



**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 September 12,  
2017  
East Hampton, New York**

**I. CALL TO ORDER**

12:00 AM Meeting called to order on September 12, 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. *John W. Hadden II***

TIME: 6:30:00 PM APPLICANT: John W. Hadden II

SIZE/LOCATION: 27,500 sq. ft., 57 Buells Lane Extension, Division of Property of Mrs. A.H. Larkin, map

#. 246, p/o lots 13 & 14, East Hampton (300-194-01-15)

DESCRIPTION: To relocate the existing residence, with alterations and additions, outside of the

Town's pyramid regulations along the southern lot line.

RELIEF SOUGHT: One variance of 11' from §255-11-72D the East Hampton Town Code is required to

allow the residence to extend approximately 11' beyond the pyramid regulations along

the southern lot line, 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: May 31, 2017 Site Plan

SEQRA class: Type II Sub Waiver

Physical Location: 57 Buells Lane Extension Subdivision

School District: East Hampton Special Permit

Zoning District: B Residence Zone Change

Overlay District: N/A Variance XX

Tax Map Number: 300-194-01-15 Natural Resources

Applicant: John W. Hadden II Special Permit

C/O Fleming & Darrell PLLC Other:

10 Gingerbread Lane

East Hampton, NY 11937

Telephone: 631-324-8778

FEMA ZONE: X Flood Zone

Soil Type: Carver and Plymouth sands, 3 to 15% slopes (CpC)

Map of Property: Division of Property of Mrs. A.H. Larkin, map no. 246, p/o lots 13 & 14

Size of Parcel: 27,500 sq. ft.

Project Description:

To relocate the existing residence, with alterations and additions, outside of the Town's pyramid regulations along the southern lot line.

Relief Requested:

One variance of 11' from §255-11-72D the East Hampton Town Code is required to allow the residence to extend approximately 11' beyond the pyramid regulations along the southern lot line, and any other relief necessary.

Property Conditions and History:

The property is currently improved with an approximately 2,800 sq. ft. two story residence with 528 sq. ft. attached garage a 252 sq. ft. wood deck, and a 720 sq. ft. swimming pool. The most recent C.O. was issued in 2007 for a 986 sq. ft. first floor, 971 sq. ft. second floor, frame, two-story, one family residence having one kitchen only; with 359 sq. ft. first floor addition, 474 sq. ft. second floor addition, 240 sq. ft. alteration, 156 sq. ft. second floor alteration, 528 sq. ft. attached garage and 252 sq. ft. wood deck; 720 sq. ft. gunite swimming pool with proper fencing and dry well. The property has not appeared before the Zoning Board previously.

Planning Department Analysis and Recommendations for the Boards Consideration:

The subject property is located on a private road off of Buells Lane Extension, in East Hampton. The applicants are requesting approval to relocate the existing residence further east on the property with additions to the northeast side of the residence, as part of the project the applicants will need to relocate the driveway and sanitary system. After the relocation, the southern side of the residence would extend approximately 11' outside of the Town's pyramid regulations.

The existing residence on the property is slightly crooked and near the rear of the property. The existing conditions include pre-existing non-conformity with the pyramid line along both the northern and southern lot lines. The existing pyramid violations are approximately 3' along the northern lot line at its greatest point and approximately 15' along the southern property line at its greatest point. Both violations decrease over the length of the residence since the house is slightly crooked in relation to the property lines. The project proposes to align the residence with the property lines and locate the residence up against the northern side yard lot line setback to reduce the violation of the southern pyramid line. The proposed project removes the pyramid violation to the northern property line altogether. The removal of the northern pyramid violation removes the nonconformity along a neighboring residential property while the reduced southern nonconformity is along a 20' wide flag strip for 61 Buells Lane Ext.

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 applicants should address how the variance does not cause an undesirable change in the character of the neighborhood, cannot be achieved by some method other than the requested variances, is not substantial, and does not have an adverse effect or impact on the environment or the neighborhood.

Recommended Project Conditions:

- 1. N/A

**B. James Edwards**

TIME: 6:50:00 PM APPLICANT: James Edwards

SIZE/LOCATION: 43,560 sq. ft., 35 Buells Lane Extension, Division of Property of Mrs. A.H. Larkin, map

# 246, lot 19, East Hampton (300-194-01-22)

DESCRIPTION: To construct an elevator tower addition within side yard lot line setbacks and outside

of the Town?s pyramid regulations.

