


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 www.apa.ny.gov</p>	<p>APA Permit and Order Granting Variance 2022-0132</p>
<p>In the Matter of the Application of</p> <p>EDIN LJESNJANIN for a permit and variance pursuant to 9 NYCRR Part 577</p>	<p>Date Issued: February 2, 2023</p> <p>To the County Clerk: Please index this Permit and Order in the grantor index under the following names: 1. Edin Ljesnjanin</p>

SUMMARY AND AUTHORIZATION

Edin Ljesnjanin (applicant) is granted a Permit, as conditioned herein, authorizing vegetative cutting inside 100 feet of the mean high water mark of the West Branch AuSable River, a designated recreational river, pursuant to sections 577.4(a) and 577.5(c)(1) of Agency regulations (9 NYCRR), implementing Article 15, Title 27 of the Environmental Conservation Law (New York State Wild, Scenic and Recreational Rivers System Act, or Rivers Act) and an Order, as conditioned herein, authorizing a variance from the applicable 150-foot shoreline structure setback pursuant to sections 577.6(b)(3) and 577.10(a) of Agency regulations (9 NYCRR) implementing the Rivers Act, to allow for the construction of a single family dwelling 75 feet from the mean high water mark of the West Branch AuSable River, in an area classified Low Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Jay, Essex County.

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.

PROJECT AND VARIANCE SITE

The project and variance site (site) is a vacant 0.90±-acre parcel of land located in the AuSable Acres Subdivision and identified on Town of Jay Tax Map as Section 7.79, Block 1, Parcel 1.000, and described in a deed from Ingrid Hamburger to Edin Ljesnjanin, dated August 30, 2021, and recorded September 14, 2021, in the Essex County Clerk's Office under Instrument Number 2021-4741 and at Book 2050, Page 307. The property is subject to a deed covenant requiring any building constructed on the site to be set back a minimum of 50 feet from the centerline of River Road, 25 feet from adjoining property boundaries, and a minimum of 25 feet from the rear property boundary.

The site contains approximately 290 feet of shoreline on the West Branch AuSable River and is within a designated recreational river area as specified in 9 NYCRR Appendix Q-6. The site is rectangular in shape, having a southerly boundary of 130±-feet in length, a northerly boundary of 160±-feet in length, and an easterly boundary of 207±-feet in length along River Road. A plateau running parallel to River Road exists at the top of the bank before sloping

moderately down to the river. The variance site is located within five miles of a northern long-eared bat hibernaculum.

Vegetation on the variance site between the mean high water mark of the river and the proposed single family dwelling consists of large white pine, hemlock, cedar, maple, poplar, and paper birch trees. The existing vegetation outside of the proposed limits of clearing will provide partial visual screening of the proposed structure from the river. The portion of the West Branch AuSable River adjacent to the site's shoreline contains a sandbar that appears to contain wetlands. There also appear to be additional wetlands at the toe of the bank near the southerly property line. These wetlands will not be impacted by the proposed development.

The AuSable Acres Subdivision is developed with seasonal use and year-round use single family dwellings on small lots. The Agency previously determined that the lot comprising the site is part of a pre-existing subdivision. The area in the immediate vicinity of the site is developed with single family dwellings on 1±-acre lots along the river and on the opposite side of River Road. The lot adjoining the southerly property boundary of the site is developed with a single family dwelling and a detached garage while the lot to the north of the site is vacant.

The majority of the site falls within the 150-foot shoreline setback of the West Branch AuSable River. The site was subject to Agency Permit and Variance Order 1992-0363, which authorized the construction of a single family dwelling in a location 75 feet from the West Branch AuSable River. That permit and variance order was never undertaken and has since expired.

PROJECT AND VARIANCE REQUEST

The project and variance approved herein involves the construction of a two-story single family dwelling that is 960 square feet in footprint (30 feet by 32 feet) and 32 feet in height, with an attached 350-square foot wooden deck 75 feet from the mean high water mark of the West Branch AuSable River. There will be no removal of vegetation within 75 feet of the mean high water mark of the river. The limits of clearing include minimal removal of vegetation within 100 feet of the mean high water mark for construction of the single family dwelling and on-site wastewater treatment system. All stumps will be left at the top of the slope for erosion control. Additional vegetation removal outside the 100-foot setback will occur for the construction of the gravel driveway. A vegetated buffer will be retained between the edge of the gravel driveway and River Road.

The project and variance approved herein is shown on a one-sheet plan titled "APA Attachment F," prepared by Ryan M. Burns, NYS P.E., dated January 3, 2022, and last revised August 16, 2022 (Site Plan Map).

A reduced-scale copy of the Site Plan Map is attached as part of this Permit and Order for reference. The original, full-scale Site Plan Map described in this paragraph is the official plan for the project and variance, with copies available upon request from Adirondack Park Agency headquarters in Ray Brook, New York.

AGENCY JURISDICTION/APPLICABLE LAWS

Pursuant to 9 NYCRR § 577.7(b)(2), one single family dwelling may be constructed without an Agency permit on any lot in a pre-existing subdivision provided it complies with the restrictions and standards of 9 NYCRR 577.6.

