



**EH Town Zoning Board of Appeals**

300 Pantigo Place  
East Hampton, NY 11937

Denise Savarese  
Telephone: (631) 324-8816

**EH Town Zoning Board of Appeals meeting of October 3,  
2017  
East Hampton, New York**

**I. CALL TO ORDER**

12:00 AM Meeting called to order on October 3, 2017 at Town Hall Meeting Room, 159 Pantigo Road, East Hampton, NY.

<b>Attendee Name</b>	<b>Present</b>	<b>Absent</b>	<b>Late</b>	<b>Arrived</b>
Chairman John P. Whelan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Board Member Theresa Berger	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Board Member Roy Dalene	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Board Member Cate Rogers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Board Member David Lys	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

**II. SCHEDULED PUBLIC HEARINGS:**

**A. AAS184 LLC**

APPLICANT: AAS184, LLC

SIZE/LOCATION: 32,800 sq. ft. (total), 184 Old Montauk Highway, Montauk (300-184-03-21)

DESCRIPTION: To demolish an existing approximately 2,112 sq. ft. multi story residence and construct

a new 2,476 sq. ft. two story residence with approximately 2,375 sq. ft. of terraces, walkways, and stairs, an outdoor shower, retaining walls, a 1,908 sq. ft. driveway, and new sanitary system within jurisdiction of bluffs, the toe of bluff, and beach vegetation.

RELIEF SOUGHT: Five variances and a Natural Resources Special Permit pursuant to ?255-4-20 of the East Hampton Town Code are required for this application. Variances of approximately 51.7?, 66.6?, 66.7?, 52.2?, and 57.4? are required from ?255-4-40C of the Town Code in order to construct the residence, walkways/terrace/patio, retaining wall, outdoor shower, and sanitary system approximately 73.9?, 57.4?, 58.3?, 72.8?, and 67.6? respectively, from the toe of bluff where 125? setbacks are required, and any other relief necessary.

ZONING DISTRICT: A Residence Zone X Flood Zone

SEQRA CLASS: Type II

**B. East Hampton Ventures LLC**

APPLICANT: East Hampton Ventures LLC

SIZE/LOCATION: 41,765 sq. ft. total, 26 Fenmarsh Rd, Map No. 2831; Map of Clearwater Beach Sec. II, Lot 259, Springs (300-039-01-04)

DESCRIPTION: To renovate the existing 2,118 sq. ft. house, to convert a 91 sq. ft. second story deck into living space, to construct a 281 sq. ft. two story addition, to resurface and construct an additional 40 sq. ft. of new decking around the outdoor shower, to rebuild swimming pool and to resurface and increase pool decking 46 sq. ft., to

relocate the pool equipment, and to create a new 4 ft. wide path to access Hog Creek on a parcel of land with wetlands.

RELIEF SOUGHT: A Natural Resources Special Permit pursuant to ? 255-4-20 and four variances from ?

255-4-30 (wetland setbacks) of the Town Code. Variances of 17.4 ft., 24.6 ft., 46.6 ft., and 38 sq. ft. are required to respectively convert an existing 2nd floor deck to living space 82.6 ft., construct new shower decking 75.4 ft., add on to pool decking 53.5 ft., and replace pool 62 ft. from the wetlands where a 100 ft. minimum setback is required.

ZONING DISTRICT: B Residence AE6- X flood

SEQRA CLASS: Type II

**i. Technical Analysis Memorandum**

Technical Analysis Memo

Lead Agency: (not applicable)

Planner: Lisa D?Andrea

Date completed: June 14, 2017 Site Plan

SEQRA class: Type IISub Waiver

Physical Location: 26 Fenmarsh Rd. Subdivision

School District: Springs Special Permit

Zoning District: B Residence Zone Change

Overlay District: Harbor Protection Overlay District (HPOD) Variance XX

Tax Map Number: 300-039-01-04 Natural Resources

Special Permit XX

Applicant: East Hampton Ventures LLC

c/o Due East Planning

PO Box 4144

East Hampton, N.Y. 11937

Telephone: 631-604-6288

FEMA ZONE: X Flood Zone; AE 6 Flood Zone

Soil Type: Montauk loamy sand, sandy variant, 8-15% slopes (MnC); Fill land (Fd)

Map of Property: Map No. 2831; Map of Clearwater Beach Sec. II, Lot 259

Size of Parcel: 41,765 sq. ft. total

Project Description: To renovate the existing 2,118 sq. ft. house, to convert a 91 sq. ft. second story deck into living space, to construct a 281 sq. ft. two story addition, to resurface and construct an additional 40 sq. ft. of new decking around the outdoor shower, to rebuild the swimming pool and to resurface and increase pool decking 46 sq. ft., to relocate the pool equipment, and to create a new 4 ft. wide path to access Hog Creek on a parcel of land with wetlands.

Relief Requested: A Natural Resources Special Permit pursuant to ? 255-4-20 and four variances from ? 255-4-30 (wetland setbacks) of the Town Code. Variances of 17.4 ft., 24.6 ft., 46.6 ft., and 38 sq. ft. are required to respectively convert an existing 2nd floor deck to living space 82.6 ft., construct new shower decking 75.4 ft., add on to pool decking 53.5 ft., and replace pool 62 ft. from the wetlands where a 100 ft. minimum setback is required.

#### Property and History:

Large mature oaks and a thin understory characterize the moderately sloping terrain in the wooded areas in the neighborhood. Tidal wetlands of Hog Creek occur on the western portion of the parcel. The western portion of the property is in FEMA AE 6 flood zone. The parcel is located within the Harbor Protection Overlay District contiguous with the waters of

Hog Creek. Hog Creek is a direct conduit to the waters of Gardiner's Bay and a component of the Peconic Estuary Critical Environmental Area.

A ZBA determination filed December 5, 1984 granted a Special Permit pursuant to §153-40 of the Town Code to construct a 3,565 sq. ft. one story residence, 1905 sq. ft. of attached deck and a 675 sq. ft. pool. The Special Permit required a scenic easement be placed over the wetlands including a 25 ft. wetland buffer as a condition of the permit. No portion of the deck or pool was allowed to be closer than 75 ft. from the wetland line.

A building permit was issued June 25, 1987 for a 1,608 sq. ft. one story residence with a 512 sq. ft. pool and 736 sq. ft. deck. Another building permit was issued October 15, 1987 to construct a 2,118 sq. ft. two story residence with a 576 sq. ft. attached garage. Two weeks later on October 30, 1987 a Certificate of Occupancy (CO) was issued for the 2,118 sq. ft. two story residence. It appears the attached garage was not constructed. The pool and deck were not included on that CO, although the survey attached to the CO does depict the pool and deck. The pool and deck are depicted on that survey at 75 ft. or greater from the wetland line. It should be noted that the existing pool and deck are closer than 75 ft. from the wetland according to the wetland verification by the Town dated December 20, 2016.

On November 19, 2002 a building permit was issued for the construction of a 443 sq. ft. detached garage and a CO for the detached garage was issued the same day.

The current owner acquired the property in 2003.

A memo from the Planning Department dated January 18, 2017 states that the premises are overcleared approximately 2,146 sq. ft.

