



**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 December 19,  
2017  
East Hampton, New York**

**I. CALL TO ORDER**

12:00 AM Meeting called to order on December 19, 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. CANCELLED PUBLIC HEARING:**

**III. SCHEDULED PUBLIC HEARINGS:**

**A. *New Cingular Wireless***

TIME: 6:30:00 PM APPLICANT: C/O John Huber New Cingular Wireless, PCS, LLC

SIZE/LOCATION: 169,681 sq. ft., 2000 Montauk Highway, Montauk (300-015-01-09)

DESCRIPTION: To locate a total of nine (9) panel antennas with three (3) sectors containing three (3) antennas each mounted on the face of the fire control tower, a GPS unit to be mounted to the top of the tower, with all other electrical equipment to be situated in the interior of the tower.

RELIEF SOUGHT: A use variance from section 255-2-11 of the Town Code along with any other relief necessary.

ZONING DISTRICT: PC: Parks & Conservation, Zone X Flood Zone

SEQRA CLASS: Type I

**i. Technical Analysis Memorandum**

Technical Analysis Memo

Lead Agency: TBD

Planner: Eric Schantz

Date completed: September 12, 2017 Site Plan X

SEQRA class: Type I Sub Waiver

Physical Location: 2000 Montauk Highway Subdivision

School District: Montauk Special Permit X

Zoning District: PC: Parks & Conservation Zone Change

Overlay District: N/A Variance X

Tax Map Number: 300-15-1-9 Natural Resources

Applicant: New Cingular Wireless, PCS, LLC Special Permit

C/O John Huber @ Re, Nielsen, Huber

& Coughlin, LLP

Other:

36 North New York Avenue

Huntington, NY 11743

Telephone: (631) 425-4100

FEMA ZONE: X

Soil Type: MnE: Montauk loamy sand, sandy variant, 15 - 35% slopes

Map of Property: N/A

Size of Parcel: 169,681 sq. ft.

Project Description:

To locate a total of nine (9) panel antennas with three (3) sectors containing three (3) antennas each mounted on the face of the fire control tower, a GPS unit to be mounted to the top of the tower, with all other electrical equipment to be situated in the interior of the tower.

**Relief Requested:**

A use variance from section 255-2-11 of the Town Code along with any other relief necessary.

**Property Conditions and History:**

The subject parcel is the iconic and historically-significant site of the Montauk Point Lighthouse. It is situated in the PC: Parks & Conservation Zoning District at the end of Montauk Point. It is nearly 100% cleared of natural vegetation and is mostly lawn. Surrounding land uses are entirely recreational open space.

The site includes: the Lighthouse tower (1796 and 1860), keeper's dwelling (1860), oil house (1860) , a brick building at the foot of Turtle Hill which was built in 1838 as part of a keeper's dwelling and was made into a barn in 1869 and into a garage in 1934, the 1897 brick fog signal house on the top of the hill, a small brick oil house built in 1904 as part of the 1902 to 1906 experimental Naval wireless station, a six-story concrete fire control station built at the edge of the bluff in 1942 associated with the defense of Long Island Sound during World War II (the structure upon which the antennas are proposed to be mounted), a stone revetment at the base of the bluff built in 1945 and rebuilt in the 1990s, a small wood bandstand dating from 1996, a memorial sculpture placed on the site in 1999, and the 2004 Conway Visitor Center.

This site was designated as a National Historic Landmark in 2012. It is a location of extreme importance to the tourist economy of Montauk and the Town as a whole.

Pursuant to SEQRA (NYCRR Part 617.4 (9)) and Chapter 128 of the Town Code the proposed project is Type I action. The Planning Board has declared lead agency status. However, the applicant's attorney has questioned whether or not it is the Planning Board that is empowered/required to consider the specific special permit standards or the Zoning Board of Appeals, due to the necessity for a use variance. The Board should consult with Counsel to determine the appropriate lead agency for this application.

The Planning Board reviewed this application at its June 7, 2017 meeting. The Board declined to send comments to the Zoning Board of Appeals. The consensus of the majority of the Board was to support the granting of the requested relief and approval of the project as proposed.

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

A Personal Wireless Service Facility is a prohibited use in the PC: Parks & Conservation Zoning District. Therefore, a use variance is required.

Pursuant to section 255-8-50C, the Zoning Board of Appeals must consider the following when deciding whether or not to grant a use variance:

?Use variances. The Board of Appeals shall not grant any use variance, so as to allow a use of land in a manner or for a purpose which is otherwise not allowed or is prohibited by the use tables[1] contained in this chapter, unless the Board shall find and fully set forth in its determination that the applicant has shown unnecessary hardship, which shall mean that:

(1) Under the use regulations contained in this chapter, the applicant cannot realize a reasonable economic return from the property, lot or land in question, under any of the uses permitted by this chapter, and that such lack of reasonable return is substantial and has been established by competent financial evidence.

(2) The hardship relating to the property is unique and does not apply to a substantial portion of the use district or neighborhood in which the property lies.

(3) The use variance to be granted will not alter the essential character of the neighborhood.

(4) The hardship relating to the property has not been self-created.

