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TOWN OF WASHINGTON  
ZONING BOARD OF APPEALS

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10 Reservoir Drive  
Millbrook, New York

October 15, 2024  
6:34 P.M.

YADGARD: 610 STANFORD ROAD - PUBLIC HEARING

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APPEARANCES :

BEFORE :

FRANK REDL, Chairman  
TATE KUNKLE  
ALEXANDER KOLLMAR

ALSO PRESENT :

KYLE BARNETT, ESQ., Town Attorney  
JENNIFER BOSSERT, Secretary

FOR LEA AND JAMES CORNELL:  
ALLAN B. RAPPLEYEA, ESQ.  
CORBALLY, GARTLAND & RAPPLEYEA, LLP  
35 Market Street  
Poughkeepsie, New York 12601

FOR RACHEL AND DANIEL YADGARD:  
JOSHUA E. MACKEY, ESQ.  
MACKEY BUTTS & WHALEN, LLP  
3208 Franklin Avenue  
Millbrook, New York 12545

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2 CHAIRMAN REDL: The next matter on the  
3 agenda is the scheduled public hearing for  
4 Yadgard, located at 610 Stanford Road, seeking  
5 four variances, three area variances and one  
6 variance for lot coverage.

7 Mr. Mackey, it is on for a public hearing,  
8 but to establish a record, do you want to give  
9 a brief introduction of the application?

10 MR. MACKEY: Sure. All right. Do you  
11 want me to come up there, or do you want to do  
12 it --

13 CHAIRMAN REDL: Yeah, you can come on up.

14 MR. MACKEY: Okay. Thanks. So this  
15 application is now 25 months in the making.  
16 It's taken on various forms. The most recent  
17 one was submitted, actually, last year at this  
18 time, October 31st. You're right, there are  
19 three variances under consideration. As you  
20 know, it's a pool, by now.

21 The first variance requests a rear yard  
22 variance. The variance is calling for 40-foot  
23 from the back boundary line, whereas a 75-foot  
24 setback is required. The second variance is a  
25 side yard setback. A hundred feet is required,

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2 and the proposed front edge of the pool being  
3 90.8 feet away from the side property. The  
4 third variance that we're requesting is lot  
5 coverage.

6 So this current iteration, it's a 35-by-15  
7 pool on a lot that is 1.74 acres. The pool  
8 itself is 525 square feet. I think if you --  
9 this gets a little bit complicated. I can go  
10 into it but, you know, the calculations of lot  
11 coverage have been discussed also in our  
12 October 31st, 2023, application. I think  
13 that -- also previously briefed the elements of  
14 area variance, what we have to show.

15 We've talked a lot about the community --  
16 the neighborhood, community character, and last  
17 year submitted ParcelAccess maps showing the  
18 existence of a swimming pool at 630 Stanford  
19 Road. If my orientation is correct, that's  
20 going to be to the north of Yadgard. There's  
21 another pool there. There's several other  
22 pools in the neighborhood that we showed on  
23 photographs in the immediate area.

24 The -- again, towards undesirable -- will  
25 there be an undesirable change to the character

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2 of the neighborhood? You might remember there  
3 was a lot of discussion about the pool pump,  
4 and according to the manufacture, this is the  
5 quiet pump on the planet. That's their words.  
6 There's different options about where that can  
7 go. From what I understand, before I got  
8 involved -- in fact, Mr. Yadgard is here. He's  
9 sitting in the back, by the way.

10 CHAIRMAN REDL: Yup.

11 MR. MACKEY: There had been discussion of  
12 putting the mechanicals next to the house,  
13 which might not require a variance, but then --  
14 not a bad idea -- someone thought, why don't  
15 you put it over in the shed or put it a little  
16 bit further away? That might require -- you  
17 know, there's some flexibility about that, I  
18 guess, if the board wants to talk about that  
19 some more.

20 CHAIRMAN REDL: Okay.

21 MR. MACKEY: But there was a lot of  
22 consideration about the sound that might  
23 emanate from the pump. You might remember the  
24 client met with Millbrook Fence and talked  
25 about a fence. I think at one of the meetings

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2 he asked, how high can I put it? So obviously,  
3 it will be within code. And landscaping, of  
4 course, was agreed to and proposed to further  
5 lessen the impacts of -- visual impacts and  
6 noise.

7 We talked a lot about whether there's some  
8 other way that we can achieve the desired  
9 swimming pool. So there's a lot of back and  
10 forth on this over the past year. The board  
11 was invited to go out. I think someone did  
12 from the board. I'm not sure who. At some  
13 point in time, someone from the board went out  
14 and visited the site. There was discussion, I  
15 think, proposed by a neighbor and the  
16 neighbor's architect that the pool could go in  
17 a -- in a raised area behind the house. The  
18 driveway comes in from the south and, kind of,  
19 comes around the back of the house, and the  
20 garage is underneath. There's all stone with  
21 mortar. There's some pretty -- probably --  
22 some places, probably 10, 12 feet high when you  
23 get around the back of the house. And in  
24 between that driveway, that U, is a small area  
25 where there's a patch of grass and some

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2 landscaping, and the idea was floated that  
3 perhaps the pool could go there.

4 We had the Yadgards' pool contractor, Four  
5 Seasons -- I met them out there wintertime this  
6 year to explore the idea. And you know, the  
7 answer to that is, of course, anything is  
8 possible. You know, a beach is eroding in  
9 Nantucket. If you want to put your house back  
10 and put it up on stilts and spend millions of  
11 dollars, you can do that. So sure, you could  
12 take out that wall, support it up, but it makes  
13 no sense to have a pool there.

