

Since 1876

Rena M. O'Connor
Allan B. Rappleyea**

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October 10, 2024

Hand Delivery

Paul O. Sullivan*
Of Counsel

Town of Washington Zoning Board of Appeals
10 Reservoir Drive
Millbrook, New York 12545

1733 Main Street
Pleasant Valley, NY 12569
tel 845 454 1110
fax 845 698 4087

Re: *Yadgard Area Variance Application*

Dear Chairman Redl and Zoning Board Members:

30 Front Street
PO Box 679
Millbrook, NY 12545
tel 845 677 5539
fax 845 677 6297

We represent James C. Cornell, Jr. and Lea Cornell, whose home and property adjoins that of the applicant. On behalf of our clients we oppose these four variances for the reasons contained in this letter and the attached exhibits.

11 2nd Ave NE, Suite 360
St Petersburg, FL 33701

The Town of Washington's website sets out the requirements for an area variance application very clearly. Under the section titled, "Preparing Your Statement of Hardship" (attached as Exhibit 1), it states the following requirements:

*Licensed in FL & NY
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- 1) "To obtain an area variance, an applicant must show to the satisfaction of the Town's Zoning Board of Appeals (ZBA) (that) strictly adhering to the Zoning Code's limitations on the use of his/her property would result in an 'unnecessary hardship'."
- 2) "In deciding to grant an area variance, the Town's ZBA must determine that **all** of the following criteria are met by the proposed use of the property that is the subject of the area variance request." It goes on to list the five criteria that must be met and which are addressed one by one in this letter.
- 3) "Please understand that the request for an (area) variance places the burden of proof upon the applicant in accordance to the General Town Law. If the applicant does not satisfy **each** of the above-mentioned criteria, the variance **must be denied** by the Town's Zoning Board of Appeals (ZBA)".

The Yadgard variance application fails to meet any of the criteria which the Town of Washington has established for being able to grant an area variance. Therefore, as stated above, it "must be denied."

In Bienstock v. Zoning Board of Appeals, 187 A.D.2d 578 (2d Dep't 1992), the Court considered a ZBA's denial of a variance to build a swimming pool on a property that already had a home on it. In upholding the ZBA's decision to deny the application, the Court observed:

It is incumbent upon an applicant for an area variance to demonstrate that "strict compliance with the zoning ordinance will result in practical difficulties. (Citations omitted). While there is no precise definition of the term "practical difficulties", in general, the petitioner must show that as a practical matter he cannot utilize his property or a structure located thereon without coming into conflict with certain of the restrictions of the zoning ordinance.

In affirming the denial of the variance the Court continued:

The petitioners may continue to use the dwelling on their property. Under these circumstances, the petitioners are hard-pressed to establish "practical difficulties" (Citations omitted). The record indicates that they desire to build a swimming pool because they feel that it is significant to their enjoyment of their house and property. Under the circumstances presented, their desire is one of a personal nature, tenuously related to their use of the property as a one-family residence, and does not form the basis of a "practical difficulty". Only in rare circumstances may problems of a personal nature possibly constitute "practical difficulties" to the landowner.

This case fits squarely with the facts here. "Practical difficulty" carries the same meaning as "unnecessary hardship". The Yadgards are claiming that strictly adhering to the Zoning Code's limitations on the use of their property would result in an "unnecessary hardship". However, as the Court held in Bienstock, "under the circumstances presented, their desire is one of a personal nature, tenuously related to their use of the property as a one-family residence, and does not form the basis of an (unnecessary hardship)." Simply stated, not having a pool which will clearly harm others does not create an "unnecessary hardship" for the applicant.

Perhaps a good starting point for the Board to consider is the status quo that existed before the Yadgard purchase. There was no pool on the property and a pool is certainly not essential for the enjoyment of the property. Pools are not the norm, they are the exception. Desiring a pool is clearly an insufficient basis to support the many variances needed.

In addition to considering the lack of an “unnecessary hardship” or “practical difficulty”, under the Town Law and other relevant cases, the ZBA must weigh the benefit to the applicant, against the detriment to the health, welfare and safety of the neighborhood. Nataro v. DeChance, 149 A.D.3d 1081, 1082 (2d Dep’t 2017). Every one of these factors, addressed below, clearly support denial of the many variances being sought in this application.

1. The Difficulty Requiring the Variance was Self-Created

The applicant was fully aware - - before purchasing the property - - that the Cornells opposed a pool so close to their home.

Before purchasing their property in May of 2022 the Yadgards were fully aware that a variance would be required for them to build a pool, and also knew that the Cornells were opposed to them building a pool as evidenced by email exchanges between the parties on February 25th and 26th of 2022, which are annexed as Exhibit 2.

They proceeded with the purchase nevertheless. After acquiring the property the Yadgards never contacted the Cornells to inform them that they had acquired the property and would be seeking a variance to build a pool despite the Cornell’s objections.

The Yadgards were not forced to buy a property that requires four variances in order to construct a pool. In fact, logic would dictate that they should have purchased a property that either had a pool or didn’t require any variances. They nevertheless did so and their “unnecessary hardship” was entirely self created. They knew when they purchased their house that the Cornell home was right near the their mutual property line and that the Cornells would oppose the construction of a pool.

As the Board also knows from prior proceedings, this home has been enlarged and already exceeds the allowable lot coverage. That too was a known fact at the time of the purchase, again establishing that any alleged difficulty was self-created by proceeding to buy a nonconforming structure on a nonconforming lot where the maximum lot coverage was already exceeded.

I also wish to note that at the initial hearing regarding the vacated variances, the ZBA asked the Yadgards if they had spoken to the Cornells about their intention to seek a variance in order to build a pool. They responded “no”. While they had not spoken, the Yadgards certainly knew their neighbors were opposed to them building a pool. The Yadgards clearly neglected to inform the ZBA of the true nature of the communications.

2. The Requested Variances are Substantial

The latest report of the Town consultant, AKRF, indicates there are a total of 4 variances being sought. Two for the Yadgard/Cornell side yard, one for the rear yard, and one for lot coverage. Stated differently, only one other possible variance is not being requested, for the other side yard.

The rear yard variance being sought is 46% over the limit. The pool equipment side yard variance is 48.5%, and the side yard pool variance is 10%. It does not appear that other variances have been considered for fencing or other structures.

AKRF has computed that the required lot coverage variance is only 2.6% over what is allowed, but that calculation is incorrect. Allowable lot coverage is correctly computed at 7,579 square feet and the existing lot coverage together with the proposed pool is a total of 9,575 square feet. A simple percentage calculation indicates that the lot coverage variance being sought is in fact 26% over the maximum allowable. It is irrelevant that the existing lot coverage over the allowable 7,579 square feet is an alleged grandfathered non-conformity. The fact is the applicant is seeking to expand the total lot coverage by 26% above what is permitted. Stating that the lot coverage is exceeded by only 2.6% is either a mathematical error or an attempt to minimize the amount by which the Appendix B maximum lot coverage allowance would be exceeded.

In sum, to place the pool where the applicant desires, 4 out of potentially 5 variances are required, demonstrating 80% non-compliance with the Code. These variances are substantial. They are also substantial because two of the four are nearly 50%. In Millennium Custom Homes, Inc. v. Young, 58 A.D.3d 740, 742 (2d Dep't 2009), the Court observed that the requested variances (which were denied), were substantial "considering the significant deviations from the Zoning Code requirements and the cumulative effect of the multiple variances requested."

It cannot be disputed that even if one variance is considered minor, the cumulative effect of all four is dramatic and substantial. This is especially true when the close proximity of the Cornell's house to the mutual property line is taken into account. The proposed pool would be approximately 110 feet from the Cornell's house.

3. The Requested Variances will Cause an Undesirable Change to the Neighborhood and be Detrimental to the Cornells

This point is proven by an undisputed history and data. In 2021 the Cornells applied for a variance to extend their garage closer to the same common boundary line now at issue. This request was denied by the ZBA, primarily, if not exclusively, because the then-owner of the Yadgard home opposed it because he was planning to sell his house and was concerned that the garage expansion would be unsightly and detrimental to his property value. The Cornells were understanding and respected his objections. A copy of the variances that were granted, with this one stricken out because it was not granted, is annexed as Exhibit 3.

Despite what one ZBA member once mentioned, the Cornells' opposition to this variance application is not a case of "sour grapes" because they didn't get the variance they were seeking. Rather, they understood - - and accepted - - that the neighbor's concerns about value and aesthetics were legitimate. This is evidenced by the fact that they never challenged the ZBA's decision.

This case is entirely opposite to the Cornell's variance application. Here the applicant was aware that the Cornells would object to a pool and that he would require a variance months before he finalized the purchase of his house. The Cornells then came before the ZBA and voiced their objections to the variance application at the February 21, 2023 meeting. The ZBA was deadlocked and put off making a decision. Now the Cornells are coming before the ZBA a second time and are restating their objections to the variance application. They are only asking that the ZBA treat their concerns with the same deference that they showed to the former owner of the Yadgard property.

In Knight v. Emelkin, 68 N.Y.2d 975 (1986) the State's highest Court held that "[a] decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious." Therefore, the ZBA may not deny one variance because of a neighbor's concern for views, value or proximity, and then disregard the exact same concerns of a neighbor who is objecting to an area variance application involving the same common property line.

Clearly, based on the history, allowing these substantial variances to impair the Cornell property would be an arbitrary and capricious action by the ZBA.