RELIEF SOUGHT: One variance of 6.2?, from ?255-11-10 the Town Code is required to allow the elevator

addition to be located 13.8? from the side yard lot line setback where a 20? setback is

required; and one variance of 5.5?, from ?255-11-72D of the Town Code, is required to

allow the elevator addition to exceed the Town?s pyramid regulations by

approximately 5.5?, 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: June 1, 2017 Site Plan

SEQRA class: Type II Sub Waiver

Physical Location: 35 Buells Lane Extension Subdivision

School District: East Hampton Special Permit

Zoning District: B Residence Zone Change

Overlay District: N/A Variance XX

Tax Map Number: 300-194-01-22 Natural Resources

Applicant: James Edwards Special Permit

C/O Due East Planning Other:

P.O. Box 4144

East Hampton, NY 11937

Telephone: 631-604-6288

FEMA ZONE: X Flood Zone

Soil Type: Carver and Plymouth sands, 3 to 15% slopes (CpC); Plymouth loamy sand, silty substratum, 0-3% slopes (PsA)

Map of Property: Division of Property of Mrs. A.H. Larkin, map no. 246, lot 19

Size of Parcel: 43,560 sq. ft.

Project Description:

To construct an elevator tower addition within side yard lot line setbacks and outside of the Town's pyramid regulations.

Relief Requested:

One variance of 6.2', from §255-11-10 the Town Code is required to allow the elevator addition to be located 13.8' from the side yard lot line setback where a 20' setback is required; and one variance of 5.5', from §255-11-72D of the Town Code, is required to allow the elevator addition to exceed the Town's pyramid regulations by approximately 5.5', and any other relief necessary.

#### Property Conditions and History:

The property is currently improved with an approximately 4,310 sq. ft. two story residence with screened porches, second story balcony, a 658 sq. ft. attached garage with storage, a shed, 704 sq. ft. swimming pool, 912 sq. ft. patio, and 198 sq. ft. pool house. The most recent C.O. was issued in 2009 for an Electric generator at existing single family residence. The property has not appeared before the Zoning Board previously.

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

The subject property is located on Buells Lane Extension, in East Hampton. The applicants are requesting approval to construct an elevator tower addition to the eastern side of the residence within side yard lot line setbacks and outside of the Town's pyramid regulations.

The existing residence is located 19.5' from the eastern side yard lot line according to the provided survey. The elevator tower has a 7' by 5' 10' footprint and services the basement, first, and second floors. The tower is proposed to be located 13.8' from the eastern side yard lot line setback and also pierce the pyramid line by approximately 5.5'.

In the submitted application the applicants state that, "the proposal is the most effective area to construct the elevator in order to meet the needs of the property owner. This area will provide access to the basement, first and second floor in the most used & needed portion of the house. Any other location would be cost prohibitive requiring extensive alterations to the existing structure of the residence." The applicants may want to provide, or the Board ask for, more detail why alternative conforming locations are not as viable and address how this location meets the variance standards. The application also makes note that this is a handicap accessibility issue for the family that has recently become an urgent need.

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 applicants should address how the variance does not cause an undesirable change in the character of the neighborhood, cannot be achieved by some method other than the requested variances, is not substantial, and does not have an adverse effect or impact on the environment or the neighborhood.

Recommended Project Conditions:

- 1. N/A

**C. 68 Prospect Hill LLC**

TIME: 7:10:00 PM 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

**i. Technical Analysis Memorandum**

Technical Analysis Memo

Lead Agency: (not applicable)

Planner: Tyler Borsack

Date completed: December 21, 2016 Site Plan

SEQRA class: Type II Sub Waiver

Physical Location: 68 Prospect Hill Ln. Subdivision

School District: Montauk Special Permit

Zoning District: A2 Residence Zone Change

Overlay District: N/A Variance XX

Tax Map Number: 300-013-02-1.14 Natural Resources

Applicant: 68 Prospect Hill LLC Special Permit

C/O Brian J. DeSesa Other:

The Adam Miller Group

P.O. Box 1947

Bridgehampton, NY 11932

Telephone: 631-537-1155

FEMA ZONE: X Flood Zone

Soil Type: Bridgehampton silt loam, till substratum, 6-12% slopes (BhC)

Map of Property: Prospect Hill, lot 16, map no. 7817

Size of Parcel: 40,195 sq. ft.