14 There's an existing patio where this pool  
15 site, we're now proposing, is located. It's  
16 off of some slider doors, where he keeps a  
17 grill. It would be cost prohibitive. Four  
18 Seasons looked at it and he said, sure,  
19 anything's possible, but you're talking about a  
20 major project, doing something like that, so it  
21 isn't quite as easy as it seems.

22 We talked about the substantial -- you  
23 know, the other factor is whether the requested  
24 area variances are substantial. Of course, you  
25 know, we're saying they're not substantial. I

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2 think in particular the one that impacts the  
3 neighbor the greatest, who seems to be in  
4 opposition to this more than anybody, that's  
5 the least substantial. That's nine percent.

6 The alleged difficulty being self-created,  
7 here's what I'm going to say to that: Of  
8 course, any one of these factors is not  
9 necessarily dispositive over the other, but the  
10 longer this is going on, I think, the more one  
11 could say it's not self-created. You know,  
12 when we started this, there's a lot of  
13 discussion in the submissions about  
14 conversations Mr. Yadgard and neighbors had  
15 before he purchased the property. Well, you  
16 know, like a lot of people moving into a new  
17 neighborhood, he had his attorney at the time.  
18 He had real estate brokers. He's had a  
19 conversation with the building department. All  
20 I'm saying, look, we can't tell you you're  
21 going to get a variance, but people get  
22 variances for -- that's -- I'm paraphrasing it,  
23 but that's essentially what he was told. The  
24 process began, as you know, and due to some  
25 procedural error, that completely had to be



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2 retracted, and there's a hole in his backyard  
3 where there was going to be a pool. So, you  
4 know, on the self-created element of an area  
5 variance, we think that certainly as time has  
6 gone on here, and through no fault of his own,  
7 it's become less and less self-created. That's  
8 the application.

9 CHAIRMAN REDL: Okay.

10 MR. MACKEY: And we're hoping that the  
11 board would -- I'm sure you're going to hear  
12 public comment tonight, but again, after 25  
13 months, we're hoping to get a vote.

14 CHAIRMAN REDL: Okay. Thank you. Thank  
15 you.

16 MR. MACKEY: You're welcome. Thank you.

17 CHAIRMAN REDL: At this point, I would  
18 make a motion to open the public hearing.

19 MR. KUNKLE: Second.

20 CHAIRMAN REDL: All in favor?

21 BOARD MEMBERS: Aye.

22 CHAIRMAN REDL: Before I ask for public  
23 comments, I want to acknowledge receipt of a  
24 ten-page letter with exhibits from Allan  
25 Rappleyea, who is representing Mr. and

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2 Mr. Cornell, next door neighbors, and we also a  
3 received a letter from the owners of 604  
4 Stanford Road, Eileen and Peter Lehrer. I  
5 don't know if I'm pronouncing that correctly.  
6 It's a letter in opposition to the Yadgard  
7 application. Both of those will be part of the  
8 record this evening for this public hearing.

9 With that out of the way, is there anybody  
10 that wishes to speak for or against the  
11 application?

12 MR. RAPPLEYEA: May I approach?

13 CHAIRMAN REDL: Absolutely.

14 MR. RAPPLEYEA: Thank you. Good evening.  
15 I've met you all before. I'm Allan Rappleyea.  
16 I represent the Cornells. The document that  
17 was submitted to the board, I dropped five  
18 copies off.

19 MALE SPEAKER: Use the mic.

20 MR. RAPPLEYEA: Oh, sorry. And I also  
21 emailed it to your attorney and Josh at the  
22 same time, so -- not the same time, but as soon  
23 as I walked back. So --

24 CHAIRMAN REDL: That's your letter dated  
25 October 10th, you're talking about?

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2 MR. RAPPLEYEA: Correct. So that was, I  
3 think, Friday. And with the board's  
4 indulgence, I just want to, sort of -- Josh  
5 started with it's been 25 months, and I think  
6 that 25 months ago, two of the gentlemen that  
7 are here tonight were not on the board. I  
8 think Frank was. Tate, I'm not sure if you  
9 were.

10 MR. KUNKLE: I was --

11 MR. RAPPLEYEA: You were?

12 MR. KUNKLE: -- last year.

13 MR. RAPPLEYEA: No. It was two years ago.

14 MR. KUNKLE: Oh, I wasn't two years ago.

15 MR. RAPPLEYEA: So I think that history's  
16 important, so it's probably as good a place to  
17 start. And the Cornells, Lea and Jim, are here  
18 with me, and you may have noted that they're  
19 always here. They've come to every meeting,  
20 either through Zoom or with me. This is really  
21 important to them.

22 We were not here in September, because  
23 what happened was we looked online, and just so  
24 you know, it said there's no meeting. So I'm  
25 going to give you a copy of that. It may just

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2 be a technological problem that you have. But  
3 Jim and Lea and I all looked to come to the  
4 meeting, and it said canceled due to lack of  
5 new applications, so we didn't come to the  
6 meeting. I understand a meeting was held. I  
7 understand that's when you decided to, you  
8 know, proceed with a public hearing. I just  
9 want the board to be aware of that, that, you  
10 know, we did want to attend. We didn't blow it  
11 off because it wasn't important, but --

12 CHAIRMAN REDL: That's understandable.

13 MR. RAPPLEYEA: -- we just didn't know  
14 based on that publication.

15 CHAIRMAN REDL: Okay.

16 MR. RAPPLEYEA: So, history. I'm going to  
17 go back very far, even before 25 months,  
18 because you guys know that these folks are  
19 neighbors. And the Cornells' property, in  
20 2020 -- in early 2022, they applied for a  
21 number of variances to extend their garage,  
22 extend the deck, and what happened was, the  
23 then owner of the property, now the Yadgard  
24 property, a gentleman named Mr. Janson --  
25 Mr. Janson appeared and had strong feelings

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2 about extending the garage that close to his  
3 house would impair its value and, you know,  
4 essentially disrupt his peace and quiet. So --  
5 and this is exhibit -- one of the exhibits that  
6 I attached. That variance application, the  
7 board did not proceed with. It was crossed out  
8 and essentially denied. The Cornells were not  
9 going to get that -- go ahead, Frank.

