



**TOWN GRAY**  
**ZONING BOARD OF APPEALS**  
**AGENDA • JUNE 23, 2021**

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**Zoning Board of  
Appeals Regular  
Meeting**

**Online Via Microsoft Teams  
Link Posted to [graymaine.org](http://graymaine.org) Day of Meeting**

**7:00 PM**

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**I. MEETING COMMENCES**

Roll Call

**II. MINUTES APPROVAL**

- a. May 26, 2021 ZBA Minutes for approval

**III. NEW BUSINESS: PUBLIC HEARINGS**

- a. Tabled DeRice Variance (*Tabled from 5-26-21see previous packet submitted*)  
Andrew DeRice and Julie DeRice are requesting a variance (shoreland) for a front setback reduction to allow for a 24'x26' garage at 164 Lyons Point Road, Tax Map 40, Lot 315-43, located in the Limited Residential (shoreland) Zoning District. The front setback in Limited Residential (shoreland) Zoning District is twenty-five feet (25'),

**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**  
**May 26, 2021**

**Regular Meeting**

**Henry Pennell Municipal Complex**

**7:00 PM**

24 Main Street, Gray, ME 04039

**I. Meeting Commenced at 7:00 p.m.**

Attendee Name	Title	Status	Arrived
Brad Fogg	Chair	Present	
Lena Reichardt	Vice Chair	Present	
John Swiger	Board Member	Present	
Joshua Sibert	Board Member	Present	
George Froehlich	Asst. 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 – April 28, 2021

**Motion to approve the Minutes of the April 28, 2021 meeting.**

No edits were requested. Lena Reichardt said the format of the April 28th minutes made reading of the discussions difficult to follow. Chair Fogg confirmed that the motion should appear before the discussion information in minutes.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	John Swiger, Board Member
<b>SECONDER:</b>	Joshua Sibert, Board Member
<b>AYES:</b>	Fogg, Reichardt, Swiger, Sibert

**III. New Business: Public Hearings**

**Tibbetts Variance Request**

**Daniel Tibbetts is requesting a variance (practical difficulty) to consider front setback 6 ft. reduction to allow for a farmer's porch to be added to a single-family dwelling located at 1 Nolan's Way, as shown on Tax Map 32, Lot 315-78, located in Lake Zoning District. The front setback in the Lake Zoning District is fifty feet (50').**

John Swiger motioned to open the discussion and Joshua Sibert seconded that motion.

Mr. Tibbetts explained the situation. The area was staked off but during excavation, stakes were moved, and the foundation was poured in the wrong location. He was unable to be present and observe at that time due to cancer

treatments. The bank notified him the location was wrong. His survey information shows they need a variance of 4.5 feet, but he requested a 6 ft. variance to allow for overhangs. The farmer's porch is the portion of the residence impacted.

Neighbors Cindy Rague, Karol Call, and Chris King spoke in favor of the variance being granted. Chair Fogg stated that Cindy Rague/Dan Beaulieu and Chris King also sent emails of support to Scott Dvorak. The public hearing was closed at 7:16pm.

- a. Motion to approve that the need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Lena Reichardt, Vice Chair
<b>SECONDER:</b>	John Swiger, Board Member
<b>AYES:</b>	Fogg, Reichardt, Swiger, Sibert

- b. Motion to approve that 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.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Lena Reichardt, Vice Chair
<b>SECONDER:</b>	John Swiger, Board Member
<b>AYES:</b>	Fogg, Reichardt, Swiger, Sibert

- c. Motion to approve that the practical difficulty is not the result of action taken by the petitioner or a prior owner.

Lena Reichardt noted the board should take caution when a contractor acts on behalf of an owner. In this case, however, she said this error was clearly against the owner's wishes. Chair Fogg will mention that concern to Scott Dvorak for future applicants.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Lena Reichardt, Vice Chair
<b>SECONDER:</b>	John Swiger, Board Member
<b>AYES:</b>	Fogg, Reichardt, Swiger, Sibert

d. Motion to approve that no other feasible alternative to a variance is available to the petitioner.

