


**THIS IS A TWO-SIDED DOCUMENT**

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|  <p><b>NEW YORK</b><br/>STATE OF<br/>OPPORTUNITY</p> <p><b>Adirondack<br/>Park Agency</b></p> <p>P.O. Box 99, 1133 NYS Route 86<br/>Ray Brook, New York 12977<br/>Tel: (518) 891-4050 Fax: (518) 891-3938<br/>www.apa.ny.gov</p> | <p>APA Order Granting Variance<br/><b>2017-0149</b></p>   |
|   | <p>Date Issued: November 9, 2018</p>  |
| <p>In the Matter of the Application of</p> <p><b>KAREN P. FARDELMANN and<br/>PETER FARDELMANN</b></p> <p>for a variance pursuant to Executive Law §806</p>  | <p>To the County Clerk: This order must be recorded on or before <b>January 8, 2019</b>. Please index this Order in the grantor index under the following names:</p> <p><b>1. Karen P. Fardelmann</b></p> |

**SUMMARY AND AUTHORIZATION**

Karen and Peter Fardelmann ("applicants") are granted a variance, as conditioned herein, from the applicable 75-foot shoreline structure setback required by § 806(1)(a)(2) of the Executive Law (Adirondack Park Agency Act or APA Act), to allow for the construction of a single-family dwelling approximately 38.7 feet from the mean high water mark of Loon Lake, in an area classified Low Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Franklin, Franklin County.

Nothing contained in this Order shall be construed to satisfy any legal obligations of the applicants 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)(2) of the APA Act establishes a minimum shoreline setback of 75 feet from the mean high water mark of Loon Lake for all accessory structures and principal buildings greater than 100 square feet in size. The applicants requested a variance from this structure setback requirement pursuant to § 806(3)(a) of the APA Act.

Section 806(1)(b) of the APA Act establishes a minimum shoreline setback of 100 feet from the mean high water mark of navigable water bodies and 100 feet from all streams, whether permanent or intermittent, for any on-site sewage absorption field or seepage pit. The applicants requested a variance from this sewage system setback requirement pursuant to § 806(3)(a) of the APA Act.

## **RELEVANT FACTS AND BACKGROUND**

### **Variance Site**

The variance site is a 0.72±-acre parcel of land on the east side of Mensink Road, with shoreline on Loon Lake, and identified on the Town of Franklin Tax Map Section 309.1, Block 1, as Parcel 4. The variance site is described in two deeds as follows: a Bargain and Sale Deed dated April 2, 2013 from Virginia T. Peyrek to Karen P. Fardelmann, recorded April 9, 2013 in the Franklin County Clerk's Office under Instrument Number 2013-1913, and a Quitclaim Deed dated February 8, 2017 from Town of Franklin to Karen P. Fardelmann, recorded February 17, 2017 in the Franklin County Clerk's Office under Instrument Number 2017-824.

The pre-existing single-family dwelling constructed in 1954 on the variance site is a one-bedroom, single-story structure located 38.7 feet from the mean high water mark of Loon Lake and entirely within 75 feet of the mean high water mark of Loon Lake. The rear side (road side) of the pre-existing dwelling is at the 75-foot structure setback. The pre-existing dwelling is a three-season structure measuring approximately 30.5 feet in width (along the lake), 34.4 feet in depth (perpendicular to the lake), 16.6 feet in height, with a footprint of 1,050 square feet.

The variance site is approximately 268 feet in length (straight line distance parallel to the shoreline) and 107-112 feet in depth (between the lake and the road). The site is constrained to the east by the 75-foot shoreline structure setback and to the west by the Town of Franklin highway superintendent's recommended 25-foot setback from the road. The area outside these two setbacks is bisected by an intermittent stream and intersected on the north by an existing driveway.

The variance site has 272± feet of shoreline on the west shore of Loon Lake, a navigable water body. The mean high water mark of Loon Lake is shown on Sheet 2 of the Engineer Plans, "Existing Conditions."

There are trees on the shoreline of the variance site, except for a 60-foot-wide portion centered on the pre-existing dwelling which is lawn and provides views of Loon Lake from the dwelling.

There are no wetlands on the variance site or within 100 feet of the replacement on-site wastewater treatment system.

There is an intermittent stream immediately south of the pre-existing dwelling that bisects the property.