(5) The use variance to be granted is the minimum variance necessary and adequate to alleviate the unnecessary hardship shown by the applicant, 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.?

The Zoning Board of Appeals should consider not only the variance standards but also the specific special permit standards for a personal wireless service facility (PWSF). The Planning Department notes the following conflicts with these standards:

## Location Standards:

Section 255-2-90 of the Town Code contains a set of directory, not mandatory, location standards.

?A. <<http://ecode360.com/10414386>>Opportunity sites. A personal wireless service facility should be located at one of the following opportunity sites:

- (1) <<http://ecode360.com/10414387>>Public rights-of-way utility poles, including telephone poles, utility-distribution poles, streetlights and traffic signal stanchions.
- (2) <<http://ecode360.com/10414388>>Religious institutions.
- (3) <<http://ecode360.com/10414389>>Rooftops.
- (4) <<http://ecode360.com/10414390>>Tree masses.
- (5) <<http://ecode360.com/10414391>>Town-owned properties (except designated open space), depending upon siting and design standards.

B. <<http://ecode360.com/10414392>>Avoidance areas. A personal wireless service facility should not be located in the following avoidance areas:

- (1) <<http://ecode360.com/10414393>>Open spaces, including:
  - (a) <<http://ecode360.com/10414394>>Woodlands.
  - (b) <<http://ecode360.com/10414395>>Wetlands.
  - (c) <<http://ecode360.com/10414396>>Moorlands (dwarf forest).
  - (d) <<http://ecode360.com/10414397>>Meadow/old fields (open or formerly farmed areas).
  - (e) <<http://ecode360.com/10414398>>Downs (prairie).
  - (f) <<http://ecode360.com/10414399>>Duneland/beach.
  - (g) <<http://ecode360.com/10414400>>Farmland (active agriculture).
- (2) <<http://ecode360.com/10414401>>Other areas attendant to water bodies and shorelines
- (3) <<http://ecode360.com/10414402>>Flood-prone areas.

(4) <<http://ecode360.com/10414403>>Historically and culturally significant resources, including historic sites, historic districts as well as structures.

(5) <<http://ecode360.com/10414404>>Areas identified in the Scenic Resources Study and Scenic Areas of Statewide Significance, not otherwise classified above.?

The site does not meet any of the criteria for an opportunity site. It meets four (4) of the five (5) criteria for avoidance areas, including: open spaces, other areas attendant to water bodies or shorelines, historically and socially significant resources, and areas designated Scenic Areas of Statewide Significance.

#### Siting Standards:

Section 255-5-50 of the Town Code contains a set of directory, not mandatory, siting standards. It appears that the facility will not meet a number of these standards, most notably:

?To the greatest extent possible, personal wireless service facilities should be concealed within existing structures or where camouflaged conditions surround them, or on inconspicuous mounts.?

Although the panel antennas are proposed relatively flush to the building, reducing their silhouette, they would still be clearly visible based upon the submitted visual analysis.

#### Fall Zone & Setback Requirements:

Section 255-5-50 of the Town Code contains a set of mandatory, design standards:

?No habitable structure or outdoor area where people congregate should be within a fall zone of two times the height of the personal wireless service facility or its mount.?

The grounds of the site are a State Park and a National Historic Place where many tourists congregate. This section of the Code is mandatory and a variance will need to be obtained from the Zoning Board of Appeals.

It should also be noted that this requirement is not only to prevent persons from being injured if the equipment itself were to fall but is also to prevent ice from accumulating on the equipment and raining down during high wind events (see page 26 - 28 of 2001 Wireless Master Plan)

Personal wireless service facilities (PWSF) were made prohibited uses in the PC: Parks and Conservation Zoning District upon the adoption of the Town's regulations regarding such facilities in 2002. Based upon the recommendations of the Town's 2001 Wireless Master Plan (pages 6 - 7 & 37 - 40) it appears that this was done to be consistent with the plan's call to discourage new facilities within parks and areas of open space. The Town does have a number of existing facilities on lots zoned PC: Parks and Conservation, which the Planning Board has allowed to be modified without necessitating a use variance. However, these were legally pre-existing facilities. All such facilities are on water towers owned by the Suffolk County Water Authority (SCWA). All of these properties were zoned PC: Parks and Conservation as part of the 2005 Comprehensive Plan's re-zoning recommendations.

For the conflicts with the specific special permit standards and the apparent intentions of the Wireless Master Plan listed above, the Planning Department does not support the granting of the requested relief and feels that the facility would be highly visible on a property with historic and scenic resources. However, as noted above, the Planning Board did not agree with this assessment upon initial review. Additionally, we would be remiss without noting that the property is owned by the Montauk Historical Society, a not-for-profit corporation which provides a benefit to the community. However, it does not appear that the facility has been designed and located in-keeping with either the use variance standards or the specific special permit standards.

#### Recommended Project Conditions:

1. Should the application be approved the exterior equipment should be painted to match the tower and a letter from a certified engineer should be submitted after installation to confirm that all equipment was installed in keeping with the approved plans.

