

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

**Zoning Board of
Appeals Regular
Meeting**



7:00 PM

I. MEETING COMMENCES

Roll Call

II. MINUTES APPROVAL

- a. September 28, 2022 Meeting Minutes

III. NEW BUSINESS: PUBLIC HEARINGS

- a. **Bennett Administrative Appeal:**

Eric & Mollie Bennett have filed an administrative appeal regarding the exclusion of right-of-way being included in the calculations of minimum lot area as defined in chapter 402 of the Gray Town Ordinance for a proposed lot split for the construction of a duplex and its applicability to their lot located at 23 Woodcock Road, Gray Tax Map 44, Lot 32-7-5, located in a Medium Density Zoning District.

- b. **Babbitt Variance Request:**

Robert M. Babbitt is requesting a hardship variance for relief from Chapter 402 Gray Town Ordinance Section 402.7.9 Accessory Apartments Section 2 (f) and/or Section 5 minimum lot size for approximately 5,000sf on his property located at 51 North Raymond Road, Gray Tax Map 13, lot 107-38, located in a Lake Zoning District, Rural Residential & Agricultural District, and a Shoreland 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.*



**APPLICATION FOR ADMINISTRATIVE APPEAL
ZONING BOARD OF APPEALS
TOWN OF GRAY MAINE**

For Office Use Only 8/25/22
 Date Submitted: 8/25/22
 Date Paid/Initials: 8/25/22
 Amount Paid: \$ 300

CONTACT INFORMATION

Name	George Theborge	E-Mail Address	geotheb1@gmail.com
Street Address	358 Middle Rd	City/State/Zip	Falmouth, Maine 04105
Phone Number	207-310-0882	Work Phone	
Name of owner on property which is subject to appeal:		Eric Bennett	

APPEAL

Please describe in detail the facts surrounding this appeal, what you think is wrong about the decision which you are appealing, and what actions you want the board of appeals to take in this matter. If additional space is needed, please continue on a separate sheet of paper and attach it to this application.

Eric and Mollie Bennett own a duplex home on Woodcock Drive and are attempting to split their lot to create a home site for his brother Isaac Bennett who is getting married this year. The lot is located in the Medium Density District which was created by the Town in order to promote development in a designated growth area of the Comprehensive Plan. Where public water is available, the MD requires a minimum lot size of 40,000 sq. ft. and a minimum area per dwelling unit of 20,000 sq. ft.

The Bennett lot contains 90,000 sq. ft. based on the prior zoning in effect at the time the lot was created and contains enough lot area for the proposed split and the resulting second buildable lot under the new zoning. The problem is that the original conveyance done by a developer retained a 60-foot easement for future access and utilities along the southwest property line of the lot. That easement was effectively abandoned when the developer accessed the abutting land through the extension of Woodcock Drive to create the adjacent Stillwater Pines Subdivision that was approved by the Gray Planning Board on July 8, 2021. That approved plan established permanent open space along the entire southeast property line where the easement ends. Thus, the easement was effectively abandoned with the approval of that subdivision.

Our attorney prepared the attached release for the "lapsed" easement, but the developer of the subdivision was unwilling to sign the release and the Code Officer has directed us to file a variance application. We believe that the Board of Appeals has authority to grant administrative relief through interpretation and application of the zoning provisions to not require deduction of abandoned and lapsed easements that "lead to nowhere."

CERTIFICATION

I certify that the information contained in this application is true to the best of my knowledge and belief.

Applicant Signature	<i>George N. Theborge</i>	Date	August 25, 2022
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PERMISSION TO REPRESENT PROPERTY OWNER

PROPERTY & OWNER INFO

Property Location/Address	23 Woodcock Drive	Property Map/Lot	044 . 032 . 007 . 006
Zoning District	Medium Density	Lot Acreage	90,000 sq. ft.
Number of Dwelling Units	2	Deed Reference	Bk 34501 Pg 280
Owner Name	Eric Bennett	Owner Phone Number	207-749-1446

I **Eric Bennett**, residing at **23 Woodcock Drive, Apt B**
 _____, am the deeded owner of the above referenced property.