All proposed and existing structures are depicted on a Saskas Surveying survey dated revised May 22, 2017 and received by the Board on May 23. The Perlick residence building plans by Barnes Coy Architects were received March 15, 2017 by the Board.

#### Planning Department Analysis and Recommendations for the Board's Consideration:

The applicant is before the Board requesting a NRSP and four variances to renovate and add on to the existing residence.

The applicant is proposing to increase the Gross Floor Area (GFA) from 2,807 sq. ft. to 3,309 sq. ft. or about a 17% increase. The property is in Harbor Protection Overlay District and when GFA is increased and a NRSP is required and the sanitary system does not meet Suffolk County Health Department (SCHD) minimum standards a sanitary upgrade is required. The applicant submitted a SCDH Certification of Existing Subsurface Sewage Disposal and Water Supply Facilities dated May 5, 2017. It appears that the current sanitary system does meet the minimum SCHD standards and an upgrade will not be required.

Some of the increase in GFA will result from the conversion of a second story deck into habitable space within the existing footprint. The two story addition on the south side of the house will increase the footprint but the increase will be landward of the existing footprint. Building coverage will increase by 138 sq. ft. On the northern side of the house the applicant is proposing to renovate and increase the decking around the outdoor shower. This will add 40 sq. ft. to the total coverage. There is a request for a variance to extend the pool deck on the south side increasing total coverage another 46 sq. ft. The applicant should explain the necessity of this expansion. The deck appears to be of adequate size for use and the enlargement variance request seems frivolous.

The Planning Department requested a construction protocol for the rebuilding of the pool. The Planning Department's concern here is that when the pool is being reconstructed, will the surrounding deck survive or will this project result in an entirely new pool and pool deck? The applicant should provide assurance to the Board that the pool can be reconstructed within the existing deck. If it can't be, there are more conforming locations on the property for a pool and deck. No dry well in association with the pool water has been indicated on the survey. The Planning Department recommends that a dry well for the discharge of the pool water be installed at least 100 ft. from the wetland if there is none.

In the project description provided by Due East Planning a 4 ft. wide path for access to Hog Creek is being proposed. Reasonable access to Hog Creek is permitted in the scenic easement. The applicant should apprise the Board of the proposed path location and it should be depicted on the survey.

The Board must determine if the project complies with the Natural Resources Special Permit standards of ? 255-5-40 in order to issue a NRSP permit.

The applicant must demonstrate compliance with the Variance standards of ? 255-8-50 of the Town Code in order to be eligible for the issuance of the requested variances. The Board must determine whether the variances sought are the minimum necessary

#### Recommended Project Conditions:

a. Sediment control fencing consisting of staked straw bales or silt mesh fencing shall be erected as depicted on the attached Planning Department sketch dated June 14, 2017 adapted from the approved survey to prevent sedimentation of the wetlands. The fencing shall be installed and maintained in accordance with the New York State Standards and Specifications for Erosion and Sediment Control manual prior to the commencement and for the duration of construction activities. The fencing shall be repaired or replaced as necessary to maintain proper function.

b. Prior to the issuance of a building permit, the Board, or their delegate, shall inspect the project limiting fencing for proper installation.

c. A revegetation plan that includes the species, size and spacing for the 187 sq. ft. required to be in compliance with the maximum clearing permitted shall be submitted to the

Board for approval prior to the issuance of a building permit. The plan shall be implemented and inspected by the Board or their delegate prior to the issuance of a Certificate of Occupancy.

d. The residence shall be furnished with gutters and leaders to direct stormwater from roofs into one or more catchment basins. Said catchment basin or basins should have a combined volume (in cubic feet) equal to the surface area of the roof (in square feet), divided by six. Said catchment basin should be made available for inspection by the building inspector prior to backfill.

e. All structures should be situated at least 2' above the seasonal high groundwater table.

f. The swimming pool should utilize a chlorine reducing sanitation system and all pool water should be discharged into a drywell located at least 100' from the wetlands on the survey.

g. The applicant shall prepare and submit a declaration of covenants and restrictions, incorporating the provisions of the appropriate paragraphs of this determination in standard form acceptable to and approved by Counsel to this Board. The said declaration shall provide for its modification or termination only upon the approval of the East Hampton Town Zoning Board of Appeals, after a public hearing held on ten (10) days' notice. Said declaration, after approval by counsel, shall be recorded at the Office of the Suffolk County Clerk.

h. An Article 25 Tidal Wetland permit or statement of non-jurisdiction should be obtained from the New York State Department of Environmental Conservation (NYSDEC) prior to the issuance of a building permit for this project.

i. A copy of the Natural Resources Special Permit and the approved survey and building plans shall be available on the parcel at all times.

### **C. *Richard Magrino***

APPLICANT: Richard Magrino

SIZE/LOCATION: 7,320 sq. ft. (total), 76 Benson Drive, Oceanside at Montauk, lot 114, map # 2730,

Montauk (300-030-05-2.2)

DESCRIPTION: To allow a 368 sq. ft. deck addition to remain and an approximately 64 sq. ft. shed to

remain relocated within jurisdiction and setbacks of freshwater wetlands.

RELIEF SOUGHT: Two variance and a Natural Resources Special Permit pursuant to ?255-4-20 of the

East Hampton Town Code are required for this application. Variances of 74? and 46.7?

are require from ?255-4-30 of the Town Code to allow the shed relocation and the deck addition to remain 26? and 53.3? from freshwater wetlands where a 100? setback is required, and any other relief necessary.

ZONING DISTRICT: B Residence Zone X Flood Zone

SEQRA CLASS: Type II

**i. Technical Analysis Memorandum**

Technical Analysis Memo

Lead Agency: (not applicable)

Planner: Tyler Borsack

Date completed: July 17, 2017 Site Plan

SEQRA class: Type II Sub Waiver

Physical Location: 76 Benson Drive Subdivision

School District: Montauk Special Permit

Zoning District: B Residence Zone Change

Overlay District: N/A Variance XX

Tax Map Number: 300-030-05-2.2 Natural Resources

Applicant: Richard Magrino Special Permit XX

Magrino Family 2012 Irrevocable Other:

Income Only Trust

38 Sterling Avenue

Harrison, NY 10528

Telephone: 914-760-4680

FEMA ZONE: X Flood Zone

Soil Type: Bridgehampton silt loam, till substratum, 2-6% slopes (BhB)

Map of Property: Oceanside at Montauk, lot 114, map # 2730

Size of Parcel: 7,320 sq. ft. (total)

**Project Description:**

To allow a 368 sq. ft. deck addition to remain and an approximately 64 sq. ft. shed to remain relocated within jurisdiction and setbacks of freshwater wetlands.

**Relief Requested:**

Two variance and a Natural Resources Special Permit pursuant to ?255-4-20 of the East Hampton Town Code are required for this application. Variances of 74? and 46.7? are require from ?255-4-30 of the Town Code to allow the shed relocation and the deck addition to remain 26? and 53.3? from freshwater wetlands where a 100? setback is required, and any other relief necessary.

**Property Conditions and History:**

The property is currently improved with an approximately 768 sq. ft. one story residence with decking, shed, and driveway. No C.O. has been issued on this parcel. The property appeared before the Zoning Board twice previously in 1977 and 1981. All of the existing structures are shown on the James P. Walsh Land Surveyor, PC survey dated revised May 23, 2016.

