

In the matter of the apparent  
Violation of Executive Law § 806 by:

JOSEPH M. COTAZINO, JR.  
JOY A. COTAZINO,

**AFFIDAVIT**

Agency File #2019-0127

Respondents.

STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF ALBANY     )

JOSEPH M. COTAZINO, JR., being duly sworn, deposes and says that:

1. I am a named Respondent in the above-entitled proceeding and am one of the owners of the premises commonly known as 102.25 Kibler Point Road located in the Village of Wells, Town of Wells, County of Hamilton, State of New York (hereinafter "the Property").

2. I submit this Affidavit in opposition to the Notice of Apparent Violation dated January 31, 2020 (hereinafter the "Notice"). We deny that we are in violation of Executive Law § 806.

3. With respect to the factual allegations in the Notice: (1) Admit; (2) Admit; (3) Deny; (4) Deny; and (5) Deny.

4. With respect to the apparent violation alleged in the Notice: (1) Admit; and (2) Deny.

5. My wife and I began the process of building a house and deck on the Property back in 1995. We also own both lots on each side of the Property. It has taken us many years, and well in excess of \$225,000.00 (our life savings), to get where we are today. At every stop of the process, I have been fastidious about complying with all statues, rules, regulations, building requirements, etc., and when necessary, hiring the professionals necessary to ensure that every

step has been done 'by the book'. By way of example, my handwritten history of the permit process in relation to the Property is annexed hereto as **Exhibit "A"**.

6. As set forth in the Affidavit of Enforcement Officer Trevor S. Fravor, on or about July 17, 2017, I sought a jurisdictional determination regarding a proposed design changes to the previously approved septic system. This application included a survey and site plan for the proposed construction (see Fravor Aff., Ex. 4).

7. On July 25, 2017, the APA issued a letter stating that the proposed construction "does not require a permit or variance from [the APA] (see Fravor Aff., Ex. 4).

8. On October 17, 2017, I submitted, to the Town of Wells (hereinafter "Town"), an application for a building permit for a 44' x 26' House, and a 44' x 16' (704 sq. ft.) deck that would be built on the back of the House (hereinafter "Deck"). A copy of the Application is annexed hereto as **Exhibit "B"**.

9. Prior to applying for the building permit, we had our surveyor (Ferguson & Foss) place flags, stakes and ropes to mark the proposed site of the House and Deck to ensure the location complied with all applicable statutes, rules, regulations, etc. This included the APA requirement that neither the House nor Deck be located within fifty (50) feet of the high-water mark of Lake Algonquin (hereinafter the "Setback"). Pictures taken showing these flags are annexed hereto as **Exhibit "C"**.

10. On October 19, 2017, Brian Towers, Town Supervisor for the Town of Wells wrote me a letter acknowledging receipt of my application for a building permit, and expressing concern about the location of the House. A copy of this letter is annexed hereto as **Exhibit "D"**. Mr. Towers' letter acknowledged that the proposed site of the House was permissible, but that Town officials were concerned that one corner of the House would be only seven (7) feet from the edge of the pavement of Kibler Point Road.

11. Nevertheless, the Town subsequently inspected the site (including the proposed location of the House and Deck) and issued a building permit on October 24, 2018, a copy of which is annexed hereto as **Exhibit “E”**.

12. We then commenced construction on the site infrastructure (i.e., utility service, septic system and water connection).

13. On or about August 6, 2018, Town Supervisor Donald Beach, and Highway Supervisor Clay Early, again expressed to me a concern that one corner of the House would be only seven (7) feet from the edge of Kibler Point Road. Supervisor Beach requested that I consider moving the location of the House and Deck closer to Lake Algonquin.

14. I told Supervisor Beach that I would consider it, but that moving the House and Deck closer to the lake would require a variance from the APA since a portion of the Deck would then be within the Setback.

15. After this conversation, I decided to try and accommodate the Town’s request and began the process of filling out an APA variance application. During this process, I decided to call the APA to obtain some guidance on how to go about it.

16. At 10:58 A.M. on August 6, 2018, I called the APA and spoke with Doug Miller for guidance regarding applying for a variance to allow the House and Deck to be built closer to the lake. I explained the situation to Mr. Miller that moving the House and Deck closer to the lake would bring the Deck within the Setback. Mr. Miller stated that the APA would perform a pre-application inspection of the Property to determine if there was an alternative way to site the House and Deck without the need for a variance.

17. Mr. Miller then told me to contact Colleen Parker at the APA to schedule a pre-application inspection, which I did immediately thereafter.

18. At 9:37 A.M. on August 7, 2018, I again called Ms. Parker and left her a voicemail requesting a pre-application inspection.

19. At 11:04 A.M. on August 7, 2018, Ms. Parker returned my phone call. She told me that she would set up a pre-application site visit. She further stated that the APA representatives would review all alternatives that could be pursued in order to avoid the need for an application for a variance. Ms. Parker stated that she would set up the pre-application site visit under my pre-existing APA jurisdictional review file.

20. Ms. Parker further stated that she would obtain additional information from Mr. Miller, give it to a review officer and that he/she would contact me to schedule the site visit. Finally, she told me to call the APA back if I did not hear from the review officer on or before August 10, 2018.

21. At 11:35 A.M. on August 10, 2018, I called the APA and spoke with Laurie Bullis since I had not heard from anyone at the APA to schedule a site visit. She told me that she would have Ms. Parker return my call.

22. At 11:50 A.M. on August 10, 2018, Ms. Parker returned my phone call to tell me again that she would request a pre-application site visit. However, Ms. Parker also told me that it would be difficult for me to get a variance because the existing proposed site for the House and Deck already complied with the Setback and because construction had begun. I then explained to her that the Town asked me to move the House and Deck closer to the lake. Ms. Parker told me that I would have to establish a hardship and that a letter from the Town could be helpful, but that the APA would still need additional justification in order to grant a variance. Again, she stressed the APA's preference for a site visit solution if possible.

23. Ms. Parker asked if I would consider a different shape or a two-story house with attached deck. I told her that these were not acceptable alternatives because the plans had already been approved and paid for, and construction of the site infrastructure had already begun. She concluded the conversation by reaffirming that she would set up the pre-application site visit and stating that “maybe it can be resolved without a variance process.”

24. On August 10, 2018, Supervisor Beach wrote a letter to the APA requesting a variance to allow the House and Deck to be constructed closer to the lake. A copy of this letter is annexed hereto as **Exhibit “F”**.

25. At 9:02 A.M. on August 16, 2018, Enforcement Officer Trevor Fravor called me to schedule the pre-application site visit. Mr. Fravor noted that he had received Supervisor Beach’s letter dated August 10, 2018. During this conversation, I told Mr. Fravor that I hoped to satisfy the Town’s concerns without the need for a variance, but I was prepared to apply for a variance if necessary. Mr. Fravor told me that he would examine what non-variance options existed but that we could discuss it more at the site visit. Mr. Fravor also asked me to ask Supervisor Beach and the Town Highway Superintendent, Clay Early, to attend.

