

THIS IS A TWO-SIDED DOCUMENT

 Adirondack Park Agency P.O. Box 99, 1133 NYS Route 86 Ray Brook, New York 12977 Tel: (518) 891-4050 www.apa.ny.gov	APA Order Granting Variance 2025-0169
	Date Issued: September 23, 2025
In the Matter of the Application of SHAWN M. DONAHUE ANGELA C. DONAHUE for a variance pursuant to Executive Law §806	To the County Clerk: Please index this Order in the grantor index under the following name(s): 1. Shawn M. Donahue 2. Angela C. Donahue

SUMMARY AND AUTHORIZATION

Shawn M. Donahue and Angela C. Donahue ("applicants") are granted a variance from the 75-foot shoreline structure setback required by Section 806(1)(a)(2) of the Executive Law (Adirondack Park Agency Act or APA Act) subject to the conditions herein. This variance allows the replacement and expansion of an existing retaining wall located approximately 30.5 feet from the mean high water mark of Kenneyetto Creek, in an area classified Rural Use by the Official Adirondack Park Land Use and Development Plan Map in the Town of Broadalbin, Fulton County.

Nothing in this Order shall be construed to satisfy any legal obligations of the applicants to obtain any governmental approval or permit from any entity other than the Agency, whether federal, State, regional or local.

APPLICABLE LAWS

Section 806(1)(a)(2) of the APA Act establishes a minimum shoreline setback of 75 feet from the mean high water mark of any shoreline, including Kenneyetto Creek, for all accessory structures and principal buildings greater than 100 square feet in size. The applicants have requested a variance from this structure setback requirement pursuant to § 806(3)(a) of the APA Act.

RELEVANT FACTS AND BACKGROUND

Variance Site

The variance site is a 0.60-acre parcel of land identified on Town of Broadalbin Tax Map Section 138.1, Block 1, as Parcel 20. Title was conveyed from Central National Bank to Shawn M. Donahue and Angela C. Donahue by deed dated December 11, 2003, and recorded December 22, 2003, in the Fulton County Clerk's Office at Book 960, Page 116.

The variance site is located in a residential neighborhood accessed from Stevers Mills Road and contains approximately 156 feet of shoreline along Kenneyetto Creek. The site is improved by a circa-1870 single family dwelling with an attached garage. A pre-existing retaining wall is attached to the northern side of the existing dwelling. The pre-existing retaining wall is located

55 feet from the mean high water mark of Kenneyetto Creek, entirely within the Agency's 75-foot shoreline setback, and measures 6 feet tall, 71 feet long and 1 foot 10 inches wide (130 square feet in plan view).

Native trees and shrubs partially screen existing structures on the variance site from adjoining properties and Kenneyetto Creek.

Variance Request

The applicants request approval to replace and expand the existing retaining wall on the variance site. The wall is located on the northern side of the existing dwelling and within the 75-foot shoreline setback from Kenneyetto Creek. The replacement wall will be located 24.5 feet closer to Kenneyetto Creek than the existing retaining wall and will be situated entirely within the 75-foot shoreline setback. The replacement wall will be approximately 30.5 feet from the mean high water mark of Kenneyetto Creek at its closest point.

The replaced and expanded wall will measure 7.5 feet high, 127.5 feet long, and 2 feet 4 inches wide, for a total of 298 square feet in plan view - 168 square feet larger than the existing retaining wall. The total width of the dwelling with its attached retaining wall, as viewed from the shoreline, will be reduced from 90 feet 8 inches to 88 feet.

Replacement of the retaining wall is necessary to support fill associated with the replacement of the failing on-site wastewater treatment system that serves the existing dwelling. The existing system is located approximately 8 feet from Kenneyetto Creek. The new and enhanced on-site wastewater treatment system will be located approximately 30.5 feet from Kenneyetto Creek.

The variance proposal is shown on a seven-sheet plan set titled "Onsite Wastewater Treatment System Design", prepared by Quiri Engineering, and dated October 29, 2023 (Project Plan). A reduced-scale copy of Sheet 3 of the Project Plan (Site Plan) is attached as a part of this Order for reference. The original, full-scale plan described in this paragraph is the official plan for the variance, with copies available upon request from Adirondack Park Agency headquarters in Ray Brook, New York.