**Planning Department Analysis and Recommendations for the Boards Consideration:**

The subject property is located on Benson Drive, in Montauk. The applicants are currently requesting to keep their approximately 368 sq. ft. deck addition and relocated/reconstructed shed within minimum setbacks to wetlands to the south. An approximately 210 sq. ft. deck has existed on the property since the construction of the original residence with an addition to that decking at some point after 1984. The original decking was located on the west side of the residence with the additional decking on the west and southern side of the residence. The decking that relief is requested for is very



similar to decking of other properties in the neighborhood and those directly adjacent to the subject parcel. While within close proximity to the wetlands to the south the deck addition is a fairly small area of decking and in one of the only locations available for any additional decking. Based on aerial images, a shed has likely existed at the rear of the property since the residence was first in place in the early 1980s, this shed was relocated and/or reconstructed sometime between 2013 and 2016. The shed meets the required side and rear yard lot line setbacks but is very nonconforming to wetland setbacks with much more conforming locations available closer to the residence, although the existing shed had similar setbacks to the wetlands.

The Board should consider what mitigation could be offered in this application. A revegetation is likely one of the easiest and most effective mitigation measures available, aside from relocation/removing the structures, to help reduce runoff, improve the existing environmental conditions on the property, and increase conformity with the Town Code. The property has an existing clearing of 7,320 sq. ft. or 100% of the property.

The premises are located within the "Ditch Plains" area of Montauk, which is located southwest of Lake Montauk. The area is characterized by high-density residential development in which the subdivisions, and much of the construction in the area, occurred prior to the Town's adoption of zoning in 1957 or the Natural Resources Special Permit standards and setbacks established in 1984. Low elevations, a high water table, poor soil drainage and extensive alterations to the natural drainage patterns all contribute to chronic flooding and poor drainage conditions throughout the area. The area contains extensive freshwater wetlands that are part of a complex drainage system in which much of the surface and groundwater flows into the southern end of Lake Montauk. Many of the freshwater wetlands in the area have been filled, ditched, culverted and even relocated in conjunction with the construction of the roads and residential improvements.

The wetlands on the survey are part of the largest watercourse in the Ditch Plains watershed and are a major tributary to Montauk Harbor. Water flows north in this area and is culverted beneath Benson Drive. Water flow continues in an easterly direction and is again culverted beneath the State Boulevard prior to discharging into the southern terminus of Lake Montauk. Non-point pollution from the Ditch Plains watershed and tributary system is suspected of contributing substantially to poor water quality and high pollution concentrations in the southern end of Lake Montauk.

The Zoning Board needs to decide if the application meets the variance standards in §255-8-50. The applicant needs to show that the proposed project will not create a detriment to nearby properties, that the benefits cannot be achieved by some other method, that the project is not substantial, and will not have an adverse impact on the physical or environmental conditions.

The applicant must demonstrate compliance with the NRSP standards of ? 255-5-51 of the Town Code in order to be eligible for the issuance of the requested NRSP. Specifically;

D. Preservation of natural resources. All structures and uses, other than coastal structures, shall be located on upland and shall be located so that no natural resource, feature, or system designated in ? 255-4-12 hereof will be diminished in size, polluted, degraded, or lost, or placed in peril thereof, in order to establish such structure or use.

The applicant must also demonstrate compliance with the general standards of ?255-5-40 of the Town Code. Specifically;

D. Compatibility. The site of the proposed use is a suitable one for the location of such a use in the Town, and, if sited at that location, the proposed use will in fact be compatible with its surroundings and with the character of the neighborhood and of the community in general, particularly with regard to visibility, scale and overall appearance.

K. Environmental protection. The natural characteristics of the site are such that the proposed use may be introduced there without undue disturbance or disruption of important natural features, systems or processes...

Recommended Project Conditions:

1. A copy of the Natural Resources Special Permit and the approved survey and building plans shall be available on the parcel at all times.

### ***D. Michael Scaraglino***

APPLICANT: Michael Scaraglino

SIZE/LOCATION: 19,967 sq. ft, 189 Old Stone Highway, Springs (300-080-04-07)

DESCRIPTION: To construct a 312 sq. ft. first story deck with staircase on a parcel located within the

Town's jurisdiction of wetlands and to allow a second story deck to remain within the Town's jurisdiction of wetlands.

RELIEF SOUGHT: A Natural Resources Special Permit (NRSP) pursuant to ?255-4-20 of the Town Code

and a 79.5? Variance from ?255-4-30 (Minimum wetland setbacks ) to allow the construction of a first story deck with staircase 20.5? from wetlands where a 100? setback is required, and any other relief necessary.

ZONING DISTRICT: A5 Residence Zone X Flood Zone, AE 6, 0.2% annual chance flood hazard

SEQRA CLASS: Type II

**i. Technical Analysis Memorandum**

Technical Analysis Memo

Lead Agency: (not applicable)

Planner: James Kommer

Date completed: July 14 2017 Site Plan

SEQRA class: Type II Sub Waiver

Physical Location: 189 Old Stone Highway Subdivision

School District: Springs Special Permit

Zoning District: A5 Residence Zone Change

Overlay District: Harbor Protection Overlay District Variance XX

Natural Resources

Tax Map Number: 300-080-04-07 Special Permit XX

Applicant: Michael Scaraglino  
189 Old Stone Hwy  
East Hampton, N.Y. 11937

Telephone: 631-604-2257

FEMA ZONE: X flood Zone, AE 6, 0.2% annual chance flood hazard

Soil Type: Wareham loamy sand (We)

Map of Property: N/A

Size of Parcel: 19,967 sq. ft. total

**Project Description:** To construct a 312 sq. ft. first story deck with staircase on a parcel located within the Town's jurisdiction of wetlands and to allow a second story deck to remain within the Town's jurisdiction of wetlands.

**Relief Requested:** A Natural Resources Special Permit (NRSP) pursuant to ?255-4-20 of the Town Code and a 79.5? Variance from ?255-4-30 (Minimum wetland setbacks) to allow the construction of a first story deck with staircase 20.5? from wetlands where a 100? setback is required, and any other relief necessary.

#### Property and History:

Subject premises consist of 19,967 sq. ft. and are located in an A5 Residential Zone. The parcel is in East Hampton on the north side of Old Stone Highway and is improved with a stone driveway, wood walk, deck, second story deck, outdoor shower (labeled to be removed) two story one family residence, shed with attached structures, including a bin labeled to be removed. The property lies within the Harbor Protection Overlay District (HPOD). The most recent Certificate of Occupancy was issued January 18, 1989. The applicant came before the board previously in August of 2016 applying for a Natural Resource Special Permit pursuant to ?255-4-20 and a variance from ? 255-4-30 (Minimum wetland setbacks) to construct a 468 sq. ft. first story deck and second story landing and steps on a parcel of land containing freshwater wetlands. While the application had proposed the construction of these structures and had yet to obtain approval, the structures had been constructed anyway without benefit of variance, NRSP or building permit. The application was subsequently denied.

All existing and proposed structures are depicted on an East End Land Surveying, P.C. map dated updated with ?Changes to Proposed Only? April 28, 2017.

