

<p>ADIRONDACK PARK AGENCY Division of Regulatory Programs PO Box 99 Ray Brook, New York 12977 Telephone (518) 891- 4050 www.apa.ny.gov</p>		<p>Application for Variance from Shoreline Restrictions December 2009</p>
---	---	--

Applicability: Section 806 of the Adirondack Park Agency Act (implemented by Parts 575 and 576 of the Adirondack Park Agency Rules and Regulations) establishes shoreline restrictions on all lakes and ponds and navigable rivers and streams. Also, Part 577 of the Agency’s Rules and Regulations establishes restrictions and standards for designated rivers included in the NYS Wild, Scenic and Recreational Rivers Act. Shoreline restrictions implemented by the Adirondack Park Agency include:

- limits on the removal of vegetation.
- minimum lot widths for shoreline subdivisions.
- minimum setbacks for new or expanded buildings and structures.
- minimum shoreline frontages for deeded or contractual access to all lakes, ponds, rivers or streams for development five or more non-shoreline lots or multiple family dwellings.
- minimum shoreline setbacks for wastewater treatment systems.

If a development proposal cannot meet the applicable shoreline restrictions, a variance from these restrictions must be obtained from the Agency before the proposal can be undertaken. This application must be used in order to apply for a shoreline restriction variance. However, before completing this application, the applicant needs to consider the fact that section 806(3)(a) of the Adirondack Park Agency Act provides that variances can be granted only “where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the restrictions....” The term “practical difficulty” has been defined by case law to mean those situations where the landowner cannot obtain reasonable use of the property in question without coming into conflict with the restriction. In other words, variances are not granted automatically; an analysis of viable alternatives not requiring a variance is required and the burden is on the applicant to demonstrate compliance with all legal requirements. Accordingly, all applicants are advised to consider redesigning any project to comply with all applicable shoreline restrictions wherever practicable.

If a development proposal requires both a shoreline restriction variance and an Agency permit for a subdivision or other new land use and development, an appropriate permit application must be submitted in addition to this variance application.

The shoreline restrictions apply as a matter of law regardless of whether an Agency permit is required. Also, note that in a designated river area both APA Act Section 806 and NYS Wild, Scenic and Recreational Rivers Act restrictions apply and the more restrictive requirements must be followed.

Instructions: Please answer all of the questions in each section of this application. Type or print clearly in ink. If you need assistance answering the questions, please contact the Agency to arrange for a pre-application meeting. Mail **three (3)** copies of the application and all required attachments to the Agency at the above address. **All maps, plans, photographs and other graphics must also be provided in electronic format (Adobe Acrobat or PDF) unless otherwise agreed to by Agency staff.** A site visit by Agency staff is required. The Agency may also request additional information.

The application will be deemed incomplete if all the information required by this application is not provided. The Adirondack Park Agency Act provides that the time period for the review of the variance application will not begin until the Agency determines that the application is complete. If the application is not complete, a written request for information will be issued by the Agency within approximately 15 days of receipt of the application. The request will specify what information is required for a complete application. The proposed development requiring a variance must not be undertaken unless and until the Agency has granted a variance.

1. Applicant [person(s) having legal interest in the variance site¹ seeking a variance from the Agency]:

Name(s): _____

Mailing Address: _____

Telephone Number (daytime): (____) _____

2. Current Variance Site Landowner(s):

___ check if same as applicant and proceed to next question

Name(s): _____

Mailing Address: _____

Telephone Number (daytime): (____) _____

3. Applicant's Authorized Representative:

By filling in the name and address below and signing this application, the applicant is authorizing the person named below to act as his/her agent in all matters relating to this variance application before the Adirondack Park Agency. The applicant acknowledges that all contact regarding the application will be through his/her Authorized Representative. The applicant further understands that he/she is ultimately responsible for the accuracy of the information contained in this application and for compliance with all terms and conditions of any variance issued to him/her by the Agency.

