



TOWN GRAY
ZONING BOARD OF APPEALS
AGENDA • FEBRUARY 24, 2021

**Zoning Board of
Appeals Regular
Meeting**

Online Via Microsoft Teams
Link Posted to graymaine.org Day of Meeting

7:00 PM

I. MEETING COMMENCES

Roll Call

II. MINUTES APPROVAL

- a. Approve the minutes of the January 27, 2021 meeting.

III. NEW BUSINESS: PUBLIC HEARINGS

- a. Huff Variance Request

Proposed motion:

Zoning Board of Appeals to consider practical difficulty variance setback reduction of a single-family dwelling. Richard A. Huff, 21 Delan Road, Tax Map 50, Lot 23-6-1, located in the Rural Residential and Agricultural Zoning District. RRA district requires a fifty (50) foot front setback. The Huff's are seeking a fifteen (15) foot reduction.

IV. ADJOURNMENT

** The Town of Gray is an equal opportunity employer and complies with all applicable equal access to public accommodations law. If you are planning to attend a Town Council or Town committee or board meeting and need assistance with a physical disability, please contact the Town Manager's office at least 48 hours in advance of the meeting to have the Town assist you. 657-3339. TTY 657-3931.*

Town of Gray
Zoning Board of Appeals Minutes
January 27, 2021

Regular Meeting **Henry Pennell Municipal Complex** **7:00 PM**
24 Main Street, Gray, ME 04039

I. Meeting Commenced at 7:00pm.

Attendee Name	Title	Status	Arrived
Brad Fogg	Chair	Present	
Lena Reichardt	Vice Chair	Present	
John Swiger	Board Member	Present	
Joshua Sibert	Board Member	Present	
Scott Dvorak	Code Enforcement Officer	Present	
Sharon Young	Town Council Liaison	Present	

This meeting was held virtually.

II. Minutes Approval

a. Zoning Board of Appeals - Regular Meeting – December 16, 2020

Motion to approve the Minutes of the December 16, 2020 meeting.

RESULT:	ACCEPTED [3 TO 1]
MOVER:	Lena Reichardt, Vice Chair
SECONDER:	Joshua Sibert, Board Member
AYES:	Fogg, Reichardt, Sibert
ABSTAINED:	Swiger

Chair Fogg announced they were approving the October 28, 2020 minutes so John Swiger abstained since he was not present for the October meeting. Later in tonight’s meeting, John Swiger asked if they had approved the December 16th minutes. Chair Fogg again mentioned October but Lena Reichardt clarified that December 16th minutes were the ones listed in the agenda for approval.

III. New Business: Public Hearing

a. **Conroy Variance**

Sharline and Denis Conroy are seeking a hardship variance request to consider height for the reconstruction of a single-family dwelling located at 136 Birchwood Road, as shown on Tax Map 18, Lot 307-25, located in the Limited Residential (Shoreland) Zoning District. Dwellings within 25-75 feet of the normal high-water line in Limited Residential (Shoreland) Zoning District cannot exceed a 20-foot maximum building height.

Sharline and Dennis Conroy were present for the meeting.

Chair Fogg stated that a letter dated January 27, 2021 had been received from Jeffrey Kalinich, Assistant Shoreland Zoning Coordinator, Bureau of Land Resources. Not all board members, or the town council liaison, had received the email. Chair Fogg read it aloud in its entirety. He requested it be made part of the official record.

The letter:

(See inserted on next 2 pages)



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
ACTING COMMISSIONER

January 27, 2021

Board of Appeals
Town of Gray
24 Main Street
Gray, Maine 04039

RE: Sharline & Dennis Conroy Variance Appeal; 136 Birchwood Road (Map LS-7, Lot 25)

Dear Members of the Board of Appeals,

The following are the Department's comments regarding the above-referenced variance application which are required to be considered by the Board of Appeals (Board) and made part of the record. The appellants seek to reconstruct a dwelling that was destroyed by over 50% of its market value in February of 2015. From the application materials it is not specified exactly what the appellants are requesting a variance from. The appellants request is to build the "same footprint, same plans as before" which were approved in 2001.

