

PORTLAND PLANNING AND ZONING COMMISSION
REGULAR MEETING
Thursday, May 16, 2024 at 7:00 PM
Buck Foreman Room (2nd Floor)
265 Main Street, Portland, CT.

Regular Meeting Minutes

1. Call Meeting to Order

Robert Ellsworth called the meeting to order at 7:00 p.m.

2. Introduction of Members and Seating of Alternates

Present: Bob Ellsworth, Robert Taylor, Victoria Tchetchet, Carolyn Freeman, Jennifer Tellone, Chantal Foster, Tom Bransfield, Joe Spada.

Staff: Dan Bourret, Town Planner
Kari Olson, Town Attorney
Dawn Guite, Recording Secretary

3. Accept Amended Agenda – *order of applications revised.*

MOTION: Chantal Foster MOVED, seconded by Robert Taylor to ACCEPT the agenda as AMENDED.
VOTE UNANIMOUS. MOTION CARRIED.

4. Meeting Procedures

Chairman Ellsworth said that public comments are limited to five minutes with permission to circle back after all who have requested have spoken.

REGULAR MEETING

5. PZC Application #23-09: 850 Portland-Cobalt Road. Request for a Site Plan Review for a proposed retail fueling station and convenience store with drive-thru. Application of Jannat LLC and property of MJS Realty Venture LLC. Map 31, Lot 23-2. Zone B-2.

Kyle Haubert, PE, CLA Engineers, Inc., represented the Applicant seeking a Site Plan Review for a proposed fueling station and convenience store with drive thru. The property is located on an undeveloped parcel (2.33 acres) at 850 Portland Cobalt Road (Rt. 66). It is approximately 500 west of the Portland-Cobalt Road intersection with Gospel Lane (Rt. 17). It is located in the B-2 Business Zone. The proposed development includes the construction of a 4,950 sf convenience store with drive-thru window for coffee and confections. No food will be prepared/cooked onsite. There will be an installation of five fuel islands over approximately 1.6 acres of the property. The development includes site regrading, and the construction of concrete block retaining walls, stormwater infrastructure, a septic system, well, landscaping, and typical site improvements shown on the plan. Included with the application documents is a Stormwater Management Report. Stormwater generally flows away from Portland-Cobalt Road toward a headwall near the northeast property corner, or toward the abutting property to the west. The system reduces peak stormwater flow rates from the site by use of underground infiltration chambers and a water quality basin. It meets the CTDEEP Stormwater Quality Manual guidelines for water quality and groundwater recharge volume. Approvals have been given by Inland Wetlands, Chatham Health and Fire Marshal (with conditions). Letter from Geoffrey Jacobson, dated February 19, 2024 also cited conditions to be met. A letter from the State of CT Department of Public Health states that the Application for a Public Water System Well Site Suitability Certification including location of Well #1 is approved. The letter stated conditions of the Certification. This is approval for Phase I. Phase I-B and Phase II require approvals before construction of the remaining components of the new public water system. This approval is valid until November 3, 2024. A neighbor's well in front of the property has an easement and an abandoned well will be removed.

Construction stormwater and erosion and sedimentation measures throughout the work area will be managed as follows:

- Silt fence along the perimeter will be provided and maintained.
- Silt sacs will be provided in new catch basins at the time of construction and in existing catch basins prior to the start of construction.
- Temporary stockpile and staging areas have been shown on the plans and will be surrounded by silt fence.
- An anti-tracking construction exit will be installed during construction.
- Provisions for temporary seeding and site stabilization during construction are included on the plans.
- Erosion control matting will be provided on all 3:1 slopes or greater.

Proposed development will disturb approximately 69,700 s.f. (1.6 acres) of the site. There will be approximately 28,000 sf of disturbance within the inland wetland regulated area. There is no proposed inland wetland disturbance.

Stacking for the drive-thru meets requirements.

A commission question was raised about drop off in elevation.

Mr. Haubert said that what was there previously was a retaining wall with fence and a water quality basin. The perimeter of the property will not change.

A commission question was raised a water issue with Dunkin Donuts and Dairy Queen being next door.

Mr. Haubert said that a well draw down test will be conducted.

Public Comment:

Robert Hetrick, High Street, asked about the impact on traffic.