Name: _____

Mailing Address: _____

Telephone Number (daytime): (____) _____

4. Variance Site* Location/Description:

Road/Highway: _____ Water body/River/Stream: _____

Size of the variance site : _____ acres

Town(s): _____

County: _____

Tax Map Designation (from the tax bill for the property):

Section: _____ Block: _____ Parcel: _____

Section: _____ Block: _____ Parcel: _____

Local Zoning District: _____ Required Setbacks (feet): Shoreline: _____ Front: _____ Back: _____
Side: _____

¹ The variance site is considered all land on which development requiring a variance is to be located, including all contiguous land under the same ownership.

5. Applicant's Legal Interest in Variance Site (check the one that applies):

- owner
- lessee
- signed purchase agreement holder
- option holder
- other. Specify: _____

Provide, as **Attachment A**, a complete copy of the current recorded deed(s) for the variance site containing the recording information. Copies are available from the County's Office.

If the applicant has an executed contract or agreement to purchase or lease the property, provide a copy of it in order to establish the applicant's legal interest in the variance site. (The purchase price and other confidential information may be blackened out.)

6. Prior Agency Contact:

(a) Have there been any previous discussions with Agency staff regarding this property, or has any Agency staff visited the variance site with the applicant or their representative?

- No
- Yes. Staff person's name: _____
Date of Contact: _____

(b) Has any portion of the variance site as it existed on the May 22, 1973 enactment date of the Adirondack Park Agency Act been the subject of a past Agency action (i.e., project permit, variance, jurisdictional determination, enforcement case or wetland flagging)?

- No
- Yes. If known, provide the following number and date:

Past Permit or Variance Number: _____ date: _____
Jurisdictional Inquiry Number: _____ date: _____
Enforcement Case Number: _____ date: _____
Wetland Boundary Flagging : _____ date: _____

7. Variance Site Information:

(a) What is the acreage of the total contiguous landholding (all connected lands) owned by the present landowner?
_____ acres.

(b) On May 22, 1973, did the owner at that time own any adjoining property, including parcels on the opposite sides of public roads?

- Yes. Provide the Tax Map Numbers:
Section: _____ Block: _____ Parcel: _____
Section: _____ Block: _____ Parcel: _____

No.

(c) Has any portion of the total contiguous landholding in Question (b) (above) as it existed on May 22, 1973 been sold, given away or otherwise subdivided or developed since that date?

- No
- Yes. If yes, please list the lots or parcels conveyed from the original parcel and the size of each in square feet or acres. (Use a separate 8-1/2"x11" paper if necessary.)

Parcel Number from the current tax map	Date of Conveyance	Lot Size (sq. ft. or acres)	Was conveyance by sale or bona fide gift?
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Provide, as **Attachment B**, a complete copy of all recorded deeds (not just abstracts) for the above conveyances back through May 22, 1973.

Provide, as **Attachment C**, a full scale copy of a survey map or the current real property tax map clearly showing the property boundaries of the variance site and any tax parcel or lot that the project site was part of on May 22, 1973.

- (d) Are there structures on the total contiguous landholding now owned by the present landowner?
 No
 Yes (Provide the information below. Attach additional sheets if necessary.)

Number	Date of Construction	Size (sq. ft. of footprint)	Height (feet)	Type/Use (e.g. store, garage)
1. _____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____
4. _____	_____	_____	_____	_____

- (e) Describe any other structures and the use of each structure which existed on the variance site as of August 1, 1973 which have since been removed or destroyed (e.g., residential, commercial). Include the date that the structure was removed or destroyed:

- (f) Describe in detail any exterior alterations or expansions (including changes to structure height) made to any of the existing structures since August 1, 1973. Provide to-scale plans and details and photographs depicting these structural changes.

