



TOWN OF GRAY
ZONING BOARD OF APPEALS
AGENDA • JANUARY 26, 2022

**Zoning Board of
Appeals Regular
Meeting**

Online Via Zoom Videoconferencing
<https://us06web.zoom.us/j/81671098201>

7:00 PM

I. MEETING COMMENCES

Roll Call

II. MINUTES APPROVAL

- a. October 27, 2021 Meeting Minutes

III. NEW BUSINESS: PUBLIC HEARINGS

- a. Dutton Hill Properties LLC Variance:

Dutton Hill Properties LLC, represented by Richard Sanborn, is requesting a practical difficulty variance for a 4' reduction to a 50' front setback requirement from Dutton Hill Road for an existing single-family dwelling located at 104 Dutton Hill Road, as shown on Tax Map 68, Lot 35-18-9, located in a Rural Residential and Agricultural Zoning District.

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
October 27, 2021

Regular Meeting

Henry Pennell Municipal Complex

7:00 PM

24 Main Street, Gray, ME 04039

I. Meeting Commenced at 7:06 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	Absent	
Scott Dvorak	Code Enforcement Officer	Present	
Doug Webster	Community Development Director	Present	
Martin Meaney	Town Council Liaison	Present	

This meeting was held virtually.

II. Minutes Approval

a. Zoning Board of Appeals - Regular Meeting – June 23, 2021

MOTION: To approve the Minutes of the June 23, 2021 meeting.

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

III. Information Exchange

1. Election of Officers

Lena Reichardt nominated Brad Fogg to be Chair and John Swiger seconded that nomination.
 John Swiger nominated Lena Reichardt to be Vice Chair.

Motion: To cast a single ballot vote for slate of officers. Brad Fogg to be Chair and Lena Reichardt to be Vice Chair.

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

2. Adopt 2022 Calendar

Motion: To adopt the 2022 meeting calendar as provided by town staff.

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

IV. NEW BUSINESS: PUBLIC HEARINGS

Trofatter Variance: (Cancelled 9-22-21)

To consider a hardship variance in the shoreland zone for a front setback reduction for a car port addition on an existing detached garage. Frederick P. Trofatter, 19 Qualey Road, Tax Map 32, Lot 304-40, located in the Limited Residential and Lake Zoning Districts that requires a Fifty (50) foot Front(s), and Fifty (50) foot Rear setbacks.

Chair Fogg opened the public hearing at 7:11pm. There were no public comments. He explained the prior permit had been issued before the CEO realized that a small portion was in shoreland. Scott Dvorak explained this was one of the first situations he worked on and Gray’s ordinance varied from Windham’s which he was familiar with. He wanted this to be corrected to not cause issues for the applicants in the future.

The board discussed the topic and decided upon the motion language in reference to a 15’ reduction on the Ramsdell Road side and 20’ reduction on the Mountain View Road side. Scott Dvorak confirmed that only a very small portion of the property is in shoreland. He explained the original application which was submitted was for practical difficulty, but he had the applicants prepare a shoreland variance application which was in the agenda packet.

John Swiger noted this variance pertains to the carport only. Mr. Dvorak confirmed he will have the applicants submit a permit request to enclose the building. The Code Enforcement office can issue approval for that next step.

a) Motion: That the land in question cannot yield a reasonable return unless a variance is granted.

John Swiger explained this was legally built and if they were to remove the structure, they would not get a reasonable rate of return. He also clarified the motion is in reference to the car port only.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	John Swiger, Board Member
SECONDER:	Brad Fogg, Chair
AYES:	Fogg, Reichardt, Swiger

b) Motion: That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

John Swiger said the conversation in order to figure out front vs. side setback illustrated the unique circumstances.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	John Swiger, Board Member
SECONDER:	Brad Fogg, Chair
AYES:	Fogg, Reichardt, Swiger

c) Motion: That the granting of a variance will not alter the essential character of the locality.