PROCEDURAL HISTORY

Following receipt of the variance application, the Agency notified all parties as required by Agency regulations. A public hearing was held on September 4, 2025. The hearing was attended by Agency staff and applicant Shawn M. Donahue.

One comment letter was received that expressed concern for any dredging or altering of Kenneyetto Creek.

VARIANCE FACTORS

The Agency may grant a variance where there are practical difficulties in carrying out the restrictions set forth in Section 806(1)(a)(2) of the APA Act.

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

The public purposes served by the Agency's structure setback requirements include protection of the water quality and aesthetics of Kenneyetto Creek.

Denial of the variance request would prevent the applicants from replacing and expanding the existing retaining wall needed to support the fill associated with replacement of the existing on-site wastewater treatment system located approximately 8 feet from Kenneyetto Creek with a new and improved on-site wastewater treatment system located 30.5 feet from Kenneyetto Creek.

As designed, the project will protect the water quality of Kenneyetto Creek by allowing the enhanced on-site wastewater treatment system to be supported by the replaced and expanded retaining wall. The quality of the shoreline will be protected as the new wall and expansion will be backdropped by the existing dwelling and vegetation when viewed from Kenneyetto Creek.

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

Although the overall height, length, and width of the retaining wall are increasing, the total width of the existing dwelling with attached retaining wall, as viewed from the shoreline, will be reduced from 90 feet 8 inches to 88 feet. Expanding the retaining wall will also allow the on-site wastewater treatment system to be re-located farther from Kenneyetto Creek - from 8 feet to 30.5 feet from the mean high water mark – improving compliance with the Agency's shoreline setback standards. There is no location on the property where the on-site wastewater treatment system can be replaced further from the mean high water mark.

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

Single family dwellings and residential uses characterize the area surrounding the variance site. The applicants have designed the reduction in shoreline setback distance and the expansion of the retaining wall footprint in a manner that maintains the character and appearance of the residential shoreline by decreasing the total width of the existing retaining wall and maintaining a majority of existing vegetation.

Although the expanded retaining wall will be visible from Kenneyetto Creek, it will be backdropped by the existing dwelling when viewed from the creek and partially screened from adjoining properties by the existing dwelling and vegetation. The expansion will not affect views of the creek from neighboring properties.

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

There are no non-jurisdictional alternatives for expanding the footprint of the existing retaining wall because it is located entirely within the 75-foot shoreline setback of Kenneyetto Creek. There is no location on the property where the on-site wastewater treatment system can be replaced outside of the shoreline setback.

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

The existing single family dwelling was constructed circa 1870, prior to the effective date of the Adirondack Park Agency Act, and the attached retaining wall is located entirely within the shoreline setback. The applicants purchased the property in 2003.

§ 576.1(c)(5): Whether granting the variance will adversely affect the natural, scenic, and open space resources of the Park and any adjoining water body due to erosion, surface runoff, subsurface sewage effluent, change in aesthetic character, or any other impacts which would not otherwise occur.

Construction of the expanded retaining wall without restrictions on vegetative cutting, lighting, and color of building materials could result in impacts to the aesthetic character of the shoreline of Kenneyetto Creek.

§ 576.1(c)(6): Whether the imposition of conditions upon the granting of the variance will ameliorate the adverse effects noted above.

The potential for adverse effects to the water quality and aesthetics of Kenneyetto Creek will be ameliorated by compliance with the following conditions:

