

STAFF DRAFT - NOT APPROVED BY THE AGENCY
THIS PERMIT RENEWS PERMIT 2004-135 ISSUED SEPTEMBER 24, 2004 AND
PERMIT 2004-135R ISSUED MARCH 25, 2008
THIS IS A TWO SIDED DOCUMENT APRIL 11, 2012

 <p>P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050</p>	APA Project Permit 2004-135R2
	Date Issued:
In the Matter of the Application of VIRGIL LUPU AND KAREN FOUNTAIN for a permit pursuant to §809 of the Adirondack Park Agency Act and 9 NYCRR Part 577	To the County Clerk: This permit must be recorded on or before _____. Please index this permit in the grantor index under the following names: 1. Virgil Lupu 2. Karen Fountain

SUMMARY AND AUTHORIZATION

Virgil Lupu and Karen Fountain are granted a renewed permit, on conditions, authorizing an after-the fact two-lot subdivision. This permit also authorizes the construction of a single-family dwelling on one of the lots in an area classified Rural Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Jay, Essex County.

This construction of the single family dwelling may not be undertaken until this renewed permit is recorded in the Essex County Clerk's Office. This renewed permit shall expire unless so recorded on or before _____ 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 construction of the single family dwelling shall not be undertaken or continued unless the project authorized herein is in existence within 60 days from the date the permit is issued. The Agency will consider the project in existence when this permit is recorded in the Essex County Clerk's Office.

Nothing contained in this permit 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 an after-the-fact two-lot subdivision and the construction of a single-family dwelling, a rivers project requiring an Agency permit pursuant to 9 NYCRR §577.4(a) and §577.5(c)(1). The East Branch of the AuSable River in the vicinity of the project site is designated as "recreational" in the New York State Wild, Scenic and Recreational River System.

PROJECT SITE

The project site is an 8.2± acre parcel of land located between John Fountain Road and the East Branch of the AuSable River in the Town of Jay, Essex County, in an area classified Rural Use on the Adirondack Park Land Use and Development Plan Map. It is identified on Town of Jay Tax Map Section 27.2, Block 2 as Parcels 2.1 and 2.2. The project site is described in two deeds: 1) a deed from Cora J. Meyer as Trustee of the Cora J. Meyer Revocable Trust Agreement to Virgil Lupu and Karen Fountain which was recorded in the Essex County Clerk's Office on August 3, 2007 in Liber 1545 of Deeds at page 309 and 2) a deed from William T. Pasterak and Erika Pasterak to Eugene F. Engert and Catherine S. Engert dated July 17, 1981 which was recorded in the Essex County Clerk's Office in Liber 745 of Deeds at Page 68.

PROJECT DESCRIPTION AS UNDERTAKEN AND PROPOSED

After-the-Fact Subdivision

A two-lot subdivision was undertaken when William T. Pasterak and Erika Pasterak conveyed a 2.2± acre lot containing a pre-1973 single family dwelling to Eugene F. Engert and Catherine S. Engert in July 17, 1981 and retained a vacant 6.0± acre lot.

Proposed Construction of Single Family Dwelling

The project as proposed is the construction of one new three-bedroom, 2,500 square foot single-family dwelling on the 6.0± acre vacant parcel. The proposed single-family dwelling will be located more than 200 feet from the river and will be served by existing municipal water supply facilities and proposed on-site wastewater treatment system. The project is shown on an untitled and undated sketch map of the project site. A reduced-scale copy of the sketch map is attached as a part of this renewed permit.

CONDITIONS

BASED UPON THE FINDINGS BELOW, THE PROJECT IS APPROVED SUBJECT WITH THE FOLLOWING CONDITIONS:

1. All conditions in Permits 2004-135 and 2004-135R remain in full force and effect unless specifically amended herein.
2. The renewed project shall be continued and undertaken as described in the request for a renewed permit, the Project Description as Undertaken and Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the permit 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.
3. This permit is binding on the applicants, all present and future owners of the project site and all contractors undertaking all or a portion of the project. Copies of this permit and the sketch map referred to herein shall be furnished by the applicants 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 shall contain references to this permit as follows: "The lands conveyed are subject to Adirondack Park Agency Permit 2004-135 issued September 24, 2004, Permit 2004-135R issued March 25, 2008, and Permit 2004-135R2 issued _____ 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 single-family dwelling on the 6.0± acre lot, no additional principal buildings shall be allowed upon either of the two lots approved herein 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 buildings.

Wastewater Treatment

6. The wastewater treatment system for the project site shall be a shallow absorption trench system with a minimum of 2 vertical feet from seasonal high ground water and shall be installed on the project site in the location shown on the site plan referenced herein. The system shall comply with New York State Department of Health's "Wastewater Treatment Standards for Individual Household Systems", the Agency's "Guidelines For On-site Sewage Disposal Systems (10 NYCRR Appendix 75-A)", and with Agency standards in 9 NYCRR Appendix Q-4.
7. The on-site wastewater treatment system shall consist of an appropriately sized septic tank, pump station (if necessary), distribution box and shallow trench absorption field. Prior to installing the new on-site wastewater treatment system, Agency approval in the form of a letter of permit compliance shall be obtained for plans prepared by a New York State Licensed Professional Engineer submitted to the Agency for its review. 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 must provide the Agency with written certification that the system was built in compliance with the approved plans.

