

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Patric Santerre, Chair
Catherine Alexander, Secretary
William Hall
Nan Sawyer
Joseph Lewis

February 12, 2004

Terry N. Snow
P.O. Box 275
Cumberland, ME 04021

RE: 145-153 Tucker Ave.
CBL: 330-D-005 through 008
ZONE: R-2 Zone

Dear Attorney Snow:

As you know, at its February 5th, 2004, meeting **the Board of Appeals voted 4-1 to grant your Variance Appeal** to allow paving 115' of lot frontage rather than the entire frontage of 135' as required. The Interpretation Appeal was not heard due to the granting of the Variance Appeal.

Enclosed please find the billing for the Zoning Board of Appeals legal ad and abutters notifications along with a copy of the Boards decision.

I am also enclosing your Certificate of Variance Approval, which must be recorded in the Cumberland County Registry of Deeds within 90 days of February 12, 2004, when it was signed. Failure to so record the Certificate will result in its being voided.

Should you have any questions please feel free to contact me at 207-874-8701

Sincerely,

Karen Dunfey
Office Manager

**CITY OF PORTLAND, MAINE
DEVELOPMENT REVIEW APPLICATION
PLANNING DEPARTMENT PROCESSING FORM
Planning Copy**

2003-0213
Application I. D. Number
1011412003
Application Date
Single Family SIF
Project Name/Description

Bill Dowd
Applicant
17 Westland Ave. Portland. ME 04102
Applicant's Mailing Address

Consultant/Agent
Applicant Ph: (207) 773-6250 Agent Fax:
Applicant or Agent Daytime Telephone, Fax

Tucker Ave, Portland, Maine
Address of Proposed Site
330 D005001
Assessor's Reference: Chart-Block-Lot

Proposed Development (check all that apply): New Building Building Addition Change Of Use Residential Office Retail
 Manufacturing Warehouse/Distribution Parking Lot Other (specify) _____

24' x 48' Proposed Building square Feet or # of Units **R-2** Zoning
Acreage of Site

Check Review Required:
 Site Plan (major/minor) Subdivision # of lots PAD Review 14-403 Streets Review
 Flood Hazard Shoreland Historic Preservation DEP Local Certification
 Zoning Conditional Use (ZBA/PB) Zoning Variance Other _____

Fees Paid: Site Pla **\$250.00** Subdivision _____ Engineer Review **\$50.00** Date **1011412003**

Planning Approval Status: Reviewer **Jay Reynolds**
 Approved Approved w/Conditions See Attached Denied
Approval Date **2/19/2004** Approval Expiration **2/19/2005** Extension to _____ Additional Sheets Attached
 OK to Issue Building Permit **Jay Reynolds** **2/19/2004**
signature date

Performance Guarantee Required* Not Required
* No building permit may be issued until a performance guarantee has been submitted as indicated below

<input type="checkbox"/> Performance Guarantee Accepted	_____ date	_____ amount	_____ expiration date
<input type="checkbox"/> Inspection Fee Paid	_____ date	_____ amount	
<input type="checkbox"/> Building Permit Issue	_____ date		
<input type="checkbox"/> performance Guarantee Reduced	_____ date	_____ remaining balance	_____ signature
<input type="checkbox"/> Temporary Certificate of Occupancy	_____ date	<input type="checkbox"/> Conditions (See Attached)	_____ expiration date
<input type="checkbox"/> Final Inspection	_____ date	_____ signature	
<input type="checkbox"/> Certificate of Occupancy	_____ date		
<input checked="" type="checkbox"/> Performance Guarantee Released	_____ date	_____ signature	
<input type="checkbox"/> Defect Guarantee Submitted	_____ submitted date	_____ amount	_____ expiration date
<input type="checkbox"/> Defect Guarantee Released	_____ date	_____ signature	

**CITY OF PORTLAND, MAINE
DEVELOPMENT REVIEW APPLICATION
PLANNING DEPARTMENT PROCESSING FORM
ADDENDUM**

2003-0213

Application I. D. Number

1011 412003

Application Date

Single Family S/F

Project Name/Description

Bill Dowd

Applicant

17 Westland Ave. Portland. ME 04102

Applicant's Mailing Address

Consultant/Agent

Applicant Ph: (207)773-6250

Agent Fax:

Applicant or Agent Daytime Telephone, Fax

Tucker Ave, Portland, Maine

Address of Proposed Site

330 D005001

Assessor's Reference: Chart-Block-Lot

Approval Conditions of DRC

- 1 All damage to sidewalk, curb, street, or public utilities shall be repaired to City of Portland standards prior to issuance of a Certificate of Occupancy.
- 2 Two (2) City of Portland approved species and size trees must be planted on your street frontage prior to issuance of a Certificate of Occupancy.
- 3 Your new street address is now #153 TUCKER AVENUE, the number must be displayed on the street frontage of your house prior to issuance of a Certificate of Occupancy.
- 4 A sewer permit is required for your project. Please contact Carol Merritt at 874-8300, ext . 8822. The Wastewater and Drainage section of Public Works must be notified five (5) working days prior to sewer connection to schedule an inspector for your site.
- 5 A street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8822. (Only excavators licensed by the City of Portland are eligible.)
- 6 As-built record information for sewer and stormwater service connections must be submitted to Public Works Engineering Section (55 Portland Street) and approved prior to issuance of a Certificate of Occupancy.
- 7 The Development Review Coordinator reserves the right to require additional lot grading or other drainage improvements as necessary due to field conditions.
- 8 Erosion and Sedimentation control shall be established prior to soil disturbance, and shall be done in accordance with Best Management Practices, Maine Department of Environmental Protection Technical and Design Standards and Guidelines.

BUILDING PERMIT INSPECTION PROCEDURES

Please call 874-8703 or 874-8693 to schedule your inspections as agreed upon

Permits expire in 6 months, if the project is not started or ceases for 6 months.

The Owner or their designee is required to notify the inspections office for the following inspections and provide adequate notice. Notice must be called in 48-72 hours in advance in order to schedule an inspection:

By initializing at each inspection time, you are agreeing that you understand the inspection procedure and additional fees from a "Stop Work Order" and "Stop Work Order Release" will be incurred if the procedure is not followed as stated below.

Ch **Pre-construction Meeting:** Must be scheduled with your inspection team upon receipt of this permit. Jay Reynolds, Development Review Coordinator at 874-8632 must also be contacted at this time, before any site work begins on any project other than single family additions or alterations.

- Footing/Building Location Inspection; Prior to pouring concrete
- N/A ~~Re-Bar~~ Schedule Inspection: Prior to pouring concrete
- Foundation Inspection: Prior to placing ANY backfill
- Framing/Rough Plumbing/Electrical: Prior to any insulating or drywalling
- Final/Certificate of Occupancy: Prior to any occupancy of the structure or use. NOTE: ~~There is a \$75.00 fee per inspection at this point.~~

Certificate of Occupancy is not required for certain projects. Your inspector can advise you if your project requires a Certificate of Occupancy. All projects DO require a final inspection

If any of the inspections do not occur, the project cannot go on to the next phase, REGARDLESS OF THE NOTICE OR CIRCUMSTANCES.