**B. Thomas Wandzilak**

TIME: 6:50:00 PM APPLICANT: Thomas Wandzilak

SIZE/LOCATION: 2,823 sq. ft., 826 East End Dr. Unit 826, Map No. 80; Montauk Shores Condominium Unit 826, Montauk (300-321-01-226)

DESCRIPTION: To replace existing 463 sq. ft. manufactured home and decking with a new 925 sq. ft.

manufactured home and new decking and to relocate an existing 63 sq. ft. shed on a parcel within 150 ft. of freshwater wetlands.

RELIEF SOUGHT: A Natural Resources Special Permit pursuant to ?255-4-20 and three variances from ? 255-4-30 (Wetland setbacks). A 82.4 ft., a 83.9 ft. and a 70 ft. variances are required to respectively relocate a shed, install a mobile home, and a deck 17.6 ft., 16.1 ft., and 30 ft.

from the freshwater wetlands where a minimum 100 ft. setback is required.

ZONING DISTRICT: RS- Resort, Zone X Flood Zone

SEQRA CLASS: Type II

**i. Technical Analysis Memorandum**

Technical Analysis Memo

Lead Agency: (not applicable)

Planner: Lisa D'Andrea

Date completed: May 9, 2017 Site Plan

SEQRA class: Type II Sub Waiver

Physical Location: 826 East End Dr. Unit 826 Subdivision

School District: Montauk Special Permit

Zoning District: Resort Zoning Zone Change

Overlay District: Variance XX

Tax Map Number: 300-032.1-01-226 Natural Resources

Applicant: Thomas Wandzilak Special Permit XX

2715 Winthrop Rd.

Lincoln, NE 68502

Telephone: (402) 617-8936

FEMA ZONE: X Flood Zone

Soil Type: Scio silt loam, till substratum 2-6% slopes (ScB)

Map of Property: Map No. 80; Montauk Shores Condominium Unit 826

Size of Parcel: 2,823 sq. ft.

Project Description: To replace existing 463 sq. ft. manufactured home and decking with a new 925 sq. ft. manufactured home and new decking and to relocate an existing 63 sq. ft. shed on a parcel within 150 ft. of freshwater wetlands.

Relief Requested: A Natural Resources Special Permit pursuant to ?255-4-20 and three variances from ? 255-4-30 (Wetland setbacks). A 82.4 ft., a 83.9 ft. and a 70 ft. variances are required to respectively relocate a shed, install a mobile home, and a deck 17.6 ft., 16.1 ft., and 30 ft. from the freshwater wetlands where a minimum 100 ft. setback is required.

#### Property and History:

The Montauk Shores Condominium complex is occupied as ?mobile home park,? which is a residential use pursuant to the Code?s use tables [255-11-10A(9)], located in a Resort Zoning District. Variances from the Zoning Board have periodically been required for natural resource and area setbacks within the ?mobile home park?. Although the complex is condominiumized and therefore implies separate ownership of the individual units, these units are not recognized as separate parcels by the Town or Suffolk County Department of Health Services, which consider the premises as one parcel.

The coverage and total coverage calculations on the George Walbridge Master Plan of Montauk Shores Condominium survey originally surveyed in February 23, 1987 were in need of being updated. There was no unified system recording change of coverage and total coverage as individual units were replaced with new structures. In an effort to rectify any inaccuracies moving forward, a new survey of Montauk Shores Condominium complex was done. A new Master Plan of Montauk Shores Condominium by George Walbridge Surveyors was done that updated the lot coverage and total lot coverages. Each proposed change to a unit size is now documented so that lot coverage and total lot coverage are kept current and will not be exceeded. It appears that the maximum lot coverage and total lot coverage maximum limits are still below the limits permitted.

While coverage and total coverage changes are now being systematically recorded on the Master Plan Montauk Shores Condominium, there has been no unified system recording the changes in the mobile home units as they are enlarged or replaced in regards to the sanitary system that services the mobile homes.

Over the years Montauk Shores Condominium (MOSHO) has made numerous applications to Suffolk County Health Department Service (SCHDS). They had applications in 1990, 1993 and 1998 which involved a recreational center. In 2008 MOSHO applied for two half baths in connection to the recreation center. These bathrooms were to be tied into the existing sanitary system. MOSHO received preliminary approval for the bathrooms in February of 2009, however, the final approval was never issued. The open permit applies to the entire sanitary system.

There has been an effort by the Town to look into the adequacy of the sanitary system. There have been many building permits for larger mobile homes issued without any systematic recording of these increases in regards to the capacity of the existing sanitary system. MOSHO was asked to provide the documentation that there was a final approval for the 2008 permit. It appears that MOSHO submitted final plans to the SCHDS in the fall of 2016. An email dated December 20, 2016 from SCDHS to Natural Resources Director Kimberly Shaw stated that the SCHDS rejected the MOSHO final plans on December 13, 2016.

The Montauk Shores Condominium sanitary system that services the individual mobile homes was designed to handle a flow rate up to 26, 534 gallons per day (gpd). The flow rate for each mobile home is determined by its size. A unit 600 sq. ft. or less has a flow rate of 150 gpd. Mobile homes 601 -1200 sq. ft. have a flow rate of 225 gpd. Any home larger than 1200 sq. ft. is rated at 300 gpd. Most of the mobile home units are in the 600-1200 sq. ft. range. There are only a few that are less than 600 sq. ft. Seven units are over 1,200 sq. ft. The Planning Department tallied up 198 units that combined have a flow rate of up to 43,425 gpd. That is approximately 16,901 gpd over maximum flow the system was designed to handle. Water quality issues are a serious problem for our harbors and bays and it has been determined that sanitary systems contribute to the degradation of our groundwater and surface waters. It is imperative that we do not have antiquated, over-taxed, or failing sanitary systems contributing further to the degradation of our ground and surface waters.

