



PLANNING BOARD REPORT PORTLAND, MAINE

Text Amendment to Section 14-473 in reference to Section 14-403
As Proposed by Gary Wood, Former Corporation Counsel
City of Portland

Submitted to: Portland Planning Board: Public Hearing Date: October 29, 2012	Prepared by: Shukria Wiar Date: October 25, 2012 Planning Board Report Number: 49-12
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I. INTRODUCTION

Gary Wood, Corporation Counsel, has drafted language for a text amendment to Sections 14-473, Variances, of the Zoning Ordinance, which will reference Section 14-403. Section 14-403 refers to street access for unimproved streets; the following is an excerpt from the latter section:

For a lot abutting any portion of a street which is unimproved or improved but not permanently paved, that portion which abuts the lot, and any like portion between such portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavements, curbs and, if located on a designated school walking route, sidewalks, in accordance with the minimum technical standards promulgated by the public works authority pursuant to section 14-498(a) of article IV of this chapter.

In Mr. Wood's memo to the City Council dated August 21, 2012 (Attachment 2), he states section 14-403 "was created to prevent individuals who own lots on paper street from developing substandard access ways or driveways along the right-of-way beneath the paper street such that the City would end up with a number of residential units accessible only by driveways or private roads down which public safety vehicles might not safely pass and that the City might ultimately be asked to eventually take over and improve to City standards".

The proposed text amendment is drafted in response to a recent variance granted by the Zoning Board of Appeals, which relieved a property owner from extending a street city standard for access to a new home. "Paper" streets refer to right-of ways that have been designated for access ways on approved subdivision plans but has not been built to City standards or accepted by the City as city streets.

The first reading for the text amendment language with the City Council was on September 5, 2012; the second reading was on September 19, 2012. At the second reading, the City Council referred the text amendment to the Planning Board for a recommendation since it is a change to the Land Use Code.

II. PROPOSED TEXT AMENDMENT

The proposed text amendment contains two parts (see Mr. Woods assessment, Attachment 2) The substantive change is the text amendment is to prohibit the Board of Appeals from granting variances from the standards in Section 14-403 by adding subparagraph (c)(4). This is proposed in order to limit the Board of Appeals authority to grant variances from Section 14-403, and includes this provision with the specific limitations already articulated in subparagraph (c)(4). Mr. Wood also proposed an amendment to the opening paragraph which adds subparagraph (c)4 to the already referenced subparagraph (c)(3). The omission of a reference to (c)(4) may have

been an oversight according to Mr. Wood.

A variance was granted by the Board of Appeals from Section 14-403 on June 12, 2012 (Attachment 4). This decision relieved a property owner from constructing a street for access to a proposed single family home. This decision does set a precedence for future variance that would defeat the intent of Section 14-403 which to build city street to city standards.

Below is the proposed language in red, the whole section is included in Attachment 3:

Sec. 14-473. Variances.

(a) *Authority.* Except as otherwise expressly provided in subsection (c)(3) and (c) (4), the board of appeals may authorize variances from the provisions of this article as meet the requirements of this division including but not limited to use variance, dwelling unit conversion, space and bulk such as lot size, density and side yard, parking, loading and signs.

...

(c) *Conditions for variances:*

...

4. *Specified variances prohibited:*

...

h. No variance shall be granted from the requirements in Section 14-403.

III. COMPREHENSIVE PLAN

Section 14-403 was enacted to ensure safe passage for emergency vehicles to homes within the city and thus to ensure the public health and welfare. The Comprehensive Plan includes the transportation goals and polices from A Time of Change: Portland Transportation Plan, which includes the following:

- Achieve a transportation system appropriately structured and designed to safely and effectively move goods and people.
- The housing goals support the creation of all types of housing within the city. Housing: Sustaining Portland's Future, specifically states, "Ensure the integrity and economic value of Portland's neighborhoods."

IV. PLANNING BOARD MOTIONS

Based on the material provides in the Planning Report # 49-12, public testimony, a review of applicable policies, and other information, the Planning Board finds that the proposed text amendment to Section 14-473 to incorporate subparagraph (c)(4) and the language "No variance shall be granted from the requirements in Section 14-403" as subparagraph (c)(4)(h) [is/ is not] consistent with the Comprehensive Plan and [does/ does not] recommend adoption of the proposed amendments to the City Council.

ATTACHMENTS

PLANNING BOARD MEMO ATTACHMENTS

1. City Council Order
2. Gary Wood's memorandum dated August 21, 2012
3. Excerpt from Section 14-473
4. Certificate of Variance Approval

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Philip Saucier
Sara Moppin-secretary
Matthew Morgan
Gordon Smith-chair
Mark Bower
William Getz
Elyse Segovias

June 29, 2012

Robert Lightfoot
547 Head Tide Road
Whitefield, ME 04353

RE: 1 South Grafton Street & East Kidder Street
CBL: 169 E028, 029, 032, & 033
ZONE: R-5

Dear Mr. Lightfoot,

At the June 21, 2012 meeting, the Zoning Board of Appeals voted 4-0 to grant the Variance Appeal to build a 16' wide driveway to access the rear of the lot that fronts on East Kidder Street. The appeal was granted with five conditions. The driveway must be built to at least 16 feet in width. Granite curbing does not need to be installed. The driveway must be built to the dimensional layout provided in the Variance Appeal application on page 7. All the other provisions in 14-403 must be complied with. The variance is good for two years from the date of the hearing before it expires. I am enclosing a cop of the Board's decision.

I am also enclosing the Certificate of Variance Approval. **The original must be recorded in the Cumberland County Registry of Deeds within 90 days of June 21, 2012, when it was signed.** Failure to record the Certificate will result in it being voided. Our office must be provided with a copy of the recorded Certificate of Variance showing the recorded book and page.

You will also find a receipt for the payment received on June 19, 2012. The fees for you appeal are now paid in full.

Now that the Variance Appeal has been approved, you need to apply for a Level I Minor Residential Development Review Application to split the existing lot and develop the new rear lot. The permit to develop the lot will not be issued until we receive a copy of the recorded Certificate of Variance. The building permit must be issued and construction begun within two years of the date of the hearing, June 21, 2012, referenced under section 14-473(e), or the Zoning Board approval will expire. I have enclosed the Level I Minor Residential Development Review Application (building permit).

Appeals from decisions of the Board may be filed in Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

Should you have any questions please feel free to contact me at 207-874-8709.

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

"Undue Hardship" Variance Appeal

DECISION

Date of public hearing: June 21, 2012

Name and address of applicant: Robert B. Lightfoot
547 Head Tide Road
Whitefield, ME 04353

Location of property under appeal: 1 South Grafton Street – 0 East Kidder St.

For the Record:

Names and addresses of witnesses (proponents, opponents and others):

- ① Robert B. Lightfoot, 547 Head Tide Rd., Whitefield, ME
- ② Michael Messer, 42 Swan St., Portland, ME
- ③ Michael Farmer, for City of Portland Engineering Depart.
- ④ Jim Drake
Exhibits admitted (e.g. renderings, reports, etc.):
→ 160 Presumpscot St., Portland, ME
- ① Variance Appeal Application
- ② Letter from David Margolis-Pineo, Deputy City Engineer
- ③ Map of 1 South Grafton / East Kidder

Findings of Fact and Conclusions of Law:

The applicant is requesting an "undue hardship" variance from section 14-403(b) of the Portland Land Use Code. That section requires that if a vacant lot is to be developed on an unimproved street, the part that abuts the lot and any part between the lot and the "nearest permanently paved street" needs to be built to city standards. The applicant intends to build a 16' wide road (driveway) to access the proposed rear lot and is requesting a variance from building the street to city standards.

"Undue Hardship" Variance standard pursuant to Portland City Code §14-473(c)(1):

1. The land in question cannot yield a reasonable return unless a variance is granted. (Note: "Failure to yield a 'reasonable return' means 'the practical loss of all beneficial use of the land.' . . . Reasonable return does not mean maximum return." *Rowe v. City of South Portland*, 730 A.2d 673, 675 (Me. 1999) (citations omitted).)

Satisfied X Not Satisfied

Reason and supporting facts:

The price of the lot is less than the cost that would be imposed if variance was not granted.

There is no practical value left in the land beyond this street b/c no where else for the street to extend. The value of the lot is directly impacted

2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

by building a road.

Satisfied X Not Satisfied

Reason and supporting facts:

Other lots have similar driveways, but are on the city-approved streets. Whereas this lot is the only completely off the city-approved streets.

3. The granting of a variance will not alter the essential character of the locality.

Satisfied X Not Satisfied

Reason and supporting facts:

There are other homes that have similar driveways, but are on the city-approved streets. Others have driveways being merely extended.

4. The hardship is not the result of action taken by the applicant or a prior owner.

Satisfied X Not Satisfied

Reason and supporting facts:

The action being sought is the extension of the street to access the back lot, and build upon that lot.

Conclusion: (check one)

Option 1: The Board finds that the standards described above (1 through 4) have been satisfied and therefore GRANTS the application.

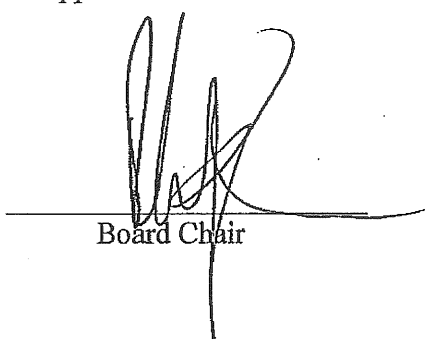
Option 2: The Board finds that while the standards described above (1 through 4) have been satisfied, certain additional conditions must be imposed to minimize adverse effects on other property in the neighborhood, and therefore GRANTS the application SUBJECT TO THE FOLLOWING CONDITIONS:

① See attached.

Option 3: The Board finds that the standards described above (1 through 4) have NOT all been satisfied and therefore DENIES the application.

Dated:

June 21, 2012


Board Chair

Conditions for Robert B. Lightfoot
"Cerule Hardship" Variance Appeal

- ① Applicant must build driveway to at least 16' in width.
- ② Applicant need not install granite curbing.
- ③ Applicant must build driveway to the dimensional layout provided in his Variance Appeal Application on page 7.
- ④ Applicant must comply with all other provisions in 14-403
- ⑤ Applicant has an extended 2 year period before the variance expires.

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

ZONING BOARD APPEAL DECISION

To: City Clerk
From: Marge Schmuckal, Zoning Administrator
Date: June 22, 2012
RE: Action taken by the Zoning Board of Appeals on June 21, 2012.

Members Present: William Getz, Phil Saucier (acting chair), Elyse Segovias, and Matthew Morgan (acting secretary)

Members Absent: Gordon Smith, Mark Bower and Sara Moppin

1. New Business

A. Interpretation Appeal:

Sumner Court & R 53-55 Cumberland Avenue, Sumner Court Land Company, LLC, owner, Tax Map 013, Block K, Lots 049 & 071, R-6 Residential Zone: The applicant is challenging the Zoning Administrator's determination that the two lots are not lots of record and therefore have merged into one lot with a total square footage of 12,479 square feet. Since the lot is over 10,000 square feet, the applicant cannot develop the property under the criteria of the Small Residential Lot Development in the R-6 zone [section 14-139(2)]. Representing the appeal is the owner Ronald Gan and his attorney Thomas Jewell. **The Zoning Board of Appeals voted 4-0 to deny the appeal upholding the Zoning Administrator's determination that the property has merged into one lot.**

B. Practical Difficulty Appeal:

Sumner Court & R 53-55 Cumberland Avenue, Sumner Court Land Company, LLC, owner, Tax Map 013, Block K, Lots 049 & 071, R-6 Residential Zone: The applicant is proposing to develop this vacant lot. Section 14-139(1)(a) requires that a lot have a minimum street frontage of forty feet. The lot has twelve feet of street frontage on North Street at the end of Sumner Court. The applicant is requesting that the minimum required street frontage be reduced from forty feet to twelve feet. Representing the appeal is the owner Ronald Gan and his attorney Thomas Jewell. **The Zoning Board of Appeals voted 4-0 to postpone the Practical Difficulty Appeal until September 6, 2012.**

C. Variance Appeal:

1 South Grafton Street & East Kidder Street, Robert B. Lightfoot, owner, Tax Map 169, Block E, Lots 028, 029, 032 & 033, R-5 Residential Zone: The applicant would like to split his existing lot to create a buildable lot in the rear of the property with frontage on

East Kidder Street. This section of East Kidder Street is unimproved. Section 14-403(b) requires that if a vacant lot is to be developed on an unimproved street, the part that abuts the lot and any part between the lot and the "nearest permanently paved street" needs to be built to city standards. The appellant is requesting a variance from building the street to city standards. The appellant is proposing to build a 16' wide road (driveway) to access the proposed rear lot. Representing the appeal is the owner. **The Zoning Board of Appeals voted 4-0 to grant the appeal with the following conditions. The applicant must build the driveway to at least 16' in width. The applicant does not need to install granite curbing. The applicant must build the driveway to the dimensional layout provided on his Variance Appeal application on page 7. The applicant must comply with all other provisions in 14-403. The applicant has an extended two year period before the variance expires.**

Enclosure:

Decisions for Agenda from June 21, 2012

One DVD

CC: Mark Rees, City Manager

Greg Mitchell, Acting Director, Planning & Urban Development

Alex Jaegerman, Planning Division

Mary Davis, Housing and Neighborhood Services Division



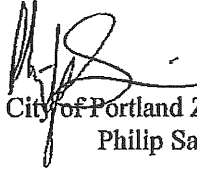
CITY OF PORTLAND

CERTIFICATE OF VARIANCE APPROVAL

I, Philip Saucier, the duly appointed Chair of the Board of Appeals for the City of Portland, Cumberland County and State of Maine, hereby certify that on the 21 day of June, 2012, the following variance was granted pursuant to the provisions of 30-A M.R.S.A. Section 4353(5) and the City of Portland's Code of Ordinances.