I authorize **George Thebarg** to represent me & the above referenced property regarding application for **23 Woodcock Drive**

Authorization extended to: (Check all that apply)

- Submit application for the Zoning Board of Appeals
- Present case at the scheduled Zoning Board of Appeals / Planning Board Meeting
- Other (please describe) _____

REPRESENTATIVE INFO

Name of Individual	George Thebarg	Email Address	geotheb1@gmail.com
Company Name (if applicable)		Primary Phone Number	207-310-0882
Mailing Address	358 Middle Rd	Alternate Phone Number	
Mailing City/State/Zip	Falmouth, Maine 04105	Other?	

Eric Bennett

Printed Name

Signature

August 25, 2022

Date

402.5.4 Districts Dimensional Requirements

Lots and structures in all districts shall meet or exceed the following minimum requirements.

TABLE 402.5.4 A - LOT DIMENSION & DENSITY STANDARDS					
ZONING DISTRICT	Minimum Lot Area	Minimum Street Frontage ^c	Minimum Area Per Dwelling Unit (Town Water)	Minimum Area Per Dwelling Unit (Private Well)	Maximum Impervious Surface
RRA	80,000 sq. ft.	200 ft.	40,000 sq. ft.	40,000 sq. ft.	N/A
LD	80,000 sq. ft.	200 ft.	N/A	80,000 sq. ft.	N/A
MD	40,000 sq. ft. ^a (80,000)	150 ft.	20,000 sq. ft.	40,000 sq. ft.	N/A

^a Lots in MD District not served by public water require 80,000 square feet of lot area.

^b Impervious surface and lot coverage in BT-2, WH-1, & WH-2 Districts can be increased to 30% of lot with Planning Board approval subject to the requirements of Section 402.8.4.L for recharge protection.

^c In accordance with Tables 402.5.4.A & B of the Zoning Ordinance, the Planning Board shall have the authority to reduce the minimum street frontage to fifty (50) percent of the required frontage but in no case less than sixty (60) feet of street frontage, whichever is greater, for lots in a Planning Board approved residential subdivision for one or more lots having street frontage only on a cul-de-sac. In such instances, street frontage shall be measured along the outside radius of the cul-de-sac. Lots which have any street frontage not on a cul-de-sac and as well as lots in a commercial subdivision shall not be eligible for reduced street frontage.