Existing structures with corner elevations have been depicted on a George Walbridge Surveying survey dated revised March 3, 2017 and received by the Board on May 9, 2017. The proposed structures are depicted on a George Walbridge Surveying survey dated revised August 10, 2016 and received by the Board on September 23, 2016.

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

The applicant is before the Board to replace a 750 sq. ft. mobile home with a 925 sq. ft. mobile home. The new deck will be roughly the same size as the existing deck. There is an existing shed that is only 8.6 ft. from the wetland and it is to be relocated 17.6 ft. from the wetland.

Freshwater wetlands essentially run along the entire eastern property line of MOSHO. Water flows generally from north of Deforest Rd southward eventually reaching the Atlantic Ocean. The wetlands that border this lot are highly disturbed and have invasive species such as phragmites (*Phragmites australis*), multiflora rose (*Rosa multiflora*), and Asian bittersweet (*Celastrus orbiculatus*). Along the eastern edge of MOSHO, south of the applicant's lot, the land has been cleared and has maintained lawn and appears to have some boats stored on it. To the south of this lawn area are 11 lots with mobile homes. Away from the eastern MOSHO lot line towards the interior of the wetlands high quality native vegetation is present. Despite the disturbance along the edges these wetlands are vitally important for attenuating flood waters, absorbing pollution carried in stormwater runoff, and for providing essential wildlife habitat for many species.

One of the Planning Department's concerns with this application is that the mobile home is essentially doubling in size. The MOSHO lot coverage and total lot coverage are still below the maximum square footage allowed. However, this is substantial increase in a mobile home size and use. It will be in the 600-1,200 sq. ft. maximum flow rate category of 225 gpd. The question if the existing sanitary system has the capacity or functionality to handle the cumulative enlargements that have occurred in MOSHO over the years remains unanswered.

The proposed larger home still requires a large wetland setback variance, however, it will not be any closer to the wetlands than the existing home and there appears to be no more conforming location. It appears there may be a more conforming location for the shed. The applicant should explain to the Board the reasons for the location of the shed.

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. An Article 24 Freshwater 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.

- b. Prior to the issuance of a building permit for this project, Montauk Shores Condominium must provide the Building Department with documentation that the existing sanitary system meets current Suffolk County Health Department (SCHD) standards.
- c. Prior to the issuance of a Certificate of Occupancy the improvements should be depicted on the Master Survey of Montauk Shores Condominium along with an update of the coverage calculations.
- d. 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. Nancy Mack**

TIME: 7:10:00 PM APPLICANT: Nancy Mack

SIZE/LOCATION: 111,461.6 sq. ft. (total), 132 Navy Road, N/A, Montauk (300-026-01-9.1)

DESCRIPTION: To construct 1,572 sq. ft. of additions, a 513 sq. ft. covered porch, a 580 sq. ft. northern patio, a 690 sq. ft. southern patio, a 300 sq. ft. southern covered porch, and a 180 sq. ft. roof deck on a parcel of land with bluffs.

RELIEF SOUGHT: Natural Resources Special Permit and two variances from ? 255-4-40 (coastal setbacks) pursuant to ? 255-4-20 of the Town Code and any relief necessary. Variances of 78.6 ft. and 56 ft. to respectively construct the deck and residential addition 72.4 ft. and 94 ft. from the bluff crest where a minimum 150 ft. setback is required.

ZONING DISTRICT: A Residence Zone X Flood Zone, VE 12 Velocity Flood Zone

SEQRA CLASS: Type II

**i. Technical Analysis Memorandum**

Technical Analysis Memo

Lead Agency: (not applicable)

Planner: Lisa D'Andrea

Date completed: September 5, 2017 Site Plan

SEQRA class: Type II Sub Waiver

Physical Location: 132 Navy Rd. Subdivision

School District: Montauk Special Permit

Zoning District: A Residence Zone Change

Overlay District: Coastal Overlay District Zone 3 Variance

Tax Map Number: 300-026-01-9.1 Natural Resources

Applicant: Nancy Mack

c/o Joel Halsey

PO Box 5030

Montauk, N.Y. 11954

Telephone: 631-668-7332

FEMA ZONE: Flood Zone X, VE 12

Soil Type: Carver & Plymouth Sands 3-15% slopes (CpC); Montauk loamy sand, sandy variant 15-35% slopes (MnE); beaches (Bc)

Map of Property:

Size of Parcel: 111,461.6 sq. ft. total

Project Description: To construct 1,572 sq. ft. of additions, a 513 sq. ft. covered porch, a 580 sq. ft. northern patio, a 690 sq. ft. southern patio, a 300 sq. ft. southern covered porch, and a 180 sq. ft. roof deck on a parcel of land with bluffs.