1. **Current Property Owner: Robert B. Lightfoot**
2. **Property: 1 South Grafton Street – 0 East Kidder Street, Portland, ME CBL: 169-E-28, 29, 32, 33**
Cumberland County Registry of Deeds, Book: 4500 Page: 168
Last recorded deed in chain of Title: 9/25/1979
3. **Variance and Conditions of Variance:**
To grant relief from section 14-403(b) of the Land Use Zoning Ordinance to allow a 16 foot wide driveway road on East Kidder Street to access a proposed rear lot instead of constructing East Kidder Street up to City standards with the following conditions:
 1. Applicant must build driveway to at least 16' in width
 2. Applicant need not install granite curbing
 3. Applicant must build driveway to the dimensional layout provided in his variance appeal application (pg 7)
 4. Applicant must comply with all other provisions in 14-403
 5. Applicant has an extended two (2) year period before the variance expires

IN WITNESS WHEREOF, I have hereto set my hand and seal this 21st day of June, 2012


, Acting Chair of
City of Portland Zoning Board,
Philip Saucier
(Printed or Typed Name)

STATE OF MAINE
Cumberland, ss.

Then personally appeared the above-named Philip Saucier and acknowledged the above certificate to be his free act and deed in his capacity as Chairman of the Portland Board of Appeals, with his signature witnessed on June, 29, 2012


(Printed or Typed Name)
Notary Public

Margaret Schmuckal My term expires June 28, 2019

PURSUANT TO 30-A M.R.S.A. SECTION 4353(5), THIS CERTIFICATE MUST BE RECORDED BY THE PROPERTY OWNER IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS WITHIN 90 DAYS FROM FINAL WRITTEN APPROVAL FOR THE VARIANCE TO BE VALID. FURTHERMORE, THIS VARIANCE IS SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 14-474 OF THE CITY OF PORTLAND'S CODE OF ORDINANCES.

Members present: Philip Saucier - Elyse Segovids, Matthew Magan
William Gertz
CITY OF PORTLAND, MAINE
Acting Sec.

Absent: Gordon Smith - Sam Moppin Mark Bowser

ZONING BOARD OF APPEALS

APPEAL AGENDA

started 6:30pm -

The Board of Appeals will hold a public hearing on Thursday, June 21, 2012 at 6:30 p.m. on the second floor in Room 209 at Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following Appeals:

1. New Business

A. Interpretation Appeal:

Sumner Court & R 53-55 Cumberland Avenue, Sumner Court Land Company, LLC, owner, Tax Map 013, Block K, Lots 049 & 071, R-6 Residential Zone: The applicant is challenging the Zoning Administrator's determination that the two lots are not lots of record and therefore have merged into one lot with a total square footage of 12,479 square feet. Since the lot is over 10,000 square feet, the applicant cannot develop the property under the criteria of the Small Residential Lot Development in the R-6 zone [section 14-139(2)]. Representing the appeal is the owner Ronald Gan and his attorney Thomas Jewell.

Denied
4-0

B. Practical Difficulty Appeal:

Sumner Court & R 53-55 Cumberland Avenue, Sumner Court Land Company, LLC, owner, Tax Map 013, Block K, Lots 049 & 071, R-6 Residential Zone: The applicant is proposing to develop this vacant lot. Section 14-139(1)(a) requires that a lot have a minimum street frontage of forty feet. The lot has twelve feet of street frontage on North Street at the end of Sumner Court. The applicant is requesting that the minimum required street frontage be reduced from forty feet to twelve feet. Representing the appeal is the owner Ronald Gan and his attorney Thomas Jewell.

Postpone
for 2 months
1st meet
Sept 6th
4-0

C. Variance Appeal:

1 South Grafton Street & East Kidder Street, Robert B. Lightfoot, owner, Tax Map 169, Block E, Lots 028, 029, 032 & 033, R-5 Residential Zone: The applicant would like to split his existing lot to create a buildable lot in the rear of the property with frontage on East Kidder Street. This section of East Kidder Street is unimproved. Section 14-403(b) requires that if a vacant lot is to be developed on an unimproved street, the part that abuts the lot and any part between the lot and the "nearest permanently paved street" needs to be built to city standards. The appellant is requesting a variance from building the street to city standards. The appellant is proposing to build a 16' wide road (driveway) to access the proposed rear lot. Representing the appeal is the owner.

Approved
with conditions
4-0

2. Adjournment:

9:35



City of Portland, Maine
 Department of Planning and Urban Development
 Zoning Board of Appeals
 Variance Appeal Application

Applicant Information:

ROBERT B. LIGHTFOOT
 Name

Business Name

547 HEAD TIDE RD

Address

WHITEFIELD, ME 04353

(207) 549-4468

Telephone

Fax

Applicant's Right, Title or Interest in Subject Property

OWNER

(e.g. owner, purchaser, etc.):

Current Zoning Designation: RS

Existing Use of Property:

Vacant Lot

Subject Property Information:

NAP 169E Lots 28, 29, 30 & 33
 Property Address

1 SOUTH GRAFTON ST. - O'Elkider St.
 Assessor's Reference (Chart-Block-Lot)

Property Owner (if different):

SAME

Name

Address

Telephone

Fax

Variance from Section 14 - 403-b

RECEIVED

JUN - 4 2012

Dept. of Building Inspections
 City of Portland Maine

NOTE: If site plan approval is required, attach preliminary or final site plan.

The undersigned hereby makes application for a variance as above described, and certified that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

Robert B. Lightfoot

Signature of Applicant

6/4/12

Date

Except as specifically provided by the Ordinance, a variance may be granted by the Board only where strict application of the Ordinance, or a provision thereof, to the petitioner and his property, would cause undue hardship. In order for the Board to find "undue hardship", the applicant must answer ALL of the following questions, and provided supporting evidence. The Board will consider this evidence in deciding whether to grant the appeal.

1. The land in question cannot yield a reasonable return unless a variance is granted. [Note: "Failure to yield a 'reasonable return' means 'the practical loss of all beneficial use of the land.'Reasonable return does not mean maximum return." *Rowe v. City of South Portland*, 730 A.2d 673, 675 (Me 1999) (citations omitted).]

Satisfied

Not Satisfied

Reason and supporting facts:

AT 300 DOLLARS PER FOOT, THE EXTENSION OF THE EAST KIDDER RD. WOULD BE APPROXIMATELY \$51,000 PLUS EXTENDING TO PUBLIC WATER AND SEWER LINES. THE VALUE OF THE PROPERTY IN THE CURRENT MARKET IS \$45,000 TO \$55,000 THOUSAND. THE CITY SPECIFIED RD WITH UTILITIES EXTENDED WOULD FAR EXCEED THE VALUE OF THE LOT.

2. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.

Satisfied

Not Satisfied

Reason and supporting facts:

THERE IS ALREADY A DRIVEWAY INTO PROPERTY A BACK ABUTTER IS CONDO DEVELOPMENT WHICH WILL NEVER ALLOW EAST KIDDER TO CONNECT. TO THE RIGHT OF DRIVEWAY IS INDUSTRIAL BOWLING ACCESSED FROM PRESUMSCOT Rd. AND WILL NEVER BE ACCESSED THROUGH.

3. The granting of a variance will not alter the essential character of the locality.

Satisfied

Not Satisfied

Reason and supporting facts:

THE SMALLER ROAD TO ACCESS LOT WILL APPEAR TO BE DRIVEWAY. TWO PARKING SPACES WILL BE ADDED TO NEW RD. FOR PARKING FOR 1 SOUTH GRAFTON, NEIGHBORHOOD WILL ~~KEEP~~ EXISTING CHARACTER.

4. The hardship is not the result of action taken by the applicant or a prior owner.

Satisfied

Not Satisfied

Reason and supporting facts:

OWNER HAS OWNED PROPERTY FOR 15+ YEARS AND WOULD LIKE TO ACCESS AND UTILIZE LOT 28/29 FOR HOUSING.

Robert B. Lightfoot
547 Head Tide Rd.
Whitefield, Maine 04353
207-549-4468

Department of Planning & Urban Development
Zoning Board of Appeals

Dear Members,

The application is a request to receive a variance from the Zoning Board of Appeals to be able to access lot 28/29 on city Map 169 with a 16' road rather than a city specified road. The smaller road would only service lot 28/29 and no other property. Beyond lot 28/29 is a gully and private road that leads to a condominium development. To the right of the new road is a fence and an industrial building that is accessed off Presumpscot Rd.

City water and sewer would be extended up new road to lot 28/29.

Having 8400 square feet of land, an additional request would be to construct a two unit apartment building on lot 28/29. Minimum required square footage is 6000.

To continue East Kidder St. and the associated costs to do so would far exceed the value of lot 28/29 and would render it economically incapable to do and would then remain vacant land.

Sincerely,

Robert B. Lightfoot

THIS IS NOT A BOUNDARY SURVEY

MORTGAGE LOAN INSPECTION PLAN

1 So. GRAFTON ST.
PORTLAND ME.

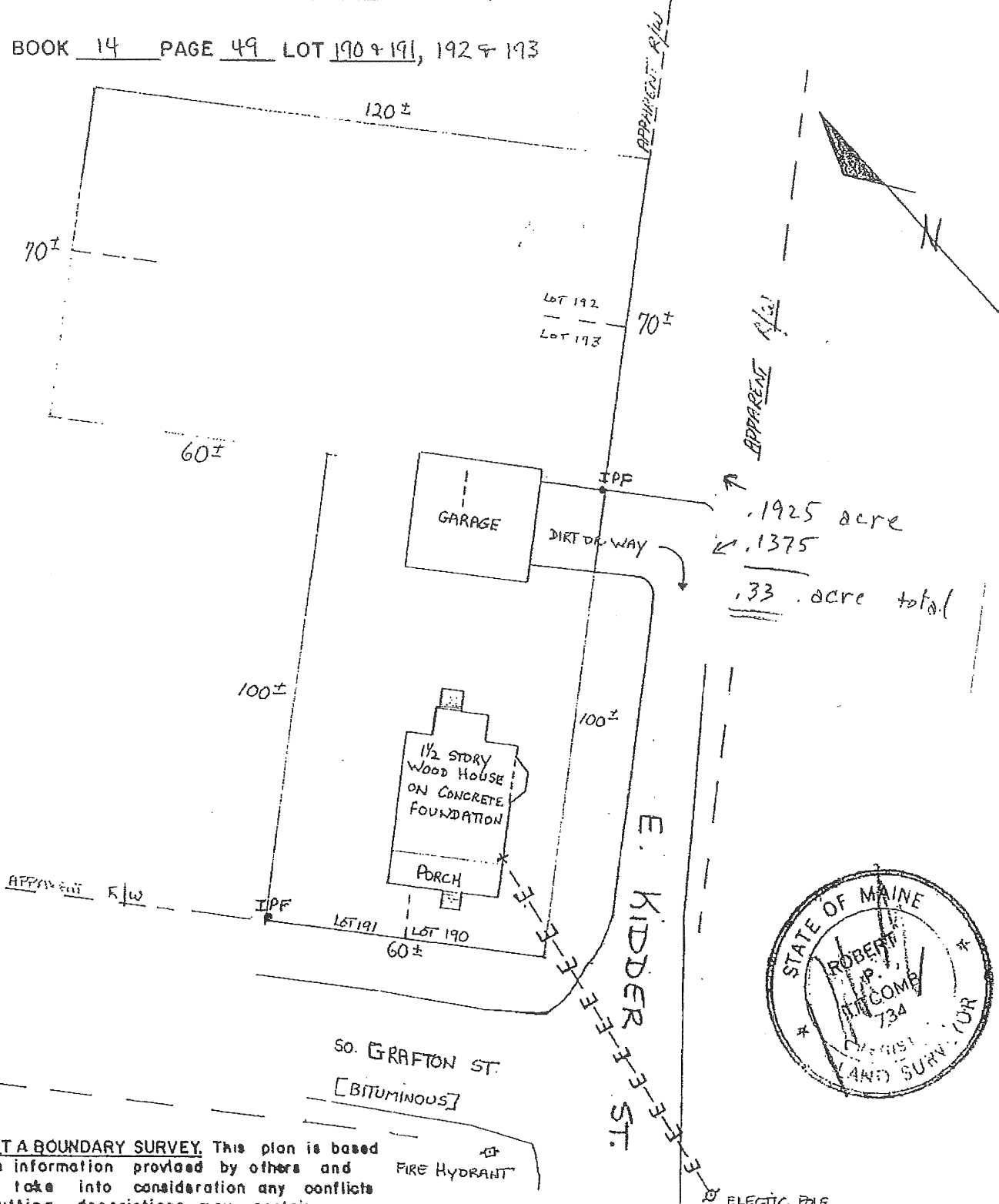
No. 595-13

TO THE LENDING INSTITUTION AND ITS TITLE INSURER —
I hereby certify that the location of the dwelling shown
on this plan did conform with the local zoning
laws in effect at the time of construction. The property
does not fall within a special flood hazard zone.

