

 <p>P.O. Box 99 • Ray Brook, New York 12977 • (518) 891-4050</p>	<p>APA Order Granting Variance 2011-182</p>
<p>In the Matter of the Application of</p> <p>THOMAS D. TRAVAGLINI CHRISTINE R. TRAVAGLINI</p> <p>for a variance pursuant to §806 of the Adirondack Park Agency Act</p>	<p>Date Issued:</p> <p>To the County Clerk: This order must be recorded on or before _____ . Please index this Order in the grantor index under the following names.</p> <ol style="list-style-type: none">1. Thomas D. Travaglini2. Christine R. Travaglini

SUMMARY AND AUTHORIZATION

Thomas D. and Christine R. Travaglini are granted a variance, on conditions, from the applicable shoreline restrictions pursuant to New York State Executive Law §806, in an area classified Low Intensity Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Black Brook, Clinton County.

This variance shall not be undertaken until this order is recorded in the Clinton County Clerk's Office. This order shall expire unless so recorded on or before _____ in the names of all persons listed on the first page hereof and in the names of all owners of record of any portion of the project site on the recordation date.

This project shall not be undertaken or continued unless the project authorized herein is in existence within four years from the date the Order is recorded. The Agency will consider the project in existence upon completion of the new single family dwelling, removal of the four existing

structures on the site, and recording of a new deed which

restricts development on the site to no more than one principal building, all as authorized herein.

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.

AGENCY JURISDICTION

The variance application seeks Agency approval for a variance of 25 feet from the applicable 75 foot shoreline structure setback restriction pursuant to §806(1)(a)(2) and §806(3) of the Adirondack Park Agency Act (Executive Law, Article 27) to authorize placement of a single family dwelling 50 feet from the mean high water mark of Silver Lake. Section 806(1)(a)(2) and 9 NYCRR Part 575 requires a minimum shoreline setback of 75 feet measured from the mean high water mark for structures greater than 100 square feet in size.

Section 806(3) authorizes procedures whereby an applicant may apply for a variance from the shoreline restrictions provided certain criteria cited in the statute and regulations are complied with, as further described below.

VARIANCE DESCRIPTION AS PROPOSED

The variance site is a 1.1±-acre parcel of land located on Island Road in the Town of Black Brook, Clinton County, in an area classified Low Intensity Use by the Adirondack Park Land Use and Development Plan Map, on 150± feet of shoreline of Silver Lake. It is identified on Town of Black Brook Tax Map Section 307.4, Block 1 as Parcel 10.11. The variance site is described in a deed from Thomas D. and Christine R. Travaglini to Thomas D. and Christine R. Travaglini dated February 28, 2006 which was recorded March 1, 2006 in the Clinton County Clerk's Office as instrument number 2006-192098.

The variance as proposed and conditionally approved herein is summarized as follows:

The proposal is the construction of a single family dwelling partially within the 75 foot shoreline setback of Silver Lake. The applicants seek a 25 foot variance for the structure, pursuant to §806 of the Adirondack Park Agency Act, described as one single family dwelling containing three bedrooms, 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.

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, at a reduced 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, pumped out, and filled in or removed as appropriate, and a new wastewater treatment system conforming to current regulations will be installed which has been approved by the Clinton County Department of 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 for the rain garden. The applicants propose to deed-restrict the property to allow only one principal building, eliminating the potential for a second single family dwelling on the site in the future.

The variance is shown on a set of plans titled "Proposed Site Plan Prepared for Thomas D. Travaglini and Christine R. Travaglini", sheets 1 through 3, prepared by Robert M. Sutherland P.C., with revisions dated January 17, 2012. Sheet 2/3 is herein referred to as the "Proposed Site Plan".

A reduced-scale copy of the Proposed Site Plan is attached as a part of this Order for easy reference. The original, full-scale maps and plans referenced in this Order are the official plans for the project.