This is especially true because the proposed pool will **negatively** impact the value of the Cornell property by an estimated \$225,000. I annex as Exhibit 4 the consulting report of LMH Appraisal dated September 20, 2024. After considering the properties at issue, the factors affecting them and the impact of this entirely new proposed structure, the two (2) well-known local appraisers, Ms. McEnroe and Ms. McGoldrick, concluded on page 12 of their 22 page report that:

Our opinion is that the value of your property would be diminished by 15 percent if a pool is installed that close to your property

The Cornells have invested approximately 1.5 million dollars into their property to make it suitable for themselves and in keeping with the local neighborhood. It would be a gross miscarriage of justice for them to suffer a \$225,000 loss in their property value just so their neighbor can install a seasonal pool only 110 feet from their house.

These appraiser's views of diminished value are also supported by well-known local broker, Candace Anderson, and a copy of her letter from January, 2023, is annexed as Exhibit 5. At that time the proposed pool was slightly larger, but the negative impact of it is the same.

It is also clear that this pool will also bring with it undesirable noise, light and potentially other hazards, as the Cornells have already testified to, and as the appraisers also note in their report, specifically on page 12.

Finally, while there have been claims about other pools nearby, we are not aware of any pool, nearby or otherwise, that is located on a lot that is nonconforming and less than 2.0 acres. Nor is there any evidence in the record suggesting that a pool may be added to exceed the allowable lot coverage, or be within set backs. The applicant must do more than claim there are pools elsewhere. They must demonstrate that there are pools located on similar nonconforming lots, that have a nonconforming house, where the maximum lot coverage is already exceeded. This will be a challenge since they don't exist.

In regard to coverage, I have annexed the affidavit of Kenneth Holzberg, a former ZBA member and a lawyer specializing in real estate, sworn to on October 2, 2024, as Exhibit 6. Mr. Holzberg stresses that he had never been a part of, and does not know of, any instance where section 392.5 allowed the ZBA to vary lot coverage, as opposed to side and rear yard setbacks. He stated that, "Clearly, the ZBA may only modify (i.e., vary) lot set back requirements under this section. Just as clearly, the lot must still comply with maximum lot

coverage requirements.” He goes on to say that, “In my years of service on the ZBA, I do not recall the Board ever referring to this section as allowing for a lot coverage variance, as it does not state this.”

This is important because it confirms that this lot, particularly with this added nonconformity, would be overbuilt and produce an unprecedented impact upon the Cornells if a pool was built on it. Mr. Holzberg has previously testified before you that it would not be appropriate, in his view, to grant the requested variances.

In sum, there is nothing in this neighborhood that benefits from these variances. While it may add to the Yadgard’s enjoyment, the impact on others is extreme, substantial and unwarranted.

In a case where a variance which was granted by a ZBA and later annulled by a Court, the Court found that the ZBA did not support most of the factors to be considered. Regarding set backs, the Court noted that the ZBA “misstates the ‘major purpose of a setback,’ which it says is to ‘ensure adequate distances between structures and the residential neighborhood.’” A set back can and is often imposed in a variety of circumstances, *such as preservation of aesthetic quality*. Gasparino v. Town Of Brighton Zoning Board of Appeals, 67 Misc.3d 1238A (Sup. Ct. Monroe County 2020) (emphasis added). Here, the Town Code established set backs to preserve aesthetic quality, and avoid neighbors from having to suffer noise and light pollution.

Therefore, there can be no reasonable dispute that these variances, if granted, would produce a highly detrimental impact on the neighborhood and, most importantly, significantly impair the value of the Cornell residence.

4. The Benefit Sought by the Applicant can be Achieved Without Variances, or Without as Many

The settled law provides that the burden is on the applicant to show that there is *no reasonable alternative* to the issuance of the variance. Durler v. Accettella, 165 A.D.2d 872 (2d Dep’t 1990) (emphasis added). That burden is not sustained because the applicant merely claims so. Similarly - - and again based on settled law in this Judicial Department - - proof that the proposed pool may more easily and cheaply be constructed if the variances were granted, does not change the nature of the improvement from one that is merely desirable, to one that is necessary for the practical utilization of the property. Katz v. Town of Bedford Zoning Bd. of Appeals, 202 A.D.2d 504 (2d Dep’t 1994).

In other words, if a pool were denied, the residential use of the property still exists and a pool is therefore not an essential component.

In an attempt to claim that he cannot locate the pool elsewhere, the applicant has provided an unsworn letter from his own pool builder. This letter claims that the pool cannot fit in the alternate location proposed by the Cornells.

However, as you can see from Exhibit 7, this pool builder was able to install a 16 x 32 gunite pool at 24 Merritt Avenue, Village of Millbrook, in 2020. The Merritt Avenue lot is 100 feet wide by 150 feet deep, according to the drawing. This pool is actually larger than that proposed by the applicant, and can certainly be fit elsewhere in this 1.5-plus acre parcel.

I have annexed as Exhibit 8 the sworn affidavit of William F. Murphy, a local contractor who has worked in Millbrook for nearly 50 years. Mr. Murphy has substantial excavation experience, including for pools, and he clearly states:

3. I have done excavation for pools dozens and dozens of times and, in fact, did all the excavation work for a pool company that is no longer in business.

4. I have been shown and I have viewed the area where the homeowner intends to build a pool. Excavation has occurred in that area.

5. I have also been shown and have viewed an alternate area, further from the Cornell boundary, where it has been suggested a pool may be constructed. I understand no variances would be needed for the pool to be in this area. I have attached a copy of that map of that area to this affidavit.

6. The 30 x 60 area shown on this map is possible for a pool to be installed. This likely would require modifying the retaining wall and driveway, which means additional site work, but these changes could be made and could accommodate a pool.

Mr. Murphy's affidavit includes the Michael Sloan generated map provided previously by the Cornells and is included in the record. Mr. Murphy clearly testifies that the pool could be placed in an area not requiring side and rear yard variances. For the record, Mr. Murphy has never done any excavation or construction work for the Cornells.

The alternate site is located behind the Yadgard house just opposite of the proposed site and can be accessed from an existing rear doorway. Most certainly this alternate site meets the "feasibility" standard that is called for in

the Town Code. Based on Mr. Murphy's unbiased testimony it is clear that the applicant has failed to establish there isn't an alternative location for his pool. What the applicant is really claiming is that he does not want to relocate the pool, not that he can't.

5. The Requested Variances will Adversely Affect the Physical and Environmental Conditions in the Neighborhood

The original Yadgard application stated that the "pool will not be visible from or disrupt the neighboring properties". This is a demonstrably false statement.

As the Board knows, the homes are very close and very near the common boundary. The appraiser's report shows the close proximity of the pool building site to the Cornells' boundary and home. This close proximity will bring unwanted noise pollution and will generally interfere with peace and quiet, particularly during the summer months when people wish to be outdoors.

Pool equipment is very noisy and is on 24/7 for many months during the year. It is also unsightly. The proposed equipment would be only 65 feet from the Cornell's house. Pool parties usually take place in the evening and that requires lighting. Bright lights would be visible from the Cornell's house.

Pools require a great deal of water. The proposed pool would need to be regularly topped off to compensate for evaporation and back washing. The water table in the Stanford Road area is notoriously light with wells going dry being a common occurrence. The proposed pool would only strain the existing water resource and could impact the Cornell's well, in particular.

Conclusion

In Nataro v. DeChance, 149 A.D.3d 1081, 1082 (2d Dep't 2017), the Court held the Board rationally concluded that the requested variances were substantial, the applicant had feasible alternatives and the negative precedent on the neighborhood was established. Therefore denial of the variances was proper. This same result was reached in Schwartz v. LoRocca, 167 A.D.3d 906 (2d Dep't 2018).

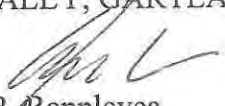
As we stated at the beginning of this letter, the Town of Washington website requires that, "If the applicant does not satisfy each of the above-mentioned criteria, the variance must be denied by the Town's Zoning Board of Appeals (ZBA)." We have demonstrated unequivocally and convincingly that the applicant in this case has failed to satisfy any of the five criteria that must be satisfied before the ZBA can grant the four variances that are being requested.

Therefore, it is incumbent upon the ZBA to deny this application in its entirety.

Thank you for your consideration.

Very truly yours,

CORBALLY, GARTLAND AND RAPPLEYEA, LLP


Allan B. Rappleyea

ABR/jrv

encl.

cc: James C. Cornell, Jr. and Lea Cornell
Kyle Barnett, Esq. (emailed)
Joshua Mackey, Esq. (emailed)

AREA VARIANCE APPLICATION

TOWN OF WASHINGTON, NEW YORK

An area variance is defined as the authorization by this town's Zoning Board of Appeals for the use of land in manner that is not allowed by dimensional or physical requirements of this Town's Zoning Code. Property owners wishing to use their land(s) that exceed these requirements must apply to the Town's **Zoning Board of Appeals (ZBA)** for an area variance prior to the start of any work and/or the issuance of a building permit. In making its determination, the ZBA shall take into consideration the benefit to the applicant if the variance is granted, as weighted against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Furthermore, the ZBA, in granting of area variances, shall 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.