10 CHAIRMAN REDL: I was going to say, I was  
11 at that meeting, and they withdrew that part of  
12 their application.

13 MR. RAPPLEYEA: And I think, is it fair to  
14 say, because of the vibe of the neighbor  
15 feeling it would affect value, and they didn't  
16 really want contention with their neighbor? So  
17 that's what --

18 CHAIRMAN REDL: It's possible. I don't  
19 know what their reasoning was, but I know that  
20 the Cornells withdrew that part of their  
21 application.

22 MR. RAPPLEYEA: Sure. That was their  
23 reasoning. So fast forward a little bit. The  
24 property gets placed on the market and gets  
25 sold to Mr. Yadgard. Prior -- and this is

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2 exhibit -- one of the exhibits. Prior to the  
3 sale, in Exhibit 2, I believe, Mr. Yadgard  
4 sends the Cornells an email and indicates to  
5 them he realizes how close it is. He uses the  
6 words proximity. That he has not entered the  
7 contract, but that a pool is a must. The  
8 Cornells, in February of '22, say thanks, but  
9 we really would be opposed to a pool being that  
10 close to our home. So Josh's point about  
11 self-creation -- there really isn't any doubt  
12 that it was entirely self-created, because the  
13 applicant understood that there was opposition  
14 from their neighbor, understood that it was in  
15 proximity to their home, understood that the  
16 man that he bought the property from felt  
17 strongly that an addition to the Cornell  
18 property would impair the value of his home,  
19 which is why the Cornells withdrew it, and  
20 nevertheless proceeded, because in his words, a  
21 pool is a must.

22 So the issue about the hole in the  
23 ground -- and this is definitely something that  
24 I think is a little misunderstood in the  
25 record. In fact, in AKR's memo, on page 2,

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2 they refer to litigation. So let me explain  
3 that litigation to you, because I think there's  
4 a perception that the Cornells are hair-trigger  
5 litigants and just like suing people. That's  
6 not what happened.

7 Here's what happened: The Yadgards came  
8 in for a variance application. No neighbors  
9 were given any notice. The board at the time  
10 was represented by Sarah Wilson. When Jim  
11 heard excavation going on, Jim and Lea had  
12 told -- his name escapes me at the moment, the  
13 former building inspector.

14 MALE SPEAKER: Finley.

15 MR. RAPPLEYEA: James Finley. Jim, if  
16 there's any application next door, can you just  
17 let us know? Fine. Jim Finley doesn't tell  
18 them anything. Kevin Eiserman[ph.] is digging.  
19 Jim Cornell goes over and says, hey, you  
20 probably shouldn't dig. We didn't know about  
21 this hearing, and we're opposed to the pool.  
22 That doesn't stop. Jim sends an email to  
23 Mr. Yadgard and says, hey, we ought to let you  
24 know, you're digging. We didn't get any notice  
25 for the variance, and that wasn't really fair

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2 to us. Fine. I reach out to the town and say,  
3 guys, hold the phone. A building permit should  
4 be revoked or suspended because no neighbor got  
5 notice. Fine.

6 As you probably know, there's a 30-day  
7 statute of limitations for Article 78s. We're  
8 probably on day 26 when that happens. The town  
9 does not revoke the permit. They had to -- I  
10 believe, Frank, they had to pull all you guys  
11 together, but by the time that happened, the  
12 statute of limitations had already expired, so  
13 we had to file to protect their rights. After  
14 we did that, the town and the Yadgards agreed  
15 to vacate the permit. So AKR describes that as  
16 litigation. Their description is, when the  
17 project was first presented to the ZBA in  
18 October '22, the ZBA granted the relief  
19 requested at that time and the applicant  
20 obtained a building permit and work commenced.  
21 However, due to ongoing Article 78 challenge --  
22 I find it probably not reasonable to say the  
23 permit was granted without notice to any  
24 neighbor, and maybe the board should understand  
25 that when this summary is given. Furthermore,



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2 the town, through Ms. Wilson, would not revoke  
3 the permit during the statutory period. So  
4 really, you didn't have much of a choice.  
5 Finally, the consultant did not advise the  
6 board that it needed a coverage variance. So  
7 the variances that they did have were  
8 incomplete, in any event.

9 So history-wise, gang, the Yadgards  
10 understood this would be an issue. They  
11 understood their neighbor created the same  
12 issue for the Cornells, understood that no  
13 notice had been given to the Cornells,  
14 understood they didn't have a coverage  
15 variance, understood that the Cornells asked  
16 them to stop digging, but they kept digging.  
17 So that's why the hole is there.