26. I subsequently called Superintendent Early, left a voicemail regarding a meeting, but he never returned my call. I also asked Supervisor Beach to attend the site visit meeting, but he was unable to make the site inspection as scheduled.

27. At 10:30 A.M. on August 20, 2018, Officer Fravor and engineer Shaun LaLonde met me at the Property. **Again, it is critical to note that the location of the House and the Deck were already flagged, staked out and roped off on the Property.** I showed Officer Fravor and Engineer LaLonde how close the approved location was to Kibler Point Road and discussed with them the respective letters of Supervisors Tower and Beach. I consistently told them “I want to comply”.

28. Officer Fravor and Engineer LaLonde thereafter spent a considerable amount of time taking a variety of measurements. Engineer LaLonde makes a vague admission in his affidavit that we had “staked out a single family dwelling footprint that was partially within the [Setback],” but does not specify whether he is alleging that this was the House or Deck.

29. Engineer LaLonde did not notify me of his opinion that a portion of either the House or Deck, as flagged by our surveyor, would be within the Setback. Nor does Engineer LaLonde claim in his affidavit that he notified me of his opinion. To the contrary, he told me I was “in compliance.”

30. They then told me that they could re-site the House and Deck further away from the road. They also told me that they had some ‘leeway’ with respect to siting and that the Deck could encroach somewhat into the Setback without incurring a violation. Therefore, I authorized them to set new flags for the House and Deck at their discretion. I had them leave the old flags, stakes and rope for the House and Deck in place for points of reference.

31. Officer Fravor and Engineer LaLonde then proceeded to place flags for the new location of the House and Deck, which resulted in the corner of the House being seven (7) feet further from the road (i.e., a total of fourteen (14) feet from the road). They also set flags marking the location of the Setback. Officer Fravor and Engineer LaLonde both admit to setting new flags but only make a vague reference to setting a “footprint for the single family dwelling” without specifically mentioning the Deck. **However, they placed flags for a new location of the House and the Deck during the site visit.**

32. The new location for the House and Deck flagged by Officer Fravor and Engineer LaLonde resulted in a portion of the Deck being within the Setback. They even measured from the high-water mark to the flags for the foundation of the House, so they were clearly aware that a portion of the Deck would be within the Setback. However, Officer Fravor and Engineer

LaLonde told me this location was acceptable with no variance needed as long as it was acceptable to me. I told them "I want to comply" and I agreed because it would satisfy the Town and avoid the need to go through the variance process. At no time did Officer Fravor and/or Engineer LaLonde tell me that I would still have to apply for a variance from the APA for the Deck.

33. Engineer LaLonde did not make any statement regarding the Deck in his affidavit. Officer Fravor falsely alleges that he told me that "if a deck was attached to the shoreline side it would be located [within the Setback] and require a variance from the [APA] (emphasis added)."

34. What actually happened was Officer Fravor asked me "how big is the deck?"

35. I responded "44' x 16'; the whole back of the house."

36. Officer Fravor then said "take it away from the property to the right of the building lot as you face the lake."

37. I responded "I will bring it up to the sliding door."

38. The intimation by Officer Fravor that they were not aware that a deck would be built and/or that it was not discussed is blatantly false and offensive. Officer Fravor and Engineer LaLonde initiated a discussion with me about the size of the Deck now that the House/Deck had been relocated. They asked me to reduce the size of the Deck so that there would be less encroachment by it into the Setback. Since agreeing to this would avoid the need for a variance, I agreed to reduce the size of the Deck from 44' x 16' to 28' x 12'. Again, the application I submitted to the Town called for a 44' x 16' deck (i.e, covering the entire rear of the House). The as-built Deck is only 28' x 12' (336 sq. ft). A photograph of the as-built Deck is annexed to the Affidavit of Officer Fravor as Exhibit 11.

39. The as-built Deck should be all the proof needed that there was a conversation/agreement with Officer Fravor and Engineer LaLonde regarding the Deck. In other

words, why would I have reduced the size of the Deck unless we had discussed it and they had requested that I do so? Officer Fravor and Engineer LaLonde were fully aware that a Deck would be built, and fully aware that a portion would be located within the Setback because they set the flags for it. In conclusion, Officer Fravor told me that “we should be ok as long as we stay away from the corner closest to the lake” and “get it away from the property next door” then both individuals left.

40. Annexed hereto as **Exhibit “G”** is a copy of the hand-written contemporaneous notes that I kept regarding the aforementioned conversations/interactions with representatives of the APA.

41. **Again, at no time did Officer Fravor and Engineer LaLonde tell me that I would still have to apply for a variance from the APA for the Deck. I specifically asked “do I still need a variance”, they responded “no. you are good here”.** Their claim to the contrary belies all logic and reason. When I first contacted the APA regarding the Town’s request, I was prepared to apply for a variance to allow the Deck to be within the Setback. Representatives of the APA insisted on exploring alternatives to a variance.

42. If my wife and I did not want to be bothered going through the APA variance process, we would have refused the Town’s request to move the House and Deck and built them as originally approved. We could have left the House and Deck as originally situated and not been in violation of the Setback.

43. Since we were prepared to go through the variance process before Officer Fravor and Engineer LaLonde came to the Property, it does not make any sense that I would ignore an instruction from Officer Fravor to apply to the APA for a variance for the Deck.

44. I submit that once Officer Fravor and Engineer LaLonde undertook to relocate the House and Deck, they created a duty to (1) tell me of their opinion that the House and/or Deck,



as originally sited, would be in violation of the Setback; (2) site the House and Deck so that they were not in violation of the Setback and/or tell me what changes would need to be made for them to be in full compliance therewith; and/or (3) tell me that the House and Deck could not be relocated by them without still being in violation of the Setback and that I would need a variance. They never told me any of this; they simply placed new flags, asked me to make the Deck smaller (which I did) and told me no variance was needed.

45. Thereafter, the construction of the House and Deck commenced as sited by Officer Fravor and Engineer LaLonde.

46. On October 13, 2018, I submitted an application to the Town to renew the building permit and asking the Town to inspect the site infrastructure, which had been completed. A copy of this application is annexed hereto as **Exhibit "H"**.

47. The Town issued a renewed building permit on October 24, 2018. A copy of this permit is annexed hereto as **Exhibit "I"**.

48. In Spring 2019, I discovered one of my neighbors, John Menke and his daughter-in-law, trespassing on the Property and taking measurements from the shoreline of the Lake to the flags/stakes that had been set by Officer Fravor and Engineer LaLonde.

49. Shortly thereafter, I received notice from Officer Fravor that a complaint had been made to the APA that the House foundation was within the Setback. Therefore, I presume Mr. Menke is the complainant in relation to Enforcement File E2019-0082 cited by Officer Fravor in his affidavit.

