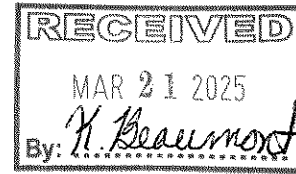


Town of Washington  
**ZONING BOARD OF APPEALS**  
10 Reservoir Drive  
Millbrook, NY 12545  
845-677-3419 ext. 116



**RESOLUTION OF CONDITIONAL APPROVAL FOR AREA VARIANCES**

**Daniel Yadgard**  
610 Stanford Road  
Millbrook, New York 12545

**Date: March 18, 2025**

WHEREAS, the applicant, Daniel Yadgard, the property owner, has submitted an application for three area variances to install an in-ground, 35' x 15' swimming pool (the "Project") at property located at 610 Stanford Road, Millbrook NY 12545 identified as tax parcel no. 135889-6766-00-042590; and

WHEREAS, the applicant seeks an area variance from the Town of Washington Zoning Code, Appendix B Area and Bulk Regulations to change the minimum rear yard setback from 75' to 40', requiring a variance of 35' ("Variance #1"); and

WHEREAS, the applicant seeks a second area variance from the Town of Washington Zoning Code, Appendix B Area and Bulk Regulations to change the minimum side yard setback from 100' to 90.8', requiring a variance of 9.2' ("Variance #2"); and

WHEREAS, the applicant seeks a third area variance from the Town of Washington Zoning Code, Appendix B Area and Bulk Regulations to change the maximum lot coverage from 10% to 12.6%, requiring a variance of 2.6% ("Variance #3"); and

WHEREAS, pursuant to 6 NYCRR 617.5(c)(17), the granting of an area variance for a single-family, two-family or three-family residence is a Type II action under the State Environmental Quality Review Act and is not subject to review under the Act; and

WHEREAS, the Washington Town Code requires that the Zoning Board of Appeals publish notice of a public hearing at least five (5) days prior to the hearing in accordance with New York Town Law Section 267-a; and

WHEREAS, such a duly noticed public hearing was held on October 15, 2024 at 6:30 p.m. at the Town Hall of the Town of Washington, 10 Reservoir Dr., Millbrook, NY, at which all those who wished to speak were heard; and

WHEREAS, at the public hearing, the Zoning Board of Appeals heard from the applicant and members of the public, and reviewed and considered all submissions filed with the Board while the public hearing remained open; and

WHEREAS, the applicable five factors for considering an area variance are set forth in Town Law Section 267-B(3) and Town of Washington Zoning Code Section 165-109(B)(2), and require the Board to balance the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant; and

WHEREAS, the Zoning Board of Appeals is not required to find that each of these five factors has been met. Instead, it simply must consider and weigh the factors in the application of the above balancing test (see *Jacoby Real Property, LLC v. Malcarne*, 96 A.D.3d 747 (2012), and *Massian v. Board of Zoning Appeals of Town of Brookhaven*, 210 A.D.3d 984 (2022)); and

WHEREAS, the Zoning Board of Appeals must base its decision on the evidence in the record; and

WHEREAS, the Zoning Board members are familiar with the area in which the subject property is located and/or have inspected the subject property when evaluating this application; and

WHEREAS, the Zoning Board of Appeals, in the granting of area variances, must deem them to be the minimum variances necessary and adequate that will, at the same time, preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

NOW THEREFORE BE IT RESOLVED, that the Zoning Board of Appeals makes the following findings in accordance with Section 267-B(3) of the Town Law and Town of Washington Zoning Code Section 165-109(B)(2) regarding the Requested Variances:

1. Variance #1: Rear yard setback variance of 35' (from 75' to 40')
  - a) The Requested Variance will not produce an undesirable change in the character of the neighborhood. There are several other neighboring properties which have pools. One pool, located at 630 Stanford Road, is closer to the abutting neighbors' property line than the proposed pool in the present application. Moreover, the Board shall condition this Requested Variance on the applicant's installation of fencing and landscaping to be approved by the building inspector, provided that the condition imposed is reasonable, directly related to, and incidental to the proposed use of the property, and is consistent with the spirit and intent of the Town of Washington Zoning Code as required by Town Law §267-B(4). The purpose of this condition is to minimize any adverse impact the variance may have on the neighborhood or community.
  - b) The benefit sought by the applicant cannot feasibly be achieved by some method, available for the applicant to pursue, other than an area variance. Potential alternative locations for the pool on the property would be cost prohibitive and an undue burden on the property owner.

