

ZONING BOARD OF APPEALS
TOWN OF WASHINGTON, NEW YORK
DETERMINATION AND RESOLUTION

In the Matter of the Appeal of

In the Matter of the Appeal of Allan B. Rappleyea, on behalf of James and Lea Cornell

Appellants,

from the November 5, 2025 and December 10, 2025 Determinations
of Zoning Administrator/Building Inspector Jonathan Ialongo
concerning permits and conditions for a pool and related improvements at

610 Stanford Road, Millbrook, New York 12545

(Tax Map ID No. 135889-6766-00-042590-0000)

I. PROCEDURAL HISTORY

The Zoning Board of Appeals of the Town of Washington (the “Board”) received a written Notice of Appeal dated December 15, 2025, submitted by Allan B. Rappleyea, Esq. of Corbally, Gartland and Rappleyea, LLP, on behalf of James and Lea Cornell (collectively, “Appellants” or the “Cornells”), the owners of the adjacent property at 620 Stanford Road. The appeal was filed with the Town Clerk pursuant to Town Code § 165-115 and invoked the automatic stay of proceedings under § 165-115(I). The appeal challenged two written determinations issued by Jonathan Ialongo, the Town of Washington Building Inspector and Zoning Administrator (the “Zoning Administrator” or “ZA”), concerning the property of Daniel Yadgard at 610 Stanford Road, Millbrook, New York (the “Yadgard Property”; Tax Map ID No. 135889-6766-00-042590-0000):

November 5, 2025 Determination: Pool equipment installation was deemed included under the pool building permit; housing pool equipment in the existing shed required no additional approval or building permit absent structural expansion; screening and fencing pursuant to the ZBA’s prior resolution would be inspected for compliance.

December 10, 2025 Determination: Re-issuance of the building permit for the pool was authorized; fences under 6' 6" not forming part of the State-required pool barrier are not regulated by Town zoning and may be relocated without a building permit; existing foliage "predominantly obscures" the neighboring property; installing pool equipment within the existing shed requires no building permit or variance if manufacturer clearances and venting requirements are satisfied, with limited vent penetrations per the Fuel Gas Code of New York State.

The Appellants' Notice of Appeal also invoked § 165-115(I) and requested confirmation that a stop work order had been placed on the permit. No certification of imminent peril to life or property was issued by the Zoning Administrator pursuant to § 165-115(I), and the stay therefore operated automatically upon filing of the appeal.

A public hearing was opened on January 20, 2026.

The issues presented on appeal are: (1) whether the screening and fencing conditions imposed by the prior ZBA resolution have been satisfied; (2) whether placing pool equipment inside the existing nonconforming shed constitutes an impermissible change of a nonconforming use under Town Code § 165-84(C); (3) whether the shed modifications require a building permit under Town Code § 165-113; (4) whether the pool equipment itself constitutes a separate "structure" subject to setback requirements; and (5) the effect of the appeal-related stay of proceedings.

II. FINDINGS OF FACT

Based upon a full review of the record, the Board makes the following findings of fact:

A. The Property and the Applicant.

Daniel Yadgard is the owner of the property located at 610 Stanford Road, Millbrook, Town of Washington, New York (Tax Map ID No. 135889-6766-00-042590-0000). The property is approximately 1.74 acres in size and is located in the RR-10 zoning district. The property contains a single-family residence as its principal use, together with existing accessory structures including a storage shed (the "Shed"). The Appellants own the neighboring property to the north at 620 Stanford Road (Tax Map ID No. 135889-6766-00-053619-0000).

B. The Pool Project and Prior Variances.

Mr. Yadgard applied for and received area variances from this Board and a building permit authorizing the construction of an in-ground swimming pool (35' × 15'), a stone retaining wall, and related appurtenances. The variances granted were: (1) a 90.8-foot side yard variance; and (2) a 40-foot rear yard variance, both subject to conditions including conditions relating to fencing and screening between the Yadgard Property and the neighboring Cornell property. The Honorable Maria G. Rosa of the Dutchess County Supreme Court, in a Decision and Order dated August 28, 2024, upheld the ZBA's prior interpretation that provisions governing nonconforming uses do not apply to accessory structures permitted as of right in the RR-10 district, and dismissed the Appellants' prior Article 78 challenge on that basis.

