



M E M O R A N D U M

TO: Richard Weber, Deputy Director, Regulatory Programs

FROM: Mitchell Goroski, Esq. and Susan Parker,
Environmental Programs Specialist

DATE: April 11, 2012

RE: P2011-182 Travaglini

The Agency received a request for a variance to §806 on October 18, 2011 from Thomas and Christine Travaglini. Subsequent information was submitted on November 21, 2011, January 19, 2012, and February 21, 2012 for this project in the Town of Black Brook, Clinton County, on Island Road, on the shoreline of Silver Lake in an area designated as Low Intensity Use on the Adirondack Park Land Use and Development Plan Map. The tax map number of the property is: Section 307.4 Block 1 Parcel 10.11.

The applicants do not require an Agency permit for these proposed structures; Agency jurisdiction is limited to review of the variance request under APA Act §806. The purpose of this memorandum is to summarize the facts from the record that are relevant to the Agency's consideration of the requested variance.

A graphic of a part of proposed site plan [from Hearing Exhibit 3, page 4] is attached to this memo.

That graphic depicts the three structures to be removed, the structure to be replaced with a storage structure, the two wastewater treatment systems to be removed, and the location of the proposed single family dwelling straddling the 75 foot setback line. Not depicted here is the location of the new wastewater treatment system located more than 100 feet from the shoreline, and the rain garden to be installed in the northeast corner of the property in the vicinity of Building number 3.

PUBLIC HEARING

A public hearing was held on March 26, 2012 at 1:30pm at the Black Brook Town Office, 18 North Main Street, Au Sable Forks, NY. APA Hearing Officer Keith McKeever conducted the hearing pursuant to Executive Law §806 and 9 NYCRR §576.5, and made a statement referencing the variance application contained in the hearing exhibits for a description of the requested variance. Jeffrey Burns, the applicants' authorized representative, made a brief presentation on behalf of the applicants and responded to questions from Agency staff. Thomas Travaglini, co-applicant, also attended the hearing and responded to questions from Agency staff.

One member of the public attended, Mr. Bob Guynup, Code Enforcement Officer for the towns of Black Brook and Wilmington. He made comments in favor of approval of the variance request. Mr. Guynup stated that the town is happy to see an improved septic system replacement to improve any effluent that could impact the lake. One comment letter from a near-by landowner was received prior to the end of the comment period, also in favor of granting the variance

A building permit has been issued for construction of the new single family dwelling by the Town of Black Brook Code Enforcement Officer. No other municipal approval is required. The Clinton County Department of Public Health has issued a permit for installation of a new on-site wastewater treatment system. Aside from an Agency variance, no permits from other agencies are required for the development proposal.

OVERVIEW OF VARIANCE REQUESTED

The proposal is to construct a single family dwelling partially within the 75 foot shoreline setback of Silver Lake, as further described below. The applicants seek a 25 foot variance for the following structure, pursuant to §806 of the Adirondack Park Agency Act, described as one single family dwelling, two stories plus a walkout basement, 38± feet in height, covering 1,634 square feet in total footprint in and beyond the 75 foot setback area. 1,156.5 square feet of the footprint will be located within the setback area.

The variance request is displayed on a plan sheet titled "Proposed Site Plan Prepared for Thomas D. Travaglini and

Memorandum to Richard Weber

April 11, 2012

Page 3 of 10

Christine R. Travaglini", sheet 2/3, prepared by Robert M. Sutherland P.C. and dated August 10, 2011, with revisions dated January 17, 2012 (part of Hearing Exhibit 5). The proposed structure requires a variance from the shoreline restrictions because it will be greater than one hundred square feet in size within the shoreline setback area, sited 50 feet of the mean high water mark of Silver Lake, and it is not a replacement in-kind of the pre-existing shoreline structures on the site.

Proposed development activity

This requested variance is to construct a new single family dwelling 50 feet from the mean high water mark of Silver Lake. Three of the four pre-existing, non-conforming residential structures on the site will be removed, and one non-conforming residential/storage structure will be replaced with a new structure in approximately the same footprint, reduced in height, to be used as an accessory structure to the new single family dwelling for boat storage purposes only. The two pre-existing, non-conforming onsite wastewater treatment systems near the shoreline will be disconnected and filled in or removed as appropriate, and a new system conforming to current regulations will be installed which has been approved by the Clinton County Department of Public Health, and will be greater than 100 feet from the mean high water mark of the lake. Stormwater management measures, including a rain garden, will be installed, and appropriate erosion control measures will be undertaken during construction on the site. Shoreline vegetation will be maintained and augmented by tree plantings at the rain garden in the vicinity of Building number 3.