Mr. Haubert said there is no negative impact currently on Rt. 66. CTDOT is satisfied with the plan of development. It is a CTDOT road.

Ben Srb, West Cotton Hill Road, owns land in the wetland area and asked that a condition be added about controlling contaminants so that there are none. He would like a report covering 6 months of activity.

Mr. Haubert said that conditions will be added to the site plan. Contaminants are storm filtered through oil/water hydro dynamic separators and through water quality basin.

Mr. Srb approves the application with the conditions stated.

RECORDED VOTE

DATE: May 16, 2024

COMMISSION: PLANNING & ZONING

To **Approve** Application #23-09: 850 Portland Cobalt Road. Request for a Site Plan Review for a proposed retail fueling station and convenience store with drive thru. Application of Jannat LLC and property of MJS Realty Venture LLC. Map 31, Lot 23-2. Zone B-2, as shown on Site Improvement Plans entitled “Proposed Retail Fuel Filling Station and Convenience Store” Prepared for JANNAT LLC, by CLA Engineers: “Boundary and Topography Survey” Dated 2/12/24, Sheet 1; “Site Plan” Dated 10/23/23 Revised to 4/25/24, Sheet 2; “Grading and Drainage Plan” Dated 10/23/23 Revised to 4/25/24, Sheet 3; “Septic System and Utility Plan” Dated 10/23/23 Revised to 4/25/24, Sheet 4; “Site Line Plan and Profile” Dated 10/23/23 Revised to 4/25/23, Sheet 5; “Vehicle Maneuvering Plan” Dated 10/23/23 revised to 4/25/24, Sheet 6; “Landscaping Plan” Dated 10/23/23 Revised to 4/25/24, Sheet 7; “Site Preparation Plan” Dated 10/23/23 Revised to 4/25/24, Sheet 8; “Erosion and Sedimentation Control and Stormwater Management Plan” Dated 10/23/23 Revised to 4/25/24, Sheet 9; “Erosion and Sedimentation Control and Stormwater Management Details” Dated 10/23/23 Revised to 3/4/24, Sheet 10; “Construction Details” Dated 10/23/23 Revised to 3/4/24, Sheet 11; “Construction Details” Dated 10/23/23 Revised to 3/4/24, Sheet 12; “Construction Details” Dated 10/23/23 Revised to 3/4/24, Sheet 13; “Construction Details” Dated 10/23/23 Revised to 3/4/24, Sheet 14; “CT DOT Pavement Restoration Details” Dated 10/23/23 Revised to 3/4/24, Sheet 15: and based on information submitted, testimony presented during hearing, and subject to the following instructions and conditions integral to this application:

1. That the applicant complies and address any comments or conditions from the Town Engineer’s memo dated 5/10/24.
2. That the applicant complies and address any comments or conditions from the Chatham Health District memo dated 5/15/24.
3. That the applicant complies and address any comments or conditions from the Fire Marshal memo dated 5/7/24.
4. That the applicant complies and address any comments or conditions from the CT State Department of Health’s letter from 5/3/24.
5. That the certified Letter of Approval be placed on the Site Plan, and that a mylar and 3 paper copies of the plans be submitted. After endorsement, the mylars must be filed on the land records within 180 days, per ZR Section 10.5.3.2.a, these requirements must be met prior to the issuance of a zoning permit.
6. That a zoning permit application be submitted in accordance with ZR Section 11.1.1.A to ensure compliance with this approval.
7. That any exterior light fixtures must comply with ZR Section 8.3 and must be approved by the Zoning Enforcement Officer prior to installation.
8. That all proposed improvements associated with this application are to be completed according to the approved plan prior to the issuance of the required Certificate of Zoning Compliance to operate businesses at this location, or a performance bond will be required in accordance with ZR Section 11.2.2.
9. Any proposed signage shall meet ZR Section 8.4.
10. That this approval will expire in 5 years.
11. That the three parking spots east of building abutting the drive-thru be employee parking.
12. As a condition of approval applicant will be required to submit the maintenance logs for hydro-dynamic separator and water quality basin.

Reasons: The proposal conforms to Section 5 and 10.5 of the Zoning Regulations.