8. Variance Description:

- (a) Describe the proposed activity and the type and dimension of variance requested:

- (b) Provide a detailed description of what the “practical difficulties or unnecessary hardships” posed by the shoreline restrictions are in this situation and explain how the proposal involves a request for a minimum amount of relief from the restrictions:

9. Variance Justification:

Please note that, since it is the applicant's burden to fully justify the need for the Agency to grant a variance, it is important that responses to the following items be as detailed and self-explanatory as possible. On separate sheet(s) labeled **Attachment D Variance Justification**, provide a detailed response keyed to each of the following items (Items c and g need not be completed by applicants for sewage setback variances):

- (a.) Describe any characteristics of the variance site (i.e. boulders, ravines, wetlands, etc., or the size or dimensions of the lot itself) which make compliance with the applicable shoreline restriction practically difficult or impossible. Provide photographs depicting these characteristics.
- (b.) Describe and document whether the specified practical difficulty in complying with the restrictions identified by the applicant can be avoided by any feasible method other than a variance. Discuss any alternatives in terms of size, location or design of the land use or development in question that would address the difficulty and allow compliance with the shoreline restrictions. Explain all measures considered to address the perceived practical difficulty.
- (c.) Describe the existing character of the shoreline in the area of the land involved on both the same and opposite sides of the water body, particularly in regard to existing shoreline development, including lot widths and setbacks. Provide photographs depicting the existing character of the shoreline.
- (d.) Describe and document the extent to which the variance, if granted, would produce a substantial change in the character of the shoreline in this area? Provide supporting facts and documentation, including photographs.
- (e.) Describe and document the extent to which the variance, if granted, would have a detrimental effect on adjoining and nearby properties. Provide supporting facts and documentation, including photographs.
- (f.) Describe and document how the variance as requested represents the minimum relief necessary from the restriction.
- (g.) Describe and document the extent to which the variance, if granted, would affect the water quality of the body of water involved.
- (h.) Describe and document the extent to which the variance, if granted, would affect the visual character of the shoreline involved. Provide supporting facts and documentation including photographs depicting existing conditions and photo-simulations or photographs altered to depict post-development conditions.
- (i.) Describe any other factors, including the manner in which the difficulties arose, that relate to this application or to the question of practical difficulties or unnecessary hardships, or otherwise justify the granting of the requested variance.
- (j.) Describe and document any viable alternatives other than a variance. Provide a description of each alternative considered and all reasons why each is not feasible.
- (k.) Describe and document any economic impact upon the value of the property involved if the variance is not granted. Provide supporting documentation such as invoices of purchase, realtor's appraisals, etc.
- (l.) *[To be completed only for wastewater treatment system setback variance.]* Describe the type and proposed location of the proposed wastewater treatment system and fully explain why it cannot meet the required shoreline setback requirement. If this system will replace an existing system, describe the type, location and adequacy of the existing system and document how the new system will provide for enhanced treatment as compared to the existing system. Provide full-scale copies of maps and/or plans that depict any existing wastewater treatment system.

10. Site Plan Map or Subdivision Plat:

Attach, as **Attachment E**, a SITE PLAN MAP or SUBDIVISION MAP clearly labeled with the map scale, north arrow, date of preparation and name of preparer. The site plan map or subdivision map must be signed and sealed by a NYS licensed design professional (e.g., surveyor, engineer or architect). Draw the map to a scale of 1 inch equals fifty feet (1" = 50') to show the entire variance site. For larger sites, show the entire property at a smaller scale, such as 1" = 100' or 1" = 200' and then show the area of development on a separate map at a scale of 1" = 50'. Show and label on the 1" = 50' scale plan map the following, as applicable:

- a. property boundary lines and proposed lot lines, including dimensions of each line;
- b. APA land use areas and if in an Agency approved local land use program, the local zoning districts;
- c. water bodies, including the water body name, floodplain limits, and mean high water mark of any navigable stream, river, pond, lake or intermittent stream;
- d. wetlands as delineated in the field by Agency staff or a qualified wetlands biologist;
- e. topography (minimum 5-foot field verified contour intervals);
- f. existing and proposed structures (e.g., single family dwellings, mobile homes, sheds, signs, fences, docks, decks, bathhouses), including location, size, use, and setbacks from all roads, water bodies, property lines and lot lines for each lot to be created;
- g. existing and proposed paved and unpaved roads, driveways and parking area, including locations, dimensions, and construction materials;
- h. existing and proposed public utilities denoting whether aboveground or underground;
- i. existing on-site wastewater treatment systems and water supplies, including all components;
- j. existing vegetative cover types (e.g., fields, woodlands, shrub areas, lawns) ;

