



BOARD OF ADJUSTMENT
TOWNSHIP OF BERKELEY HEIGHTS

BERKELEY HEIGHTS, NEW JERSEY 07922



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February 1, 2021

August N. Santore, Jr., Esq.
143 Summit Avenue
Berkeley Heights, NJ 07922

Re: **App.#26-20: Keyvan Gharehtapeh, 129 Hamilton Ave., Bl. 1106, Lot 8.02**
Proposed installation of an in-ground swimming pool with pool surround and fencing to be located in the rear yard. Variances are needed for exceeding the maximum other and total lot coverage percentages permitted. Existing nonconforming issues are lot width, principal side- and combined side yard setbacks, other coverage, and existing shed location. (R-15 Zone)

Dear Mr. Santore:

Attached you will find the resolution adopted by the Board of Adjustment of the Township of Berkeley Heights at its meeting on January 28, 2021. The resolution memorializes a motion which was adopted by the Board on December 10, 2020.

Please review the conditions that need to be satisfied before the project may proceed.

Very truly yours,

A handwritten signature in cursive script that reads "Connie Valenti".

Connie Valenti, Secretary

Encl.

**BOARD OF ADJUSTMENT
TOWNSHIP OF BERKELEY HEIGHTS**

**KEYVAN GHAREHTAPEH
Case No. 26-20**

RESOLUTION

WHEREAS, **KEYVAN GHAREHTAPEH** (the “Applicant”) has applied to the Zoning Board of Adjustment of the Township of Berkeley Heights (the “Board”), seeking bulk variance relief as set forth below, in connection with the construction of an in-ground swimming pool with pool surround and fencing, to be located in the rear yard on property identified as Block 1106, Lot 8.02 on the Township Tax Map, more commonly known as 129 Hamilton Avenue (the “Property”):

- (1) A variance for a proposed “other” coverage of 18.08%, whereas the existing “other” coverage is 10.61%, and the maximum permitted other coverage is 10%, pursuant to Section 6.1.1.B of the Land Use Procedures Ordinance (the “Ordinance”);
- (2) A variance for a proposed “combined” coverage of 29.96%, whereas the existing combined coverage is 23.02%, and the maximum permitted combined coverage is 25%, pursuant to Section 6.1.1.B of the Ordinance; and
- (3) A variance for an existing side-yard setback of 8.9 feet and rear-yard setback of 8.5 feet, to an accessory structure (shed), whereas the minimum required side- and rear-yard setbacks from an accessory structure are 10 feet, pursuant to Section 6.1.1.B of the Ordinance; and

WHEREAS, a web-based public hearing on notice was held on such application on December 10, 2020, at which time interested citizens were afforded an opportunity to appear and be heard; and

WHEREAS, the Board, after carefully considering the evidence presented by the Applicant and members of the public, and the reports from consultants and reviewing agencies, has made the following factual findings and conclusions:

1. All of the application materials and hearing exhibits were posted on the municipal website, and made available to members of the public, within the requisite timeframe, in advance of the hearing. Members of the public were provided with instructions on how to access said materials and participate in the scheduled hearing both via the web-based meeting platform and telephonically, if necessary.

2. All Board Members and Board Professionals and staff participated in the hearing through the web-based platform and were able to perceive the Applicant and the Applicant's professionals, both visually and audibly, in real time.

3. The Property is a narrow (89 foot width, whereas 100 foot width required) lot located in the R-15 Zone, with frontage on Hamilton Avenue. The Property is presently improved with a two-story, single-family dwelling, wood deck, patio paver, shed, and associated improvements.

4. The Applicant proposes to construct an in-ground pool with pool surround and fence to be located in the rear yard. The requested bulk variance relief for the excessive "other" and "combined" coverage, and the location (accessory side- and rear-yard setback encroachment) of the existing shed, is governed by N.J.S.A. 40:55D-70(c).

5. The Applicant's proposal is depicted on plans prepared by William G. Hollows, P.E., P.P., P.L.S., dated August 20, 2020, unrevised, same consisting of two (2) sheets.

6. August N. Santore, Jr., Esq., entered his appearance on behalf of the Applicant. He explained that the proposal before the Board was the result of multiple revisions, all of which reduced the proposed "combined" coverage from approximately 32% to less than 30%.

7. William G. Hollows, P.E., P.P., P.L.S., having a business address of 192 Central Avenue, Stirling, New Jersey, was duly sworn according to law, provided his qualifications, and

was accepted by the Board as an expert in the fields of civil engineering and land surveying. Mr. Hollows described the location of the Property and the existing improvements. He explained that the lot was created as part of a subdivision that was approved in 2012. Mr. Hollows explained that the Property slopes from the rear towards Hamilton Avenue.