APPLICABLE LAW

The purpose of the shoreline restrictions is protection of water quality in the lake and the quality of the shoreline itself. APA Act §806(1). §806 requires that all principal buildings and accessory structures in excess of one hundred square feet in a Low Intensity Use area be set back at least 75 feet from the mean high water mark.

A. Practical Difficulty

The Adirondack Park Agency may vary the restrictions if the applicant establishes that there are practical difficulties or unnecessary hardships in carrying out the strict letter of the restrictions, 9 NYCRR §576.1(a), so that the spirit of the restrictions are observed, public safety and welfare secured, and substantial justice done. The shoreline restrictions aim to protect the quality of the shoreline and protect water quality. Here there are practical difficulties in carrying out the strict letter of the restrictions because there are physical site constraints in constructing a single family dwelling that meets the 75' setback requirement and also a modern waste water disposal system that meets the 100' septic setback requirement. By placing the modern waste water disposal system in the most suitable area on the site and meeting the 100' septic setback requirement (without the need for a variance) the location of the new SFD is constrained and the 75' setback requirement cannot be met.

B. Consequences

The Agency regulations also provide that a variance will be granted when "the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the shoreline restriction." 9 NYCRR §576.1(b). Here, the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the shoreline restriction. The status quo on the site is that there are a series of pre-existing non-conforming residential structures and associated septic systems located close to the shoreline. Denial of the plan to eliminate these in favor of, first, a modern waste water disposal system in the most suitable area on the site and meeting the 100' septic setback requirement, and, second, a modern SFD that needs a 25' variance to meet the 75' setback requirement, would mean that both the existing shoreline visual and water quality impacts would continue and the family plans to create a new SFD and reduce shoreline impacts would not be met.

Consequently, granting the variance would serve both the public purpose of the shoreline restrictions and the applicant's goals. They are not in conflict.

C. Relevant Factors

In determining whether to vary the restrictions, the Agency, under 9 NYCRR §576.1(c), considers the following factors:

- (1) whether the application requests the minimum relief necessary;
- (2) whether the variance will create a substantial detriment to adjoining or nearby landowners;
- (3) whether the difficulty can be obviated by a feasible method other than a variance;
- (4) the manner in which the difficulty arose;
- (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; and
- (6) whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects referred to in paragraph (5) above.

The burden is on the applicant to establish that this proposal satisfies the factors above.

In considering this variance, the condition of the shoreline in 1973 and now is relevant. Four pre-existing, non-conforming residential structures (constructed prior to 1973) containing a total of seven bedrooms currently exist on the site and within the shoreline setback of Silver Lake. Three of these structures are at or within 12 feet of the mean high water mark, while the fourth (and smallest) structure straddles the setback line. The two largest structures are single family dwellings containing kitchens and bathrooms, each served by an individual onsite wastewater treatment system that is approximately 30 feet from the shoreline of the lake. The two smaller structures each contain a bedroom but no kitchen or bath facilities, and are not connected to the wastewater treatment systems. In addition, there are two pre-existing concrete retaining wall/structures at the shoreline, shown on the Proposed Site Plan, for dock attachment.

1. Whether the application requests the minimum relief necessary.

The proposal, while still requiring a variance, eliminates three of the existing non-conforming shoreline residential structures in favor of one energy efficient single family dwelling located much further from the lake, eliminates two outdated, non-conforming wastewater treatment systems in favor of a modern system which meets Agency and DOH requirements, including a 100 foot separation distance to the lake.

The request is for a 1,634 square foot, three-bedroom single family dwelling, of which 1,156.5 square feet is within the 75 foot shoreline setback. However, four existing structures with a total of 7 bedrooms will be removed, with one replaced by a similarly sized storage structure. The footprint total of the existing residential structures within the shoreline setback is 2,300 square feet. If the variance is granted, the end result will be a total footprint of 1,876.5 square feet (the new dwelling and the replacement storage structure) within the shoreline setback, a reduction of 323.5 square feet but further from the shoreline. Two of these structures (buildings 2 and 3 on the Proposed Site Plan), totaling 1,247± square feet, are located at the shoreline. Building 1 is partially within the 75 foot shoreline setback, with 233± square feet within the setback, approximately 62 feet from the shoreline.

The fourth pre-existing structure, one of the two single family dwellings, is located 8± from the shoreline, and has a footprint of 820± square feet. The basement level of this structure has been used as a storage area for boats and other equipment. The applicants propose to replace this "A-frame" structure with a smaller, 720 square foot single story accessory structure for boat and equipment storage only. It will be located 12 feet from the shoreline, with no clearing and minimal grading required.

