



Memorandum
Planning and Urban Development Department
Planning Division

To: Sean Dundon , Chair and Members of the Portland Planning Board

From: Barbara Barhydt, Development Review Services Manager

Date: March 9, 2018

Re: Section 14-403 Text Amendments

Meeting Date: March 13, 2018

I. INTRODUCTION:

Section 14-403 Street Access is contained within Division 24, Use Regulations and Exceptions of the Land Use Code. It applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits. The goals of the text amendments are to support the production of new housing in Portland without imposing significant new City expenses in terms of the construction and maintenance of streets and at the same time provide adequate access for public safety services. The proposed amendments seek to allow development on undersized built streets that meet minimum standards for emergency services and to continue to require undeveloped streets to be improved to meet current city street standards. The substance of proposed amendments remains consistent with current policy, while seeking to simplify and clarify the regulations.

The legislative history and public purposes of the section are outlined in a memorandum prepared by Anne Torregrossa, Associate Corporation Counsel ([Attachment 1](#)). As stated in Anne Torregrossa's memo, "The City Manager and staff recognized the requirements in Sec 14-403 limited development even on City-accepted streets, and also that the section was complicated, difficult to apply, and duplicated many of the rules and requirements that are now part of the site plan review process." Staff members from Corporation Counsel, Public Works, Fire, Permitting and Inspections, and Planning collaborated on the proposed rewrite of Section 14-403 "...in an attempt to streamline and clarify the requirements of the section..." The staff is seeking the Board's input on the proposed amendments and the draft will also be presented to the Housing Committee before the item returns to the Board for a public hearing and recommendation to City Council.

II. NOTICE AND PUBLIC COMMENT

This item was noticed in the Legal Ad that appeared in the Portland Press Herald on March 5 and March 6th. It was posted on the City's web page on March 2nd and sent to interested citizens through Notify Me on that same date. Public Comment was submitted by Matt Power and is included as [Attachment 3](#), Public Comment. Mr. Power owns property on Tarbell Street finds the existing and proposed Section 14-403 to be cost prohibitive for him to be able to build a home on this street. He offers suggestions to add more streets as exceptions, allow for more waivers of standards, allow for appeals of the ordinance, and have

exceptions for tiny houses. Victoria Morales, representing a local developer, has submitted public comment and suggestions for ordinance amendments in Att 3 PC2.

III. PROPOSED TEXT AMENDMENTS

The proposal is to replace the existing Section 14-403 with a rewritten section. Please refer to Attachment 1 (Torregrossa memo) for a summary of the amendments and Attachment 2 for the proposed ordinance text. A comparison of the existing and proposed language is below.

Current Section 14-403 Language	Proposed Section 14-403 Language
<p>a) <i>In general.</i> 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.</p>	<p>A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.</p> <p>(a) <i>Permanently paved and accepted streets or island streets.</i> The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:</p> <ol style="list-style-type: none"> 1. For one- or two-family dwellings – 25’; 2. For all other buildings – 28’. <p>These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.</p>
<p>(b) <i>Minimum requirements for street improvements on unimproved and improved but unpaved streets.</i> 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</p>	<p>(b) <i>Streets to be upgraded in connection with development.</i> The owner or developer of the lot will do all of the following in connection with the development of that lot:</p> <ol style="list-style-type: none"> 1. Upgrade the street, between the lot and the nearest permanently paved and accepted City street, to meet the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;

<p>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.</p>	<ol style="list-style-type: none"> 2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and 3. Obtain site plan approval for the work required under this subsection.
<p>I <i>Exceptions.</i> 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:</p> <p>Dingley Court;</p> <p>Morgan Court.</p>	<p>(c) <i>Other exceptions.</i> The building or structure is one of the following:</p> <ol style="list-style-type: none"> 1. An accessory building; or 2. Part of a Planned Residential Unit Development.