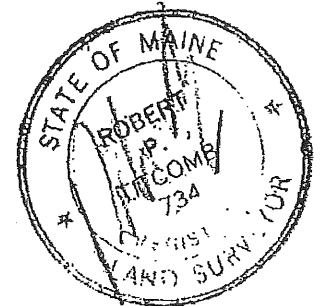
BOOK 4500 PAGE 168 COUNTY CUMBERLAND

OWNER: ROBERT LIGHTFOOT

PLAN BOOK 14 PAGE 49 LOT 190 & 191, 192 & 193



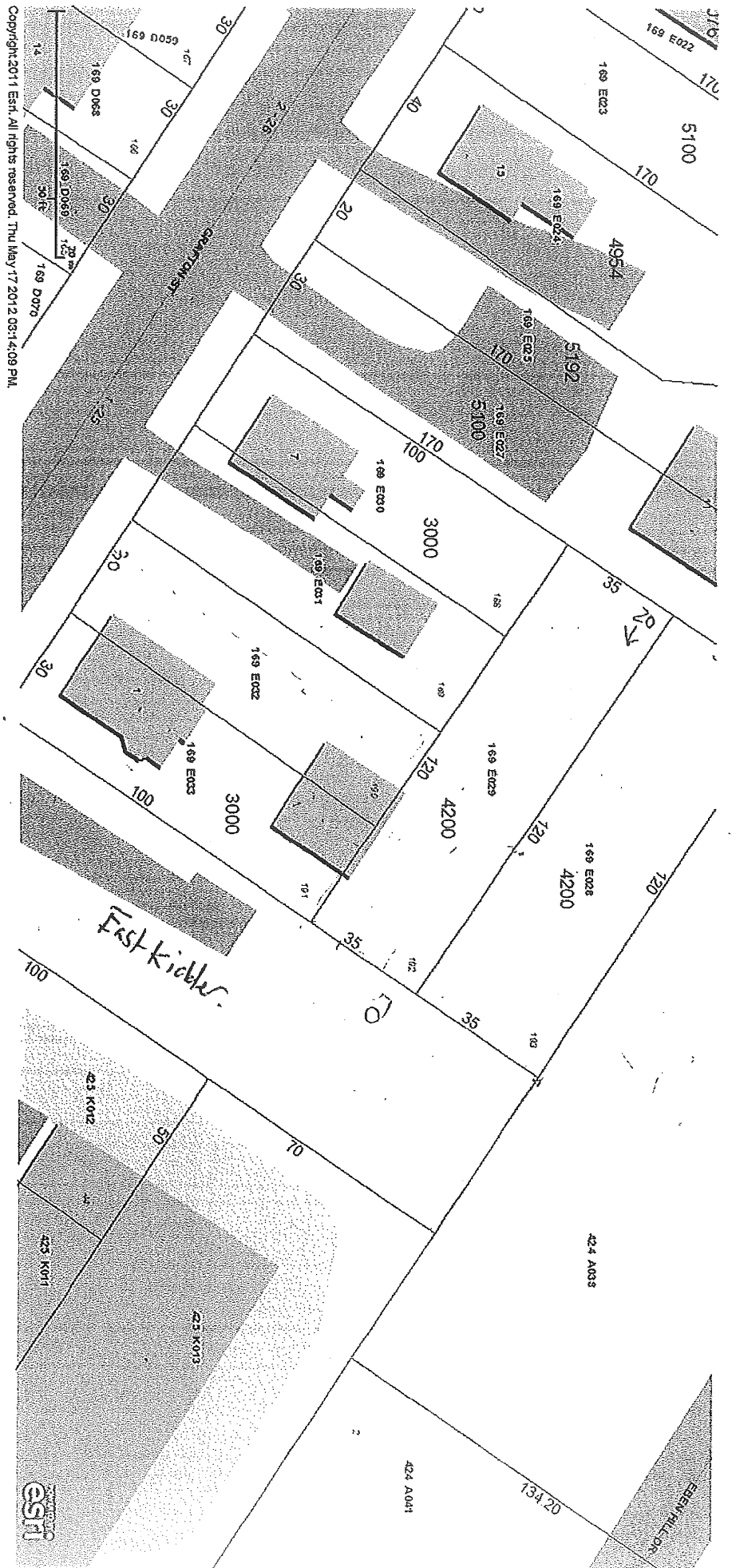
.1925 acre
.1375
.33 acre total



THIS IS NOT A BOUNDARY SURVEY. This plan is based strictly on information provided by others and does not take into consideration any conflicts which abutting descriptions may contain. This plan was not made from an instrument survey. The certifications are for mortgage purposes only. This plan applies only to conditions existing as of the date shown hereon. This plan is not for recording.

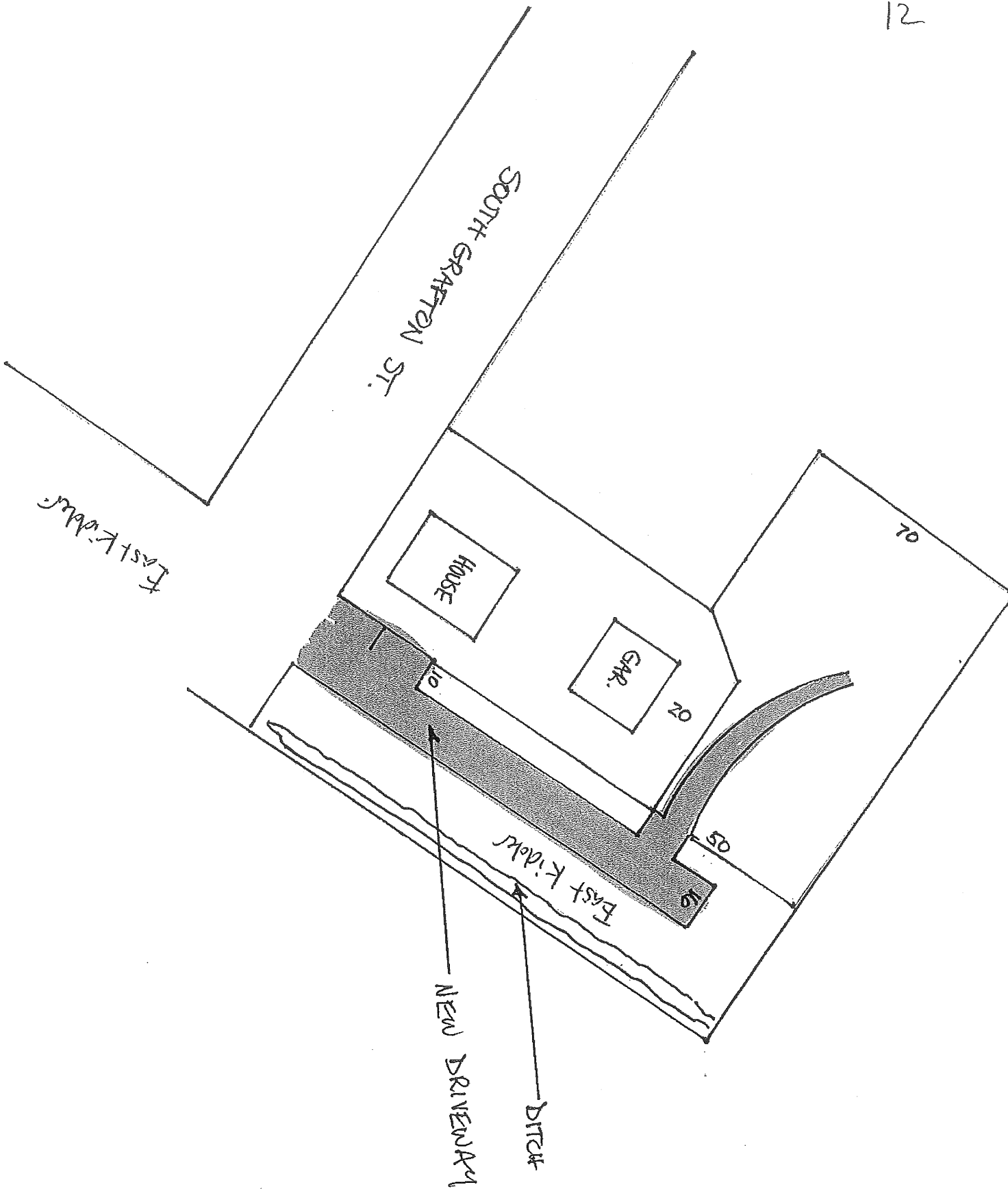
Date 11-13-86 Scale 1" = 30'

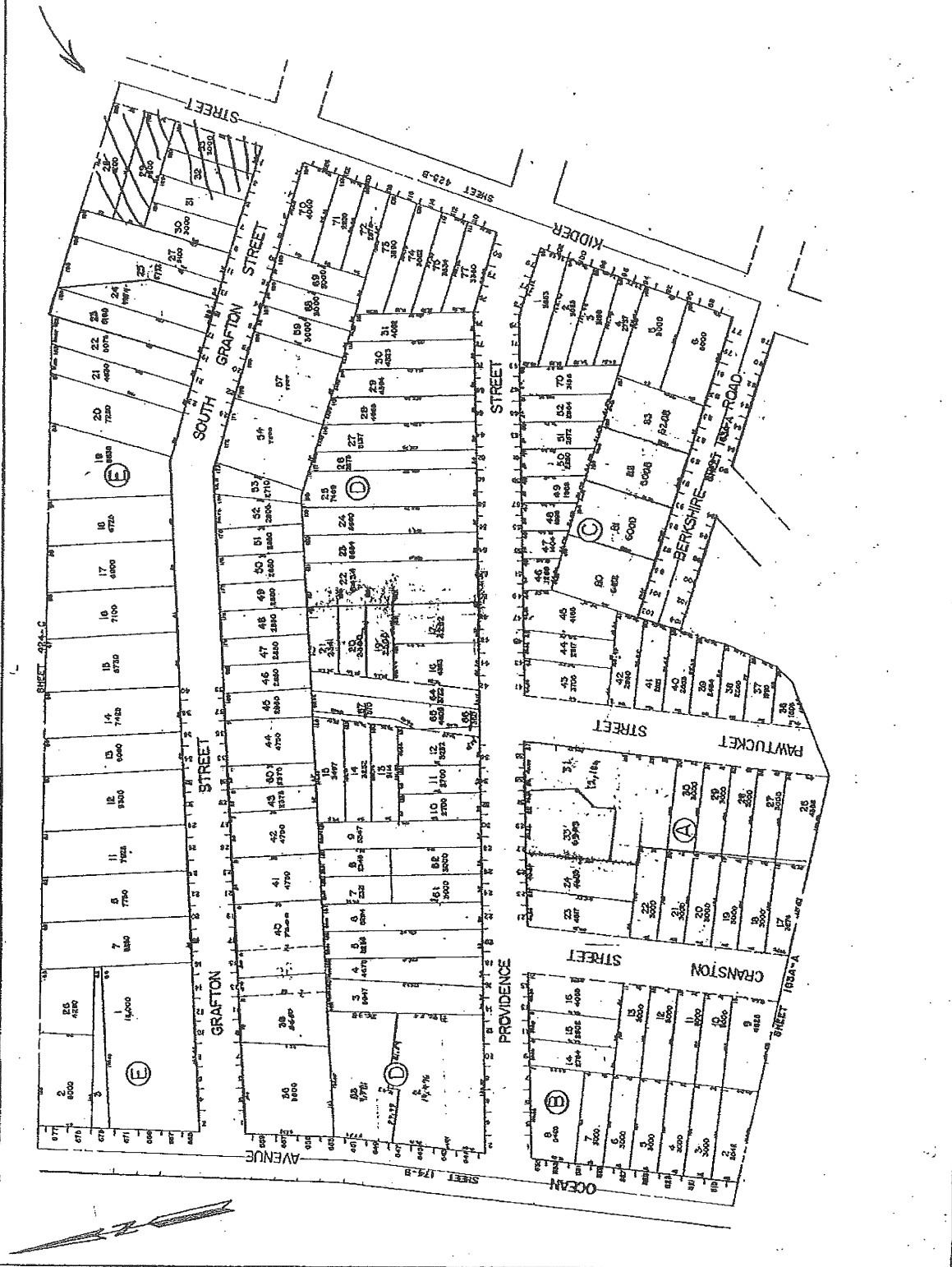
RP TITCOMB ASSOCIATES, INC. Falmouth, Maine Drawn By ROC



Copyright 2011 Esti. All rights reserved. Thu May 17 2012 03:14:09 PM.