Board members, upon visiting the property, determined that the proposed location is the most logical site for the improvement.

- c) The Requested Variance may be considered substantial. The variance will change the rear yard setback from 75' to 40' (a 35' variance). However, the applicant had previously applied for a change in the setback from 75' to 35' feet (a 40' variance) and subsequently reduced the dimensions of the pool from the previously proposed size to bring the project closer to compliance and mitigate the impact of the Requested Variance.
- d) The Requested Variance will not have an adverse effect or impact on the physical or environmental conditions in the general neighborhood or district. In reviewing all documents submitted to the ZBA, the Board considered a submission from the neighboring Cornells, dated October 10, 2024, which included an appraisal report purportedly demonstrating that approval of the present application and installation of the pool would result in a 15% reduction in the Cornells' property value. The Board finds this report unpersuasive because it is highly subjective and lacks support for the stated opinion that the pool would result in any diminution of the Cornells' property value, much less 15%. The appraiser claims that the pool noise could disturb the Cornells without any explanation of how an appraiser could quantify that opinion, and offers a survey of properties which sold below, at, or above listing price without reference to the myriad of conditions which impact those values. In the same letter, the Cornells offered opinions of a real-estate broker who, admittedly, had previously been retained by the Cornells and, too, provided opinion without any support. Therefore, the Board attributes no weight to these reports.

The applicant has agreed to install fencing and landscaping sufficient to mitigate the potential visual and auditory impacts of the proposed pool and pool pump. When feasible, landscaping installations will include native plant species. No adverse environmental impact is anticipated to result from the proposed pool.

- e) The difficulties are self-created.

The foregoing Variance was duly put to a vote which resulted as follows:

	YEA	NAY	ABSENT
Chairman Redl	<u>  x  </u>	_____	_____
Member Briggs	_____	_____	<u>  x  </u>
Member Kollmar	<u>  x  </u>	_____	_____
Member Kunkle	<u>  x  </u>	_____	_____
Member Rolland	<u>  x  </u>	_____	_____
Alternate Frederick	<u>  x  </u>	_____	_____

2. Variance #2: Side yard setback variance of 9.2' (from 100' to 90.8')

- a) The Requested Variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. As previously stated, there are several neighboring properties with pools and the applicant has consented to install adequate screening features. As above, the Board shall condition this Requested Variance on the applicant's installation of fencing and landscaping to be approved by the building inspector, provided that the condition imposed is reasonable, directly related to, and incidental to the proposed use of the property, and is consistent with the spirit and intent of the Town of Washington Zoning Code as required by Town Law §267-B(4). The purpose of this condition is to minimize any adverse impact the variance may have on the neighborhood and community. The Board notes that the applicant has acted in good faith to decrease the size of all Requested Variances to adhere more closely to the spirit and intent of the Code.
- b) The benefit sought by the applicant cannot feasibly be achieved by some method, available for the applicant to pursue, other than an area variance. As stated, this is the most feasible location for the pool as other potential locations would be cost prohibitive for the applicant. The small lot size makes alternatives unfeasible.
- c) The Requested Variance is not substantial. The Requested Variance will change the permitted side yard setback from 100' to 90.8' (a variance of 9.2'). Additionally, this variance was further reduced from the previous application, which proposed a 12.2' variance, to bring the project closer to compliance.
- d) The Requested Variance will not have an adverse effect or impact on the physical or environmental conditions in the general neighborhood or district. Although the neighboring Cornells claim that the pool installation will negatively impact their property value, as stated above, the Board attributes no weight to the appraisal and real-estate broker reports submitted with the Cornells' October 10, 2024 letter because the reports are subjective, lack rationale, and are otherwise unpersuasive.  
The Board notes that the existing pool on the property to the north-east of the Cornells' property appears to be closer and more visible than the pool at issue here. Applicant will install curated landscaping and fencing. When feasible, landscaping installations shall include native plant species. No adverse environmental impact is anticipated to result from the proposed pool.
- e) The difficulties are self-created.