#### Planning Department Analysis and Recommendations for the Board's Consideration:

The subject property is located on the north side of Old Stone Highway in the Harbor Protection Overlay District in Springs and is surrounded to the north and west by expansive freshwater wetlands which in turn transition to the tidal wetlands of Accabonac Harbor. The wetlands within jurisdiction are an example of a high quality, minimally disturbed tupelo-maple swamp. The aforementioned wetlands perform numerous ecological services, providing habitat for native plant and animal species and a stopover for migrating birds, as well as acting as a buffer to nearby Accabonac Harbor, attenuating stormwater runoff, aiding to dissipate and remove pollutants and helping to maintain surface water quality. Over development of the area and encroachment on the local wetlands potentially reduces the resiliency of the local environment and could lead to its degradation and the loss of the vital environmental services it provides. When wetlands are degraded by encroachment, water will not be as clean, human, fish and bird populations could be affected, and the

severity of floods could increase. As such, the development potential of the property is highly constrained by its proximity to the wetlands surrounding and running through the west side of the property and the non-conforming nature of the lot.

The applicant is proposing to construct a 312 sq. ft. first story deck with staircase and second story landing on a parcel located within the Town's jurisdiction of wetlands. While the variances requested are substantial, the proposed first story deck has been redesigned and reduced in size compared to the currently existing non-conforming structure and thus requires less of a variance than originally sought, will be situated entirely within the footprint of the pre-existing second story deck and will not require additional clearing or grading. The proposed structure doesn't reduce the required setbacks or relocate to a more conforming location, but as it is beneath a currently existing structure, will potentially reduce runoff and the risk of flooding in the area. The existing structure will be replaced with untreated, non-leaching materials, minimizing impact on the nearby wetlands. The applicant has also offered to remove a "shed bin" and outdoor shower constructed on the property without benefit of building permits and has already removed a pergola constructed on the eastern side of the residence without benefit of a building permit.

The Zoning Board needs to decide if the project complies with the Natural Resources Special Permit Standards of §255-5-40 in order to issue a NRSP permit and variance standards in §255-8-50 of the Town Code in order to be eligible for the issuance of the requested variance. The Planning Department has no objection to a deck composed of non-leaching materials that does not decrease wetland setbacks or increases total coverage within wetland setbacks. The outdoor shower is located less than 20' from the wetlands and should be removed as proposed by the applicant.

#### Recommended Project Conditions:

- a. Sediment control fencing consisting of staked straw bales or reinforced silt fence should be erected in the location depicted on the attached Planning Department sketch dated 7/14/2017 adapted from the attached survey to prevent sedimentation of the wetlands. The fencing shall be installed and maintained in accordance with the New York State Standards and Specifications for Erosion and Sediment Control manual prior to the commencement and for the duration of construction activities. The fencing shall be repaired or replaced as necessary to maintain proper function.
- b. Prior to the issuance of a building permit, the Board, or their delegate, shall inspect the project limiting fencing for proper installation.
- c. The clearing of vegetation and the filling, grading or recontouring of the property shall be strictly prohibited.
- d. Any building materials should be composed of untreated timber or synthetic materials that will not leach chemicals into wetlands.

**E. Otis CMS Real Estate Holdings LLC**

APPLICANT: Otis CMS Real Estate Holdings LLC

SIZE/LOCATION: 47,210 sq. ft. (total), 189 Marine Blvd, Map of Beach Hampton; # 1283; Sec. 2; lots 4- 12, Amagansett (300-176-08-23)

DESCRIPTION: To demolish an existing one story residence and construct a new 4,973 sq. ft. two

story residence with first and second story decking, swimming pool, accessory building with roof deck and new sanitary system on a parcel of land containing barrier dunes, dune land and beach vegetation.

RELIEF SOUGHT: A Natural Resources Special Permit (NRSP) pursuant to ? 255-4-20 and variances from

? 255-4-40 (Coastal setbacks) and ? 255-11-10 (Table of dimensional regulations) of the Town Code and any other relief necessary. A 47.2? variance is required to allow the accessory building and roof deck to be located 52.2? from the primary (barrier) dune crest where a 100? setback is required and a 7? variance is required to allow the residence to extend 32? above natural grade where 25? is the maximum for a flat roofed structure. The residence and swimming pool have been proposed 100? from the

primary dune crest.

ZONING DISTRICT: A Residence VE velocity flood zone, el. 17',

SEQRA CLASS: Type II

**i. Technical Analysis Memorandum**

Technical Analysis Memorandum

Lead Agency: (not applicable)  
Planner: Brian Frank  
Date completed: 7/10/2017 Site Plan  
SEQRA class: Type II Sub Waiver  
Physical Location: 189 Marine Blvd Subdivision  
School District: Amagansett Special Permit  
Zoning District: A Residence Zone Change  
Overlay District: Coastal Erosion Overlay District Zone 1 Variance: XX  
Flood Hazard Overlay District  
Tax Map Number: 300-176-08-23 Natural Resources  
Applicant: Otis CMS Real Estate Holdings LLC Special Permit: XX  
C/o Britton Bistran Other:  
PO Box 2756  
Amagansett, NY 11930  
Telephone: (631) 324-8716  
FEMA ZONE: VE velocity flood zone, el. 17?  
Soil Type: Dune land (Du)  
Map of Property: Map of Beach Hampton; # 1283; Sec. 2; lots 4-12  
Size of Parcel: 47,210 sq. ft. (total)

Project Description:

To demolish an existing one story residence and construct a new 4,973 sq. ft. two story residence with first and second story decking, swimming pool, accessory building with roof

deck and new sanitary system on a parcel of land containing barrier dunes, dune land and beach vegetation.

#### Relief:

A Natural Resources Special Permit (NRSP) pursuant to ? 255-4-20 and variances from ? 255-4-40 (Coastal setbacks) and ? 255-11-10 (Table of dimensional regulations) of the Town Code and any other relief necessary. A 47.2? variance is required to allow the accessory building and roof deck to be located 52.2? from the primary (barrier) dune crest where a 100? setback is required and a 7? variance is required to allow the residence to extend 32? above natural grade where 25? is the maximum for a flat roofed structure. The residence and swimming pool have been proposed 100? from the primary dune crest.

#### Property Conditions and History:

The subject premises are presently improved with an approximately 2,567 sq. ft. one-story residence with slate patio and a 1,309 sq. ft. three bedroom one-story cottage with decking constructed prior to the adoption of zoning. The residence and its associated patio are located 34? and 28? respectively from the primary dune crest. The improvements on the property most recently received a Certificate of Occupancy in June, 2016 and the owner appears to have acquired the property in July, 2016. The most recent survey (Saskas Surveying Company, revised 3/06/17) depicts the proposed structures and the structures proposed for removal in greyscale. The corresponding building plans were prepared by Form Architecture (9 pgs) dated 1/17/17. The application was submitted prior to the Code?s revision to the maximum allowable gross floor area limitations. The proposed residence and existing cottage aggregate 6,253 sq. ft. which complied with the limitations at the time. This application appears to require a Coastal Erosion Hazard Area permit from the New York State Department of Environmental Conservation (NYSDEC). Comments from the NYSDEC have not been received to date.