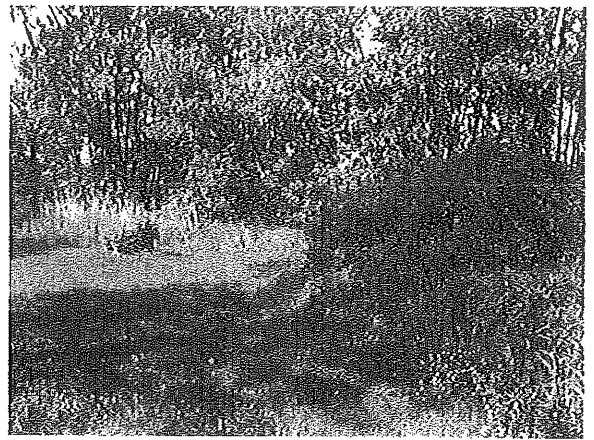




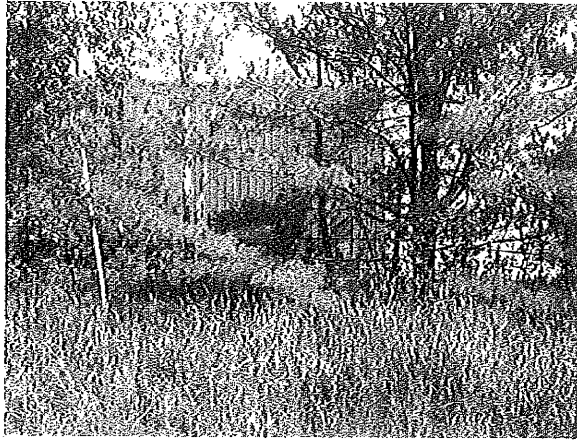




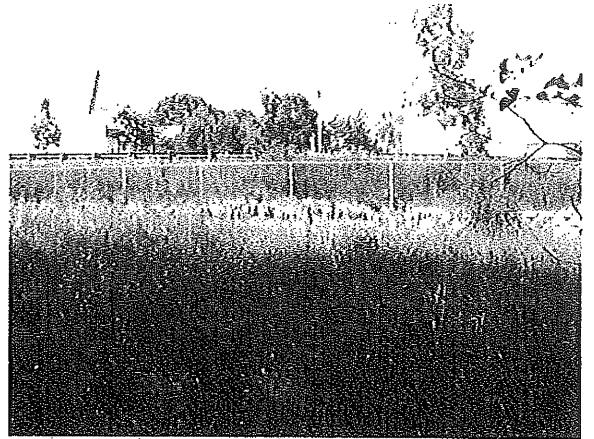
End of East Kidder



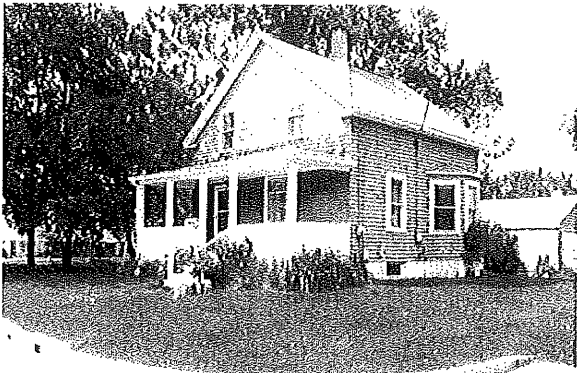
Lot 28 and 29



Across from Lot 28 and 29



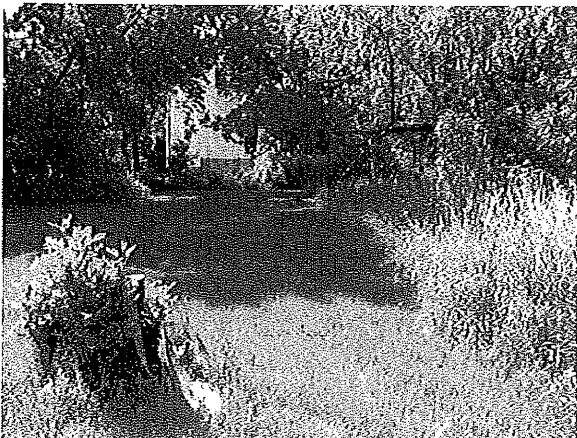
End of East Kidder, beyond Lot 28 and 29



House at South Grafton and East Kidder



View up South Grafton



View of Lot 28 and 29 from East Kidder



View back down East Kidder from Lot 28 and 29

168

TF#2390

26243
WARRANTY DEED
Maine Statutory Short Form

RECEIVED
JUN 06 2012
Dept. of Building Inspections
City of Portland Maine

Know all Men by these Presents,

That GUILFORD F. PENDEXTER

of Portland, County of Cumberland, State of Maine
being unmarried, for consideration paid, grant to ROBERT W. LIGHTFOOT

of Portland, County of Cumberland, State of Maine
whose mailing address is 71 Federal Street, Portland, Maine

with warranty covenants, the land in Portland, County of Cumberland,
State of Maine, described as follows:

A certain lot or parcel of land, with the buildings thereon, situated in Portland, Cumberland County and State of Maine, on Grafton Street and being lots numbered 190 and 191 as shown on Plan of Washington Avenue Gardens Annex belonging to Everett C. Wells, said plan made by Ernest W. Branch, Surveyor, dated October 1920 and recorded in the Cumberland County Registry of Deeds in Plan Book 14, Page 49, to which plan reference is hereby made for a more particular description.

Said lots measure each 30 feet in width by 100 feet in depth and contain each, according to said plan, 3000 square feet, more or less.

Also two other certain lots or parcels of land, with any buildings thereon, situated on Kidder Street in said Portland being lots 192 and 193 according to plan of Washington Avenue Gardens Annex, above-mentioned.

Said lots measure each 35 feet in width by 120 feet in depth and contain each 4,200 square feet, more or less.

Being the same premises conveyed to the Grantor herein by deed of Ralph A. Stowell, Sr., et al dated June 3, 1977 and recorded in the Cumberland County Registry of Deeds in Book 4029, Page 113.

This conveyance is made subject to current real estate taxes which the Grantee herein, by acceptance of this deed, does hereby assume and agree to pay.

And

~~granted to the said person and his heirs and assigns forever~~

Witness my hand and seal this twenty-fifth day of the month of September, 1979.

Signed, Sealed and Delivered in presence of

Rebecca L. Coleman

Guilford F. Pendexter
Guilford F. Pendexter

State of Maine, County of Cumberland

25 September 1979

Then personally appeared the above named Guilford F. Pendexter

and acknowledged the foregoing instrument to be his free act and deed.

Before me,

Rebecca L. Coleman

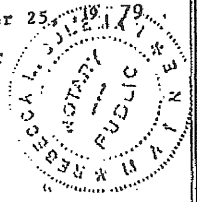
Justice of the Peace
Notary Public
Attorney at Law

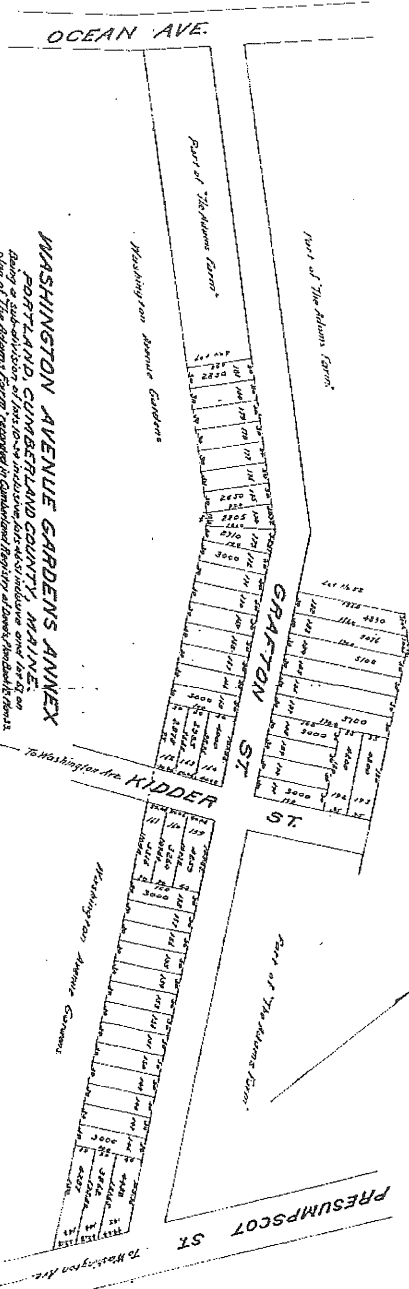
MY COMMISSION EXPIRES
JULY 14, 1985

SEP 25 1979

REGISTRY OF DEEDS CUMBERLAND COUNTY, MAINE
Received at 2:35 P.M. and recorded in

BOOK 4500 PAGE 168 *Lah. S. Ribotta* Deputy Register





WASHINGTON AVENUE GARDENS ANNEX
 PORTLAND, CUMBERLAND COUNTY, MAINE
 Being a subdivision of the land shown on
 plan of the Adams Farm, recorded in Cumberland Registry at date of March 16, 1888.
 OWNED BY
EVERETT C. WELLS
 Formerly owned by Moses R. Adams
 SCALE OF FEET 1" = 100'

Drawn by
 Ernest W. Marsh, Civil Engineer
 237 Commercial Street, Portland, Maine

Book 14 Page 49

1" = 100'
 1" = 100'
 1" = 100'

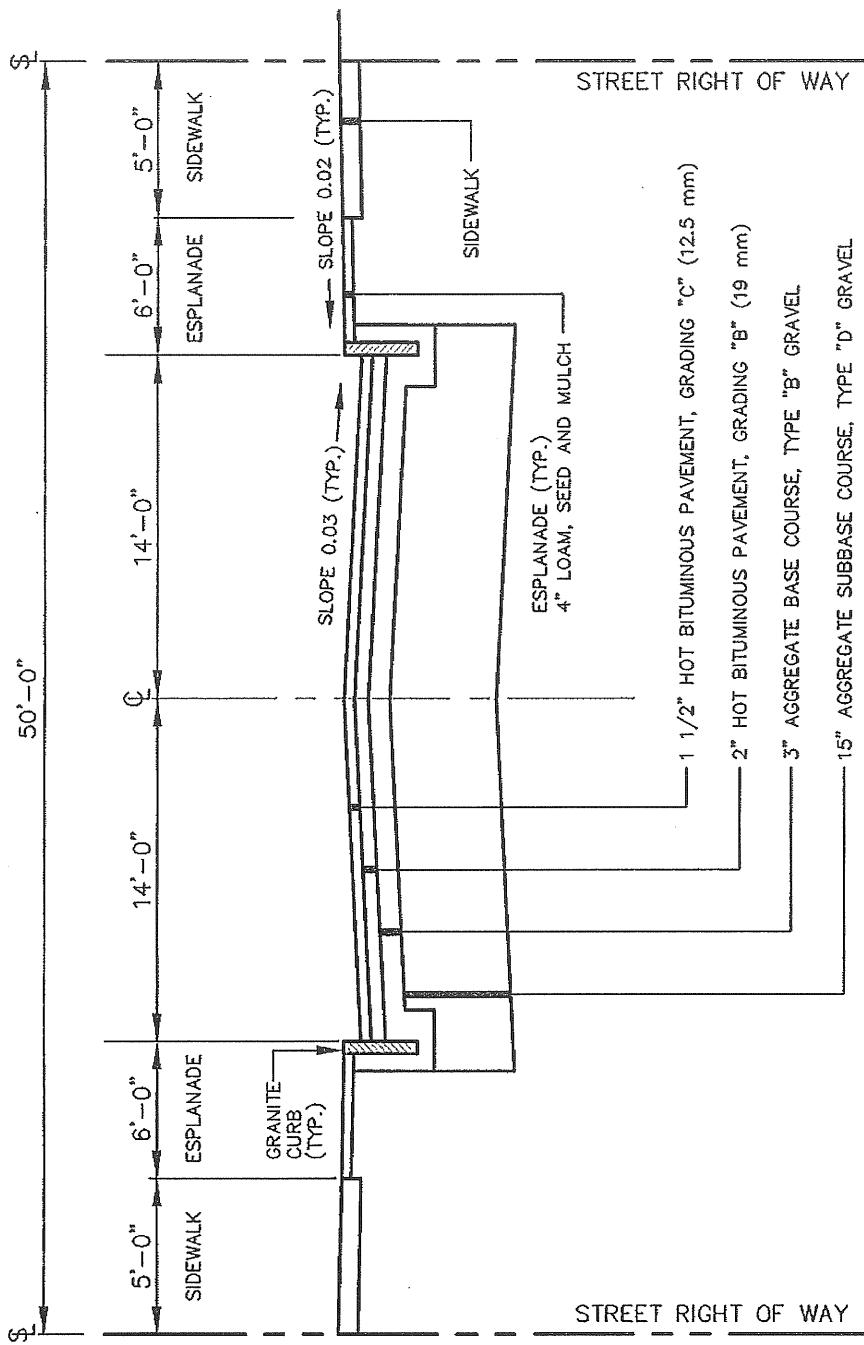
1" = 100'
 1" = 100'

Ann Machado - East Kidder Street - Request to Waive the 14-403 Code of Ordinances

From: David Margolis-Pineo
To: Ann Machado
Date: 6/11/2012 12:14 PM
Subject: East Kidder Street - Request to Waive the 14-403 Code of Ordinances
CC: Barbara Barhydt; Marge Schmuckal
Attachments: David Margolis-Pineo.vcf

East Kidder Street is classified as a paper street from the intersection of South Grafton Street for approximately 160' to 170' in a Northeast direction where it dead ends. This means the dead end portion of E. Kidder St. is privately owned. However, if built to City standards the City council could accept it as a city street. The dead end portion of East Kidder Street indicates a right of way width of 50' which is consistent with the accepted portion of the street. For E. Kidder to become an acceptable city street under Code Section 14-403, the street would need to be constructed as shown in Figure I-1 of the City of Portland Technical Manual. The only exception is that the requirement for a sidewalk could be waived since the dead end of E. Kidder is not on a school walking route. The street would also require the installation of a water line with possible hydrant, sanitary sewer, stormwater sewer, lights and a since this is a dead end street, a turnaround as shown on Figure I-5 of the Technical Manual would be required.