50. On June 11, 2019, Officer Fravor came to the Property to meet with me and discuss the complaint. He measured the location of the House foundation in relation to the high-water mark of the lake. **As of that date and time, the footings for the Deck were in place and our contractor was beginning to build it; all special order materials were purchased and**

paid for (which cost in excess of \$20,000.00 and cannot be returned). It would have (or should have) been evident to Officer Fravor that what had already been built was within the setback – especially since Officer Fravor had located it there. Officer Fravor found no violation based upon the location of the foundation for the House. In fact Officer Fravor stated “I don’t even know why I’m here.” Most importantly, Officer Fravor said nothing to me about the location of the Deck and let construction continue.

51. On August 13, 2019, Officer Fravor again visited the Property after receiving a complaint (apparently from Mr. Menke) about the location of the Deck. Not surprisingly, Officer Fravor found a portion of the Deck to be within the Setback. This is not surprising because Officer Fravor located the Deck where it currently sits and told me that I did not need to apply to the APA for a variance. Officer Fravor did not insist or demand that I cease construction on the Deck.

52. On August 15, 2019, the Town issued a Certificate of Occupancy for the House. A copy of this is annexed hereto as **Exhibit “J”**.

53. On August 21, 2019, John Burth of the APA sent me a proposed ‘settlement agreement’, but this was nothing less than a demand for a complete capitulation because I would have to remove the Deck and pay a \$1,000 fine. A copy of this letter is annexed hereto as **Exhibit “K”**. I felt that this was inherently unjust and unfair because Officer Fravor and Engineer LaLonde relocated the site of the House and Deck and told me that I did not need to apply for a variance. I also note that the letter from Mr. Burth claimed that during the June 11, 2019 site visit, I was “notified that a deck attached to the shoreline side of the single-family dwelling on the above-referenced property would be located within [the Setback], and would therefore require a variance....”

54. Notwithstanding the fact that I was not told anything of the sort, Officer Fravor

stated in his affidavit that he told me “if a deck were to be attached,” I would need a variance. So, Officer Fravor is claiming that on June 11, 2019, there was no evidence of the Deck, but Specialist Burth claims that there was evidence of the Deck and that I was told I needed a variance. The only person whose testimony is consistent in this matter is mine. The false, misleading, vague and conflicting affidavits submitted in support of the Notice of Apparent Violation lack any credibility.

55. I also note that, up until the APA’s letter dated December 20, 2019, I was never told to cease construction, or warned to cease construction on the Deck. By this time, the Deck was substantially completed.

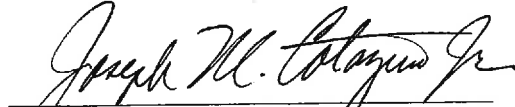
56. I also submit that Officer Fravor’s affidavit is impermissibly vague. He states in his affidavit that “most, if not all, of the deck is located within [the Setback]”.

57. Given that the APA is demanding that the entire Deck be removed, then Officer Fravor is required to definitely state and prove that the entire Deck is within the Setback. If only a portion of the Deck is within the Setback, then he is required to state with specificity, and prove, which portion he is alleging is within it.


58. The burden is upon the APA to prove a violation. We submit that the lack of measurements and vagueness render the Notice of Apparent Violation unenforceable on its face.

59. We now find ourselves the subject on an APA enforcement action because I cooperated with the Town’s request that I move the House and Deck. Had I not cooperated with the Town, and followed the instructions of Officer Fravor and Engineer LaLonde, we would not be in the current situation. We attempted to do everything correctly with respect to the construction of our House and Deck. I repeatedly stated “I want to comply”. Since this predicament is not of our making, but that of APA staff, we respectfully request that no violation be found.

Dated: February 28, 2020

  
\_\_\_\_\_  
JOSEPH COTAZINO, JR.

Sworn to before me this  
28<sup>th</sup> day of February, 2020

  
\_\_\_\_\_  
Notary Public- State of New York

**JUSTIN WILLIAM GRAY**  
Notary Public, State of New York  
No. 02GR6095507  
Qualified in Albany County 23  
Commission Expires 07/14/2023

**EXHIBIT "A"**

## Permit History

Permit # 371 Issued 4/28/95 - 1st app. ever filed.  
Permit # 432 Issued 9/14/96 - JAMES ORR - ORIGINAL permit.  
Permit # 464 Issued 9/19/97 - JAMES ORR - Renewal of Permit # 432.  
Permit # 14 Issued 11/14/98 - JAMES ORR - Renewal of Permit # 464  
Permit # 377 Issued 2/10/00 - Dale Early - Renewal of Permit # 14  
Permit # 377 Issued 4/28/01 - Dale Early - Renewal of Permit # 377  
from 4/28/02 - 10/17/17 did not renew permits @ Advice of Dale Early  
& GENE Harrington & Jean Harrington they advised me that  
not necessary to file renewal app. each yr & pay the fee - when  
ready to build file application w/ Attachments & pay fee - "You  
are Approved Already".

Permit # 2017-43 Issued 10/20/17 - Robert Klafehn - Application to begin  
Bldg.

Permit # 2018-39 Issued 10/24/18 - Mike McElroy - Renewal of Permit # 2017-43

→ Permit # 2018-39 Expires 10/24/19

Permit # 2019-18 Issued 7/2/19 - Mike McElroy - Permit for Side Deck  
NOT IN ORIG. App.

8/15/19 - Certificate of Occupancy issued by Mike McElroy

**EXHIBIT "B"**

# ORIGINAL APPLICATION

10/17/17

COPY

## Town of Wells

### Application for Building Permit

Date Received 10/17/17 Permit Number 2017-43

Property owner:

Name: JOSEPH M. COTAZINO JR AND Joy A. COTAZINO

Address: 5 Robin Drive Voorheesville, N.Y. 12186

Phone: 518-248-6895

Email: (jmcjr127@aol.com) or (jac527@aol.com)

Property where work is to be performed

Tax map I.D. Number: 130.018-1-17.110

Street Address of property: 102 KIBLER Point

Cost of project: \$86,000<sup>00</sup> Total Sq. F

Contractor contact information (include certificate insurance)

Name: Serenity Housing Sales Inc. Address:

Phone: 518-883-7673 Amst.

Email: joe@serenityhousinginc.com

Filed this Application because ready to begin construction. Got Permit #2017-43

- House + Deck on Application (44'x16')

- HOUSE MANUFACTURER

- WATER FOUNDATION  
- SEPTIC SYSTEM  
- EXCAVATION

NAME: C.L. Smith (Clifford Lawrence) - Speculator N.Y.