CONDITIONS

BASED UPON THE FINDINGS ABOVE AND INFORMATION CONTAINED IN THE VARIANCE FILE, THE VARIANCE IS APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. The project shall be undertaken as described in the completed application, the Variance Description as Proposed and Conditions herein. In the case of conflict, the Conditions control. Failure to comply with the Order is a violation and may subject the applicant, successors and assigns to civil penalties and other legal proceedings, including modification, suspension or revocation of the Order.
2. This project may not be undertaken, and no transfer deed shall be recorded, until this Order is recorded in the _____ County Clerk's Office. This Order shall be recorded on or before _____ in the names of all persons listed on the first page hereof and in the names of all owners of record of any portion of the project site on the recordation date.
3. This Order is binding on the applicants, all present and future owners of the variance site and all contractors undertaking all or a portion of the project. Copies of this Order and all the approved maps and plans referred to herein shall be furnished by the applicants to all contractors prior to undertaking the project, and to all subsequent owners or lessees of the project site prior to sale or lease. All deeds conveying all or a portion of the lands subject to this Order shall contain references to this Order as follows: "The lands conveyed are subject to Adirondack Park Agency Order 2011-182 issued _____, the terms and conditions of which are binding upon the heirs, successors and assigns of the grantors and all subsequent grantees."
4. The Agency may conduct such on-site investigations,

examinations, tests and evaluations as it deems necessary to ensure compliance with the terms and conditions hereof. Such activities shall take place at reasonable times and upon advance notice where possible.

Projected Remaining Building Density

5. After the construction of the single family dwelling authorized herein and removal of the pre-existing structures on the site, no additional principal buildings shall be allowed on Town of Black Brook Tax Map Parcel 307.4-1-10.11. All deeds conveying this 1.1±-acre parcel subject to this order shall contain a deed covenant which shall run with, touch and concern the land, enforceable by the Adirondack Park Agency and the State of New York, which shall preclude the construction of any additional principal buildings on the 1.1±-acre parcel.

Structure Location and Size

6. This Order authorizes the construction of one single family dwelling and one accessory structure in the locations shown on the project plans. The single family dwelling shall not exceed a footprint of 1,634 square feet including all covered and uncovered attached porches, decks, exterior stairs and accessory structures, and shall not exceed 38 feet in height. The height shall be measured from the highest point on the structure, including the chimney, to the lowest point of existing grade or finished grade, whichever is lower.
7. Any changes to the locations, sizes, or dimensions of the authorized structures will require a new or amended Agency Order. Within 60 days of completing the structures authorized herein, a qualified design professional shall provide written certification to the Agency that the structures were built in compliance with the approved plans.

Accessory Uses and Structures

8. This Order authorizes the installation of one accessory structure for storage of boats and associated equipment, to be located and constructed as shown on the project plans described herein, upon the footprint of one pre-existing single family dwelling scheduled to be removed. The accessory structure shall only be used for the storage of boats and/or equipment for property maintenance; shall not contain bathroom facilities, sanitary plumbing, or sanitary drains of any kind; shall not contain kitchen facilities of any kind; shall not contain a heating system of any kind; shall not contain beds or sleeping quarters of any kind; and shall not exceed a single story nor 14 feet in height as measured from the peak of the roof to existing or finished grade at the lowest point of the structure, whichever is lower. The footprint of the storage structure shall not exceed 720 square feet.
9. One additional accessory structure, except guest cottage, hunting and fishing cabin, and boathouse, is permitted without an Order amendment, provided it is located beyond the 75 foot setback area of Silver Lake, does not require the removal of any vegetation on the north side of Island Road, and in no case shall an accessory structure exceed 200 square feet in footprint or 18 feet in height.

Expansion

10. The single family dwelling and accessory structure shall not be expanded without prior Agency review and approval.

Building Color

11. All exterior building materials, including roof, siding and trim, used to surface the exterior of the dwelling authorized herein and all accessory use structures on the project site shall be of a natural earth-tone color which blends with the existing vegetation. The Agency will, upon request, advise whether any particular proposal complies with this condition.

Outdoor Lighting

12. All free-standing and building mounted outdoor lights shall employ full cut-off fixtures; they shall be fully shielded to direct light downward and not into the sky. The fixtures shall be oriented so as to not cast light toward the shoreline or the waters of Silver Lake, or neighboring properties. Light fixtures shall be installed at a height no greater than 15 feet above natural grade.