Brad Fogg said an abutter sent a letter of support for the applicants to build. Mr. Fogg also mentioned this fits in with the neighborhood.

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

d) Motion: That the hardship is not the result of action taken by the applicant or a prior owner.

Brad Fogg said the error was done by the town and the owners should not be penalized. Lena Reichardt added there is no expectation that the owners would have known of the error.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	John Swiger, Board Member
SECONDER:	Brad Fogg, Chair
AYES:	Fogg, Reichardt, Swiger

MOTION: The Zoning Board of Appeals approves a hardship variance in the shoreland zone for a 15 ft. reduction on the Ramsdell Road side and 20 ft. reduction on the Mountain View Road side for a car port addition on an existing detached garage, property owned by Frederick P. Trofatter, 19 Qualey Road, Tax Max 32, Lot 304-40, located in the limited Residential and Lake Zoning Districts.

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

31 Main Street Variance - Johnson

To consider a practical difficulty variance for relief for lots size standard requirements for two principle uses. Kurt T. Johnson Sr, 31 Main Street, Tax Map 35 Lot 403-26, located in Village Center Proper zoning district. Village Center Proper district requires 20,000 sq ft per principle use.

Chair Fogg explained the applicant wants to use one unit for a barbershop. He called for a motion to open the public hearing. John Swiger motioned and Lena Reichardt seconded. The public hearing was opened at 7:41pm. There were no public comments.

Scott Dvorak clarified he is seeking a variance for the “second use”. Therefore, if the barbershop doesn’t stay, and another permitted business is planned for that space, he doesn’t have to come back to ZBA.

Brad Fogg said he has reviewed the Comprehensive Plan and the town would like more businesses in the Village Center Proper. The outside of the building won’t be altered.

Mr. Johnson said the plans are to have the 10x10 and 10x13 rooms be the cutting areas and the larger portion will be the reception area. He also confirmed the downstairs has three units. One is occupied by a counselor, one by a lawyer, and then this space. He also has an office on the first floor. The upstairs consists of another business.

a) MOTION: The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.

Lena Reichardt mentioned this is an older building which already has commercial uses.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Brad Fogg, Chair
SECONDER:	Lena Reichardt, Vice Chair
AYES:	Fogg, Reichardt, Swiger

b) MOTION: 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.

Lena Reichardt commented this is a desirable change. Brad Fogg noted the building isn’t changing. Egresses are not changing either.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Brad Fogg, Chair
SECONDER:	Lena Reichardt, Vice Chair
AYES:	Fogg, Reichardt, Swiger

c) **MOTION: The practical difficulty is not the result of action taken by the petitioner or a prior owner.**

Brad Fogg said this fits in with the neighborhood and the Comprehensive Plan.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	John Swiger, Board Member
SECONDER:	Brad Fogg, Chair
AYES:	Fogg, Reichardt, Swiger

d) **MOTION: No other feasible alternative to a variance is available to the petitioner.**

Brad Fogg said the town wants to follow the Comprehensive Plan to encourage businesses in the village and make it pedestrian friendly. He said there is no other feasible alternative except retail, personal services, or professional services.

John Swiger said the information was well-communicated in the packet and at the meeting.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lena Reichardt, Vice Chair
SECONDER:	Brad Fogg, Chair
AYES:	Fogg, Reichardt, Swiger

e) **MOTION: The granting of a variance will not unreasonably adversely affect the natural environment.**

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

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

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lena Reichardt, Vice Chair
SECONDER:	Brad Fogg, Chair
AYES:	Fogg, Reichardt, Swiger

Motion: The Zoning Board of Appeals approves a practical difficulty variance for relief for lots size standard requirements for two principle uses for the property of Kurt T. Johnson Sr., property located at 31 Main Street, Tax Map 35 Lot 403-26, located in Village Center Property zoning district.