David Margolis-Pineo
Deputy City Engineer
Department of Public Services
55 Portland St.
Portland, ME 04101
Office 207-874-8850
Fax 207-874-8852
Cell 207-400-6695
dmp@portlandmaine.gov



LOCAL STREET CROSS SECTION
 NOT TO SCALE

DATE:
 AUGUST 2009
 REVISED:

CITY OF PORTLAND, MAINE
 TECHNICAL STANDARDS MANUAL

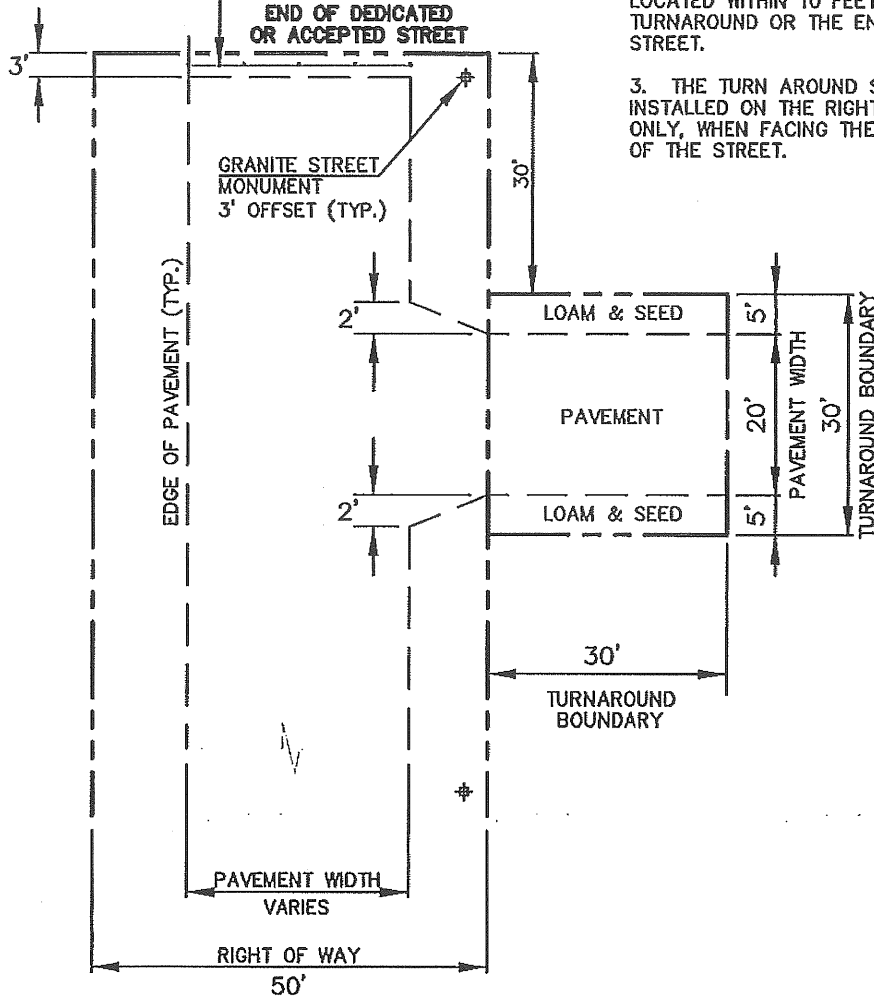
TRANSPORTATION SYSTEMS
 AND STREET DESIGN
 SECTION I

FIGURE:

LOCAL STREET CROSS SECTION

1-1

GALVANIZED STEEL OR PRESSURE
 TREATED WOOD GUARDRAIL
 WITH OM4-2 END OF ROADWAY
 MARKER SIGN OR APPROVED
 EQUAL



NOTES

1. A TURNAROUND EASEMENT SHALL BE CONVEYED TO THE CITY.
2. NO DRIVEWAYS SHALL BE LOCATED WITHIN 10 FEET OF THE TURNAROUND OR THE END OF THE STREET.
3. THE TURN AROUND SHALL BE INSTALLED ON THE RIGHT SIDE ONLY, WHEN FACING THE DEAD END OF THE STREET.

TURNAROUND ON DEAD END STREET

NOT TO SCALE

DATE: AUGUST 2009 REVISED:	CITY OF PORTLAND, MAINE TECHNICAL STANDARDS MANUAL	TRANSPORTATION SYSTEMS AND STREET DESIGN SECTION I	FIGURE:
TURNAROUND ON DEAD END STREET			I-5



City of Portland Zoning Board of Appeals

June 13, 2012

Robert B. Lightfoot
547 Head Tide Rd.
Whitefield, ME 04353

Dear Mr. Lightfoot,

Your Variance Appeal has been scheduled to be heard before the Zoning Board of Appeals on **Thursday, June 21, 2012 at 6:30 p.m.** in Room 209, located on the second floor of City Hall.

Please remember to bring a copy of your application packet with you to the meeting to answer any questions the Board may have.

I have included an agenda with your appeal highlighted, as well as a handout outlining the meeting process for the Zoning Board of Appeals.

I have also included the bill for the processing fee, legal ad and the notices for the appeal. The check should be written as follows:

MAKE CHECK OUT TO: City of Portland
MAILING ADDRESS: Room 315
389 Congress Street
Portland, ME 04101

Please feel free to contact me at 207-874-8709 if you have any questions.

Sincerely,

Ann B. Machado
Zoning Specialist

Cc: File

Ann Machado - Re: Legal Ad For Zoning Board of Appeals

From: Joan Jensen <jjensen@pressherald.com>
To: Ann Machado <AMACHADO@portlandmaine.gov>
Date: 6/11/2012 11:08 AM
Subject: Re: Legal Ad For Zoning Board of Appeals
Attachments: Agenda 6:15.pdf

Hi Ann,

All set to run your ad on Friday, June 15.
The cost is \$282.72 includes \$2.00 online charge. I included a proof.
Thank you,
Joan

--

Joan Jensen
Legal Advertising
Portland Press Herald/Maine Sunday Telegram
P.O. Box 1460
Portland, ME 04104
Tel. (207) 791-6157
Fax (207) 791-6910
Email jjensen@pressherald.com

On 6/11/12 9:52 AM, Ann Machado wrote:

Joan -

Attached is the Zoning Board of Appeals legal ad for Friday, June 15, 2012.

Thanks.

Ann
874-8709

1 South Grafton





PLANNING BOARD REPORT PORTLAND, MAINE

Text Amendment to Section 14-473 in reference to Section 14-403
As Proposed by Gary Wood, Former Corporation Counsel
City of Portland

Submitted to: Portland Planning Board: Public Hearing Date: October 29, 2012	Prepared by: Shukria Wiar Date: October 25, 2012 Planning Board Report Number: 49-12
--	--

I. INTRODUCTION

Gary Wood, Corporation Counsel, has drafted language for a text amendment to Sections 14-473, Variances, of the Zoning Ordinance, which will reference Section 14-403. Section 14-403 refers to street access for unimproved streets; the following is an excerpt from the latter section:

For a lot abutting any portion of a street which is unimproved or improved but not permanently paved, that portion which abuts the lot, and any like portion between such portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavements, curbs and, if located on a designated school walking route, sidewalks, in accordance with the minimum technical standards promulgated by the public works authority pursuant to section 14-498(a) of article IV of this chapter.

In Mr. Wood's memo to the City Council dated August 21, 2012 (Attachment 2), he states section 14-403 "was created to prevent individuals who own lots on paper street from developing substandard access ways or driveways along the right-of-way beneath the paper street such that the City would end up with a number of residential units accessible only by driveways or private roads down which public safety vehicles might not safely pass and that the City might ultimately be asked to eventually take over and improve to City standards".

The proposed text amendment is drafted in response to a recent variance granted by the Zoning Board of Appeals, which relieved a property owner from extending a street city standard for access to a new home. "Paper" streets refer to right-of ways that have been designated for access ways on approved subdivision plans but has not been built to City standards or accepted by the City as city streets.

The first reading for the text amendment language with the City Council was on September 5, 2012; the second reading was on September 19, 2012. At the second reading, the City Council referred the text amendment to the Planning Board for a recommendation since it is a change to the Land Use Code.

II. PROPOSED TEXT AMENDMENT

The proposed text amendment contains two parts (see Mr. Woods assessment, Attachment 2) The substantive change is the text amendment is to prohibit the Board of Appeals from granting variances from the standards in Section 14-403 by adding subparagraph (c)(4). This is proposed in order to limit the Board of Appeals authority to grant variances from Section 14-403, and includes this provision with the specific limitations already articulated in subparagraph (c)(4). Mr. Wood also proposed an amendment to the opening paragraph which adds subparagraph (c)4 to the already referenced subparagraph (c)(3). The omission of a reference to (c)(4) may have

been an oversight according to Mr. Wood.

A variance was granted by the Board of Appeals from Section 14-403 on June 12, 2012 (Attachment 4). This decision relieved a property owner from constructing a street for access to a proposed single family home. This decision does set a precedence for future variance that would defeat the intent of Section 14-403 which to build city street to city standards.

Below is the proposed language in red, the whole section is included in Attachment 3:

Sec. 14-473. Variances.

(a) *Authority.* Except as otherwise expressly provided in subsection (c)(3) and (c) (4), the board of appeals may authorize variances from the provisions of this article as meet the requirements of this division including but not limited to use variance, dwelling unit conversion, space and bulk such as lot size, density and side yard, parking, loading and signs.

...

(c) *Conditions for variances:*

...

4. *Specified variances prohibited:*

...

h. No variance shall be granted from the requirements in Section 14-403.

III. COMPREHENSIVE PLAN

Section 14-403 was enacted to ensure safe passage for emergency vehicles to homes within the city and thus to ensure the public health and welfare. The Comprehensive Plan includes the transportation goals and polices from A Time of Change: Portland Transportation Plan, which includes the following:

- Achieve a transportation system appropriately structured and designed to safely and effectively move goods and people.
- The housing goals support the creation of all types of housing within the city. Housing: Sustaining Portland's Future, specifically states, "Ensure the integrity and economic value of Portland's neighborhoods."

IV. PLANNING BOARD MOTIONS

Based on the material provides in the Planning Report # 49-12, public testimony, a review of applicable policies, and other information, the Planning Board finds that the proposed text amendment to Section 14-473 to incorporate subparagraph (c)(4) and the language "No variance shall be granted from the requirements in Section 14-403" as subparagraph (c)(4)(h) ~~is~~ **is not** consistent with the Comprehensive Plan and ~~does~~ **does not** recommend adoption of the proposed amendments to the City Council.

4-0 - s.l.k absent
ATTACHMENTS

PLANNING BOARD MEMO ATTACHMENTS

1. City Council Order
2. Gary Wood's memorandum dated August 21, 2012
3. Excerpt from Section 14-473
4. Certificate of Variance Approval

Order 60-12/13
~~Tab 26 9-5-12~~
Tab 14 9-19-12

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE
ARTICLE III. ZONING
RE: JURISDICTION OF BOARD OF APPEALS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

1. That sections 14-473 of the Portland City Code is hereby amended to read as follows:

Sec. 14-473. Variances.

(a) Authority. Except as otherwise expressly provided in subsection (c)(3) and (c) (4), the board of appeals may authorize variances from the provisions of this article as meet the requirements of this division including but not limited to use variance, dwelling unit conversion, space and bulk such as lot size, density and side yard, parking. Loading and signs.

...

(c) Conditions for variances:

...

4. Specified variances prohibited:

...

h. No variance shall be granted from the requirements in Section 14-403.

2. Effective date: This amendment shall go into effect on June 21, 2012 at 12:00 a.m.

CITY OF PORTLAND

MEMORANDUM

TO: Mayor and Council

FROM: Gary Wood

DATE: August 21, 2012

RE: Amendment to Portland City Code Chapter 14, Section 14-473 (Variances)

This amendment contains two components. The first component amends Section 14-473 so that the limitation on the Board of Appeals authority to grant variances references the specific limitations already articulated in subparagraph (c)(4), as well as referencing subparagraph (c)(3). The omission of a reference to (c)(4) may have been an oversight. The reference to Paragraph (c)(3) in the current ordinance should be retained because there are some subsections contained within (c)(3) that make it clear that practical difficulty variances cannot be used in certain circumstances in the City's Shoreland Zone.

The second component of the amendment prohibits the Board of Appeals from granting variances from the standards set forth Section 14-403 by adding that section to subparagraph (c)(4).