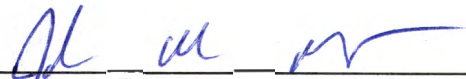
1. This authorization shall expire unless recorded in the Fulton County Clerk's Office within 60 days of the date of issuance.
2. This Order is binding on the applicants, all present and future owners of the project site, and all persons undertaking all or a portion of the project
3. The authorization to undertake construction of the plan view expansion of the retaining wall closer to Kenneyetto Creek shall expire five years from the date this Order is recorded in the Fulton County Clerk's office, unless construction of the structure has been completed in accordance with the Project Plan by that date or written authorization has been obtained from the Agency extending the deadline for construction.
4. The project shall be undertaken as depicted on the plan sheets referenced herein. Any changes to the locations, sizes, dimensions, or other aspects of the structures shall require a new or amended Agency Order or a letter of compliance.
5. All exterior building materials of the retaining wall authorized herein shall be a dark shade of green, grey, or brown.
6. Between the expanded retaining wall and Kenneyetto Creek, no trees, shrubs, or other woody stemmed vegetation may be cut, culled, trimmed, pruned or otherwise removed or disturbed without prior written Agency authorization, except for the removal of dead or diseased vegetation, rotten or damaged trees, or any other vegetation that presents a safety or health hazard.
7. Any new free-standing or building-mounted outdoor lights associated with the retaining wall authorized herein with the shall employ full cut-off fixtures that are fully shielded to direct light downward and not into the sky or toward Kenneyetto Creek or adjoining property.

CONCLUSION

The Agency has considered all of the standards and factors for issuance of a variance as set forth in 9 NYCRR Part 576. The Agency hereby finds that the applicant's variance request meets the approval criteria, provided the authorized activities are undertaken as described herein and in compliance with the conditions set forth above.

ORDER issued this 23rd day
of September, 2025.