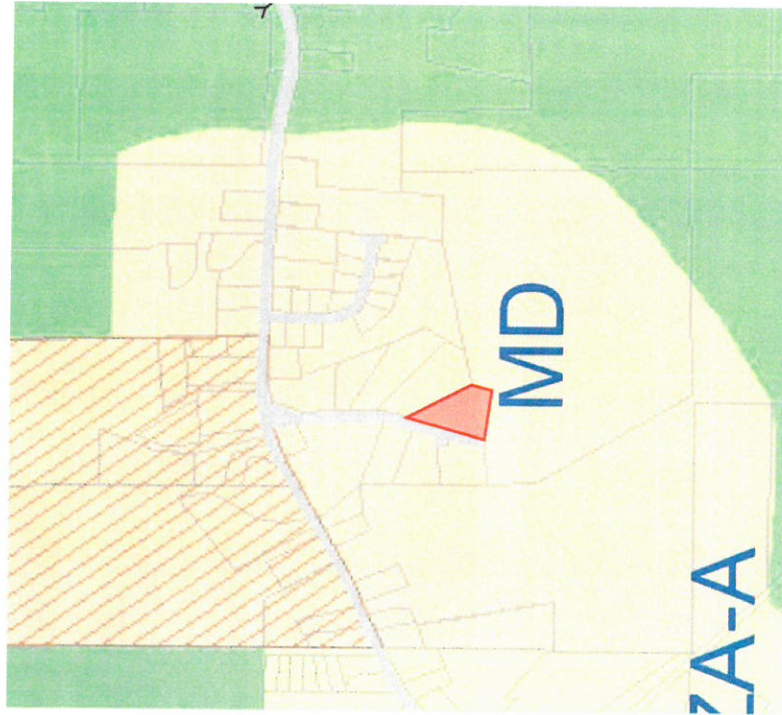


TABLE 402.5.4 B - BUILDING CONSTRUCTION SPATIAL STANDARDS

ZONING DISTRICT	Maximum Lot Coverage	Minimum Lot Line Setback Front	Minimum Lot Line Setback Side	Minimum Lot Line Setback Rear	Maximum Building Height
RRA	10 %	50 ft.	± 25 (15) ft.	50 ft.	35 ft.
LD	20 %	50 ft.	± 25 (15) ft.	50 ft.	35 ft.
MD	15 %	50 ft.	± 20 (15) ft.	20 ft.	35 ft.

^a Height requirements do not apply to flagpoles, chimneys, transmission towers, steeples, windmills or similar structures usually erected at a greater height than the principal building, however such accessory structures or appurtenances require a lot line setback distance of no less than its height.

^b Side setback for non-conforming lots of record in RRA, LD, MD, BD-1, WH-1, & WH-2 Districts is 1.5 feet.

^c Maximum building height in BD-1, BD-2, and C is 5.5 feet if public water is available and at least two sides of the building are accessible by fire apparatus.

^d Side setback in BT Districts is 10 feet if not abutting a residential property.

^e For any lot in a BD-2 District, the setback for any property line(s) that abuts another district, including BD-1, shall meet the minimum setback(s) for either the abutting district or BD-1, whichever is less restrictive.

Release of Lapsed Right of Way

This Release is given by and between Birchpoint Properties, LLC, a Maine limited liability company, and AHGrover, Inc., a Maine business corporation (hereinafter, collectively, "Developer"), and Eric W. Bennett and Mollie Bennett, of Gray, Maine, with a mailing address of _____, (hereinafter, collectively, "Bennett").

WHEREAS, Developer is the owner and developer of the Stillwater Pines Subdivision, a 13- lot subdivision, with potential additional phased development, situated in Gray, Maine and depicted on that certain subdivision plan of "Stillwater Pines Subdivision on Woodcock Drive, Gray, Maine" approved July 8, 2021 recorded at the Cumberland County Registry of Deeds (CCRD) in Plan Book 221, Page 432 ("Stillwater Pines Subdivision"); and

WHEREAS, Bennett is the owner of certain real estate, abutting and shown on said plan of Stillwater Pines Subdivision, more particularly described in a deed from Ronald A. Nevers et al dated November 30, 2017 recorded at the CCRD in Book 34501, Page 280 (the "Bennett Parcel"); and

WHEREAS, the Bennett Parcel is subject to a 60' easement for access and utilities along its entire southwesterly sideline, by virtue of a reservation made in a deed from Wade B. Trudel to Pole Star Properties, LLC dated January 12, 2005 and recorded at the CCRD in Book 22234, Page (the "Lapsed Right of Way"); and

WHEREAS, land formerly of said Wade B. Trudel that would have benefitted from the Lapsed Right of Way is now part of the Stillwater Pines Subdivision; and

WHEREAS, although the Lapsed Right of Way was reserved in 2005, upon information and belief it was never expressly conveyed thereafter for the benefit of any parcel, nor was it ever improved or developed in any way, nor depicted or referenced on the plan of Stillwater Pines Subdivision; and

WHEREAS, access and utilities from Woodcock Road to Stillwater Pines subdivision is not provided via the Lapsed Right of Way, but rather via an extension of Woodcock Road, as shown on said plan of Stillwater Pines Subdivision; and

WHEREAS, the Stillwater Pines Subdivision terms and conditions of approval call for 3.09 acres of "Open Space" at the southerly sideline of the Bennett Parcel where the Lapsed Right of Way would have terminated if developed, making development of the Lapsed Right of Way impossible; and