"Paper" streets are rights of way designated on approved subdivision plans but never built to city standards or accepted by the City as city streets. The City has over 407 paper streets at this time that are shown on subdivisions recorded prior to September 29, 1987. Under state law the City has until September 29, 2017 to decide whether to continue the City's right to accept one or more of these streets or vacate the potential public rights in them. Current law also allows the Council to extend the deadline another 20 years.

Section 14-403 was created many years ago (see attached memo) to prevent individuals who own lots on paper streets from developing substandard access ways or driveway along the right-of-way beneath the paper street such that the City would end up with a number of residential units accessible only by driveways or private roads down which public safety vehicles might not safely pass and that the City might ultimately be asked to eventually take over and improve to City standards.

The section avoids that result by imposing a requirement on property owners who wish to build residential units along a paper street to build the road to city standards for the entire length of the individual's property abutting the paper street.

The requirement that the road be built along the entire length of the abutting property prevents a property owner from stopping the construction of a road built to city standards at that

point along his property where he has established enough road frontage to meet city road frontage requirements thus leaving a potential gap for the next abutting property owner should that person subsequently wish to also build a residential unit on their lot.

Although the City's Board of Appeals has for the most part refused to grant variances from Section 14-403 nothing in the current ordinance prevents them from doing that and on June 21, 2012 the Board did grant a variance from Section 14-403 requirements.

In granting that variance, the Board acted within its current authority in the ordinance and also in a situation in which a large number of residential units could not be built along the roadway because of its short length. However, this decision sets the stage for variances that could defeat the purpose of Section 14-403 by leading to long paper streets with a number of homes or buildings being served by substandard streets and put the City in a difficult situation.

In order to prevent developers or other property owners from taking advantage of the current authority in the ordinance to grant variances from Section 14-403 the proposed amendment has a retroactive date to the date upon which the Board of Appeals issued its decision. No additional applications have been filed since that decision seeking a variance from the Section 14-403 requirements although, there is one pending application that may be amended to do so.

Because the proposed amendment is to Chapter 14, it should be referred to the Planning Board for a recommendation back to the Council before the Council can act on it.

City of Portland
Code of Ordinances
Sec. 14-472

Land Use
Chapter 14
Rev. 10-5-12

notice thereof shall be mailed by the secretary to each party.

4. *Right to grant variance in deciding appeals.* In any case where the notice is accompanied by an application for variance in accordance with section 14-473(b)(1), the board of appeals shall have the authority to grant, as part of the relief, a variance, but only in strict compliance with each provision of section 14-473 hereof.
5. *Conditions and limitations on rights granted by appeal.* Any right granted by the board of appeals on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

(Code 1968, § 602.24.B; Ord. No. 437-74, 7-1-74)

Sec. 14-473. Variances.

(a) *Authority.* Except as otherwise expressly provided in subsection (c)(3), the board of appeals may authorize variances from the provisions of this article as meet the requirements of this division including but not limited to use variance, dwelling unit conversion, space and bulk such as lot size, density and side yard, parking, loading and signs.

(b) *Procedure:*

1. *Application.* Application for a variance shall be submitted to the building authority. A payment of a nonrefundable application fee, as established from time to time by the city council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the building authority and contain at least the following information and documentation:
 - a. The name and address of the applicant and his or her interest in the subject property;
 - b. The name and address of the owner, if different from the applicant;
 - c. The address or location of the subject property;
 - d. The present use and zoning classification of the

subject property;

- e. Where the site plan approval is required by article V of this chapter, a preliminary or final site plan as defined by article V of this chapter;
 - f. The relief sought from the board of appeals.
2. *Public hearing.* A public hearing shall be set, advertised and conducted by the board of appeals in accordance with article VI of this chapter.

A copy of each variance request pertaining to division 26 (shoreland regulations) including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commission of the Department of Environmental Protection at least twenty (20) days prior to action by the board. Any comments received from the Commissioner prior to action by the board shall be made part of the record and shall be taken into consideration by the board.

3. *Action by board of appeals.* Within thirty (30) days following the close of the public hearing, the board of appeals shall render its decision granting or denying the variance, in the manner and form specified by article VI of this chapter. The failure of the board to act within thirty (30) days shall be deemed an approval of the variance unless mutually extended in writing by the applicant and the board. Within seven (7) days of such decision or the expiration of such period, the secretary shall mail notice of such decision or failure to act to the applicant.

(c) *Conditions for variances:*

1. *Undue hardship required; defined.* Except as provided in subsection (2) below, a variance may be granted by the board only where strict application of the ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words "undue hardship" as used in this subsection mean:
 - 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.
2. *Disability variance:* Notwithstanding the provisions of subsection (c)(1) of this section, the board may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. For the purpose of this subsection, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. Section 4553.
3. *Practical difficulty variance:*
- a. Notwithstanding the provisions of subsections 14-473(c)(1) and (2) of this section, the board of appeals may grant a variance from the dimensional standards of this article when strict application of the provisions of the ordinance would create a practical difficulty, as defined herein, and when all the following conditions are found to exist:
 1. The need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood;

2. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties;
 3. The practical difficulty is not the result of action taken by the applicant or a prior owner;
 4. No other feasible alternative is available to the applicant, except a variance;
 5. The granting of a variance will not have an unreasonably adverse effect on the natural environment; and
 6. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. § 435, nor within a shoreland zone or flood hazard zone, as defined in this article.
- b. The following words have the meanings set forth below:
1. *Dimensional standards*: Those provisions of this article which relate to lot area, lot coverage, frontage, and setback requirements.
 2. *Practical difficulty*: A case where strict application of the dimensional standards of the ordinance to the property for which a variance is sought would both preclude a use of the property which is permitted in the zone in which it is located and also would result in significant economic injury to the applicant.
 3. *Significant economic injury*: The value of the property if the variance were denied would be substantially lower than its value if the variance were granted. To satisfy this

standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land.

- c. Except as modified above, the other provisions of section 14-473 will apply to practical difficulty variances, including, but not limited to, the provisions of section 14-473(b)(2) (public hearing), and section 14-473(d) (specified variances prohibited).
 - d. A practical difficulty variance may not be used to grant relief from the provisions of section 14-449 (land use standards), to increase either volume or floor area, nor to permit the location of a structure, including, but not limited to, single-component manufactured homes, to be situated on a lot in a way which is contrary to the provisions of this article.
4. *Specified variances prohibited:*
- a. No use permitted in medium- and high-density residential districts shall be permitted in low-density residential districts. No use permitted in business districts shall be permitted in any residential district. No use permitted in industrial districts shall be permitted in any business or residential district. No use permitted in residential districts shall be permitted in any industrial district. The general use categories are listed below:
 - 1. Low-density residential: IR-1, IR-2, IR-3, R-1, R-2, R-3.
 - 2. Medium- and high-density residential: R-4, R-5, R-6.
 - 3. Business: R-P, B-1, B-2, B-3, A-B, B-4, B-5, I-B.
 - 4. Industrial: I-L, I-Lb, I-M, I-Ma, I-Mb, I-H, I-Hb.

- b. No variance shall be granted which would permit the creation of a lot or parcel that cannot be developed in compliance with the zoning, subdivision and other regulations applicable thereto.
- c. No variance shall be granted which would result in a use or development of the lot or parcel in question which would not be in harmony with the general purpose and intent of this article or the land development plan of the city; which would be materially detrimental to the public welfare or materially injurious to the enjoyment, use or development of property or improvement permitted in the vicinity; or which would materially impair an adequate supply of light and air to properties and improvements in the vicinity, substantially increase congestion in the public streets, increase the danger of flood or fire, or endanger the public safety.
- d. No variance shall be granted which would be greater than the minimum variance necessary to relieve the undue hardship or the hardship of the applicant.
- e. Except for appeals concerning nonconforming dwelling units in existence and use prior to April 18, 1984, no variance shall be granted which would permit the alteration of a structure to accommodate any additional dwelling unit as a conditional use without meeting the requirements which would otherwise be a condition precedent to such conditional use treatment.
- f. No variance shall be granted which would permit the alteration of an existing residential structure in an R-4 or an R-5 zone to accommodate more than three (3) dwelling units. No such variance shall be granted unless:
 - 1. No additional unit shall have less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic;

2. No open outside stairways or fire escapes above the ground floor shall be or have been constructed in the immediately preceding five (5) years;
3. A lower level dwelling unit shall have a minimum of one-half of its floor-to-ceiling height above the average adjoining ground level;
4. No existing dwelling unit shall be decreased to less than one thousand (1,000) square feet of floor area;
5. The building shall have been in existence prior to January 1, 1984;
6. A minimum of nine thousand (9,000) square feet of land area shall be required;
7. A minimum of four (4) on-site parking spaces shall be required;
8. A minimum of seventy-five (75) feet of street frontage shall be required; provided, further, before a building permit may be issued, site plan approval under article V of this chapter shall be required with the following additional review standards:
 - (i) Any addition or exterior alterations such as facade materials, building form and roof pitch shall be designed to be compatible with the architectural style of the structure;
 - (ii) The scale and surface area of parking, driveways, and paved areas shall be arranged and landscaped to be compatible in size and scale with neighboring properties in the area and to properly screen vehicles from adjacent properties and streets;

provided, further, that no variance shall be granted with respect to any of the preceding additional requirements.

- g. No variance shall be granted from the minimum lot sizes set forth in section 14-433 for lots in the IR-1, IR-2 and I-B zones.

(d) *Conditions on variances; variances less than requested.* Reasonable conditions and safeguards relating to construction, character, location, landscaping, screening and other matters may be imposed upon the premises benefited by a variance as considered necessary to prevent injurious effects upon other property and improvements in the vicinity or upon public facilities and services. Such conditions shall be expressly set forth in the resolution granting the variance and in the notice informing the applicant thereof. Violation of such conditions and safeguards shall be a violation of this article. A variance less than or different from that requested may be granted when the record supports the applicant's right to some relief but not to the relief requested.

(e) *Limitations on variances.* No variance permitting the erection or alteration of a building shall be valid for a period longer than six (6) months, or such other time as may be fixed at the time granted not to exceed two (2) years, unless a building permit for such erection or alteration is issued and construction is actually begun within that period and is thereafter diligently pursued to completion. One (1) or more extensions of said expiration dates may be granted if the facts constituting the basis of the decision have not materially changed and the two-year period is not exceeded thereby. No variance relating to the establishment or maintenance of a use not involving a building or structure shall be valid for a period longer than six (6) months, or such other time as may be fixed at the time granted not to exceed two (2) years, unless an occupancy permit is issued and a use commenced within such period; provided, however, that one (1) or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed, and the two-year period is not exceeded thereby.

(f) *Recording of variances.* No variance shall be valid unless, within thirty (30) days of final approval of the variance, a certificate describing the variance has been recorded by the applicant for the variance in the registry of deeds as required by

RECEIVED

SEP 13 2012

Dept. of Building Inspections
City of Portland Maine



Doc#: 44138 Bk:29832 Pg: 345

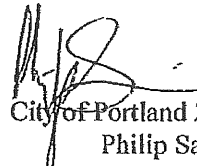
CITY OF PORTLAND

CERTIFICATE OF VARIANCE APPROVAL

I, Philip Saucier, the duly appointed Chair of the Board of Appeals for the City of Portland, Cumberland County and State of Maine, hereby certify that on the 21 day of June, 2012, the following variance was granted pursuant to the provisions of 30-A M.R.S.A. Section 4353(5) and the City of Portland's Code of Ordinances.

- 1. Current Property Owner: Robert B. Lightfoot
- 2. Property: 1 South Grafton Street – 0 East Kidder Street, Portland, ME CBL: 169-E-28, 29, 32, 33
Cumberland County Registry of Deeds, Book: 4500 Page: 168
Last recorded deed in chain of Title: 9/25/1979
- 3. Variance and Conditions of Variance:
To grant relief from section 14-403(b) of the Land Use Zoning Ordinance to allow a 16 foot wide driveway road on East Kidder Street to access a proposed rear lot instead of constructing East Kidder Street up to City standards with the following conditions:
 - 1. Applicant must build driveway to at least 16' in width
 - 2. Applicant need not install granite curbing
 - 3. Applicant must build driveway to the dimensional layout provided in his variance appeal application (pg 7)
 - 4. Applicant must comply with all other provisions in 14-403
 - 5. Applicant has an extended two (2) year period before the variance expires

IN WITNESS WHEREOF, I have hereto set my hand and seal this 21st day of June, 2012

 , Acting Chair of
City of Portland Zoning Board,
Philip Saucier


(Printed or Typed Name)

Received
Recorded Register of Deeds
Aug 13, 2012 01:46:36P
Cumberland County
Pamela E. Lavley

STATE OF MAINE
Cumberland, ss.

SEAL

Then personally appeared the above-named Philip Saucier and acknowledged the above certificate to be his free act and deed in his capacity as Chairman of the Portland Board of Appeals, with his signature witnessed on June, 29, 2012



(Printed or Typed Name)

Notary Public

Margaret Schmuckal My term expires June 28, 2019

PURSUANT TO 30-A M.R.S.A. SECTION 4353(5), THIS CERTIFICATE MUST BE RECORDED BY THE PROPERTY OWNER IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS WITHIN 90 DAYS FROM FINAL WRITTEN APPROVAL FOR THE VARIANCE TO BE VALID. FURTHERMORE, THIS VARIANCE IS SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 14-474 OF THE CITY OF PORTLAND'S CODE OF ORDINANCES.



