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STAFF DRAFT – JUNE 1, 2017 – NOT APPROVED BY AGENCY**

<div style="display: flex; align-items: center;"><div>Adirondack Park Agency</div></div> <p style="text-align: center; margin-top: 20px;">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 style="text-align: center; margin-top: 20px;">APA Order Granting Variance 2016-0182</p>
<p>In the Matter of the Application of</p> <p style="text-align: center; margin-top: 10px;">ESTATE OF GENEVIEVE M. GARRANT</p> <p style="margin-top: 20px;">for a variance pursuant to Executive Law §806</p>	<p>Date Issued: XXXX</p> <p style="margin-top: 20px;">To the County Clerk: This order must be recorded on or before XXXX. Please index this Order in the grantor index under the following names applicant and all landowners names:</p> <p style="margin-left: 20px;">1. Estate of Genevieve M. Garrant</p>

SUMMARY AND AUTHORIZATION

The Estate of Genevieve M. Garrant ("applicant") is granted a variance, as conditioned herein, from the applicable minimum shoreline lot width of 125 feet required by Section 806(1)(a)(1) of the Executive Law ("Adirondack Park Agency Act" or "APA Act"), to allow for the construction of a single family dwelling on a lot having 76.2 feet of lot width in an area classified Low Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Fort Ann, Washington 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)(1) of the APA Act establishes a minimum shoreline lot width of 125 feet as measured along the shoreline of a navigable water body for each one family residential structure. The applicant requested a variance from this shoreline lot width requirement pursuant to § 806(3)(a) of the APA Act.

RELEVANT FACTS AND BACKGROUND

Variance Site

The variance site is a 1.35± acre parcel of land identified on Town of Fort Ann Tax Map Section 101.15, Block 1, as Parcel 15, and described in a deed from Hadlock Realty Corporation to Herbert Garrant and Genevieve Garrant, dated May 3, 1963, and recorded June 3, 1963 in the Washington County Clerk's Office at Book 388, Page 873.

The variance site is currently vacant and wooded with a mix of white pine, hemlock and hardwood trees with little to no understory vegetation. Access to the site is from Copeland Pond Road, a town road that forms the eastern boundary of the property.

The variance site contains 76.2 feet of shoreline on Hadlock Pond. The mean high water mark of Hadlock Pond is labeled as the "average annual high water level" on the Project Plans as 448.30 feet above mean sea level (AMSL). The Town of Fort Ann owns Hadlock Pond and regulates its water level, which is typically drawn down over the winter.

There are no wetlands or streams on the variance site or within 100 feet of the development authorized herein.

The single family dwelling and associated development will be located outside of the 75 foot shoreline setback for Low Intensity Use land use areas.

From the high point on the variance site (509 feet AMSL), in the location of the on-site wastewater treatment system leaching facility, the variance site slopes downward to the west to Hadlock Pond (448.30 feet AMSL) and downward to the east to Copeland Pond Road (482 feet AMSL). Existing slopes in the location of the leaching facility are less than 3 percent, in the location of the driveway are 16± percent, and in the location of the dwelling are 13± percent. The steepest existing slopes are 31± percent, between the dwelling and Hadlock Pond.

The on-site wastewater treatment system's leaching facility will be located greater than 200 feet from existing neighboring wells and the proposed well on the variance site. A deep-hole soils test pit examined in the location of the leaching facility revealed greater than 48 inches to seasonal high ground water and greater than 72 inches to bedrock.

Lot History

The variance site was one of three contiguous parcels acquired separately by Herbert and Genevieve Garrant in 1948, 1955, and 1963. Pursuant to § 573.4(g) of Agency Rules and Regulations, adjoining property under one ownership as of the May 22, 1973 enactment date of the Adirondack Park Land Use and Development Plan is deemed, for Agency purposes, to have merged into one undivided lot as of that date, even if described in different deeds or having different tax map designations. In 1975, the single merged lot was subdivided into two parcels, current Fort Ann tax parcels 101.19.-1-1 and 101.19-1-15 (the variance site). Because the variance site contains less than the minimum 125 feet of shoreline required by § 806 of the Adirondack Park Agency Act, an Agency variance is required prior to construction of a single family dwelling on this lot.