CERIFICATE OF OCCUPANICES MUST BE ISSUED AND PAID FOR, BEFORE THE SPACE MAY BE OCCUPIED

[Signature]
Signature of Applicant/Designee

4/12/04
Date

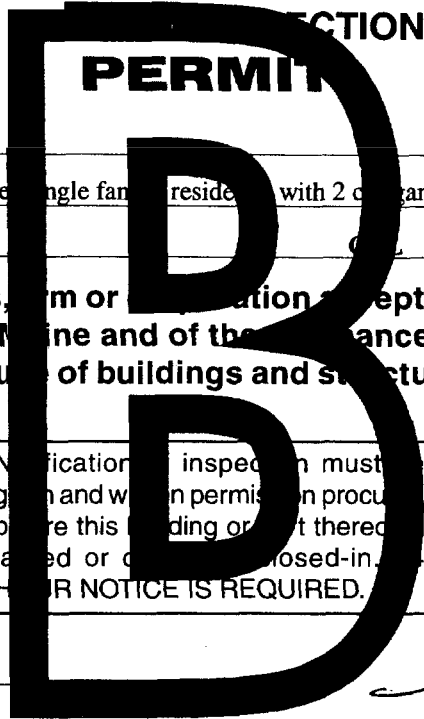
[Signature]
Signature of Inspections Official

4/12/04
Date

CBL: 330 D005 Building Permit #: 031246

DISPLAY THIS CARD ON PRINCIPAL FRONTAGE OF WORK CITY OF PORTLAND

Please Read
Application And
Notes, If Any,
Attached



Permit Number: 031246

This is to certify that W & C Llc /Bill Dowd
has permission to Build new 24' x 48' split foyer single family residence with 2 car garage under
153
AT Tucker Ave 330 D005001

provided that the person or persons, firm or corporation accepting this permit shall comply with all of the provisions of the Statutes of Maine and of the ordinances of the City of Portland regulating the construction, maintenance and use of buildings and structures, and of the application on file in this department.


Apply to Public Works for street line and grade if nature of work requires such information.

Notification of inspection must be given and work in permit on procedure before this building or part thereof is closed or enclosed-in. 48 HOUR NOTICE IS REQUIRED.

A certificate of occupancy must be procured by owner before this building or part thereof is occupied.

OTHER REQUIRED APPROVALS

Fire Dept. _____
Health Dept. _____
Appeal Board _____
Other _____
Department Name


Director - Building & Inspection Services

PENALTY FOR REMOVING THIS CARD

City of Portland, Maine - Building or Use Permit

389 Congress Street, 04101 Tel: (207) 874-8703, Fax: (207) 874-8716

Permit No: 03-1246	Date Applied For: 10/14/2003	CBL: 330 D005001
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Location of Construction: 153 Tucker Ave	Owner Name: W & C Llc	Owner Address: Po Box 10127	Phone:
Business Name:	Contractor Name: Bill Dowd	Contractor Address: 17 Westland Ave Portland	Phone (207) 773-6250
Lessee/Buyer's Name	Phone:	Permit Type: Single Family	

Proposed Use: Single family dwelling: 24' x 48' split foyer with 2 car garage under	Proposed Project Description: Build new 24 x 48' split foyer single family residence with 2 car garage under
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Dept: Zoning **Status:** Approved with Conditions **Reviewer:** Marge Schmuckal **Approval Date:** 02/24/2004**Note:** 10/17/03 I e-mailed Jay this is a 14-403 street - the road must be extended - does public works need a turn around too - the rest of zoning is ok **Ok to Issue:** 2/5/04 The **ZBA** granted the Variance request not to extend Tucker Ave under 14-403

- 1) Separate permits shall be required for future decks, sheds, pools, and/or garages.
- 2) This property shall remain a single family dwelling. Any change of use shall require a separate permit application for review and approval.
- 3) This permit is being approved on the basis of plans submitted. Any deviations shall require a separate approval before starting that work.

Dept: Building **Status:** Approved with Conditions **Reviewer:** Tammy Munson **Approval Date:** 04/08/2004**Note:** **Ok to Issue:**

- 1) The furnace must be located at least 5' away from the oil tank.

Comments:

3/12/2004-tmm: Faxed review list to Bill Dowd on 03/03/04 - still waiting for info back - put in hold pile

From: Marge Schmuckal
To: Jay Reynolds
Date: Tue, Feb 10, 2004 12:07 PM
Subject: Tucker Avenue Permit

Jay,

On 2/5/04 the Zoning Board of Appeals approved the variance for this property. They do not have to extend the street to the end of their property. Where are you on the approval? I will be signing off on it soon.

Marge

CC: Michael Bobinsky; PENNY LITTELL; Sarah Hopkins

Zoning Division
Marge Schmuckal
Zoning Administrator

Department of Planning & Development
Lee Urban, Director



CITY OF PORTLAND

November 25, 2003

W & C LLC
C/o Bill Dowd
17 Westland Avenue
Portland, ME 04102

**RE: 145 – 153 Tucker Avenue 330-D-005, 006, 007 & 008 – R-2 Residential Zone
Permit application #03-1246**

Dear Bill,

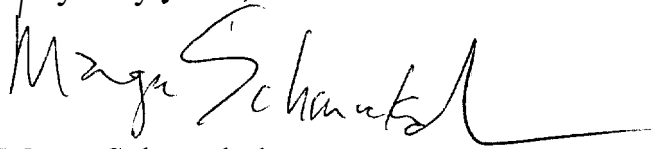
I am in receipt of your permit application to construct a 24' x 48' single family, split foyer with a 2 car garage underneath. Your permit can not be issued until further information is supplied concerning the road construction of Tucker Avenue.

Section 14-403 states that there are minimum requirements for street improvements on a lot abutting any portion of a street which is not permanently paved. That portion of the street shall be improved in accordance with the minimum technical standards promulgated by the public works authority, including sewers, storm drains, pavements, curbs, and if located on a designated school walking route, sidewalks. Your current plans show that pavement ends prior to the end of your property fronting on Tucker Street. Tucker Street needs to be extended to the end of this newly developed property.

Your permit can not be issued and is on hold until this office receives further information showing the extension of Tucker Street. The public works authority shall review such submittal to determine compliance with the technical standards.

You have the right to appeal my decision. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours,

A handwritten signature in black ink that reads "Marge Schmuckal". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Marge Schmuckal
Zoning Administrator

Cc: Jay Reynolds, Planning Div.

Zoning Division
Marge Schmuckal
Zoning Administrator

Department of Planning & Development
Lee Urban, Director



CITY OF PORTLAND

TO: ZONING BOARD OF APPEALS

FROM: ^{W&C} MARGE SCHMUCKAL, ZONING ADMINISTRATOR

SUBJECT: **145-153 TUCKER AVENUE – 330-D-5 THRU 8 – R-2 ZONE –**
INTERPRETATION APPEAL

DATE: JANUARY 27, 2004

I respectfully address the Zoning Board of Appeals in regards to the interpretation appeal that is requested by Terry Snow, attorney for W & C, LLC. It is my understanding that this request for an interpretation appeal does not constitute an interpretation of the wording or meaning of the ordinance as ~~it~~ is written.