IV. STAFF ANALYSIS

The proposed text amendments are intended to simplify and clarify the language of Section 14-403 Street Access, which is contained within Division 24, Use Regulations and Exceptions of the Land Use Code. The section applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits. There are built streets in Portland, particularly on the peninsula, that are narrow and do not meet city standards. There are also undeveloped streets, particularly off the peninsula, where property owners seek to develop. The proposed amendments address both situations by allowing development on undersized built streets that meet minimum standards for public safety access and continues to require undeveloped streets be improved to meet current city street standards. Staff members from Corporation Counsel, Public Works, Fire, Permitting and Inspections, and

Planning collaborated on updating Section 14-403 to improve the clarity of the ordinance and retain the underlying public purposes of encouraging development where adequate public safety access is available without imposing significant new City expenses for street construction and maintenance. In addition to the long standing public policy on this matter, Portland's Plan 2030 encourages the production of new housing city-wide that meets the diverse needs of Portland's residents and calls for encouraging quality, sustainable design in new housing. Again, the proposed text amendments seek to simplify and clarify Section 14-403, while retaining the substance of the current public policy.

In terms of the specific amendments, subsection (a) address development on existing streets that are built, but do not meet today's standards. The current standards for a local street require a right-of-way width of 50 feet with a pavement width of 28 feet. There are streets, particularly on the peninsula and islands, that do not meet current dimensional standards and in some cases are inaccessible for emergency and public works vehicles. The intent is to set a minimum clear width for a built street, which must be in place in order for the construction of a building or addition of units to occur. Thus, new development may occur on existing undersized developed streets that meet minimum requirements to enable the City to provide emergency public safety services.

Subsection (b) addresses streets that are unimproved for new development. It requires the street to be improved to current street standards by the applicant, which is consistent with the City's current policy. The intent is to provide adequate access for city services, while not burdening the tax base with street construction costs. Since the adoption of Sec 14-403 over 30 years ago, new development along undeveloped streets requires an applicant to bring the road up to standards from where the existing street pavement ends and along the full extent of lot frontage.

Street extensions are reviewed administratively under the site plan ordinance as either a Level I or Level II application. The level of review is based upon the amount of impervious surface area that is being added. The standards of review are the same for both applications. Briefly, the review process requires a survey stamped by a licensed surveyor and engineered plans for the street meeting the City's technical standards. Portland's Technical Manual contains the engineering specifications for streets, sidewalks, public utility installations, and stormwater management (<http://www.portlandmaine.gov/756/City-Codes-Ordinances-Regulations-Maps>) Over the past five years there have been five approved street extensions that are summarized in the following chart.

Approved Street Extensions Under 14-403
All approved with a 50 foot wide ROW and 28 foot paved width

Street Name	Street Length	Turn Around	Granite Curbs	Sidewalks	Development	Status
Pomeroy	200	yes	yes		Single Family	Built
Gertrude	93	no-gravel road beyond	yes	waived	Single Family	Built
Hillcrest	200	no-gravel road beyond	no- open drainage	waived	Single Family	Built
Pamela	585	no- linked existing Pamela & Alice St	yes	yes	10 Single Family House Lots	Built
Motley	94	no- gravel road beyond	no-open drainage	waived	2 Single Family House Lots	Built

Van Vechten	584	no - gravel road beyond	no-open drainage	waived	4 House Lots	Approved
-------------	-----	-------------------------	------------------	--------	--------------	----------

Under the present version of Section 14-403, an applicant may seek to have the sidewalk waived, if the street is not a school walking route and the curbing may be waived by the Public Works Director. The proposed draft eliminates the waiver language within Section 14-403, and instead allows waivers to be considered using provisions already established under the City Code. In regard to sidewalks and curbs, Section 14-506 Modifications in the Subdivision Ordinance establishes waiver criteria applied during subdivision and site plan reviews. The waiver criteria for curbs and sidewalks are excerpted below.