WHEREAS, the existence of the reservation of the Lapsed Right of Way in the description of the Bennett Parcel creates a cloud on title; and

WHEREAS, as the owner of the Stillwater Pines subdivision, Developer is the party who may hold inchoate and inexercisable rights in the Lapsed Right of Way;

NOW THEREFORE,

Birchpoint Properties, LLC and AHGrover, Inc. hereby release to Eric W. Bennett and Mollie Bennett, any and all right, title, interest, and development rights in and to that certain 60' easement that was reserved for purposes of ingress and egress and installation of utilities, along the entire Southwesterly side line of the parcel described in that deed dated November 31, 2017 recorded at the CCRD in Book 34501, Page 280.

IN WITNESS WHEREOF, the Birchpoint Properties, LLC and AHGrover, Inc. have caused this instrument to be signed and sealed, this _____ day of _____, 2021

BIRCHPOINT PROPERTIES, LLC

Witness

By:
Its:

AHGrover, Inc.

Witness

By:
Its:

STATE OF MAINE
COUNTY OF CUMBERLAND

Date:

Personally appeared before me the above-named _____ in his/her capacity as _____ of the company and acknowledged the foregoing instrument to be his/her own free act and deed and the free act and deed of the company.

Notary Public
Print Name:
My commission expires:

SCH, LLC
87A OCEAN STREET
SOUTH PORTLAND, MAINE 04106
(207) 805-1332

March 28, 2022

Via Email: ewbennett57@gmail.com

Eric Bennett
23 Woodcock Road
Gray, Maine 04039

RE: Unused Easement at 23 Woodcock Road Gray

Dear Eric:

You asked me to review and provide some analysis regarding a vaguely drafted, unused easement referenced in your deed to 23 Woodcock Road, Gray that appears to have been abandoned. Your lot now contains in excess of 90,000 square feet and sufficient frontage to divide it to build another residential structure, but only if you can include the area subject to this unused easement in your calculations. Your plans to develop your lot do not include building within the easement area, but you need to count the square footage for density purposes.

This letter does not constitute a zoning or legal opinion letter, nor a title opinion, but reflects my review and analysis of the problematic title history and practical implications of the current development of the properties involved, which could indicate that the easement was abandoned. I did not conduct a title search, but reviewed the relevant deeds in your chain of title provided by your surveyor, including the recorded subdivision plan called, "Stillwater Pines Subdivision on Woodcock Drive, Gray, Maine" approved in July 2021 and recorded at the Cumberland County Registry of Deeds (CCRD) in Plan Book 221, Page 432 (the "Stillwater Pines" plan).

The easement clouding your title seems to have first been reserved in a 2005 deed from Wade B. Trudel to Pole Star Properties LLC recorded at the CCRD in Book 22234, Page 59. A cursory look at the registry index for Mr. Trudel during this time frame reveals that he was an active property developer and was conveying and reserving many lots and parcels of land at that time. The easement in your deed is not specific, does not identify the benefitted parcel, and, because does not appear to have been affirmatively granted in a dominant estate's chain of title, arguably may have been abandoned by Mr. Trudel at some point, replaced by other options. Further, unlike other rights of way created by Mr. Trudel in this time frame, the easement in your deed does not include the right to pave or improve for purposes of meeting any specific town road standards, nor does it give an indication of the number or type of potential users. As such, its intended utility is unclear.

It's placement is also problematic. We can place the approximate location of this easement because it is described as running "along the entire Southwesterly sideline of [your property] from the said Woodcock Road to the stone wall and land of the said Taylor." (Your deed recorded at CCRD Book 34501, Page 286). I did not do any title work to determine where the land of Taylor lied, but Stillwater Pines abuts

your property along these side lines and that plan shows that there is now a "50' Forested Buffer" along the southwesterly sideline of your lot and 3.09 acres of permanently dedicated "Open Space" along the southerly boundary where this easement would otherwise terminate. Notes on the Stillwater Pines subdivision plan indicate that, as a condition of approval for the 13 lots thereon, its developer restricted the location of trails and rights of way within the buffer zones (Note 21 on said plan) and restricted the use of the "Open Space" to those uses set out in Section 401.13.13 of the Town of Gray zoning ordinances (Note 22 on said plan.) While the definition of "Open Space" in the zoning ordinance does allow some community use, like playgrounds or ball fields, there is no reservation or indication made on the Stillwater Pines plan that access to that Open Space would be over an abutter's lot. Rather, the Stillwater Pines plan depicts an extension of Woodcock Road as the natural and practical way to provide access to any further phases or developments at this subdivision.