In the first cover letter submitted by Attorney Snow for an interpretation appeal, he states on page 2, paragraph 3, “Ms. Schmuckal is correct when she states that pursuant to Section **14-403**, there are minimum requirements for street improvements on a lot that abuts any portion of a street which ~~is~~ is not permanently paved.” The paragraph goes on to agree that the ordinance refers to the Public Works authority as having jurisdiction on specifically how the required street shall be constructed by using the technical and design standards (a separate publication).

In the second cover letter submitted by Attorney Snow for a variance appeal, he states on page 1, the last paragraph, “Ms Schmuckal, City of Portland Zoning Administrator, is correctly referring to Applicant to Section **14-403**, which states in part that there are minimum requirements for street improvements on a lot abutting any portion of a street which is not permanently paved.” This is a second reference to my correct interpretation to section **14-403**.

The Public Works Department can not waive or grant a variance for the zoning standards as set forth in section **14-403**. Only the Zoning Board of Appeals may grant a variance. This is State law. Public **Works** can only waive or interpret their technical standards.

Both the applicant and I agree on the wording and interpretation of the ordinance. There is no dispute for the Zoning Board to consider for an interpretation.

The arguments that Attorney Snow brings forward are appropriately handled as a variance appeal, not an interpretation appeal. I do not dispute the applicant's right to a variance appeal before the Board.

I am also not arguing against the Zoning Board's right to grant a variance appeal if all the required criteria have been met as reviewed by the Board. I would also suggest that the applicant has another remedy if the variance cannot be granted by the Zoning Board. The applicant may request a vacation of that portion of Tucker Avenue. I am uncertain why the Planning Board allowed this portion of Tucker Avenue to remain if conditions of the land were so fragile and detrimental for completion. Please be aware that I am not questioning those arguments of the present conditions. I am questioning the wisdom to keep that portion of the street when it was known that conditions of the land were such as they are presented by Mike Bobinsky. There is an additional lot next to the lot presently in question which would be subject to the same section **14-403** if it were to be developed. I am sure this would perpetuate another variance before the Zoning Board.

**PETITION TO BOARD OF APPEALS,
CITY OF PORTLAND, MAINE**

I, the undersigned, Terry N. Snow, attorney for W & C, LLC, hereby respectfully request that the Board grant the necessary approvals under the zoning ordinance for the City of Portland, and interpret the Land Use Code and determine that the Applicant is not required to improve the portion of Tucker Avenue abutting the property because the lot abuts a portion of Tucker Avenue that has already been reviewed by the public works authority pursuant to section 14-498(a) of Article IV of the Land Use Code and the review included the decision not to disturb wetlands at the end of Tucker Avenue.

Background: The Applicant currently owns a 10,125 square foot unimproved parcel of land at 145-153 Tucker Avenue (330-D-005,006, 007 & 008) in Portland, which was purchased by the Applicant in November 2002. At the time of the purchase, it was the Applicant's intention to construct a 24' x 48' single family, split foyer with a 2 car garage on the property. It was also the Applicant's understanding at the time of the purchase that they would not have to improve Tucker Avenue, as the road had been approved by the Planning Board and accepted by the City Council, in its current condition.

On October 10, 2003 the Applicant applied for a building permit (Permit Application #03-1246) to construct a home on the property. By a letter dated November 25, 2003, the Applicant was informed by Ms. Schmuckal, City of Portland Zoning Administrator, that the permit could not "be issued until further information is supplied concerning the road construction of Tucker Avenue." The Zoning Administrator went on to state that the "permit can not be issued and is on hold until this office receives further information showing the extension of Tucker Street (Avenue). The public works authority shall review such submittal to determine compliance with the technical standards." In making her determination, she referred the Applicant to Section 14-403, which states in part that there are minimum requirements for street improvements on a lot abutting any portion of a Street which is not permanently paved.

Upon receiving the letter of November 25th from the City of Portland, the Applicant was confused because of the recent conflicting decisions that the City had made regarding newly constructed homes on Tucker Avenue. The Applicant can stand on his property and look across the street at a newly constructed home that was approved by the Planning Department, Public Works Department and the Building Inspection Department --- and has almost half of its frontage on an unimproved portion of Tucker Avenue.

The Applicant reviewed the Planning Board Report for the Tucker Woods Subdivision, dated December 8, 1998; the approved recording plat for Tucker Woods; the

construction drawings for the improvements to Tucker Avenue that were reviewed by the Planning Staff, the Planning Board and Public Works; and the City Council's Order

accepting the whole length of Tucker Avenue, including the unimproved portion as a City street. In reviewing the documents, two things are quite clear: First, the portion of Tucker Avenue abutting the Applicant's property has already been reviewed by the public works authority pursuant to section 14-498(a) of Article IV of the Land Use Code and secondly, the City's review included the decision not to disturb wetlands at the end of Tucker Avenue, which abut the Applicant's property. For the Board's convenience the above-mentioned documents have been enclosed with this packet.

Ms. Schmuckal is correct when she states that pursuant to Section 14-403, there are minimum requirements for street improvements on a lot that abuts any portion of a street which is not permanently paved. Pursuant to 14-403, the improvements shall be made "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." A review of 14-498(a) confirms that "the public works authority may promulgate technical and design standards for subdivisions **and** site plans." Furthermore, such technical and design standards become effective upon approval of the planning board. The standards "shall be necessary and reasonable and shall be in accordance with sound engineering practice."

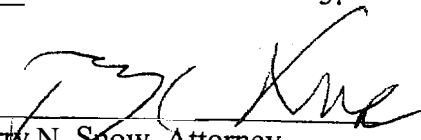
It is clear that the public works authority for the City of Portland reviewed all of Tucker Avenue in 1999 **and** 2000 and made necessary and reasonable decisions in accordance with sound engineering practice decisions, which culminated in the approval of Tucker Woods and the subsequent acceptance of the Tucker Avenue by the City of Portland. It is not necessary and totally inconsistent for the Zoning Administrator to ask the Applicant to improve a portion of Tucker Avenue that has already had a 14-498(a) review.

Applicant requests the following: Pursuant to Section 14-471, et. seq., the Board **has** the power to decide appeals from interpretations made by the building authority. We agree **with** Ms. Schmuckal that the portion of Tucker Avenue that abuts the Applicant's property must be reviewed by public works prior to the issuance of a building permit; however, it is our position that the proper interpretation of 14-403 is that public works has already reviewed Tucker Avenue **as** it relates to this property pursuant to 14-498(a) and that the Applicant's building permit should be issued by the City without any further review.

Conclusion: Based upon all of the foregoing facts, the Applicant respectfully requests that no further review of the application is necessary and that the City of Portland Zoning Administrator may issue a building permit without **further** information being supplied to the City regarding the construction of Tucker Avenue and that the

permit application be approved as submitted.