Imposing conditions on area variances:

This town's Zoning Board of Appeals (ZBA) has the authority to impose reasonable conditions and restrictions when granting an area variance if they are directly related to and incidental to the proposed use of the property. Once the ZBA has imposed a condition on an applicant, it shall be complied with before the Town of Washington, New York can issue a building permit and/or a certificate of occupancy. The purpose of these conditions is to minimize the adverse impact of the variance on the neighborhood or community. These conditions can be related to fences, safety devices, landscaping, screening and access roads, traffic, outdoor lighting and noises, and enclosures of buildings, emission of odors, dust, smoke, refuse matter, vibrations, parking and other factors incidental to comfort, peace, enjoyment, health or safety of the surrounding area.

Schedule:

Applications are due 21 days prior to the meeting of the Zoning Board of Appeals. The town strongly recommends that an application be submitted five days prior to the deadline, in order for the town to review the application for completeness. An application which has been deemed incomplete will not be reviewed by the Zoning Board of Appeals.

Contacting the Town's Zoning Administrator:

Prospective applicants are strongly advised to consult with this town's Zoning Administrator before submitting their application. The Zoning Administrator will explain the approval process and make the applicants aware of regulations that apply to their projects.

The Zoning Administrator's main telephone number is 845-677-3419 ext. 109. Most applications can be downloaded from the Town of Washington's website under Documents and Forms, Zoning Board of Appeals.

Application process:

1. The application for an area variance must be completed and presented before the ZBA by the property owner or his/her designated representative. The property owner is encouraged to attend the meeting in order to answer questions, keeping the process moving forward without delays.
2. The following documents shall be submitted with all applications:
 - a. A complete application form, including the written statement of hardship.
 - b. Scaled drawings of proposed project in an 11x17 format, or, if necessary, to maintain legibility, a larger format. Drawings should be folded with the packet and include the name of the property owner and address on the drawings. These drawings should include, but are not limited to, the following:
 - i. Site plan.
 - ii. Floor plan(s).
 - iii. Elevations.
 - iv. Any other details deemed necessary to explain this project.
 - c. Current survey map of the property with the name of the property owner and parcel ID number. The survey map must be prepared by a professional land surveyor, licensed in the State of New York. The map should be folded to fit in a legal sized file folder.
 - d. Legal proof of control of the property by ownership. (Deeds may be obtained from the Office of the Dutchess County Clerk or via the website:
<https://www.co.dutchess.ny.us/CountyClerkDocumentSearch/Search.aspx>)
 - e. Please attach any certificates of occupancy for the subject premises. If any are lacking, please apply to the Building Department to either obtain them or to obtain an Amended Notice of Disapproval.
 - f. New York State Environmental Assessment Form. The type of environmental assessment form to be submitted will depend on the scope of work and proposed use described in the application. Please refer to the New York State Department of Environmental Conservation's website at www.dec.ny.gov/permits/357.html for further information as well as printing required forms.

g. A set of at least four photographs labeled to show different angles of the yard areas after staking corners for new construction, and photos of building area to be altered.

h. Application fee:

i. Four hundred dollars (\$400.00) for the first variance ii. One hundred twenty five dollars (\$125.00) for each additional area variance iii. The ZBA may require that an escrow be established for the town to engage professional consultants to assist in the review of the application. The minimum escrow amount would be fifteen hundred dollars (\$1,500.00).

i. A PDF or Flash Drive of all documents, except the application fee, required for the review by the Zoning Board of Appeals. A PDF may be emailed to ZBA@washingtontny.org referenced as "ZBA Application/Owner's Name"

3. The original application packet and six (6) copies of the completed application, required documentation and application fee shall be submitted to the **Office of Building and Zoning** prior to the application deadline date that is described on the attached schedule. All packets shall be collated and stapled for distribution. Please understand that the Town of Washington shall not accept any applications past the deadline date due to the timeframe needed to execute a coordinated review with other applicable agencies and/or Town entities.

4. **APPLICANTS ARE RESPONSIBLE FOR PUBLICATION OF "NOTICE OF PUBLIC HEARING" & MAILING TO ADJACENT NEIGHBORS**

- CONSULT with ZBA Clerk for a copy of the Notice of Public Hearing & Neighbor List
- The following two requirements must be provided to the ZBA Clerk **two weeks prior to the meeting** or the application will be removed from the agenda.
 1. Affidavit of Publication from Poughkeepsie Journal
 2. Proof of Mailing to Adjacent Neighbors from the United States Post Office (USPS Certified Mail Receipt for each neighbor)

Approval by other Town Entities and/or Regulatory Agencies:

Please understand that any approval(s) granted by the ZBA for this variance does not imply approval of drawings that are required to be reviewed and approved by other Town entities and/or regulatory agencies. Questions about building permits and other regulations can be addressed by the Town's Building Department at 845-677-3419 ext. 112.

PREPARING YOUR STATEMENT OF HARDSHIP

TOWN OF WASHINGTON, NEW YORK

To obtain an area variance, an applicant must show, to the satisfaction of the Town's Zoning Board of Appeals (ZBA), which strictly adhering to the Zoning Code's limitations on the use of his/her property, would result in an "unnecessary hardship." To this end, a written statement of hardship is included as part of the application for an area variance. In such statement of hardship, the property owner must address all criteria listed below.

In deciding whether to grant an area variance, the Town's ZBA must determine that all the following criteria are met by the proposed use of the property that is the subject of the area variance request:

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 granting of the 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 condition in the neighborhood or zoning district.
5. Whether the alleged difficulty is self-created; which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of an area variance.

Please understand that the request for a use variance places the burden of proof upon the applicant in accordance to General Town Law. If the applicant does not satisfy each of the above-mentioned criteria, the variance must be denied by the Town's Zoning Board of Appeals (ZBA).

From: "Daniel Yadgard" <daniel@thefndtn.com>
Subject: 610 STANFORD - YADGARD
Date: February 26, 2022 at 9:22:53 AM EST
To: jccornell54@gmail.com, leacornell88@gmail.com
Cc: "rachel kupferberg yadgard" <rachelyadgard@gmail.com>

Mr. & Mrs Cornell - I hope this email finds you well in sunny Florida!
Please excuse the unsolicited email; but I felt the need to clarify the situation as I saw the correspondence between you and Candy.

My name is Daniel Yadgard and my wife Rachel is CC'd. We live on the Upper Westside in the city with our 2 children aged 10 and almost 7. We have been looking for a new weekend home since we sold ours early last year and as you know we have landed on 610 Stanford. We have come to terms with the seller on price and we were about to take the next steps in the process. These steps have however lead to me writing this email. This is also where I wanted to clarify things to ensure you were clear on the situation.

Mr Janson has no idea we are in communication. He does not know that I know about the issues he caused you with your variance request. I came across this information on my own.

Once we agreed on price I decided to do the due diligence surrounding the pool we intended to build. Having a pool is a must for our weekend home and we would not purchase a house without the ability to have one. I therefore just wanted to confirm we would have the ability to build one on this plot. I quickly found out that per zoning in this area we would most certainly require a variance. From there I spoke with the town to understand the process and how realistic receiving one would be. I was left to conclude after a review that receiving a variance for a pool should not pose an issue ... but obviously it's not something they could guarantee and it had to go through the process. Obviously the idea of a neighbour of such close proximity raising issue did cross my mind. From there we asked if the seller would start the process for the request for us to get a head start ... he denied us this but said he did not see an issue of getting a variance as he looked into it before and he had attended town meetings recently and felt it would be fine based no experience. This raised a red flag in my mind wondering why he is attending meetings and I once again reached out to the town to understand the proposal you set forth where he felt the need to attend meetings on the topic. I was then downloaded on your plans and his issues with them. So that brings us to where we are now!!

There was never a conversation with the seller on this topic. He has kept this situation he has had with you guys under-wraps and neither he nor his agent know this conversation is taking place. Once I was made aware of it I felt the need to reach out because the seller has clearly pissed off his neighbour and I needed to confirm this would not effect me in the future considering I would need their cooperation moving forward. I'm glad I did as this was uncovered now rather than later.

Where do we go from here? I believe in transparency so I think it's best to just put all the cards on the table so we can both make the most informed and best decision possible. You seemingly would have an issue with a pool in that backyard even without the issues caused by Mr. Janson.

I will start by saying I would not have had any issues with your plans to build a garage. When I heard the seller had an issue with your plans I was in shock ... I told my agent that the only thing I would have an issue with is if they were building a 2nd story on the house. A garage to me made sense and I felt if anything it was great as it would only add more privacy and separation for the two homes.

In regards to our plans I will admit that the most ideal spot for a pool would have been to the side of the house near the property line. But I mostly dismissed that as an option due to the proximity to your home. This did not feel right.

I've attached a screenshot of what we were thinking for your reference. In addition to this depending on how the trees or bushes fill in between the houses we would also look to add to it to provide more separation and privacy in the future. As you can see we do have plenty of room and we are actually only 12 feet short of being 100 feet from the property line.

Myself and my wife are nice, "normal" people that believe in the classic definition of the word neighbour and being neighbourly. We would strive for nothing less than a situation where we had a good relationship with all our neighbours.

Apologies for the lack of brevity I just wanted to properly clarify the situation and put everything on the table so you could fully understand the situation.

if you want to chat I remain available at 917-734-3301

Best Regards
Daniel



Daniel Yadgard (Co-Founder) - [The Foundation](#) - 212-575-2373 x 121

-----Original Message-----

From: candylanderson <candylanderson@aol.com>
To: kvolino@houlihanlawrence.com
Cc: candy.anderson@compass.com
Sent: Fri, Feb 25, 2022 7:20 pm
Subject: Re: 610 Stanford Road

Hi Karen,

As you can see from the entire thread below, the Cornells are not in agreement with a request for the variance.

