

TOWN OF SHELTER ISLAND  
PLANNING BOARD

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In the Matter of the Wetlands Application of  
James Dawson & Rosalind Dimon

**DETERMINATION**

Address: 57 South Ferry Road  
SCTM #: 700-19.-2-116.1

# \_\_\_-2023

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HEARING DATE(S): September 12, 2023

**FINDINGS OF FACT AND DETERMINATION OF THE PLANNING 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 file and which were received prior to the close of the record, and any inspections made by the members of this Board.

**A. PROJECT DESCRIPTION:**

1. **PURPOSE OF APPLICATION:** The applicants are seeking to relocate an existing unpermitted and non-compliant habitable accessory building to comply with zoning and wetlands setbacks. Construct new 15' x 15' addition to existing residence. Addition will have a full foundation with storage and new master bath on first floor. Work includes the removal of a conventional septic from wetlands regulated area and construction of a new IA owts and well outside of wetlands jurisdiction.
2. **RELIEF OR APPROVAL SOUGHT:** Applicant is requesting a wetlands permit to allow for the following scope of work:
  - a. To demolish and relocate to a code compliant location an unpermitted accessory structure (studio) located 97.1' from flagged wetlands where 100' is required;
  - b. To demolish the unpermitted attached deck and stairs located 80.3' from flagged wetlands where 100' is required, with a total 585 sq. ft in the Adjacent Vegetative Buffer (AVB).
  - c. To allow a proposed addition to an existing residence to within 84.4' of the flagged wetlands, thereby allowing an additional 213 sq. ft. in the AVB.

**B. PROPERTY INFORMATION:**

1. LOT SIZE: 87,173 sq. ft.
2. ZONING: AA
3. OVERLAY DISTRICT: Near Shore and Peninsula Overlay District
4. STREET LOCATION: 57 S. Ferry Road
5. CONTIGUOUS WATER BODIES: N/A
6. SUBDIVISION: N/A
7. SUFFOLK COUNTY TAX MAP NO.: #700-19.-2-116.1

**C. SEORA**

The applicant submitted an Environmental Assessment Form Part I pursuant to the State Environmental Quality Review Act (SEQRA). Since this is a request for a wetlands permit for an addition to a residential structure, the application is classified as a Type II action under 6 NYCRR § 617.5(c)(11). Accordingly, the application is not subject to review under SEQRA.

**D. FINDINGS OF FACT**

1. The applicants, James Dawson and Rosalind Dimon, are the reputed owners of a parcel of real property located on the easterly side of South Ferry Road, approximately 540' south of Mashomack Road (private road) (the "subject property" or "property"). The property is located wholly within Zoning District AA and the Near Shore Overlay District. The size of the subject property is 87,173 sq. ft., where a minimum lot size of 80,000 sq. ft. is required for the district. The subject property contains freshwater wetlands. The upland edge of wetlands was determined by Shawn Barron, M.S. on July 14, 2022.
2. The most recent site plan submitted was prepared by Sherman Engineering & Consulting P.A. dated 5/18/2023. The subject property is improved with a single-family residence, a studio, a conventional sanitary system and a gravel driveway. The existing sanitary system is located between the house and the wetlands and is only 61.5' from the wetlands. The studio was constructed without permits and does not conform to zoning and wetlands setbacks. Applicants have proposed relocating the studio to a conforming location. At the public hearing, the applicants expressed the desire to keep the studio in its current location due to the location of large trees that may make relocation difficult. Applicants would need to obtain the necessary variances from the ZBA and a new wetlands permit from this Board in order to allow the studio to remain.
3. Also submitted with the application are a notice of disapproval from the Town of Shelter Island Building Department dated May 26, 2023, a permit dated January 26,

2023, later modified on June 6, 2023 from the New York State Department of Environmental Conservation (the “DEC”). A permit dated 5/26/2023 was also obtained from the Suffolk County Department of Health Services to install an I/A/OWTS (R-23-0403).

4. The Planning Board’s Engineer submitted a Wetlands Application Memo on the project dated July 10, 2023, that recommended the Board schedule the application for public hearing.
5. The Town of Shelter Island Conservation Advisory Council provided a report to the Board from a CAC meeting held August 14, 2023.

#### **E. PLANNING BOARD PROCEEDINGS**

The Board opened the public hearing for the application on September 12, 2023. Matthew Sherman from Sherman Engineering & Consulting presented the application to the Board on behalf of the owner. The Board closed the public hearing and the record on September 12, 2023.