DATED at Cumberland Center, Maine this 23 day of December, 2003.



Terry N. Snow, Attorney
In Fact for Applicant
W & C, LLC

Law Office of Terry N. Snow
294 Main Street, P.O. **Box 275**
Cumberland, Maine 04021-0275
(207) 829-6363

**PETITION TO BOARD OF APPEALS,
CITY OF PORTLAND, MAINE**

I, the undersigned, Terry N. Snow, attorney for W & C, LLC, hereby respectfully request that the Board grant the necessary approvals under the zoning ordinance for the City of Portland, regarding the issuance of a building permit to construct a 24' x 48' single family, split foyer with a 2 car garage on the applicant's property, without requiring the applicant to improve the portion of Tucker Avenue abutting the property.

Background: Applicant currently owns a piece of land at 145-153 Tucker Avenue in Portland, which was purchased by the Applicant in November 2002. At the time of the purchase, it was the Applicant's intention to construct a 24' x 48' single family, split foyer with a 2 car garage on the property. It was also the Applicant's understanding at the time of the purchase that they would not have to improve Tucker Avenue, as the road had been approved by the Planning Board and accepted by the City Council, in its current condition.

On October 10, 2003 the Applicant applied for a building permit (Permit Application #03-1246) to construct a home on the property. By a letter dated November 25, 2003, the Applicant was informed by Ms. Schmuckal, City of Portland Zoning Administrator, that the permit could not "be issued until further information is supplied concerning the road construction of Tucker Avenue." The Zoning Administrator referred the Applicant to Section 14-403, which states in part that there are minimum requirements for street improvements on a lot abutting any portion of a street which is not permanently paved. In order for the City to issue a building permit for the Applicant's property, the Applicant had to submit a plan showing the improvement of approximately 15 to 20 feet Tucker Avenue abutting their property.

Applicant requests the following: Pursuant to Section 14-473(c)(1), applicant requests a variance **from** the minimum requirements for street improvements on unimproved and improved but unpaved streets as outlined in 14-403(b), and further states that such variance will not be contrary to public interests, is due to the conditions peculiar to the property, not the result of the actions of the applicant, and a literal enforcement of the ordinance would result in unnecessary and undue hardship.

Furthermore, the variance would do no more than allow the Applicant to construct a home on its lot which has 115 feet of paved, improved frontage on Tucker Avenue and only approximately 15-20 feet of unpaved, unimproved frontage **AND** has a newly built home which was approved by the City of Portland with more than 70 feet of unpaved frontage directly across **the** street from it.

And finally, the hardship has been created **by** the conflicting positions of various City of Portland departments and the Zoning Ordinance for the City. Ms. Schmuckal, City of Portland Zoning Administrator, is correctly referring the Applicant to Section 14-403, which states in part that there are minimum requirements for street improvements on

~~a lot abutting any portion of a street which is not permanently paved. However, the Planning Board and the Public Works Department has already reviewed Tucker Avenue and determined that the portion Tucker Avenue abutting the Applicant's property should not be improved.~~

DATED at Cumberland Center, Maine this 23 day of December, 2003.


Terry N. Snow, Attorney
In Fact for Applicant
W & C, LLC

Law Office of Terry N. Snow
294 Main Street, P.O. Box 275
Cumberland, Maine 04021-0275
(207) 829-6363

1. The land in question cannot yield a reasonable return unless a variance is granted;

The Portland Planning Board and the Public Works Department has determined, in its recent review of the Tucker Woods Subdivision, that Tucker Avenue should not be improved in order to “avoid impacting an existing wetland area”. The Applicant cannot improve Tucker Avenue without impacting the wetland area and without disturbing a stilling basin, which was required by the City of Portland, to be installed by Design Dwellings, Inc. when they improved Tucker Avenue for the Tucker Woods Subdivision. If the variance is not granted, the Applicant will lose its total investment because they cannot comply with 14-403, without disturbing the wetlands **and** removing a drainage structure that was recently approved by the City.

The purpose of the variance is to allow the Applicant to build a home on Tucker Avenue, consistent with the decisions of the Portland Planning Board and Public Works.

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

The property in question and the circumstances surrounding the property are unique. On February 23, 1999, the City of Portland Planning Board approved a 16 lot subdivision known as Tucker Woods Subdivision. The subject property is located adjacent to and across the street from the approved subdivision. In order not to impact wetlands, the Board approved the Project and did not require the developer to extend Tucker Avenue so that all of the lots had improved, paved frontage. This decision has left the Applicant in a unique situation – owning a lot with 15 feet of paved frontage on Tucker Avenue and 15-20 feet of unimproved frontage. What makes the situation even more unique is the fact that the City has allowed a home to be built in the Tucker Woods Subdivision directly across the street from the property in question (which has more frontage on an unpaved road than the present lot) and will not allow the Applicant to build its home on the same street. Finally the need for the variance for the property in question is due to the unique circumstances of having conflicting needs and requirements from more than one City Department. The Planning Board and the Public Works Department does not want Tucker Avenue paved/improved because it will disturb wetlands, while the Zoning Department will not issue a building permit unless the wetlands is disturbed.

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

The property is located in a residential neighborhood and therefore the granting of the variance, which would allow the applicant to construct a 24' x 48' single family, split foyer with a 2 car garage, would not alter the essential character of the locality. In fact there is a home that was recently constructed across the street from this property.

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

The need for the variance is a direct result of prior actions taken by the City of Portland. On February 23, 1999, the City of Portland Planning Board approved a 16 lot subdivision known as Tucker Woods Subdivision. In making their determination, the Board decided to approve the Project in such a way that the Tucker Avenue improvements were to be extended to about 60 feet short of the northerly edge of Lot 9. The reasoning was to not impact an existing wetlands. The Board also required the developer to install a stilling basin at the end of Tucker Avenue. The City Council on January 3, 2000, accepted Tucker Avenue as a City Street, including the 60 foot area that was not improved. Without a variance, the applicant would be required to disturb wetlands and a stilling basin that was required by the Planning Board and improve an area of road that the Public Works Department and the Planning Board did not want paved. The hardship was not self-created, nor created by a prior owner.

From: Charlie Lane
To: ZBA
Date: Thu, Jan 22, 2004 10:02 AM
Subject: Tucker Avenue Appeal

Good morning:

The Tucker Avenue matter involves ~~two~~ appeals: an interpretation appeal and a variance appeal. Inadvertently, staff at City Hall failed to advertise the interpretation appeal, so the Board may not address it until ~~the~~ required notice has been given.

The applicant would prefer to be heard on both appeals at the same time.

Under the circumstances, he requested a continuance. I told him that I would present his request to the Board, explain the circumstances and also said that it would not be necessary for him to appear.

When the matter does come before you, Marge will challenge the Board's jurisdiction over the interpretation appeal sought by the applicant. It is a situation similar to that involving the Regency, but the ZBA will have to make the final decision of whether it has jurisdiction.