C. Administrative Review and Submissions.

On November 5, 2025, the ZA issued a determination confirming that pool equipment installation was included within the existing pool building permit and that housing pool equipment in the existing Shed required no additional approval or building permit, absent structural expansion of the Shed. On November 18, 2025, following the ZBA's September 16, 2025 resolution, the ZA notified Mr. Yadgard of the following prerequisites to reinstating the pool building permit: (1) a new screening plan for a 4-foot post-and-rail fence and landscaping; (2) copies of the pool equipment manufacturer's installation instructions; and (3) a landscaping plan. Mr. Yadgard submitted an updated plan on November 23, 2025, including equipment installation manuals and a video documenting existing screening between the two properties. Following review of those materials, the ZA issued the December 10, 2025 determination authorizing re-issuance of the building permit for the pool.

D. Site Conditions and Screening.

The shared side yard boundary between 610 and 620 Stanford Road is characterized by dense existing vegetation, including pines, deciduous trees, shrubs, and bushes, which provides substantial screening between the two properties. Photographic and video evidence in the record demonstrates that this existing vegetation predominantly obscures the Cornell residence from the Yadgard Property in the area of the proposed pool. The ZA so found in the December 10, 2025 determination. In response to the Town's request for additional plantings, Mr. Yadgard committed, per his March 2026 fence and landscaping plan, to installing 15 to 20 supplemental plantings along the fence line, comprising Spartan Juniper, Limelight Hydrangea, and Arrowhead Viburnum,

placed to fill any gaps in the existing screening and to provide year-round coverage. The revised fence plan proposes a 4-foot post-and-rail fence located approximately 15 feet inside the Yadgard Property to avoid disturbance to existing vegetation.

E. The Existing Shed and Proposed Pool Equipment Installation.

The Shed is an existing accessory structure on the Yadgard Property. Its nonconforming status arises solely from its physical location on the lot, which encroaches into the required yard setbacks. The Shed's use as a storage structure for household equipment, machinery, and similar property incidental to the residential use has at all times been a permitted use as of right in the RR-10 district. Mr. Yadgard proposes to house the pool equipment—including the Pentair IntelliFlo3 VSF variable speed pump and a gas-fired pool heater—within the existing Shed. No enlargement, structural alteration, or physical expansion of the Shed is proposed.

The only physical modifications to the Shed's envelope required to accommodate the pool equipment are limited penetrations for the exhaust vent and combustion air intake applicable to the gas-fired heater, consistent with manufacturer instructions and the Fuel Gas Code of New York State. The Appellants allege that pool equipment exhaust and fumes will be vented toward the Cornell property boundary, and assert that this constitutes an injurious impact not previously associated with the Shed. The Board addresses this concern through the conditions imposed in Section IV below.

III. CONCLUSIONS OF LAW

Based upon the Findings of Fact set forth above, and upon the Board's review of the applicable provisions of the Town Code and New York State law, the Board reaches the following conclusions of law:

A. Jurisdiction and Standard of Review.

Pursuant to Town Code § 165-115 and New York Town Law § 267-a, an appeal from any ruling of any administrative officer administering any portion of the Zoning chapter may be taken by any person aggrieved to the Zoning Board of Appeals. In the exercise of its appellate functions, the Board may reverse or affirm, wholly or in part, or modify the order, requirement, decision, or determination appealed from, acting by resolution containing a full record of findings. See Code § 165-115(D); Town Law § 267-a(4). The Board finds the ZA's determinations rational, consistent

with the applicable Code provisions, and entitled to affirmance, subject to the clarifying conditions set forth in Section IV below.

B. Applicable Code Provisions.

The following provisions of the Town Code are principally applicable to the issues on appeal:

Screening: Town Code § 165-61(C) provides that, if a pool will be visible from a neighbor's residence or from a public road, the pool and its associated equipment shall be "adequately screened to the satisfaction of the Zoning Administrator." The screening determination is committed to the ZA's reasonable satisfaction.

Nonconformities: Town Code § 165-84(C) prohibits changing a nonconforming use of land, buildings, or other structures to any use substantially different in nature or purpose from the existing nonconforming use, unless permitted in the district or the ZBA finds no greater injurious impact. Section 165-84(G) authorizes enlargement, extension, reconstruction, or alteration of a nonconforming structure by a maximum of 25% of the aggregate gross floor area of the structure as it existed on May 13, 1971, or up to the maximum lot coverage permitted in the zoning district, whichever is less, by special permit from the ZBA pursuant to § 165-116 and subject to site plan approval from the Planning Board. Section 165-84(G) is not implicated where no enlargement is proposed.