I'm terribly sorry. I'm afraid the initial attitude of the seller soured the neighbors generosity of spirit.

Best,
Candy

----- Original message -----

From: james.cornell <jccornell54@gmail.com>
Date: 2/25/22 6:44 PM (GMT-05:00)
To: Candy Anderson <candylanderson@aol.com>
Cc: Candy Anderson <candy.anderson@compass.com>, Lea Cornell <leacornell88@gmail.com>
Subject: Re: 610 Stanford Road

Candy,

We didn't think you had anything to do with the sale, and understood that the buyers broker had sent you that email.. I am just surmising that the sellers told the buyers broker that we might grant approval for the pool if they granted their approval for the garage extension. However, the 610 back yard is a postage stamp and the pool would have to be built almost directly on the property line. That's the last thing we want to see from our back yard.

Jim Cornell
203-731-1956

OFFICE OF THE SUPERVISOR
GARY CIFERRI
(845) 677-3419

TOWN OF WASHINGTON

10 Reservoir Drive
P.O. Box 667
Millbrook, New York 12545

VARIANCE SPECIAL PERMIT

Tax map ID/Grid Number: 6766-00-053619

Owner Name Lea + James Cornell

Address 620 Stanford Rd. Millbrook, N.Y. 12545

Description of Variance or Special Permit:

~~Extension of garage for bathroom addition~~
~~and to accommodate car~~
~~- existing front + back deck demolished and~~
~~replaced, roof added to porch~~

Special Conditions: 60' sideyard variance for front porch
41.28' sideyard variance for back porch

Approved Disapproved

Board Members: Motion _____ Second: _____

John Parisi aye _____
Peter Audia aye _____
Frank Redl aye _____
Fletcher Coddington aye _____
Katherin Briggs aye _____

Signature Kristen D'Isio Date of Meeting 1/18/2022

given to Michael 1/18/22

CONSULTING REPORT



AS OF

September 20, 2024

PREPARED FOR
James and Lea Cornell
620 Stanford Road
Millbrook
Town of Washington
County of Dutchess
State of New York

PREPARED BY
LMH APPRAISAL

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LMH APPRAISAL

P.O. BOX 195
MILLBROOK, NEW YORK 12545

845-373-9723
FAX 845-373-8356

USPAP COMPLIANCE

September 27, 2024

James and Lea Cornell
620 Stanford Road
Millbrook, New York 12545

Re: 620 Stanford Road, Millbrook, New York

Dear Mr. and Mrs. Cornell:

It was good to meet you last week as we made an inspection of the site which has a view of the area where your neighbor wishes to install an inground pool. After observing the site, we have prepared this Consulting Report to offer an opinion on the impact this might have on your property.

As you will see in the addendum of this report, Maureen McGoldrick and I each have more than twenty-five years of experience appraising properties. For the past seventeen years we have collaborated on appraisals in Dutchess County, appraising single-family homes, estates, farms, land and commercial properties for a variety of clients and for a variety of purposes.

After observing your situation, we have prepared this consulting report in accord with Standards Rule 2.2 (a) of the *Uniformed Standards of Appraisal Practice 2024* for an appraisal report.

INTENDED USE AND USER OF REPORT: It is our understanding that the adjacent neighbor immediately south of your property plans to install an Inground pool very close to your property line, and, in fact, within the setback required by Town of Washington zoning. The purpose of this report is to offer an opinion on the impact this might have on your property. It is also our understanding that this report will be used by you and your legal representative, and it is

expected that it will be shared with the Town of Washington and the Court. It is not intended for any other use or other user.

It is important to read this report in its entirety but in our opinion, the value of your property would be negatively impacted by about fifteen (15%) percent.

EFFECTIVE DATE OF REPORT: The effective date of this report is September 20, 2024, the date we visited the property.

SUMMARY OF SALIENT FACTS

Location	620 Stanford Road, Millbrook Town of Washington County of Dutchess State of New York
Owner of Record	James C. Cornell, Jr. and Lea G. Cornell, husband and wife By deed dated September 8, 2021 from Tara Kelly and recorded in Liber 22021/Page 53507 on September 17, 2021. Indicated Consideration: \$945,000
Legal Description	Liber 22021/Page 53507
Parcel ID	135889-6766-00-053619-0000
Site Description	<p>A mostly rectangular, interior plot, measuring 2.03 acres, with approximately 292 feet of frontage on the easterly side of Stanford Road in the Town of Washington. The plot has its own well and septic system. There is electric service to the plot. Numerous phone and internet providers offer service to the area. There is no sidewalk or curb in front of the property, and Stanford Road is an asphalt-paved, public street.</p> <p>The terrain rises gently from its northwest corner to its southeast corner where the highest elevation (596 to 598 feet) is and where the home is located. The house is located very close to the property line</p>

separating it from Parcel 135889-6766-00-042590-00000, known as and by the property address 610 Stanford Road, Millbrook.

Building Description The subject parcel is improved with a ranch-style home built in 1964, which has three bedrooms and two full bathrooms. Lee A. McEnroe had appraised the home at the time of purchase and found both interior and exterior to be in good condition. On the date of inspection, only the exterior was viewed and was noted to not only be in excellent condition, but also to have shown some improvements.

Occupancy James C. Cornell, Jr. and Lea G. Cornell, husband and wife

Zoning Classification Town of Washington RR-10. This is a zoning which requires a minimum of ten acres to build and has a maximum lot coverage of 10%

Taxation Assessor's Market Value: \$798,000
Land - \$79,500
Total - \$593,396
Town of Washington Equalization Rate is 74.36%

Property Rights Fee Simple

PARCEL MAP



The subject parcel, identified on the preceding map as the Cornell home, is a two-acre parcel on the easterly side of Stanford Road. While the zoning on the property is Town of Washington RR-10, which requires a minimum lot of ten acres for building, the subject parcel and the one adjacent to it are substandard and grandfathered, but they are still expected to abide by the other requirements of the RR-10 zoning, which includes a lot coverage of no more than 10% and a side yard setback of 100 feet.

APPRAISAL PROBLEM

As shown on page 6, the subject parcel and the neighboring parcel, are not only adjacent, but each parcel is improved with a residence that is very close to the parcel boundary between the two parcels.

The owner of the parcel, identified as 135889-6766-00-042590-0000, as and by the street address 610 Stanford Road, and noted as the Yadgard home on the preceding map, plans to construct an inground pool, and had already begun construction of it. It is planned for the area marked by the red star on page 6.

One of the aims of the zoning code of the Town of Washington was to assure privacy for residences and freedom from nuisances and harmful, unsightly uses and protect the community against unsightly, obtrusive, and noisome land uses and operations.¹ The planned construction site is close to your home. Because of the planned location of the pool, you will probably be disturbed by the noise of pool enjoyment, as well as the sound of the pool mechanics, such as the pool filter.

Furthermore, on a map prepared by the Dutchess County Soil and Water Conservation District (shown on the following page), it shows that the topography of the Yadgard home is a minimum of six feet above your home, and at times when the pool is drained, the natural flow of water will be downhill to the your property, which could damage your landscaping, hardscaping, and possibly the residence, especially if the water has been chemically treated.

¹ <https://ecode360.com/37495619#37495617>. Accessed September 26, 2024

Town of Washington: Parcel #135889-6766-00-042590-0000 [Topography]
 Town of Washington: Parcel #135889-6766-00-053619-0000 [Topography]



DUTCHESS COUNTY
soil & water
 CONSERVATION DISTRICT

0 25 50 100 US Feet

09/24/2021
 Map Produced by Dutchess County
 Soil & Water Conservation District
 NOT FOR SITE SPECIFIC WORK
 ALL INFORMATION MUST BE SITE VERIFIED

2021 - US Department of Agriculture (USDA),
 National Resources Conservation Service (NRCS),
 Soil Survey Geographic Data Base (SSURGO), 11/21

141 402301
 Dutchess County Soil Agency, 1000 Agency Road
 Green Pines Office, Dutchess County, NY 12521



The neighbor had begun construction of the pool. This photograph was taken from the property line between 610 Stanford Road, and your property at 620 Stanford Road. This shows how close the pool would be to your property.

Stanford Road, where the properties are located, is an attractive road. Both parcels discussed herein are small compared to the much larger properties surrounding them that comply with the zoning code. There is a feeling of openness and rural beauty which would be compromised if these parcels are overbuilt. These two homes already are very close to each other, a situation which is unusual in this zoning district, but still there is a market for them. However, in adding a pool to the Yadgard property, you will lose some of the peace and privacy that brought you to this location, and this loss would make your property less marketable or salable.

All sales are based on the principle of substitution. "When several similar or commensurate commodities, goods, or services are available, the one with the lowest price will attract the greatest demand and widest distribution."²

In the Town of Washington there are many properties sold every year. Not every property is ideal for every buyer. For properties that are desirable in many ways such as location, view, property condition, style, etc., buyers are willing to pay the asking price and occasionally a premium. For properties that lack in one or more ways, the seller will have to discount the selling price of the property.