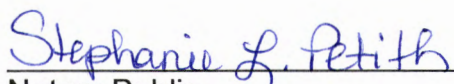
ADIRONDACK PARK AGENCY

BY: 
John M. Burth
Deputy Director, Regulatory Programs

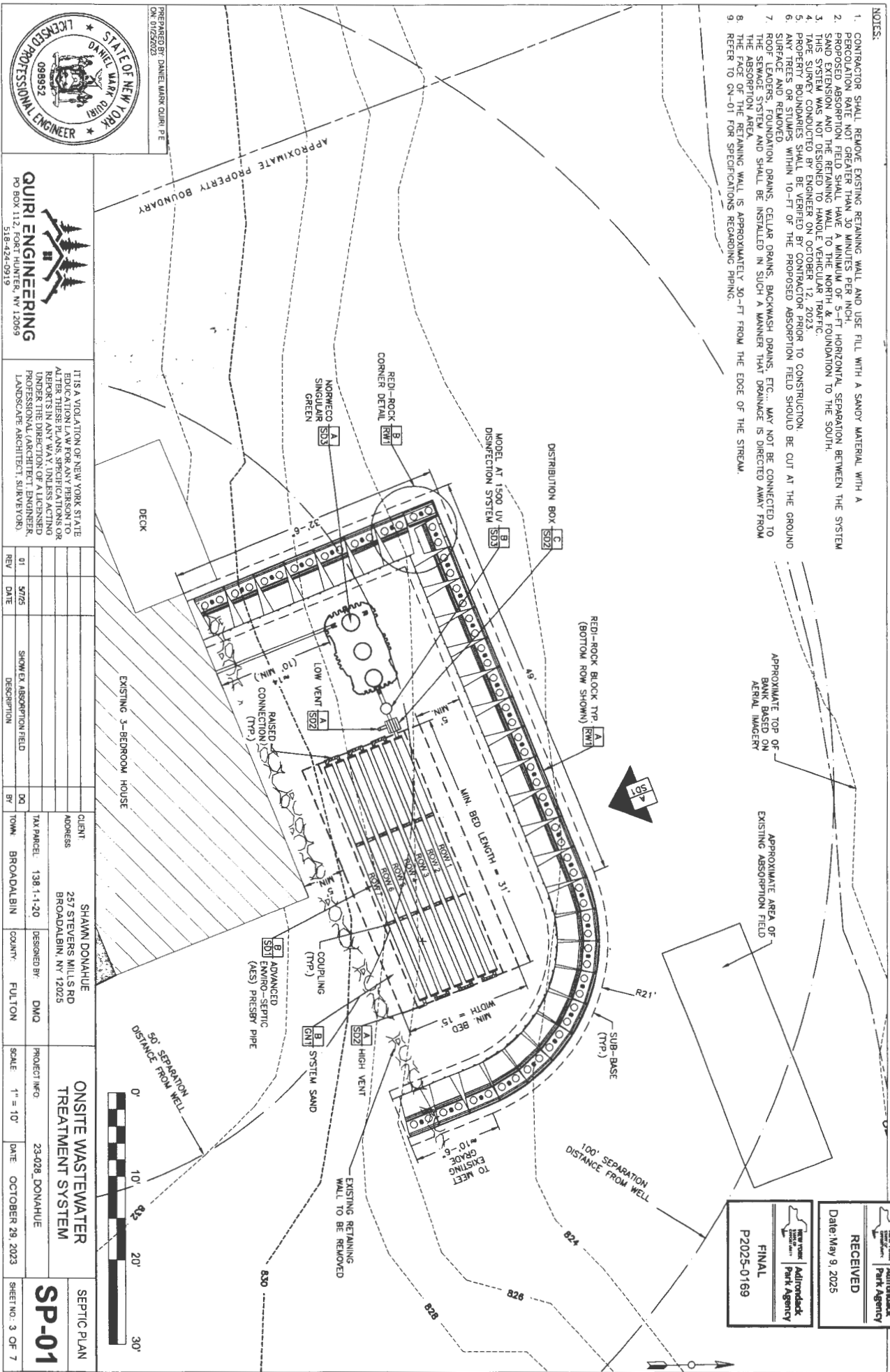
**STATE OF NEW YORK
COUNTY OF ESSEX**

On the 23rd day of September in the year 2025, before me, the undersigned, a Notary Public in and for said State, personally appeared John M. Burth, 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 they executed the same in their capacity, and that by their signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

STEPHANIE PETITH
Notary Public, State of New York
Reg. No. 01PE6279890
Qualified in Essex County
Commission Expires April 15, 2026


Notary Public

- NOTES:
1. CONTRACTOR SHALL REMOVE EXISTING RETAINING WALL AND USE FILL WITH A SANDY MATERIAL WITH A PERCOLATION RATE NOT GREATER THAN 30 MINUTES PER INCH.
 2. PROPOSED ABSORPTION FIELD SHALL HAVE A MINIMUM OF 5'-FT HORIZONTAL SEPARATION BETWEEN THE SYSTEM SAND EXTENSION AND THE RETAINING WALL TO THE NORTH & FOUNDATION TO THE SOUTH.
 3. THIS SYSTEM WAS DESIGNED FOR A 1500 GPD SYSTEM.
 4. THIS SYSTEM WAS DESIGNED FOR A 1500 GPD SYSTEM.
 5. PROPERTY BOUNDARIES SHALL BE VERIFIED BY CONTRACTOR PRIOR TO CONSTRUCTION.
 6. ANY TREES OR STUMPS WITHIN 10'-FT OF THE PROPOSED ABSORPTION FIELD SHOULD BE CUT AT THE GROUND SURFACE AND REMOVED.
 7. THE SEWAGE SYSTEM AND SHALL BE INSTALLED IN SUCH A MANNER THAT DRAINAGE IS DIRECTED AWAY FROM THE ABSORPTION AREA.
 8. THE FACE OF THE RETAINING WALL IS APPROXIMATELY 30'-FT FROM THE EDGE OF THE STREAM.
 9. REFER TO GN-01 FOR SPECIFICATIONS REGARDING PIPING.



QURI ENGINEERING
 PO BOX 112, FORT HUNTER, NY 12093
 518-424-0919

IT IS A VIOLATION OF NEW YORK STATE EDUCATION LAW FOR ANY PERSON TO ALTER THESE PLANS, SPECIFICATIONS OR UNDER THE DIRECTION OF A LICENSED PROFESSIONAL ARCHITECT, ENGINEER, LANDSCAPE ARCHITECT, SURVEYOR.

REV	DATE	DESCRIPTION	BY
01	5/7/25	SHOW EX ABSORPTION FIELD	DO

CLIENT: SHAWN DONAHUE
 ADDRESS: 257 STEVENS HILLS RD
 BROADALBIN, NY 12025

PROJECT INFO: 23-028 DONAHUE
 SCALE: 1" = 10'
 DATE: OCTOBER 29, 2023
 SHEET NO.: 3 OF 7

RECEIVED
Date: May 9, 2025

FINAL
P2025-0169