the area of the proposed development are primarily seasonal and year-round residential uses.

Alternatives

12. The original proposed location for the single family dwelling would have required 37 feet of relief from the shoreline setback restrictions and would have involved the construction of a retaining wall to be located approximately 5 feet from the edge of a jurisdictional wetland. During discussions with the applicant's authorized representatives, the proposal was revised to locate the dwelling further from the useable waters of Sacandaga Lake and further from wetlands. The grading plan was revised to take into consideration the existing topography of the site and the proposed retaining wall was eliminated. The new

location provides for a 16 to 20 foot vegetated buffer to the wetlands after the grading plan, stormwater plan and erosion controls measures have been completed.

Public Notice and Comment

13. The Agency notified all parties as required by the Adirondack Park Agency Act and Agency regulations. A public comment map was received at the public hearing. All of the public comments at the public hearing were in favor of approval of the variance.

Public Hearing

14. On November 29, 2011, a public hearing on the variance request was held in the Town of Lake Pleasant. The hearing was attended by Agency staff, the applicant and his representative, and three members of the public. No objections were made to the proposal during the hearing.

Other Regulatory Permits and Approvals

15. The Agency has been advised by the Town of Lake Pleasant in a completed Local Government Notice Form that municipal approval is required for the project.
16. The New York State Department of Health issued a waiver on February 1, 2012 for the installation of an on-site wastewater treatment system within 100 feet of wetlands on the project site.

PROJECT IMPACTS

Wetlands and Water Resources

17. This project will involve no filling or impacts to wetlands provided the project is undertaken as authorized herein. Limiting the removal of vegetation outside the proposed clearing limits, requiring revegetation of disturbed areas and requiring erosion control measures and stormwater management devices to be undertaken as proposed will serve to protect the wetlands.
18. Installation of a shallow absorption trench on-site wastewater treatment system in the location shown on the site plan and in accordance with Agency Guidelines and Regulations and all applicable New York State New York State Department of Health standards will adequately protect groundwater and surface water resources.

Open Space/Aesthetics/Shoreline Character

19. Limiting the removal of vegetation to the proposed clearing limits and limiting the height of structure on the project site will minimize potential visual impacts to the public road, Sacandaga Lake and adjacent land uses.

Historic Sites or Structures

20. By letter dated August 4, 2010, the NYS Office of Parks, Recreation and Historic Preservation determined that the proposed project will have no impact upon cultural resources in or eligible for inclusion in the State and National Registers of Historic Places. Therefore, the project 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.

VARIANCE IMPACTS AND CRITERIA

The following findings of fact evaluate the project against the variance factors set forth in 9 NYCRR § 576.1.

Whether there are practical difficulties in carrying out the strict letter of the shoreline restrictions -

21. The applicant has demonstrated that there are practical difficulties present on the site based on the size of the lot, and the location of wetlands and the mean high water mark on the property.

Whether adverse consequences from denial outweigh the public purpose of statutory shoreline restriction -

22. Denial of the requested variance will prevent the applicant from building a single family dwelling with an on-site wastewater treatment system and would significantly limit the use and value of the property.
23. The single family dwelling will be setback approximately 200 feet from the navigable shoreline of Sacandaga Lake. The dwellings on most of the adjoining and nearby properties are located approximately 50-60 feet from the navigable shoreline of the lake.
24. The 1.2± acre lot is one of the lots in a 44-lot subdivision which received Town approval and New York State Department of Health approval in 1972 and Agency approval in January 1973.

Whether the application requests the minimum relief necessary -

25. The proposed location, size and orientation of the single family dwelling maximizes the distance to the wetlands and mean high water within the confines of the town building setback limits, taking into consideration the proposed location of the on-site wastewater treatment system and the location of the existing on-site wastewater treatment system on the adjoining landowner's property.

Whether granting the variance will create a substantial detriment to adjoining or nearby landowners -

26. The property contains dense deciduous vegetation between the proposed single family dwelling and Sacandaga Lake. A minimum amount of vegetative cutting is proposed between the dwelling and the Lake.
27. The dwelling will be set back 16 feet from the adjoining property boundary line and 32 feet from the adjoining landowner's leach field component of the on-site wastewater treatment system.

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

28. The applicant has demonstrated that there are unique practical difficulties present on the lot based on the location of wetlands and of the mean high water mark on the property 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.

The manner in which the difficulty arose -

29. The applicant purchased the property in 1982 with the intention of building a home within the clearing established on the property at the time of purchase when economically possible. The 1.2± acre lot was created by a subdivision which had New York State Department of Health and Town approval prior to 1973, and Agency approval in January 1973. The mean high water mark at set elevation of 1729.3 asml extends 310 feet into the property into heavily wooded jurisdictional wetlands. As such, a majority of the property is eliminated from the buildable area.

Whether granting the variance will adversely affect existing resources

30. The distance between the leach field component of the on-site wastewater treatment system and the wetlands has been maximized.

31. A minimum of 5 feet of undisturbed vegetation will be maintained between the wetlands and any proposed disturbance that will occur during construction. Erosion control measures will be implemented to protect the wetlands during construction. The disturbed areas will be revegetated to create a minimum of 16 to 20 foot vegetated buffer between the driveway and the wetlands.
32. A stormwater management plan has been prepared which includes infiltration trenches and snow storage locations to protect wetlands and the Lake from runoff.
33. The dwelling will be screened from off-site locations by existing vegetation.

Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects noted above

34. Requiring written certification of the installation of the on-site wastewater treatment system, requiring erosion control measures and stormwater management devices, requiring Agency review for any proposed addition of pavement to the driveway or parking areas, requiring written certification that the single family dwelling is constructed in compliance with the approved plans and requiring reseeded of disturbed areas will serve to ameliorate any potential adverse impacts.

CONCLUSIONS OF LAW

1. There are practical difficulties in the way of carrying out the strict letter of the shoreline setback restriction set forth in §806 of the Adirondack Park Agency Act and 9 NYCRR Part 575, in that:
 - a. the application requests the minimum relief necessary;
 - b. there will be no substantial detriment to adjacent or nearby landowners;
 - c. the difficulty cannot be obviated by a feasible method other than the variance;
 - d. the difficulty arose because of the location of the mean high water mark on this 1.2± acre approved lot, which extends approximately 310 feet into jurisdictional wooded wetlands on the property effectively eliminating much of the buildable area;
 - e. the granting of the variance will not adversely affect the

natural and scenic resources of the shoreline and adjoining water body due to erosion, surface runoff, subsurface sewage effluent, detrimental change in aesthetic character, or other impacts which would not otherwise occur;

- f. the imposition of appropriate conditions will ameliorate any adverse effects; and,
 - g. the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restrictions.
2. The variance, pursuant to §806 of the Adirondack Park Agency Act, 9 NYCRR Part 576, observes the spirit of the Act, secures public safety and welfare, and does substantial justice.
 3. A variance of the terms of the APA Act is not personal and runs with the land. Recording of this Permit and Order Granting Variance is intended to provide notice to subsequent owners of the land.
 4. The Agency has considered all statutory and regulatory criteria for project approval as set forth in §809(10) of the Adirondack Park Agency Act (Executive Law, Article 27) and 9 NYCRR Part 574; §24-0801(2) of the NYS Freshwater Wetlands Act (ECL, Article 24, Title 8) and 9 NYCRR Section 578.10. The Agency hereby finds that the project is approvable and complies with the above criteria, provided it is undertaken in compliance with the conditions herein.