My role in regard to Marge's challenge will be to advise the Board: I cannot simultaneously represent Marge and advise the Board on the same matter.

~~See~~ you tonight.

Charlie

CC: Marge Schmuckal

From: Charlie Lane
To: Marge Schmuckal
Date: Thu, Jan 22, 2004 9:42 AM
Subject: Re: Tucker Ave

Good morning:

I just talked with Terry Snow. He would like to continue tonight's hearing so both appeals can be heard at the same time.

He understands that you take the position that the interpretation appeal is not the kind of appeal which the ZBA can address. I told him that you would present that issue to the Board. My role would be to advise the Board if it had questions. I also mentioned the Board's awareness of this problem because of the recent matter involving the Regency.

He requested that the matter be rescheduled for rehearing on either Feb. 5th or March 4th. His client will not be available on Feb. 19th.

I told him that I would present his request for a continuance to the Board, explaining that it was cause by the City and that I told him it would not be necessary for him to appear.

Charlie

>>> Marge Schmuckal 01/21 11:40 AM >>>

Charlie,

Yes, Karen inadvertently forgot to include the interpretation appeal. However, I do not think it is an interpretation appeal anyway. Based upon your comments at the last meeting, an interpretation appeal should be based upon interpreting text. Terry Snow stated in his submittal that he agrees with my decision. His argument is that Public Works agrees with his client that the road should not be put in based upon their evaluation. That is a variance argument, not an interpretation argument.

So I believe that this should only be a variance appeal, not an interpretation appeal. I have already spoken to Terry Snow and told him this. I have also related that his arguments for the variance appeal should be formed around the variance criteria which was not included in his submittal.

Does this sound correct?

Marge



CITY OF PORTLAND

DATE: January 2, 2004

TO: Zoning Board of Appeals

FROM: Michael J. Bobinsky, Director of Public Works

SUBJECT: Recommendation to Waive Requirement for Street Improvements for Lot on Tucker Avenue - Permit Application # 03-1246, Bill Dowd

This memorandum provides an advisory position from the Public Works Department regarding Permit Application #03-1246 to the Zoning Board of Appeals. At issue here is the requirement that the entire frontage of the above referenced lot must be paved, and provide for minimum required street improvements in accordance with Section 14-403 of the City's Zoning Ordinance. According to Mr. Dowd's permit application and plans, his lot has approximately 135 feet of road frontage, with 115 feet fronting the paved street and 20 feet unpaved. In accordance with our Ordinance, this remaining 20 feet of unpaved road needs to be paved and upgraded before the building permit is issued.

I have taken the opportunity to view this lot and observe what constraints it has in terms of becoming fully compliant with Section 14-403. The following are my findings:

1. Impacts on the adjacent wetlands appear to be severe if the applicant is made to extend the street by approximately 20 feet. While this issue is the applicants' concern, I am worried that the level of effort to extend the paved road frontage as requested will place an undue hardship on the applicant to properly mitigate the wetlands impacted from extending the paved area the additional 20 feet.
2. In reviewing background information the Public Works Department has on the Tucker Woods subdivision, it appears the developer was not required to extend Tucker Road past the entire frontage of Lot #9 within the Subdivision due to concerns the Planning Board had on impacts to existing wetlands area at the end of Tucker Avenue. Lot #9 was allowed to be constructed with approximately 70 feet of unpaved road. The Dowd lot is directly across the street from this lot, and although the Dowd lot is not a part of the Tucker Woods Subdivision, the same issues and concerns apply regarding impacts to the existing wetlands by extending the street.

3. The Public Works Department endorses Section 14-403 of the Zoning Ordinance; however, we do not feel in this case that filling of the wetlands to extend the pavement by 20' provides the operational and maintenance benefit for the City inherent with this Zoning requirement.

Should you have any questions or need further information, please let me know.

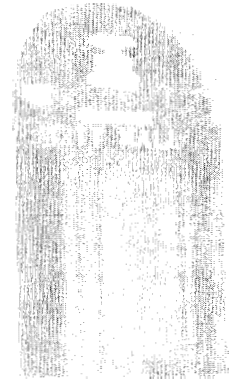
MJB:jw

cc: Lee Urban, Director of Planning and Development
Sarah Hopkins, Development Review Services Manager
Marge Schmuckal, Zoning Administrator ✓
Eric J. Labelle, P.E., City Engineer
Katherine A. Earley, P.E., Engineering Services Manager

City of Portland
INSPECTION SERVICES

Room 315
389 Congress Street
Portland, Maine 04101

Telephone: 207-874-8703 or 207-874-8693
Facsimile: 207-874-8716



FACSIMILE TRANSMISSION COVER SHEET

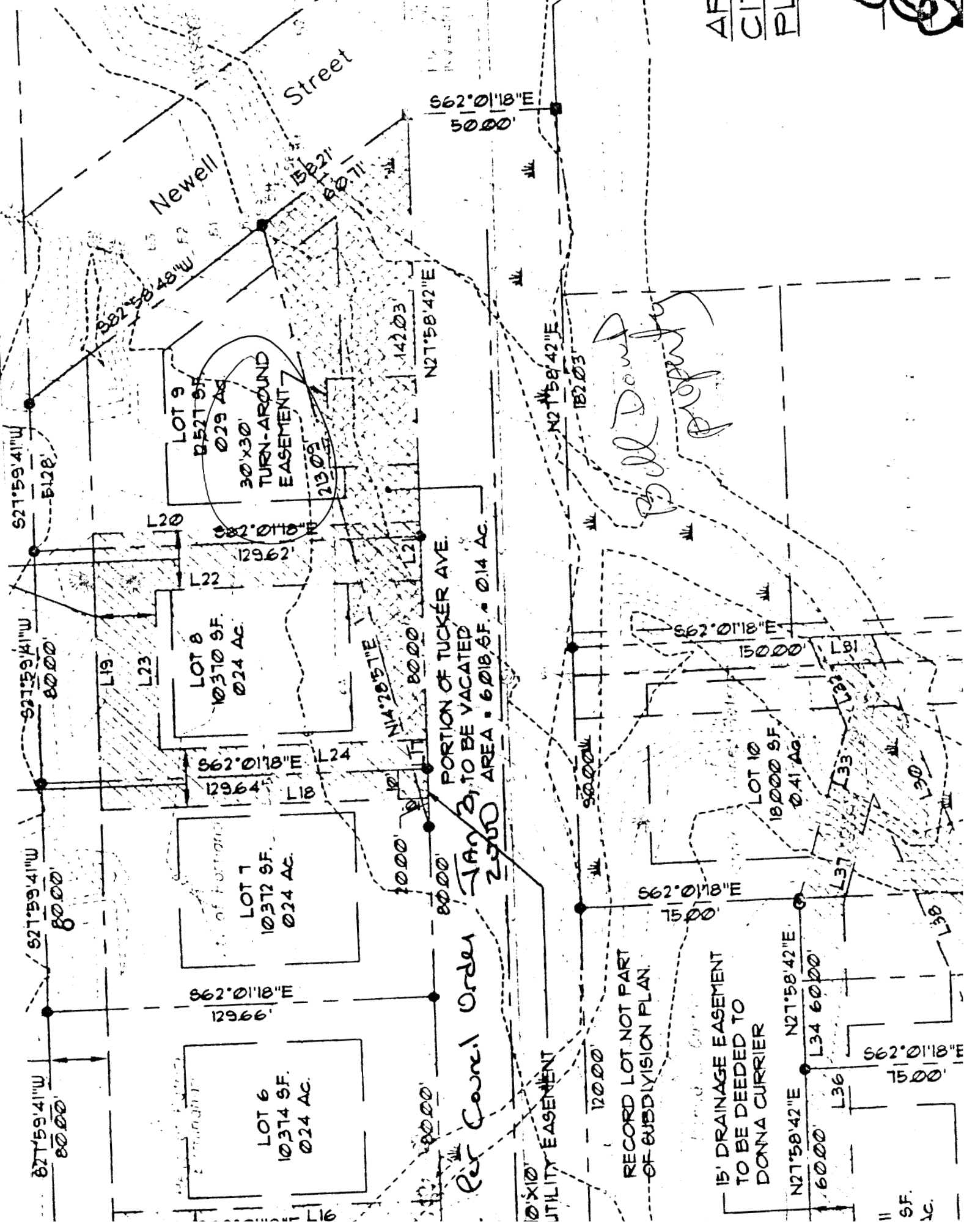
TO: <u>Mike Bobmsky</u>	FROM: <u>Marge Schmeckel</u>
FAX NUMBER: <u>074-0816</u>	NUMBER OF PAGES, WITH COVER: <u>3</u>
TELEPHONE: _____	RE: <u>Tucker AVE</u>
DATE: <u>12/23/03</u>	_____