Project Description:

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

Relief Requested:

Three variances of 27.2', 9.2', and 4' from §255-11-10 of the Town Code are required to construct the proposed tennis court 22.8', 40.8', and 46' from the northern, southern, and western lot lines, respectively, where 50' setbacks are required. One variance of 41.1' from §255-11-10 of the Town Code is required to construct the proposed tennis court 58.9' from the front yard lot line where a 100' setback is required, and any other relief necessary.

Property Conditions and History:



The property is currently unimproved and has not appeared before the Zoning Board previously.

Planning Department Analysis and Recommendations for the Boards Consideration:

The property is located on the south side of Prospect Hill Ln which is located off of East Lake Drive in Montauk. The applicant is before the Board for approval to construct a new standard 60' by 120' tennis court in the rear of the property within front, side, and rear yard lot line setbacks. A new residence with patio appears to be planned as well on the provided survey, however, no other structures require review by the Zoning Board at this time.

The provided survey shows that with all the proposed structures included the coverage and total lot coverages will remain within the allowable under the Town Code. The tennis court also meets the required 10' setback from the scenic easement to the south. No clearing line is provided although it appears that clearing should not be an issue with the proposed structures. The Board should still request prior to making a decision, or applicants provide prior to the public hearing, an updated survey which depicts the proposed clearing limits to insure that clearing is proposed within the allowable limits.

It should be noted that it is unclear if a front yard setback variance is required and the Board may want to have written correspondence from the Building Department clarifying what the required setbacks should be. A double front yard accessory setback may have never been applied to tennis courts in the past, but there is not enough information or history that the Planning Department is aware of in order to advise the Zoning Board. An official determination from the Building Department is probably the best course of action moving forward. Unlike the note for double swimming pool setbacks which explicitly states side and rear yard setbacks are doubled, the note on the dimensional table for playing courts states, "Yard setbacks from all property lines are doubled for playing courts and must be at least 50 feet in depth adjoining residential property, pursuant to §255-11-88, Playing Court."

The unimproved property to the west appears to be the most affected neighbor by the tennis court variances. This vacant property borders on two of the variance requests, the northern lot line variance request along the access strip and the western lot line variance request. The affected property to the south is an approximately 16' wide reserved area with a roadway access further south.

Variance applications for tennis courts are not common, since 2012 the Board has had 4 variance requests for tennis courts. The most recent variance request was 15 Wainscott Hollow Road LLC (SCTM# 300-196-01-8.10) which was withdrawn prior to the Board making an official decision. Illuminus Property Holdings LLC (SCMT# 300-189-04-10) was

approved three lot line setback variances of 7.3?, 2.1?, and 9.3? in October of 2015. Servily/Evereteze (SCTM# 300-155-01-20.2) was granted approval of two variances of 24.7? and 8.7? in 2013. Finally, 225 Old Montauk Highway LLC (SCTM# 300-087-01-17) was granted a single 10? side yard variance in 2012.

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 NRSP and variances. 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

Recommended Project Conditions:

1. N/A

#### **IV. WORK SESSION:**

#### **V. EXTENSION OF TIME:**

##### **A. Kevin Sullivan**

SCTM# 300-19-8-1.5

85 Fairview Avenue

Montauk

##### **B. Linda Burkhardt**

SCTM# 300-19-7-9.1

255 Fairview Avenue

Montauk, NY

##### **C. Rollner-Heidenberg**

SCTM# 300-30-5-15

4 Duval Place

Montauk

**D. *Laura Michaels***

SCTM# 300-28-4-27

71 South Edgemere

Montauk

**E. *Vincente Wolf***

SCTM# 300-87-3-12.3

220 Old Montauk Highway

Montauk

**VI. POSSIBLE ADMINISTRATIVE APPLICATIONS:**

**A. *Langan***

SCTM# 300-19-5-19.9

15 Lakeside Court, Montauk

Project Description: To allow a 1,045 sq. ft. pool patio, pool, hot tub and a 30 sq. ft. walkway to remain within 150 ft. of wetlands.

**VII. BOARD DETERMINATIONS:**

**A. *ES Landing***

SCTM# 300-90-1-15.1

96 NW Landing Road

East Hampton

Modification to reconfigure the area of allowable 1st floor decking to allow for better access and means of egress from the second floor deck and first floor bedrooms.

**B. Safe Harbor Retreat LLC**

SCTM# 300-176-1-18

Requesting an adjournment for the public hearing that is currently scheduled for September 19th 2017.