The appraisers surveyed OneKey Multiple Listing Service for sales of homes in the Town of Washington, as well as in the Town of Armenia immediately to the south, and in the Town of Stanford immediately to the north. The homes surveyed were within the \$750,000 to \$1,500,000 range, which would bracket the sale prices both you and the Yagards paid. The surveyed sales took place between January 1, 2022, when the COVID effect had begun to subside and the date of inspection. Forty-nine homes met that criteria, and twenty-five of those sold at list price or at a premium greater than list price. The appraisers then looked at the properties that sold at a discount, which ranged from .39% up to a maximum of 21.88%, with an average of 10.77%, to induce a purchase price.

A chart showing these sales is on the following page.

² *The Appraisal of Real Estate, Twelfth Edition*, Appraisal Institute Chicago, 2001

Sold at List Price or above

List Price	Sold Price	Differential	Title Date
\$845,000	\$860,000	103.33%	5/31/2024
\$1,175,000	\$1,400,000	119.15%	8/24/2022
\$789,000	\$900,000	114.07%	4/25/2022
\$800,000	\$900,000	112.50%	3/11/2024
\$1,250,000	\$1,400,000	112.00%	4/6/2023
\$865,000	\$1,041,000	107.66%	7/12/2022
\$745,000	\$800,000	107.38%	12/13/2023
\$850,000	\$900,000	105.88%	9/10/2024
\$1,275,000	\$1,325,000	103.92%	1/11/2023
\$1,320,000	\$1,350,000	102.27%	5/10/2023
\$795,000	\$810,000	101.69%	12/18/2023
\$895,000	\$999,999	100.50%	8/19/2024
\$1,225,000	\$1,230,000	100.41%	8/6/2024
\$785,000	\$785,000	100.00%	4/26/2022
\$795,000	\$795,000	100.00%	5/26/2022
\$799,900	\$799,900	100.00%	6/3/2022
\$1,450,000	\$1,450,000	100.00%	8/10/2022
\$1,475,000	\$1,475,000	100.00%	6/26/2022
\$875,000	\$875,000	100.00%	7/6/2022
\$1,350,000	\$1,350,000	100.00%	1/30/2023
\$975,000	\$975,000	100.00%	8/30/2023
\$1,350,000	\$1,350,000	100.00%	1/30/2024
\$875,000	\$875,000	100.00%	2/5/2024
\$1,145,000	\$1,145,000	100.00%	2/28/2024
\$775,000	\$775,000	100.00%	8/5/2024

Compiled from OneKey MLS for LMH Appraisal

Sold below List Price

List Price	Sold Price	Differential	Title Date
\$1,275,000	\$1,270,000	99.61%	4/8/2022
\$819,500	\$808,350	98.64%	1/14/2022
\$995,000	\$980,000	98.49%	11/4/2022
\$795,000	\$767,000	96.48%	9/1/2023
\$850,000	\$810,000	95.29%	2/14/2022
\$825,000	\$785,000	95.15%	10/21/2022
\$799,000	\$750,000	93.87%	2/22/2024
\$1,375,000	\$1,280,000	93.09%	7/28/2022
\$1,085,000	\$999,999	92.17%	2/18/2022
\$1,245,000	\$1,135,000	91.16%	3/25/2022
\$1,485,000	\$1,350,000	90.91%	8/8/2022
\$1,290,000	\$1,150,000	89.15%	5/20/2022
\$1,185,000	\$1,050,000	88.70%	1/12/2023
\$1,150,000	\$998,000	86.76%	11/28/2022
\$1,500,000	\$1,300,000	86.67%	3/31/2023
\$1,150,000	\$995,000	86.52%	3/23/2023
\$1,595,000	\$1,350,000	84.64%	1/30/2023
\$1,550,000	\$1,300,000	83.87%	2/28/2023
\$1,700,000	\$1,425,000	83.82%	11/7/2022
\$1,495,000	\$1,250,000	83.61%	2/16/2024
\$1,100,000	\$912,500	82.95%	6/2/2023
\$1,300,000	\$1,075,000	82.69%	5/28/2024
\$1,200,000	\$949,995	79.17%	11/4/2022
\$1,200,000	\$937,500	78.13%	8/1/2024

Compiled from OneKey MLS for LMH Appraisal

In some of the "below list price" sales, the difference was small, but in appraisal practice any loss in value is termed depreciation. According to the Appraisal Institute, the market recognizes the occurrence of losses in the value of improvements due to the effects of age, wear and tear, and other causes.

Depreciation in an improvement can result from three major causes operating separately or in combination:

1. Physical deterioration – wear and tear from regular use, the impact of the elements or damage. Such deterioration can be curable or incurable.
2. Functional obsolescence – a flaw in the structure, materials, or design that diminishes the function, utility, and value of the improvements. Such obsolescence can be curable or incurable.
3. External obsolescence - a temporary or permanent impairment of the utility or salability of an improvement or property due to negative influences outside the property. External obsolescence is incurable. Because of its fixed location, real estate is subject to external influences that usually cannot be controlled by the property owner, landlord, or tenant.³

The appraisers reviewed listings for the 24 properties that sold below list. Ones that mentioned condition factors were eliminated, but the appraisers interviewed brokers who had listed properties that had some form of external obsolescence. These included properties that were on a flag lot, shared driveways, insufficient frontage for subdivision, not enough property for further development, or location next to a commercial property, all situations that a seller/buyer could not fix, but for a discount, a buyer was willing to purchase. Properties with external obsolescence were those that had the deepest discounts.

If your neighbor is successful in installing a pool, it will be too close to your home and you will be subject to the sounds of those using the pool, the sounds of the mechanical equipment needed to operate the pool, and there is the matter of draining pool water running on to your property. In appraisal practice, this will have created an external obsolescence over which you have no control.

Based on the interviews we had with brokers, we found the listings that had the steepest discounts were those with external obsolescence.

On the basis of that, our opinion is that the value of your property would be diminished by 15 percent if a pool is installed that close to your property.

³ *The Appraisal of Real Estate, 14th Edition*. Appraisal Institute, Chicago, 2013

CERTIFICATION

We certify that, to the best of our knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial and unbiased professional analyses, opinions and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have performed no services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- Lee A. McEnroe and Maureen D. McGoldrick made an inspection of the subject site, as well as the community surrounding it, on September 20, 2024. No one provided significant real property appraisal assistance to the person signing this certification.
- The reported analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.

- As of the date of this report, I, Lee A. McEnroe, have completed the continuing education program for Certified Residential Appraisers in the State of New York, including the Uniform Standards of Professional Appraisal Practice.
- As of the date of this report, I, Maureen D. McGoldrick have completed the Standards and Ethics Education Requirements for Practicing Affiliates of the Appraisal Institute. As of the date of this report, I, Maureen D. McGoldrick have completed the continuing education program for Practicing Affiliates of the Appraisal Institute.

Dated: September 27, 2024
LMH Appraisal

Lee Mc Enroe

Maureen D McGoldrick

Lee A. McEnroe
Certified N.Y.S. Real Estate
Residential Appraiser
#45000022652

Maureen D. McGoldrick
Certified N.Y.S. Real Estate
General Appraiser
#46000031968

STATEMENT OF GENERAL ASSUMPTIONS AND LIMITING CONDITIONS

The following Standard Conditions apply to reports by LMH APPRAISAL. Special conditions and significant issues are added as required.

1. Analyses are performed, and written reports are prepared in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.
2. No opinion is rendered as to property title, which is assumed to be good and marketable. Unless otherwise stated, no consideration is given to liens or encumbrances against the property. Sketches, maps, photos or other graphic aids included in reports are intended to assist the reader in ready identification and visualization of the property and are not intended for technical purposes. Because the appraiser(s) is not a surveyor or architect, he or she makes no guarantees, express or implied, regarding these documents including the survey and flood maps.
3. Information furnished by others, upon which all or portions of this report are based, are believed

to be reliable, but have not been verified in all cases. It is our opinion that the information is of the kind generally accepted in the appraisal profession as reliable, thus it was utilized in forming all or part of the professional opinion(s) found herein. However, no warranty is given as to the accuracy of such information.

4. Responsible ownership and competent property management are assumed.
5. Areas and dimensions of the property were obtained from surveys and/or public records. The areas utilized for the purposes of comparison were derived from Comps Inc. Maps or sketches, if included in this report, are only to assist the reader in visualizing the property and no responsibility is assumed for their accuracy. No independent surveys were conducted.
6. Reports may contain estimates of future financial performance, estimates or opinions that represent the appraiser's view of reasonable expectations at a particular point in time, but such information, estimates or opinions are not offered as predictions or as assurances that a particular level of income or profit will be achieved, that events will occur, or that a particular price will be offered or accepted. Actual results achieved during the period covered by our prospective financial analyses will vary from those described in our report, and the variations may be material.
7. No responsibility is taken for changes in market conditions and no obligation is assumed to revise this report to reflect events or conditions that occur subsequent to the date hereof.
8. It is assumed that all required licenses, certificates of occupancy, consents or others legislative or administrative authority from any local, state or national government or private entity or organization, have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
9. It is assumed that legal, engineering or other professional advice, as may be required, has been or will be obtained from professional sources and that the report will not be used for guidance in legal or technical matters such as, but not limited to, the existence of encroachments, easements or other discrepancies affecting the legal description of the property. It is assumed that there are no concealed or dubious conditions of the subsoil or subsurface waters including water table and flood plain, unless otherwise noted. We further assume there are no regulations of any government entity to control or restrict the use of the property unless specifically referred to in the report. It is assumed that the property will not operate in violation of any applicable government regulations, codes, ordinances or statutes.
10. Unless otherwise stated, the values found within this report do not consider the existence of hazardous substances including, without limitation, asbestos, polychlorinated biphenyls, petroleum leakage or agricultural chemicals, which may or may not be present on the property.

11. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing the appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist.
12. In the absence of competent technical advice to the contrary, it is assumed that the property being appraised is not adversely affected by concealed or unapparent hazards such as, but not limited to asbestos, hazardous or contaminated substances, toxic waste or radioactivity. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
13. The allocation, if any, in this report of the total valuation between components of the property, land and improvements applies only to the program of utilization stated in this report. The separate values for any components may not be applicable for any other purpose and must not be used in conjunction with any other appraisal.
14. The report, the final estimate of value and estimates of future financial performance included therein, are intended for the information of the person or persons to whom they are addressed, solely for the purposes stated therein, and should not be relied upon for any other purpose. The addressee shall not distribute the report to third parties without prior permission of LMH APPRAISAL. Before such permission shall be provided, the third party shall agree to hold LMH APPRAISAL harmless relative to their use of the report. Neither our report, nor its contents, nor any reference to the appraisers or LMH APPRAISAL, may be included or quoted in any offering circular or registration statement, prospectus, sales brochure, other appraisal, loan or other agreement or document without our prior written permission. Permission will be granted only upon meeting certain conditions.
15. Information furnished by others is presumed to be reliable and, where so specified in the report, has been verified; but no responsibility, whether legal or otherwise, is assumed for its accuracy, and it cannot be guaranteed as being certain. No single item of information was completely relied upon to the exclusion of other information.
16. Assignments are accepted with the understanding that there is no obligation to furnish services after completion of the original assignment. If the need for subsequent service related to an

assignment (e.g., testimony, updates, conferences, reprint or copy service) is contemplated, special arrangements acceptable to LMH APPRAISAL must be made in advance. No significant change is assumed in the supply and demand patterns indicated in the report. (The report assumes market conditions as observed as of the current date of our market research stated in the letter of transmittal.) These market conditions are believed to be correct; however, the appraisers assume no liability should market conditions materially change because of unusual or unforeseen circumstances.

17. The valuation applies only to the property described and for the purpose so stated and should not be used for any other purpose. Any allocation of total price between land and the improvements as shown is invalidated if used separately or in conjunction with any other report.
18. Neither the report nor any portions thereof (especially any conclusions as to value, the identity of the appraisers or LMH APPRAISAL or any reference to the Appraisal Institute or other recognized appraisal organization or the designations they confer) shall be disseminated to the public through public relations media, news media, advertising media, sales media or any other public means of communication without the prior written consent and approval of the appraisers and LMH APPRAISAL. The date(s) of the valuation to which the value estimate conclusions apply is set forth in the letter of transmittal and within the body of the report. The value is based on the purchasing power of the United States dollar as of that date.
19. No individual signing or associated with this report shall be required by reason of this report to give testimony or appear in court or other legal proceedings, unless specified arrangements therefore have been made.
20. The Addressee agrees to indemnify LMH APPRAISAL and its respective partners, principals and employees (LMH APPRAISAL and each such person being an "Indemnified Party") from and against any and all losses, claims, damages and liabilities, joint or several, to which such Indemnified Parties may be subject under any applicable federal or state law, related to, or arising out of, the subject analysis and/or the engagement of LMH APPRAISAL pursuant to the assignment and will reimburse any Indemnified Party for all reasonable expenses (including counsel fees and expenses) as they are incurred in connection with the investigation of, preparation for, or defense of, any pending or threatened claim or action or proceeding arising therefrom whether or not such Indemnified Party is a party. The Addressee will not be liable under the foregoing indemnification provisions to the extent that any loss, claim, damage, liability or expense is found in a final judgment by a court of competent jurisdiction to have resulted primarily from the bad faith, gross negligence or recklessness of an Indemnified Party.
21. It should be specifically noted by any prospective mortgagee that the report assumes that the property will be competently managed, leased and maintained by financially sound owners over the expected period of ownership. This engagement does not entail an evaluation of

management's or owner's effectiveness, nor are we responsible for future marketing efforts and other management or ownership actions upon which actual results will depend.

22. The Americans with Disabilities Act ("ADA") became effective January 26, 1992. LMH APPRAISAL has not made a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more of the requirements of the Act. If so, this fact could have a negative effect upon the value of the property. Since LMH APPRAISAL has no direct evidence relating to this issue, LMH APPRAISAL did not consider possible non-compliance with the requirements of ADA in estimating the value of the property.

23. LMH APPRAISAL does not, as part of its valuation, perform an audit, review or examination (as defined by the AICPA) of any of the historical or prospective financial information used and therefore does not express any opinion with regard to same.

24. The legal description and pertinent building areas for the subject property were obtained from sources that are deemed reliable. The legal description and building areas have not been verified on our part by legal counsel, surveyor or a qualified architect. We assume no responsibility for the accuracy or the legality of the legal description or building areas and the permitted uses of the property. Verification should be made prior to use.

25. Acceptance of and/or use of this appraisal report constitutes acceptance of the foregoing General Underlying Assumptions and Limiting Conditions. The appraisal duties, pursuant to the employment to make the appraisal, are complete upon delivery and acceptance of the appraisal report. However, any corrections or errors should be called to the attention of the appraiser within 60 days of the delivery of the report.

ADDENDUM - QUALIFICATIONS OF APPRAISER

Lee McEnroe

P.O. Box 195, Millbrook, NY 12545 Cell: (845) 453-6381

lmhappraisal@optonline.net

Office: (845) 373-9723

CURRENT POSITIONS

LMH Appraisal, Owner and Certified Real Estate Appraiser, Millbrook, New York	1999-Present
Equitable Assessment, LLC, Associate, Wappingers Falls, New York	April 2016-Present
Town of Union Vale- Data Collector, Union Vale, NY	January 2017-Jan. 2020
Town of Rye, NY - Data and Clerical work in Assessor's Office	Sept. 2016 - as needed
Town of Stanford - Data Collector, Stanfordville, NY 12581	Aug. 2017 - Present

EMPLOYMENT HISTORY

Lakewood Appraisal, Real Estate Appraiser Assistant, Wappingers Falls, New York	1997-1999
Lee McEnroe Real Estate, Owner and Licensed Real Estate Broker, Amenia, New York	1986-1997

LICENSES AND CERTIFICATIONS

Certified Residential Real Estate Appraiser

- New York License Number - 45000022652 (02 16 99 02 15 25)

Licensed Real Estate Broker

- License Number - 0498843-37-523478 (1986 2026)

EDUCATION

Manfred School for Real Estate Education

Albany Center for Real Estate Education

Dutchess Community College

PROFESSIONAL EXPERIENCE

A thirty-year career in real estate, focused on Dutchess and Columbia Counties in New York, and Litchfield County in Connecticut, including two decades as a real estate appraiser, appraising more than 10,000 properties including farms, large estates, single-family and multi-family properties, condominiums and unimproved land. These appraisals have been for a variety of purposes, including mortgage lending, litigation, estates, and tax grievances. Clients have included law firms, private property owners, and a number of lending institutions, including Salisbury Bank & Trust Company and Bank of Millbrook.

More than ten years were spent as the broker/owner of a Lee McEnroe Real Estate in Amenia, New York, handling the sales of hundreds of residential and commercial properties, primarily in Dutchess County.

As an Associate with Equitable Assessment, LLC, worked on the Reevaluation of the Town of Stanford (Dutchess County), inspecting, measuring, and photographing nearly 600 town parcels, entering the data in RPS (County Real Property Software). The duties have also included assisting with the Neighborhood delineation map, attending and participating at Public Hearing Meetings and the informal interviews with property owners, and meeting with County and State Real Property Department of Taxation and Finance Representatives regarding the status of the Reevaluation.

Data Collector with Town of Union Vale, NY, and Town of Stanford: inspecting, measuring, and photographing properties to update files for the Assessor, entering the information in RPS, and sketching properties when necessary. In addition, working closely with the Building Inspector for the town to obtain building permits, and closed building permits so the Assessor's files are current and updated.

Data and clerical work for the Town of Rye, NY Assessor's office.

