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Christian R. Miller, Direct E-mail:
cmiller@mpl-law.com

July 24, 2023

Shawn Beinhower
476 Granite Quarry Road
New Cumberland, PA 17070

VIA REGULAR MAIL

RE: Fairview Twp. Zoning Hearing Board – No. 2023-09

To Whom It May Concern:

Enclosed please find the fully executed decision of the Fairview Twp. Zoning Hearing Board for Docket No. 2023-09 related to Shawn Beinhower's zoning hearing board application, heard and decided by the Zoning Hearing Board on July 20, 2023.

Thank you.

Very truly yours,

MPL LAW FIRM

A handwritten signature in blue ink that reads 'Christian R. Miller'.

Christian R. Miller, Esquire

Enclosure

Cc: Fairview Township Zoning Hearing Board (c/o Stephen Waller, Zoning Officer)



**BEFORE THE FAIRVIEW TOWNSHIP
ZONING HEARING BOARD**

DECISION

**IN RE: APPLICATION OF SHAWN BEINHOWER
APPLICATION NO. 2023-09**

APPLICANT(S): Shawn Beinhower
HEARING DATE: July 20, 2023
DECISION DATE: July 20, 2023
APPEARANCES: Shawn Beinhower
Chris Hoover (Engineer)
Stephen Waller, Township Zoning Officer
EXHIBITS: Exhibit 1 – Application (including all submittals)
SUBJECT PROPERTY: 476 Granite Quarry Road, New Cumberland, Pennsylvania, 17070

BACKGROUND

This decision of the Fairview Township Zoning Hearing Board (the “*Board*”) is from an application filed with Fairview Township (the “*Township*”) on or about June 26, 2023 (the “*Application*”), seeking zoning relief under the Township’s Zoning Ordinance (the “*Ordinance*”), for a variance from Section 300.16.A, Table 4-3 to construct a pool outside of the front yard setback line, which would be 67 ft from the street right-of-way line. The subject property is located at 476 Granite Quarry Road, New Cumberland, Pennsylvania, 17070, located in the Township’s Rural Living (RL) Zoning District.

A hearing was held on the Application on Thursday, July 20, 2023, with the meeting starting at 6:00 p.m. The Zoning Hearing Board was represented by Timothy Mader (Chairman), Mark Perry, and Daniel Alderman (as the acting alternate member). All published and posted notices were duly given, with no objection thereto being made in writing or orally at the time of the hearing. No testimony in opposition to the Application was offered or taken, and no parties attended the hearing in opposition. After hearing the testimony and viewing the evidence in this matter, the Board makes the following determinations:

FINDINGS OF FACT

1. Shawn Beinhower (“*Applicant*”), is the current owner of property located at 476 Granite Quarry Road, New Cumberland, Pennsylvania, 17070, having an irregular shape and area of roughly 4.23 acres (the “*Property*”), which is used as a primary residential dwelling.
2. The Property is located in the Township’s Rural Living (RL) Zoning District (the “*RL Zone*”) and is improved with a residential dwelling (the “*House*”).
3. Applicants seek to construct an inground pool in the front yard of the Property (the “*Pool*”), which would encroach on the current front yard setback, with the Pool being 67 feet from the front yard setback (as measured from the street right of way).

4. The Property is located on a steeply sloped area, with many slopes at greater than 25%, and all greater than 15% slope.

5. Given the layout of the Property with the steep slopes and the location of the House, as well as the location of the well and septic, the proposed location of the Pool (as shown on the plans submitted with the Application) is the only feasible location to place the Pool.

6. The House is located in such a manner that the Pool would be shielded from view by any passerby or neighbor due to the slope of the Property and the height (in relation to the street and neighboring property).

7. The Pool would be located against a retaining wall, being shielded by the retaining wall, a wooded area, and being roughly 30 ft above the closest neighbor's rooftop (being 600 ft. away from the House – the same being the only neighbor which would be remotely impacted by the construction and location of the Pool).

8. There would not be any impact on any neighboring property due to the aforementioned height difference in the respective properties.