Building Permits: Town Code § 165-113 requires a building permit when a building or structure is erected, added to, or structurally altered. Town Code § 74-5(A)(1) exempts from the building permit requirement the construction or installation of "one-story, detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for toolsheds and storage sheds, playhouses or similar uses," provided the gross floor area does not exceed 144 square feet.

Definitions: Town Code § 165-140 defines "Structure" as "[a]ny building or thing constructed or erected on the ground or by attachment to something on the ground." The same section defines "Storage Shed" as "a structure which is accessory to a residential building, and which is used for

the storage of household items, equipment, machinery, and similar personal property customarily used or owned by homeowners in connection with use, operation and maintenance of residences.” A “Nonconforming Building or Structure” is defined as one that “which contains a permitted use, but does not meet the setback, side yard, rear yard, height, coverage, floor area, projection, or stories requirements” of the Code.

State Codes: The Fuel Gas Code of New York State governs vent sizing, category classification, and terminations.

C. Screening and Fencing.

The Appellants contend that the prior ZBA variance approval conditioned the project upon “new” screening beyond existing vegetation, and that the ZA’s December 10, 2025 determination improperly relies solely on existing foliage. The plain language of § 165-61(C) requires adequate screening “to the satisfaction of the Zoning Administrator,” without mandating that such screening consist exclusively of newly installed plantings. The ZA’s determination that existing vegetation predominantly obscures the neighboring Cornell residence, and that the updated plan maintains that level of privacy, is rational and supported by photographic and video evidence in the record. The ZA exercised the discretion expressly committed to him by § 165-61(C).

The record additionally reflects that the Town requested supplemental plantings, and that Mr. Yadgard has committed, per his March 2026 fence and landscaping plan, to installing 15 to 20 supplemental plantings along the fence line to fill any screening gaps, and to locating the 4-foot post-and-rail fence approximately 15 feet inside the Yadgard Property to preserve existing vegetation. Conditioning final approval on verification of screening adequacy by the ZA prior to first use of the pool is consistent with § 165-61(C) and is within the Board’s authority.

With respect to fencing, the ZA correctly determined that fences under 6 feet 6 inches in height that do not form part of the New York State-required pool barrier are not regulated by the Town of Washington Zoning Code and do not require a building permit. This determination is affirmed.

D. The Shed’s Nonconforming Status Does Not Bar the Pool Equipment Installation.

Town Code § 165-84(A)–(E) governs nonconforming uses of land, buildings, and other structures. These provisions are facially inapplicable here. The Shed’s nonconforming status is solely locational—it arises from its encroachment into the required yard setbacks—and is entirely

unrelated to its use. See Code § 165-140 (definition of “Nonconforming Building or Structure”). The Shed’s use as a storage structure for residential equipment and machinery has always been, and remains, a permitted use as of right in the RR-10 district.

Section 165-84(C), upon which Appellants principally rely, prohibits changing a nonconforming use to a substantially different use. Because the Shed has no “nonconforming use,” that provision is inapplicable. Installing pool equipment within a storage shed does not change the Shed’s use—it remains a storage shed for equipment and machinery incidental to the residential use of the Yadgard Property, which is precisely the purpose for which the Code’s definition of “Storage Shed” is written. See Code § 165-140.

Section 165-84(G), which requires a ZBA special permit and site plan approval from the Planning Board for the enlargement, extension, reconstruction, or alteration of a nonconforming structure, is also inapplicable. No enlargement, extension, or structural change to the Shed is proposed. The Shed’s footprint, volume, and structural elements remain entirely unchanged.

With respect to the Appellants’ assertion of greater injurious impact from vent exhaust directed toward the Cornell property, the Board acknowledges this concern as a legitimate record issue. The Board addresses it through the conditions imposed in Section IV below, which require vent terminations to be oriented, to the extent feasible within applicable codes and manufacturer requirements, to minimize exhaust discharge toward the neighboring property.