18 Now, the town website -- I didn't realize  
19 this until Mr. Cornell pointed it out to me.  
20 The town website has -- I don't know who wrote  
21 it, but it's very good, whoever wrote it. On  
22 page 4, when it talks about ZBA applications,  
23 it has a great guide. It's one of the best  
24 guides I've ever seen about area variances.  
25 And what it starts out with is, the applicant

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2 needs to make a show -- a showing, rather, of  
3 unnecessary hardship. I've looked in the  
4 application. There is no showing of any  
5 hardship, let alone an unnecessary hardship.  
6 And I think it's fair to say we probably all  
7 know what hardship means, but I looked it up  
8 because lawyers look stuff up, and one of the  
9 definitions was a severe suffering or  
10 privation. I take that to mean, you know,  
11 somebody has a health issue or severe health  
12 issue or something that really their life  
13 requires.

14 And there's a case that I cited on page 1  
15 and 2 of the letter that I sent you that is a  
16 comparable pool case, and the court essentially  
17 said a pool is not a hardship. Needing a pool  
18 is not a hardship. You don't even get to the  
19 five standards until you establish that you  
20 have a hardship. There's nothing in this  
21 record to suggest there is any kind of  
22 hardship, and in fact, the application lacks a  
23 statement of hardship. So I think you have to  
24 start at that point, not it's been 25 months.  
25 I really need the pool. There's been no

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2 showing whatsoever.

3 The end of that, page 4, even talks  
4 about -- and we'll go through these, but if the  
5 applicant did not satisfy every one of these  
6 standards, the variance must be denied by the  
7 zoning board of appeals. This is not -- I  
8 didn't create this. This is on the town's  
9 website, and it's page 4 of the subject marked  
10 area variance application.

11 So I think I've, sort of, covered the  
12 first -- first of the standards in my letter  
13 is, was the difficulty self-created?  
14 Undoubtedly, it was. There's no -- I  
15 appreciate Josh's argument that perhaps its --  
16 you know, time has passed. The passage of time  
17 doesn't dilute the self-creation issue at all.

18 The second issue is, are the variances  
19 substantial? So Josh indicated that there were  
20 three. There are four variances, and this is  
21 what they total: The rear yard variance is 46  
22 percent; the side yard variance is 48.5 percent  
23 for the pool equipment; the side yard variance  
24 for the pool is 10 percent; the coverage  
25 variance -- your consultant indicates that it's

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2 2.6 percent. Respectfully, that's not correct  
3 math. There isn't any doubt -- there isn't any  
4 dispute that what's on site is approximately  
5 7500 square feet. Appendix B talks about, you  
6 know, how many more square feet it can be. If  
7 this pool is built, there's going to be 9500  
8 square feet. The fact that some of it is  
9 nonconforming doesn't excuse compliance with  
10 Appendix B. So while it's true  
11 constitutionally if something is  
12 nonconforming -- I'm not conceding this is, but  
13 if something is nonconforming, you can't tell  
14 somebody they can't do it. Can't take away.  
15 But when they open that up and say we want to  
16 add more, the appropriate measuring point is  
17 not nonconforming versus what we want to add.  
18 It's, what does Schedule B permit and what do  
19 they want to have? And I'm not great at math,  
20 but I believe it's 26 percent, not -- you know,  
21 it's a 2,000-square-foot differential over 7500  
22 square feet. It's 26 percent. So what does  
23 that leave us with? Four variances out of the  
24 total of five that you could need to be there.  
25 The only one they don't need is on the Lehrer

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2 side.

3 We now know the Lehrers, or 100 percent of  
4 the neighbors affected by this application, are  
5 opposed to this application. You have three  
6 sides. The Lehrers own on two. The Cornells  
7 own on the other. The Lehrers -- I did see the  
8 letter myself. It was forwarded to me -- say  
9 you can put it in a place where you don't need  
10 any variances. That's where you should put it.  
11 So we have -- think about this site. Out of  
12 five possible variances, they need four of  
13 them. One's -- two of them are almost  
14 50 percent. One's more than 25. One's more  
15 than ten.

16 We secured an affidavit from Ken Holzberg,  
17 who used to be on the ZBA. I don't know if all  
18 of you gentlemen know him. I know Frank knows  
19 him. And basically, Frank -- rather, Ken  
20 looked at -- and this is Exhibit 6 in the  
21 package. He looked at 392.5 of the code and  
22 basically said we've never used that to grant a  
23 coverage variance. And I think the point that  
24 Ken was trying to make is that the ZBA -- can't  
25 speak for it, but has probably never seen an

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2 application exactly like this, and here's why:

3 Josh talked about there are pools nearby.

4 There are. There's two. The old Toad Hill

5 property, now the Lehrer, is 4.1 acres. I did

6 the measurements on ParcelAccess. It didn't

7 need any variances. It's 111 feet from one

8 boundary and 118 feet from the other boundary.

9 No variances. The other parcel is 7.7 acres.

10 That's called the Lindseys[ph.]. No variances.

11 Not near boundaries.

12 So we don't dispute there are pools. We

13 do dispute that there is any pool on a parcel

14 that's under two acres, that's already over the

15 coverage allowance in the Town of Washington.

16 And if there's evidence to the contrary I'd

17 love to see it, because just saying there are

18 pools -- those pools are compliant with the

19 code. We're comparing apples to oranges. This

20 proposal is 80 percent out of compliance with

21 the code.

22 Now, undesirable change and effect on the

23 neighborhood. That's probably self-evident at

24 this point. That's how the Cornells feel. I

25 would submit to you that the other neighbor

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2 affected by it feels the same way, based on  
3 their letter to the board. These two other  
4 pools, totally incomparable. If there is --  
5 Frank, you've been on the board a long time.  
6 If you can think of another pool that benefited  
7 from this kind of application, please, if it  
8 comes to mind, I'd love to discuss it.