Relief Requested: A Natural Resources Special Permit and two variances from ? 255-4-40 (coastal setbacks) pursuant to ? 255-4-20 of the Town Code and any relief necessary. Variances of 78.6 ft. and 56 ft. to respectively construct the deck and residential addition 72.4 ft. and 94 ft. from the bluff crest where a minimum 150 ft. setback is required.

Property and History:

The property is improved with a two story residence and concrete patios erected before the adoption of zoning. It appears that the stairway access to the beach was also constructed

prior to zoning. It is visible in a 1983 aerial photograph of the property. It is not clear how many times the stairway has been repaired or rebuilt over the years. However, from examining the more recent aerials, it appears the stairway was reconfigured and reconstructed between 2011 and 2016. The Town records indicate that no permits were attained for the rebuilding of the stairway.

In 2007 a building permit was issued for a 960 sq. ft. pool. In that same year another building permit was issued for 1,350 sq. ft. first floor and 950 sq. ft. of second floor interior alterations. The most recent Certificate of Occupancy (CO) issued December 7, 2007 reflects the pool and interior alterations.

The applicant has owned the property since 2005.

All existing and proposed structures are depicted on a James P. Walsh L. S. survey dated revised May 15, 2017 and received by the Board on June 30, 2017. The building plans for 132 Navy Rd. project by Robert Young Architect PLLC dated June 19, 2017 were also received by the Board on June 30, 2017.

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

The premises are contiguous with Block Island Sound with a residence that is 100% pre-existing non-conforming. The existing residence has a Gross Floor Area (GFA) of 3,145 sq. ft. and the maximum allowable expansion is 1,572 sq. ft. The applicant is before the Board for a NRSP and two variances to construct exactly 1,572 sq. ft. of additions as well as add two covered porches, two patios, and a roof deck.

It appears that over the years the bluff crest has remained fairly stable incurring minimal erosion. However, that could change at any time with a severe coastal storm. It should be noted that the property is large enough to move the house and the sanitary system landward to a conforming or more conforming location.

The applicant is proposing to remove a portion of the existing residence on the seaward side of the house and replace it with a covered porch. The new addition and the main part of the house will be situated 94 ft. from the bluff crest. The proposed patio will be seaward of the addition and approximately 72.4 ft. from the bluff crest.

Because of the topography and natural grade, some of the main house will be considered basement and another portion will be at least four feet above grade and considered a first story. The addition will have a full basement of 1,122 sq. ft. The building plans label this the "lower level" (pg. A101). The "lower level" project will consist of 1,572 sq. ft. of basement and 240 sq. ft. of first floor.

What is labeled as the "main floor" on the building plans (pg. A102) is the level that the 1,030 sq. ft. of first story addition, along with the 513 sq. ft. northern and 300 sq. ft. of southern covered porches, and a 580 sq. ft. northern and a 690 sq. ft. southern patio will be constructed. The "upper floor" plan is the level that includes the 792 sq. ft. of second story to the addition, the roof deck, and sedum roofs. The sedum plantings will be part of the roofs over the covered porches.

The clearing as depicted on the survey submitted with this application is not accurate. The existing clearing estimated from the 2016 aerial is about 65,000 sq. ft. This property is about 14,000 sq. ft. overcleared.

The clearing that exists on the property is not entirely pre-existing non-conforming. The estimated clearing calculated from the 2004 aerial is about 51,000 sq. ft. and that should be considered the maximum clearing allowed. Some clearing along the bluff crest also took place since 2004.

Between 2004 and 2007 it appears a new driveway was constructed that required clearing. The driveway configuration was changed again some time between 2010 and 2013 and lawn was established in areas that had been uncleared. (Various aerial photos with clearing will be sent under another cover). The clearing calculated from the 2013 is estimated at about 70,000 sq. ft. or just about the entire area landward of the bluff crest. It appears since 2013 that about 5,000 sq. ft. of maintained lawn in a sloped area has been allowed to naturalize.

If the Board approves this project the Planning Department recommends that the clearing come into compliance with the maximum clearing allowed which is 51,000 sq. ft. This should include revegetation of the bluff crest west of the stairway.

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. Project limiting fencing consisting of 4' plastic safety or snow fence shall be erected in the location depicted on the attached Planning Department sketch dated September 5, 2017 to limit land disturbance. The fencing shall be maintained for the duration of construction activities and replaced as necessary when damaged, dislodged or 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 property should be brought into compliance in regards to clearing. A revegetation plan that indicates the locations, species, size and spacing 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 two story addition 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.

e. 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.

f. 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. *Travis Rathbone***

TIME: 7:30:00 PM APPLICANT: Travis Rathbone

SIZE/LOCATION: 28,001 sq. ft., 98 Rutland Rd., Map No. 3122; Lot 666 Map of Clearwater Beach, Sec.3,

Springs (300-024-12-12)

DESCRIPTION: To allow approximately 8,800 sq. ft. of clearing to remain on the property.

RELIEF SOUGHT: One variance from 255-2-60 (Residential District Provisions) of the Town Code and

any relief necessary. A 8,800 sq. ft. clearing variance is requested to allow 25,800 sq.

ft. of clearing to remain on the property where the maximum clearing permitted is

17,000 sq. ft.