Under the Town of Gray's Shoreland Zoning Ordinance (Ordinance) Section 12 C. 3. the dwelling could have been reconstructed if a permit was obtained within 18 months of the loss and the dwelling was located to the greatest practical extent from the normal high-water line of Little Sebago Lake. Under Section 12 C. 3. the condition of the foundation at the time could have been considered as part of the greatest practical extent determination.

From the application it is not clear if the appellants are requesting to use the same foundation or are planning on a new foundation. A foundation report obtained from the Code Enforcement Officer dated June 13, 2017 states that at that time the foundation was still useable. It is not clear if the foundation is currently useable after three and a half years from the last report. Even if the foundation is currently useable, since 18 months have passed without obtaining a permit for reconstruction this proposal should be reviewed as a new dwelling on a non-conforming lot of record. A greatest practical extent determination should be conducted and if the 100-foot setback can't be met, a variance application should include a specific request for a reduction.

From the application it is inferred that the appellants are seeking a variance from height limits imposed by the Mandatory Shoreland Zoning Act (ACT) 38 MRSA Sec. 439-A 4. Since the 18 months for obtaining a permit to reconstruct the preexisting dwelling have passed this project should be reviewed as constructing a new dwelling on a non-conforming lot of record. Once the greatest practical extent of the dwelling setback is determined then the height standard from the

Act can be applied. Assuming, for discussion only, that the proposed dwelling location is at the greatest practical extent, the materials provided appear to be proposing a 31-foot high structure in a location where a new structure is limited to 20 feet in height. This however is not clearly stated in the application and requires making assumptions and estimates from the information provided.

While not clearly specifying exactly what variances are being requested the application also does not provide a description of how requiring a dwelling to meet current standards will result in undue hardship as has been decided by Maine Courts. Not being able to have what you used to have because of an unfortunate set of circumstances does not meet the standard for finding undue hardship. The information provided in the application could be interpreted as the appellants requesting a variance from the 18-month limit on obtaining a permit to reconstruct under Ordinance Section 12 C. 3. Since the 18-month limit does not involve dimensional requirements a variance request should not be granted per Ordinance Section 16 H.2.

To be clear the Department is not finding the parcel is currently unbuildable. Rather the Department is requesting that any proposed dwelling undergo required reviews and meet applicable standards. If after review it is determined a setback variance is required, the Department would not be opposed to it as long as it met all applicable review criteria. If other dimensional variances are required, the Department would like the opportunity to review them on their merits and not have to speculate about what variance is being requested and why it is being requested.

Based on these considerations, the Department recommends that the Board deny the variance application on the basis that the applicant has not submitted a complete application and has not described any of the criteria required for the Board to find undue hardship. Thank you in advance for thoughtfully considering the Department's comments. Please contact me if you have any questions or seek further clarification in this matter. I may be reached by telephone at (207) 615-7044 or return email at Jeffrey.C.Kalinich@maine.gov.

Sincerely,



Jeffrey Kalinich
Assistant Shoreland Zoning Coordinator
Bureau of Land Resources

cc: Scott Dvorak; Code Enforcement Officer
File

Mr. Conroy explained that after a six-year battle with family, they received a deed of distribution and are now are trying to rebuild the property. Mrs. Conroy expressed there had been many hardships, including the house burning down.

Board members posed several questions regarding the footprint, setbacks, and height of property, and the recommendations in the DEP letter regarding considering this a new construction since the 18-month time frame had passed. Chair Fogg requested clarification of 89' vs. 74' setback notations in the application. Scott Dvorak clarified 74' is the correct number.

Scott Dvorak provided clarification that the applicants want to rebuild the 2001 property which was 31' in height. Current standard is a maximum of 25' height. A smaller camp had been on the property prior to that time. He also reminded the board that they cannot provide a variance for a high-water mark.

There were no public comments. Sharon Young, Town Council Liaison, informed the Board that she had a conversation with an abutter, a friend of hers, Kevin Kaserman, who also serves on the Little Sebago Lake Association with her. She wanted to share his comments; Chair Fogg was not sure they could consider it since the abutter hadn't submitted comments in writing. Sharon Young explained she has it in writing and she emailed it to Brad Fogg on January 16th. She as liaison, offered to share the abutter's comments at tonight's meeting. She wanted people to know they don't have to go down to the town office to view information and she reminded Chair Fogg that materials are to be posted within a 7-day window on the town agenda. John Swiger called a Point Of Order to move on as this was time for the appellants. Sharon Young read Mr. _____'s comments and he lent his support to this request of the Conroys. Chair Fogg asked Sharon Young to provide the written information from the abutter to Scott Dvorak.