Variance Request

The applicant's objective is to sell the lot as a building lot for a single family dwelling. Construction of a single family dwelling on this 76.2±-foot-wide lot requires a variance of 48.8± feet from the 125 foot shoreline lot-width requirement. The buyer has proposed the location

and design for the single family dwelling. The variance as conditionally approved herein involves the construction of a three bedroom single family dwelling 2,440± square feet in footprint and 38 feet in height, including a 192± square foot deck and a 768± square foot attached garage. The single family dwelling structure will be located 95± feet from the mean high water mark of Hadlock Pond, entirely outside of the 75-foot shoreline structure setback for a Low Intensity Use land use area. The on-site wastewater treatment system leaching facility will be located greater than 300 feet from Hadlock Pond. The driveway will be 670± feet long with a maximum finished grade of 12 percent. Utilities will be routed to the dwelling within the limit of disturbance shown on the Project Plans. Shoreline tree cutting is proposed to create a filtered view of Hadlock Pond from the dwelling. A single floating dock will be installed from the variance site as shown on the Project Plans.

The variance site is shown on a map titled "Map of a Survey made for Estate of Herbert Garrant," S-1, Sheet 1 of 1, prepared by Van Dusen & Steves Land Surveyors, dated October 1, 2003 and last revised November 2, 2016 ("Survey Map").

The variance proposal is shown on a set of plans titled "Hadlock Pond," prepared by Martino & Anthony Engineering and Landscape Architecture, stamped by Corinna Martino, PE on November 3, 2016 ("Project Plans"), including:

- Drawing C-1, Site Preparation, Erosion and Sediment Control Plan and Selective Clearing Plan;
- Drawing C-2, Layout, Materials and Landscape Treatment Plan;
- Drawing C-3, Grading, Drainage and Utility Plan;
- Drawing C-4, Site Details;
- Drawing C-5, Utility Details; and
- Drawing C-6, Utility Details.

The variance application included a report titled "Stormwater Management Report, Hadlock Pond Site, Town of Fort Ann, Washington County," prepared for Estate of Geneive [sic] Garrant, prepared by Martino & Anthony Engineering and Landscape Architecture, DPC, and Issued for Approvals October 31, 2016 ("Stormwater Plan").

The variance application also included the following unattributed and undated plans, received by the Agency on November 4, 2016 ("Dwelling Plans"):

- "Proposed Floor Plan" showing main floor, upper floor, and basement,
- "Front Elevation" and "Rear Elevation,"
- "South Side Elevation," and
- "North Side Elevation."

A reduced-scale copy of Drawing C-3 (Grading, Drainage and Utility Plan) of the Project Plans is 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 the Agency regulations. On May 5, 2017, the Agency held a public hearing on the variance request in the Town of Fort Ann. The hearing was attended by Agency staff, a co-executrix of the Estate of Genevieve M. Garrant, the applicant's representative, the applicant's consultant, and two members of the public. No comment letters have been received and no public comment was offered at the hearing.

DISCUSSION

The Agency may grant a variance where there are practical difficulties in carrying out the restrictions set forth in Section 806(1)(a)(1) 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.

The potential adverse consequence to the applicant resulting from denial would be the inability to construct a dwelling on a vacant lot. Denial of the requested lot-width variance would also adversely affect the sale of the variance site property by the estate. The public purposes served by the Agency's shoreline lot width requirements include protection of the water quality and shoreline quality of Hadlock Pond. The potential for impacts from the variance to the water quality and shoreline quality of Hadlock Pond may be mitigated by ensuring that construction occurs as proposed, in compliance with the erosion and sediment control, stormwater, and wastewater treatment system plans, and with limitations on vegetative cutting, lighting, and exterior structure colors. Weighing the factors considered herein, the adverse consequences to the applicant resulting from denial are greater than the public purposes served by the Agency's shoreline lot width requirements.