COMPUTER SKILLS

In addition to a familiarity with the Microsoft Office Suite, specialized Computer Skills include:
RPS (County Real Property Software), Alameda Software, Apex Sketching, Excel

PROFESSIONAL TRAINING

- Qualifying Course for Real Estate Salespersons – 45 Hour course
- Qualifying Course for Real Estate Brokers – 45 Hour course
- Ethics and Standards of Professional Practice
- R1: Introduction to Real Estate Appraisal
- R2: Valuation Principles and Procedures
- R3: Applied Residential Property Valuation
- R4: Introduction to One to Four Family Income Capitalization
- Land Conservancy
- Buyers Agency M-959
- Tax Assessment Grievance Process
- Legal Update
- How to run your Real Estate Agent's Business Like a Business
- New FHA/HUD Guidelines and Test Procedures
- Manufactured Homes
- Deeds: Reading, Plotting & Understanding
- A Practical Understanding of the Appraisal Process
- Selling New Construction
- Vacant Land Appraisal
- Investment Property Analysis
- Tax Assessment Grievance Process
- Eminent Domain Valuation

- Changing Market Conditions and the Appraiser
- Arthur McCartney Spring Appraiser Conference
- Analyzing Distressed Real Estate
- Mortgage Fraud: A Dangerous Business (A)
- Quadrennial Code of Ethics Training
- Understanding the 1044MC Form
- Working Together: Mortgage Broker, Sales Agent and Appraiser
- Foreclosures
- An URAR form review
- Architectural Styles that shaped the American Landscape
- Sales Comparison Approach
- Appraisal of 2-4- Family and Multi-Family Properties
- Green in Residences and Appraisals
- Covering all the Bases in Residential Reporting
- 2014-15 National USPAP Update
- Supervisory Appraiser/Trainee Appraiser Course
- Mold, Moisture and Building Codes
- The Art of Defensive Appraising
- Defensive Appraising
- 2022-23 National USPAP Update
- Fair Housing and Fair Lending Instruction
- Tax Assessment Grievance Process
- What Every RE Professional Should Know
- How to Inspect Exteriors
- Staying Compliant: Understanding Fair Housing Laws, Ethics and Lay of Agency
- Appraising Historic Homes
- Basic Construction Review
- Appraising Small Income Residential Properties

QUALIFICATIONS OF APPRAISERS

**MAUREEN D. McGOLDRICK
PRACTICING AFFILIATE, APPRAISAL INSTITUTE
MDM APPRAISALS, LLC**

**Upstate: 1078 Lakeview Road,
Copake, NY 12516**

**Long Island: 365 Stewart Avenue, B9
Garden City, NY 11530**

**mdmappraisals@optonline.net
516-805-1684**

Professional Experience

2006 –
Present Certified General Real Estate Appraiser
Principal, MDM Appraisals, LLC

Appraisal of commercial, residential, and industrial properties throughout New York State, but with special emphasis on Nassau, Suffolk, the five boroughs of New York City, and the mid-Hudson Valley.

1996-Present Becker Real Estate Services, Inc.
34 Forest Avenue, Lynbrook, New York 11563

- Licensed Real Estate Salesperson
- Contract appraiser

Appraisal of commercial, residential, and industrial properties in Nassau, Suffolk, Kings and Queens Counties, with a special emphasis on appraisals for tax certiorari and estate tax matters.

1982-1996 Law Office of William M. McGoldrick
Legal Secretary with a specialization in real estate

Professional Associations

- Long Island Board of Realtors
- Appraisal Institute – Long Island Chapter
- Appraisal Institute – NY Metro Chapter

Professional Licenses

- New York State Certified General Real Estate Appraiser
- New York State Licensed Real Estate Salesperson
- New York State Notary Public

Community Service

Town of Copake Board of Assessment Review 2020-Present
Chairperson, Town of Copake Board of Assessment Review - 2024

Professional Education

Columbia Society at Hofstra University – all courses required for a residential appraisal license

Appraisal Institute at NYU – all courses required for a Certified General Appraisal License

Seminars:

Columbia Society:

What the Appraiser Really Values

Supervisory Appraiser Course

Appraisal Institute

Land Valuation Adjustment Procedures

Analyzing Operating Expenses

USPAP 2018-2019

Complex Litigation Appraisal Studies

Appraising Properties after Hurricane Sandy

Comparative Analysis

The Discounted Cash Flow Model

Understanding Rates & Ratios

Business Practice and Ethics

Practical Highest and Best Use

Aerial Inspections for Real Estate (Drone Technology)

Artificial Intelligence, AVMs, and Blockchain: Implications for Valuation

McKissock Learning

Introduction to Expert Witness Testimony for Appraisers

Understanding Luxury Home Features

New Construction Essentials of Luxury Homes

Fundamentals of Appraising Luxury Homes

Certificate in the Appraisal of Luxury Homes



COMPASS

*Anna
Cory*

January 16th, 2023

Town of Washington Zoning Board of Appeals
10 Reservoir Drive
Millbrook, NY 12545

Re: Yadgard Variance(s) Application

To Members of the Town of Washington Planning Board:

I have been a full time real estate professional in the Millbrook area for over 38 years. I am currently employed at H.W. Guernsey at Compass located at 3295 Franklin Avenue in the Village of Millbrook where I have been the leading broker in our region for over 30 years. As a respected industry authority, I have been quoted in distinguished journals and international publications such the New York Times, Wall Street Journal, Architectural Digest, Gotham, Avenue Magazine, Yahoo Finance, Town and Country and numerous online publications.

Jim and Lea Cornell, former clients of mine, have asked me to render a professional opinion regarding the impact that the construction of a 40' X 18' inground pool at 610 Stanford Road, within the required 100 foot side yard set-back, would have on the value of their home at 620 Stanford Road. My comments are as follows:

1) The area where both homes are located is zoned RR-10. While both properties are non-conforming the character of the area is characterized as luxury rural. The property next to 610 Stanford Road recently sold for \$2.5M and sits on less than five acres. Another home less than one mile away recently sold for \$2.6M, and two homes located within the same distance are listed at over \$10M each. Homes in the RR-10 zone are sought after because of the privacy, exclusivity, and rural quality they afford their owners. The Cornell's house is located very close to the 610 Stanford Road property line. Locating a pool that close to the Cornell's house would conflict with all of the qualities that prospective buyers are seeking in this area.

- 2) Pools by their nature are attractive nuisances. People entertain in and around them (think loud music), children play in them, in general they are a place where groups gather to have fun. It is well known that water amplifies sound. As a result, pools and the area surrounding them are loud and disturbing. This would certainly be unwelcomed by a future prospective buyer of 620 Stanford Road.
- 3) Pool equipment is very noisy and operates continuously seven days a week. It is also unsightly. The proposed equipment location is only fifty feet from the Cornell residence. This non-stop disturbance would clearly be undesirable to current and future owners.
- 4) Pool parties usually take place in the evening and that requires lighting. Bright lights that are visible from the Cornell's yard would also be unwelcomed.
- 5) The Cornell's can see directly into the backyard of 610 Stanford Road. The owners of 610 Stanford Road propose to surround their pool with a chain link fence. This is unsightly and not in keeping with the type of fencing found in this area. Also, should the owners decide to install a slide, or other pool accessory, in the future it would further detract from the Cornell's view. Again, this would all be unwelcomed by a prospective buyer of 620 Stanford Road.

In conclusion, for all of the reasons I have stated above it is my professional opinion as a real estate expert in the Millbrook area for over 38 years that the construction of a 40' X 18' in ground pool within the required 100 foot side yard set-back at 610 Stanford Road would seriously impair the value of the Cornell residence located at 620 Stanford Road.

Sincerely,



Candy Anderson

Associate Real Estate Broker
HW Guernsey at Compass
914.475.7576

Affidavit

State of New York)
)
County of Dutchess) ss.:

Kenneth Holzberg, being duly sworn deposes and states:

1. I reside in the Town of Washington and was a member of the Town's Zoning Board of Appeals (the "ZBA") for many years. I am an attorney at law and am very familiar with the Town's Zoning Code.

2. In my opinion, Town Zoning Code section 392. 5 does not allow the ZBA to vary lot coverage. The amount of a lot that is covered by improvements is not a set back issue, but a lot coverage issue. Lot set backs dictate how close an improvement may be to a neighbor's boundary, and have nothing to do with how much of a lot can be covered by improvements.

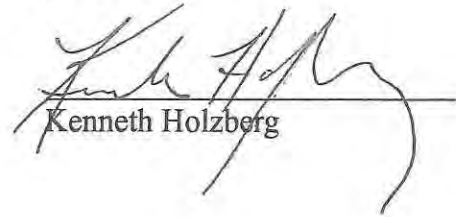
3. Section 392.5 states:

Nothing herein is intended or shall be construed to affect any requirement of this Local Law with respect to matters other than the area, shape and frontage of nonconforming lots. An eligible nonconforming lot shall be required to comply with all other requirements of this Local Law, including those set forth in the Schedule of District Use Regulations (Appendix A), the minimum setback, maximum building height, *and maximum lot coverage* Regulations set forth in the Schedule of Area and Bulk Regulations (Appendix B), and with all other requirements of the Town, County, and State regarding the construction of buildings and supporting systems. If not specifically listed, eligible nonconforming lots shall comply with the requirements applicable to one (1) acre lots. The Zoning Board of Appeals shall have the

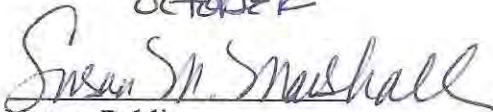
authority to modify the *lot setback requirements* insofar as deemed appropriate and justifiable in the public interest. (Emphasis added).


4. Clearly, the ZBA may only modify (i.e. vary) lot set back requirements under this section. Just as clearly, the lot must still comply with *maximum lot coverage* requirements.

5. In my years of service on the ZBA, I do not recall the Board ever referring to this section as allowing for a lot coverage variance, as it does not state this.