#### Planning Department Analysis and Recommendations for the Board?s Consideration:

The subject property is situated on the south side of Marine Boulevard which borders the primary dune and beach of the Atlantic Ocean. This group of properties is characterized by predominantly improved properties. Many of these properties were initially developed prior to the Town?s adoption of contemporary coastal setbacks in 1984 and some, like the subject property, were initially developed prior to the adoption of zoning. Over the years the Zoning Board has reviewed numerous applications in this area ranging from modest additions or appurtenances to complete redevelopments with much larger residences.

This stretch of shoreline has not experienced severe or chronic erosion since the 1970?s and early 1980?s when several of the homes along the oceanfront were relocated landward to reduce the potential damage from coastal erosion and a few were moved landward more than once. Nonetheless, the potential vulnerability of this area to flooding and erosion



should not be underestimated. Coastal areas are inherently dynamic and prone to cyclical changes in erosion rates and patterns, especially adjacent to the ocean shoreline. Nearly all of the property is located in the Velocity Flood Zone, is seaward of the State designated Coastal Erosion Hazard Area boundary and seaward of the federally designated Limit of Moderate Wave Action (LiMWA) boundary. The VE Flood Zone is part of the Velocity Floodplain as defined by the Town Code and is characterized as an area "subject to high velocity wave action from storms" and "shall have the same meaning as "coastal high hazard area". According to the Federal Emergency Management Agency (FEMA), VE flood hazard zones are locations where wave heights may equal or exceed 3' during 1% annual chance flood event. The vulnerability of Marine Boulevard to flooding and erosion is likely to increase in the future as result of the impacts of sea level rise.

Generally, due to limitations to the percentage of non-conforming square footage that may be added to non-conforming structures and FEMA thresholds that require non-conforming structures to comply with flood zone elevation requirements and specifications, the trend towards redevelopments on properties south of Marine Boulevard is likely to continue. The Planning Department would encourage the Board to limit the number and magnitude of variances granted from the 100' primary dune crest. The accessory building is proposed to be constructed by modifying the existing residence. The exact location of the cabana is unclear; the survey depicts the footprint of a 532 sq. ft. roof deck 52.2' from the dune crest and a 120 sq. ft. ground floor deck on the north side of the structure. The proposed accessory building appears to be a poor candidate for the required dune crest variance and should be denied for its failure to satisfy the variance criteria of § 255-8-50D of the Town Code. The 48' variance is substantial and it appears that a cabana can be incorporated into the redevelopment that complies with the 100' dune crest setback. The property is one of the largest lots on the south side of Marine Boulevard and as such, is arguably less constrained than smaller (narrower) properties in the area. Granting the variance for this structure will likely encourage other properties to seek the retention of similarly non-conforming setbacks when they are redeveloped. No changes are proposed to the cottage and the property will remain non-conforming to the number of residences.

In conjunction with the redevelopment of the property, the environmental conditions should be improved to the fullest extent possible and in a manner consistent with the Board's practices for this area of Town. A retaining wall along the southern limit of the lawn results in a low and narrower section in the barrier dune and should be removed. The proposed clearing for a larger path from the cottage through the dune should be eliminated and the number of dune crossing should be limited to one. In order to conserve the value of the barrier dune in perpetuity, the Zoning Board has established scenic and conservation easements over the dune to a distance of 50' landward of the crest and the Planning Department would strongly encourage this mitigation to be incorporated into the redevelopment of this property. The application appears to retain a deck located immediately landward of the dune crest and this structure should be eliminated or at least reduced to a maximum width of 4 feet to be consistent with State and local policies for coastal structures. Upon the completion of approved construction activities, the property should be naturalized by eliminating the lawn. Fill material used to establish finished grades above the sanitary system and around the improvements should consist of clean sand and disturbed areas should be revegetated with beach grass or with species indigenous to the dune land of Amagansett shown on revegetation plan to be approved by the Board.

Summary of Mitigation:

- a. Project limiting fencing consisting of 4' plastic safety or snow fence shall be erected concurrent with the clearing boundary approved by the Board to limit the clearing of vegetation and land disturbance. The fencing shall be maintained for the duration of construction activities and replaced as necessary when damaged, dislodged, deteriorated or upon request of the Building Department or a delegate of the Zoning Board of Appeals.
- b. Prior to the issuance of a building permit, the Board, or their delegate, shall inspect the project limiting fencing for proper installation.
- c. The clearing of vegetation and the filling, grading or recontouring of the property shall be strictly limited to the boundaries established by the Board and any proposed grading depicted on the approved survey.
- d. The retaining wall located along the southern limit of the lawn and the lawn should be removed
- e. A scenic easement shall be established over the lands 50' landward of the primary dune crest. The easement, along with the approved survey depicting the location of scenic easement shall be submitted in acceptable form to the Zoning Board of Appeals Office for approval by Counsel to this Board, prior to the issuance of a Building Permit. The Town Board must accept and the applicant must file with the Suffolk County Clerk's Office the scenic easement. The original easement shall be returned the East Hampton Town Clerk's Office. Proof of filing must be presented to the Zoning Board before a Certificate of Occupancy can be issued.
- f. Copies of the same, with proof of recordation shown thereon, shall be returned to the Town Clerk prior to the issuance of a building permit.
- g. The retaining wall located along the southern limit of the lawn and the lawn should be removed. The Dune land soils excavated for the approved structures shall be retained on site and used for backfill and top dressing to facilitate the retention of the dune land character and the recolonization of disturbed areas with indigenous dune land species.
- h. All areas disturbed by construction activities should be revegetated with Beach Grass (*Ammophila breviligulata*) planted 18" on centers in culms of three or more in staggered rows or on a revegetation plan that indicates the locations, species, size and spacing. Any plan shall be submitted to the Board for approval prior to the issuance of a building permit. The plan shall be implemented and inspected by the Board or their delegate prior to the issuance of a Certificate of Occupancy.
- i. The number of dune crossings for beach access should be limited to one and the existing deck within the access beach access should be eliminated or reduced to 4' in width.
- j. The establishment of turf, lawn, sod or ornamental vegetation should be prohibited.
- k. The residence should be furnished with gutters and leaders to direct stormwater from roofs into one or more catchment basins. Said catchment basin or basins should have a combined volume (in cubic feet) equal to the surface area of the roof (in square feet), divided by six. Said catchment basin should be made available for inspection by the building inspector prior to backfill.

l. All structures should be situated at least 2' above the seasonal high groundwater table.

m. The swimming pool should utilize a chlorine reducing sanitation system and all pool water should be discharged into a drywell located at least 100' from the wetlands on the survey.

n. The driveway should be composed of only of a clean, local, water-pervious quartz gravel surface or, if paved, the driveway composition and any drainage structures should be reviewed and approved by the Town Engineer prior to the issuance of a building permit. The completed driveway and drainage structures should be inspected by the Town Engineer prior to the issuance of a Certificate of Occupancy.

o. The applicant shall prepare and submit a declaration of covenants and restrictions, incorporating the provisions of the appropriate paragraphs of this determination in standard form acceptable to and approved by Counsel to this Board. The said declaration shall provide for its modification or termination only upon the approval of the East Hampton Town Zoning Board of Appeals, after a public hearing held on ten (10) days' notice. Said declaration, after approval by counsel, shall be recorded at the Office of the Suffolk County Clerk.

p. A permit or statement of non-jurisdiction should be obtained from the New York State Department of Environmental Conservation (NYSDEC) prior to the issuance of a building permit for this project.

q. A copy of the Natural Resources Special Permit and the approved survey and building plans shall be available on the parcel at all times.