Pursuant to 9 NYCRR § 577.6(b)(3), in recreational river areas, new structures, except for fences, poles, signs of less than two square feet in area, lean-tos, docks, boathouses, bridges, and stream improvement structures for fishery management purposes, shall not be permitted inside the mean high water mark of the river or within 150 feet of the mean high water mark, except in hamlet or moderate intensity use areas. The applicant has requested a variance from this structure setback requirement pursuant to 9 NYCRR § 577.10.

Pursuant to 9 NYCRR § 577.5, a permit is required for the harvesting, cutting, culling, removal, thinning or other disturbance of timber or other vegetation inside or within 100 feet of the mean high water mark in all river areas not exempted by 9 NYCRR § 577.6(c)(1).

PROCEDURAL HISTORY (VARIANCE REQUEST)

Following receipt of the variance application, the Agency notified all parties as required by Agency regulations. On December 7, 2022, the Agency held a remote public hearing on the variance request. The hearing was attended by Agency staff and one member of the public. No public comments were received during the hearing. The Agency received one written public comment expressing concerns with the project and variance.

DISCUSSION (VARIANCE REQUEST)

The Agency may grant a variance where there are practical difficulties in carrying out the restrictions set forth in § 577.6 of the Agency’s regulations. 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 purpose served by the Agency’s shoreline structure setback requirements include protection of the water quality and aesthetics of the West Branch AuSable River.

Denial of the variance request would impact the applicant’s ability to construct a single family dwelling on this property, as the majority of this property is within the Agency’s 150-foot shoreline setback.

As proposed, the project will protect the water quality of the West Branch AuSable River through implementation of erosion control methods and installation of an on-site wastewater treatment system that meets all applicable New York State Department of Health standards and the standards set forth in Appendix Q-4 of the Agency’s regulations.

The quality of the shoreline will be protected by maintaining a vegetated buffer within 75 feet of the mean high water mark of the West Branch AuSable River that will partially screen the proposed single family dwelling from the river and adjoining residences.

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

As proposed, the single family dwelling is located 75 feet from the mean high water mark of the West Branch AuSable River in an area that will minimize visibility from the river, as well as adjoining and nearby landowners. The single family dwelling is approximately 960 square feet

in size and 32 feet in height and is located as far from the shoreline as practicable without violating the deed restrictions associated with this property.

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

There will be no detriment to nearby landowners as the single family dwelling will comply with the architectural requirements of the AuSable Acres Property Owners Association and meet the required building setbacks and vegetated buffer requirements of the deed restrictions associated with the property. A majority of the dwelling's footprint will be set back at least 100 feet from the West Branch AuSable River and will be adequately screened from the river by existing vegetation. The proposed single family dwelling will also be a dark shade of green, grey, or brown screening the proposed dwelling from adjoining or nearby landowners.

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

The variance site is subject to a deed covenant requiring any building constructed on the site to be set back a minimum of 50 feet from the centerline of River Road, a minimum of 25 feet from adjoining property boundaries, and a minimum of 25 feet from the rear property boundary.

Due to the relatively small size of the variance site, topography, location of the shoreline and property lines, and deed required building setbacks, there is no alternative location for the construction of a single family dwelling. As there is no area on the variance site outside of the Agency's 150-foot shoreline setback and outside the deed required 50-foot front property line building setback, a variance is necessary for any single family dwelling to be built on this property.

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

The variance site was created as Lot 26 of a 19-lot subdivision in 1965 (Section 4B of a 900+ lot subdivision undertaken in sections and approved by the New York State Department of Health on February 25, 1965). The deed conveying the lot contains numerous restrictive covenants including building setback requirements and vegetative buffer requirements. The variance site is located almost entirely within the Agency's 150-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.

The resources of the Park will be protected through implementation of erosion control methods and installation of an on-site wastewater treatment system that meets all applicable New York State Department of Health standards and the standards set forth in Appendix Q-4 of the Agency's regulations. The shoreline will be further protected by maintaining a vegetated buffer within 75 feet of the mean high water mark of the West Branch AuSable River that will partially screen the proposed single family dwelling from the river and adjoining residences. Restrictions on vegetative cutting, exterior lighting, and building color will protect against impacts to the aesthetic character of the shoreline of the West Branch AuSable River.

Changes to the variance site over time could alter the potential for adverse effects from construction of the expanded single family dwelling. Imposition of a five-year time limit on the requested variance will mitigate these potential impacts.

§ 576.1(c)(6): Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects noted above.

The Conditions included in this Permit and Order will ameliorate any potential adverse effects from the requested variance. Conditions regarding wastewater, stormwater, vegetation cutting, and erosion and sediment control, and adherence to the approved plans will ensure that there will be no adverse effects from the granting of the variance.