Phone: 518-860-5221

HEATING AIR + CONDITIONING

NAME: ADIRONDACK MECHANICAL CORP. 444 Co. Highway 126 BROADALBIN, N.Y. 12025

518-883-3077 office  
PHONE: STEVEN KIRK 518-883-3164 cell E-MAIL: skirkamc@nycap.rr.com



# ORIGINAL APPLICATION

10/17/17

COPY

## Town of Wells

### Application for Building Permit

Date Received 10/17/17 Permit Number 2017-43

Property owner:

Name: JOSEPH M. COTAZINO JR And Joy A. Cotazino

Address: 5 Robin Drive Voorheesville, N.Y. 12186

Phone: 518-248-6895

Email: (jmcjr127@aol.com) or (jac527@aol.com)

Property where work is to be performed

Tax map I.D. Number: 130.018-1-17.110

Street Address of property: 102 KIBLER POINT RD

Cost of project: \$86,000<sup>00</sup> Total Sq. Ft (if applicable): 1144

Contractor contact information (include certificate of liability & workers comp insurance)

*- House Manufacturer*  
Name: Serenity Housing Sales Inc. Address: 2983 State Highway 30  
Phone: 518-883-7673 AMSTERDAM, N.Y. 12010  
Email: joe@serenityhousinginc.com

*- WATER Foundation  
- SEPTIC System  
- Excavation*  
Name: C.L. Smith (Cliffon Lawrence) - Speculator N.Y.  
Phone: 518-860-5221

*HEATING Air Conditioning*  
Name: ADIRONDACK MECHANICAL CORP. 444 Co. Highway 126 BROADALBIN, N.Y. 12025  
518-883-3077 office  
PHONE: STEVEN KIRK 518-883-3164 cell E-MAIL: skirkamc@NYCAP.RR.COM

Occupancy (check one)

One family dwelling

Two family dwelling

Commercial

Miscellaneous

Type of Improvement (check all that apply) and applicable fee schedule

New Building (Including septic system)	<input type="checkbox"/>	\$.15 per sq. ft./\$100. Minimum	\$___
<u>Modular</u> or Manufactured home (Including septic system)	<input checked="" type="checkbox"/>	\$.15 per sq. ft./\$100. Minimum	\$ <u>171.60</u>
Addition	<input type="checkbox"/>	\$.15 per sq. ft./\$50. Minimum	\$___
Remodeling/Structural Alterations	<input type="checkbox"/>	\$.15 per sq. ft./\$50. Minimum	\$___
Deck/Porch <u>44' X 16' 704 sq. ft.</u>	<input checked="" type="checkbox"/>	\$.15 per sq. ft./\$50. Minimum	\$ <u>105.60</u>
Garage/Pole Barn	<input type="checkbox"/>	\$.15 Per sq. ft./\$50. Minimum	\$___
Demolition	<input type="checkbox"/>	\$25.	\$___
New septic system/existing structure (Tank & leach field)	<input type="checkbox"/>	\$50.	\$___
Replace existing septic tank only	<input type="checkbox"/>	\$50.	\$___
Solid fuel burning device	<input type="checkbox"/>	\$25.	\$___
Storage shed 144 S.F. and larger (Without a permanent foundation)	<input type="checkbox"/>	\$25.	\$___
Swimming pools, Ramps, Stairs	<input type="checkbox"/>	\$25	\$___
Permit Renewal	<input type="checkbox"/>	\$50.	\$___

Check payable to **Wells Town Clerk**

Total

\$ 277.20

Other (please describe) \_\_\_\_\_

I hereby certify that the proposed work is authorized by the owner of record and that I am, or have been authorized by, the owner to make this application as the owner's agent. We agree to adhere to and conform to all NYS Building and Code and Fire Prevention laws and any and all applicable laws of this jurisdiction,

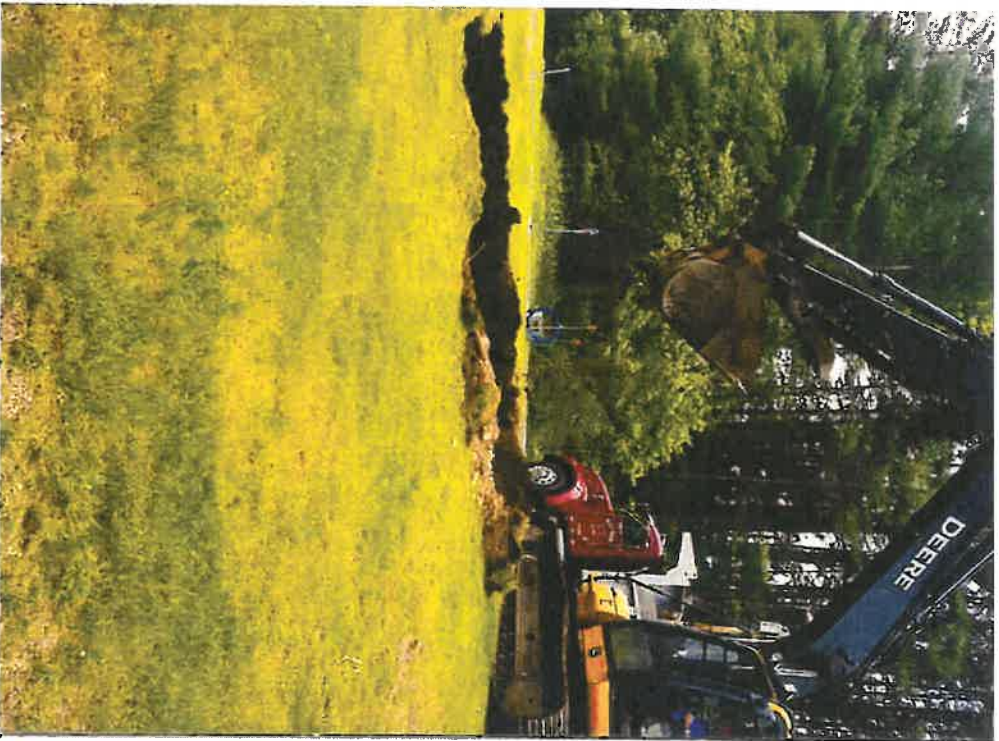
Signature of Applicants <u>Joseph M. Cortezio</u> <u>Jay R. Cortezio</u> Application Date <u>10/17/17</u>	Address (If different from above) <u>5 Robin Drive</u> <u>Voorheesville, N.Y. 12186</u>
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\*\*\*\*\* For department use only \*\*\*\*\*

Building Permit Application Fee _____ Total Due: _____ Received by: _____ <p style="text-align: center;">Town Clerk</p>	<input type="checkbox"/> Cash <input type="checkbox"/> Check # _____ <input type="checkbox"/> Money Order, # _____
<p style="text-align: center;"><b>Validation</b></p> Building Permit Issued <input type="checkbox"/> Yes <input type="checkbox"/> No Permit No. _____ Date: _____	Approved by: _____ Building Code Enforcement Officer