### **III. WORK SESSION:**

### **IV. BOARD DECISIONS:**

#### **A. 68 Prospect LLC**

APPLICANT: 68 Prospect Hill LLC

SIZE/LOCATION: 40,195 sq. ft., 68 Prospect Hill Ln., Prospect Hill, lot 16, map no. 7817, Montauk (300-013-02-1.14)

DESCRIPTION: To construct an approximately 7,200 sq. ft. tennis court within side yard lot line setbacks.

RELIEF SOUGHT: One variance of 11.8' from ?255-11-10 of the Town Code is required to construct the proposed tennis court 38.2' from the northern side yard lot line where a 50' setback is required, and any other relief necessary.

ZONING DISTRICT: A2 Residence Zone X Flood Zone

SEQRA CLASS: Type II

2/28/2017

### **B. Michael Hoeh**

APPLICANT: Michael Hoeh

SIZE/LOCATION: 20,924 sq. ft. (total), 26 Bay Inlet Road, Lion Head Beach; # 3451; lot 51, Springs (300-023-01-23)

DESCRIPTION: To demolish an existing one story residence and construct a new 3,408 sq. ft. two-story residence, swimming pool with decking and patio, sanitary system and driveway on a parcel of land containing wetlands and surface waters.

RELIEF SOUGHT: A Natural Resources Special Permit (NRSP) pursuant to ? 255-4-20 and variances from ? 255-4-30 and ? 255-11-10 (Table of Dimensional Regulations) of the Town Code and any other relief necessary. The following variances are required: (1) & (2) Variances of 24' & 35' are required to allow the residence and decking to be constructed 76' & 65' from wetlands where a 100' setback is required & (3) a 4' variance is required to install the sanitary system 146' from wetlands where a 150' setback is required.

### **C. Christopher Haak**

APPLICANT: Christopher Haak

SIZE/LOCATION: 29,553 sq. ft., 81 Northwest Landing Road, East Hampton (300-090-03-13)

DESCRIPTION: To demolish an existing one story residence with shed and construct a new 1,556 sq. ft. two story residence with 709 sq. ft. of first and second story decking, a 236 sq. ft. patio, 192 sq. ft. shed, relocated driveway, and new sanitary system within jurisdiction and minimum setbacks of wetlands and within front yard lot line setbacks.

RELIEF SOUGHT: Six variance and a Natural Resources Special Permit pursuant to ?255-4-20 of the East Hampton Town Code are required for this application. Variances of 61.1', 71.1', 71.1', and 71.2' from ?255-4-30 of the Town Code are required to construct the residence, decking, patio, and shed 38.9', 28.9', 28.9', and 38.8', respectively, from wetlands where 100' setbacks are required. One variance of 10' is required to construct the shed 20' from the front yard lot line where a 30' setback is required. One variance of 163.6' from ?255-3-75B of the Town Code, is required to construct the new sanitary system 36.4' from wetlands where a 200' setback is required, and any other relief necessary.

ZONING DISTRICT: A2 Residence AE Flood Zone, elevation 6

SEQRA CLASS: Type II

**V. MINUTES APPROVAL:**

**A. *September 26th 2017***

**VI. RESOLUTIONS**

**A. *39 Hoppin LLC***

ZONING BOARD OF APPEALS

TOWN OF EAST HAMPTON

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In the Matter of the Application

of

DETERMINATION

39 HOPPIN LLC

SCTM #300-031-02-02

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HEARING DATE: July 18, 2017

PRESENT: JOHN WHELAN, Chair  
CATE ROGERS, Vice Chair  
DAVID LYS, Member  
ROY DALENE, Member  
THERESA BERGER, Member

ALSO PRESENT: ELIZABETH L. BALDWIN, ESQ., Counsel to the Board

DENISE A. SAVARESE, Legislative Secretary

LISA D'ANDREA, Planner

BRIAN FRANK, Chief Environmental Analyst

JOEL HALSEY, Agent for Applicant

TODD ROME, Applicant

LORI HEARNEY, Neighbor

#### FINDINGS OF FACT AND DETERMINATION OF THE BOARD

The findings of fact and determination made herein are based upon the application, the evidence received at the public hearing before the Board, all documents contained in the Board's files and which were received prior to the close of the hearing, and the inspection and field report made by Member Berger of this Board.

#### A. PROJECT DESCRIPTION

##### 1. PURPOSE OF APPLICATION:

To construct a 1,411 sq. ft. residence with 673 sq.ft. of decking and a new sanitary system on a parcel of land within wetland jurisdiction.

##### 2. RELIEF OR APPROVAL SOUGHT:

A Natural Resources Special Permit (NRSP) pursuant to ? 255-4-20 and four variances from ?255-4-30 (wetland setbacks) and a 2 ft. 1 in. variance from 255-11-72D (Pyramid Law) of the Town Code and any relief necessary. Variances of 51.1 ft. and 59.1 ft. are required to construct the residence and deck 49.9 ft. and 40.9 ft. from the wetland where a minimum 100 ft. setback is required. A 19 ft. clearing variance is required to clear vegetation within 31 ft. of the wetland where a minimum 50 ft. setback is required. An 85 ft. variance is required to install the sanitary system 65 ft. from the wetland where a 150 ft. setback is required.

#### B. PROPERTY SIZE & LOCATION

##### 1. LOT SIZE: 7,320 sq. ft. (total)

2. STREET LOCATION: 39 Hoppin Avenue
3. CONTIGUOUS WATER BODIES: N/A
4. HAMLET OR GEOGRAPHIC AREA: Montauk
5. FILED MAP NAME: Oceanside at Montauk
6. FILED MAP NUMBER: 2730
7. DATE OF MAP FILING: August 7, 1957
8. BLOCK NUMBER IN FILED MAP: N/A
9. LOT NUMBER IN FILED MAP: 221
10. SUFFOLK COUNTY TAX MAP DESIGNATION: #300-031-02-02

C. ZONING INFORMATION

1. ZONING DISTRICT: A5 Residence
2. ZONING OVERLAY DISTRICT: Harbor Protection Overlay District

D. SEQRA DETERMINATION

1. SEQRA CLASSIFICATION: Type II
2. LEAD AGENCY: N/A
3. DETERMINATION OF SIGNIFICANCE: N/A
4. DATE OF DETERMINATION: N/A

E. STANDARDS FOR BOARD REVIEW

1. In order to be eligible for issuance of the requested Natural Resources Special Permit, applicant must show that the proposed action is compatible with the purposes of ??

255-1-11 and 255-4-10 of the East Hampton Town Code and satisfies the criteria set forth in ?? 255-5-40 and 255-5-50 (Natural Resources Special Permit) and 255-5-51 of the Town Code.