**VIII. BOARD DECISIONS:**

**A. Montauk Energy**

TIME: 6:30:00 PM APPLICANT: Montauk Energy Storage Center, LLC

SIZE/LOCATION: 19,726 sq. ft., 10 North Shore Road, N/A, Montauk (300-027-04-088.8)

DESCRIPTION: Site plan/special permit application has been made to construct a ~90' X 46' (4,154 sq.

Ft.) Battery storage building and associated accessory structures, lighting, landscaping & access.

RELIEF SOUGHT: Three (3) variances from section 255-11-10 of the Town Code, including: a variance of

24' from the front lot line as a minimum setback of 50' is required and a setback of 26' is proposed, a variance of 7' from the side lot line (eastern) as a minimum setback of

15' is required and a setback of 8' is proposed, a variance of 11' from the rear lot line as a minimum setback of 25' is required and a setback of 14' is proposed.

ZONING DISTRICT: CI- Commercial Industrial Zone X Flood Zone

SEQRA CLASS: Unlisted

**B. Edward Milstein**

APPLICANT: Edward Milstein

SIZE/LOCATION: 21,789 sq. ft. total, 24 Bay Inlet Dr., Map No. 3451; Map of Lion Head Beach Lot No.

52, Springs (300-023-01-22)

DESCRIPTION: To make exterior renovations to the existing entryway and construct a new set of stairs

on to the entryway, to install 6 ft. high stockade fences along the northern and southern property lines, and to alter the existing driveway and create a 450 sq. ft.

parking area on a parcel of land with wetlands.

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

from ?255-2-30 (wetland setbacks) of the Town Code and any relief necessary. Variances of 80 ft. and 40 ft. are required to respectively construct a stockade fence and new entryway steps 20 ft. and 60 ft. from the wetlands where a minimum 100 ft. setback is required.

ZONING DISTRICT: B Residence, AE Flood Zone, elevation 8 &X

SEQRA CLASS: Type I

### **C. *Franklin Salasky***

APPLICANT: Franklin Salasky

SIZE/LOCATION: 11,419 sq. ft., 11 Miller Lane, East Hampton (300-163-05-5.2)

DESCRIPTION: To allow a 96 sq. ft. pond, 46 sq. ft. deck, an approximately 340 sq. ft. slate patio with

204 sq. ft. arbor, two propane tanks, and an air conditioning unit to remain within side

yard lot line setbacks and outside of the Towns pyramid regulations.

RELIEF SOUGHT: Twelve variances from the East Hampton Town Code are required for this application.

Variances of 9.6?, 7.3?, 6.5?, 2.7?, and three variances of 10? from ?255-11-10 of the

Town Code are required to allow the pond to be located 0.4?, deck to be located 2.7?, slate patio to be located approximately 3.5?, arbor to be located 7.3?, and both propane tanks and air conditioning unit to be approximately 0? from the side yard lot lines where 10? setbacks are required. Five variances from ?255-11-72D of the Town Code are required to allow the pond to be located 0.6?, arbor to be located 1.2?, both propane tanks to be approximately 4?, and the air conditioning unit to be approximately 2?8? outside of the Towns pyramid regulations, and any other relief necessary. ZONING DISTRICT: A Residence Zone X Flood Zone

SEQRA CLASS: Type II

**D. 80 Firestone Road LLC**

APPLICANT: C/o Joel Halsey 80 Firestone Road LLC

SIZE/LOCATION: 48,478 sq. ft. (total), 80 Firestone Road, N/A, Montauk (300-017-01-05)

DESCRIPTION: Not applicable.

RELIEF SOUGHT: An Appeal of the Principal Building Inspector pursuant to ? 255-8-35A(1) of the Town

Code. Appellants seek to challenge the determination dated August 5, 2016 finding that protected natural features on the property have been accurately identified on

June 29, 2016 by the Planning Director.

ZONING DISTRICT: RS- Resort VE velocity flood zone, el 12'; X flood zone

SEQRA CLASS: Type II

**E. Claflin**

APPLICANT: John and Jennifer Claflin

SIZE/LOCATION: 41,087 sq. ft., 27 Lilla Lane, Green River Estates, lots 1 and 3, map # 4116, Springs (300-102-03-08)

DESCRIPTION: To allow the property to remain beyond the clearing limits established in the Water Recharge Overlay District.

RELIEF SOUGHT: One variance of 3,579 sq. ft. from ?255-3-65 of the Town Code is require to allow the existing clearing to remain at 18,715 sq. ft. where 15,136 sq. ft. is the maximum allowed.