# **EXHIBIT "C"**







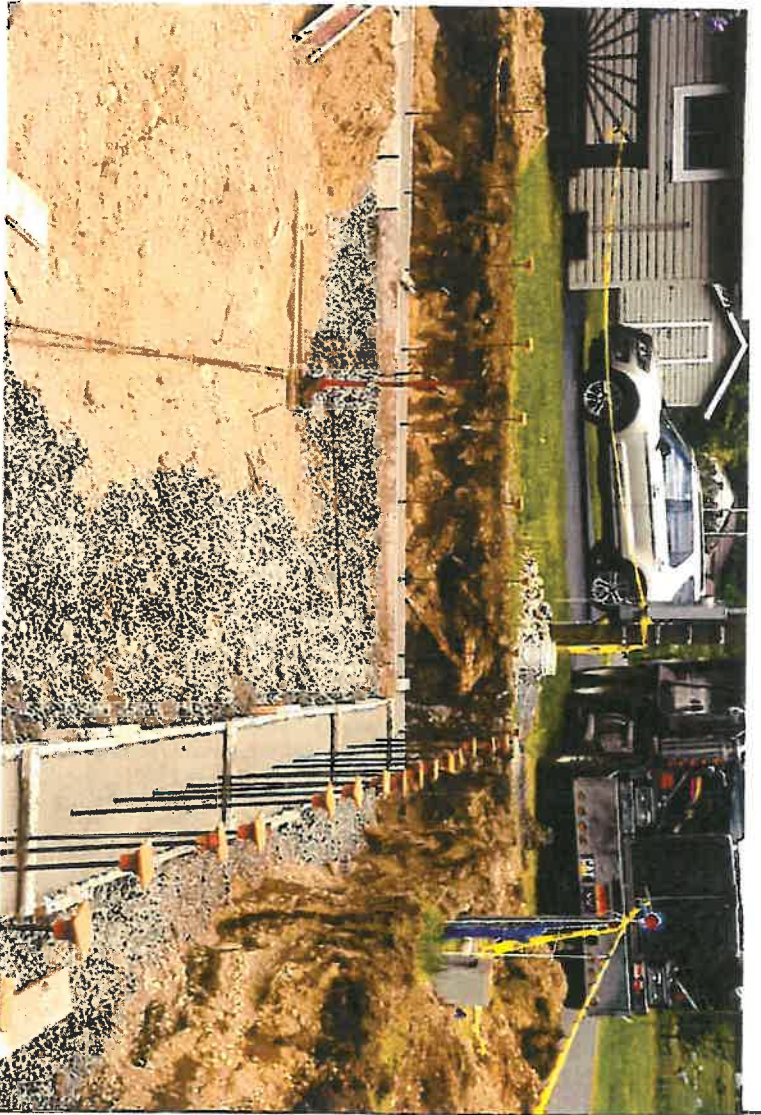
















# **EXHIBIT "D"**



# TOWN of WELLS

Office of the Supervisor

Brian E. Towers

19 October 2017

Mr. Joseph M. Cotazino Jr.  
5 Robin Drive  
Voorheeville, NY 12186

RE: Building Application / Kibler Point Rd

Dear Joe:

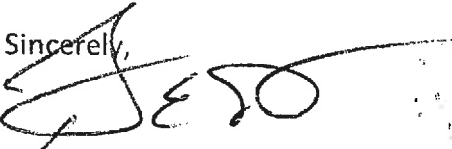
The town is in receipt of your application that proposes to build a structure, with Adirondack Park Agency approval, approximately 7 feet from the edge of the pavement on the Kibler Point Road.

In a previous correspondence dated 30 November 2004, I addressed Supreme Court Judge White's 1989 decision, and subsequently upheld by the Appellate Court, that the width of the Kibler Point Road was, in effect, the width as it is maintained including snow banks, ditches, and etcetera.

The purpose of this letter is to memorialize the discussions you have had with both the Highway Superintendent and Building Inspector, who have both expressed their concerns and the likely consequences, with placing said structure in such close proximity to the road surface.

As the owner of the property, the town cannot prevent you from sitting the structure where you desire outside of the setbacks as set forth in State Law. However, with all do respect, the town will not be held legally responsible for any damage to your property incurred during the routine maintenance of our road, including snow removal from the driving surface, the height or width of resulting snow banks, and/or naturally occurring water drainage.

Sincerely,

  
Brian Towers  
Town Supervisor

Cc: Mr. Clay Earley, Highway Superintendent  
Mr. Robert Klafehn, Building Inspector

# **EXHIBIT "E"**

APPLICANT COPY

THIS PERMIT NOT VALID UNLESS  
PROPERLY RECEIPTED BY CASHIER

AMOUNT  
PAID

# BUILDING PERMIT

VALIDATION

APPLICANT \_\_\_\_\_ DATE 11/10/11 PERMIT NO. 1110 27  
(NO.) ADDRESS (STREET) (CONTR'S LICENSE)

PERMIT TO REPAIR (TYPE OF IMPROVEMENT) NO. 1 STORY (PROPOSED USE) NUMBER OF DWELLING UNITS 1

AT (LOCATION) 100 S. 10th St (NO.) (STREET) ZONING DISTRICT R-1

BETWEEN \_\_\_\_\_ (CROSS STREET) AND \_\_\_\_\_ (CROSS STREET) LOT SIZE \_\_\_\_\_

SUBDIVISION 100 S. 10th St LOT \_\_\_\_\_ BLOCK \_\_\_\_\_

BUILDING IS TO BE \_\_\_\_\_ FT. WIDE BY \_\_\_\_\_ FT. LONG BY \_\_\_\_\_ FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION

TO TYPE \_\_\_\_\_ USE GROUP \_\_\_\_\_ BASEMENT WALLS OR FOUNDATION \_\_\_\_\_ (TYPE)

REMARKS \_\_\_\_\_

AREA OR VOLUME \_\_\_\_\_ (CUBIC/SQUARE FEET) ESTIMATED COST \$ \_\_\_\_\_ PERMIT FEE \$ \_\_\_\_\_

OWNER \_\_\_\_\_ ADDRESS \_\_\_\_\_ BUILDING DEPT BY \_\_\_\_\_





# **EXHIBIT "F"**

Donald W. Beach, Town Supervisor  
Town of Wells  
PO Box 205  
Wells, NY 12190  
(518) 924-7912  
(518) 924-4521 FAX

Doug Miller  
Adirondack Park Agency  
PO Box 99  
1133 NYS Route 86  
Ray Brook, NY 12977

August 10, 2018

Dear Doug:

I'm writing this letter on behalf of the Town of Wells to ask for a variance on the following property:

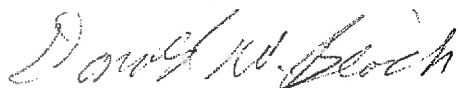
Parcel ID # 130.018-17.100  
102 Kibler Point Road  
Wells, NY 12190

This property is owned by Joseph M. Cotazino, Jr. We are requesting this variance because, if the house is built where the original building permit locates it, it will cause the town to be unable to safely plow the road or otherwise safely maintain the road during the year. This presents a serious safety issue for the town.