2. In order for this Board to grant applicant the requested area variances, applicant must demonstrate that the requirements of Town Law ? 267-b 3 have been met. The Board is to ?take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the grant of an area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.? The Town Law also directs the Board, in granting area variances, to ?grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.?

3. The standards set forth in Town Code ? 255-8-50 (D) paraphrase the requirements language of Town Law ? 267-b 3:

a) the benefit to applicant from grant of the requested variance outweighs any detriment which grant of the variance will cause to the general health, safety, and welfare of the neighborhood or the Town as a whole; and

b) the variance sought is the minimum variance necessary and adequate to alleviate the difficulty causing applicant to request area variance, while at the same time preserving and protecting the character of the neighborhood and the general health, safety, and welfare of the Town as a whole.

4. The Board finds that granting the instant application will not be consistent with the requirements of both Town Law ? 267-b and Town Code ? 255-8-50.

F. ADDITIONAL FINDINGS AND CONCLUSIONS



1. The parcel is vacant, densely vegetated and disturbed. The applicant is proposing to construct a residence with a deck and a Hydro Action sanitary system. The owner acquired the property in September 2015. A Phase 1 Archaeological Investigation was conducted and no pre-historic or historic artifacts were encountered. The report did not recommend further archaeological work. The project will require New York State Department of Environmental Conservation (NYSDEC) approval. All proposed structures are depicted on a James P. Walsh L.S. survey dated revised January 28, 2017 and stamped received by the Zoning Board on February 1, 2017. The corresponding construction plans (the Greenberg Residence Building Plans (6 pages)) dated June 7, 2016 and stamped received by the Zoning Board on August 23, 2016. An additional page A-03 ( ? in.= 1 ft. scale) to depict compliance/non-compliance to the Pyramid Law was received by the Board on October 25, 2016. The TF Engineering PLLC, Hydro Action sanitary system plan for 39 Hoppin Ave., dated last revised December 9, 2016 was received by the Board on December 20, 2016. NYSDEC comments and requirements for the proposed project dated January 23, 2017 were received by the Board on February 1, 2017.

2. The premises are located within the "Ditch Plains" area of Montauk, which is located southwest of Lake Montauk. The area is characterized by high-density residential development in which the subdivisions, and much of the construction in the area, occurred prior to the Town's adoption of zoning in 1957 or the Natural Resources Special Permit standards and setbacks established in 1984. The area contains extensive freshwater wetlands that are part of a complex drainage system in which much of the surface and groundwater flows into the southern end of Lake Montauk. Many of the freshwater wetlands in the area have been filled, ditched, culverted and even relocated in conjunction with the construction of the roads and residential improvements.

3. The wetland pertinent to this application is on the adjacent Town owned parcel to the west. It was acquired by the Town in 1997 but efforts by the Town to purchase it go as far back as 1974. It is a Class 1 NYSDEC regulated wetland which is the highest quality ranking for a freshwater wetland. This wetland is an important component of the largest watercourse in the Ditch Plains watershed. Large amounts of water flow through this watercourse. Water flows north within the unopened right-of-way of Otis Road and is culverted beneath Benson Drive. Water flow continues in an easterly direction and is again culverted beneath the State Boulevard prior to discharging into southern Lake Montauk. The importance of this largest watercourse in Ditch Plains and its associated wetlands has been recognized by the Town for some time. Six parcels have been acquired by the Town to protect this watercourse and wetlands. 51 Otis Rd. (SCTM No. 300-031-03-33) was acquired by the Town in 1988. Most of these properties were acquired by the Town before a dedicated funding source such as Community Preservation Fund (CPF) was available. The wetlands are very disturbed along the edges, however, high quality native vegetation is present towards the interior. Winterberry holly (*Ilex verticillata*), High bush blueberry (*Vaccinium corymbosum*), Cinnamon fern (*Osmundastrum cinnamomeum*), and Carex sedges (*Carex* spp) were all documented during the flagging of this wetland. Wetlands such as this one provide essential habitat for wetland dependent plants and animals within the dense residential development of Ditch Plains.

4. Ditch Plains is in the Montauk Subwatershed 7. A Subwatershed as defined in the Montauk Watershed Management Plan is "considered to be a collection of catchment areas which share a common drainage into Lake Montauk". Subwatershed 7 is characterized as generating the most run-off within the entire watershed for basically two reasons: it is large in size and it has almost a total absence of the sandy soil types necessary for good drainage. Increased development increases the amount of total hard surface area. As a result stormwater runoff volume and flow rate through the watercourses increases. Overall water quality suffers from ever increasing nitrogen amounts and sediments that ultimately course their way into Lake Montauk. It is this non-point pollution from the Ditch Plains watershed and its tributary system that is most likely a significant contributing factor to the poor water quality and high pollution concentrations in the southern end of Lake Montauk.

5. The applicant acquired this property in 2015 and should have been aware of its significant environmental constraints. It is located in AE11 and AE12 flood zones. In addition to being highly flood prone and constrained by wetlands, it is substandard in regards to lot size and frontage within B zoning further limiting the type and locations of structures that can be constructed in compliance with zoning setbacks. The proposed project requires substantial variances from all of the Town's minimum wetland setbacks. The sanitary system requires a 56% variance, the residence requires a 50% variance, the deck requires a 41% variance and the clearing a 38% variance. Permitted building coverage is 20% and this project proposes a 15% building coverage. Total lot coverage permitted is 50% and this project proposes about 24% coverage.

6. The parcel is vacant and densely vegetated. The applicant proposes to clear within 31 ft. of the wetland, which as stated above, requires a 38% variance. The original application submitted for this project proposed a 50% clearing variance but the NYSDEC has delineated a Limits of Clearing, Grading and Ground Disturbance (LCGGD) line that the applicant must adhere to in order to get a NYSDEC approval. Adherence to this LCGGD line will reduce the clearing variance required and reduce the overall clearing on the property. The clearing will be reduced from 91% to 84% or about a 500 sq. ft. reduction from what was originally proposed. However, 84% clearing is still a substantial amount of clearing on such an environmentally sensitive parcel. Removal of vegetation with established, extensive root systems will likely exacerbate the drainage and flooding problems already inherent in the neighborhood. The applicant has, to date, not offered any revegetation to offset the intensity of development on this parcel.

7. The applicant is proposing to install a "Hydro-action" aerobic treatment sanitary system. The purpose of an aerobic treatment system is to aid in nitrogen reduction of the effluent before being discharged into the ground. Groundwater and surface water quality are very much at risk from pollution not just in Montauk but throughout East Hampton. It has been determined that waste water treatment and disposal systems have been contributing to the degradation of our surface waters and groundwater. It has, therefore, become apparent that there is a need to design sanitary systems that can be constructed and operated to prevent degradation of both groundwater and surface water quality.

8. Suffolk County Health Department (SCHD) has launched a pilot program that includes 5 different aerobic treatment sanitary systems installed in various locations throughout Suffolk County. SCHD has been assessing each system for performance in reducing nitrogen. So far, it appears that only two designs of aerobic treatment sanitary systems have been approved for residential use. The aerobic treatment systems are designed to improve the quality of the effluent entering into the ground but they do not address or improve other water quality issues that might exist on or around the property. This property is in an AE11 and AE12 Flood Zones. The groundwater is an average of 3 ft. below ground surface. As mentioned above, the high density residential development, the low elevations, high water table, and poor drainage in Ditch Plains all play a role in the surface (Lake Montauk) and groundwater quality. The aerobic treatment system will not alleviate other environmental issues such as stormwater runoff and flooding potential on this property.