ZONING DISTRICT: B Residence Zone X Flood Zone

SEQRA CLASS: Type I

**IX. MINUTES APPROVAL:**

**A. August 22nd 2017**

**X. RESOLUTIONS**

**A. Brabant**

ZONING BOARD OF APPEALS

TOWN OF EAST HAMPTON

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In the Matter of the Application

of

DETERMINATION

KENNETH BRABANT

SCTM #300-58-08-9.1

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HEARING DATE: August 1, 2017

PRESENT: JOHN P. 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  
TYLER BORSACK, Planner  
KENNETH BRABANT, Applicant

#### 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 Vice-Chair Rogers of this Board.

A. PROJECT DESCRIPTION

1. PURPOSE OF APPLICATION:

To allow an approximately 1,700 sq. ft. brick pool patio to remain within rear yard lot line setbacks.

2. RELIEF OR APPROVAL SOUGHT:

One variance of 6.1? from ?255-11-10 of the Town Code is required to allow the brick pool patio to remain 13.9? from the rear yard lot line where a 20? setback is required, and any other relief necessary.

B. PROPERTY SIZE & LOCATION

1. LOT SIZE: 20,000 sq. ft. (total)
2. STREET LOCATION: 51 Lincoln Avenue
3. CONTIGUOUS WATER BODIES: N/A
4. HAMLET OR GEOGRAPHIC AREA: Springs
5. FILED MAP NAME: Montauk Manor
6. FILED MAP NUMBER: 455
7. DATE OF MAP FILING: July 11, 1911
8. BLOCK NUMBER IN FILED MAP: 50
9. LOT NUMBER IN FILED MAP: 31-40 inclusive
10. SUFFOLK COUNTY TAX MAP DESIGNATION: #300-58-8-9.1

C. ZONING INFORMATION



1. ZONING DISTRICT: B Residence
2. ZONING OVERLAY DISTRICT: N/A
- 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 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.?

2. 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 variances 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 variances sought are the minimum variances necessary and adequate to alleviate the difficulty causing applicant to request area variances, 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.

3. The Board finds that granting the instant application will 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 currently improved with a two story residence with swimming pool, brick patio, and shed. All of the structures are depicted on the Saskas Surveying Company, P.C. survey dated revised May 25, 2016, and stamped received by the Zoning Board on September 2, 2016. The most recent Certificate of Occupancy (C.O.) was issued in 2004 for a ?439 sq. ft. second floor addition to existing one family residence; and 120 sq. ft. wood decking.? The property before the Board is located on Lincoln Avenue, in Springs. The applicant is currently before the Board for approval to allow the existing brick patio around the swimming pool to remain within rear yard lot line setbacks. This parcel has not appeared before the Zoning Board previously.

2. The swimming pool on the property was constructed sometime after a 2011 building permit was issued for a 560 sq. ft. vinyl swimming pool with proper fencing and dry well and before 2013 when aerial images were taken. The brick patio was also constructed during this time period, presumably concurrent with, or just after, construction of the swimming pool. The swimming pool meets the required 20? setbacks from the rear yard lot line and the majority of the brick patio meets the setback as well. There is a line of vegetation along the rear yard lot line that partially screens the patio from the neighboring property to the south.

3. The Board finds that granting the requested variance does not cause an undesirable change to the character of the neighborhood or create a detriment to nearby properties. The pool patio is protected from outside views by existing vegetation. The pool patio does not interfere with the enjoyment of neighboring parcels and is protected from outside views by existing vegetative screening. No neighbors submitted letters or spoke out at the public hearing against the location of the pool patio.

4. The Board finds that the benefit sought by the applicant with regard to the location of the swimming pool and pool decking, cannot be achieved by some method feasible for

the applicant to pursue other than the requested area variance. The shape of the subject parcel is unique in that it is wider than it is longer, creating a very small rear yard area where double setbacks are difficult to meet.

5. The Board finds that although the requested variance may be considered substantial, it is the minimum variance necessary and adequate to alleviate the difficulty causing the applicant to request the area variance. The patio is in the best location to provide easy and safe travel around the swimming pool. The Board finds that the benefit to the applicant 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.

6. The Board finds that granting the requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The subject parcel does not contain any sensitive wildlife habitats, unique landforms or bodies of water including wetlands. The pool patio is protected from outside views by vegetative screening.