Comments: I hope this helps you



Street

Newell



PORTION OF TUCKER AVE.
TO BE VACATED
AREA = 6,018.6 SF = 0.14 AC

City Council Order
Jan 3, 2000

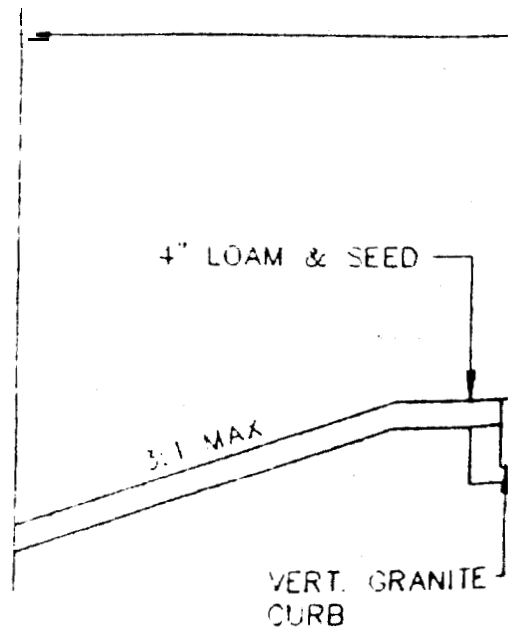
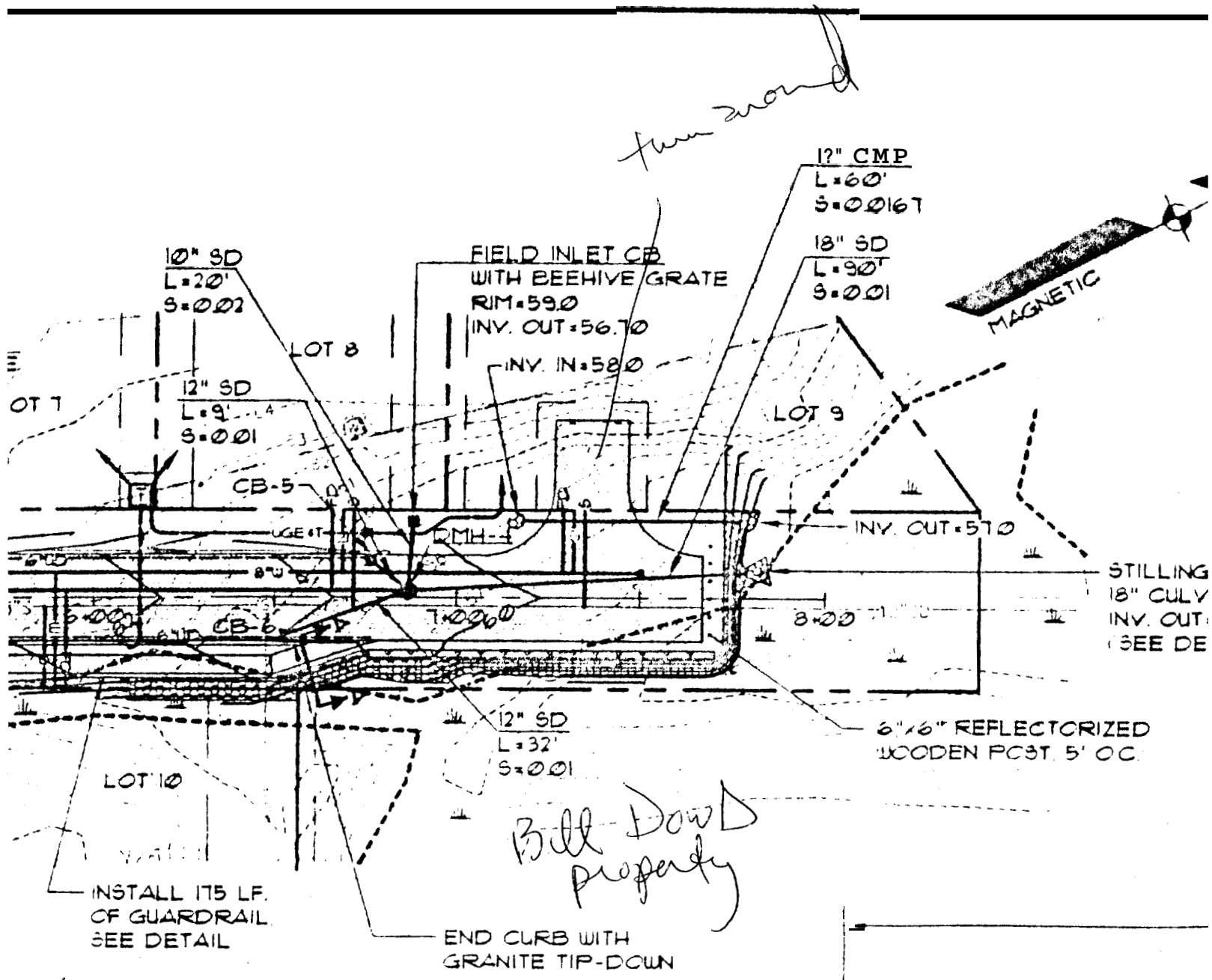
Bill Dwyer
Property

UTILITY EASEMENT

RECORD LOT NOT PART
OF SUBDIVISION PLAN.