ZONING DISTRICT: B Residence,

SEQRA CLASS: Unlisted

**i. Technical Analysis Memorandum**

Physical Location: 98 Rutland Rd.

Zoning District: B Residential

Overlay District:

Tax Map Number: 300-024-12-12

Applicant: Travis Rathbone

c/o Cherie Sperber

62 Muir Blvd.

East Hampton, N.Y. 11937

Telephone: (631) 960-2588

FEMA ZONE: Flood Zone X

Soil Type: Montauk fine sandy loam, 0-3% slopes (MfA)

Map of Property: Map No. 3122; Lot 666 Map of Clearwater Beach, Sec.3

Size of Parcel: 28,001 sq. ft.

Continuation of Full EAF Part 3:

Project Description: To allow approximately 8,800 sq. ft. of clearing to remain on the property.

Relief Requested: One variance from ?255-2-60 (Residential District Provisions) of the Town Code and any relief necessary. A 8,800 sq. ft. clearing variance is requested to allow 25,800 sq. ft. of clearing to remain on the property where the maximum clearing permitted is 17,000 sq. ft.

Property and History:

A Certificate of Occupancy (CO) was issued on April 8, 1968 for a 960 sq. ft. one story residence with an attached 404 sq. ft. garage. On November 16, 2007 a building permit was issued to convert a 278 sq. ft. attached garage to habitable space. In 2011 a building permit was issued to construct a 715 sq. ft. deck. The most recent CO was issued February 4, 2011 for a 960 sq. ft. residence with 404 sq. ft. attached garage to living space and a 715 sq. ft. deck. A building permit was issued September 25, 2014 for a 828 sq. ft. pool. A CO has not been issued for the pool.

The existing structures and clearing are depicted on a Gary Benz, L.S. survey dated April 26, 2017.

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

? 255-2-60 Residential District Provisions was adopted into the Town Code in June of 2004. The clearing on this property cannot be considered pre-existing non-conforming.

In 2004, the western two thirds of the property was wooded and considered uncleared. In 2007 about half of the understory in the wooded area had been cleared. In 2010 most of the understory had been cleared from the wooded area. It appears that progressively the understory was being removed and lawn was being established. It appears that in the 2013

aerials some of the mature trees were also removed in the back. In 2011, when the building permit was sought for the deck, most of the property could be considered cleared.

It appears that the building department did not require a survey with the clearing calculations and delineation on it for the deck possibly because the deck would be in a location that was already cleared and would not require any further clearing. The survey attached to the CO issued on February 4, 2011 for the deck and garage conversion did not include a clearing delineation or calculations which was an oversight on the part of the building department.

Another building permit was issued in 2014 for a swimming pool. The Thomas Matarazzo L.S. survey dated September 8, 2014 submitted for the building permit does not have the clearing or clearing calculations. The pool was constructed. As required by ?255-2-60 (7) ?Upon completion of any project requiring a building permit and additional clearing, a survey will be required that includes the existing clearing lines and calculations to ensure compliance with this section before a certificate of occupancy may be issued.? It appears the building department did require a survey with the clearing calculations. The as-built Gary Benz, L.S. survey dated April 26, 2017 does have the clearing lines and calculations. The clearing is over the maximum allowed. A CO has not yet been issued for the pool.

? 255-2-60 was adopted into the Town Code in June of 2004 to regulate clearing of lots or parcels of land within any residential district to further protect our native habitats and preserve the rural character of the community.

Although this property is not in the Water Recharge Overlay District (WROD), Harbor Protection Overlay District (HPOD) it is less than half a mile south of Gardiners Bay and about a half mile west of Accabonac Harbor. Water quality has become an important issue within the Town. Preservation of our intact native woodlands with its many layers aid in filtering the water before it ends up in the groundwater or into our surface waters. Lawn has very little, if any environmental value. What is applied to lawns and landscaped areas in the forms of fertilizers, pesticides, and herbicides get absorbed into the ground and ultimately make their way into the groundwater. The clearing regulations in ?255-2-60 are less stringent than for properties within WROD or HPOD and were adopted to give the land owner ample room for a residence, accessory structures such as pools, patio, and landscaping while preserving the native woodland habitat.

This property had quality native woodland in 2004. The owner acquired the property in 2014 and is responsible for his property and knowing the laws pertaining to it. The Variance Standards state that the Board ?shall not grant any area variance unless the variance outweighs any detriment it will cause to the general health, safety and welfare of the neighborhood or Town as a whole.? ? 255-2-60 Residential District Provisions were adopted precisely for the general welfare of the Town as a whole. The Planning Department?s

opinion is that the benefit gained by the applicant will not outweigh the detriment to the Town. It also does not appear to be the minimum variance necessary. The requested variance is substantial, may adversely affect the environment, and in essence, was self-created. Furthermore, the property has the area that can be revegetated with native forest vegetation.

When considering the clearing variance in this application, Board should keep in mind that it may encounter similar applications in the future. We recommend that the Board consider all of the circumstances that led to overclearing as well as the potential to avoid the need for a variance altogether.