There are eight shoreline parcels to the north of the variance site within 1,000 feet. One of these parcels is vacant, and the other seven parcels, ranging in size from 0.23± acres to 0.46± acres in size, are developed with residential structures. There are three shoreline parcels to the south of the variance site and within 1,000 feet. These parcels range in size from 1.04± acres to 2.06± acres and are all developed with residential

structures. There are shoreline parcels of a similar size and with residential development 1,240± feet across the lake on Horse Head Point.

The existing on-site wastewater treatment system serving the pre-existing dwelling is a gravity flow system consisting of a septic tank and absorption field system located to the south side of the dwelling. The horizontal separation of the existing absorption field to the mean high water mark of Loon Lake is approximately 30 feet.

A deep-hole soils test pit conducted in the location of the absorption bed for the replacement on-site wastewater treatment system found evidence of seasonal high ground water at a depth of 32 inches and a depth to bedrock greater than 48 inches.

The existing single-family dwelling on the parcel to the north is 125 feet from and visible from the pre-existing dwelling on the variance site. The existing single-family dwelling on the parcel to the south is 450 feet from and not visible from the pre-existing dwelling on the variance site.

### **Variance Request**

The applicants seek to replace a pre-existing single-family dwelling with a new year-round single-family dwelling. Specifically, the variance proposal is to expand the footprint, width, and height of a pre-existing dwelling within the shoreline setback area.

The proposal involves replacing the pre-existing single-story, one-bedroom dwelling located approximately 38.7 feet from the mean high water mark of Loon Lake with a two-story, four-bedroom single family dwelling also located 38.7 feet from the mean high water mark. The proposed dwelling will have a footprint of 1,376.8± square feet within the setback area, a width of 40 feet within the setback area, and a height of 26.5± feet at the highest roof ridge line within the setback area. The total footprint of the proposed dwelling, including the areas outside the setback area, will be 3,646± square feet, the total width will be 95.7± feet, and the total height will be 39.6± feet. The portion of the dwelling constructed greater than 75 feet from the mean high water mark of Loon Lake does not require a permit or a variance, provided it does not exceed 40 feet in height as measured from the highest point on the structure, including any chimney, to the lower of existing or finished grade.

Within the setback area, the proposed dwelling will be approximately 327± feet larger, 9.5± feet wider, and 7.9± feet taller than any lawful replacement dwelling. The 9.5-foot width expansion of the pre-existing dwelling is in the direction of the parcel to the north and will be visible from the dwelling to the north. The expanded dwelling will not be visible from the dwelling to the south.

During the review process, staff suggested that the applicants consider alternative dwelling plans that would minimize or eliminate the need for a variance. In response, the applicants moved a portion of the dwelling and attached garage away from the shoreline so that approximately 64 percent of the new dwelling and garage will be outside the setback area, and further reduced the height of the proposed dwelling within the setback to minimize the variance request.

The variance proposal also involves the installation of an on-site wastewater treatment system for a four-bedroom dwelling design capacity that is located approximately 91 feet from the mean high water mark of Loon Lake and 33 feet from an intermittent stream. The replacement wastewater treatment system consists of an enhanced treatment unit (ETU) that provides additional effluent treatment within the septic tank and an absorption bed system.

In addition, an erosion and sediment control plan and a stormwater management plan will be implemented. The stormwater management plan consists of utilizing green infrastructure practices and the installation of an eave trench, two rain gardens, and a vegetated swale. As part of the site redevelopment, approximately 62 feet of the intermittent stream will be hard-piped to protect the integrity of the replacement dwelling's foundation.

No trees or vegetation will be removed from the variance site within 35 feet of the mean high water mark of Loon Lake. Three trees greater than 6 inches in diameter at breast height will be removed from an area greater than 75 feet from the lake. The applicants plan to replace these trees by planting three trees to the east of where they are removed and within 75 feet of the lake.