15' DRAINAGE EASEMENT
TO BE DEEDED TO
DONNA CARRIER

11 SF.
AC.



PVI STA = 7+25
PVI ELEV = 59.17
AD = 159

11,
...

From: Marge Schmuckal
To: Internet: expectsuccess@dowdrealestate.com; Micha...
Date: Tue, Dec 23, 2003 11:58 AM
Subject: Appeal of 14403 - Tucker Ave

Bill,

Mike Bobinsky has forwarded your letter to him for my files. Please be reminded that Mike does not have the authority to waive a zoning requirement. Only the Zoning Board of Appeals can grant relief from the Zoning Ordinance. Certainly some input from Public Works may be helpful in your arguments to the Zoning Board. I know that you have already picked up our informational packet on what is required to file for an appeal to the Zoning Board.

Please be reminded that your window to appeal is limited by law to thirty (30) days from the date of my denial letter to you. Call me if you have any questions.

Marge Schmuckal

City of Portland
55 Portland Street
Portland, ME 04101
Phone: 874-8801
Fax: 874-8816

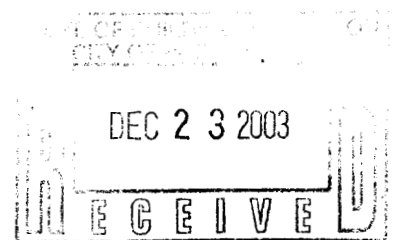
PORTLAND PUBLIC WORKS

Fax

To: Marge From: Melissa Shaffner
Fax: _____ Pages: _____
Phone: _____ Date: _____
Re: _____ CC: _____

Urgent For Review Please Comment Please Reply Please Recycle

• Comments:



DOWD
PROPERTIES

Since 1982

Marge Schmuckal
cc: Kelli Earley
Eric LeBelle
FII -

RESIDENTIAL • INVESTMENT

December 18, 2003

Michael Bobinsky
Director Of Public Works
55 Portland Street
Portland, ME 04101

Dear Mike,


I am requesting a waiver by Public Works so I do not have to pave the additional 20 ft of road frontage on my lot on Tucker Avenue as requested by the Zoning Division.

In summary -

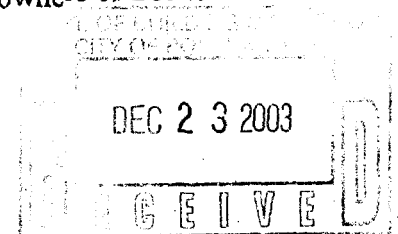
- I applied for a building permit on the last lot on the right hand side of Tucker Avenue Ext AKA Tucker Woods.
- I have approximately 135ft of road frontage - 115 ft paved 20 ft unpaved that fronts Tucker Ave Stilling Basin.
- a Marge Schmuckal denied the permit (her letter enclosed) based upon 14-403 that states the entire frontage of my lot must be paved.
- In 1999 Tucker Woods Subdivision was reviewed and approved by the Planning Staff, Public Works, Planning Board etc.
- At that time lot #9 of Tucker Woods (across the street from my lot) was approved with only 70ft of paved road frontage and approximately 70ft of unpaved road frontage.
- a Planning Board Report #54-98 (see enclosed) indicates that the road was not extended the entire length of lot 9 to avoid impacting an existing wetlands area.
- The 20ft that we would need to pave has a stilling basin on it as required by the Planning Board and Public Works for Tucker Woods.
- Paving the additional 20+/- feet would disrupt the existing stilling basin and wetlands unnecessarily

I am requesting that I be allowed the same concessions granted to the owners of Lot #9 across the street.

Sincerely,


Bill Dowd
W & C LLC

17 Westland Avenue Portland, Maine 04102 (207)773-6250 Fax (207)773-0048
email: expectsuccess@dowdrealstate.com



W & C LLC
17 WESTLAND AVENUE
PORTLAND, MAINE 04102
207-773-6250 FAX 773-0046

December 9, 2003

Marge Schmuckal, Zoning Administrator
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Tucker Avenue Lot

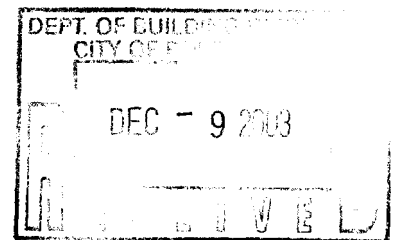
Dear Marge,

Enclosed please find information that I believe supports my request for a building permit for Tucker Avenue. I would appreciate it if you would review this and hopefully agree.

Please give me a call and let me know what you think.

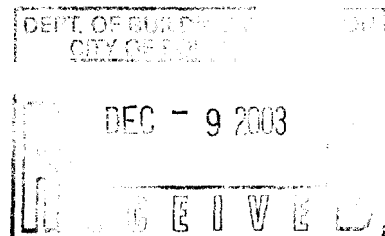
Sincerely,


William J. Dowd



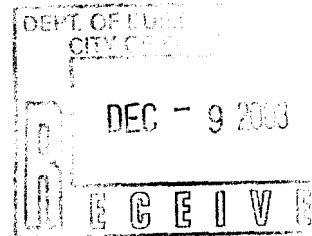
TUCKER AVENUE EXTENSION

1. The Tucker Avenue Extension recording plat was recorded in the Cumberland County Registry of Deeds on March 10,1999 in Book 199,Page 130. See enclosed plan.
2. The City of Portland Planning Board approved said plan and all associated street improvements. This included not extending pavement the entire length of lot 9 which located directly across from said property being discussed.
3. On January 3,2000 the City Council accepted that portion of Tucker Avenue extending from the southeasterly sideline of lot 1 along the lines of lots 2 thru 9, a distance of 842.03 feet. (The entire length of lot 9)
4. The entire frontage of the W&C lot plus an additional 60 feet is located on a City of Portland Accepted Street.
5. Section 14-403 has been met as the street has been developed to the standards required by the Public Works Authority and further approved by the Planning Authority and Planning Board. A plan of the improvements for the street was submitted at the time of plan approval, a performance guarantee was accepted by the City and said improvements were performed to the satisfaction of the City prior to the acceptance of said street improvement. Enclosed please find a copy of said plans.



PLANNING BOARD REPORT #54-98

**TUCKER WOODS SUBDIVISION
SUBDIVISION REVIEW AND STREET VACATION
DESIGN DWELLINGS, INC., APPLICANT**



Submitted to:

Portland Planning Board
Portland, Maine

December 8, 1998

I. INTRODUCTION

Public Works is also requiring that the applicant specify at least four (4) granite monuments at the four corners of this development along Tucker Avenue. The proposed driveways must be revised so that they are four (4) feet wider at the pavement gutter line than the driveway at the street right of way. Also, the applicant must install granite headstones at each proposed catch basin and a seven (7) foot long granite tipdown curb at each end of the headstone.