<p>Sidewalks-</p> <ol style="list-style-type: none"> 1. There is no reasonable expectation for pedestrian usage coming from, going to and traversing the site. 2. There is no sidewalk in existence or expected within 1000 feet and the construction of sidewalks does not contribute to the development of a pedestrian oriented infrastructure. 3. A safe alternative-walking route is reasonably and safely available, for example, by way of a sidewalk on the other side of the street that is lightly traveled. 4. The reconstruction of the street is specifically identified and approved in the first or second year of the current Capital Improvement Program or has been funded through an earlier CIP or through other sources. 5. The street has been constructed or reconstructed without sidewalks within the last 24 months. 6. Strict adherence to the sidewalk requirement would result in the loss of significant site features related to landscaping or topography that are deemed to be of a greater public value. <p>Curbing-</p> <ol style="list-style-type: none"> 1. The cost to construct the curbing, including any applicable street opening fees, is in excess of 5% of the overall project cost. 2. The reconstruction of the street is specifically identified and approved in the first or second year of the current Capital Improvement Program or has been funded through an earlier CIP or through other sources. 3. The street has been rehabilitated without curbing in the last 60 months. 4. Strict adherence to the curb requirement would result in the loss of significant site features related to landscaping or topography that are deemed to be of a greater public value. 5. Runoff from the development site or within the street does not require curbing for stormwater management. <p>In no event shall the waiver have the effect of creating potentially hazardous vehicle and pedestrian conflict or nullifying the intent and purpose and policies of the land development plan relating to transportation and pedestrian infrastructure and the regulations of this article.</p>

Lastly, the exceptions listed in subsection (c) of Section 14-403 for Morgan and Dingley Court. Both of these streets are improved and narrower than today's standards with development on the adjoining lots. The proposal is to remove these streets from the exception list and instead apply the new provisions for any further development on these streets. The proposed draft does exempt accessory buildings, such as garages and sheds, and Planned Residential Unit Developments (PRUD) from 14-403. PRUDs have separate requirements for the construction and maintenance of the private street network serving the development.

NEXT STEPS

- Address Planning Board questions and suggestions
- Review proposed amendments with the Housing Committee
- Schedule a public hearing with the Planning Board
- Recommendation to City Council

ATTACHMENTS:

1. Memorandum from Anne Torregrossa, Associate Corporation Counsel, March 5, Attachments to the memo include:
 1. Joe Gray memo, 1984
 2. Gary Wood memo, 2012
2. Proposed Text Amendments to Section 14-403
3. Public Comment
 1. Matt Power, 3-3-18
 2. Victoria Morales with Attachment, 3-9-18

MEMORANDUM

TO: City of Portland Planning Board
FROM: Anne M. Torregrossa, Associate Corporation Counsel
DATE: March 5, 2018
RE: Proposed changes to § 14-403

Section 14-403 has been in place for more than thirty years. Initially, it prohibited the construction of residential buildings on streets less than 35' in width. In 1984, however, the City Council added to § 14-403 to require that streets be brought up to standard before any building could be constructed. This included paving, curbing, sidewalks, and sewers. The 1984 changes were spurred by concerns about the significant costs to the City to upgrade these streets at taxpayer expense, and the danger that undersized or substandard streets posed to the provision of City services and the response of emergency vehicles. As described by the City's then-Director of Planning & Urban Development, development on unimproved streets "tends to create incessant demand for costly City-funded street improvements and also makes servicing of these areas by emergency and public safety vehicles extremely hazardous and uncertain." A copy of that memorandum is attached.

Even as recently as 2012, the City Council reaffirmed its commitment to ensuring that streets are safe before they can be built upon, and that developers bear the cost of their development. In 2012, the Zoning Board of Appeals ("ZBA") granted a hardship variance to a developer, exempting his project from the requirements of § 14-403. In response, the City Council amended § 14-473, which governs the ZBA's authority over variances, to eliminate that possibility. In a memo to the Planning Board addressing the reasons for eliminating this loophole, then-Corporation Counsel wrote that, "the 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." That memo is also attached.