9. Stephen Waller, as the Township Zoning Officer, testified that all public notice of the application and hearing was legally conducted, with the hearing being advertised in the newspaper on July 6th and 13th, the Property being posted on July 6th, and the adjoining property owners having letters mailed to them on June 28th.

CONCLUSIONS OF LAW

1. The Applicant has established the elements required by Section 300-99(E)(4) of the Ordinance regarding the general criteria for a variance in order to grant a variance from § 300.16.A, Table 4-3 to construct the Pool inside the current front yard setback line applicable to accessory structures, which would be 67 ft from the street right of way line.

DECISION

Mr. Perry moved to grant the zoning relief requested by the Applicant in the Application, being a variance from Section 300.16.A, Table 4-3 to construct the Pool inside the current front yard setback line applicable to accessory structures, which would be 67 ft from the street right of way line.

Mr. Alderman seconded the motion. Upon a vote, the Fairview Township Zoning Hearing Board unanimously approved the motion.

APPLICANT SHALL ABIDE BY ALL FEDERAL, STATE AND LOCAL LAWS, REGULATIONS AND ORDINANCES PERTAINING TO PERMISSIONS GRANTED BY THIS DECISION.

APPLICANT SHALL PROCEED PURSUANT TO THIS DECISION IN ACCORDANCE WITH THE TESTIMONY AND EXHIBITS PRESENTED AT THE HEARING.

Date: 7/24/23


Timothy Mader, Chairman

ANY PERSON AGGRIEVED BY THIS DECISION OF THE FAIRVIEW TOWNSHIP ZONING HEARING BOARD MAY APPEAL TO THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA. THE APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS FROM THE MAILING OF THESE FINDINGS OF FACT, CONCLUSIONS OF LAW AND THE ABOVE DECISION.

MAIL DATE: 7/24/23



ZONING HEARING BOARD APPLICATION
YORK COUNTY, PENNSYLVANIA

❖ Part 1:

APPLICANT(S)/EQUITABLE OWNER

Name: Shawn E. Beinhower
Address: 476 Granite Quarry Road
New Cumberland, PA 17070
Phone: 717-554-1701

PROPERTY LOCATION:

Address: 476 Granite Quarry Road
New Cumberland, PA 17070
Lot Size: 4.23 acres
Date Purchased: June 11, 2018
Location: 476 Granite Quarry Road
New Cumberland, PA

EXISTING OWNER OF PROPERTY:

Name: Same as Applicant
Address:

PRESENT USE OF PROPERTY:

Single Family Home

EXISTING ZONE: RL, Rural Living

❖ Part 2:

ZONING REQUEST (Identification of the applicable request(s)):

- () SUBSTANTIVE CHALLENGE
() SPECIAL EXCEPTION
(X) VARIANCE
() APPEAL OF THE ZONING OFFICERS DECISION

SECTION(S) OF ZONING ORDINANCE WHICH APPLY TO THIS REQUEST - Please identify the specific section(s) of the Zoning Ordinance involved in the request:

300-16.A - Required front yard setback for an accessory structure shall be 150 feet, and not allowed to be located within the front yard if the principal structure is less than 150 feet from the street right of way

❖ Part 3:

DESCRIPTION OF REQUEST:

The applicant wishes to construct a pool on the subject property. The site is currently developed with the applicant's single family home, driveway well and onsite sewage system. Due to the

❖ Part 4

LIST ALL INDIVIDUAL PROPERTY OWNERS WITHIN 200 FEET OF THE PERIMETER OF THE ENTIRE PROPERTY.