Chair Fogg said tearing down what is there would not be a good alternative.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Lena Reichardt, Vice Chair
<b>SECONDER:</b>	John Swiger, Board Member
<b>AYES:</b>	Fogg, Reichardt, Swiger, Sibert

e. Motion to approve that the granting of a variance will not unreasonably adversely affect the natural environment.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Lena Reichardt, Vice Chair
<b>SECONDER:</b>	John Swiger, Board Member
<b>AYES:</b>	Fogg, Reichardt, Swiger, Sibert

**MOTION to approve a variance (practical difficulty) for Daniel Tibbetts to consider front setback 6.5 ft. reduction of a 50 ft. setback requirement to allow for a farmer's porch to be added to a single-family dwelling located at 1 Nolan's Way, as shown on Tax Map 32, Lot 315-78, located in Lake Zoning District.**

Chair Fogg requested the motion be amended to reflect a 6.5 ft. reduction to the 50 ft. setback.

<b>RESULT:</b>	<b>APPROVED AS AMENDED [UNANIMOUS]</b>
<b>MOVER:</b>	John Swiger, Board Member
<b>SECONDER:</b>	Lena Reichardt, Vice Chair
<b>AYES:</b>	Fogg, Reichardt, Swiger, Sibert

### DeRice Variance Request

**Andrew DeRice and Julie DeRice are requesting a variance (shoreland) for a front setback 12.5 ft. reduction for a 24'x26' garage at 164 Lyons Point Road Tax Map 40, Lot 315-43, located in the Limited Residential (Shoreland) Zoning District. The front setback in Limited Residential (shoreland) Zoning District is twenty-five feet (25').**

John Swiger motioned to open the discussion and Brad Fogg seconded that motion.

Julie DeRice explained the situation. This will be their full-time summer residence. They need a garage for storage. Other homes in the neighborhood have garages for two or more cars. The garage they are proposing will be reached from the current driveway and there is a raised berm which will hide most of the garage. When they winter in Florida, they store their vehicle at a property in Portland. They are in the process of selling the Portland property and will need to store their vehicle at this home in Gray. They want the vehicle, kayaks, and other items to be stored in the garage.

John Swiger stated 24x26 is larger than a 2-car garage and asked why they couldn't build a one car garage. Andrew DeRice said a one car garage wouldn't blend in with the neighborhood and they also have a boat they wish to store in the garage. Julie DeRice said they need the storage space requested and it wouldn't make sense to build a long, tubular shaped garage.

Chair Fogg closed the public comment section of the public hearing at 7:35 p.m. He referenced letters of support from Peter/Deb Gellerson, Bridget Carpenter, and Doug MacGillivray. He also stated a letter from Jeff Kalinich of DEP was received stating DEP doesn't have a comment on this situation.

Chair Fogg reported that Susan McGaulley sent an email stating the road is narrow at this point and asked the Board to respect the zoning. She is not in favor and asks the ZBA to reject the variance request. She also said she understood the applicants would be storing items for their Portland business.

Susan McGaulley spoke and said she did realize they were planning to use the existing driveway, so part of her objection went away with this information. She said others in the neighborhood store boats, trailers, etc. outside.

Joshua Sibert asked Susan McGaulley if her other objections still stand as stated in her email. She said yes, it is very narrow between the road and the lake and she has ecological concerns. Mr. Sibert noted the garages of abutters (each side and across the street) are at or less than 15 ft so this is common in this area due to tight places.

Chair Fogg asked Susan McGaulley how building the garage behind the existing berm and using the driveway would affect the road. She said it would have a minimal effect on the road. When he asked about her ecological concerns, she said she was concerned with water getting on the road, but it won't with existing driveway and existing berm. Julie DeRice spoke to Susan McGaulley's concerns and said they will not be storing business items.