Motion to Approve Made by: _____

Seconded by: _____

IN FAVOR

IN OPPOSITION

IN ABSTENTION

Recorded By: Dawn Guite

6. PZC Application #23-12: 220: Isinglass Hill Road. Request for Special Permit for construction of an 8 -bedroom residential care home. Application of Oroville Place, LLC and property of Sean McGrail Revocable Trust. Map 129, Lot 9. Zone RR.

Victoria Tchetchet recused herself from this application. Tom Bransfield is seated.

MOTION: Robert Taylor MOVED, seconded by Jennifer Tellone to OPEN the Public Hearing.
VOTE UNANIMOUS. MOTION CARRIED.

Attorney George Law, 595 Main Street, represented the Applicants requesting a Special Permit for construction of an 8-bedroom residential care home for senior residents. The residential care home is licensed by the CT Department of Health. It will have 24/7 supervision. The property will be professionally landscaped and there will be a three-car garage for staff and vehicle transport for seniors. This is another opportunity for seniors to remain in town.

Ms. Courtney Jinjika, Owner and Administrator, Oroville Place, LLC, said that this will be the opening of her first residential home. Per state regulations, rooms, meals, and adult supervision will be provided for those who cannot live independently. The seniors, however, do not require the skills of a licensed nurse. The home will be a state-of-the-art facility designed to look and feel like other homes in the neighborhood. She plans to replicate this model for future residential care homes adapting unique characteristics of neighborhoods. The Craftsman style home features 8 private suites each with its own bathroom, an elevator, a living room, recreation room, a kitchen, and a formal dining area. Staffing needs will be by one person at any given time with overlaps during shift changeovers. Staff vehicles will be parked in the garage as well as a company vehicle/luxury SUV. There will be ample spaces on the driveway for outside visitors. Visitation policy will be liberal and consistent with resident care and community consideration. There is no traffic impact with this property (10 trips in, 10 trips out). The home will be similar to By the River residential care home in Marlborough, CT.

Pat Benjamin, PE, Bascom & Benjamin, LLC, representing the Applicant, said that the property was surveyed in 2019 as part of a subdivision approved by the PZC. The septic has been approved by Chatham Health and is almost exact to the original plan. An oil/water separator will be installed as well as an underground gallery system with footings/drains and stone around it. All building areas will be professionally staked out and limits documented. There is a three-car garage and 2 parking spaces in front. The garage is 4 – 5feet lower than the existing road. An additional outside parking space is suitable as handicap meets health department criteria. It is 16 feet wide and less than a 2% slope. The property meets the proposed building setbacks. After review by Jeff Jacobson, plans were revised and turned back in. There was one question about the number of parking spaces which were confirmed for six spaces. Residents will not have vehicles.

Matt Pegolo, AIA, Pegarch Architecture and Design Services, representing the Applicant is in charge of design of the residential care home and gave a presentation about the structure. The 2022 CT State Building Code was followed as well as Title 19, public health and safety codes. The home is three levels, a basement floor, a second floor similar to the homes in the area. The building encompasses 4,774 sf which is about 20% larger than all of the houses on the adjacent street. It isn't terribly larger than the remaining homes. The existing three houses, the house immediately to the north was his project and is currently under construction. When we were tasked with designing this project we did the best we could given constraints. The first floor has some of the living units on the left side. There is a small kitchen that has a residential kitchen feel. The three-car garage is no larger than the existing homes surrounding it. There will be a covered entry, building mounted lighting to light the areas at entrances as well as in front of garage doors. There will be no free-standing lighting or building mounted signage. Per Mr. Jacobson's comments, photometric calculations for the building mounted lighting and specs. The building will be fully sprinklered. The space above the garage is not being utilized. There the other remaining living units, the elevator, and the recreation room. The maximum height allowed for a building in this area is 35 ft. We are proposing 28 ft. maximum. Plants growing around the garage makes it appear to be off in the distance and off the road so there is some coverage.

Tom Graceffa, Landscape Architect, representing the applicant, said on the eastern end there is untouched forest and will remain as is. Forest offers a great backdrop. You aren't seeing through that to the residence coming

from the south. Anything on the western side will also remain as is (mature Oaks and Maples). Where you drive up the entrance and a slight curve there will be trees/shrubs/perennials that are single row deep. Most of the south side will be three or four evergreens or deciduous plants, or a mix of both three rows deep. There was concern about vision to the site and we worked very hard on trying to put that together. Nothing will be planted around water and septic courses.