NAME	ADDRESS	USE TYPE
Marcy Miller/Digrugilliers Anton	470 Granite Quarry Road, New Cumberland, PA	Single Family Home
Terrence L. and Donna L. Welchans	480 Granite Quarry Road, New Cumberland, PA	Single Family Home
Zachary Jackson	7 Fortuna Lane, Enola, PA 17025	Vacant
Jessica Elscheid	477 Granite Quarry Road, New Cumberland, PA	Single Family Home
Christopher Williams	475 Granite Quarry Road, New Cumberland, PA	Single Family Home

❖ *Part 5 For office use only:*

ZONING HEARING BOARD CHECKLIST

Application Received: _____

Property Zoned: _____

Asking for Special Exception, Variance or Appeal: _____

Case No.: _____

Fees Paid: _____

Hearing Date: _____

Draft Public Notice sent to Attorney for review: _____

Notice sent to Newspaper: _____

Notice Published in Newspaper: _____

Notice Mailed to Property Owners in 225ft. Buffer: _____

Public Notice Posted on Property: _____

ZHB Packets Mailed and Emailed: _____

SHAWN AND TABITHA BEINHOWER ZONING REQUEST

Project Narrative

Shawn and Tabitha Beinhower own the existing property located at 476 Granite Quarry Road, New Cumberland, Pennsylvania. Currently existing on the property is the Beinhower's single family home, driveway accessing onto Granite Quarry Road, well and onsite sewage disposal system. The lot consists of 4.23 acres.

The remainder of the lot is mostly forested. The topography of the lot is steep to very steep, with all of the lot located within slopes of 15% or greater, and much of the lot has slopes in excess of 25%. Two petroleum pipelines cross the lot in a north-south, as well as east-west orientation. The zoning of the property is RL, Rural Living.

The Beinhower's would like to construct a pool on the property. Per the Fairview Township Zoning Ordinance (ZO), the required minimum setback for accessory structures is 150 feet measured from the street right of way and shall be located to the rear of the principal use. However, due to existing features and topographic challenges, this setback cannot be met, and the Applicant is requesting a variance from Section 300-16.A of the ZO. The relief requested is 83 feet which will place the proposed pool 67 feet from the right of way line.

Variance Conditions - Section 300-99.(94) Compliance

In order to gain a variance, as per the process detailed in Section 300-99.E(4), the applicant must show that the following criteria have been met:

Variations. The Zoning Hearing Board of the Township of Fairview shall hear requests for variances where it is alleged that the provisions of this chapter inflict unnecessary hardship upon the applicant. The Zoning Hearing Board of the Township of Fairview may, by rule, prescribe the form of application to the Zoning Officer. The Zoning Hearing Board of the Township of Fairview may grant a variance, provided that all of the following findings are made, where relevant in a given case:

- (a) *That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property and the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of this chapter in the neighborhood or zoning district in which the property is located;*

The ZO requires that accessory structures be located a minimum of 150 feet from a street right of way line and be located behind the principal structure. This could not be accomplished for the following reasons:

1. This would place the proposed pool behind the home on slopes of 15% or greater. Substantial excavation would need to be undertaken, and the use of retaining walls in excess of 12 feet would be required.
2. The current onsite sewage disposal system, septic and pump tanks, as well as the drainfield are located to the side and rear of the home. These features cannot be relocated due to slope constraints.
3. The existing well, buried propane tank and existing pipeline easement are located to the south and west of the home which prevents the pool from being located within those area.

- (b) *That because of such physical circumstances or conditions, there is not a possibility that the property can be developed in strict conformity with the provisions of this chapter and that the authorization of a variance is therefore necessary to enable reasonable use of the property;*

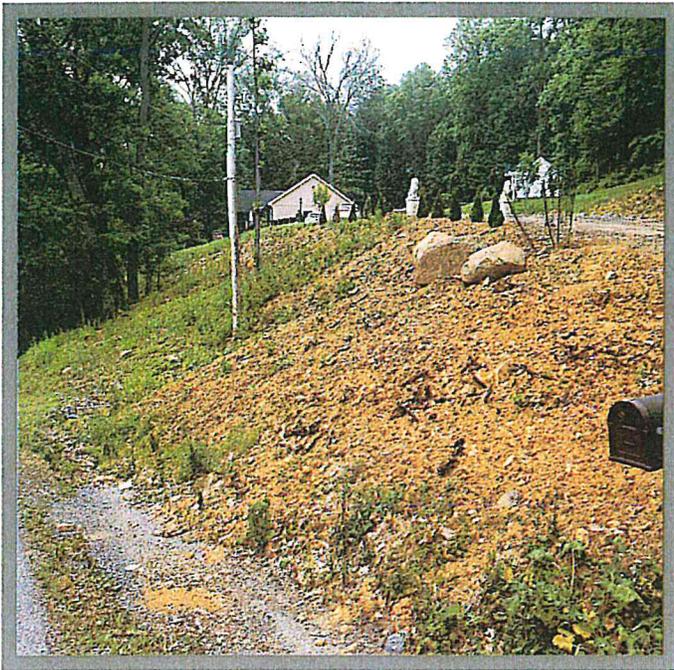
Due to the existing conditions outlined in (a) above, the pool cannot be located meeting the setback