7. The Board finds that the need for the variance is self-created. The applicant stated that the contractor was not aware of the double setback requirements for pool patios. Case law has consistently concluded that the error on the part of one's contractor, even if made in good faith, is attributable to the owner of the property and constitutes a self-created hardship. The Board finds however, that although the need for the requested variance is self-created, this need, although relevant to the Board's decision does not preclude the granting of the requested variance. Town Law §267-b(3)(b)(5).

#### 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 GRANTED:

One variance of 6.1' from §255-11-10 of the Town Code is required to allow the brick pool patio to remain 13.9' from the rear yard lot line where a 20' setback is granted.

##### 2. DESCRIPTION OF WORK APPROVED:

To allow an approximately 1,700 sq. ft. brick pool patio to remain within rear yard lot line setbacks.

H. CONDITIONS OF APPROVAL

Grant of the specified variances is specifically conditioned upon compliance with the conditions set forth in this section of the determination. All improvements shall be made, built, or installed in accordance with the survey and plans described below.

1. APPROVED SURVEY: Prepared by Saskas Surveying Company, P.C., dated last revised May 25, 2016, and stamped received by the Zoning Board on September 2, 2016.
  
2. APPROVED BUILDING OR CONSTRUCTION PLANS: N/A
  
3. ADDITIONAL CONDITIONS AND TIME LIMITATIONS:
  - a. Applicant shall apply for and obtain a building permit for the pool patio no more than thirty-six (36) months from the date of filing of this determination.
  - b. Applicant shall apply for and obtain a Certificate of Occupancy no later than twelve (12) months from the date of issuance of the building permit.

I. VALIDITY OF APPROVAL

If any condition of this determination is not met, or is not met within the prescribed time period, all approvals, permits, or authorizations granted hereby shall be deemed void and of no effect.

ALL CONCUR:

JOHN WHELAN, Chair

CATE ROGERS, Vice-Chair

DAVID LYS, Member

ROY DALENE, Member

THERESA BERGER, Member

Dated: September 12, 2017

cc: Building Department  
Planning Department  
Kenneth Brabant, Applicant

***B. Adam Wade Potter***

ZONING BOARD OF APPEALS

TOWN OF EAST HAMPTON

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In the Matter of the Application

of

DETERMINATION

THE ADAM WADE POTTER REVOCABLE TRUST

SCTM # 300-94-01-11

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HEARING DATE: August 1, 2017

PRESENT: JOHN P. 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 SAVARESE, Legislative Secretary

TYLER BORSACK, Planning Department

DENISE R. SCHOEN, ESQ., Agent for Applicant

DAN MICHELS, Architect for Applicant

#### 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 Vice-Chair Rogers of this Board.

#### A. PROJECT DESCRIPTION

##### 1. PURPOSE OF APPLICATION:

To remove the existing residence and associated structures and to construct a 2,387 sq. ft. residence with approximately 900 sq. ft. of covered and screened porches, a 160 sq. ft. roof deck, and new sanitary system within setbacks and jurisdiction of bluffs and tidal wetlands.

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

Three (3) variances from the East Hampton Town Code and a Natural Resources Special Permit pursuant to ?255-4-20 of the East Hampton Town Code are required for this application. Variances of 21.1 and 24.5? are required from ?255-4-30 of the Town Code to

construct the residence 78.9? and covered porch 79? from tidal wetlands where 100? setbacks are required. One (1) variance of 63? is required from ?255-3-75B of the Town Code to construct the new sanitary system 137? from tidal wetlands where a 200? setback is required.

B. PROPERTY SIZE & LOCATION

1. LOT SIZE: 19,280 sq. ft. (total)
2. STREET LOCATION: 155 Three Mile Harbor Road
3. CONTIGUOUS WATER BODIES: Three Mile Harbor
4. HAMLET OR GEOGRAPHIC AREA: Springs
5. FILED MAP NAME: N/A
6. FILED MAP NUMBER: N/A
7. DATE OF MAP FILING: N/A
8. BLOCK NUMBER IN FILED MAP: N/A
9. LOT NUMBER IN FILED MAP: N/A
10. SUFFOLK COUNTY TAX MAP DESIGNATION: #300-94-1-11

C. ZONING INFORMATION

1. ZONING DISTRICT: A 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 255-5-51 (Natural Resources Special Permit) of the Town Code.

2. In order for this Board to grant applicant the requested area variance, 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 variances sought are the minimum variance necessary and adequate to alleviate the difficulty causing applicant to request an 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 grant of the instant application will be consistent with the requirements of both Town Law § 267-b and Town Code § 255-8-50.