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

The applicant's objective is to sell the variance site as a building lot for a single family dwelling. The buyer has proposed the location and design for the single family dwelling.

The 76.2±-foot lot width of the variance site is the only lot width available to the applicant since both lots to the north and south are developed with seasonal residences and related site features. The lot to the north is 198 feet wide and the lot to the south is 50 feet wide (already substandard). No additional land is available for purchase.

There are 72 shoreline parcels on Hadlock Pond that are also located in a Low Intensity Use land use area, including the variance site. Of those 72 parcels, 55 parcels are less than 125 feet wide. The five parcels to the south of the variance site have lot widths of 50± feet, 32± feet, 50± feet, 50± feet, and 100± feet. The five parcels north of the variance site have lot widths of 198± feet, 470 feet±, 258± feet, 120± feet, and 140± feet.

The single family dwelling will be located 95 feet from the mean high water mark of Hadlock Pond, entirely outside of the 75-foot shoreline structure setback for a Low Intensity Use land use area, and will be further from the shoreline than the dwellings located immediately north and south of the variance site.

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

The single family dwelling is proposed to be located on the variance site in a location 22.6 feet from the southern property boundary and 19.9 feet from the northern property boundary. Vegetation is proposed to be removed up to both property boundaries. The new dwelling location is 69± feet from the neighboring dwelling to the south, 180± feet from the neighboring dwelling to the southeast, and 130± feet from the neighboring dwelling to the north. The new dwelling will be located to the rear of these dwellings (in the direction of Copeland Pond Road) as opposed to directly adjacent. The new dwelling will be visible from each of these neighboring dwellings, because the trees on site are mature with high branches and there is little understory growth. Similarly, there is a lack of buffering vegetation on the adjacent lots with further allows visibility of these dwellings. The addition of a dwelling in this context is consistent with the neighborhood character. Furthermore, no comment letters were received regarding this variance.

The dwelling to the south of the variance site was constructed in 1950. Developing the variance site as authorized herein will not cause any change, beneficial or adverse, in the quality of any eligible or registered property in the project impact area.

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

There is no feasible alternative that would not require a variance from the Agency and meet the applicant's objective of selling a building lot suitable for a single family dwelling. Construction of a dwelling in any location on the lot would still require a lot-width variance from the Agency. Improving the lot with a hunting and fishing cabin or a travel trailer does not meet the applicant's objectives and would not be acceptable to the buyer.

Agency staff did ask the applicant to consider a dwelling location further from Hadlock Pond and closer to Copeland Pond Road, approximately 400 feet from the Pond, in order to reduce the length of the driveway and amount of overall site disturbance. This alternative was not accepted by the applicant or buyer as they desire to have a dwelling closer to the water, i.e., a waterfront dwelling rather than a dwelling with waterfront access. The applicant also rejected this alternative because, as they asserted, it could require more tree and branch removal to obtain a view of Hadlock Pond and it would not as easily accommodate their preferred dwelling design with a walkout basement.

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

The difficulty is self-created. The variance site was created by subdivision in 1975 without the necessary Agency permit. This subdivision was reported by the applicant to the Agency in August of 2015. Pursuant to a September 1, 2015 letter from the Agency's Enforcement Division, the Agency informed the applicant that, given the circumstances, further enforcement action related to the 1975 subdivision would not be pursued, but that an Agency variance would be required prior to construction of a principal building (i.e., single family dwelling) on the variance site.

§ 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.

Construction of the proposed single family dwelling and site disturbance resulting from installation of related infrastructure (i.e., driveway, on-site wastewater treatment system, on-site water supply, and utilities) not in accordance with the Project Plans, Dwelling Plans, and Stormwater Plan could cause surface runoff, erosion, subsurface effluent, and a change in the aesthetic character, resulting in impacts to adjoining landowners and surface water, groundwater, and aesthetic resources. Continued maintenance of the stormwater controls will also be necessary to avoid potential water quality impacts.