E. No Building Permit Is Required for the Pool Equipment Installation.

Town Code § 165-113 requires a building permit only where a building or structure is “erected, added to, or structurally altered.” The proposed installation of pool equipment within the existing Shed does not constitute the erection of a new structure, an addition to the Shed, or a structural alteration. No load-bearing elements, walls, floors, or structural members will be modified. The limited vent and combustion air intake penetrations required by manufacturer instructions and the Fuel Gas Code of New York State do not, on this record, constitute “structural alterations” within the meaning of § 165-113.

This conclusion is further supported by the exemption in Town Code § 74-5(A)(1), which reflects a clear legislative judgment that detached residential storage sheds constitute low-impact improvements not intended to be subject to the building permit process. It would be anomalous to

require a building permit for minor vent penetrations to an existing shed when the far more substantial act of constructing an entirely new shed is expressly exempt.

The ZA's determination that no building permit is required for the shed modifications—absent any enlargement or structural change—is rational, well-grounded in the plain language of the Code, and is affirmed.

F. Pool Equipment as a Separate “Structure” was not preserved for review

The late-raised contention that the pool equipment itself constitutes a separate “structure” under Town Code § 165-140 was not identified or preserved in the Appellants’ December 15, 2025 Notice of Appeal, which grounded the appeal exclusively on nonconforming use arguments under § 165-84. The ZBA’s appellate jurisdiction is limited to the administrative action that was appealed; a party may not advance new, unpreserved theories mid-proceeding. *Maidstone WJM Corp. v Zoning Bd. of Appeals of Town of E. Hampton*, 220 AD3d 781, 782 (2d Dept 2023) (“a zoning board of appeals’ jurisdiction is appellate only, and in the absence of an administrative determination to review, a zoning board of appeals is without power to grant a variance or render a *de novo* determination with respect to an issue not determined by an administrative official.”)

G. Stay of Proceedings.

Town Code § 165-115(I) provides that an appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies that, by reason of facts stated in the certificate, the stay would cause imminent peril to life or property. No such certification was issued in this matter. The appeal filed on December 15, 2025 therefore operated as a statutory stay of all proceedings under the appealed determinations from that date. The stay is dissolved by issuance of this Determination and Order, and the Zoning Administrator’s determinations are affirmed subject to the conditions set forth below.

IV. DETERMINATION AND ORDER

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board of Appeals of the Town of Washington, having reviewed the full record in this matter, including all written submissions of counsel for the parties, the fence and landscaping plans and photographic and video record, and the applicable provisions of the Town Code, hereby:

1. Screening and Fencing — AFFIRMED with Clarifying Conditions.

The Zoning Administrator's determinations that (a) non-barrier fences under 6' 6" may be relocated without a building permit, and (b) existing foliage predominantly obscures the neighboring residence such that screening adequacy is satisfied under § 165-61(C), are affirmed. To ensure measurable compliance, the following conditions are imposed:

- The applicant shall install 15 to 20 supplemental plantings along the fence line, consistent with the applicant's March 2026 fence and landscaping plan, comprising a mixture of Spartan Juniper, Limelight Hydrangea, and Arrowhead Viburnum (or comparable species already existing on the property), positioned to fill any gaps in the existing screening and to maintain year-round visual screening from the Cornell residence. Final placement shall be field-adjusted by the applicant taking into account the anticipated mature size and growth characteristics of each tree or shrub, with particular attention to providing year-round coverage given the seasonal nature of deciduous plantings.
- The 4-foot post-and-rail fence shall be located approximately 15 feet inside the Yadgard Property as proposed to preserve existing vegetation.
- Prior to final inspection and approval for pool use, the Zoning Administrator shall verify, to his satisfaction under § 165-61(C), that plantings and fence installation have been completed.

2. Pool Equipment in the Existing Shed — AFFIRMED with Conditions.

The Zoning Administrator's determinations that installing pool equipment entirely within the existing Shed, without enlargement or structural alteration, does not violate Town Code § 165-84 and does not require a building permit under § 165-113, are affirmed. The following conditions are imposed:

- All pool equipment installations shall conform to manufacturer instructions and all applicable provisions of the Fuel Gas Code of New York State.