requirements, nor be placed in the rear yard.

- (c) *That such unnecessary hardship has not been created by the appellant;*
The existing conditions outlined are natural slopes and were not created by the applicant.
- (d) *That the variance, if authorized, will not alter the essential character of the zoning district or neighborhood in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare;*
The proposed pool is common and normal uses associated with single family home communities. A review of the aerial mapping of this area does indicate that most accessory structures are located to the rear of the principal structure, there are a few lots which do have pools and accessory buildings located within the front yard.
- (e) *That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulations in issue;*
The requested dimensional variance is the least necessary in order to accommodate the proposed pool and apron area.
- (f) *The proposed use complies with Article VI of this chapter relating to Floodplain Overlay Zoning District (FPO) and Chapter 151, relating to floodplains;*
This requirement is not applicable since the lot is not located within a floodplain area of the Township.

Following are site photographs which illustrate the area of the proposed pool installation.

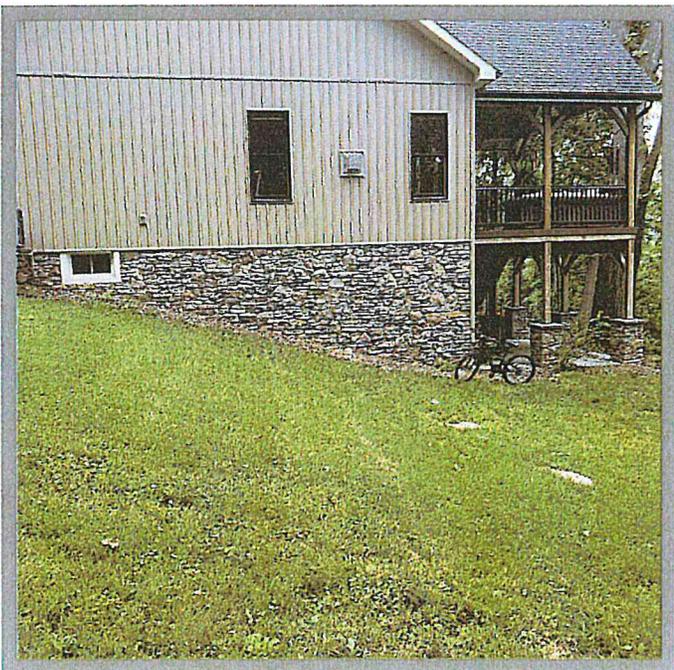
View of the proposed home looking from Granite Quarry Road facing northeast.



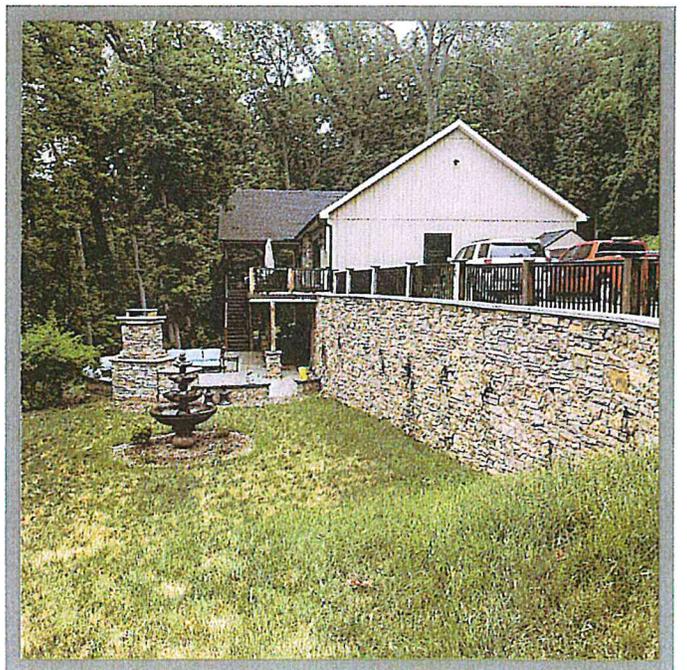
View of the area to the rear of the home. Septic system is located to the right and above the bunny hutch