Please advise us of your decision at your earliest convenience.

Thank you for your consideration.

Sincerely,



Donald W. Beach  
Town Supervisor

# **EXHIBIT "G"**

# VARIANCE APPLICATION

102 Killeen Point Road  
J2017-0444

P.1

Mon.  
8/6/18  
10:58  
A.M.

Called APA 518-891-4050  
S/w Doug Miller  
Variance from the Shoreline = APA 50ft Setback  
Variance from Road = Town of Wells

Re Application Inspection to see if Alternative  
Way to accomplish what Applicant wants w/o Variance Application

Colleen Parker - will schedule someone from  
Regulatory office.

Redesigned - will fill out Variance  
Application want Site Inspection  
before Application for Variance.

L.M. on Colleen Parker's v.m. - need Appointment w/ Site  
Inspector to come out and look @ Building Site.

Tues.  
8/7/18  
9:37  
A.M.

Called Colleen Parker - L.M. on her v.m. - would like to  
schedule Site Inspection - maybe Thurs. 8/9 or Fri 8/10  
of this week - please call me @ 518-248-6895.

Tues. 11:04  
8/7/18 A.M.

Colleen Parker - Ret'd My Call - She said she got my  
message about scheduling a "Site Visit". She said she will  
set up a "Pre Application Site Visit". We will discuss and  
review all Alternatives that can be pursued in order to  
"Avoid A VARIANCE Application". She will use my "Jurisdictional  
Review File" set up when Bob Reis filed his letter for the J.R.  
as my "Pre Variance Application File" also. Colleen will get info  
from Doug Miller and give it to a Review Officer + the officer

Tues.  
8/7/18  
(Cont.)

Will contact me about setting up a site visit date + time. If you don't hear anything by Fri. 8/10/18 Call + find out what Review Officer has been assigned to My "Pie Application Process". Told her OK + Thank You.

Fri.  
8/10/18  
11:35 A.M. Called APA 518-~~891-4050~~ - s/w Laurie Buller Status of Assigning Review Officer to My "Pie Variance Application Process". - She will have Colleen Parker call me back.

Fri.  
8/10/18  
11:50 A.M.

- Colleen Parker called me back - She is going to arrange a site visit for Variance. She said will be difficult because I already met the requirements - (50 ft Set back). Exceptions for a variance are things like "The lot was there before the APA was created - in that case grandfathered in". She said my lot is big enough to meet the Set back requirements so I already comply. Told her about Brian Towers 10/19/17 letter + that Town Supervisor now (Don Beach) + Highway Supervisor (Chay Early) would like house moved off road more (20 feet ???).

Colleen said variance process is a "legal process". The APA likes to look @ any Alternatives to Avoid a Variance. In My Case it could be ① Smaller House (no) ② Different Shape (no) ③ 2 story not 1 (no).

She said I will have to document why it will be a "HARDSHIP" to justify a Variance so I do not have to meet the 50' set back. Colleen said "A LETTER FROM THE TOWN IS SOMETHING" "IT IS RELEVANT INFO".

Fri.  
8/10/18  
11:50 A.M.  
(Cont.)

but she is afraid it will need "MORE JUSTIFICATION".  
 They will ask you why can't you build a smaller house or a reconfigured house ??? -> Already done.  
 Colleen said in your case you already got a letter to build + a building permit and then the Town sends you a letter - (Brian Towers 10/19/17) and then approaches you and asks you to get a variance. "You are caught between a rock + a hard place" I told her yes and we already started construction + development of the infrastructure on the lot (water, electric, septic...)  
 Colleen will set up a "SITE VISIT" - The site inspector will call you to arrange meeting.  
 Told her thank you - She said "maybe it can be resolved w/ a variance process".

THURS.  
8/16/18  
9:02 A.M.

Trevor FAVOR called me - he is the site inspector for APA. his phone # is 518-891-4050. he wants to set up appointment to review 102 Kilda Point Rd w/ APA Engineer - he got Don Beach's 8/10/18 letter asking that a variance be granted. He said engineer is Sean - can I meet them on Monday 8/20/18 @ 10:30 - 11:00 A.M.  
 Told him yes. Told Trevor I was hoping there is a way to get variance or approval to move foundation w/o going through whole variance process - he said he would ask in his office what some non variance request options are - will discuss

Thurs.  
8/16/18  
9:02  
A.M.  
(cont.)

more on Mon. 8/20/18. Try to have Town  
Superior there + Highway Supervisor - told  
him I will try. See you on Mon. 8/20/18.

(p.4)

Sun. — Called Clay Early — 518-775-6592  
8/19/18 L.M. on his cell phone v.m.  
Can he make 8/20/18 10:30 A.M. Mtg w/ APA.  
6:22 P.M. He has not called me back.

Sun. 8/19/18 - Called Don Beach - Town Hall # 518-924-7912  
12:31 P.M. L.M. about Mtg w/ APA on 8/20/18.

Sun. 8/19/18 - Called Don Beach Cell - 518-774-6514  
7:37 P.M. L.M. about Mtg. w/ APA on 8/20/18.

Mon. 8/20/18 - Don Beach called me - he can not make 8/20/18  
8:28 A.M. Mtg w/ APA - he will see if he can get a hold of Clay Early.

Mon. 8/20/18  
10:30  
A.M.

I Met w/ Trevor + Sean (Engineer) - I showed them  
how close the already approved foundation was to  
the road in the Southeast Corner of the property.  
We discussed Brian Towers 10/19/17 letter and Don Beach's  
letter dated 8/10/18 Asking if I could get Variance  
for set back of foundation. Trevor + Sean Moved the  
foundation location West towards our existing Camp  
~~area~~ This took the southeast corner of the foundation  
and moved it approx. 7' further away from the road.  
They set new flags marking 50' set back of 2 Lake side  
Corner and said they would allow the foundation here  
w/o any Variance needed if that was acceptable to

MON.

8/20/18

10:30 A.M.

(Cont.)

me. I told them it was fine with me.  
 Another 7 feet makes it better for the town.  
 Trevor and Sean helped me put the 4 corner stakes back in the ground where they should be for the new foundation location and we put the string back on the stakes. We kept the old string and stakes in place so that I could show the town the approx 7 foot difference. - Told Trevor and Sean I appreciate them coming out. I want to comply. Now there should be no issue since they come out and located the new stakes for me. Don Beach or Clay Early never showed up - I apologized for them. Trevor asked me what we would use on a patio under deck. Told him probably paver blocks. Haven't decided yet. We discussed the approved deck size (44' x 16') now that they moved the stakes for the foundation. Trevor said may want to scale size back. We decided I would scale it back to end just past the sliding door and bring it in from the 16 feet. That would make it approximately 28 feet x 12 feet. He said "We should be ok as long as we stay away from the corner closest to lake (Northeast corner). Told him I will. Both guys left.