Erosion & Sediment Control

13. Prior to undertaking any earthwork on the site north of Island Road, silt fence shall be properly installed parallel to the existing contours between the disturbance area and Silver Lake. Prior to removal of the existing structures and construction of the single family dwelling and accessory structure, silt fence shall be installed as shown on the Proposed Site Plan and shall be embedded into the earth a minimum of six inches. For earthwork related to the installation of the absorption field of the new wastewater treatment system, silt fence shall be installed between this disturbed area and the existing driveway. The silt fence shall be maintained throughout the ground disturbance and construction, and shall not be removed until after all disturbed soils are stabilized to prevent siltation of Silver Lake. The applicants, their agents, or their successors in interest shall inspect the fabric at least once a week and after every major storm event to ensure the fabric and supports are intact and to remove accumulated sediments so as to maintain the fence in a functional manner.

Stormwater Management

14. Stormwater diversion measures shall be installed for management of stormwater runoff generated by the new single family dwelling as shown on the Proposed Site Plan and described in the variance proposal.
15. A rain garden shall be installed as an element of the stormwater management measures which will incorporate only plantings as described on the Proposed Site Plan. However, to promote successful establishment of the

rain garden, the plan shall be revised in order to direct that the trees be planted down slope of the rain garden in a linear fashion that parallels the shoreline. The approved plan shall be implemented in the first growing season immediately following removal of the existing structure. The rain garden vegetation shall be well established prior to connection to the stormwater diversion measures to minimize the potential for washout. Any trees or shrubs which do not survive shall be replaced annually by the applicants or their assigns until such time as all of the trees and shrubs have been established in a healthy growing condition.

Wastewater Treatment

16. The proposed on-site wastewater treatment system shall be constructed in complete conformity with the location and design shown on the plans referenced herein approved by Clinton County Department of Health. Installation of the system shall be under the supervision of a licensed design professional (licensed Professional Engineer, Registered Architect, or exempt Licensed Surveyor). Within 30 days of complete system installation and prior to utilization, the design professional shall provide the Agency with written certification that the system was built in compliance with the approved plans.

Shoreline Setbacks

17. Except for the structures authorized by this variance order, all structures, except docks and boathouses, 100 square feet in size or greater, including attached decks, shall be set back a minimum of 75 feet, measured horizontally, from the closest point of the mean high water mark of Silver Lake.

Vegetation Screening

18. The Agency shall be notified in writing within 30 days of the completion of the construction of the single family dwelling, in order for a site visit to be arranged to conduct a visual analysis to determine at what locations vegetation may be required to be planted, if necessary, to substantially screen the single family dwelling from public view as seen from

Silver Lake. Within 60 days of the visual analysis, if determined necessary, a planting plan shall be submitted to the Agency for approval showing the proposed locations of the planting and types and sizes of vegetation to be planted. The approved plan shall be implemented the spring or fall, whichever comes first, immediately following the construction of the single family dwelling authorized herein. Any dead or diseased trees shall be replaced and successfully re-established within one year.

Shoreline Cutting

19. No shoreline vegetation shall be cut, culled, trimmed or pruned without prior Agency review and approval. No other vegetation shall be removed from the site on the north side of Island Road except for that which has been scheduled for removal as shown on the Site Plan to accommodate the development authorized herein.

20. In the event of any natural causes such as blow-downs, ice storms, disease, or events that result in the loss of vegetation that provides screening of the structures authorized herein, the property owner shall replant the area within one year to a tree density and species composition similar to prior existing vegetation. Additionally, should any dead, diseased, rotten or damaged or wind thrown vegetation or any vegetation that presents a safety or health hazard be removed that results in the dwelling authorized herein becoming more visible, said vegetation must be replaced within one year of removal. Any replacement vegetation that does not survive shall be replanted annually, until such time as healthy replacement vegetation is established. Deciduous replacement trees shall be a minimum of 1½" in caliper at the time of planting and coniferous trees shall be a minimum of 6-8 feet in height. This condition shall not be deemed to prevent the removal of dead or diseased vegetation or of rotten or damaged trees or of other vegetation that presents a safety or health hazard, but rather is intended to ensure that replanting of that vegetation is accomplished.