8. Mr. Hollows testified that the Property is located near a required riparian buffer, but that the proposal does not impact said buffer area. On discussion of the buffer area, the Applicant stipulated, as a condition of approval, to ensuring that leaf clippings and brush are not relocated from the Property into the buffer area. The Applicant further stipulated, as a condition of approval, that a stormwater management plan would be submitted to, and that same would be subject to the review and approval of, the Township Engineer.

9. On questioning as to “typical stockpile” shown on the plans, Mr. Hollows explained that the Applicant will use the topsoil that is being removed for the proposed pool to build up other portions of the Property and, therefore, the topsoil will temporarily be stored on the Property. On questioning as to construction access, Mr. Hollows explained that the Applicant may have to relocate the existing generator located on the easterly side of the dwelling.

10. On questioning as to where the pool equipment will be located, the Applicant stipulated, as a condition of approval, that said equipment will be located in a conforming location. On questioning as to whether the pool equipment pad would increase the proposed coverage, Mr. Hollows explained that the 100 square foot existing shed was inadvertently included in the coverage calculations even though it should not have been, and therefore, an equipment pad would not impact the coverage unless it exceeded 100 square feet (which it will not).

11. Keyvan Gharehtapeh, the Applicant, having an address of 129 Hamilton Avenue, was duly sworn according to law. Mr. Gharehtapeh testified that the proposed pool will utilize a vinyl liner. He explained that the Applicant had reduced the size of the proposed surround to reduce the amount of coverage proposed. Mr. Gharehtapeh further explained that the proposed pool has lighting within the pool and, therefore, no additional external lighting is proposed. He testified that the proposed pool fencing will be 5 feet high and will comply with the pool fencing requirements and that he would obtain the necessary permits for same.

12. Christy Chatfield, having an address of 135 Hamilton Avenue, was duly sworn according to law and expressed concern about the impacts the Applicant's proposal might have on stormwater runoff and the existing trees. Mr. Hollow explained that the Applicant will be required to submit stormwater management plans and that said plans will be reviewed and approved by the Township Engineer. On questioning as to whether Ms. Chatfield felt that the landscaping between her property and the Applicant's property would be sufficient, she advised that she believed it would be sufficient and reiterated her concern about stormwater runoff.

13. Richard Leister of the Environmental Commission questioned whether the Applicant had obtained a Letter of Interpretation. Mr. Hollows confirmed that there is no evidence of wetlands given his inspection of the Property and review of the Geoweb information available to him. He confirmed that the Applicant's proposed improvements are located outside of the riparian buffer. Mr. Hollows noted that any such required riparian buffer would only extend 50 feet, whereas the proposed improvements are approximately 65 feet from the wetland area.

14. On discussion of the location of the existing shed and whether the Applicant would agree to relocate it to a conforming location, Mr. Gharehtapeh requested that the Board

allow the Applicant to maintain the shed in the same location. He explained that the shed's current location is the least impactful on the adjacent properties. Mr. Gharehtapeh further explained that the Applicant had already removed the wood deck shown to the east of the proposed pool.

DECISION

15. After reviewing the evidence submitted, the Board, by a vote of 7 to 0, finds that the Applicant has demonstrated entitlement to the requested bulk variance relief for the "other" and "combined" coverage deviations, as well as the side- and rear-yard setback deviations for the existing shed, pursuant to N.J.S.A. 40:55D-70(c)(2).

The "c(2)" Variance Relief – Positive Criteria:

16. The Board finds that the Applicant has satisfied the positive criteria for "c(2)" or "flexible c" variance relief for the aforementioned "other" and "combined" coverage deviations, and side- and rear-yard setback deviations relating to the existing shed. The Board finds, as to same, that the Applicant has satisfied the burden of demonstrating that the purposes of the Municipal Land Use Law ("MLUL") will be advanced by the requested deviations from the zoning requirements and that the benefits to be derived therefrom will substantially outweigh any detriments associated therewith. In this regard, the Board finds that the proposed development will provide a desirable visual environment, enhance the visual compatibility of the Property with adjoining properties, and otherwise promote the general welfare. Here, the Applicant is improving the overall appearance of the Property and generally advancing the public welfare, particularly given the stipulated conditions regarding stormwater management and pool fencing. The Board further finds that the benefits of the proposed improvements substantially outweigh the relatively modest detriments associated

therewith, since the proposed improvements will be screened by the existing and proposed landscaping and further mitigated by the stipulated to conditions set forth below. As such, the Board finds that the Applicant has satisfied the positive criteria for c(2) variance relief.