9 We had submitted -- when the first pool  
10 was proposed way back when, couple of years  
11 ago, Candy Anderson, one of the brokers -- it's  
12 attached to our submission. I don't remember  
13 the exhibit number -- gave us a letter. Said  
14 it will definitely impact value. We weren't  
15 sure when this application would restart or if  
16 it would restart. When it did restart, when we  
17 saw online that actually a meeting was held,  
18 the Cornells hired Lee McEnroe and Maureen  
19 McGoldrick. You guys may know them. They're  
20 very well-known local appraisers. They spent a  
21 lot of time -- and it's attached to the  
22 submission. It's Exhibit 4. They spent a lot  
23 of time -- it's a 22-page report -- looking at  
24 the impact this might have on the Cornell  
25 property, and they said a few things. I

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2 encourage you, if you don't have a chance -- or  
3 if you haven't had the chance, please read it.  
4 But specifically, on page 12, they talk about  
5 this notion in appraising. I know Kyle and I  
6 have had some tax cases together, so we know a  
7 fair amount about appraisers. But external  
8 obsolescence, and what that means in the  
9 appraisal lingo is there are external features  
10 that can affect you, and there's nothing you  
11 can do about them.

12 They looked at 24 sales that were below  
13 market, and what they found was that the  
14 steepest discounts were those affected by  
15 external obsolescence. And their conclusion  
16 was that if this pool is built where it's  
17 proposed to be built, it will -- the value of  
18 the Cornell property will deteriorate by  
19 15 percent, and that's in bold on their  
20 conclusions on page 12. That aligns with  
21 exactly what Candy Anderson said. It doesn't  
22 give an exact number. But it doesn't take,  
23 frankly, in my view, great mystery to realize  
24 that it's going to impair their value.

25 So, sort of, on the point of hardship,



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2 there's nothing in this record over the past  
3 two years that suggests that this will not be  
4 harmful to the Cornells. Now the record is  
5 clear that it will be financially harmful as  
6 well. And I would submit to the board that  
7 allowing variances to improve one value to  
8 impair another is not a precedent the board may  
9 be interested in setting.

10 Now, in terms of other factors and how it  
11 affects the neighborhood, look, there's no pool  
12 there now, so we know the property can be  
13 enjoyed. It was enjoyed for decades. There's  
14 no pool there now. You don't need a pool to  
15 live there. So the addition of a pool will  
16 bring light, noise, just more busyness to the  
17 site that's that close to somebody else's home,  
18 and it will impact those external and those  
19 environmental features.

20 The Cornells also pointed out, we have  
21 very low well in this area. A lot of people on  
22 Stanford Road do. My sister, Susie Whalen, her  
23 well ran dry last year. They're about a mile  
24 away. Stanford Road is notoriously a low water  
25 area. So if you're constantly filling a pool

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2 because the water's evaporating, that's a  
3 problem.

4 The next standard: Can the benefit be  
5 sought by other means or achieved by other  
6 means? And there's cases -- and again, the  
7 town's standards -- this is right on. Point 2,  
8 whether the benefit sought by the applicant be  
9 achieved by some other method, feasible for the  
10 applicant to pursue, other than an area  
11 variance. The alternative location would not  
12 require an area variance.

13 Now, it's true, the driveway was built to  
14 circle around and go into the garage. But the  
15 driveway was built, which means earth was  
16 moved. Rock was moved. It can be moved again.  
17 The driveway can be pushed out further. And I  
18 stress to the board, the applicant -- this is  
19 some of the cases we cited. The applicant must  
20 show this. The applicant must carry this  
21 burden.

22 I called Willy Murphy. I've known Will a  
23 long time. I asked him, go look at the site.  
24 He provided an affidavit. It's Exhibit 8, and  
25 it's not a letter. It's a sworn affidavit.

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2 And Willy told me that he actually worked on  
3 this property in the '80s, finishing the  
4 siding. He said that the property had been  
5 enlarged several times, and he -- whoever the  
6 contractor was didn't finish the job. So the  
7 owner at the time asked him to come out and  
8 finish, and he did. So what he said is,  
9 frankly, consistent with what Josh said, is it  
10 can be moved. And Josh didn't say it can't be  
11 moved. He said it can be moved. It might  
12 involve greater expense. There's no doubt  
13 about that, but it can be moved. And while  
14 it's more convenient for the Yadgards to have  
15 it in that other location, convenience isn't  
16 one of the standards. It can be moved, and  
17 that's established by Willy. It's established  
18 by the applicant's attorney.

19 Willy says specifically -- and I highly  
20 encourage you to read his affidavit -- that  
21 he's done excavation work for pools dozens and  
22 dozens of times. He did all the excavation  
23 work for a pool company that is no longer in  
24 business. He gave me the name, but I forgot  
25 it. He was shown the alternative location. He

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2 was able to see that area. He pointed out that  
3 excavation had occurred, meaning where the hole  
4 was, and he says, pretty clearly, you can put a  
5 pool in there. It might require some site  
6 work, but you can put a pool in that area. So  
7 the benefit, in fact, can be achieved by other  
8 means. It can be achieved by other means  
9 without any variances. It will still need a  
10 coverage one, by the way. I shouldn't say any.  
11 It will still need a coverage variance, in any  
12 case, but it will eliminate the side yard. It  
13 will eliminate the rear yard. That is  
14 supported by 100 percent of the neighbors  
15 affected by this application.