MON. 8/20/18

1:10 P.M.

- Clay Early drove by lot while I was there. I showed him where the APA located the new set of foundation stakes.



Mon.

8/20/18

1:10 P.M.

(Cont.)

showed him how we moved the entire foundation location closer to Mallard Cove. (We had the room because we eliminated beach field design). I told Clay the new APA location takes the S.E. corner of the house another 7 feet off of the road. Told Clay the APA came up with the new foundation location as an alternative to me having to apply for a variance. Clay said "it is better than the first location but still close". I told Clay that the new location is where it is going to go because I will not need a "Variance Application" filed. Clay said "it is better". He apologized for not being here for the meeting - doesn't know where Donny was. Told him Thank you - he drove off.

---

Colleen  
Called 8/17/18 11:04 A.M.

- Pre App. Site Visit
- All Alternatives to Avoid  
VARIANCE App. have to be  
pursuit.

Will use Jurisd. Rev. file as  
Pre App file Also

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Get info from  
Doug - Give to  
Review officer +  
Then will contact you  
if not by Friday - Call  
Who is Assigned to Pre Applications

# **EXHIBIT "H"**

# RENEWAL APPLICATION

10/13/18

COPY

## Town of Wells

### Application for Building Permit

Date Received 10/13/18 Permit Number 2017-43

Property owner:

Name: JOSEPH M. COTAZINO JR.  
JOY A. COTAZINO Address: 5 Robin Drive  
Voorheesville, N.Y. 12186

Phone: 518-248-6895

Email: (JOSEPH) jmcjr127@AOL.COM or (JOY) jac527@AOL.COM

Property where work is to be performed

Tax map I.D. Number: 130.018-1-17.110

Street Address of property: 102.25 Kibler Point Road

Cost of project: \$86,000<sup>00</sup> Total Sq. Ft (if applicable): 1144

Contractor contact information (include certificate of liability & workers comp insurance)

→ Previously Submitted

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

NOTE: Please Renew Permit # 2017-43  
previously issued on 10/20/17 and please fill  
in the inspection boxes on the permit for the  
Electrical Service, Septic System install + WATER MAIN install  
All of which have been completed as of 10/13/18. Joseph M. Cotazino Jr.

Occupancy (check one)

One family dwelling \_\_\_\_\_

Two family dwelling \_\_\_\_\_

Commercial \_\_\_\_\_

Miscellaneous \_\_\_\_\_

Type of Improvement (check all that apply) and applicable fee schedule

New Building (Including septic system)	_____	\$.15 per sq. ft./\$100. Minimum	\$_____
Modular or Manufactured home (Including septic system)	_____	\$.15 per sq. ft./\$100. Minimum	\$_____
Addition	_____	\$.15 per sq. ft./\$50. Minimum	\$_____
Remodeling/Structural Alterations	_____	\$.15 per sq. ft./\$50. Minimum	\$_____
Deck/Porch	_____	\$.15 per sq. ft./\$50. Minimum	\$_____
Garage/Pole Barn	_____	\$.15 per sq. ft./\$50. Minimum	\$_____
Demolition	_____	\$25.	\$_____
New septic system/existing structure (Tank & leach field)	_____	\$50.	\$_____
Replace existing septic tank only	_____	\$50.	\$_____
Solid fuel burning device	_____	\$25.	\$_____
Storage shed 144 S.F. and larger (Without a permanent foundation)	_____	\$25.	\$_____
Swimming pools, Ramps, Stairs	_____	\$25	\$_____
Permit Renewal (See Attached)	<u>X</u>	\$50.	\$ <u>50<sup>00</sup></u>
Copy of Certificate of Occupancy	_____	\$10.	\$_____

*ONCE BUILDING PERMIT IS RENEWED AND UPDATED PLEASE SEND ME THE PERMIT SO I CAN FORWARD A COPY TO THE HOUSE MANUFACTURER.*  
T.Y. *Joseph M. [Signature]*

Check payable to Wells Town Clerk	Total	\$ <u>50<sup>00</sup></u>
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Other (please describe) \_\_\_\_\_

I hereby certify that the proposed work is authorized by the owner of record and that I am, or have been authorized by, the owner to make this application as the owner's agent. I/we agree to adhere to and conform to all NYS Building and Code and Fire Prevention laws and any and all applicable laws of this jurisdiction,

Signature of Applicants <u>Joseph M. Cotugno Jr.</u> <u>Jay A. Cotugno</u>	Address (If different from above) <u>5 Robin Drive</u>
Application Date <u>10/13/18</u>	<u>Voorheesville, N.Y. 12186</u>

\*\*\*\*\* For department use only \*\*\*\*\*

Building Permit Application Fee Total Due: _____	<input type="checkbox"/> Cash <input type="checkbox"/> Check # _____ <input type="checkbox"/> Money Order, # _____
Received by: _____ <p style="text-align: center;">Town Clerk</p>	
<p style="text-align: center;"><b>Validation</b></p> Building Permit Issued <input type="checkbox"/> Yes <input type="checkbox"/> No  Permit No. _____  Date: _____	Approved by:  _____ Building Code Enforcement Officer

# **EXHIBIT "I"**

# BUILDING PERMIT

## JOB WEATHER CARD

APPLICANT J. J. Williams DATE 10/1/74 PERMIT NO. 215-9  
 ADDRESS (NO.) (STREET) (CONTR'S LICENSE)

PERMIT TO stone mason (TYPE OF IMPROVEMENT) (NO.) (PROPOSED USE) STORY 1 NUMBER OF DWELLING UNITS 1

AT (LOCATION) 102-20 Avenue Street Road (NO.) (STREET) ZONING DISTRICT R-1  
 BETWEEN (CROSS STREET) AND (CROSS STREET)

SUBDIVISION 100-000-1-1-111 LOT BLOCK LOT SIZE

BUILDING IS TO BE FT. WIDE BY FT. LONG BY FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION

TO TYPE USE GROUP BASEMENT WALLS OR FOUNDATION (TYPE)

REMARKS:

AREA OR VOLUME (CUBIC/SQUARE FEET) ESTIMATED COST \$ PERMIT FEE \$

OWNER ADDRESS BUILDING DEPT. BY

THIS PERMIT CONVEYS NO RIGHT TO OCCUPY ANY STREET, ALLEY OR SIDEWALK OR ANY PART THEREOF, EITHER TEMPORARILY OR PERMANENTLY. ENCROACHMENTS ON PUBLIC PROPERTY, NOT SPECIFICALLY PERMITTED UNDER THE BUILDING CODE, MUST BE APPROVED BY THE JURISDICTION. STREET OR ALLEY GRADES AS WELL AS DEPTH AND LOCATION OF PUBLIC SEWERS MAY BE OBTAINED FROM THE DEPARTMENT OF PUBLIC WORKS. THE ISSUANCE OF THIS PERMIT DOES NOT RELEASE THE APPLICANT FROM THE CONDITIONS OF ANY APPLICABLE SUBDIVISION RESTRICTIONS.