The history of nonuse, non-inclusion in dominant parcel deeds, coupled with its omission from the Stillwater Pines plan *and* the surrender and permanent dedication of surrounding property to open space are indications that the easement in your deed may have been abandoned. Further, abandoned or not, in a practical sense, it seems unlikely that the easement in your deed would – or could – be improved without additional town approvals, revisions to the subdivision plans, and possibly consents from the lot owners, if it is possible at all. In short, to the extent that any inchoate rights to use or develop this easement did exist, those rights might have been surrendered when the only possible interested holder permanently dedicated the surrounding land to forested and open space uses.

All of this is not to say that I think your title can be cleared of this encumbrance without an express release or a court order. However, I would hope that the history and state of facts as they are now, would constitute color of title in that easement area, sufficient for the limited purposes of including its area when calculating acreage to meet space and bulk zoning requirements.

I hope this is helpful and please do not hesitate to contact me if I can provide any further explanation or information.

Sincerely,

Susan Hasson

Susan Hasson, JD



VARIANCE APPLICATION-HARDSHIP
ZONING BOARD OF APPEALS
TOWN OF GRAY MAINE

For Office Use Only
Date Submitted: 9/1/22
Tent. Sched. for: 9/28/22
Amount Paid: \$300

PROPERTY INFORMATION

Property Location/Address	51 North Raymond Rd.	Property Map/Lot	13 . 107 . 38 .
Zoning District	LR/LAKE/RRA	Lot Acreage	1.26 A
Owner Name	Robert Babbitt	Owner Phone Number	207-415-3662
Number of Dwelling Units	1 w/ proposed Accy Apt		

APPLICANT

Name (IF different than owner)		Email Address	
Mailing Address	P.O. Box 10248	Contact Phone Number	
Mailing City/State/Zip	Portland ME. 04104	Alternate Phone Number	

VARIANCE INFORMATION

Per Gray Zoning Ordinance 402.9.2.B.2:

Variance Appeals: To hear and decide, upon appeal, in specific cases where a relaxation of the terms of this Ordinance would not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this Ordinance would result in unnecessary or undue hardship. A variance may be granted by the Board only where strict application of the Ordinance, or a provision thereof, to the petitioner and his/her property would cause undue hardship. The words "undue hardship" mean:

- That the land in question cannot yield a reasonable return unless a variance is granted;
- That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- That the granting of a variance will not alter the essential character of the locality; and
- That the hardship is not the result of action taken by the applicant or a prior owner.

Establishment or expansion of a use or structure otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the Zoning District or uses in adjoining Zoning Districts. The Board of Appeals shall grant a variance only by concurring vote of at least three (3) members and in so doing may prescribe conditions and safeguards as are appropriate under this Ordinance.

Describe request (description may be attached separately). Survey of property required to be attached.

	Current Requirement			Currently Existing			Proposed		
Front Setback (LR)	25			25			25		
Rear Setback (RRA LAKE)	50			50			50		
Side Setback LR/LAKE	10	25		10	25		10	25	
Other Setback (describe)	STRUCTURES OUTSIDE			SHORELAND ZONE -			250' FROM NHWL		
Max. Lot Coverage	LR	LAKE	RRA	LR	LAKE	RRA	LR	LAKE	RRA
	20%	20%	10%	NO CHANGE	± 6%	NO CHANGE	NO CHANGE	± 7%	NO CHANGE
Max. Impervious Surface	LR	LAKE	RRA	LR	LAKE	RRA	LR	LAKE	RRA
	20%	N/A	N/A	NO CHANGE	N/A	N/A	NO CHANGE	N/A	N/A
Min. Lot Area	30,000			± 54,886			± 54,886		
Min. Street Frontage	200'			± 115'			± 115'		
Other (describe)	N/A			N/A			N/A		

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

- a. That the land in question cannot yield a reasonable return unless a variance is granted;
- b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- c. That the granting of a variance will not alter the essential character of the locality; and
- d. That the hardship is not the result of action taken by the applicant or a prior owner.