16 Now, lastly, will it adversely effect the  
17 physical or environmental characteristic in the  
18 neighborhood? I don't think I need to repeat.  
19 That's, in many ways, kind of what I've already  
20 said.

21 Now, again, I want to go back and look at  
22 the town website. The last sentence of the  
23 whole thing: If the applicant does not satisfy  
24 each of the above mentioned criteria, the  
25 variance must be denied by the zoning board of

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2 appeals. I would submit to the board that the  
3 applicant has not established one of the  
4 criteria, let alone five. The applicant has  
5 not established any hardship whatsoever, which  
6 is necessary before you reach any of the  
7 criteria.

8 Are there any questions? There's no bad  
9 questions. I'll do my best to answer whatever  
10 they are, good, bad or indifferent.

11 CHAIRMAN REDL: The alternative site would  
12 be in the front yard of the house?

13 MR. RAPPLEYEA: No. That's the backyard.

14 CHAIRMAN REDL: That's still the backyard?

15 MR. RAPPLEYEA: Yes. I don't think you  
16 can put a pool in a front yard.

17 CHAIRMAN REDL: So is it safe to say that  
18 if they change locations, your clients might  
19 not be opposed to the pool being there?

20 MR. RAPPLEYEA: I think that's very safe  
21 to say.

22 CHAIRMAN REDL: Okay. Those are the only  
23 questions I have.

24 MR. KUNKLE: I don't have any questions.

25 MR. KOLLMAR: I don't have any questions.

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2 MR. BARNETT: Allan, the only question I  
3 have is --

4 MR. RAPPLEYEA: Excuse me, Kyle. Hold on  
5 one second.

6 MR. BARNETT: Take your time.

7 MR. RAPPLEYEA: I just -- this is ringing.  
8 It's my wife calling. I'm not going to answer  
9 it. I just didn't want it to be loud. Shoot.

10 MR. BARNETT: I see you have a  
11 stenographer that you brought for the  
12 proceedings. Do you -- if -- do you have a  
13 request to submit the transcript this evening  
14 as part of the record?

15 MR. RAPPLEYEA: If the board would like  
16 it, sure. I mean, if they find it helpful.

17 CHAIRMAN REDL: I think it would.

18 MR. BARNETT: Okay.

19 MR. RAPPLEYEA: I mean, I don't know that  
20 you need to keep your hearing open for that  
21 reason, but --

22 MR. BARNETT: No. No. What I would do --  
23 we would just for that submission -- for  
24 written submissions, perhaps, any written  
25 submissions.

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2 CHAIRMAN REDL: Like two weeks or  
3 something like that?

4 MR. BARNETT: Sure.

5 MR. RAPPLEYEA: Well, let me ask you a  
6 question: How quickly can that transcript be  
7 ready? Not to put you on the spot or anything.

8 THE COURT REPORTER: It can be as quickly  
9 as you tell me. I don't know how it works with  
10 the agency, but usually I think it's eight to  
11 ten business days on a normal schedule.

12 CHAIRMAN REDL: Would you prefer it to be  
13 part of the record, Mr. Rappleyea?

14 MR. RAPPLEYEA: I think everybody would  
15 prefer it be part of the record.

16 CHAIRMAN REDL: Okay. Yeah. I don't have  
17 an objection to it.

18 MR. KUNKLE: I have no objection to it.

19 MR. KOLLMAR: No objection.

20 CHAIRMAN REDL: Okay. Is there anybody  
21 else that wishes to speak for or against the  
22 application this evening?

23 MR. CORNELL: Well, I'd just like to say a  
24 few words as the --

25 MR. RAPPLEYEA: Jim, why don't you come

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2 up? I'll move.

3 MR. CORNELL: Yeah, I will. Certainly, as  
4 the affected party here --

5 MR. BARNETT: Sir, just start with your  
6 name and address.

7 MR. CORNELL: This is James Cornell, the  
8 owner of 620 Stanford Road, which is the  
9 property that's adjoining the Yadgard property.  
10 And just to reiterate what Allan said, when  
11 Janson did object to our extension of our  
12 garage, he informed us that he was going to --  
13 he was going to sell the house and was  
14 concerned that that extension would impair the  
15 value or the marketability of his property  
16 because it would get fairly close.

17 CHAIRMAN REDL: I think around four feet,  
18 wasn't it?

19 MR. CORNELL: Yeah. And we asked him --  
20 we said, can we landscape? We'll plant stuff  
21 there, pine trees or whatever. He said no. I  
22 don't want anything that's going to, you know,  
23 impair the marketability of the property. I'm  
24 putting it up on the market. And he ended up  
25 doing so and selling it to the Yadgards. And



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2 we understood that.

3 I wanted to -- I was on the planning board  
4 for eight years. You might know that. I  
5 respect the code. I upheld the code during  
6 those eight years, and I know it very well. So  
7 when this happened, I understood that this  
8 was -- you know, it would be very -- it would  
9 impose, you know, a hardship on us. I knew it  
10 was going to impact our value. I did bring in  
11 Candy Anderson's letter, which was not --  
12 didn't monetize it. And so we did ask -- you  
13 know, get a most serious appraiser in Dutchess  
14 County, Lee McEnroe. I'm sure a lot of people  
15 are familiar with her. She does, you know,  
16 great deal of work throughout Dutchess. And I  
17 was very surprised to see that she monetized it  
18 at, you know, 15 percent. This is impacting  
19 our property value by \$225,000.