The proposed dwelling would be located in an area of relatively gently grade with little clearing of existing vegetation. While the new dwelling could potentially be moved further from the lake an additional 20 feet and still maintain the 20 foot minimum separation distance from the absorption field of the wastewater treatment system, more vegetation removal would be required, the slope is greater as one moves farther from the lake, and the longstanding

driveway/parking area which has been well compacted over time would need to be reconstructed further up-slope with more vegetation removal. And this would still require a variance.

The original application was for a larger variance (39 feet versus the current 25 feet) because the applicants proposed a deck across the front of the house facing the shoreline. The applicants reconfigured and reduced the decking to reduce the requested variance to 25 feet. They also agreed that the deed will eliminate future principal buildings. Given the applicant's reasonable goal and the site constraints, as well as the modification to its plan to reduce the variance requested, staff's opinion is that the relief requested is the minimum necessary.

2. Whether the variance will create a substantial detriment to adjoining or nearby landowners.

The adjoining and nearby landowners include several private landowners. The applicants point out that the proposed single family dwelling will be visually similar to or an improvement upon the appearance of many of the nearby residential structures along Island Road and the shoreline of Silver Lake. There have been no objections from adjacent or nearby landowners.

While no professional photo simulation was requested or prepared for the new single family dwelling location, it is staffs' judgment that adequate partial screening exists at the shoreline, and the removal of the nonconforming shoreline structures and septic systems will improve the quality of the shoreline and the water quality for neighbors and the public.

3. Whether the difficulty can be obviated by a feasible method other than a variance.

The record shows that there are two main alternatives which would not require a variance. Neither would meet the applicants objective. First, under 9 NYCRR §575.5, the two existing shoreline single family dwelling structures could be expanded rearward by a maximum 250 square feet each. This would result in a non-jurisdictional expansion of two single family dwellings directly on the shoreline. This would continue the visual impacts of structures proposed to be removed as part of the variance request, and the associated water quality impacts from two non-conforming septic systems.

Second, the new single family dwelling could be reduced in size and located beyond the 75' setback while avoiding the new wastewater treatment system location, but this would place it on steeper slopes with more vegetation clearing and land grading required. It would also not achieve their size objective for a new single family dwelling, which staff consider to be reasonable.

The proposed new wastewater treatment system absorption field is located on the only suitable location on the parcel with acceptable slopes (15% or less) and which meets applicable horizontal setbacks to waterbodies, wells and structures. Note that if the proposed dwelling were to be moved back 25 feet to meet the shoreline setback then the dwelling footprint would not meet the minimum 20 feet setback standard to the absorption field unless it could be designed to be narrower and longer.

The absorption field and slopes are thus the limiting factors on the site, and the single family dwelling must be designed around these factors.

4. The manner in which the difficulty arose.

The variance request arose because the applicants seek to consolidate the various, scattered residential structures into one modern, energy-efficient, more useful, comfortable space for the family. However, while able to meet the 100' setback for the modern wastewater treatment system (at the only suitable spot), this limits the ability to meet the 75' structure setback for the SFD and thus creates the need for the variance.

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.

Potential adverse impacts resulting from granting the variance could include erosion due to construction activities, stormwater runoff from the new single family dwelling, and a change in the visual character of the site. However, when considered in the context of the proposal, which includes removal of non-conforming shoreline structures, use of erosion control measures and soil

stabilization during/following construction, retention and replacement of shoreline vegetation, clearing limits, improved wastewater treatment system installation, installation of a rain garden for stormwater management, and structure color/lighting specifications, staff believe that any adverse impacts should be adequately mitigated.

In addition, the proposal would actually further the statutory goals of the shoreline restrictions because it would remove pre-existing non-conforming shoreline residences and wastewater treatment systems in favor of one SFD set further back and a modern wastewater treatment system that meets the 100' setback. In addition, keeping the existing shoreline vegetation and constructing a rain garden (for stormwater) with additional plantings will help preserve the visual quality of the shoreline and water quality.

6. Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects referred to in paragraph (5) above.

Conditions to mitigate potential adverse impacts, as noted in 5 above, include installation of a new modern wastewater treatment system, vegetation clearing limits with no shoreline vegetation removal, required replacement of dead, diseased, or hazardous vegetation, installation of stormwater management measures with a rain garden with additional plantings, erosion control measures, implementation of a deed restriction limiting the site to a single principal building, and no additional docks or boathouse. The applicants have proposed and/or agreed to these conditions during the review process.

Memorandum to Richard Weber

April 11, 2012

Page 10 of 10

CONCLUSION

Each variance is unique. Here, denial of the requested variance would mean that the pre-existing non-conforming residential structures and the pre-existing non-conforming wastewater treatment systems would continue to cause negative visual impacts and water quality impacts. In staffs' view, granting the variance would substantially improve the shoreline visual impacts and water quality impacts by allowing both the living space and wastewater treatment system to be moved further back on the parcel. Staff recommends granting the variance with conditions.