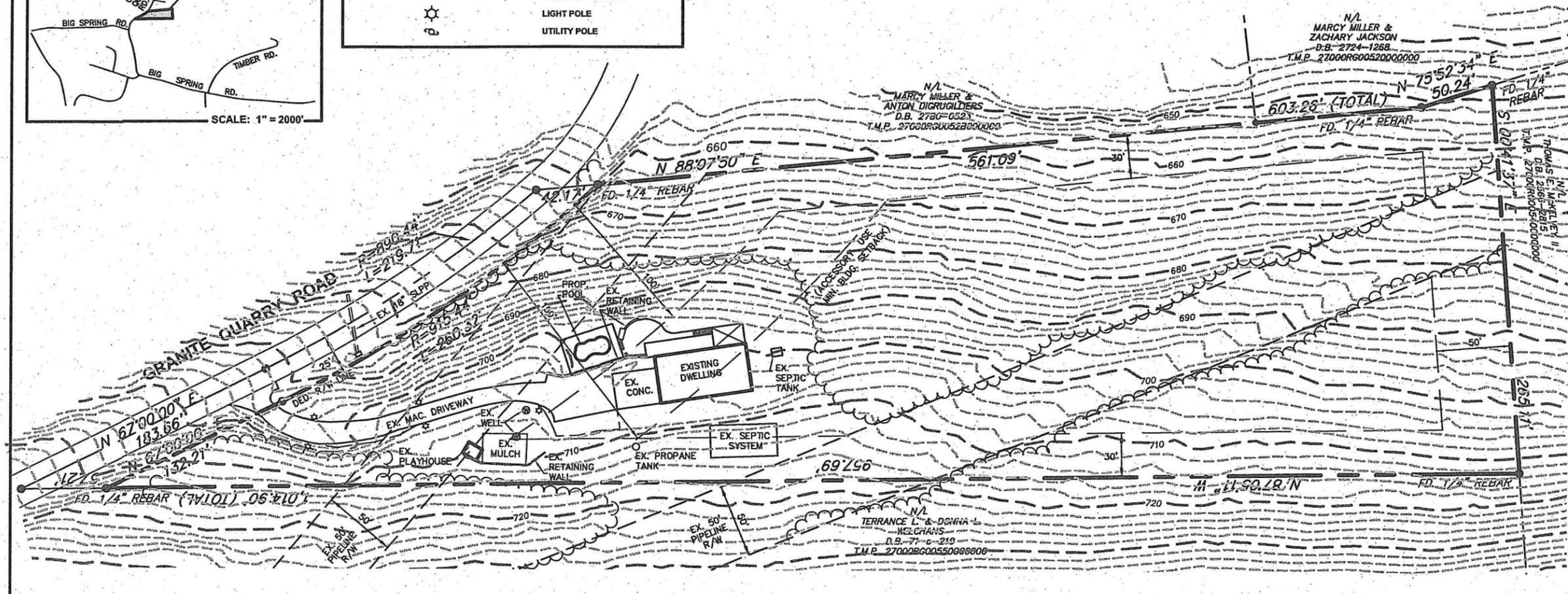
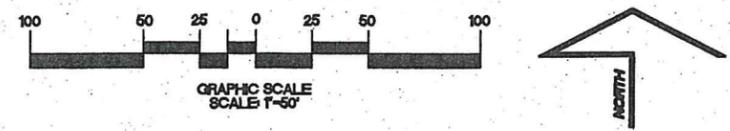
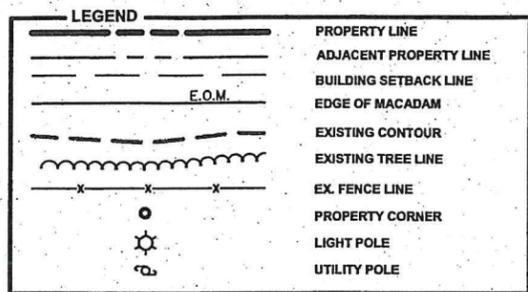
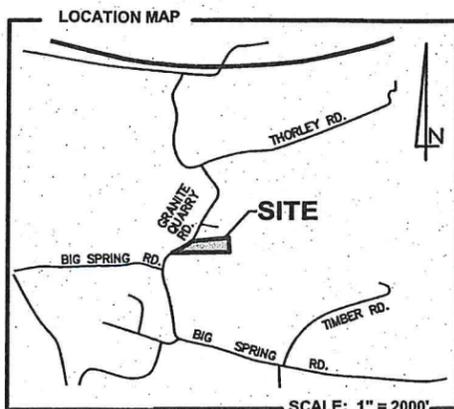