20 MR. KUNKLE: Is your house on sale?

21 MR. CORNELL: Is my house for sale, no.

22 MR. KUNKLE: Are you selling your house or  
23 planning on selling it?

24 MR. CORNELL: No, but it's impacting the  
25 value of it.

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2 MR. KUNKLE: Well, it only impacts it to  
3 the extent you sell it.

4 MR. CORNELL: No, that's not true. That's  
5 not true.

6 MR. KUNKLE: That's your point.

7 MR. CORNELL: That's --

8 MR. KUNKLE: I'm just trying to cut  
9 through the --

10 MR. CORNELL: Well, this -- no. I'm just  
11 saying --

12 MR. KUNKLE: -- talk.

13 MR. CORNELL: It's not the talk. It's  
14 impairing value, so that's what --

15 MR. KUNKLE: When you sell it. I  
16 understand.

17 MR. CORNELL: Whatever. But that's the  
18 point, and I think it should be taken  
19 seriously.

20 MR. KUNKLE: I understand the point. Your  
21 point was your neighbor was selling it. He was  
22 going to. He told you he was selling the  
23 property.

24 MR. CORNELL: Right.

25 MR. KUNKLE: You just --

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2 MR. CORNELL: He was --

3 MR. KUNKLE: You got a -- anyway, that was  
4 my question. You answered it. Thank you.

5 MR. CORNELL: I'm talking about  
6 impairment, impairment of the value. That's  
7 pretty clear cut. And what I'm saying is that  
8 there's no reason -- this pool is not  
9 necessary. I mean, it's a pool that would be  
10 used in the summertime. We know this is not a  
11 year-round option for anybody. They want to  
12 put a pool in, and that's going to impair our  
13 value, and meanwhile, maybe it will improve the  
14 value of his property. I'm just saying that as  
15 a precedent, we were willing to withdraw our  
16 opposition -- our application for a garage  
17 extension and for the same reason that we're  
18 requesting that they withdraw or you deny them  
19 a variance for -- you know, for a pool that  
20 would have the same impact on our property  
21 value. That's all we're asking for, and I  
22 think this is -- I mean, as a person who's been  
23 living in this community 40 years, I don't  
24 think that's a big ask. So just wanted to  
25 leave you with that.

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2 CHAIRMAN REDL: Thank you for your  
3 comments.

4 MR. KUNKLE: Thank you.

5 MR. KOLLMAR: Thank you.

6 CHAIRMAN REDL: Anybody else want to speak  
7 for or against the application?

8 MR. MACKEY: I'd just like to address  
9 again, if that's okay.

10 CHAIRMAN REDL: Absolutely.

11 MR. MACKEY: Just a couple of -- in  
12 response to Allan's citation of the guide  
13 that's on the website, that's not the code;  
14 right? So that's on the website. That's -- it  
15 is what it is. It's a guide. And if you read  
16 the first paragraph on the second -- I'm  
17 sorry -- the third -- one, two, three -- fourth  
18 page of the guide, it says, in such statement  
19 of hardship, the property owner must address  
20 all the criteria below. So it actually tells  
21 you what the statement of hardship is. It's  
22 those five elements that are right there. This  
23 isn't something new.

24 I am a little bit troubled by the  
25 precedent of prior board members, who

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2 themselves may have unclean hands, coming  
3 forward and offering their testimony about what  
4 they did in their tenure as a ZBA member. I'm  
5 not sure that the board should rely on that,  
6 especially when he's talking about to the best  
7 of his recollection. Same thing goes with  
8 McEnroe's appraisal. She says -- I encourage  
9 you to read it -- probably. She talks about  
10 the noise. She says that the pump and the  
11 noise from the pool probably would impact the  
12 Cornells. So there's a lot of qualifiers in  
13 that appraisal.

14 Comparing the variances that were  
15 requested by the Cornells, five feet from the  
16 property line versus 90 feet from the property  
17 line, there is no comparison. Big difference.  
18 That's it.

19 CHAIRMAN REDL: Thank you, Mr. Mackey.

20 MR. RAPPLEYEA: May I be heard briefly?  
21 May I be heard briefly?

22 CHAIRMAN REDL: Absolutely. I want to  
23 give everybody a fair shot here.

24 MR. RAPPLEYEA: Sorry. Josh is right.  
25 It's not new. It's exactly what the law's been

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2 for a long time, and all of the cases say that.  
3 And the town's -- on the town website, it's  
4 just a very good summary of exactly what the  
5 cases say, that there must be a hardship and  
6 you must hit all those criteria. And the  
7 burden is not on the neighbors. The burden is  
8 on you.

9 The comment about unclean hands, no idea  
10 who he's talking about. I think that might be  
11 Ken Holzberg because Ken gave an affidavit.  
12 Unclean hands is a defense that's used usually  
13 to toss somebody out of court because they came  
14 and they did something rotten. That's not  
15 present here. I don't think anybody's engaged  
16 in that.

17 The McEnroe appraisal, by its very nature,  
18 is an appraisal. It reaches conclusions that  
19 says this is what I think may happen or this is  
20 something I think may impair value. Compare  
21 that to the absence in the record of saying  
22 anything to the contrary. There's only one  
23 thing in this record. It will affect value.  
24 There's nothing saying it won't.

25 And lastly, Josh is correct on the limited

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2 point of four feet. However, what he's  
3 forgetting is that of the variances they need,  
4 they need four or five, or 80 percent of what  
5 the code would permit, including 26 percent  
6 over. Mind you, no one disputed that.  
7 26 percent over what's allowable in coverage.  
8 Thanks.