CITY COUNCIL REPORT PORTLAND, MAINE

Text Amendment to Section 14-473 in Reference to Section 14-403
As Proposed by Gary Wood, Former Corporation Counsel
City of Portland

Submitted to: Portland City Council First Reading: September 5, 2012 September 19, 2012 Public Hearing Date: November 19, 2012	Submitted by: Portland Planning Board Prepared by: Shukria Wiar Date: November 9, 2012 Planning Board Report Number: 51-12
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I. INTRODUCTION

On September 19, 2012, the City Council held a public hearing on a text amendment to Section 14-473 Variances that would eliminate the Zoning Board of Appeals ability to consider variances from the requirements of Section 14-403 Street Access. The amendments were drafted by Gary Wood, former Corporation Counsel, in response to a recent decision rendered by the Zoning Board of Appeals. The City Council referred the text amendment to the Planning Board for a recommendation on this Land Use Code amendment.

The purpose of the proposal is to amend the opening paragraph of Section 14-473 to add subparagraph (c)4 to the already referenced subparagraph (c)(3). The omission of a reference to (c)(4) may have been an oversight according to Mr. Wood. The second part of the amendment is to prohibit the Board of Appeals from granting variances from the standard presented in Section 14-403 by adding the section to subparagraph (c)(4).

On November 5, 2012, the Planning Board held a public hearing on the proposed amendments and voted unanimously (4-0, Silk absent) to recommend the proposed text changes to Section 14-473 in reference to Section 14-403 of the Zoning Ordinance.

II. BACKGROUND

Gary Wood drafted language for a text amendment to Sections 14-473, Variances, of the Zoning Ordinance, which will reference Section 14-403. Section 14-403 refers to street access for unimproved streets; the following is an excerpt from the latter section:

For a lot abutting any portion of a street which is unimproved or improved but not permanently paved, that portion which abuts the lot, and any like portion between such portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavements, curbs and, if located on a designated school walking route, sidewalks, in accordance with the minimum technical standards promulgated by the public works authority pursuant to section 14-498(a) of article IV of this chapter.

In Mr. Wood's memo to the City Council dated August 21, 2012 ([Attachment 2](#)), he states section 14-403 "was created to prevent individuals who own lots on paper street from developing substandard access ways or

driveways along the right-of-way beneath the paper street such that the City would end up with a number of residential units accessible only by driveways or private roads down which public safety vehicles might not safely pass and that the City might ultimately be asked to eventually take over and improve to City standards”.

The proposed text amendment is proposed in response to a recent variance granted by the Zoning Board of Appeals, which relieved a property owner from extending a street city standard for access to a new home. “Paper” streets refer to right-of ways that have been designated for access ways on approved subdivision plans but has not been built to City standards or accepted by the City as city streets.

III. PUBLIC COMMENT

Robert Hains spoke at the public hearing and raised concerns about the street access requirements for development and the costs associated with extending streets in order to provide access.

IV. PROPOSED TEXT AMENDMENT

The proposed text amendment contains two parts (see Mr. Woods assessment, Attachment 2). The substantive change is to prohibit the Board of Appeals from granting variances from the standards in Section 14-403 by adding subparagraph (c)(4)(h) in Section 14-473. Section(c) (4) contains limitations on the Zoning Board of Appeals authority to grant variances. Mr. Wood also proposed an amendment to the opening paragraph which adds subparagraph (c)4 to the already referenced subparagraph (c)(3). The omission of a reference to (c)(4) may have been an oversight according to Mr. Wood.

A variance was granted by the Board of Appeals from Section 14-403 on June 12, 2012 (Attachment 4). This decision relieved a property owner from constructing a street for access to a proposed single family home. This decision does set a precedence for future variance that would defeat the intent of Section 14-403 which to build city street to city standards.

Below is the proposed language in red, the whole section is included in Attachment 3:

Sec. 14-473. Variances.

(a) *Authority.* Except as otherwise expressly provided in subsection (c)(3) **and (c) (4)**, the board of appeals may authorize variances from the provisions of this article as meet the requirements of this division including but not limited to use variance, dwelling unit conversion, space and bulk such as lot size, density and side yard, parking, loading and signs.

...

(c) *Conditions for variances:*

...

4. *Specified variances prohibited:*

...

h. No variance shall be granted from the requirements in Section 14-403.

V. COMPREHENSIVE PLAN ANALYSIS

Section 14-403 was enacted to ensure safe passage for emergency vehicles to homes within the city and thus to ensure the public health and welfare. The Comprehensive Plan includes the transportation goals and polices from A Time of Change: Portland Transportation Plan, which includes the following:

- Achieve a transportation system appropriately structured and designed to safely and effectively move goods and people.
- The housing goals support the creation of all types of housing within the city. Housing: Sustaining Portland’s Future, specifically states, “Ensure the integrity and economic value of Portland’s neighborhoods.”

VI. PLANNING BOARD RECOMMEDATION

On November 5, 2012, by a vote of 4-0 (Silk absent) the Planning Board found the proposed text amendments consistent with the Comprehensive Plan and is recommending adoption of the text amendments to the City Council to amend Section 14-473 to incorporate subparagraph (c)(4) and the language "No variance shall be granted from the requirements in Section 14-403" as subparagraph (c)(4)(h).

ATTACHMENTS

1. City Council Order
2. Gary Wood's memorandum dated August 21, 2012
3. Excerpt from Section 14-473
4. Excerpt from 14-403
5. Certificate of Variance Approval
6. Abutter Comment

Order 60-12/13
~~Tab 26 9-5-12~~
Tab 14 9-19-12

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
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JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE
ARTICLE III. ZONING
RE: JURISDICTION OF BOARD OF APPEALS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

1. That sections 14-473 of the Portland City Code is hereby amended to read as follows:

Sec. 14-473. Variances.

(a) Authority. Except as otherwise expressly provided in subsection (c)(3) and (c) (4), the board of appeals may authorize variances from the provisions of this article as meet the requirements of this division including but not limited to use variance, dwelling unit conversion, space and bulk such as lot size, density and side yard, parking. Loading and signs.

...

(c) Conditions for variances:

...

4. Specified variances prohibited:

...

h. No variance shall be granted from the requirements in Section 14-403.

2. Effective date: This amendment shall go into effect on June 21, 2012 at 12:00 a.m.

CITY OF PORTLAND

MEMORANDUM

TO: Mayor and Council

FROM: Gary Wood

DATE: August 21, 2012

RE: **Amendment to Portland City Code Chapter 14, Section 14-473 (Variances)**

This amendment contains two components. The first component amends Section 14-473 so that the limitation on the Board of Appeals authority to grant variances references the specific limitations already articulated in subparagraph (c)(4), as well as referencing subparagraph (c)(3). The omission of a reference to (c)(4) may have been an oversight. The reference to Paragraph (c)(3) in the current ordinance should be retained because there are some subsections contained within (c)(3) that make it clear that practical difficulty variances cannot be used in certain circumstances in the City's Shoreland Zone.

The second component of the amendment prohibits the Board of Appeals from granting variances from the standards set forth Section 14-403 by adding that section to subparagraph (c)(4).

"Paper" streets are rights of way designated on approved subdivision plans but never built to city standards or accepted by the City as city streets. The City has over 407 paper streets at this time that are shown on subdivisions recorded prior to September 29, 1987. Under state law the City has until September 29, 2017 to decide whether to continue the City's right to accept one or more of these streets or vacate the potential public rights in them. Current law also allows the Council to extend the deadline another 20 years.

Section 14-403 was created many years ago (see attached memo) to prevent individuals who own lots on paper streets from developing substandard access ways or driveway along the right-of-way beneath the paper street such that the City would end up with a number of residential units accessible only by driveways or private roads down which public safety vehicles might not safely pass and that the City might ultimately be asked to eventually take over and improve to City standards.

The section avoids that result by imposing a requirement on property owners who wish to build residential units along a paper street to build the road to city standards for the entire length of the individual's property abutting the paper street.

The requirement that the road be built along the entire length of the abutting property prevents a property owner from stopping the construction of a road built to city standards at that

point along his property where he has established enough road frontage to meet city road frontage requirements thus leaving a potential gap for the next abutting property owner should that person subsequently wish to also build a residential unit on their lot.

Although the City's Board of Appeals has for the most part refused to grant variances from Section 14-403 nothing in the current ordinance prevents them from doing that and on June 21, 2012 the Board did grant a variance from Section 14-403 requirements.

In granting that variance, the Board acted within its current authority in the ordinance and also in a situation in which a large number of residential units could not be built along the roadway because of its short length. However, this decision sets the stage for variances that could defeat the purpose of Section 14-403 by leading to long paper streets with a number of homes or buildings being served by substandard streets and put the City in a difficult situation.

In order to prevent developers or other property owners from taking advantage of the current authority in the ordinance to grant variances from Section 14-403 the proposed amendment has a retroactive date to the date upon which the Board of Appeals issued its decision. No additional applications have been filed since that decision seeking a variance from the Section 14-403 requirements although, there is one pending application that may be amended to do so.

Because the proposed amendment is to Chapter 14, it should be referred to the Planning Board for a recommendation back to the Council before the Council can act on it.

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notice thereof shall be mailed by the secretary to each party.

4. *Right to grant variance in deciding appeals.* In any case where the notice is accompanied by an application for variance in accordance with section 14-473(b)(1), the board of appeals shall have the authority to grant, as part of the relief, a variance, but only in strict compliance with each provision of section 14-473 hereof.
5. *Conditions and limitations on rights granted by appeal.* Any right granted by the board of appeals on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

(Code 1968, § 602.24.B; Ord. No. 437-74, 7-1-74)

Sec. 14-473. Variances.

(a) *Authority.* Except as otherwise expressly provided in subsection (c)(3), the board of appeals may authorize variances from the provisions of this article as meet the requirements of this division including but not limited to use variance, dwelling unit conversion, space and bulk such as lot size, density and side yard, parking, loading and signs.

(b) *Procedure:*

1. *Application.* Application for a variance shall be submitted to the building authority. A payment of a nonrefundable application fee, as established from time to time by the city council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the building authority and contain at least the following information and documentation:
 - a. The name and address of the applicant and his or her interest in the subject property;
 - b. The name and address of the owner, if different from the applicant;
 - c. The address or location of the subject property;
 - d. The present use and zoning classification of the

subject property;

- e. Where the site plan approval is required by article V of this chapter, a preliminary or final site plan as defined by article V of this chapter;
 - f. The relief sought from the board of appeals.
2. *Public hearing.* A public hearing shall be set, advertised and conducted by the board of appeals in accordance with article VI of this chapter.

A copy of each variance request pertaining to division 26 (shoreland regulations) including the application and all supporting information supplied by the applicant, shall be forwarded by the municipal officials to the Commission of the Department of Environmental Protection at least twenty (20) days prior to action by the board. Any comments received from the Commissioner prior to action by the board shall be made part of the record and shall be taken into consideration by the board.

3. *Action by board of appeals.* Within thirty (30) days following the close of the public hearing, the board of appeals shall render its decision granting or denying the variance, in the manner and form specified by article VI of this chapter. The failure of the board to act within thirty (30) days shall be deemed an approval of the variance unless mutually extended in writing by the applicant and the board. Within seven (7) days of such decision or the expiration of such period, the secretary shall mail notice of such decision or failure to act to the applicant.

(c) *Conditions for variances:*

1. *Undue hardship required; defined.* Except as provided in subsection (2) below, a variance may be granted by the board only where strict application of the ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words "undue hardship" as used in this subsection mean:
- 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.
2. *Disability variance:* Notwithstanding the provisions of subsection (c)(1) of this section, the board may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term "structures necessary for access to or egress from the dwelling" shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. For the purpose of this subsection, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. Section 4553.
3. *Practical difficulty variance:*
- a. Notwithstanding the provisions of subsections 14-473(c)(1) and (2) of this section, the board of appeals may grant a variance from the dimensional standards of this article when strict application of the provisions of the ordinance would create a practical difficulty, as defined herein, and when all the following conditions are found to exist:
 1. The need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood;

2. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties;
 3. The practical difficulty is not the result of action taken by the applicant or a prior owner;
 4. No other feasible alternative is available to the applicant, except a variance;
 5. The granting of a variance will not have an unreasonably adverse effect on the natural environment; and
 6. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. § 435, nor within a shoreland zone or flood hazard zone, as defined in this article.
- b. The following words have the meanings set forth below:
1. *Dimensional standards*: Those provisions of this article which relate to lot area, lot coverage, frontage, and setback requirements.
 2. *Practical difficulty*: A case where strict application of the dimensional standards of the ordinance to the property for which a variance is sought would both preclude a use of the property which is permitted in the zone in which it is located and also would result in significant economic injury to the applicant.
 3. *Significant economic injury*: The value of the property if the variance were denied would be substantially lower than its value if the variance were granted. To satisfy this

standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land.