Brad Fogg said that since the DEP letter recommended denying the variance and the applicants' application isn't complete, it could open issues for the town. Mr. Sibert asked what type of repercussions and Chair Fogg said DEP could take us to court.

Lena Reichardt expressed concerns that if the board grants the variance, the applicants and the town could face legal issues in the future. She suggested tabling this to provide the applicants time to provide more clear wording on the applicant regarding the height. She explained to the applicants that the goal was not to hold them up or make things more difficult. It is because she wants to make sure the paperwork is 100% complete for when others read the information many years in the future.

Mr. Conroy stated they would be fine with tabling it and is willing to work with people to come up with the right solution. Mrs. Conroy said she appreciates the seriousness with which the board is taking this situation. She is also glad to know the abutter is supportive.

Scott Dvorak said it would be advantageous to have clarity on the application. After the vote, Chair Fogg asked the Conroys to meet with Scott Dvorak to make corrections to the application and get back on a future agenda.

Motion to table the Variance Request of Sharline and Dennis Conroy Until Applicants Can Meet With the Code Enforcement Officer to Make Corrections to Application, and Be Properly Acted Upon by the Board.

RESULT:	TABLED [UNANIMOUS]
MOVER:	Brad Fogg, Chair
SECONDER:	Joshua Sibert, Board Member
AYES:	Fogg, Reichardt, Swiger, Sibert

IV. Adjournment

a. Motion to adjourn at 7:53pm

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Joshua Sibert, Board Member
SECONDER:	Lena Reichardt, Vice Chair
AYES:	Fogg, Reichardt, Swiger, Sibert



**VARIANCE APPLICATION - PRACTICAL DIFFICULTY
ZONING BOARD OF APPEALS
TOWN OF GRAY MAINE**

For Office Use Only
Date Submitted: 1/28/21
Tent. Sched. for: 2/24/21
Amount Paid: \$ 250

PROPERTY INFORMATION

Property Location/Address	<u>21 Deban Rd Gray</u>	Property Map/Lot	<u>050-023-006-001</u>
Zoning District	<u>RRA</u>	Lot Acreage	<u>2</u>
Owner Name	<u>Richard A HUFF</u>	Owner Phone Number	<u>207-776-9553</u>
Number of Dwelling Units	<u>1</u>		

APPLICANT

Name (IF different than owner)		Email Address	<u>Sherihuff65@gmail.com</u>
Mailing Address	<u>36704 Lakewood Dr</u>	Contact Phone Number	<u>207-776-9553</u>
Mailing City/State/Zip	<u>Zephyrhills FLA 33542</u>	Alternate Phone Number	<u>207-776-5154</u>

VARIANCE INFORMATION

Per Gray Zoning Ordinance 402.9.2.B.3:

Practical Difficulty Variance: The Board may grant a variance from the dimensional standards of the Zoning Ordinance when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty and when the following conditions exist:

- The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
- The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
- The practical difficulty is not the result of action taken by the petitioner or a prior owner;
- No other feasible alternative to a variance is available to the petitioner;
- The granting of a variance will not unreasonably adversely affect the natural environment; and
- The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.

As used in this subsection, "dimensional standards" means and is limited to ordinance provisions relating to lot area, lot coverage, frontage and setback requirements.

As used in this subsection, "practical difficulty" means that the strict application of the ordinance to the property precludes the ability of the petitioner to pursue a use permitted in the zoning district in which the property is located and results in significant economic injury to the petitioner.