9 CHAIRMAN REDL: Thank you. Anybody else?

10 Do you guys have any comments or questions  
11 or anything for anybody that spoke?

12 MR. KOLLMAR: No.

13 MR. KUNKLE: I do not.

14 CHAIRMAN REDL: Well, what I'd like to do  
15 at this point is close the public hearing,  
16 except we'd be willing to accept the transcript  
17 from tonight's proceeding. Do you think it can  
18 be done within two weeks?

19 MR. RAPPLEYEA: So she works for --

20 CHAIRMAN PARISI: Babiarcz, but it's now --

21 MR. RAPPLEYEA: No, it's not Babiarcz  
22 anymore.

23 CHAIRMAN PARISI: It's somebody new now.

24 MR. RAPPLEYEA: Yeah. Yeah. So she's an  
25 independent reporter. She's saying she can.

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2 I'll work it out with them. It will get to the  
3 board in two weeks. I'll send Kyle a copy and  
4 I'll send Josh a copy.

5 CHAIRMAN REDL: Okay. If we're waiting  
6 for the transcript, if either anybody for or  
7 against the application want to make one other  
8 submission within two weeks, we'll accept it.  
9 Other than that, I would move that we close the  
10 public hearing.

11 MR. RAPPLEYEA: So, Frank, can I be heard  
12 on that point, which is, if we're going to --  
13 if more evidence is going to come in, then  
14 that's difficult, because if the public  
15 hearing's closed, we can't comment.

16 CHAIRMAN REDL: You're right. We'll close  
17 the public hearing, subject only to receiving  
18 the transcript.

19 MR. RAPPLEYEA: Thank you.

20 CHAIRMAN REDL: That would be my motion.

21 MR. KUNKLE: I'll second that.

22 CHAIRMAN REDL: All in favor?

23 BOARD MEMBERS: Aye.

24 CHAIRMAN REDL: Okay. Just speaking for  
25 myself, there's a lot of legal issues that have



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2 been proposed by both sides, and I would like  
3 an opportunity at some point to have an  
4 executive session with our attorney to review  
5 those. In order to do that, I would move to  
6 adjourn this application to our November  
7 meeting.

8 MR. KUNKLE: I think that makes sense.  
9 I'll second that.

10 MR. KOLLMAR: I agree.

11 CHAIRMAN REDL: Okay. All in favor?

12 BOARD MEMBERS: Aye.

13 CHAIRMAN REDL: All right. So we closed  
14 the public hearing subject to receiving the  
15 transcript only. We'll put this on for the  
16 November agenda, Jennifer.

17 MS. BOSSERT: Okay. Got it.

18 MR. RAPPLEYEA: What's that date,  
19 Jennifer?

20 MS. BOSSERT: It's the third -- I'm sorry.  
21 Third Tuesday in November. So it would be -- I  
22 think it's the 19th. Yeah.

23 MR. BARNETT: Just -- so let me just --  
24 just if I may, Mr. Chair, so if we get this  
25 transcript in a couple of weeks, I just want to

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2 caution everybody, it is theoretically possible  
3 that we are not prepared. And then also we're  
4 going to want to have an attorney -- it's  
5 really -- I think what you're proposing is an  
6 attorney-client meeting as opposed to executive  
7 session. And so there may not be sufficient  
8 time at that point in time to be prepared to  
9 have a determination at the November meeting.  
10 So I think we'll shoot for it, but in the event  
11 that that doesn't happen, this may then get  
12 leaked over to December.

13 CHAIRMAN REDL: Right.

14 MR. BARNETT: Just so everyone's aware  
15 that it's possible we may --

16 CHAIRMAN REDL: We've got 62 days; right?

17 MR. BARNETT: Yeah, from the close of  
18 public. So we've got plenty of time.

19 CHAIRMAN REDL: Yeah.

20 MR. BARNETT: So it may not be -- it may  
21 not be November. We're going to shoot for it,  
22 but if that doesn't happen, I'm sure we'll be  
23 back here in December to resolve this.

24 CHAIRMAN REDL: That certainly makes sense  
25 to me. Yeah.

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2 MR. RAPPLEYEA: Does it make sense to  
3 calculate what 62 days would be so there's not  
4 any kind of default approval?

5 MR. BARNETT: It wouldn't be a default  
6 approval anyway. It doesn't work that way in  
7 the ZBA. It would -- well, I'll discuss what  
8 it would be off the record.

9 MR. RAPPLEYEA: No, it doesn't matter to  
10 me. I just don't want any argument. That's  
11 why.

12 MR. BARNETT: No, it wouldn't be a default  
13 approval.

14 CHAIRMAN REDL: Very good. I think we're  
15 done here.

16  
17 (Off the record.)

18  
19 CHAIRMAN REDL: I'll make a motion that we  
20 close the public hearing with the exception of  
21 receiving the transcript from tonight's  
22 proceedings.

23 MR. KOLLMAR: I second.

24 CHAIRMAN REDL: All in favor?

25 BOARD MEMBERS: Aye.

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2 CHAIRMAN REDL: Carried.

3 (Time noted: 7:18 p.m.)

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CERTIFICATION

I, ILANA BROWN, a Notary Public for  
and within the State of New York, do  
hereby certify:

That the within transcript is a true and  
accurate record of the proceedings.

I further certify that I am not  
related to any of the parties to this  
action by blood or marriage, and that I am  
in no way interested in the outcome of  
this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 29th day of October,  
2024.



ILANA BROWN

\* \* \*

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