The foregoing Variance was duly put to a vote which resulted as follows:

	YEA	NAY	ABSENT
Chairman Redl	<u>  x  </u>	<u>          </u>	<u>          </u>

Member Briggs

\_\_\_\_\_ x \_\_\_\_\_

Member Kollmar

x \_\_\_\_\_

Member Kunkle

x \_\_\_\_\_

Member Rolland

x \_\_\_\_\_

Alternate Frederick

\_\_\_\_\_ x \_\_\_\_\_

3. Variance #3: Maximum lot coverage variance of 2.6% (from 10% to 12.6%)

- a) The Requested Variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. There are several neighboring properties with pools and the applicant has consented to install adequate screening features to mitigate potential impacts to the abutting properties. As above, the Board shall condition this Requested Variance on the applicant's installation of fencing and landscaping to be approved by the building inspector, provided that the condition imposed is reasonable, directly related to, and incidental to the proposed use of the property, and is consistent with the spirit and intent of the Town of Washington Zoning Code as required by Town Law §267-B(4). The purpose of this condition is to minimize any adverse impact the variance may have on the neighborhood and community.
- b) The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance. Because the present lot is already nonconforming at 11.9% coverage, the addition of a pool of any size and in any location on the property would require the applicant to obtain a lot coverage variance.
- c) The Requested Variance is not substantial. The subject lot is 75,794 sq. ft. and the maximum lot coverage allowed by the Code is 10%. The applicant seeks a 2.6% lot coverage area variance. The current lot coverage is already nonconforming at 11.9% coverage, 1.9% more than the maximum allowable. This variance will increase the actual lot coverage by 0.7%.
- f) The Requested Variance will not have an adverse effect or impact on the physical or environmental conditions in the general neighborhood or district. As stated above, the Board finds the appraisal and real-estate broker reports submitted by the Cornells unpersuasive. When feasible, landscaping installations shall include native plant species. No adverse environmental impact is anticipated to result from the proposed pool.
- d) The difficulties are self-created.

The foregoing Variance was duly put to a vote which resulted as follows:

	YEA	NAY	ABSENT
Chairman Redl	<u>  x  </u>	<u>          </u>	<u>          </u>
Member Briggs	<u>          </u>	<u>          </u>	<u>  x  </u>
Member Kollmar	<u>  x  </u>	<u>          </u>	<u>          </u>
Member Kunkle	<u>  x  </u>	<u>          </u>	<u>          </u>
Member Rolland	<u>  x  </u>	<u>          </u>	<u>          </u>
Alternate Frederick	<u>  x  </u>	<u>          </u>	<u>          </u>

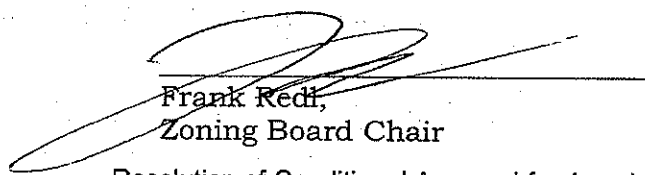
BE IT FURTHER RESOLVED, that the Zoning Board of Appeals hereby grants the Requested Variances subject to the following Conditions:

1. Applicant will comply with the conditions of this authorization within six months from the date of approval or the approval will expire per the Town of Washington Code Section 165-115(H).
2. Applicant has agreed to install landscaping and fencing sufficient to screen the pool from the view of abutting properties to the satisfaction of the building inspector, and will use native plant species to the extent feasible.
3. In accordance with the Town's schedule of fees, applicant shall be responsible for the payment of all application review fees incurred by the Zoning Board of Appeals in review of this application which are in excess of the application review fees paid by the applicant to date. Such fees shall be paid within thirty (30) days of the notification to the applicant that such fees are due. If such fees are not paid within the thirty (30) day period and an extension thereof has not been granted by the Zoning Board of Appeals, this Resolution shall be null and void. Refund of any remaining funds within the escrow account for the application will not be made until six (6) months after the issuance of the building permit.
4. No building permit may be issued unless and until the conditions 2 and 3 above have been satisfied.

The foregoing Conditions were duly put to a vote which resulted as follows:

	YEA	NAY	ABSENT
Chairman Redl	_____x_____	_____	_____
Member Briggs	_____	_____	_____x_____
Member Kollmar	_____x_____	_____	_____
Member Kunkle	_____x_____	_____	_____
Member Rolland	_____x_____	_____	_____
Alternate Frederick	_____x_____	_____	_____

Dated: Millbrook, New York  
March 18, 2025

  
 Frank Redl,  
 Zoning Board Chair