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

V. Adjournment

Motion: To Adjourn at 8:01 p.m.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lena Reichardt, Vice Chair
SECONDER:	Brad Fogg, Chair
AYES:	Fogg, Reichardt, Swiger



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

For Office Use Only
 Date Submitted: 1/3/22
 Tent. Sched. for: 1/26/22
 Amount Paid: \$300 fee

PROPERTY INFORMATION			
Property Location/Address	104 Dutton Hill - Gray	Property Map/Lot	068 .035 .018 .009
Zoning District	RRA	Lot Acreage	1.84
Owner Name	Dutton Hill Properties, LLC	Owner Phone Number	Kathleen Sanborn - 207-749-2017
Number of Dwelling Units	1		

APPLICANT			
Name (IF different than owner)		Email Address	rasK5867@gmail.com
Mailing Address	P.O. Box 1538	Contact Phone Number	207-749-2017
Mailing City/State/Zip	Windham, ME 04062	Alternate Phone Number	207-892-7473

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)

RRA	Current Requirement	Currently Existing	Proposed
Front Setback	50'	± 47	4' variance
Rear Setback	50'	± 348	KEEP 50' REQ
Side Setback	25'	± 78 & ± 82	KEEP 25' REQ
Other Setback (describe)	N/A	N/A	N/A
Max. Lot Coverage	10%	1.8%	KEEP 10%
Min. Lot Area	80,000 SF	80,000	80,000
Min. Street Frontage	200	210	210
Other (describe)	N/A	N/A	N/A

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;

Please see Attached cover letter.

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; **True**

Please see Attached cover letter.

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

Please see Attached cover letter.

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

Please see Attached cover letter.

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

Please see Attached cover letter.

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

RRA Please see Attached cover letter.

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



Printed Name

Kathleen L Sanborn

Date

12/30/21

DUTTON HILL PROPERTIES, LLC
P.O. BOX 1538
Windham, Maine 04062

December 30, 2021

Town of Gray
Zoning Board of Appeals

Re: 104 Dutton Hill
Variance Application – Practical Difficulty

Dear Appeals Board Members,

We are submitting the attached variance application as the excavation contractor for this project apparently was in error when placing the foundation of the new home which is now completely constructed at 104 Dutton Hill in Gray. The error was discovered by the buyers mortgage company when they had a mortgage survey of the property completed. We forwarded a copy of the Livingston-Hughes mortgage survey (copy attached) to the original surveyor (Wayne Wood) of the lot for his review. A copy of his letter regarding his review is also attached. As a result of this error, we respectfully request a four foot variance on the front setback requirement of 50 ft. as indicated in the application. Below is our response to the variance request criteria:

- a. Variance needed is due to the unique circumstances of the property. The front of the property slopes downward approximately 3 inches per foot toward the house. The excavator measured the front distance on the actual ground and not "as the crow flies" which added to the error. (this was discussed with Wayne Wood)
- b. Granting of the variance will not change the character of the neighborhood and is currently under contract of sale with an offer that exceeds per square foot pricing of similar homes in the immediate area. Neighborhood market prices will not be adversely impacted by granting of the variance.
- c. The practical difficulty is not the result of petitioner or prior owner. The excavation contractor miscalculated as explained in "a." above.
- d. The home is completely built and currently under contract of sale. No feasible alternative exists.

Page 2

Town of Gray
Zoning Board of Appeals

Re: 104 Dutton Hill
Variance Application – Practical Difficulty

- e. The variance will not adversely effect the natural environment in any way.
- f. The property is not located in whole or in part within shoreland areas as determined in review with Town of Gray Code Enforcement Department.

Variance Review Criteria:

- a. Granting of variance will not effect prevailing character of area.
- b. Proposed variance will not require any screening or fencing.
- c. The proposed variance will not create drainage, erosion or flooding issues.
- d. Proposed variance will not have any effect on water pollution.
- e. Proposed variance will not effect traffic or parking.
- f. Granting of variance will not violate other performance standards.
- g. Granting of variance will not in any way effect abutters to this property.
- h. The variance request is the least modification necessary to afford relief in this situation.