The City Manager and staff recognized that the requirements in § 14-403 limited development even on City-accepted streets, and also that the section was complicated, difficult to apply, and duplicated many of the rules and requirements that are now part of the site plan review process. In an attempt to streamline and clarify the requirements of that section, staff from the Planning Department, Fire Department, Department of Public Works, Permitting and Inspections Department, and Corporation Counsel collaborated on the attached proposed revision. The revision accomplishes the following:

1. Reduces the minimum width for permanently paved and accepted City streets from 35' to 25' for one- and two-family dwellings, and to 28' for other buildings. These widths may be further reduced with the determination of DPW and the Fire Department that ability of the City to provide services will not be impaired. This change makes the minimum required widths consistent with those provided for elsewhere in the Code and also provides flexibility where

2. Requires that all streets that are not accepted and paved, be upgraded and dedicated to the City. This is consistent with the previous version of § 14-403 but does remove many of the details from the ordinance, as they are all captured elsewhere, including the site plan review requirements and the technical standards. DPW has the ability under the technical standards to waive certain requirements, as appropriate.
3. Removes certain exceptions, including for Dingley Court, Morgan Court, and single-family dwellings that have been owned since November 19, 1984. These exceptions have been removed because they defeat the intent of the section to protect individuals who might want to build under those circumstances. Additionally, Dingley Court and Morgan Court appear to have been fully built, and there are few undeveloped lots remaining that have been in one ownership since 1984. Additionally, that provision had been abused by certain developers who simply “flipped” the house, rather than living there, as contemplated by the ordinance.
4. Retains the exceptions for island streets.

CITY OF PORTLAND, MAINE
MEMORANDUM

TO: Stephen T. Honey, City Manager

DATE: 9/17/84

FROM: Joseph E. Gray, Jr., Director of Planning & Urban Development

SUBJECT: Development on Unaccepted/Unimproved Streets

Please place the following item on the September 24th City Council Agenda:

Amendment to Portland City Code Chapter 14 (Land ^{USE} ~~UR~~), Article III (Zoning) Section 14-403 (Street Access) Re: Required Street Improvements.

Statement of Fact

Planning and Public Works officials have been concerned for some time about the accelerating pace of development on unimproved streets and in legally grandfathered subdivisions. Such developments tends to create incessent demand for costly City-funded street improvements and also makes servicing of these areas by emergency and public safety vehicles extremely hazardous and uncertain.

In a related development, the Corporation Counsel recently determined that accepted streets which were abandoned between 1946 and 1976, and unaccepted streets which were dedicated before 1946, do not meet the Zoning Ordinance's requirements that buildable lots have frontage on an accepted or dedicated street. A copy of Mr. Lourie's opinion is attached for your reference.

Against this backdrop, a task force consisting of Planning, Public Works and Corporation Counsel staff has recommended enactment of the attached amendment dealing with development on unimproved streets. A summary of the amendment follows:

Legal Status of Streets

The first part of the amendment deals with the issue of "lapsed" and "abandoned" streets. The amendments would expressly reincorporate "lapsed" and "abandoned" streets into the category of buildable streets, provided that the property owner first gives to the City (1) a release and indemnification from and against all claims for damages in the event the City should decide to take the street by eminent domain, and (2) a release deed to any property rights he may have in the street.

Required Street Improvements

The remainder of the amendment deals with the issue of unimproved streets. The amendment would require that certain improvements be made in the following two instances as a condition precedent to development:

Improved but unpaved streets: For lots abutting an improved (i.e., in common and ordinary use) but unpaved portion of street, that portion which abuts the lot must be improved to public work's minimum roadway specifications (sidewalks and curbs not included).

Unimproved streets: For lots abutting an unimproved (i.e., not in common and ordinary use) portion of street, that portion which abuts the lot, and any portion between that portion and the nearest improved portion which is the principal access to the lot, must be improved to public work's minimum roadway specifications (sidewalks and curbs not included).

These Amendments were approved by the City Council Housing Committee at their meeting on September 12, 1984 by a vote of 3-0. The items are being sponsored by Councilor Abromson, Chairman of the Housing Committee.