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

Robert Babbitt

Date

8-7-22

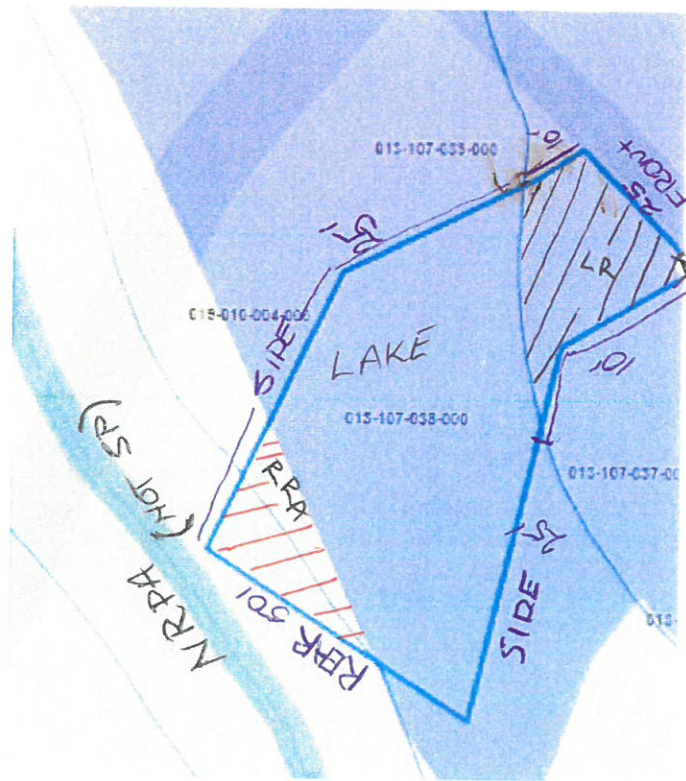
1. The hardship variance is being requested because the variance through practical difficulty is not allowed on a lot with partial shoreland zoning per state law.
2. Though the property only consists of 1.26 acres it is located in three different zones and is a non-conforming lot.
3. The proposed building is located on the back side of the house and will not even be seen from the road. See proposed garage on exhibit A.
4. The property is a non-conforming lot and does not contain the appropriate square footage.