It is our hope that you will grant this variance and it is our future intention to have a licensed surveyor place the corner pins of the foundation of any homes we may build in Gray or anywhere for that matter.

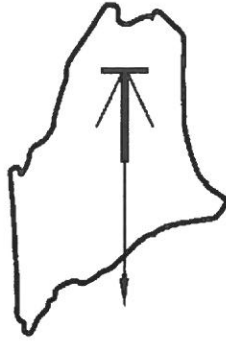
We remain available to answer any questions you may have and thank you for your considerations in this application review process.

Sincerely,



Kathleen L. Sanborn
Managing Member
Dutton Hill Properties, LLC

WAYNE



WOOD & co.

PROFESSIONAL LAND SURVEYING
and LAND PLANNING
30 Wood Drive, Gray, Maine 04039

WETLANDS DELINEATION
Telephone (207) 657-3330
wtwco@securespeed.net

December 30, 2021

RE: 104 Dutton Hill Road, Gray, Maine

To Whom it may concern:

I did the original survey to create the lot located at 104 Dutton Hill Road in Gray at the corner of Sashas Way. I have reviewed the Mortgage Loan Inspection Plan that was done by Livingston-Hughes dated 12-08-21 and verified that they did an actual location of the structure with survey instruments tied to original survey markers that I had set on the property. With this knowledge I would conclude that you should be looking for a variance from the 50' front yard setback down to a 46' distance from the front lot line.

I hope this helps to clarify the situation and if you have any questions please do not hesitate to give me a call.

Sincerely,

Wayne T. Wood, PLS 1328
Wayne T. Wood & Co.

22018-let

THIS IS NOT A BOUNDARY SURVEY

This copyrighted document expires 03-08-22. Reproduction and/or dissemination after this date is unauthorized.

MORTGAGE INSPECTION OF: DEED BOOK 38103 PAGE 86 COUNTY Cumberland
 PLAN BOOK 203 PAGE 183 LOT 13.53 acres