- c. Except as modified above, the other provisions of section 14-473 will apply to practical difficulty variances, including, but not limited to, the provisions of section 14-473(b)(2) (public hearing), and section 14-473(d) (specified variances prohibited).
 - d. A practical difficulty variance may not be used to grant relief from the provisions of section 14-449 (land use standards), to increase either volume or floor area, nor to permit the location of a structure, including, but not limited to, single-component manufactured homes, to be situated on a lot in a way which is contrary to the provisions of this article.
4. *Specified variances prohibited:*
- a. No use permitted in medium- and high-density residential districts shall be permitted in low-density residential districts. No use permitted in business districts shall be permitted in any residential district. No use permitted in industrial districts shall be permitted in any business or residential district. No use permitted in residential districts shall be permitted in any industrial district. The general use categories are listed below:
 - 1. Low-density residential: IR-1, IR-2, IR-3, R-1, R-2, R-3.
 - 2. Medium- and high-density residential: R-4, R-5, R-6.
 - 3. Business: R-P, B-1, B-2, B-3, A-B, B-4, B-5, I-B.
 - 4. Industrial: I-L, I-Lb, I-M, I-Ma, I-Mb, I-H, I-Hb.

- b. No variance shall be granted which would permit the creation of a lot or parcel that cannot be developed in compliance with the zoning, subdivision and other regulations applicable thereto.
- c. No variance shall be granted which would result in a use or development of the lot or parcel in question which would not be in harmony with the general purpose and intent of this article or the land development plan of the city; which would be materially detrimental to the public welfare or materially injurious to the enjoyment, use or development of property or improvement permitted in the vicinity; or which would materially impair an adequate supply of light and air to properties and improvements in the vicinity, substantially increase congestion in the public streets, increase the danger of flood or fire, or endanger the public safety.
- d. No variance shall be granted which would be greater than the minimum variance necessary to relieve the undue hardship or the hardship of the applicant.
- e. Except for appeals concerning nonconforming dwelling units in existence and use prior to April 18, 1984, no variance shall be granted which would permit the alteration of a structure to accommodate any additional dwelling unit as a conditional use without meeting the requirements which would otherwise be a condition precedent to such conditional use treatment.
- f. No variance shall be granted which would permit the alteration of an existing residential structure in an R-4 or an R-5 zone to accommodate more than three (3) dwelling units. No such variance shall be granted unless:
 - 1. No additional unit shall have less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic;

2. No open outside stairways or fire escapes above the ground floor shall be or have been constructed in the immediately preceding five (5) years;
3. A lower level dwelling unit shall have a minimum of one-half of its floor-to-ceiling height above the average adjoining ground level;
4. No existing dwelling unit shall be decreased to less than one thousand (1,000) square feet of floor area;
5. The building shall have been in existence prior to January 1, 1984;
6. A minimum of nine thousand (9,000) square feet of land area shall be required;
7. A minimum of four (4) on-site parking spaces shall be required;
8. A minimum of seventy-five (75) feet of street frontage shall be required; provided, further, before a building permit may be issued, site plan approval under article V of this chapter shall be required with the following additional review standards:
 - (i) Any addition or exterior alterations such as facade materials, building form and roof pitch shall be designed to be compatible with the architectural style of the structure;
 - (ii) The scale and surface area of parking, driveways, and paved areas shall be arranged and landscaped to be compatible in size and scale with neighboring properties in the area and to properly screen vehicles from adjacent properties and streets;

provided, further, that no variance shall be granted with respect to any of the preceding additional requirements.

- g. No variance shall be granted from the minimum lot sizes set forth in section 14-433 for lots in the IR-1, IR-2 and I-B zones.

(d) *Conditions on variances; variances less than requested.* Reasonable conditions and safeguards relating to construction, character, location, landscaping, screening and other matters may be imposed upon the premises benefited by a variance as considered necessary to prevent injurious effects upon other property and improvements in the vicinity or upon public facilities and services. Such conditions shall be expressly set forth in the resolution granting the variance and in the notice informing the applicant thereof. Violation of such conditions and safeguards shall be a violation of this article. A variance less than or different from that requested may be granted when the record supports the applicant's right to some relief but not to the relief requested.

(e) *Limitations on variances.* No variance permitting the erection or alteration of a building shall be valid for a period longer than six (6) months, or such other time as may be fixed at the time granted not to exceed two (2) years, unless a building permit for such erection or alteration is issued and construction is actually begun within that period and is thereafter diligently pursued to completion. One (1) or more extensions of said expiration dates may be granted if the facts constituting the basis of the decision have not materially changed and the two-year period is not exceeded thereby. No variance relating to the establishment or maintenance of a use not involving a building or structure shall be valid for a period longer than six (6) months, or such other time as may be fixed at the time granted not to exceed two (2) years, unless an occupancy permit is issued and a use commenced within such period; provided, however, that one (1) or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed, and the two-year period is not exceeded thereby.

(f) *Recording of variances.* No variance shall be valid unless, within thirty (30) days of final approval of the variance, a certificate describing the variance has been recorded by the applicant for the variance in the registry of deeds as required by

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(j) Prior Judicial and Administrative Action. Decisions of any court or administrative body, including but not limited to, the Zoning Administrator, the Planning Board or the Board of Appeals made prior to the effective date of this section and which addressed the number of nonconforming dwelling units in a particular structure, will not bar relief under this section.

(Ord. No. 153-03/04, 02/23/04)

*Editor's note—Section 4 of Ord. No. 354-85, adopted Jan. 7, 1985, repealed the pre-2004 version of § 14-391, relative to the Board of Appeals permitting temporary nonconforming uses, which derived from Code 1968, § 602.17.K.

Sec. 14-392. - Sec. 14-400. Reserved.

DIVISION 24. USE REGULATIONS AND EXCEPTIONS

Sec. 14-401. Generally.

The requirements of this article shall be subject to the use regulations and exceptions of this division.
(Code 1968, § 602.18)

Sec. 14-402. Relationship of buildings to lots.

Every building hereafter erected shall be located on a lot as defined in section 14-47.
(Code 1968, § 602.18.A)

Sec. 14-403. Street access.

(a) *In general.* No building intended for use as a habitation shall be erected on a lot which has its only street frontage on a street less than thirty-five (35) feet wide. No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this section. For purposes of this section, street shall be as defined in section 14-47, except that a dedicated street which may no longer be accepted due to lapse of time and an accepted street which may have been discontinued by abandonment shall also be deemed to be streets, provided that an applicant for a building permit respecting any lot abutting such street shall, without compensation or claim for damages, and at his

own cost and expense, first submit to the building authority (a) a deed from the owner of such lot conveying to the city all his right, title and interest in and to such street or any portion thereof; and (b) an agreement by such owner forever releasing the city from any and all claims for damages for the laying out and taking of such street and indemnifying the city against any and all other such claims, both such instruments to be executed and in recordable form acceptable to the corporation counsel and to encumber and run with the land.

(b) *Minimum requirements for street improvements on unimproved and improved but unpaved streets.* For a lot abutting any portion of a street which is unimproved or improved but not permanently paved, that portion which abuts the lot, and any like portion between such portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavements, curbs and, if located on a designated school walking route, sidewalks, in accordance with the minimum technical standards promulgated by the public works authority pursuant to section 14-498(a) of article IV of this chapter. Where the nearest permanently paved street does not have granite curbing, the public works authority may waive the requirement of curbing under this section, if it determines that an acceptable alternative drainage plan will be provided. Prior to the issuance of a building permit for erection of a building on a lot abutting any portion of a street which is unimproved or improved but not permanently paved, the following shall occur: (1) A plan of the street improvements required by this section shall be submitted to the public works authority; and (2) upon determination by the public works authority that the plan meets the street improvement requirements established by this subsection, a performance guarantee and inspection fee for said improvements shall be submitted to the city as set forth in section 14-501. Also as set forth in section 14-501, a one-year defect bond shall be tendered to the city prior to release of the performance guarantee required hereby. The provisions of this subsection (b) shall not apply to the erection of any single-family dwelling on any lot where the owner of the lot establishes that he or she was the owner of that same lot on November 19, 1984, and at all times thereafter, and states his or her intention under oath to make the structure his or her personal residence.

I *Exceptions.* The requirements of this section shall not apply to the following city streets upon their construction by the public works authority to such standards as are determined by the

authority to be the most feasible:

1. Dingley Court;
2. Morgan Court.
(Code 1968, § 602.18.B; Ord. No. 193-84, § 1, 11-19-84; Ord. No. 178-87, 11-2-87;
Ord. No. 372-89, 3-20-89; Ord. No. 273-90, 3-19-90)

Sec. 14-404. Accessory use.

The term "accessory use" shall include only the following:

- (a) A subordinate use of land or building which is customarily incidental to the main building or to the principal use of the land and which is located on the same lot with the principal building or use. No "garage sale," "lawn sale," "attic sale," "rummage sale," or other similar casual sale of tangible personal property which is advertised by any means whatsoever whereby the public at large is or can be made aware of such sale, shall be deemed to be "customarily incidental" if such sale occurs after sales have been conducted on the same premises for six (6) or more days previously during the calendar year.

Except where the principal use consists of the sale of alcoholic beverages for consumption on premises or where the principal structure is an airline terminal, pinball machines or amusement devices shall not be considered to be accessory uses whenever there are more than a total of two (2) such machines or devices on the premises.

- (b) Off-street parking when serving conforming uses located in any zone.
- (c) Home occupations as defined in section 14-47 and section 14-410.
- (d) Signs as defined in division 22 of this article.
- (e) The letting of rooms within an existing dwelling unit in any residential zone, provided that:
 1. There shall be no more than two (2) persons occupying such room or rooms;

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Dept. of Building Inspections
City of Portland Maine



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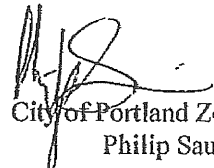
CITY OF PORTLAND

CERTIFICATE OF VARIANCE APPROVAL

I, Philip Saucier, the duly appointed Chair of the Board of Appeals for the City of Portland, Cumberland County and State of Maine, hereby certify that on the 21 day of June, 2012, the following variance was granted pursuant to the provisions of 30-A M.R.S.A. Section 4353(5) and the City of Portland's Code of Ordinances.

- 1. Current Property Owner: Robert B. Lightfoot
- 2. Property: 1 South Grafton Street – 0 East Kidder Street, Portland, ME CBL: 169-E-28, 29, 32, 33
Cumberland County Registry of Deeds, Book: 4500 Page: 168
Last recorded deed in chain of Title: 9/25/1979
- 3. Variance and Conditions of Variance:
To grant relief from section 14-403(b) of the Land Use Zoning Ordinance to allow a 16 foot wide driveway road on East Kidder Street to access a proposed rear lot instead of constructing East Kidder Street up to City standards with the following conditions:
 - 1. Applicant must build driveway to at least 16' in width
 - 2. Applicant need not install granite curbing
 - 3. Applicant must build driveway to the dimensional layout provided in his variance appeal application (pg 7)
 - 4. Applicant must comply with all other provisions in 14-403
 - 5. Applicant has an extended two (2) year period before the variance expires

IN WITNESS WHEREOF, I have hereto set my hand and seal this 21st day of June, 2012

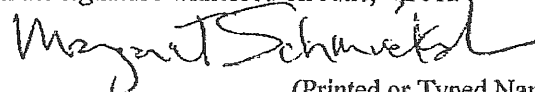
 , Acting Chair of
City of Portland Zoning Board,
Philip Saucier
(Printed or Typed Name)

Received
Recorded Register of Deeds
Aug 13, 2012 01:46:36P
Cumberland County
Pamela E. Lavley

STATE OF MAINE
Cumberland, ss.

SEAL

Then personally appeared the above-named Philip Saucier and acknowledged the above certificate to be his free act and deed in his capacity as Chairman of the Portland Board of Appeals, with his signature witnessed on June, 29, 2012


(Printed or Typed Name)
Notary Public
Margaret Schmuckal My term expires June 28, 2019

PURSUANT TO 30-A M.R.S.A. SECTION 4353(5), THIS CERTIFICATE MUST BE RECORDED BY THE PROPERTY OWNER IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS WITHIN 90 DAYS FROM FINAL WRITTEN APPROVAL FOR THE VARIANCE TO BE VALID. FURTHERMORE, THIS VARIANCE IS SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 14-474 OF THE CITY OF PORTLAND'S CODE OF ORDINANCES.

250 Holm Avenue
Portland, Maine 04102-1208
207-772-2522
November 5, 2012

Ms. Carol Morrissette
Chairwoman of the Portland Planning Board
City Hall
Portland, Maine

Dear Ms. Morrissette and Members of the Portland Planning Board;

I am writing to you in regards to Planning Board Report Number: 49-12 referring to proposed new requirements for building on "Paper Streets".

I am requesting Petitioner or Intervener status for this item. I am making this request for the following reasons: 1) I own a number of "Paper Streets" in the City; 2) I own scattered and various lots along these streets; 3) I also own various and scattered lots along other "Paper Streets" in the City.

I am requesting Petitioner or Intervener status as this item affects me directly, unlike most of the items which I comment on as an interested member of the public. To speak on this item it will take me longer than three (3) minutes and should take me less than ten (10) minutes.

Thanking you in advance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert C. Hains", written over a faint, illegible background.

Robert C. Hains