- The exhaust vent and combustion air intake penetrations through the Shed envelope shall be sized and installed in conformance with the applicable venting category requirements, the manufacturer's installation instructions, and, as applicable, the Fuel Gas Code of New York State.
- The applicant shall submit to the Zoning Administrator confirmation of compliance with the manufacturer's installation instructions.
- To mitigate potential impacts on the neighboring property, vent terminations shall be oriented and located, to the extent reasonably possible and consistent with any applicable Fuel Gas Code of New York State and manufacturer instructions, to minimize exhaust discharge toward the shared lot line with the Cornell property.
- The Zoning Administrator shall confirm, during inspection and prior to final approval for pool use, that: (a) the venting configuration corresponds to the manufacturer instructions; (b) vent termination orientation is consistent with the conditions above; and (c) the installation otherwise complies with all applicable provisions of the Fuel Gas Code of New York State.
- Any future enlargement or structural alteration of the Shed remains subject to all applicable Code provisions, including Town Code § 165-84(G), and is not authorized by this Determination.

3. Building Permit Scope — AFFIRMED.

The Zoning Administrator's determination that no Town building permit is required solely for installing pool equipment within the existing Shed with limited vent and intake penetrations and no enlargement or structural alteration is affirmed, consistent with Town Code § 165-113 and § 74-5(A)(1).

4. Pool Equipment as "Structure" Argument — DISMISSED as unreserved and, in any event, meritless.

The late-raised contention that pool equipment constitutes a separate “structure” under Town Code § 165-140 was not preserved in the December 15, 2025 Notice of Appeal and is beyond the scope of this appellate review. In any event, equipment and machinery are items stored within a structure under § 165-140 and do not themselves constitute structures.

5. Stay of Proceedings — Dissolved.

The automatic stay of proceedings under Town Code § 165-115(I) that arose upon the filing of the appeal on December 15, 2025 is hereby dissolved by issuance of this Determination and Order. The Zoning Administrator’s November 5, 2025 and December 10, 2025 determinations are affirmed and the stay is lifted as of the date of adoption of this Resolution.

BE IT FURTHER RESOLVED that the appeal of the Cornells is DENIED IN SUBSTANTIAL PART, and the Zoning Administrator’s November 5, 2025 and December 10, 2025 determinations are AFFIRMED, with the clarifying conditions set forth above. No remand is necessary except for administrative verification of screening, installation compliance, and vent orientation compliance during inspection as specified in this Order.

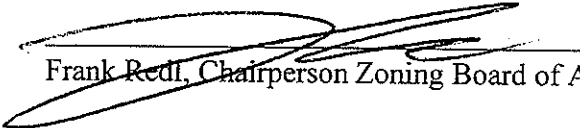
BE IT FURTHER RESOLVED that this Resolution shall be filed with the Town Clerk within five business days of adoption and that copies shall be provided to the applicant, the Appellants’ counsel, and the Building Inspector/Zoning Administrator, as required by law.

The foregoing Resolution was adopted at a duly noticed public meeting of the Zoning Board of Appeals of the Town of Washington held on April 21, 2026, by the following votes recorded separately on each issue.

Members present: Frank Redl (Chairperson); Alexander Kollmar; Tate Kunkle; Annie Rolland.

#	Issue	Redl	Kollmar	Kunkle	Rolland	Result
<i>Motion:</i> <i>Chairperson</i> <i>Frank Redl</i>	<i>Second:</i> <i>Alexander G. Kollmar</i>					
I	Screening & Fencing — AFFIRMED w/conditions	AYE	AYE	AYE	AYE	4-0
<i>Motion:</i> <i>Chairperson</i> <i>Frank Redl</i>	<i>Second:</i> <i>Alexander G. Kollmar</i>					

2	Pool Equipment in Shed — AFFIRMED w/conditions	AYE	AYE	AYE	NAY	3-1
<i>Motion:</i> <i>Chairperson</i> <i>Frank Redl</i>	<i>Second:</i> <u>Tate Kunkle</u>					
3	Building Permit Scope — AFFIRMED	AYE	AYE	AYE	AYE	4-0
<i>Motion:</i> <i>Chairperson</i> <i>Frank Redl</i>	<i>Second:</i> <u>Tate Kunkle</u>					
4	“Structure” Argument — DISMISSED	AYE	AYE	AYE	AYE	4-0
<i>Motion:</i> <i>Chairperson</i> <i>Frank Redl</i>	<i>Second:</i> <u>Alexander Q. Kellmar</u>					
5	Stay of Proceedings — DISSOLVED	AYE	AYE	AYE	AYE	4-0



Frank Redl, Chairperson Zoning Board of Appeals, Town of Washington, New York