The variance proposal is shown on the following maps and plans:

- Eight drawings titled "Camp Tetoloka, Loon Lake, NY," prepared by Verdant Architecture, undated, and received October 15, 2018 (Architect Plans):
  - Setback and Constraint Diagram – Existing Site Analysis 06-ITEM 1;
  - Setback and Constraint Diagram – Proposed Site Analysis 06-X101;
  - Basement Plan 06-A100;
  - First Floor Plan 06-A101;
  - Second Floor Plan 06-A102;
  - Loon Lake Elevation (East) 06-A201A;
  - South Elevation 06-A202; and
  - Site Section Diagram 06-A301.
- Six drawings titled "Proposed Site Plan Fardelmann Residence," prepared by Environmental Design Partnership, LLP, and dated as noted below (Engineer Plans):
  - Site Plan, Sheet 1, dated October 10, 2018 and last revised October 18, 2018;
  - Existing Conditions, Sheet 2, dated December 6, 2017 and last revised October 18, 2018;
  - Erosion Control and Sediment Plan, Sheet 3, dated December 6, 2017 and last revised October 18, 2018;
  - Stormwater Details, Sheet 4, dated December 6, 2017 and last revised October 18, 2018;
  - Wastewater Design, Details and Notes, Sheet 5, dated December 6, 2017 and last revised October 18, 2018; and
  - Wastewater System, Sheet 6, dated October 10, 2018 and last revised October 18, 2018.

A reduced-scale copy of Sheet 1 of the Engineer Plans and the Loon Lake Elevation of the Architect 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 Agency regulations. On October 18, 2018, the Agency held a public hearing on the variance request in the Town of Franklin. The hearing was attended by Agency staff, the applicants and their authorized representative, and one member of the public. Ten comment letters were received, nine in support of the variance and one opposed. A petition with seven signatures was also received, in support of the variance. The letter in opposition to the variance request expressed concerns about the replacement on-site wastewater treatment system and possible impacts to the water quality of Loon Lake.

### **DISCUSSION**

The Agency may grant a variance where there are practical difficulties in carrying out the restrictions set forth in Section 806(1)(a)(2) of the APA Act. The Agency has considered the standards and factors set forth in 9 NYCRR § 576.1(b)-(c).

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

The applicants propose to construct a structure that is 327± feet larger in footprint, 9.5± feet wider, and 9.87± feet taller within the setback area than the existing structure (7.87± feet taller than could lawfully be constructed). During review of the proposal, the applicants moved a portion of the dwelling and attached garage away from the shoreline so that the majority of the new dwelling and the entirety of the garage will be outside the setback area, and further reduced the height of the proposed dwelling within the setback area to minimize the variance request. The replacement dwelling is oriented on a north-south axis, parallel to the shoreline and road, and as close to the road as possible, maintaining 64 percent of the dwelling and garage footprint outside the shoreline structure setback.

For a 4-bedroom septic design capacity, the location and design of the replacement wastewater treatment system – utilizing an enhanced treatment unit (ETU) and absorption bed – maximizes the distance from the mean high water mark of Loon Lake and the intermittent stream given the dimensions and physical constraints of the site.

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

The variance site is located in a developed portion of Loon Lake, and there are several shoreline structures in the vicinity of the site. There are no anticipated detriments to adjoining or nearby landowners. The replacement dwelling fits within the character of

the shoreline in the immediate area, where there are other two- and three-story dwellings between Mensink Road and Loon Lake that are on similarly sized parcels and visible from Loon Lake. There are no dwellings on the opposite/west side of Mensink Road, and therefore the replacement dwelling will not block the views of any neighbor. The replacement wastewater treatment system meets required side lot setbacks.

Nine comment letters in support of the variance were received from neighbors to the north of the variance site and other interested parties. One letter was received raising concerns related to the replacement on-site wastewater treatment system and possible impacts to the water quality of Loon Lake. The record indicates that, to the extent feasible, the applicants maximized the setback distance of the system to the mean high water mark of Loon Lake and the intermittent stream. The applicants will also be utilizing an enhanced treatment unit (ETU) to provide additional effluent treatment.

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

The applicants could construct a new dwelling outside the shoreline structure setback. The applicants could also replace the pre-existing dwelling, with an increase in height of up to two feet, within the shoreline structure setback. Either alternative, or a combination of these alternatives, would not require a variance. The applicants plan to build the majority of their new dwelling and attached structures outside the shoreline structure setback area, but maintain that an expansion of the portion of the dwelling inside the shoreline structure setback is necessary.

For a four-bedroom dwelling design capacity, there is no alternative septic system location or design that would obviate the need for a variance. There is insufficient area on the variance site that is both greater than 100 feet from the mean high water mark of Loon Lake and the intermittent stream.