- MINIMUM OF THREE CALLED INSPECTIONS REQUIRED FOR ALL CONSTRUCTION WORK:
1. FOUNDATIONS OR FOOTINGS.
  2. PRIOR TO COVERING STRUCTURAL MEMBERS (READY FOR LATH OR FINISH COVERING).
  3. FINAL INSPECTION BEFORE OCCUPANCY.

APPROVED PLANS MUST BE RETAINED ON JOB AND THIS CARD KEPT POSTED UNTIL FINAL INSPECTION HAS BEEN MADE. WHERE A CERTIFICATE OF OCCUPANCY IS REQUIRED, SUCH BUILDING SHALL NOT BE OCCUPIED UNTIL FINAL INSPECTION HAS BEEN MADE.

WHERE APPLICABLE SEPARATE PERMITS ARE REQUIRED FOR ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATIONS.

### POST THIS CARD SO IT IS VISIBLE FROM STREET

BUILDING INSPECTION APPROVALS	PLUMBING INSPECTION APPROVALS	ELECTRICAL INSPECTION APPROVALS
1	1 Water main installed	1 Electrical service installed
2	2 Septic system installed	2
3	HEATING INSPECTION APPROVALS	REFRIGERATION INSPECTION APPROVALS
	1	1
OTHER	2	2

WORK SHALL NOT PROCEED UNTIL THE INSPECTOR HAS APPROVED THE VARIOUS STAGES OF CONSTRUCTION.

**PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION WORK IS NOT STARTED WITHIN SIX MONTHS OF DATE THE PERMIT IS ISSUED AS NOTED ABOVE.**

INSPECTIONS INDICATED ON THIS CARD CAN BE ARRANGED FOR BY TELEPHONE OR WRITTEN NOTIFICATION.

FORM NO. I.C.C. - BP 2003



# **EXHIBIT "J"**

Certificate of Occupancy  
Town of Wells, Hamilton County, New York  
12190

Owner: JOE COTAZINO

Address: 5 Robin Drive, Voorheesville, NY

The property located at: 102.25 Kibler Pt Rd  
Has been found to comply with the State of New York Fire  
Prevention and Building Codes for the following uses:

Residential one family home

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Granted on this date: 8/15/2019

Code Enforcement Official: [Signature]

Comments: NICE HOME

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# **EXHIBIT "K"**



**Adirondack  
Park Agency**

ANDREW M. CUOMO  
Governor

TERRY MARTINO  
Executive Director

*Rec'd  
8/22/19*

August 21, 2019

Mr. Joseph Cotazino, Jr. and Ms. Joy Cotazino  
5 Robin Drive  
Voorheesville, NY 12186

**RE: Enforcement File E2019-0127  
Tax Map Parcel 130.18-1-17.110**

Dear Mr. and Ms. Cotazino:

During site visits on August 20, 2018 and June 11, 2019, Agency staff notified Mr. Cotazino that a deck attached to the shoreline side of the single-family dwelling on the above-referenced property would be located within the shoreline setback of Lake Algonquin, and would therefore require a variance from the shoreline restrictions administered by the Adirondack Park Agency. On August 13, 2019, Agency staff observed that construction of the deck had been undertaken and was ongoing.

*- told VARIANCE  
Not Deeded  
6/20/18.*

Please find enclosed a proposed Settlement Agreement intended to resolve this matter; this agreement requires removal of the deck and payment of a civil penalty. If the agreement is acceptable to you, please sign both copies before a notary public and return them to the Agency by September 4, 2019. Agency staff will then execute the two original agreements and send you one for your files.

Please do not hesitate to contact me with any questions.

Sincerely,

John M. Burth  
Environmental Program Specialist 3

JMB:TSF:ap  
Enclosures

**STATE OF NEW YORK: ADIRONDACK PARK AGENCY**

In the matter of the apparent violation of Section 806 of the Adirondack Park Agency Act on lands owned by:

**SETTLEMENT AGREEMENT**  
Agency File E2019-127

**JOSEPH COTAZINO, JR**  
**JOY COTAZINO**

Respondents, on property located in the Town of Wells, Hamilton County (Tax Map Parcel 130.18-1-17.110)  
Land Use Area: Hamlet

**WHEREAS:**

1. Pursuant to Section 806 of the Adirondack Park Agency Act, a variance is required from the Adirondack Park Agency prior to the construction of any structure greater than 100 square feet in size within 50 feet of the mean high-water mark of any lake on Hamlet lands in the Adirondack Park.
2. Tax Map Parcel 130.18-1-17.100 (Lot 17.100) is an approximately 0.24 acre property located on Hamlet lands and containing shoreline on Lake Algonquin.
3. Respondents are the current owners of Lot 17.100, as described in deeds recorded in Book 208, Page 898 and in Book 234, Page 549 in the Hamilton County Clerk's Office.
4. Agency investigation reveals that, in 2019, Respondents constructed a single-family dwelling on Lot 17.100, with a deck attached to the shoreline side of the dwelling. This structure is greater than 100 square feet in size and located within 50 feet of the mean high-water mark of Lake Algonquin.

*Resolved 6/20/18 w/o variance*

No variance was obtained from the Agency prior to the construction of this structure within 50 feet of the mean high-water mark of the lake.

*Told I did not need one.*

5. Respondents desire to resolve this matter and agree to be bound by the terms of this Settlement Agreement.

**NOW, THEREFORE, THE AGENCY AND RESPONDENTS AGREE AS FOLLOWS:**

6. By October 31, 2019, Respondents shall remove the attached deck from the single-family dwelling on Lot 17.100. Respondents shall notify the Agency Enforcement Program upon completion of the work required by this Paragraph 6 so that a compliance inspection may be undertaken.
7. By October 31, 2019, Respondents shall pay a civil penalty to the State of New York in the amount of \$1000 in settlement of the violation alleged herein. Payment of this penalty shall be by check or money order and shall be transmitted to the Agency c/o Enforcement Division.
8. This Settlement Agreement resolves the violation cited herein. This Agreement shall not be construed as limiting the Agency's right to seek additional relief or penalties for any violation on Lot 17.100 of the Adirondack Park Agency Act or the Freshwater Wetlands Act not cited herein.



**AGREEMENT**

Respondents agrees to the terms set forth in this Settlement Agreement to resolve the matter of Adirondack Park Agency File E2019-127.

By: \_\_\_\_\_  
Joseph Cotazino, Jr.

State of                    )  
                                  ) ss:  
County of                 )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State personally appeared \_\_\_\_\_, 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

By: \_\_\_\_\_  
Joy Cotazino

State of                    )  
                                  ) ss:  
County of                 )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State personally appeared \_\_\_\_\_, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public