Construction of the single family dwelling without limits on tree cutting and trimming, structure color, and exterior lighting could impact the aesthetic character of Hadlock Pond.

Changes to the variance site over time could alter the potential for adverse effects from construction of a dwelling and the associated on-site wastewater treatment system. Imposition of a four 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 potential for adverse effects to the water quality and aesthetic character of Hadlock Pond will be ameliorated by compliance with the following conditions:

1. This Order shall be recorded in the Washington County Clerk's Office by <XXXX>.
2. The authorization to undertake construction of the single family dwelling authorized herein shall expire four years from the date this Order is recorded in the Washington County Clerk's office, unless construction of the dwelling has been completed in accordance with the plan sheets 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 and described on the Project Plans, Dwelling Plans, and Stormwater Plan referenced herein. Any change to the location, size, dimension, or other aspect of the single family dwelling, attached accessory structures, or other project components (including, but not limited to, the driveway, on-site wastewater treatment system, and stormwater controls) shall require a new or amended Agency Order or a letter of compliance.
4. Pursuant to the Adirondack Park Agency Act, new structures greater than 100 square feet in size are prohibited within 75 feet, measured horizontally, of the mean high water mark of Hadlock Pond. Boathouses and docks, as defined under 9 NYCRR §570.3, are excepted from this requirement.
5. 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 Hadlock Pond, Copeland Pond Road, or adjoining property.
6. All exterior building materials, including roof, siding and trim, of any structure on the variance site shall be a dark shade of green, grey, or brown.
7. Within 35 feet of the mean high water mark of Hadlock Pond, no trees, shrubs, or other vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed without prior written Agency authorization, except for (a) the removal of those five hemlock and pine trees labeled as to be removed on Sheet C-1 of the Project Plans, (b) the removal of trees, shrubs, and vegetation from the 20-foot by 6-foot shoreline access area as shown on Sheet C-1 of the Project Plans, (c) any vegetative removal authorized pursuant to Condition 9 of this Order, and (d) dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.
8. Greater than 35 feet of the mean high water mark of Hadlock Pond, no trees, shrubs, or other vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed without prior written Agency authorization, except for (a) within the "limit of disturbance" shown on Sheet C-1 of the Project Plans, (b) any vegetative removal authorized pursuant to Condition 9 of this Order, and (c) dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.
9. Removal of vegetation outside the limit of disturbance, shown on Sheet C-1 of the Project Plans, shall not be undertaken until construction of the single family dwelling and associated infrastructure is complete. Upon completion of construction, the permittee, their successor, or assign shall contact the Agency to arrange a site visit for review of vegetative removal to develop a view of Hadlock Pond from the dwelling. Such vegetative removal shall be directed at creating filtered views, with limited whole tree removal. Selective pruning shall be used as the primary tool to create targeted views from specific locations (i.e., from porches or windows). Pruning to a uniform height of the remaining trees across a shoreline property shall be avoided, as well as removal of branches to 2/3 or more of the total tree height.

10. There shall be no principal buildings located on the variance site other than the dwelling authorized herein. There shall be no guest cottages on the variance site.
11. The wastewater treatment system shall be constructed in conformance with the location and design shown on the Project Plans. 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 except pursuant to written authorization from the Agency.

12. The project shall be undertaken in compliance with the Stormwater Plan and in compliance with the Erosion and Sediment Control Plan (a component of the Project Plans referenced herein). All sediment accumulated in any check dam or swale shall be removed as necessary and all proposed stormwater management practices shall be maintained in working order.

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 , 2017.

ADIRONDACK PARK AGENCY

BY: _____
Richard E. Weber III
Deputy Director, Regulatory Programs

STATE OF NEW YORK
COUNTY OF ESSEX

On the day of in the year 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard E. Weber III, 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

REW:ADL:slp