Area to the side of the home showing steep slopes and existing septic tanks



Proposed pool to be located in this area adjacent to existing retaining wall





DATE: 6-14-23
 SCALE: 1"=50'
 FILE: 223092
 DWG: 223092Base

ZONING HEARING BOARD EXHIBIT
 FOR
 476 GRANITE QUARRY ROAD
 FAIRVIEW TOWNSHIP, YORK COUNTY, PA.

NO.	DATE	DESCRIPTION

HOOPER
 ENGINEERING SERVICES, INC.
 ENGINEERS • PLANNERS • SURVEYORS
 609 GAUMER RD., SUITE 100
 NEW CUMBERLAND, PA 17053
 TELEPHONE (717) 776-0100 FAX (717) 776-1557

ZONING INFORMATION:
 ZONING OF TRACT : RL - RURAL LIVING
 MINIMUM LOT AREA : 80,000 S.F.
 MINIMUM LOT WIDTH : 250 FT.
 MAXIMUM LOT COVERAGE : 20%
 MINIMUM FRONT YARD : 100 FT.
 MINIMUM SIDE YARD : 30 FT.
 MINIMUM REAR YARD : 50 FT.
 MAXIMUM PERMITTED HEIGHT : 35 FT.

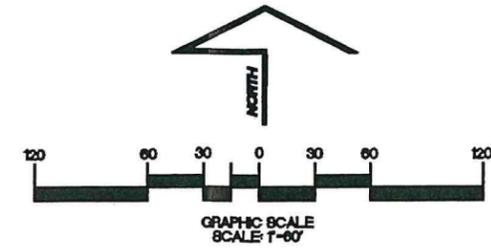
SITE DATA:
 ZONING OF TRACT : RL - RURAL LIVING
 PIN : 27000RG0055A000000
 DEED BOOK : D.B. 2473-8208
 EXISTING METHOD OF SEWAGE DISPOSAL = PRIVATE
 METHOD OF WATER SUPPLY = PRIVATE
 LOT AREA = 3.93 AC.

LOT COVERAGE INFORMATION :
 TOTAL LOT AREA = 3.93 AC. (NET)
 EXISTING IMPERVIOUS AREA = 0.210 AC. / 5.34%
 EXISTING NON-IMPERVIOUS AREA = 3.720 AC. / 94.66%
 PROPOSED IMPERVIOUS AREA = 0.214 AC. / 5.44%
 PROPOSED NON-IMPERVIOUS AREA = 3.716 AC. / 94.56%