F. ADDITIONAL FINDINGS AND CONCLUSIONS

1. The property is currently improved with an approximately 1,330 sq. ft. two story residence with wood decking, and sanitary system. There is no C.O. on file. The property has not appeared before the Zoning Board previously. The property is located on Three Mile Harbor Hog Creek Highway in Springs. The applicants are requesting approval to remove the existing 1,330 sq. ft. two story residence and associated structures and construct a new 2,387 sq. ft. two story residence with porches, roof deck, and new sanitary system within jurisdiction of tidal wetlands and bluffs. The existing residence on this property is located approximately 38', the existing deck 30', and existing sanitary system, which may only contain a single leaching pool, 41' from the tidal wetlands of Three Mile Harbor. The residence includes a 1,083 sq. ft. first floor with a 220 sq. ft. partial second story.

2. The residence is proposed to be constructed 78.5' from the tidal wetlands of Three Mile Harbor. The proposed residence consists of a 1,360 sq. ft. first story, a 1,027 sq. ft. second story, and a 965 sq. ft. finished basement. The residence also is proposed to have a 300 sq. ft. covered porch, a 600 sq. ft. covered porch, a 160 sq. ft. roof deck, and a new sanitary system 137' from the tidal wetlands. The sanitary is proposed in the most conforming location available on the property. It must be noted that since the property is located in the Harbor Protection Overlay District (HPOD), any additions to the existing residence would require a sanitary system upgrade, which would likely be the exact system that is proposed in this application given the limited options available for sanitary locations. There is limited space available on this property that is outside of wetland setbacks, and very little on the property is outside of NRSP jurisdiction. The property is preexisting nonconforming to the Town's clearing regulations and is nearly entirely cleared.

3. The property that is before the Board is contiguous with the waters of Three Mile Harbor. Three Mile Harbor is approximately 1,270 acres in size, consisting of 1,070 acres of open water. The harbor is a New York State Significant Fish and Wildlife Habitat and part of the Peconic Estuary Critical Environmental Study Area. The harbor provides important habitat for over wintering waterfowl and fish. Any activity that would degrade the water quality of Three Mile Harbor would adversely impact the biological productivity of the area. It is also noted in the Town's adopted Local Waterfront Revitalization Plan (LWRP) that the Harbor's waters are stressed by increasing shoreline development, boat and water sport use, and runoff from roads, drainage and septic systems in the immediate Three Mile Harbor area. The harbor is extensively used for commercial and recreational water dependent

activities and its overall health and productivity are intrinsic to the economic well-being of the Township.

4. The Board finds that granting the requested variances will not cause an undesirable change to the character of the neighborhood or create a detriment to nearby properties. The design of the proposed residence is in conformance with other homes within this neighborhood. The proposed new residence is modest compared with other properties and is not expected to interfere with the enjoyment of neighboring parcels.

5. The Board finds that the benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than the requested area variances. Due to the unique size and shape of the parcel in conjunction with its proximity to the wetland, there is no location on the subject that would be in complete conformance with setback requirements.

6. The Board finds that although the requested variances may be considered substantial, they are the minimum variances necessary and adequate to alleviate the difficulty causing the applicant to request the area variances. The existing residence is pre-existing non-conforming with regard to setback requirements and the new residence will increase setbacks. The applicants have also removed a proposed patio on the seaward side of the residence removing several variances associated with it.

7. The Board finds that granting the requested variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood. The applicant will upgrade the existing sanitary system to be in compliance with current Suffolk County Department of Health Services (SCDHS), benefitting the waters of Three Mile Harbor. The upgraded septic system will be located an additional 100' from the wetlands and will exceed the 4' separation from groundwater as set forth in the Harbor Protection Overlay regulations. The applicant will establish a scenic easement along the shoreline and revegetate the parcel to protect Three Mile Harbor by attenuating runoff from the property and helping to intercept non-point pollutants such as sediments, suspended and dissolved solids, nutrients associated with fertilizers and other chemical compounds that adversely affect the water quality. The root systems of the vegetation will stabilize the soil, minimizing the risk of erosion from precipitation and help to retain and dissipate water during periods of flooding. The revegetation will bring the parcel into compliance with Harbor Protection Overlay clearing restrictions.