Public Works memo is included as Attachment 4. A potential condition of approval is:

that the plan be revised in accordance with Public Works' memo dated December 3, 1998 regarding granite monuments, driveway widths, snow plow turnaround, street width and finish pavement depth.

Tucker Avenue improvements are extended to about 60' short of the northerly edge of Lot 9, apparently to avoid impacting an existing wetland area. Normally, a subdivision or 14-403 street would be improved to the extent of the farthest lot frontage, which appears to be paper Newell Street. Tucker and Newell were reserved from automatic vacation last year, except the portion of Newell from Tucker to Riverside, which was vacated. Beal Street is a reserved, unimproved, unaccepted street running parallel to Tucker Avenue. Lots 10-16 have frontage on Beal as well as Tucker Avenue. The subdivision ordinance calls for avoidance of such double-frontage lots, but in this case the old subdivision arrangement yields either shallow lots (75') or deep ones as proposed (150'). The applicant has put a note on the proposed recording plat which states that "all lots shall be accessed from Tucker Avenue only. No lots shall be provided access from Riverside Industrial Parkway or from any future development of Beal Street."

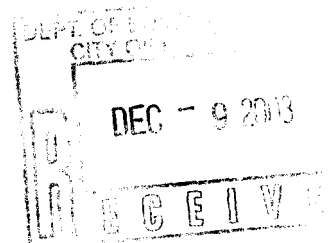
Corporation Counsel would like a condition placed on all proposed subdivision which states that no public service shall be provided to the development until the street has been accepted by the City. This will ensure that the street be accepted by the City, which has not always happened in the past. A potential condition of approval is:

that a note be added to the subdivision plat which states that no public service shall be provided to the Tucker Woods development until the street has been accepted by the City.

6. Sanitary/Stormwater

Sanitary

The applicant is proposing to install a sewer line in Tucker Avenue to connect with the existing sewer line. The Sewer Division has stated that they do not foresee any sewer capacity issues in this area. The applicant shall request a sewer capacity letter from the Sewer Department.



Zoning Division
Marge Schmuckal
Zoning Administrator

Department of Planning & Development
Lee Urban, Director



CITY OF PORTLAND

November 25, 2003

W & C LLC
C/o Bill Dowd
17 Westland Avenue
Portland, ME 04102

RE: 145 – 153 Tucker Avenue 330-D-005, 006, 007 & 008 – R-2 Residential Zone
Permit application #03-1246

Dear Bill,

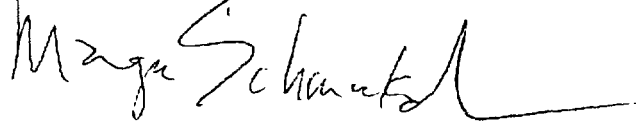
I am in receipt of your permit application to construct a **24' x 48'** single family, split foyer with a 2 car garage underneath. Your permit can not be issued until further information **is supplied** concerning the road construction of Tucker Avenue.

Section 14-403 states that there are minimum requirements for street improvements on a lot abutting any portion of a street which is not permanently paved. That portion of the street shall be improved in accordance with the minimum technical standards promulgated by the public works authority, including sewers, storm drains, pavements, curbs, and if located on a designated school walking route, sidewalks. *Your* current **plans** show that pavement ends prior to the end of your property fronting on Tucker Street. Tucker Street needs to be extended to the end of this newly developed **property**.

Your permit can not be issued and is on hold until this office receives further information showing the extension of Tucker Street. The public works authority shall **review** such submittal to determine compliance with the technical standards.

You have the right to appeal my decision. If you wish to exercise your right to appeal, you have **30** days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Very truly yours,

A handwritten signature in black ink that reads "Marge Schmuckal". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Marge **Schmuckal**
Zoning Administrator

Cc: Jay Reynolds, Planning Div.

Page 79

**SECTION OF TUCKER AVENUE
AND A RELATED DRAINAGE ESEMENT**

ACCEPTED BY ORDER OF THE CITY COUNCIL PASSED
JANUARY 3, 2000 City of Portland Records Volume _____, Page _____

**ORDER ACCEPTING A SECTION OF TUCKER AVENUE
AS A CITY STREET AND A RELATED DRAINAGE EASEMENT**

ORDERED, that the City hereby accepts as a City street a section of Tucker Avenue known as the "Tucker Avenue Extension," as more particularly described in Exhibit A attached hereto; and

BE IT FURTHER ORDERED, that the City accepts a related drainage easement of approximately 20' x 20' located next to Lots #14 and #15 as shown on a plan entitled "Recording Plat of Tucker Avenue Extension" dated 10/06/98 as revised 2/01/99 and recorded at Plan Book 199, Page 130 of the Cumberland County Registry of Deeds.

EXHIBIT A

A certain lot or parcel of land situated in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at the northeasterly end of Tucker Avenue at a granite monument to be set marking the westerly corner of Lot #16 on "Recording Plat of Tucker Avenue Extension" for Record Owner, Design Dwellings, Inc." dated 10/06/98 as revised 2/01/99 and recorded in Cumberland County Registry of Deeds in Plan Book 199, Page 130.

Thence, N 62° 01' 18" W along the said northeasterly end of Tucker Avenue, 50.00 feet to a granite monument to be set;

Thence, N 27° 58' 42" E along land now or formerly of Melvin E. Ireland and along the southeasterly line of Lots #1, #2, #3, #4, #5, #6, #7, #8 and #9 on said "Recorded Plat", a distance of 842.03 feet to a granite monument to be set;

Thence, S 62° 01' 18" E, 50.00 feet to a granite monument to be set;

Thence S 27° 58' 42" W along land now or formerly of Bernard Higgins, along the northwesterly line of land now or formerly of Donna L. Carrier and along the northwesterly line of Lot #11, #12, #13, #14, #15, and HIG on said "Recording Plat, a distance of 842.03 feet to the point of beginning. Containing 42,101.5 square feet.

Bearings are referenced to True North, per Astronomic Observation. Meaning and intending to convey all of the area shown as Tucker Avenue Extension on said "Recording Plat of Tucker Avenue Extension". Plan Book 199, Page 130.

**SECTION OF TUCKER AVENUE
AND A RELATED DRAINAGE EASEMENT**

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Zoning Division
Marge Schmuckal
Zoning Administrator

Department of Planning & Development
Lee Urban, Director



CITY OF PORTLAND

November 25, 2003

W & C LLC
C/o Bill Dowd
17 Westland Avenue
Portland, ME 04102

RE: 145 – 153 Tucker Avenue 330-D-005, 006, 007 & 008 – R-2 Residential Zone
Permit application #03-1246

Dear Bill,

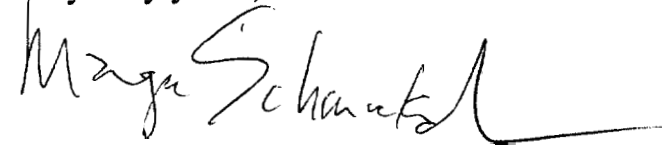
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Marge Schmuckal
Zoning Administrator

Cc: Jay Reynolds, Planning Div.