54,886 SF

1.26 A.

60,000 = 75%
of 80,000

51 N. RAYMOND



Acey Dwelling Unit



Proposed
Apt + Garage 20x24



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS

THIS IS NOT A BOUNDARY SURVEY

MORTGAGE INSPECTION OF: DEED BOOK 9761 PAGE 4 COUNTY Cumberland
PLAN BOOK --- PAGE --- LOT ---

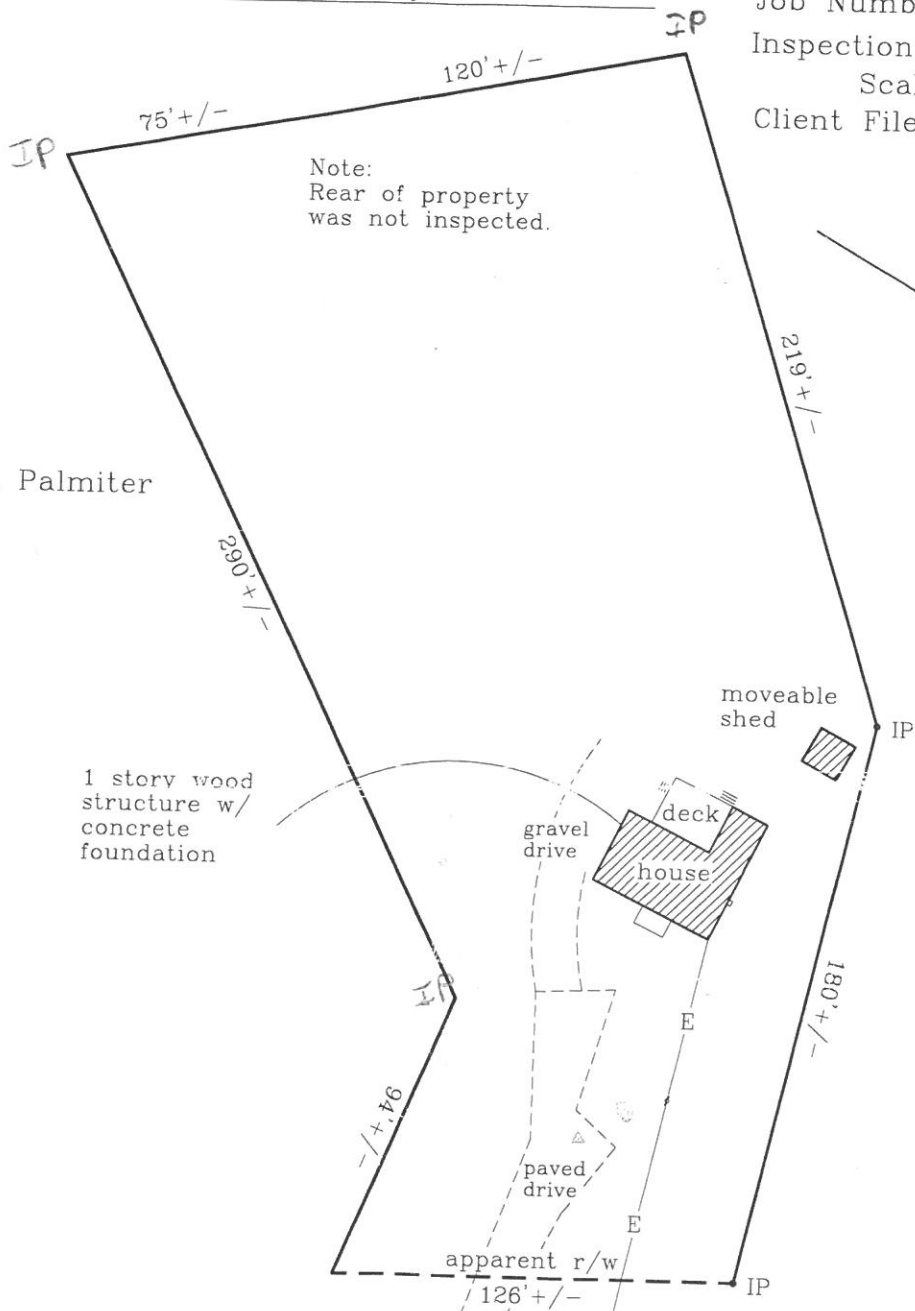
ADDRESS: 51 North Raymond Road, Gray, Maine

Job Number: 283-70

Inspection Date: 6-08-00

Scale: 1" = 60'

Client File#: 00030542



Owners: Tami J. Palmiter

[Handwritten signature]
to Rte. 26

No. Raymond Rd.

I HEREBY CERTIFY TO: Northeast Land Title; Coastal Bank
and its title insurer.

Monuments found did not conflict with the deed description.

The dwelling setbacks do not violate town zoning requirements.

As delineated on the Federal Emergency Management Agency Community Panel: 230048-0005 A

The structure does not fall within the special flood hazard zone.

The land does not fall within the special flood hazard zone.

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.

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Livingston - Hughes
Professional Land Surveyors
88 Guinea Road
Kennebunkport - Maine 04046
207-967-9761 phone/fax

THIS SKETCH IS FOR MORTGAGE PURPOSES ONLY