- k. existing areas of steep slopes (greater than 15%);
- l. existing areas of bedrock at or near the surface;
- m. temporary and permanent erosion control and stormwater management facilities, including ditches, swales, culverts, catch basins and sediment basins;
- n. proposed limits of planned vegetative clearing;
- o. proposed landscape plantings, including plant name and size; and
- p. proposed individual on-site water supply and/or individual wastewater treatment system locations (*the plan must show all components of each proposed on-site individual wastewater treatment system and a 100% replacement area*).

Clearly differentiate between existing and proposed improvements/conditions on this map.

The shoreline restrictions are measured from the mean high water mark (MHW). The MHW must be established and shown and labeled on the site plan map or subdivision map. At the applicant's request, Agency staff will determine the MHW or the determination can be made by a NYS licensed land surveyor experienced in making such determinations.

11. Detailed Plans and Elevations:

For Structure Setback Variances

Attach, as **Attachment F**, detailed to-scale building plans and elevations of any proposed buildings or structures, including attached decks, stairs, and porches. Provide to-scale elevations depicting the shortest horizontal distance between the closest portion of the structure(s) to the navigable water body and the water body's MHW.

For Wastewater Treatment System Setback Variances

Attach, as **Attachment G**, a detailed design report and plans for any proposed new, expanded or replacement on-site wastewater treatment system prepared by a NYS licensed professional engineer. Refer to Agency publication "Minimum Requirements for Engineering Plans for On-Site Wastewater Treatment Systems" [copy available on the Agency's website (www.apa.state.ny.us) upon request].

12. Landowners Within 500 Feet:

Provide on enclosed **Attachment H** a current list of the names and complete mailing addresses of all landowners whose property is located within 500 feet of the boundaries of the variance site, with the tax map references (tax map section, block, and parcel numbers) of all such parcels according to the latest computed tax rolls. This list will be used by the Agency to mail the required public notification to these landowners and other parties of the variance application status and of the variance hearing details.

13. Historic Resources

Does the variance site contain any buildings that are more than 50 years old, or does the site or surrounding area contain any structures or districts which are listed or deemed eligible to be listed on the State or National Register of Historic Places or does the project site involve any known archeological resources?

- No
- Yes (to any of the above criteria)

If Yes, provide a fourth copy of this application with all supporting information and recent photographs of all buildings which are over 50 years old and of the surrounding area. The Agency will forward these materials to the New York State Office of Parks, Recreation and Historic Preservation for its determination of impact on historic resources, its recommendations for studies and surveys and its recommendations for mitigation of any impact to historic resources. The application can not be deemed complete until that Office has made a final impact determination.

14. Local Government Notice

The Agency cannot approve a variance for a proposal which has been denied a variance or permit or which is a prohibited use under local zoning requirements and other local laws or ordinances. The proposal should be designed to meet the regulatory requirements of local governmental land use controls.

Provide enclosed **Attachment I**, a Local Government Notice Form which has been completed and signed by an appropriate official (e.g., Zoning Administrator, Planning Board Chairman or, if there is no Zoning Administrator or Planning Board Chairman, the Town Supervisor or Village Mayor). Please read the form for instructions.

15. Municipal Approval Documents

Provide as **Attachment J**, as available, a copy of all municipal documents showing that the proposal has been approved by the municipality (e.g., permits, letters of approval, meeting minutes) if approval is required from the local government.