Docks/Boathouse

21. No new docks shall be constructed on the project site. No boathouse shall be constructed on the project site. The pre-existing docks and permanent supporting concrete structure located within the setback area as shown on the Proposed Site Plan may be maintained, repaired or replaced in-kind only, without further Agency approval. The docks shall only be used for the purposes of securing and loading or unloading watercraft and for swimming or water recreation.

Future Subdivision or Land Use and Development

22. There shall be no subdivision or new land use and development without a new or amended Agency order or permit.

FINDINGS OF FACT

Background/Prior History

1. As of the May 22, 1973 enactment date of the Adirondack Park Land Use and Development Plan Map, the variance site was part of a larger parcel of land. The applicants, Thomas D. and Christine R. Travaglini, purchased the subject property as two separate parcels conveyed by two separate deeds in 1980 and 2000 from the same pre-1973 landowner who also owned adjoining property. The 1980 conveyance was a violation of §810(2)(b)(2)(a) of the Adirondack Park Agency Act in that the parcel created by subdivision at that time resulted in a parcel which was substandard in size and would have required an Agency permit. The parcel acquired in 2000 was also substandard in size; however, in 2006 the applicants merged by deed the two parcels into one 1.1± acre parcel, which corrected the violation as there were no other jurisdictional predicates. Prior to this order, the variance site has not been the subject of any Agency actions or determinations.

Existing Environmental Setting/Character of the Area

2. The variance site contains 153± feet of shoreline on Silver Lake with four pre-existing structures which have been used as seasonal camps. Vegetation on the site is mixed deciduous/ coniferous trees with grassy lawn maintained around the camps, and many trees at the shoreline to provide screening. Island Road, a private dirt and gravel road, bisects the lot in an east to west direction and provides access from the nearest public road, Silver Lake Road. The site slopes toward the lake from south to north, ranging from greater than 30 percent on the south side of Island Road down to 8 percent nearer the shoreline. An embankment marks shoreline and mean high water mark. The area in the vicinity of this property consists of similarly sized lots with mostly seasonal and several year-round dwellings ranging from modest pre-existing camps to recently constructed, large, multi-story dwellings.

Public Notice and Comment

3. The Agency notified all parties as required by the Adirondack Park Agency Act and Agency regulations. One comment letter was received expressing support for granting the requested variance.

Public Hearing

4. On March 26, 2012, a public hearing on the variance request was held in the Town of Black Brook. The hearing was attended by Agency staff, one of the applicants and a representative, and one member of the public. No objections were made to the proposal during the hearing.

Other Regulatory Permits and Approvals

5. The Town of Black Brook issued a building permit for the proposal on November 28, 2011.
6. Clinton County Department of Health issued approval for the new on-site wastewater treatment system on September 15, 2011.

Wetlands

7. No jurisdictional wetlands were field identified on the variance site. However, wetlands may exist adjacent to the site which are not described herein. No wetlands exist within 100 feet of the proposed wastewater treatment system.

Wastewater

8. The installation of the onsite wastewater treatment system as detailed in the application and as located on the Proposed Site Plan has been determined to comply with all applicable Clinton County Department of Health, New York State Department of Health, and Agency standards. The proposed design and location avoids or adequately mitigates impacts to groundwater and surface water resources, is sized appropriately for the proposed dwelling, and replaces two existing sub-standard systems on the site.

Water Resources/Navigable Shorelines

9. The variance site involves shoreline on Silver Lake, a navigable water body, with a Department of Environmental Conservation surface water classification of "A". No vegetative cutting is proposed along the shoreline of the project site, structures at the shoreline will be removed, the residential use of the shoreline area on this site will not change, additional vegetation will be planted for the rain garden, and stormwater and erosion control measures will be undertaken, all of which will maintain or improve water quality.

Open Space/Aesthetics/Shoreline Character

10. Retention/maintenance of the existing trees along the shoreline of Silver Lake and planting of vegetation for the rain garden will provide screening of the proposed dwelling, while limiting clearing of vegetation for the proposed development will assure a vegetation backdrop for the structures, avoiding skylighting as viewed from the lake.