9. The intent of the new aerobic treatment systems is to reduce the degradation of both groundwater and surface water quality. The new system reduces the amount of nitrogen that exits the sanitary system. It does not eliminate the release of this and other pollutants that result from normal residential use. The Planning Department wants to stress that these systems should not be used as a reason to accommodate the construction of larger structures and increased development especially in environmentally sensitive areas. This application has not yet been approved for the Hydro-action system and may not be approved. The use of these systems for residences is in its infancy and not enough data have been compiled to determine just how effective these systems are or will be. They require a good deal of maintenance, power to run the equipment and consistent use to be effective. Seasonal residences may not be ideal for these type of systems. If these systems do prove to be effective, it is possible that within the next several years SCHD will require all new construction to have aerobic treatment systems.

10. The Planning Department feels that the proposed development exceeds the environmental constraints of the property and does not support the application as proposed. The wetland setback variances are all substantial. The overall clearing is substantial. The Planning Department's opinion is that because of the severity of the constraints on the property a reduction of both the square footage and building coverage is warranted. Elimination of the open floor plan could result in a more compact design and reduced building coverage. The lot should only be developed in proportion to its constraints. A concrete slab foundation is proposed. The Planning Department also recommends that the residence be constructed on pilings because of the small lot size and the large volume of water moving through the watercourse on the adjacent property to the west. In a storm and flooding event, the piling foundation would allow for unrestricted water movement. The Planning Department also recommends that the driveway/parking area should be constructed according to the regulations outlined in ? 255-3-75 Harbor Protection Overlay District (HPOD). The regulations are designed to protect the wetlands from harmful substances, changes in pH, etc that could impact the ecology of these sensitive areas. These wetlands, as mentioned above are an important part of the largest watercourse in Ditch Plains and warrant the greatest protection. The water that flows through this wetland eventually works its way into the surface waters of Lake Montauk.

11. The Board finds that granting the requested variances will cause an undesirable change to the character of the neighborhood or create a detriment to nearby properties. The Board finds that the proposed residence is too large and does not fit within character of the surrounding area of Ditch Plains. While applicant compares the proposed size of the residence to other properties in the area, the Board finds the comparisons are not applicable. While some of the house sizes may be similar, the lot sizes on the compared houses are smaller and are not located in such a highly sensitive areas. Moreover, the Board finds that while the clearing will be reduced from 91% to 84% or about a 500 sq. ft. reduction from what was originally proposed, 84% clearing is still a substantial amount of clearing on such an environmentally sensitive parcel. Removal of vegetation with established, extensive root systems will likely exacerbate the drainage and flooding problems already inherent in the neighborhood.

12. The Board finds that the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than the requested area variances. The Board finds that the size of the house should be limited in order to improve the required clearing on the property and minimize flooding.

13. The Board finds that the requested variances are substantial. As noted by the Town's Planning Department in its Technical Analysis Memorandum dated April 12, 2017 the proposed project requires substantial variances from all of the Town's minimum wetland setbacks. The sanitary system requires a 56% variance, the residence requires a 50% variance, the deck requires a 41% variance and the clearing a 38% variance. Permitted building coverage is 20% and this project proposes a 15% building coverage. Total lot coverage permitted is 50% and this project proposes about 24% coverage.

14. The Board finds that granting the requested variances will have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The Board feels that the proposed development exceeds the environmental constraints of the property and does not support the application as proposed. The wetland setback variances are all substantial. The overall clearing is substantial. The Board notes, the Planning Department's opinion is that because of the severity of the constraints on the property a reduction of both the square footage and building coverage is warranted. Elimination of the open floor plan could result in a more compact design and reduced building coverage. The lot should only be developed in proportion to its constraints. A concrete slab foundation is proposed. The Planning Department also recommends that the residence be constructed on pilings because of the small lot size and the large volume of water moving through the watercourse on the adjacent property to the west. In a storm and flooding event, the piling foundation would allow for unrestricted water movement. The Planning Department also recommends that the driveway/parking area should be constructed according to the regulations outlined in ? 255-3-75 Harbor Protection Overlay District (HPOD). The regulations are designed to protect the wetlands from harmful substances, changes in pH, etc that could impact the ecology of these sensitive areas. These wetlands, as mentioned above are an important part of the largest watercourse in Ditch Plains and warrant the greatest protection. The water that flows through this wetland eventually works its way into the surface waters of Lake Montauk.

15. The Board finds that the need for the variances is self-created. Applicant purchased the property in 2015 with all the current zoning restrictions in place.

16. The Board finds that the benefit to the applicant does not outweigh the detriment which grant of the variance will cause to the general health, safety, and welfare of the neighborhood or the Town as a whole.

17. Pursuant to the Town Code, in order to be entitled to the grant of a Natural Resources Special Permit an applicant must show that he has satisfied the general standards contained in Town Code ? 255-5-40 as well as the specific standards contained in the Natural Resources Special Permit sub-section in ? 255-5-50.

18. The Board finds that the application does not meet the requirements for the requested variance or Natural Resources Special Permit because the proposed project exceeds the environmental constraints of the property and will exacerbate current flooding issues in the area. The Board finds the project can be redesigned to lessen detrimental impacts to the natural features on the property, including but not limited to limiting clearing on the property.

19. The Board finds that the proposed use will prevent the orderly and reasonable use of adjacent properties because the proposed project will exacerbate flooding in the area.

20. The Board finds that the characteristics of the site are such that the proposed use may not be introduced without undue disturbance or disruption to important natural features. The Board finds that the project, as proposed, will exacerbate current flooding bay causing detrimental impacts to the natural features on the property.

G. DISPOSITION OF APPLICATION

For the reasons set forth herein, the Board makes the following determination with respect to the application:

1. RELIEF OR APPROVAL DENIED:

A Natural Resources Special Permit (NRSP) pursuant to ? 255-4-20 and four variances from ?255-4-30 (wetland setbacks) and a 2 ft. 1 in. variance from 255-11-72D (Pyramid Law) of the Town Code are denied. Variances of 51.1 ft. and 59.1 ft. are denied to construct the residence and deck 49.9 ft. and 40.9 ft. from the wetland where a minimum 100 ft. setback is required. A 19 ft. clearing variance is denied to clear vegetation within 31 ft. of the wetland where a minimum 50 ft. setback is required. An 85 ft. variance is denied to install the sanitary system 65 ft. from the wetland where a 150 ft. setback is required.

2. DESCRIPTION OF WORK DENIED:

To construct a 1,411 sq. ft. residence with 673 sq.ft. of decking and a new sanitary system on a parcel of land within wetland jurisdiction.

ALL CONCUR:

JOHN WHELAN, Chair

CATE ROGERS, Vice-Chair

DAVID LYS, Member

THERESA BERGER, Member

Dated: October 3, 2017

cc: Building Department

Planning Department

Joel Halsey, Agent for Applicant