8. The Board finds that the need for the variances is self-created. The Board finds however, that although the need for the requested variances is self-created, this need, although relevant to the Board's decision does not preclude the granting of the requested variances. Town Law §267-b(3)(b)(5).

9. The Zoning Board finds the nature of the proposed use will be in harmony with and will promote the general purposes of the Town of East Hampton Zoning Law as described by ? 255-1-11 of the Town Code.

10. The Board finds the lot area to be sufficient, appropriate and adequate for the proposed improvements. The total lot coverage will be 3,200 sq. ft., well below the 8,998 sq. ft. total lot coverage allowed.

11. The Board finds that the proposed use will not prevent the orderly and reasonable use of adjacent properties as no impact to adjacent properties is anticipated from the construction of the proposed project. The project does not require any side, rear or front yard setback relief. The proposed residence is modest and will not cause a disturbance to neighboring parcels.

12. The Board finds that adequate provision can and will be made for the collection and disposal of stormwater runoff, as the Board will require that all roof and outdoor shower runoff be directed by leaders and gutters into subsurface drywells and all pool water will be directed into a subsurface drywell.

13. The Board finds that the characteristics of the site are such that the proposed use may be introduced without undue disturbance or disruption to important natural features. The environmental conditions on the parcel are expected to improve as the applicant will revegetate the parcel with native species and will establish a scenic easement to protect the waters of Three Mile Harbor.

14. The Board finds that the site of the proposed residence is a suitable one for such a use in the Town as the residence will be in conformance with other homes in this area of the Town.

15. The Board finds that the benefit to the applicant from grant of the requested variances outweighs any detriment which grant of the variances will cause to the general health, safety and welfare of the neighborhood and the Town as a whole.

#### 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 GRANTED:

Three (3) variances from the East Hampton Town Code and a Natural Resources Special Permit pursuant to §255-4-20 of the East Hampton Town Code are granted. Variances of 21.1 and 24.5' are granted from §255-4-30 of the Town Code to construct the residence 78.9' and covered porch 79' from tidal wetlands where 100' setbacks are required. One (1) variance of 63' is granted from §255-3-75B of the Town Code to construct the new sanitary system 137' from tidal wetlands where a 200' setback is required, and any other relief necessary.

2. DESCRIPTION OF WORK APPROVED:

To remove the existing residence and associated structures and to construct a 2,387 sq. ft. residence with approximately 900 sq. ft. of covered and screened porches, a 160 sq. ft. roof deck, and new sanitary system within setbacks and jurisdiction of bluffs and tidal wetlands.

H. CONDITIONS OF APPROVAL

Grant of the specified variances is specifically conditioned upon compliance with the conditions set forth in this section of the determination. All improvements shall be made, built, or installed in accordance with the survey and plans described below.

1. APPROVED SURVEY: Prepared by Gary Benz, L.S., dated last revised February 13, 2017, and stamped received by the Zoning Board on March 17, 2017.

2. APPROVED BUILDING OR CONSTRUCTION PLANS: Site Plan prepared by Christian Tabet, P.E., Daniel Michels, Architect, dated last revised February 14, 2017, and stamped received by the Board on March 17, 2017.

3. ADDITIONAL CONDITIONS AND TIME LIMITATIONS:

a. Sediment control fencing consisting of staked straw bales or silt mesh fencing shall be erected along the line marked as Zone X flood zone on the approved survey referenced

above. 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. The Board, or their delegate, prior to the issuance of a building permit, shall inspect the project limiting fencing and straw bales for adequacy.

c. The parcel shall be revegetated in accordance with the species, sizes and spacing indicated on the "proposed re-vegetation plan" received on March 17, 2017 prior to the issuance of a building permit. The revegetation shall be completed prior to the issuance of a certificate of occupancy.

d. A scenic easement shall be established in the area shown on the approved survey. 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. 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.

e. 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.

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

g. The applicant shall prepare and submit a declaration of covenants and restrictions, incorporating the provisions of paragraphs (e) and (f) 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. 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

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

I. VALIDITY OF APPROVAL

If any condition of this determination is not met, or is not met within the prescribed time period, all approvals, permits, or authorizations granted hereby shall be deemed void and of no effect.

ALL CONCUR:

JOHN P. WHELAN, Chairman

CATE ROGERS, Vice-Chair

DAVID LYS, Member

ROY DALENE, Member

THERESA BERGER, Member

Dated: September 12, 2017

cc: Building Department

Planning Department

Denise R. Schoen, Esq., Agent for Applicant