Describe request (description may be attached separately- plot plan/site map required to be attached)

	Current Requirement	Currently Existing	Proposed
Front Setback	<u>50'</u>	<u>41.5</u>	<u>35'</u>
Rear Setback	<u>50'</u>	<u>230</u>	
Side Setback	<u>N 25'</u>	<u>56</u>	
Other Setback (describe)	<u>W 25'</u>	<u>244</u>	
Max. Lot Coverage		<u>2.4 AC.</u>	
Min. Lot Area	<u>2.0 AC.</u>		
Min. Street Frontage			
Other (describe)			

Richard A Huff
234 Greely Brook Road
Oxford Maine 04270

Winter address
36704 Lakewood Drive
Zephyrhills Florida 33542

To whom it may concern:

It has just recently (January 21) been discovered in preparing to sell my property to my long time tenant there is an issue with my setbacks. There has been a bank land survey done and found out that there is a front setback problem to the home, which a 50' distance is required. The existing home is at approximately 42.5', How this problem had been created is I owned a separate lot next to mine that I sold in 2011. I had to grant an accessed right of way across my property, 21 Delan Road. So at this point Tom Reinsborgh released a permit for the vacant lot to build a home in 2013, not realizing the right of way at that time was 60'(now 50'). It automatically encroached my home and I not realizing and Tom either. Then in 2017 I applied for complete renovation and porch permit for my existing home. At that time I did a plot plan showing the setbacks from the edge of roadway including ditchway to be 80'. So I applied and was granted a permit from Tom Reinsborgh. Again he nor I did not pick up on the encroachment of home to be at approximately 31.5'. Now the right of way required is 50', still making the home at 41.5'.

So I am now asking for a practical difficulty variance for setbacks of 35' to cover steps and roof overhangs.

Thank you in advance,
Richard Huff

CRITERIA- BRIEFLY DESCRIBE HOW YOUR REQUEST MEETS EACH OF THE FOLLOWING:

a. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood; *When an adjoining lot next to ours was created a 50' Right of Way created a front encroachment*

b. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;

Everything stays as it is

c. The practical difficulty is not the result of action taken by the petitioner or a prior owner;

NO

d. No other feasible alternative to a variance is available to the petitioner;

NO

e. The granting of a variance will not unreasonably adversely affect the natural environment; and

The current use of property or neighbors

f. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.

NO

Per Gray Zoning Ordinance 402.9.2.B.4:

Variance Review Criteria: In hearing variance appeals under this section, the Board of Appeals shall determine that the applicant has demonstrated that all of the undue hardship or practical difficulty criteria in sub-Sections 2 and 3 above have been met. Additionally, the Board shall consider the following criteria in its decision to grant any variances or impose conditions:

- a. What effect will be proposed variance have on the prevailing character of the area?
- b. Does the proposed variance require special screening or fencing to separate or protect the property of abutting owners?
- c. Will the proposed variance create drainage, erosion or flooding problems?
- d. Will the proposed variance increase water pollution?
- e. Will the proposed variance generate vehicular traffic, access circulation or parking conditions which create hazardous situations?
- f. Will granting of the variance violate any of the performance standards of this Ordinance apart from the specific relief authorized by this Section?
- g. Will the proposed variance create to any degree nuisances to abutting property owners?
- h. Is the variance request the least modification of the Zoning Regulations necessary to afford relief?
- i. In granting any variance, the Board may attach such reasonable conditions and safeguards as it may deem necessary to implement the purposes of this Ordinance.