The Planning Department recommends, and will continue to recommend that properties be revegetated to the maximum extent possible and variances only be approved when the only option available would be to demolish existing structures in order to revegetate. A high bar should be set for allowing clearing to exceed the maximum allowed.

Recommended Project Conditions:

- a) The square footage to be revegetated should be determined by the Board.
- b) The parcel should be revegetated with the species, sizes and spacing indicated on a revegetation plan to be approved by the Board or its delegate prior to the issuance of a building permit. Any invasive non- native species such as ornamental grasses in areas to be revegetated should be removed. The revegetation should be completed within six months of the issuance of a building permit.
- c) The revegetation should be inspected by the Board or its delegate prior to the issuance of a Certificate of Occupancy.

### ***E. George & Anastasis Gavalas***

TIME: 7:50:00 PM APPLICANT: George & Anastasia Gavalas

SIZE/LOCATION: 28,874 sq. ft. total, 43 Marine Blvd., Map No. 4987; Seaview at Amagansett Lot 39,

Amagansett (300-179-01-09)

DESCRIPTION: To construct two approximately 51 sq. ft. one story additions, a 64 sq. ft. one story addition, a 21 sq. ft. one story addition, a 56 sq. ft. one story addition, a 175 sq. ft. one story addition with covered porch and steps, a 360 sq. ft. attached garage with a second story deck, and a 342 sq. ft. second story addition on a parcel of land with dune crests and wetlands.

RELIEF SOUGHT: A Natural Resources Special Permit pursuant to Section ? 255-4-20 and ten variances from ? 255-4-40 (Coastal setbacks) of the East Hampton Town Code and any relief

necessary. Variances of 67.8 ft., 77.5 ft. 58 ft. 44 ft. 50 ft., 45 ft. 50 ft., 45 ft., 55 ft. Are respectively required to construct six additions to the existing residence 32.2 ft., 22.5

ft., 42 ft., 56 ft., 50 ft., 55 ft. , 50 ft., 55 ft., and 45 ft. from the dune crest where a 100 ft.

minimum setback is required. A 32 ft. variance is required to construct a second story

deck on the garage 68 ft. from the wetland where a minimum 100 ft. setback is required.

ZONING DISTRICT: B Residence VE velocity flood zone

SEQRA CLASS: Type II

11/14/2017

**i. Technical Analysis Memorandum**

Technical Analysis Memo

Lead Agency: (not applicable)

Planner: Lisa D'Andrea

Date completed: November 3, 2017 Site Plan

SEQRA class: Type II Sub Waiver

Physical Location: 43 Marine Blvd. Subdivision

School District: Amagansett Special Permit

Zoning District: B Residence Zone Change

Overlay District Coastal Erosion Overlay Zone 1 Variance XX

Tax Map Number: 300-179-01-09 Natural Resources

XX Applicant: George & Anastasia Gavalas Special Permit

c/o Jeffrey L. Bragman, PC

15 Railroad Ave., Suite #1

East Hampton, NY, 11937

Telephone: 631-324-3737

FEMA ZONE: VE 17 and AE 10 Flood Zones

Soil Type: Dune land (Du); Beaches (Bc)

Map of Property: Map No. 4987; Seaview at Amagansett Lot 39

Size of Parcel: 28,874 sq. ft. total

Project Description: To construct two approximately 51 sq. ft. one story additions, a 64 sq. ft. one story addition, a 21 sq. ft. one story addition, a 56 sq. ft. one story addition, a 175 sq. ft. one story addition with covered porch and steps, a 360 sq. ft. attached garage with a second story deck, and a 342 sq. ft. second story addition on a parcel of land with dune crests and wetlands.

Relief Requested: A Natural Resources Special Permit pursuant to Section ? 255-4-20 and ten variances from ? 255-4-40 (Coastal setbacks) of the East Hampton Town Code and any relief necessary. Variances of 67.8 ft., 77.5 ft. 58 ft. 44 ft. 50 ft, 45 ft. 50 ft, 45 ft, 55 ft. are respectively required to construct six additions to the existing residence 32.2 ft., 22.5 ft., 42 ft., 56 ft., 50 ft., 55 ft. , 50 ft., 55 ft., and 45 ft. from the dune crest where a 100 ft. minimum setback is required. A 32 ft. variance is required to construct a second story deck on the garage 68 ft. from the wetland where a minimum 100 ft. setback is required.

Property and History:

A two story residence with a breezeway, 292 sq. ft. attached garage and 680 sq. ft. of decking was constructed in 1969. In 1982 a variance for a dune setback requirement for a 96 sq. ft. addition to the pre-existing non-conforming residence was granted by the Board. The most recent Certificate of Occupancy was issued February 4, 1987 for the 96 sq. ft. addition and interior alterations.

The current owner acquired the property in 2014 and should be fully aware of the vulnerability and constraints of the property.

All existing and proposed structures are depicted on a Saskas Surveying survey dated revised March 9, 2017 and received by the Board on April 5, 2017. The Gavalas Residence building plans by Ernest Schieferstein Architect, dated revised February 1, 2017 were received by the Board on February 7, 2017.

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

The July 22, 1969 CO records the house as being 2,373 sq. ft. with a 300 sq. ft. garage and 680 sq. ft. of decking. On October 4, 1987 a CO for a 96 sq. ft. addition with complete interior alteration was issued.