Kenneth Holzberg

Sworn to before me this
2 day of ~~September~~, 2024
OCTOBER


Notary Public

SUSAN M. MARSHALL
Notary Public, State of New York
Reg. No. 01MA6197676
Qualified in Dutchess County 
My Commission Expires 12/01/2024



VILLAGE OF MILLBROOK
 APPLICATION FOR BUILDING PERMIT
 BUILDING INSPECTOR: KENNETH McLAUGHLIN

PHONE/TEXT: 845-240-2118 FAX: 845-677-3972 OFFICE HOURS: 9-5 PM AT VILLAGE HALL
 ADDRESS: VILLAGE OF MILLBROOK PO BOX 349 35 MERRITT AVE MILLBROOK NY 12545
PLEASE USE UPDATED FEE SCHEDULE

IDENTIFICATION OF APPLICANT

NAME OF OWNER Jason Smith PHONE NO.: C: 845-505-3977
 PARCEL GRID NO. 455127 PHYSICAL ADDRESS: 24 Merritt Ave
 MAIL ADDRESS Millbrook STATE: NY ZIP CODE: 12545
 APPLICANT'S NAME: Four Seasons Pool Service Inc. PHONE NO.: 518-789-0591
 E-Mail (for e-copy of Building Permit): fourseasonsny@optonline.net
 (If applicant is not the owner of the property, owner of property MUST sign at the bottom of application)

DESCRIBE THE PROPOSED WORK FOR THIS APPLICATION: (PLEASE CHECK) ALTER USE ERECT

- ACCESSORY BUILDING ADDITION ALTERATIONS INSULATING MECHANICAL PERMIT
- DECK/PORCH/SUNROOM POOL/HOT TUB STRUCTURAL REPAIRS ELECTRICAL PERMIT

DESCRIPTION OF WORK TO BE PERFORMED AND CONTRACTOR'S NAME AND PHONE NUMBER:
Construction of 16'x32' in-ground Gunite swimming pool

Four Seasons Pool Service Inc. 518-789-0591

DIMENSIONS: 16' X 32' TOTAL SQ. FT. _____ ESTIMATED COST: \$ 68,000.00
 ATTACH THE FOLLOWING DOCUMENTS AS PART OF THIS APPLICATION
 (Please check appropriate boxes)

- A PROPERTY SURVEY OR COPY OF THE APPROVED PLOT OF THE AFFECTED PREMISES
 - CONSTRUCTION PLANS & SPECIFICATIONS (2 SETS IF ARCHITECTURAL PLANS)
 - ZONING WORKSHEET
 - PROOF OF WORKMAN'S COMPENSATION INSURANCE ON FORM #C-105.2 OR U26.3 BY THE CARRIER
- PLEASE CHECK IF YOU OR OWNER IS AWARE OF ANY EASEMENT/S. IF YES, PLEASE PROVIDE A COPY OF AFORESAID EASEMENT/S. NOT PROVIDING A COPY OF THE EASEMENT/S MAY RESULT IN A DELAY IN ISSUANCE OF YOUR BUILDING PERMIT AND/OR CERTIFICATE OF OCCUPANCY.

APPLICATION IS HEREBY MADE TO THE OFFICE OF THE BUILDING INSPECTOR, DEPARTMENT OF PLANNING, ZONING AND BUILDING PURSUANT TO THE N.Y.S. UNIFORM FIRE PREVENTION & BUILDING CODE & THE CODE OF THE VILLAGE OF MILLBROOK AS ADOPTED BY THE VILLAGE BOARD. THE APPLICANT AGREES TO COMPLY WITH ALL APPLICABLE LAWS, ORDINANCES & REGULATIONS.

SIGNATURE OF APPLICANT _____ DATE 8/17/20

SIGNATURE OF OWNER Jason Smith DATE 8/17/20

VILLAGE OF MILLBROOK
Dutchess County, NY

BUILDING PERMIT

NO: 20-23

This permit issued pursuant to the plans and specifications on file in compliance with the Building Code of New York State. Any changes may result in revocation of this permit.

Location: 24 Merritt Ave
Grid: 6765-18-455127

Project: 16' x 32' In-ground Gunite Swimming Pool

Work governed by this permit should be limited to 7:30 AM – 7:00 PM (Monday- Saturday)

PLEASE POST IN A CONSPICUOUS LOCATION



Kenneth W. McLaughlin
Building Inspector

EXPIRES: 08-17-2021

When you have completed your project- contact Building Inspector for final inspection

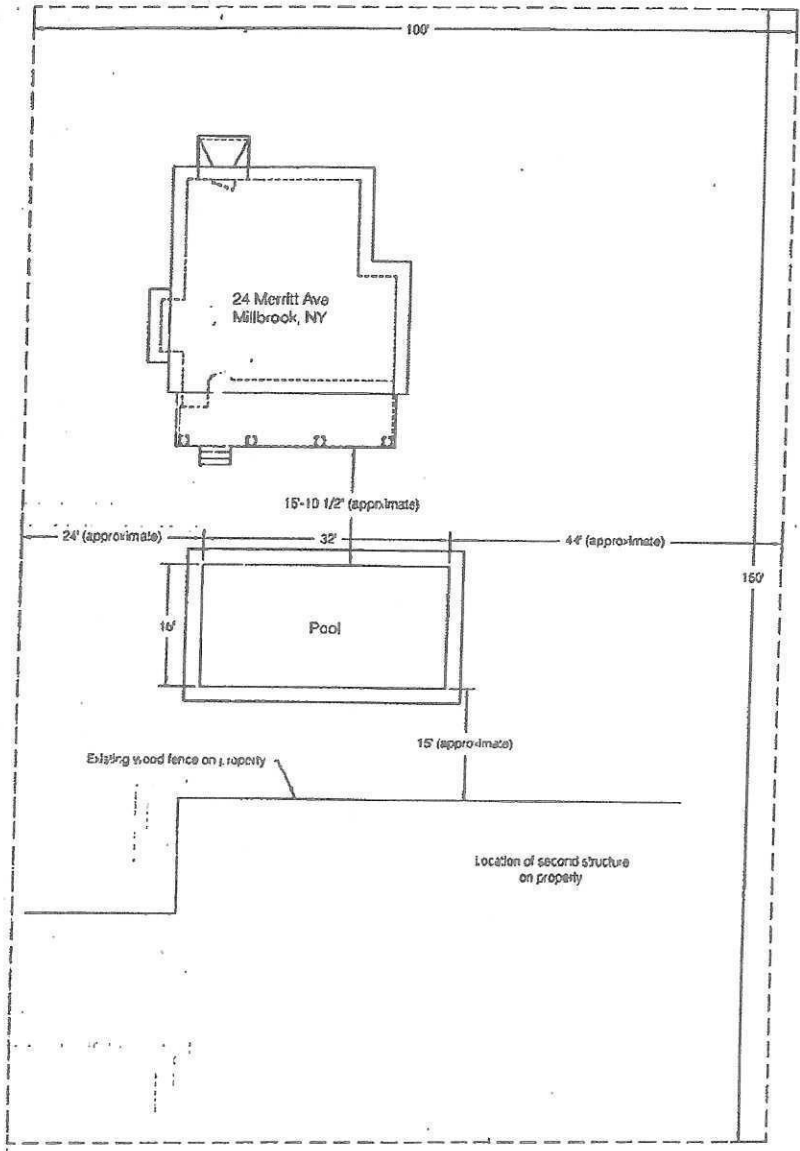


EXHIBIT 3



24 MERRITT AVE

MILLBROOK, NY 12545

Single Family 3 Beds 2 Full Baths 1 Partial Bath 1,356 Sq. ft. 0.31 Acres

\$1,100,000 • SOLD

Sold on 11/29/2023

Affidavit

State of New York)
) ss.:
County of Dutchess)

William F. Murphy, being duly sworn deposes and states:

1. I reside in the Town of Washington and have done so my entire lifetime.

I am the principal of William F. Murphy, Inc., a construction company located on Millbrook. I have worked in construction and excavation for nearly 50 years, primarily in the Millbrook area.

2. I am familiar with the property at issue in this matter and have been advised it is now owned by Daniel Yadgard. I remember working on a house addition on this property in the late 1980s. The house was added on to several times, which I know of to my own knowledge. I remember finishing the exterior siding on one addition, in the late 1980s. The property was then owned by a local family.

3. I have performed site excavation for different projects, including pools, hundreds of times over my 40-plus years. I have done the excavation for pools dozens and dozens of times and, in fact, did all of the excavation work for a pool company that is no longer in business.

4. I have been shown and I have viewed the area where the homeowner intends to build a pool. Excavation has occurred in that area.

5. I have also been shown and have viewed an alternate area, further from the Cornell boundary, where it has been suggested a pool may be constructed. I understand no variances would be needed for the pool to be in this area. I have attached a copy of that map of that area to this affidavit.

6. The 30 x 60 area shown on this map is possible for a pool to be installed.

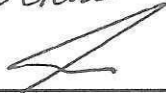
This likely would require modifying the retaining wall and driveway, which means additional site work, but these changes could be made and could accommodate a pool.



William F. Murphy

Sworn to before me this
^{4th} day of ~~September~~, 2024

October



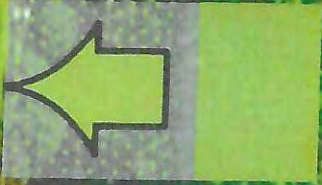
Notary Public

ALLAN B. RAPPLEYEA
NOTARY PUBLIC, State of New York
Reg. No. 5008140
Qualified in Dutchess County 27
Commission Expires Feb. 16, 20

Alternate Site
No Variances



Proposed Site
4 Variances
required





STANFORD RD

250'

042590
1.7A(d)

Select a scene



STANFORD RD

250'

WASHINGTON

042590
1:7A(d)