11. Setback of the proposed dwelling from the shoreline, use of the existing driveway for access, minimal vegetation removal, use of downward-directed or shielded lighting, and use of earthtone colors will protect the open space character within and surrounding the project site and reduce nighttime light pollution (glare, light trespass, and sky glow). Removal of two structures currently located on the shoreline and replacement of one structure with a new structure approximately ten feet lower in height will reduce the visual impacts of new development on the site as viewed from the lake when compared with existing development.

Historic Sites or Structures

12. Although the variance site contains structures that appear to be greater than 50 years old, the Agency's Historic Preservation Officer determined a referral to New York State Office of Parks, Recreation, and Historic Preservation was not required. Therefore, the project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR Part 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.

VARIANCE IMPACTS AND CRITERIA

13. The following findings evaluate the variance proposal pursuant to the standards and criteria set forth in 9 NYCRR 576.1.

(a) **Whether there are practical difficulties in carrying out the strict letter of the shoreline restrictions**

There are physical site constraints in constructing a new single family dwelling that meets the 75' setback requirement and also a modern wastewater treatment system that meets the 100' separation distance requirement to waterbodies. By placing the modern wastewater treatment system in the most suitable area on the site and meeting the 100' separation distance requirement (without the need for a variance) the location of the new single family dwelling is

constrained and the 75' setback requirement cannot be met.

(b) Whether the adverse consequences to the applicant resulting from denial are greater than the public purpose sought to be served by the restriction.

There are a four pre-existing non-conforming residential structures and associated wastewater treatment systems located at or within 65 feet of the mean high water mark of Silver Lake. Denial of the plan to construct a new single family dwelling that needs a 25' variance to meet the 75' setback requirement, including installation of a modern wastewater treatment system compliant with current standards which meets the 100' separation requirement to water resources in the only suitable location on the site, and removal of the old structures and systems, would mean that both the existing shoreline adverse visual and water quality impacts would continue and the applicants' plans to create a new, energy efficient, and more useful, comfortable space for the family, single family dwelling which will reduce shoreline impacts would not be met. Granting the variance serves both the public purpose of the shoreline restrictions and the applicants' goals. They are not in conflict.

(c) In determining whether a variance shall be granted, the agency will consider, among other relevant factors:

(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. Given the increased protection of the shoreline and water quality in light of the entire proposal, the proposal may be considered to be the minimum relief necessary.

(2) Whether granting the variance will create a substantial detriment to adjoining or nearby landowners;

The adjoining and nearby landowners include several private landowners and NYS land designated Wild Forest. 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.

It is staffs' judgment that adequate partial screening exists at the shoreline, and the removal of the non-conforming shoreline structures and wastewater treatment systems will improve the visual 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;

Agency Rules and Regulations, 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, continuing the visual impacts of structures proposed to be removed as part of the variance request, and continuing the associated water quality impacts from two non-conforming wastewater treatment 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 the applicants' 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, and comfortable space for their 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 single family dwelling and thus creates the need for the one 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; and

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 single family dwelling set further back and a modern wastewater treatment system meeting the 100' separation distance. 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) of this subdivision.

Conditions to mitigate potential adverse impacts, as noted in 5 above, include installation of a new 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.

CONCLUSIONS OF LAW

- A. There are practical difficulties in the way of carrying out the strict letter of the shoreline restrictions.
- B. The adverse consequences resulting from denial of this request are greater than the public purpose sought to be served by the restrictions.
- C. The factors set forth in 9 NYCRR § 576.1(c) have been considered:
- (1). whether the application requests the minimum relief necessary;
 - (2). whether there will be a substantial detriment to adjacent or nearby landowners;
 - (3). whether the difficulty can be obviated by a feasible method other than the variance;
 - (4). the manner in which the difficulty arose;
 - (5). whether granting the variance will adversely affect the resources of the Park; and
 - (6). whether the conditions noted herein will ameliorate any adverse effects.

The variance, pursuant to §806 of the Adirondack Park Agency Act and 9 NYCRR Part 576, observes the spirit of the Act, secures public safety and welfare, and does substantial justice.

A variance of the terms of the APA Act is not personal and runs with the land. Recording of this Order Granting Variance is intended to provide notice to subsequent owners of the land.