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.

Sec. 14-403. Street access.

A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.

(a) *Permanently paved and accepted streets or island streets.* The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:

1. For one- or two-family dwellings – 25’;
2. For all other buildings – 28’.

These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

(b) *Streets to be upgraded in connection with development.* The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street, between the lot and the nearest permanently paved and accepted City street, to meet the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;
2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and
3. Obtain site plan approval for the work required under this subsection.

(c) *Other exceptions.* The building or structure is one of the following:

1. An accessory building; or
2. Part of a Planned Residential Unit Development.

Fwd: Public Comments for March 13th Planning Meeting

Barbara Barhydt <bab@portlandmaine.gov>
To: "Munson, Jennifer" <jmy@portlandmaine.gov>

Sun, Mar 4, 2018 at 8:11 AM

Public comment for 14-403.

Barbara Barhydt
Development Review Services Manager
Planning Division
389 Congress Street 4th Floor
Portland, ME 04101
(207) 874-8699
Fax: (207) 756-8256
bab@portlandmaine.gov

----- Forwarded message -----

From: **Matt Power** <power.matt@yahoo.com>
Date: Sat, Mar 3, 2018 at 9:40 AM
Subject: Public Comments for March 13th Planning Meeting
To: "bab@portlandmaine.gov" <bab@portlandmaine.gov>, Kim Cook <kcook@portlandmaine.gov>

3-2-2018

Hello Barbara,

I've been corresponding with Kim Cook over the last week about the Portland ordinance that the planning board is taking up for comment on March 13th, section 14-403. I'm submitting my comments in writing below, because I am away on business on the 13th, and can't be there in person. Kim has been very kind to assist me and follow up on this matter.

Here are my public comments.

An Argument for Preventing "Ghost Lots" with 14-403

My partner and I own a parcel on Tarball Ave in the Riverton neighborhood, one of many so called paper streets in Portland. It's .6 acre lot on an unpaved road. Tarbell Ave has several homes on it, including one that is past us, on the end of the street, and another, at 119 Tarbell, that was built after the restrictive language in 14-403 was adopted in 1987 (**see attached document**). Many outbuildings have also been added after the ordinance. The street is plowed by the city, trash and recycling are picked up, street lights are serviced, electric, sewer and water are already at the street. To my understanding, on a paper street, none of these are supposed to be provided by the city (per the notes sent to the 119 Tarbell property). This rule is apparently not followed, and I'm glad—as are the many residents of Tarbell Ave.

We would like to be able to build a small home and garden-related outbuildings on our property, but we have been blocked by 14-403, because as it's written, we would have to widen, pave and add curbs to the entire dirt street, a huge expense we could not afford. This restrictive ordinance as its written makes no sense for streets like ours. A new home on the street would add little or no infrastructure burden, and bring in new taxes.

Under 14-403, public works can waive the curb requirement, but not the other street upgrades. This means the only recourse for property owners on paper roads wanting to build a home or even an outbuilding is to appeal the interpretation of the ordinance, with slim chance of success.

As you know, last year, [Maine ordered municipalities to declare paper streets as city streets or revert them to abutting owners](#), but left a loophole that Portland took, buying them 20 more years of procrastination on paper streets. I understand why the city did it...paving all those streets would cost a fortune. But at the same time, the combination of this choice, and strict interpretation of 14-403, have effectively "locked out" properties like ours, which are ideally situated for small scale new construction.

As written, 14-403 is outdated. I assume the initial intent was to push the cost of street upgrades onto large scale developers, but unfortunately it has caught small landowners in its net, at a time when Portland needs new ways of adding housing. The ordinance needs to be relaxed to allow for common sense development. A street that is already serviced and occupied should not have "ghost lots" created by a heavy-handed ordinance.