#### **F. GOVERNING LAW**

##### **§ 129-5. Criteria for permit issuance.**

A.No permit shall be issued unless the applicant demonstrates, and the Planning Board finds, that the following standards have been met:

- (1) The proposed action and location will not create a risk of impairing the function and value of the wetland and buffer.
- (2) The proposed project will not diminish any wetland in size, unless the approving authority finds that the proposed activity is water-dependent or requires access to the wetland as a central element of its basic function and will result in the minimum possible alteration or impairment of the wetland.
- (3) The proposed project will not have a negative impact on the quantity and quality of groundwater.
- (4) The proposed project will not create a net increase in the risk of runoff.
- (5) The applicant has demonstrated that there are no practicable alternatives which allow the project to be constructed outside the regulated area. Practicable alternatives are presumed to be available unless the applicant clearly demonstrates otherwise. In making this determination, note that the Planning Board generally finds that conducting the proposed regulated activity on the side

or landward side of the house is highly preferred to conducting it within the regulated area.

(6) The applicant has submitted information to describe alternative site locations and configurations sufficient for a determination that the proposed work and location would have a less adverse environmental impact than any other practicable alternative in order for it to be approved. Practicable alternatives that are constructed entirely outside the vegetative buffer are presumed to have less adverse impacts on the wetlands than projects that do not meet such standards, unless the applicant clearly demonstrates otherwise.

(7) The Planning Board has determined that the applicant will voluntarily implement, within three months of the issuance of the permit, adequate mitigation measures that contribute to the protection and enhancement of wetlands and wetland benefits.

B. The Planning Town Board reserves the right to impose any conditions and mitigation measures it deems to be compatible with the purpose and public policy of this chapter.

#### **G. FINDINGS AND CONCLUSIONS**

With respect to the statutory requirements for a wetlands permit, the Board finds as follows:

1. The Planning Board finds that the proposed application meets the criteria set forth in § 129-5 of the Town Code.
2. Specifically, the Board finds that the proposed project will not negatively impact value, function, or size of the wetlands because the proposed project will result in less coverage within the Adjacent Regulated Area. The addition is proposed in a flat, already clearing area. Also, the removal of the outdated sanitary system 61.5' from the wetlands and the installation of a new IA OWTS sanitary system will have a positive impact on the quality of the wetlands.
3. The proposed project will not have a negative impact on the quantity or quality of groundwater because applicants are upgrading an outdated sanitary system, which is currently located only 61.5' from the wetlands and are adding storm water recharge drywells. All of these improvements will have positive impacts to groundwater.
4. The applicants have demonstrated that the proposed project will not create a net increase in the risk of runoff because stormwater drywells and revegetation of the vegetative buffer will mitigate any negative impacts to the wetlands. The property is flat and naturally vegetated which will limit runoff to the wetlands. Applicants are

also reducing the overall coverage within the Adjacent Regulated Area from 953 sq. ft. to 912 sq. ft. by relocating the studio to outside the Adjacent Regulated Area.

5. Due to the location of the existing residence, there are no practicable alternatives to adding additional living space to the residence., applicant's project is the best alternative to achieve additional space while providing minimal environmental impact.

#### **H. CONDITIONS OF APPROVAL**

Approval of the wetlands permit herein is conditioned upon compliance with the conditions set forth in this section of the determination. All improvements shall be made, built, installed or maintained in accordance with the survey and plan(s) referenced below.

1. APPROVED SITE PLAN: Prepared by Sherman Engineering & Consulting P.A. dated 5/18/23
2. APPROVED LANDCAPE PLAN: To be submitted by applicants as a condition of approval
3. ADDITIONAL CONDITIONS AND TIME LIMITATIONS:
  - a. Prior to any construction, applicant shall install wire backed silt fence to prevent runoff, siltation and sedimentation during construction and until disturbed areas are stabilized.
  - b. Applicant shall provide and install stormwater collection and recharge drywells. Said stormwater collection and drywells shall be in conformance with the approved site plan and shall include a drywell of the relocated studio.
  - c. Prior to issuance of a building permit, applicant shall submit a vegetation plan to Board for approval.
  - d. Applicants shall relocate the existing studio to a conforming location. During any relocation project, the applicants shall do all possible to preserve the large trees located near the studio.

- e. This permit shall only be valid for construction commencing within two years of the date of this approval.
- f. Upon completion of the permitted project the applicant shall contact the Town's Environmental Consultant, fees to be incurred by the applicant, to confirm that the subject buffer, if any, meets the requirements of this Chapter and the conditions of the permit. If confirmed, and all of the other terms are met, the Building Inspector shall issue a certificate of wetlands compliance.

## I. VALIDITY OF APPROVAL

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

ALL CONCUR:

IAN McDONALD, *Chairman*  
MARCUS KAASIK, *Deputy Chairman*  
JULIA WEISENBERG, *Member*  
MATTHEW FOX, *Member*  
DAVID AUSTIN, *Member*

This Resolution was duly adopted (5-0).

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Ian McDonald, Chairperson  
Approved for filing \_\_/\_\_/2023

Dated: October 10, 2023

cc: Applicant