- GENERAL NOTES :**
- THE PURPOSE OF THIS PLAN IS AS FOLLOWS:
 a. ILLUSTRATE THE EXISTING FEATURES CURRENTLY LOCATED ON THE SUBJECT SITE, AND REFLECT THE PROPOSED POOL ADDITION.
 - PERIMETER INFORMATION AS SHOWN IS BASED UPON THE FOLLOWING:
 a. A FIELD SURVEY PERFORMED BY HOOVER ENGINEERING SERVICES, INC. SURVEY PERFORMED JUNE, 2023.
 b. SITE DEED RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS FOR YORK COUNTY: INSTRUMENT DEED BOOK 2473, PAGE 8208.
 c. RECORDED SUBDIVISION PLAN ENTITLED "FINAL SUBDIVISION PLAN No. 1 FOR LOUIS E. SCANGA" RECORDED IN PLAN BOOK Y, PAGE 671.
 - TOPOGRAPHIC INFORMATION AS SHOWN IS BASED UPON A FIELD SURVEY PERFORMED BY HOOVER ENGINEERING SERVICES, INC. AND PASDA LIDAR MAPPING. SURVEY COMPLETED IN JUNE 2023. ADJACENT TOPOGRAPHIC INFORMATION TAKEN FROM P.A.S.D.A. LIDAR MAPPING INFORMATION.
 - THERE ARE NO WETLANDS LOCATED WITHIN THE AREA OF PROPOSED CONSTRUCTION BASED UPON A WETLAND INVESTIGATION PERFORMED BY HOOVER ENGINEERING SERVICES, INC. WETLAND INVESTIGATION PERFORMED ON MAY, 2023.
 - UTILITIES AS SHOWN ARE BASED UPON FIELD SURVEYED INFORMATION, RECORDED SUBDIVISION AND LAND DEELOPEMNT PLANS, AND INFORMATION PROVIDED BY OTHERS. HOOVER ENGINEERING SERVICES, INC. DOES NOT WARRANT OR GUARNTTEE THE ACCURACY OF SAID LOCATIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL UTILITY LOCATIONS PRIOR TO START OF CONSTRUCTION. THE CONTRACTOR SHALL SAFEGUARD ALL UTILITIES DURING CONSTRUCTION.
 - NO 100 YEAR FLOOD PLAIN OR FLOOD HAZARD AREAS ARE LOCATED ON THIS TRACT BASED UPON A REVIEW OF F.E.M.A. MAPPING FOR FAIRVIEW TOWNSHIP, YORK COUNTY, PANEL 42133C0065F, EFFECTIVE ON12/16/2015.
 - THERE ARE SIGNIFICANT STEEP SLOPE AREAS (15% OR GREATER) LOCATED ON THIS TRACT.
 - THE APPLICANT IS REQUESTING A VARIANCE FROM ZONING ORDINANCE SECTION 300-16.A - REQUIRED FRONT YARD SETBACK FOR ACCESSORY STRUCTURES.

PROPERTY OWNER :
 SHAWN E. & TABITHA A. BEINHOWER
 476 GRANITE QUARRY ROAD
 NEW CUMBERLAND, PA 17070
 PH. (717) 554-1701

LEGEND	
	PROPERTY LINE
	ADJACENT PROPERTY LINE
	BUILDING SETBACK LINE
	EDGE OF MACADAM
	EXISTING CONTOUR
	EXISTING TREE LINE
	EX. FENCE LINE
	PROPERTY CORNER
	LIGHT POLE
	UTILITY POLE
	STEEP SLOPES -15% TO 25%
	STEEP SLOPES -25% +



DATE: 6-14-23
 SCALE: 1"=60'
 FILE: 223092
 DWG: 223092Base

STEEP SLOPE EXHIBIT
 FOR
476 GRANITE QUARRY ROAD
 FAIRVIEW TOWNSHIP, YORK COUNTY, PA.

NO.	DATE	DESCRIPTION	BY

HOOVER
 ENGINEERING SERVICES, INC.
 ENGINEERS • PLANNERS • SURVEYORS
 658 GAUMER RD. - SUITE 100
 NEW CUMBERLAND, PA. 17062-2823
 TELEPHONE (717) 770-0100 FAX (717) 770-1557