Possible Solutions

1. Make street exceptions easier. There is currently one mechanism for building on a paper street. The street can be *declared an exception*. A few streets are on this short list, but my understanding is that adding a street requires a full council vote. Why not add some codified, basic criteria that supports an exception? If the street is occupied and serviced by the city already, for example, the exception process should be easier. Perhaps a simple appeal can redefine the street as a "De Facto City Street." In other words, it's a city street in all but name, not subject to the same high level of upgrades, but much more flexible for landowners looking to build homes or outbuildings.

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}

2. Allow for individual parcel appeals. Add language that allows for smaller residential projects to appeal the restrictive road requirements for paper streets. An appeal would not challenge the interpretation of this ordinance. It would challenge the application of the ordinance to specific lots on a street, based on the level of additional infrastructure costs.

3. Give public works more waivership options. At present, they can only waive the curb requirement. Give them the ability to waive road widening, storm drains, sidewalks, paving and other requirements if they don't see them as essential to current maintenance of a paper street. –excerpt from 14-403 below:

(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

4. Add off-grid and tiny house options. Landowners who are willing to build a home that is low impact, supplies its own water, electricity and so on should be held to a less stringent infrastructure standard. Tiny homes are [included in the Maine state building code now](#). They are also talked about on the [now outdated City faq page](#) about tiny homes:

"The city is actively looking at the issue of tiny houses and what role they might play in helping address our housing needs. The biggest challenge appears to be the state building code, which the city is required to utilize."

That challenge is **no longer an issue**. It's a good time to add some language opening the door to eco-friendly housing options that would allow Portland to live up to its goals of being a "green" place to live

Please consider these suggestions as you modify 14-403. Building in the city limits is the most sustainable kind of new development. Without changes to 14-403, the options for adding new housing stock over the next 20 years will be extremely limited, and the residents will be poorly served.

Thank you,

Matt Power

Portland

[207-619-2713](tel:207-619-2713)



Records for 119 Tarbell Ave-websized.pdf
4838K



Barbara Barhydt <bab@portlandmaine.gov>

March 13th PB workshop RE: proposed changes to 14-403

1 message

Victoria Morales <victoria@moraleslaw.me>

Fri, Mar 9, 2018 at 2:29 PM

To: Barbara Barhydt <bab@portlandmaine.gov>, "sgo@portlandmaine.gov" <sgo@portlandmaine.gov>

Dear Planning Board Members and Planning Staff,

Please accept this email and attachment with additional suggestions to the proposed amendments to section 14-403 of the land use code.

I represent MTR, LLC, a small residential construction company interested in building homes that are between 1,400 and 1,600 square feet and are affordable for working middle class families. To further that goal, my client is looking at lots in Portland near schools and green space, and with frontage on streets acceptable to the City. Many undeveloped lots in the City are on gravel roads that have been dedicated for public travel many years ago through the recording of a subdivision plan (paper streets). The barrier to creating housing on many of these lots is the cost of building the road, including the subsurface infrastructure, drainage, and lighting that is currently required. Larger scale developers can often absorb these costs and role them into the return on the higher end product. That is not the same for smaller developers.

My goal in submitting these suggestions is to request that the Planning Board take a good look at the street and infrastructure standards in Chapter 25 and the Technical Manual, which present significant barriers to building residential housing in the City, particularly for building one single family home on a gravel road that already has other residential homes on it. Admittedly, the amendments I offer do not go far enough to unlock the potential for creating more housing on the many undeveloped lots in the City. However, my hope is that the Planning Board, staff, and DPW can gather and examine the data regarding the existing list of unaccepted roads, unpaved roads, and available lots to remove the barriers that exist today to meeting the goals of the Comprehensive Plan to create more much needed housing in the City.

Very truly yours,

Victoria

Victoria Morales, Esq.**Morales Law****Land Use and Government****Relations Counsel**

188 State Street, Suite 3, Portland Maine 04101

207.216.0643<https://www.linkedin.com/in/victoria-morales-a69b7550>

CONFIDENTIALITY NOTICE: This email correspondence, including documents, files, or previous messages attached to it, is intended only for use by the individual or entity named above. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution, or copying of this email and any attachments thereto is strictly

prohibited. If you have received this correspondence in error, please immediately notify me by replying to this message and permanently delete the original, all copies, and all printouts of this message. Thank you.