PLEASE REFER TO THE CURRENT FEE SCHEDULE FOR APPLICABLE FEES TO INCLUDE REQUIRED ADVERTISING AND ABUTTER NOTIFICATIONS

Applicant Signature

Richard Huff

Printed Name

Richard A Huff

Date

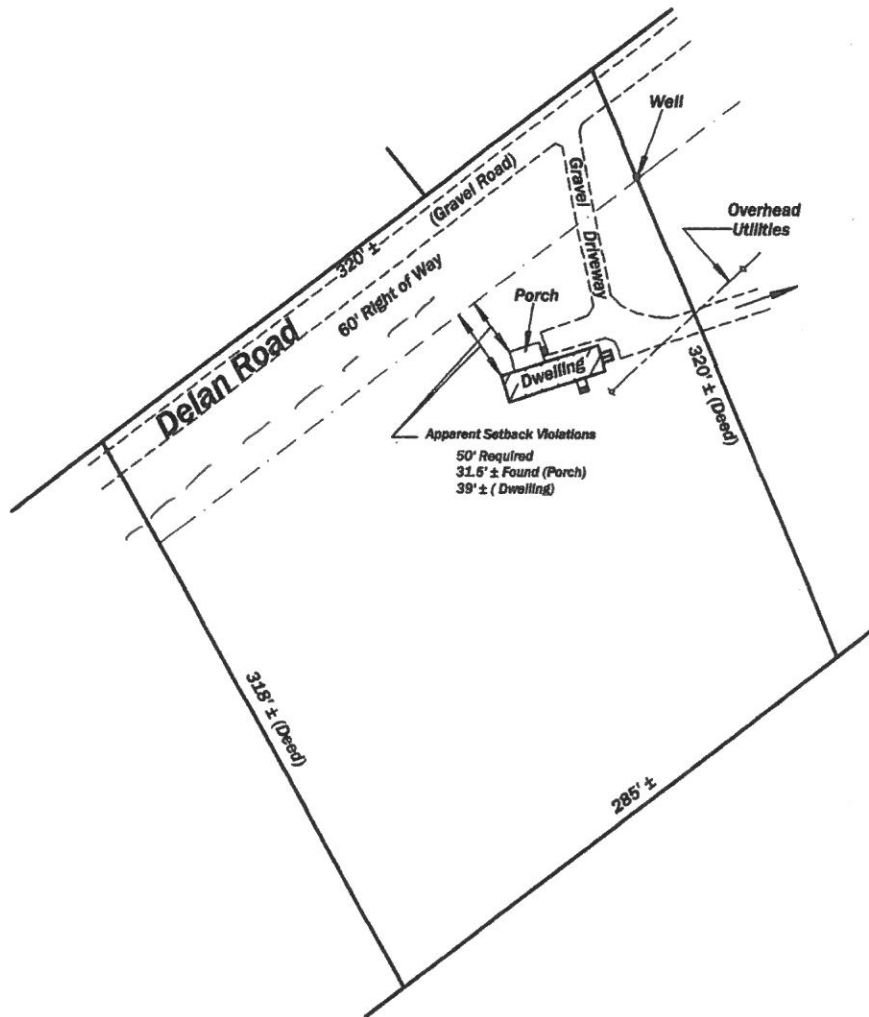
1-21-21

THIS IS NOT A BOUNDARY SURVEY AND SHOULD NOT BE RECORDED OR USED IN LOCATING BOUNDARIES

ADDRESS: 21 Delan Road
Gray, Maine

INSPECTION DATE: 12/3/2020
SCALE: 1" = 100'

Note: The well appears to be partially off the apparent lot boundaries. No permit found for the dwelling. Town assessment has a dwelling age of 1983. The porch was issued a building permit in 2017.



THE DWELLING DOES NOT HORIZONTALLY SCALE IN A SPECIAL FLOOD HAZARD AREA PER FEMA COMMUNITY MAP: 230048 PANEL: 15A ZONE: C DATE: 1/6/1982

THE DWELLING DOES NOT APPEAR TO BE IN COMPLIANCE WITH MUNICIPAL ZONING SETBACKS.

OWNER: Richard A. Huff
 APPLICANT: Renee M. Pratt
 REQUESTING PARTY: Cornerstone Title & Settlement
 LENDER: Norway Savings Bank
 FILE #: 20-1398
 MUNICIPAL REFERENCE:
 MAP: 50 BLOCK: _____ LOT: 23-6-1
 TITLE REFERENCE:
 DEED BOOK: 28253 PAGE: 60 COUNTY: Cumberland
 PLAN BOOK: _____ PAGE: _____ LOT: _____