At 7:45 p.m., John Swiger called a Point of Order to point out that Lena Reichardt was not longer connected to the meeting. Joshua Sibert reached her by telephone. She lost power and wifi due to the rainstorm and could not reconnect to the meeting. She gave permission to move forward without her. John Swiger wanted to make sure

the applicants were accepting of the Board only having three voting members. There was discussion as to whether or not a majority or unanimous vote would be needed to pass the request.

John Swiger made the motion to vote on the request and Joshua Sibert seconded the motion. As the board proceeded to voting, discussion ensued about whether or not they were voting on the correct criteria and concerns were raised if the applicants had been given the correct application with the questions they needed to answer. They also reflected on if they needed to discuss topics of reasonable return, hardship, etc. pertaining to this variance request. George Froehlich joined the conversation as well while the Board tried to determine the proper criteria they needed to vote on.

After a great deal of discussion, Chair Fogg stated they need to obtain clarity on this from the Code Enforcement Officer and possibly the town attorney prior to proceeding. He motioned to table this until the June 23<sup>rd</sup> meeting.

<b>RESULT:</b>	<b>TABLED [3-0]</b>
<b>MOVER:</b>	Brad Fogg, Chair
<b>SECONDER:</b>	Joshua Sibert, Board Member
<b>AYES:</b>	Fogg, Swiger, Sibert
<b>AWAY:</b>	Reichardt

**Motion to adjourn at 8:33 p.m.**

Chair Fogg adjourned the meeting at 8:33 p.m.

June 7, 2021

Request for Variance to reduce the current setback requirements in order to construct 24' x 26' garage at 164 Lyons Point Rd.

Town of Gray

Zoning Board of Appeals

To whom it may concern,

We would like to submit some additional information to the Board to consider that was not addressed in the May 26, 2021 meeting that was tabled.

**A. That the land in question cannot yield a reasonable return unless a variance is granted;**

All of the properties in our neighborhood, not just those abutting, all have either 2,3 or 5 car garages. Without a garage our property is not in character to it's surrounding neighbors and we would be in a disadvantage over other properties should we choose to sell.

Under the current setback requirements, a 12.5' x 48' garage, which would accommodate our needs, would be permissible to be permitted. However, construction of a structure with these dimensions would be a detriment to not only our property but to the neighboring homes. Constructing a garage with those dimensions would also require us to take down several additional established trees reducing the existing canopy. We have a desire to be good stewards to the lake and would prefer not to remove more trees than would be necessary with the construction of our proposed garage.

**C. That the granting of a variance will not alter the essential character of the locality; and**

All three of the abutting properties have two and three car garages which are non-conforming to the existing side and or front set-back requirements. The property to our West is only 5.1' from the side set back. The current side set-back required is 10'. The property abutting us to the East is again closer at 8.4' . property line. The garage directly across from us is constructed at 14.9' from the front line. Thus, all of our neighboring properties are non- compliant. The current set back forces us to be held to a higher standard than all of our abutters.

I would like to add that in 2018, the then, Zoning Board of Appeals granted a variance request for construction of a garage with a front line set back of 1' from the tared way. The address of this property is 5 Evergreen Rd which is another waterfront home just around the cove from our property. Over the years there were actually two set back variances granted to them after a calamity of self- imposed hardships. While this is not the case for our request it does speak to the fact the the Zoning Board of Appeals has granted others variances and sets a precedence of previous forgiveness.

**D. That the hardship is not the result of action taken by the applicant or a prior owner.**

This hardship is a result of a change in the front set back requirements that were put into place sometime between 2008 to 2010. The sole purpose for this change from 10' to 25' was for safety concerns. They were concerned that with such short driveways, the plowing was very difficult and unsafe. Also, driving directly out from a garage onto a narrow camp road and traveled way was extremely problematic. The construction of our proposed garage causes none of these issues as we will enter on our existing driveway.