Edits to proposed changes 14-403 v.11(1).docx

20K

Further suggested changes to the proposed amendments to 14-403 in red.

Sec. 14-403. Street access.

A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.

(a) *Permanently paved and accepted streets or island streets.* The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:

1. For one- or two-family dwellings – 25’;
2. For all other buildings – 28’.

These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.

(b) *Streets to be upgraded in connection with development.* The owner or developer of the lot will do all of the following in connection with the development of that lot:

1. Upgrade the street between the lot and the nearest permanently paved and accepted City street **by paving the existing travel way or the minimum clear width measurement as described above, as determined by the Public Works Authority, and meeting the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;**
 - i. **The widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.**
2. Take all necessary steps under Chapter 25, Article III, Section 47 of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and
3. Obtain site plan approval for the work required under this subsection.

(c) *Other exceptions.* The building or structure is one of the following:

1. An accessory building; or
2. Part of a Planned Residential Unit Development.

Street Acceptance – Portland Code, Chapter 25

Victoria's suggested changes in red

Sec. 25-47.

Acceptance of streets and ways dedicated for public travel prior to July 7, 1948. A street or way dedicated for public travel prior to July 7, 1948, **including paper streets**, shall be laid out and accepted as a public street or way by the city only upon the following conditions:

(a) Minimum width. Such street or way shall have a minimum width of fifty (50) feet unless the owners of property adjoining the street or way shall convey to the city sufficient land to lay out a fifty (50) foot street; provided, however, that the Public Works **and Planning Authority may allow the minimum clear width or less, as described in 14-403** when a fifty (50) foot street is impracticable.

Provided further that any such street or way located on any of the islands in Casco Bay, which is not considered to be a collector street in the opinion of the public works authority and the planning board, may have a minimum width of thirty-two (32) **(change to: the minimum clear width standard in 14-403)** feet.

(b) Recorded plan. A plan of the street or way shall have been recorded in the county registry of deeds prior to July 7, 1948.

(c) Petition by abutters. A majority of the abutters upon the street or way shall in writing, on a form to be prescribed by the public works authority, petition the city council to improve the street by grading, curbing, gravelling, macadamizing, paving, or in any other way making a permanent street of the same, or any part thereof; and in said petition shall waive any damages resulting from the laying out and acceptance of said street or way, or any necessary changes in the grade thereof; and shall agree to pay their just proportion of one-third of the cost thereof. For purposes of this article, a majority of the abutters shall mean those abutters who own more than fifty (50) percent of the frontage, both in front-feet and in assessed value.

(d) Assessment of costs. When the street or way shall have been laid out and accepted as a public street or way, and such improvements have been made, one-third of the cost thereof shall be assessed on the property adjacent to and bounded on the street or way in the manner, and with the same right of appeal, provided in 23 M.R.S.A §§ 3601--3605.¹ (Code 1968, § 707.2) Cross reference(s)--Uniform procedure for collecting assessments,

¹ 23 M.R.S. §3601. Apportionment of damages or benefits

Whenever the city government lays out any new street or public way, or widens or otherwise alters or discontinues any street or way in a city, and decides that any persons or corporations are entitled to damage therefor, and estimates the amount thereof to each in the manner provided by law, it may apportion the damages so estimated and allowed, or such part thereof as to it seems just, upon the lots adjacent to and bounded on such street or way,

other than those for which damages are allowed, in such proportions as in its opinion such lots are benefited or made more valuable by such laying out or widening, alteration or discontinuance, not exceeding in case of any lot the amount of such benefit, but the whole assessment shall not exceed the damages so allowed. Before such assessment is made, notice shall be given to all persons interested of a hearing before said city government, at a time and place specified, which notice shall be published in some newspaper in said city at least one week before said hearing.