MORTGAGE LOAN INSPECTION PLAN

FLYNN LAND SURVEYING, LLC
 136 PLAINS ROAD
 RAYMOND, MAINE 04071
 207 329-9913



THIS INSPECTION IS FOR MORTGAGE LENDER USE ONLY. ITS SPECIFIC PURPOSE IS TO RENDER AN OPINION ON COMPLIANCE TO MUNICIPAL ZONING SETBACKS AND ZONE LOCATION ON THE FEMA FLOOD MAPS FOR THE EXISTING DWELLING AND ACCESSORY STRUCTURES. THERE ARE NO MONUMENTS SET OR MARKINGS MADE IN THE FIELD TO DEPICT THE LOCATION OF TITLE OR EASEMENT BOUNDARIES. THE LOCATION OF THE IMPROVEMENTS SHOWN ARE APPROXIMATE AND SHOULD NOT BE USED TO OBTAIN A BUILDING PERMIT. DISTANCES SHOWN ARE TAKEN FROM THE PROVIDED TITLE REFERENCES. SEE TITLE REFERENCES FOR ANY APPURTENANCES. A BOUNDARY SURVEY IS RECOMMENDED FOR AN ACCURATE LOCATION. THIS INSPECTION MAKES EXCEPTION TO ALL THE TECHNICAL STANDARDS ESTABLISHED BY THE STATE OF MAINE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS. LOCATION OF WETLANDS ARE NOT DETERMINED AND ANY SHOWN ARE TAKEN FROM THE PROVIDED REFERENCES. COMPLIANCE TO DEEDED COVENANTS AND RESTRICTIONS NOT DETERMINED.

JOB NUMBER: 20138



BUILDING PERMIT APPLICATION
TOWN OF GRAY MAINE

For Office Use Only

Permit No: 17-175
Date Submitted: 5/24/17
Date Paid: 6/9/17

PERMIT EXPIRES ONE YEAR FROM ISSUANCE DATE, RENEWABLE ONE TIME
Permit Fees are \$100 or doubled (whichever is higher) if work began prior to issuance of permit.

PROPERTY

Property Location/Address: 21 DeJan Rd
Property Map/Lot: 50-23-6A-1
Zoning District:
Lot Acreage: 2 AC.
Number of Dwelling Units: 1
Required Setbacks: Front, Rear, Side
Owner Name: Richard Huff
DIG SAFE # (CALL 811)

APPLICANT

Name (IF different than owner):
Email Address:
Mailing Address: 19 Rockey Pt. Rd.
Contact Phone Number: 207-776-9553
Mailing City/State/Zip: Raymond Me.
Alternate Phone Number: 207-776-5154 (Sheri)
Contractor Name:
Contractor Phone Number:

PROJECT

Approximate Project Dimensions: 10 x 16 = 160
Estimated Construction Cost: \$ 2500.00 (Required)
Project Description: New Construction, Renovation, Tear Down/Reconstruct, Addition, Demo
Structure Type: Home, Mobile, Garage, Deck, Shed, Other
Project Description / Comments: Add 10x16 Deck with Roof

A COMPLETE APPLICATION REQUIRES

Plot Plan/Survey Construction Documents Septic Design

** FINAL OCCUPANCY INSPECTION IS REQUIRED FOR YOUR SAFETY **

I CERTIFY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE

Applicant Signature: [Signature] Date: 5/21/17

FOR CODE ENFORCEMENT OFFICE USE ONLY

Table with columns: Inspection Record (Inspector, Date, Pass/Fail), #, Price. Includes rows for Foundation, Septic, Heating System, etc. Total Building Permit Fee: \$ 50 min. Fee.

CODE ENFORCEMENT OFFICER APPROVAL

Signature of CEO: [Signature] Date: 5/31/17 Conditions (if any): Must meet Required Setbacks.

Scott Dvorak

From: Sheri Huff <sherihuff65@gmail.com>
Sent: Friday, February 5, 2021 9:28 AM
To: Scott Dvorak
Subject: Re: 21 delan

Richard Huff
207-776-9553

Reference: 21 Delan Road Gray maine

C-No-Please see letter of explanation

D-No- we were advised to use Practical Difficulty application

F-No-per discussion with Doug Webster it was not within a shore land area

Thank you
Richard
Sent from my iPad

On Feb 3, 2021, at 9:04 AM, Scott Dvorak <sdvorak@graymaine.org> wrote:

Hi,

I reviewed your application for the zoning board of appeals, and in the criteria where it asks you describe your request. The letters c, d and f were answered with "No". In the past the board has asked that you still explain why you are answering no. You can submit a brief explanation of c, d and f in a email to if you wish, or answer the board at the time of your meeting on 2/24/21.

Best Regards,
Scott

Town of Gray Code Enforcemnt Officer.

<image001.png>

This electronic mail message and any attachments hereto, as well as any electronic mail message(s) that may be sent in response to it, may be considered public records, and may therefore be subject to public record requests for review and copying under Maine's Right to Know Law (Title 1, 401-521 of the Maine Revised Statutes).

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