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

The variance site is 0.72± acres in size, with more than half of the lot located within the shoreline setback area. The variance site has been in the landowner's family since 1953, and was conveyed to the landowner in 2013. The buildable area on the variance site is constrained to the east by the 75-foot shoreline structure setback, to the west by the Town's setback from the road (for safety and snow removal), to the north by the existing driveway and northern property line, and to the south by an intermittent stream in the center of the property that bisects the site. The pre-existing dwelling contains only a single bedroom, and the pre-existing onsite wastewater treatment system is a gravity flow system with an absorption field located approximately 30 feet from the mean high water mark of Loon Lake.

**§ 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 requested variance would result in a replacement dwelling larger in footprint, width, and height than the pre-existing dwelling, and will be more visible from the lake than the existing dwelling. However, there is residential development in the immediate vicinity of the variance site and the dwelling is consistent with the overall character of the shoreline. In addition, the portion of the proposed dwelling within the shoreline setback area will be backdropped by the taller portion of the dwelling located outside of the setback area, for which no Agency review is required. Exterior dwelling colors that don't blend with the landscape and lighting that is not fully-shielded and directed downward could lead to adverse changes to the aesthetic character of the waterbody. Appropriate restrictions on dwelling dimension, color, and lighting will protect the resources of the Park and adjoining water bodies.

Construction of the expanded dwelling without stormwater and erosion controls could cause additional erosion or surface runoff. However, implementation of the proposed stormwater practices and erosion controls will help to alleviate any impacts to the water quality of Loon Lake.

Replacing the existing on-site wastewater treatment system with a modern system further from the lake and intermittent stream will improve the water quality of each. Failure to install the replacement on-site wastewater treatment system or installation of the system in a different location or of a different design could cause impacts to the water quality of the intermittent stream and/or Loon Lake. Adherence to the proposed wastewater plan will protect the resources of the Park and adjoining water bodies.

**§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 Loon Lake will be ameliorated by compliance with the following conditions:

1. This Order shall be recorded in the Franklin County Clerk's Office by January 9, 2019.
2. The authorization to construct the single-family dwelling and install the on-site wastewater treatment system shall expire four years from the date this Order is recorded in the Franklin County Clerk's office, unless construction of the foundation, framing, and roof of the dwelling has been completed in accordance with the Architect Plans and Engineer Plans by that date or written authorization has been obtained from the Agency extending the deadline for dwelling construction and septic installation.
3. The project shall be undertaken as depicted on the Architect Plans and Engineer Plans referenced herein. Any changes to the locations, sizes, dimensions, or other aspects of the expanded dwelling or replacement wastewater treatment system shall require a new or amended Agency Order or a letter of compliance.

4. All exterior building materials, including roof, siding and trim, of the expanded dwelling shall be a dark shade of green, grey, or brown.
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 Loon Lake, Mensink Road, or adjoining property.
6. The on-site wastewater treatment system shall be replaced in conformance with the location and design shown on the wastewater plans contained within the Engineering Plans. There shall be no more than four bedrooms in the expanded dwelling. 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.

7. The project shall be undertaken in compliance with the Erosion and Sediment Control Plan and the Stormwater Plan contained within the Engineer Plans.
8. Within 35 feet of the mean high water mark of Loon Lake, no trees, shrubs or other woody-stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed on the variance 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.

**§ 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 adverse consequences to the applicant resulting from denial would be the inability to construct the portion of the proposed dwelling expansion inside the shoreline setback.

The public purposes of the shoreline restrictions are to protect water quality and the qualities of Adirondack shorelines. The water quality of Loon Lake will be protected by installation of a replacement on-site wastewater treatment system, retention of shoreline trees, as well as implementation of the erosion and sediment control plan and stormwater management plan. The quality of the shoreline of Loon Lake will be protected because the expanded dwelling will be in a developed area of the shoreline, partially screened by the retention of shoreline trees, and will be consistent with the overall character of the neighborhood.

Weighing the factors considered herein, the adverse consequences to the applicants resulting from denial are greater than the public purpose sought to be served by the restriction.



**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 applicants' 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                               , 2018.

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 2018, 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:BHH:AJP:JMH:slp