The Negative Criteria:

17. As to the negative criteria for the requested bulk variance relief, the Board finds that the Applicant has demonstrated that the proposal will not result in either substantial detriment to the public good or substantial impairment of the zone plan and ordinance. As to the substantial detriment prong of the negative criteria, the Board finds that the proposal will allow the Applicant to use the Property more efficiently while not being substantially out of character with the neighborhood. Additionally, the Board recognizes that the shed has existed in said location without issue and that relocating the shed would require additional land disturbance. As to the substantial impairment prong of the negative criteria, the Board finds that granting the requested relief does not rise to the level of rezoning the Property and, hence, does not substantially impair the intent and purpose of the Master Plan and Zoning Ordinance, particularly since pools are permitted in the R-15 Zone.

WHEREAS, the Board took action on this application at its meeting on December 10, 2020, and this Resolution constitutes a Resolution of Memorialization of the action taken in accordance with N.J.S.A. 40:55D-10(g);

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Berkeley Heights, that the application of **KEYVAN GHAREHTAPEH**, for bulk variance relief, as aforesaid, be and is hereby granted, subject to the following conditions:

1. Any and all outstanding escrow fees shall be paid in full and the escrow account shall be replenished to the level required by Ordinance within 30 days of the adoption of a Resolution, within 30 days of written notice that a deficiency exists in the escrow account, prior to signing the site plan and/or subdivision plat, prior to the issuance

of a zoning permit, prior to the issuance of construction permits, and prior to the issuance of a temporary and/or permanent certificate of occupancy, completion or compliance (whichever is applicable);

2. The Applicant shall submit a Letter of Interpretation in accordance with N.J.A.C. 7:7A;
3. The Applicant shall submit a stormwater management plan and same shall be subject to the review and approval of the Township Engineer;
4. The Applicant shall locate the pool equipment in a fully conforming location, same to be subject to the review and approval of the Township Engineer;
5. The Applicant shall not remove any trees and, if the Applicant cannot comply with same, the Applicant shall be required to obtain a tree removal permit for the removal of any trees on the Property;
6. The Applicant shall ensure that the riparian buffer area to the rear of the Property remains in its natural state and will not be used by the Applicant or their contractors for leaves, refuse, or anything else that would change the character of the lot;
7. The Applicant shall comply with the pool fencing requirements set forth in Section 3.1.7 of the Ordinance and those set forth in the Uniform Construction Code, including that the height of the proposed fence shall be at least 4 feet and include a self-latching gate, and the Applicant shall obtain the requisite building permit for said pool fencing;
8. The Applicant shall comply with local and State noise regulations when utilizing the pool and/or any associated equipment;
9. The Applicant shall ensure that any lighting proposed to illuminate the pool shall be arranged and shielded such that no direct light from the lighting fixture can be seen from adjacent properties, nor shall there be any light spillage on any adjacent lot, and same shall be subject to the review and approval of the Township Engineer, in his reasonable discretion;
10. The aforementioned approval shall be subject to all requirements, conditions, restrictions and limitations set forth in all prior governmental approvals, including, but not limited to, all prior approvals of this Board, to the extent same are not inconsistent with the terms and conditions set forth herein; and
11. Pursuant to Section 17.1.7 of the Ordinance, any variance relief granted by the Zoning Board of Adjustment permitting the erection or alteration of any building or structure, or permitting in the case of the Zoning Board of Adjustment a specified use of any premises shall expire by limitation unless such construction or alteration shall have been actually commenced on each and every building or structure

permitted by said variance, or unless such permitted use has actually been commenced, within one (1) year (twelve months) and the construction or alteration completed within two (2) years (twenty-four months) from the date of entry of the judgment or determination of the Board; except however, that the running of the period of limitation herein provided shall be tolled from the date of filing an appeal from the decision of the Board to the Township Committee, or to a court of competent jurisdiction, until the termination in any manner of such appeal or proceeding

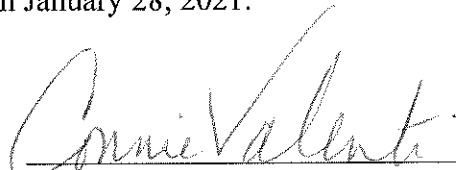
ROLL CALL VOTE

ON DECEMBER 10, 2020: 7 - 0

Those in Favor: Mr. Sullivan, Mr. Siburn, Mr. Nappi, Mr. Delia,
Mr. Coviello, Mr. Sylvester, and Mr. Ringwood

Those Opposed: None

The foregoing is a true copy of a Resolution adopted by the Zoning Board of Adjustment of the Township of Berkeley Heights at its meeting on January 28, 2021.



Connie Valenti, Secretary
BOARD OF ADJUSTMENT
TOWNSHIP OF BERKELEY HEIGHTS,
STATE OF NEW JERSEY

Dated: January 28, 2021