PERMIT AND VARIANCE CONDITIONS

THE PROJECT AND VARIANCE ARE APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. This authorization shall expire unless recorded in the Essex County Clerk's Office within 60 days of the date of issuance.
2. This Permit and Order is binding on the permittee, all present and future owners or lessees of the site, and all persons undertaking all or a portion of the project and variance. Copies of this permit and order, the Site Plans and the Structure Plans shall be furnished by the permittee to all subsequent owners or lessees of the site prior to sale or lease, and by the permittee and/or any subsequent owner or lessee to all persons undertaking any development activities authorized herein.
3. 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 Granting Variance 2022-0132, issued February 2, 2023, the conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
4. The authorization to undertake the construction of a single family dwelling and associated on-site wastewater treatment system on the site shall expire five years from the date this Permit and Order is recorded in the Essex County Clerk's office, unless construction of the structure has been completed in accordance with the site plan by that date or written authorization has been obtained from the Agency extending the deadline for construction.
5. In addition to complying with all terms and conditions of this Permit and Order, all future activities on the site shall be undertaken in compliance with the requirements of New York State's Adirondack Park Agency Act, Freshwater Wetlands Act, and the Adirondack Park Agency's implementing regulations [9 NYCRR §§ 570-588].
6. Subject to the conditions stated herein, this Permit and Order authorizes the construction of a single family dwelling and on-site wastewater treatment system, along with limited vegetative cutting, on the site in the location, footprint, and height depicted on the Site Plan Map referenced herein. Any changes to the locations, sizes, dimensions, or other aspects of the structure or vegetative cutting shall require prior written Agency authorization.

7. The undertaking of any new land use or development not authorized herein on the site within one-quarter mile of the West Branch AuSable River shall require a new or amended Permit and Order.
8. Pursuant to the Adirondack Park Agency Act and Agency regulations implementing New York State's Wild, Scenic and Recreational Rivers System Act, new structures are prohibited within 150 feet, measured horizontally, of the mean high water mark of the West Branch AuSable River.
9. Any on-site wastewater treatment system on the project site installed within five years of the date of issuance of this permit and order shall be constructed in conformance with the location and design shown on the Site Plan Map. 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 project site more than five years after the date of issuance of this permit and order except pursuant to written authorization from the Agency.

10. The project and variance shall be undertaken in compliance with the stormwater design and the erosion and sediment control depicted and described in the Site Plan. Prior to undertaking any ground disturbance, silt fencing shall be installed in the locations depicted on the Site Plan Map and maintained until all disturbed soils are stabilized with native, non-invasive vegetation.
11. When brought from off-site, all equipment, including but not limited to trucks, excavators, tractors, etc., and hand excavation tools such as shovels, rakes, and picks, to be used on the project site shall be clean and free of soil, mud, or other similar material. If washed on the project site, equipment shall be washed in one location to prevent the distribution of propagules among different wash sites.
12. Any new free-standing or building-mounted outdoor lights shall employ full cut-off fixtures that are fully shielded to direct light downward and not into the sky or toward the West Branch AuSable River, River Road, or adjoining properties.
13. All exterior building materials, including roof, siding, and trim, of the dwelling shall be a dark shade of green, grey, or brown.
14. Outside of the limits of clearing shown on the Site Plan Map and authorized by this Permit and Order, no trees, shrubs, or other woody-stemmed vegetation may be cut, culled, trimmed, pruned, or otherwise removed or disturbed on the project site without prior written Agency authorization, except for the removal of dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.
15. Between April 1 and October 31, no trees shall be removed or disturbed on the project site without prior written Agency authorization.

- 16. The undertaking of any activity involving wetlands shall require a new or amended permit.
- 17. There shall be no more than one principal building located on the variance site at any time. The single family dwelling authorized herein constitutes a principal building.

CONCLUSIONS OF LAW

The Agency has considered all statutory and regulatory criteria for project approval set forth in the Adirondack Park Agency Act and 9 NYCRR Parts 574, and all standards and factors for issuance of a variance set forth in 9 NYCRR Parts 576 and 577. The Agency hereby finds that the project as conditioned herein:

- a. will be consistent with the land use and development plan;
- b. will be compatible with the character description and purposes, policies and objectives of the Low Intensity Use land use area;
- c. will be consistent with the overall intensity guidelines for the Low Intensity Use land use area;
- d. will comply with the shoreline restrictions of section 806 of the Adirondack Park Agency Act and the regulatory requirements of the Adirondack Park Agency's implementation of New York State's Wild, Scenic and Recreational System Act, except as approved in the variance granted herein; and
- e. will not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational, or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project.

ORDER issued this 2nd day of February, 2023.

ADIRONDACK PARK AGENCY

BY: 
Barbara A. Rice, Executive Director

STATE OF NEW YORK
COUNTY OF ESSEX

On the 2nd day of February in the year 2023, before me, the undersigned, a Notary Public in and for said State, personally appeared Barbara A. Rice, 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 they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

Stephanie L. Petith
Notary Public, State of New York
Reg. No 01PE6279890
Qualified in Franklin County
Commission Expires April 15, 2025