ADDRESS: 104 Dutton Hill Road, Gray, Maine

Job Number: 1147-03

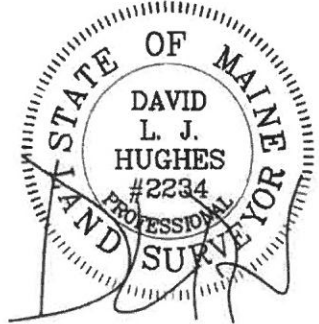
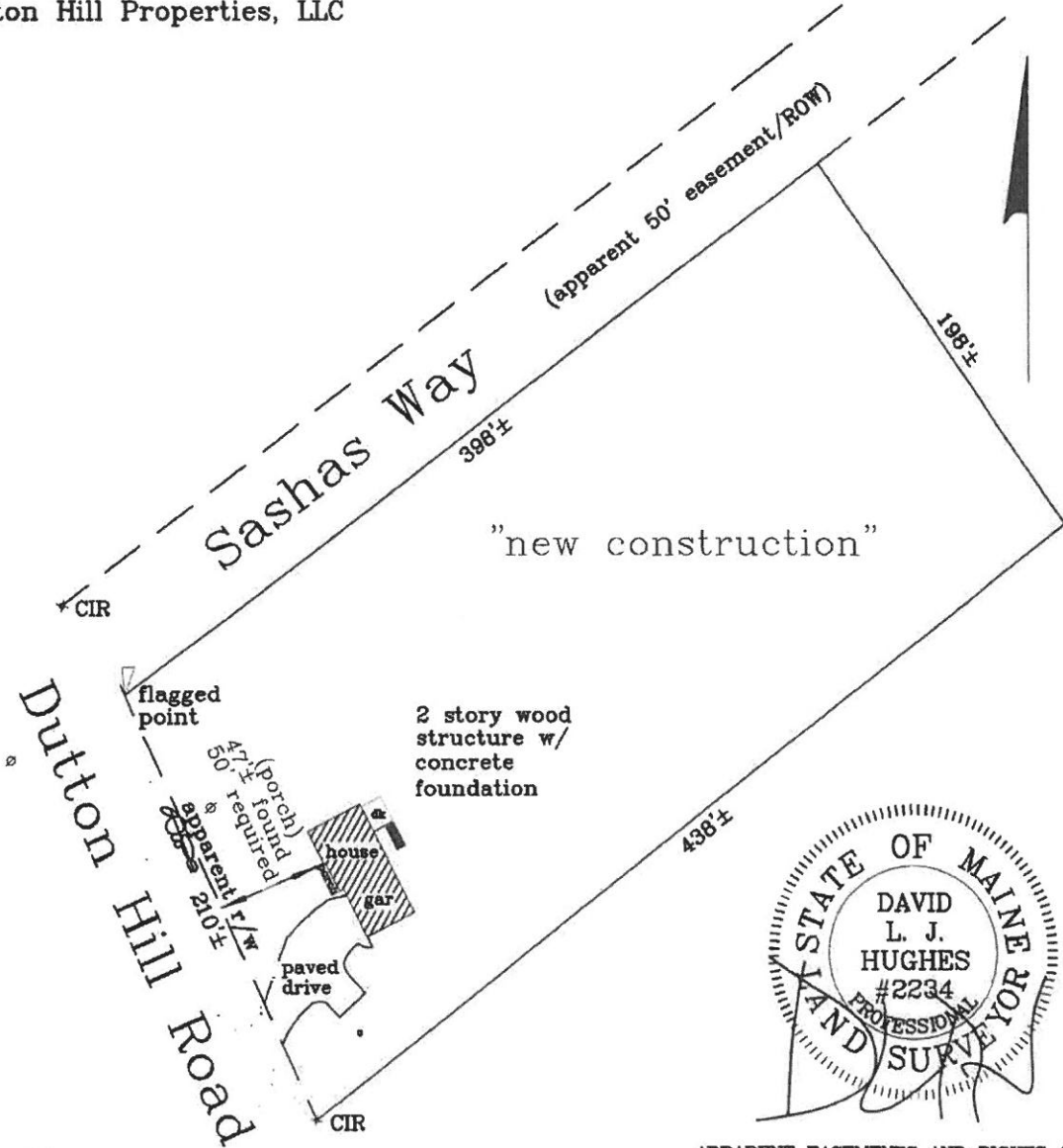
Inspection Date: 12-08-21

Buyer: David Jackson

Scale: 1" = 80'

Client File #: 2021-1330

Seller: Dutton Hill Properties, LLC



I HEREBY CERTIFY TO: Bay Area Title Services, Inc.; Mortgage Network, Inc. and its title insurer.
 Monuments found did not conflict with the deed description.
 The dwelling setbacks do ~~not~~ violate town zoning requirements. (Porch)
 As delineated on the Federal Emergency Management Agency Community Panel 230048-0015 A :
 The structure does not fall within the special flood hazard zone.
 The land does not fall within the special flood hazard zone.
 A wetlands study has not been performed.

APPARENT EASEMENTS AND RIGHTS OF WAY ARE SHOWN. OTHER ENCUMBRANCES, RECORDED OR NOT, MAY EXIST. THIS SKETCH WILL NOT REVEAL ABUTTING DEED CONFLICTS, IF ANY.

Livingston-Hughes
 Professional Land Surveyors
 88 Guinea Road
 Kennebunkport, Maine 04046
 207-967-9761 phone 207-967-4831 fax
 www.livingstonhughes.com

THIS SKETCH IS FOR MORTGAGE PURPOSES ONLY

104 Dutton Hill - Gray, ME