Visual/Open Space Protection

8. In the first spring or fall planting season after construction of the single family dwelling authorized herein, a minimum of 10 indigenous conifer trees, each being a minimum of four feet in height, shall be successfully planted in a random fashion between the single-family dwelling and John Fountain Road. These trees shall be maintained to provide maximum visual screening benefit. No tree shall be removed, thinned or unnecessarily pruned or disturbed. Any trees that do not survive shall be promptly replaced.

Wild, Scenic and Recreational Rivers Special Provisions

9. Inside and within 100 feet of the mean high water mark of the East Branch of the Au Sable River, no trees or other vegetation shall be harvested, cut, culled, removed, thinned or otherwise disturbed on the project site without prior Agency review and written approval in the form of an amended Agency permit.

Shoreline Setbacks

10. All new buildings, decks and other structures (except for fences, poles, lean-tos, docks, boathouses, bridges, and stream improvement structures for fishery management purposes) shall be set back a minimum of 150 feet from the mean high water mark of the East Branch of the Au Sable River.

Docks

11. Any dock may extend into or over the navigable river from only that portion of the immediate shoreline necessary to attach the floating or fixed structure to the shoreline. No dock shall be wider than eight feet 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. Any dock shall only be used for the purposes of securing and loading or unloading watercraft and for swimming or water recreation.

Agency Review of Future Subdivision and Development

12. There shall be no further subdivision or new land use and development without a new or amended Agency permit. However, accessory structures are permitted without a permit amendment provided they are located within 100 feet of the single-family dwelling. Any accessory structure shall be customarily incidental and subordinate to the principal land use or development and that customarily accompanies or is associated with such principal land use or development. In no case shall the single-family dwelling or any accessory structure exceed 35 feet in overall height.

FINDINGS OF FACT

Background/Prior History and Description of Violation

1. The project site was the subject of Agency Permit P78-209 (Project R78-13) which was issued August 16, 1978 approving a two-lot subdivision of an approximately 8.2± acre project site into a 6± acre vacant lot (Tax Map Parcel No. 27.2-2-2.100) and a 2.2± acre lot (Tax Map Parcel No. 27.2-2-2.200) which contains a preexisting single-family dwelling. That previous project was not undertaken within two years of recordation of the permit and, hence, was void. The two-lot subdivision was undertaken when William T. Pasterak and Erika Pasterak conveyed the 2.2± acre lot to Eugene F. Engert and Catherine S. Engert by a deed dated July 17, 1981 which was recorded in the Essex County Clerk's Office in Liber 745 of Deeds at Page 68.

2. Permit 2004-135 issued on September 24, 2004 re-authorized the two-lot subdivision after-the-fact and also authorized the construction of a new single family dwelling on the vacant 6± acre lot. The single family dwelling was not completed within four years of recordation of the permit. By letter dated March 20, 2008, Virgil Lupu and Karen Fountain requested a renewal of Adirondack Park Agency Permit 2004-135 authorizing the construction of a single-family dwelling with no changes or amendments to the original permit. Permit 2004-135R was issued on March 25, 2008.
3. By letter dated April 2, 2012, a request was made for a second renewal of Agency Permit 2004-135.

Existing Environmental Setting

4. Soils in the area of the proposed on-site wastewater treatment system are coarse sand and gravel with no seasonal high water table within 30 inches of existing grade. There is a seasonal high groundwater table within 18 inches of grade on the lower portions of the project site.
5. The portion of the 6.0±-acre lot suitable for building and an on-site wastewater treatment system is a level open field at approximately the same grade as John Fountain Road. There is an embankment running parallel to a wire fence where slopes exceed 25% with a generally moderately sloping area between the embankment and the East Branch of the Au Sable River. The area near the river is wooded with predominantly hardwood trees.
6. The East Branch of the Au Sable River is designated as recreational in the New York State Wild, Scenic and Recreational Rivers System. In this area, it is navigable flatwater. Trees located along the river will provide partial screening for the proposed single-family dwelling.
7. Rural residences and open space are the predominant land use in the vicinity of the project site. Access to the project site is from John Fountain Road, a paved town-maintained road.

Other Regulatory Permits and Approvals

8. The Agency has been advised by the Town of Jay in a completed Local Government Notice Form that no municipal approval is required for the project.

PROJECT IMPACTS

Open Space/Aesthetics

9. No undue adverse impacts to open space will result from the project provided successful tree planting occurs between the single-family dwelling and John Fountain Road and provided no vegetative cutting occurs within 100 feet of the East Branch of the AuSable River without prior Agency review and approval.

Recreational River

10. Adherence to the restrictions contained in 9 NYCRR Part 577 (regulations implementing the New York State Wild, Scenic and Recreational Rivers Act) will serve to adequately protect this designated recreational river.

Historic Sites or Structures

11. 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 §426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

CONCLUSIONS OF LAW

If undertaken in compliance with the conditions herein:

1. The project would be consistent with the purposes and policies of the Wild, Scenic and Recreational Rivers System Act.
2. The project would comply with the applicable restrictions and standards of 9 NYCRR Section 577.6.
3. The project would not cause an undue adverse impact upon the natural, scenic, aesthetic, ecological, botanical, fish and wildlife, historic, cultural, archeological, scientific, recreational or open space resources of the river area, taking into account the commercial, industrial, residential, recreational or other benefits that might be derived therefrom.