The applicant has reviewed buildings plans for the house and has submitted information that was received by the Board on October 23, 2017 that revises the house as 2,717 sq. ft. with a 292 sq. ft. detached garage. (The garage is not included in GFA because it is not habitable space). Presuming the GFA is actually the larger number a 50% expansion of the non-conforming structure would be limited to 1,358 sq. ft. A 96 sq. ft. addition was put on in 1987 and the remaining expansion that could be permitted is 1,252 sq. ft. The applicant is proposing to convert the 292 sq. ft. garage into habitable space, construct a 360 sq. ft. attached garage, and construct 657 sq. ft. of additions. The proposed 360 sq. ft. detached garage is not included in the GFA because it will not be utilized as habitable space. The overall increase in non-conforming GFA will be approximately 943.5 sq. ft. and within the limit allowed.

The applicant is proposing seven additions of various sizes and an attached garage with a roof deck to be constructed on to the pre-existing non-conforming structure. The attached garage which will be landward of the house requires a 41.2% variance and the roof deck a 32% variance. All of the other proposed additions will require more substantial variances. Two of the additions are proposed to be seaward of the existing structure although within the existing footprint.

The house is situated about 110 feet seaward of the FEMA designated Limit of Moderate Wave Action (LIMWA) Line. In fact, the entire property except the extreme northwest corner is seaward of the LIMWA line. Three quarters of the property lies seaward of the Coastal Erosion Hazard Line (CEHA) and the residence itself is at its most landward point still 80 ft. seaward of the CEHA line. It should be noted that the CEHA was mapped in 1988 and may not accurately represent current coastal risks. The residence is located in a VE 17 flood zone. The improvements are proposed to remain wholly within the Velocity Flood Zone

which is defined by FEMA as "coastal high hazard areas. They are subject to high velocity water including waves; they are defined by the 1% annual chance (base) flood limits (also known as the 100-year flood) and wave effects 3 feet or greater.

The house as is exists does not meet the Town's minimum dune crest setback of 100 ft. Coastal setbacks which were codified to protect our natural resources and to lessen the danger to life and property caused by coastal flooding and storms. The Planning Department feels that it is not prudent to allow the expansion of such a non-conforming structure located so close to the dune crest. One must keep in mind that beaches and dunes are dynamic features and that the existing residence is in an extremely vulnerable location. The patterns of sand movement and dune formation that may characterize an area could change gradually over the years or change dramatically with a severe storm or hurricane event.

Recommended Project Conditions:

- a. Project limiting fencing consisting of 4' snow fence shall be erected in the location depicted on the attached Planning Department sketch dated April 18, 2017 adapted from the approved Saskas Surveying survey dated revised March 9, 2017. 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 plan.
- d. All areas disturbed by construction activities should be revegetated with Beach Grass (*Ammophila breviligulata*) planted 12' on centers in culms of three or more in staggered rows.
- e. 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.

f. The establishment of turf, lawn, sod or ornamental vegetation should be prohibited.

g. 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.

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

i. 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.

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

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

**IV. WORK SESSION:**

**V. EXTENSION OF TIME:**

**VI. POSSIBLE ADMINISTRATIVE APPLICATIONS:**

**VII. BOARD DETERMINATIONS:**

**A. *Rowley***

SCTM# 300-32-4-20

69 Seaside Avenue

Montauk

Memorandum from Joel Halsey

**B. *Milstein***

SCTM# 300-23-1-22

24 Bay Inlet Road

Springs

Requesting a letter from the Board issuing a Building Permit. Applicant does not feel they have to comply with Condition H4 (a) and (b) of the Determination.

**VIII. BOARD DECISIONS:**

**A. *Zwirko***

APPLICANT: Gregory Zwirko

SIZE/LOCATION: 22,296 sq. ft. (total), 12 Napeague Lane, Beach Hampton -  
Section 1, block 1, lots 6-

15, map # 1203, Amagansett (300-174-05-23 & 24)

DESCRIPTION: To construct a 1,428 sq. ft. residence with attached shed, approximately 209 sq. ft.

brick terrace, walkway, sanitary system with retaining wall, driveway, and to clear vegetation within jurisdiction and setbacks of wetlands and beach vegetation.

RELIEF SOUGHT: Four 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 61.7? and 34?

are required from ?255-4-30 of the Town Code to construct the residence with attached

shed and brick terrace 38.3? and 76?, respectively, from freshwater wetlands where a

100? setback is required. One variance of 75.6? is required from ?255-4-30 of the Town

Code to construct the sanitary system 74.4? from freshwater wetlands where a 150?

setback is required. One variance of 39? is required from ?255-4-30 of the Town Code

to allow clearing to within 11? of freshwater wetlands where a 50? setback is required,

and any other relief necessary.

ZONING DISTRICT: B Residence AE Flood Zone, elevation 10

SEQRA CLASS: Type II

**B. Karen Zedlovich**

SCTM# 300-23-1-16.1

143 Isle of Wight Road

Springs

**IX. MINUTES APPROVAL:**

**A. *December 12th 2017***

**X. RESOLUTIONS**