



***Environmental, Planning, and Engineering Consultants***

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## Memorandum

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**To:** Town of Washington Zoning Board of Appeals  
**From:** AKRF, Inc. (Aaron Werner, AICP; Alicia Moore)  
**Date:** September 13, 2024  
**Re:** 610 Stanford Road – Pool Variance  
**cc:** Daniel Yadgard (property owner)  
Joshua Mackey (Mackey Butts & Whalen, LLP)  
Kyle Barnett (ZBA Attorney)

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AKRF is providing this memorandum at the request of the ZBA Chair to provide an overview of what we understand to be the latest variance requests, current legal status, and next steps regarding the above-referenced application.

### DESCRIPTION OF APPLICATION

The Applicant and property owner, Daniel Yadgard, requests area variances to install an in-ground, 35' x 15' (525 sf) swimming pool in the rear yard of a 1.74-acre lot in the RR-10 zoning district (tax parcel 135889-6766-00-042590). The property is currently improved with a 1-story single-family residence (year built: 1955), accessory sheds, and a paved driveway. The existing house and sheds are preexisting nonconforming structures due to reduced side and rear setbacks (100 feet and 75 feet, respectively); however, no changes to these existing structures are proposed. In addition, the existing lot coverage may also be nonconforming for exceeding the maximum allowable coverage of 10%.

Swimming pools are permitted by right as an accessory use in residential districts (Zoning Code Appendix A); however, area variances would be required due to the reduced lot size and shape and other preexisting conditions. The proposed pool would be 35 feet from the rear yard (eastern) lot line, and 87.8 feet from the side yard (northern) lot line. In addition, the equipment pad, proposed along the north side of the existing residence (adjacent to HVAC equipment), would be 51.5 feet from the side yard (northern) lot line. In consideration of the above, four area variances are required:

- Rear yard variance of 35 feet (40' proposed; 75' required)
- Side yard variance of 9.2 feet (90.8' proposed; 100' required)
- Side yard variance of 48.5 feet (51.5' proposed; 100' required) (pool equipment)
- Lot coverage variance of 2.6% (12.6% proposed; 10% permitted)

Residential properties are located to the north and south of the subject property, and the rear lot line abuts a large parcel of wooded vacant land. According to the Applicant, there is no alternate location to place the proposed swimming pool.

The project was first presented to the ZBA in October 2022; the ZBA granted the relief requested at that time, and the Applicant obtained a building permit and commenced work. However, due to an ongoing Article 78 challenge by a neighboring property owner, the building permit was revoked. The instant application, which is the Applicant's third request for variances to construct the pool, represents the project in its current form and has been modified in response to comments from the Applicant's neighbor, the ZBA, and the ZBA's legal counsel.

A decision and order of the Supreme Court of the State of New York – Dutchess County was issued for the Article 78 petition on August 28, 2024. The petition was dismissed in its entirety by the court.

This updated memorandum focuses on zoning / SEQR aspects of the application and defers the legal history to the ZBA Attorney.

## COMMENTS

AKRF previously commented on this application in memos dated October 13, 2022, November 11, 2022, February 17, 2023, and December 15, 2023. Most of the comments below are recycled from the December 15, 2023 memorandum, as our understanding is that the application has not changed since that time.

1. Based on correspondence between AKRF and the Applicant (during the previous applications), the septic system is located in the northwestern portion of the subject property, and not in the rear yard. Therefore, construction of the proposed pool should have no impact on the septic system. For the Town's files, the ZBA may wish to request the submitted survey be updated to include the location of the septic field.
2. The subject property, with a width of approximately 336 feet, frontage of approximately 250 feet, and size of 1.74 acres, is below the 400-foot minimum width and frontage and 10-acre minimum, as required in the RR-10 district, and it is therefore considered a nonconforming lot. However, since the nonconformities are preexisting and the lot size is greater than 20,000 square feet, the property is an *eligible nonconforming lot* under Zoning Code Section 392. The existing house and sheds are also preexisting nonconforming, as the minimum side and rear setbacks (100 feet and 75 feet, respectively) are not met. No changes to the existing house or sheds are proposed in this application.
3. The proposed pool is 525 feet (35 x 15 ft), reduced from the previously proposed size of 720 feet (40 x 18 ft). The smaller size has decreased the extent of variances required. Previously, the rear setback was proposed at 35 feet (requiring a 40-foot variance), and the side setback was proposed at 87.8 feet (requiring a 12.2-foot variance). To bring the project closer to compliance, the Applicant has reduced the size of the pool, which increases the distance to the lot lines and reduces the extent of the necessary variances (as described below).
4. Rear yard variance. The proposed pool would be 40 feet from the rear property line. As the minimum required rear setback is 75 feet, a variance is required for the difference of 35 feet. (The extent of the rear variance has been reduced from the previous application, which proposed a 35-foot rear setback and a 40-foot variance.)
5. Side yard variance. The proposed pool would be 90.8 feet from the side property line. As the minimum required side setback is 100 feet, a variance is required for the difference of 9.2 feet. (The extent of the side variance has been reduced from the previous application, which proposed an 87.8-foot side setback and a 12.2-foot variance.)
6. Side yard variance for pool equipment. The pool equipment and pad are proposed along the northern side of the existing house next to the HVAC equipment. As this location is 51.5 feet from the side lot line, and a minimum of 100 feet is required, a variance of 48.5 feet is required. The Applicant has advised that the pool equipment can be moved if a different location is preferred by the ZBA.

7. Lot coverage variance. The size of the subject lot is 75,794 square feet; the maximum allowable lot coverage is 10%, which is 7,579 sf. Per prior Determination Letters from the Building Department, the existing lot coverage is 9,050 sf, which exceeds the maximum allowable, amounting to 11.9% coverage; therefore, the lot coverage is preexisting nonconforming. The proposed pool would increase the coverage by 525 sf, for a total 9,575 sf, which amounts to 12.6% coverage. An area variance would thus be required to increase the nonconformity by 0.7% ( $12.6 - 11.9 = 0.7$ ), amounting to a total coverage variance of 2.6% ( $12.6 - 10 = 2.6$ ).
8. The application is considered a Type II Action under the State Environmental Quality Review Act (SEQRA), which requires no environmental review or submission of an Environmental Assessment Form. The applicable Type II citation is as follows:

*“6 NYCRR 617.5(c)(16) – granting of individual setback and lot line variances and adjustments”*

### **RECOMMENDATION**

At the September 17, 2024 ZBA meeting, AKRF recommends that the ZBA discuss the application, discuss the Article 78 decision and order with the ZBA Attorney, reaffirm the classification of the application as Type II under SEQRA (6 NYCRR 617.5(c)(16)), and set a public hearing if prepared to do so.