16. State and Federal Agency Contacts

Complete the following and indicate whether any of the following agencies or departments has been contacted regarding the proposal. To allow for a coordinated review, the Agency variance application may remain incomplete until all state agency applications are complete.

AGENCY	NO	YES	DATE	CONTACT PERSON & PHONE #
NYS Department of Health	_____	_____	_____	_____
NYS Department of Transportation	_____	_____	_____	_____
NYS Dept. of Environmental Conservation	_____	_____	_____	_____
NYS Department of Law	_____	_____	_____	_____
NYS Office of Parks, Rec. & Historic Preservation	_____	_____	_____	_____
U.S. Army Corps of Engineers	_____	_____	_____	_____
Other	_____	_____	_____	_____

17. State and Federal Permits, Approvals and Determinations

Provide as **Attachment K**, copies of all permits, approvals and determinations received from the above agencies.

18. Required Signatures:

I HAVE PERSONALLY EXAMINED AND AM FAMILIAR WITH THE INFORMATION SUBMITTED IN THIS APPLICATION, INCLUDING ALL ATTACHMENTS, AND I BELIEVE THIS INFORMATION TO BE TRUE, ACCURATE AND COMPLETE.

I HEREBY AUTHORIZE THE ADIRONDACK PARK AGENCY AND MEMBERS OF ITS STAFF TO ENTER ON THE PROPERTY DESCRIBED HEREIN FOR THE PURPOSES OF CONDUCTING SUCH INVESTIGATIONS, EXAMINATIONS, TESTS AND SITE EVALUATIONS AS IT DEEMS NECESSARY, AT REASONABLE TIMES AND WITH ADVANCE NOTICE WHERE POSSIBLE, TO VERIFY INFORMATION CONTAINED IN OR RELATED TO THIS APPLICATION FOR A VARIANCE.

Landowner(s):

_____	_____	_____
signature	print name	Date

Applicant(s) (if not landowners):

_____	_____	_____
signature	print name	Date

Authorized Representative:

_____	_____	_____
signature	print name	Date

Please provide landowners names, addresses and Tax Map numbers for all properties within 500 feet of the boundaries of the variance site, including those across public roads and rights-of-way.

Example: 155-1-27 Mr. John Doe Main Street Jay, New York 12941		

LOCAL GOVERNMENT NOTICE FORM
for Project/Variance Application to the Adirondack Park Agency

The Adirondack Park Agency will not deem the application complete until the appropriate municipal official in the Town or Village where the project is located has completed and signed this form and it has been returned to the Agency.

If the town or village in which the project site is located has zoning or other regulations which apply to the proposal, the Adirondack Park Agency will be unable to issue a permit if: (a) the town or village has either refused to grant a necessary permit or variance, or (b) the proposal is a prohibited use in that jurisdiction.

To be completed by the applicant:

Applicant Name: _____

Landowner Name: _____

APA Project Number (if available): _____

Project site location: Town/Village: _____ Tax Map Number: _____

Project type/description: _____

If the project involves subdivision, please provide the appropriate local official a copy of the proposed plat as part of the project description with the plan title and date recorded in the space provided above.

To be completed by the Town/Village: Does the Town/Village have land use controls? Yes No

If Town/Village has zoning, provide Zoning District Name(s): _____

Is this "use" allowed in the zoning district(s)? Yes No

Is the project prohibited by any local law or ordinance? Yes No

Is a municipal permit, variance or other approval required for this project? Permit Variance
 Other (Specify: _____)

Has the municipality issued any decision on this project? Yes No

Provide explanation for any decisions on this project or inconsistencies the project may have with local laws or any comments you wish to provide to the Agency about the project: _____

Provide daytime telephone number if official signing this form wishes to discuss this project with Agency staff: (_____) _____

Signature of Zoning Official or Planning Board Chair (or Mayor/Supervisor if no such official exists)

Name and Title (Print)

Date

Return this form to the: Adirondack Park Agency, PO Box 99, Ray Brook, NY 12977

or fax: 518-891-3938