Attorney George Law was asked if the site is considered by the town or state a healthcare facility.

Attorney Law said that the application is considered to be a healthcare institution and a permitted use under Section 41. An institution is considered a dwelling with units designed for particular population that requires on-site staff. It is not a convalescent home or hospital because there is no medical staff there.

Attorney George Law was asked about the reference as residential care home. Connecticut Statute 198490 states a community residence that furnishes in single or multiple facilities food, shelter, to two or more persons unrelated to the proprietor and provide services to meet a need beyond the basic provisions beyond food, shelter, and laundry.

Attorney Law was asked for clarification that no residents will have vehicles on-site. Will there be a property vehicle to transport residents.

Attorney Law said that there will be a luxury SUV housed in the garage. The site is community living with bedrooms and bathrooms. Someone will be cooking food for the residents all the time. These people are required to be able to live independently. It is their choice not to live alone.

Ms. Jinjika said typically someone going into these homes want someone to take care of the daily tasks and possibly assistance with dressing or showering, nothing beyond that. Food will be prepared by a staff member in the kitchen. For a residence with less than 19 people, food can be prepared on-site. When care needs change, we work with the family to secure the next level of care beyond the residence. The daily cost for residency is yet to be determined by the State. Once confirmed, payment will be made in 30 day increments. The demand is for single rooms not couples to share rooms. Ms. Jinjika will be the SUV driver or one will be on call. It would kind of be by appointment. The State regulation is that we keep three days of food on-site. Snacks are included in the cost to the residents. I see myself doing most of the inbound work for necessities. The goal of this type of facility is to get people up and active. It promotes longevity. The residents do not get a lot of visitors post-Covid. We will have guidelines and a behavioral contract for visitors. We are working with a consultant to build the guidelines. Main access is through the main door into the community area. There is no access to the living units except for the hallway. There is entrance from the garage into the main area. A State requirement is that there are alarms on the doors so that you know when someone is leaving. I will be taking on a lot of tasks. The caretaker will be the cook and when the shift changes there will be a bit of an overlap. The luxury SUV will be on demand. We are brainstorming what a schedule will look like with the least disruptive as possible for the residents and neighbors.

Public Comments:

Michael Gan, 26 Isinglass Hill Road, said his property directly abuts the proposed site. He introduced himself to Ms. Jinjika as a neighbor and taxpayer. Most of his concerns that will be addressed by his attorney. The western edge of the proposed structure is very close to his property, around 25 feet based on measurements. On the other side the border the closest point is also 25 feet. He is concerned about proximity of structures on a hill and going up and down the hill. The grade of the slope on the hill is between 25 and 45%. Anything coming down from that facility will eventually wind up on his property, in his well, and further down the vernal pool that is part of the wetlands on the other side of his property. He is concerned that the leech field is too close to his well. He is concerned that because most of the property is ledge and dynamite has been used prior to construction of nearby homes. He is concerned that blasting will upset the water table, his well, septic system, and structure of his home. He was at home when there was blasting at 230 Isinglass Hill Road and was not notified that it would be taking place. There was damage done to his house and inside his house. The proposed facility is 10 times closer and four times bigger than property that I am referring to. He respectfully requests that the PZC address his personal concerns as well as all additional concerns that his attorney is going to be presenting.

Attorney Lewis George, representing Michael Gan, said that adult living is not a bad idea but in this situation doesn't fit. Regulations do not allow for this. It is not an as of right use nor a use permitted by special permit. The table on 4.1 specifically states that it is either a convalescent home, hospital, or a healthcare institution. This application is for a residential care home which by definition does not allow for this type of use.

Robert Taylor said have you read the general statutes that define what institution is.

Attorney George said that he has a letter.

Robert Taylor said that anytime in our zoning regulations where a term is not defined we refer to the general statutes for a definition. In this circumstance residential home does fall under it so it is permitted by special permit.

Attorney George said that he respectfully disagrees. He has a letter that lists out the definitions. Healthcare institution is defined in your regulations. It is not a convalescent home although some of their plans use a convalescent home in terms of parking one to three. It's not a convalescent home, it's not a hospital, and it's not a healthcare institution as defined which is a hospital healthcare facility for the handicap, mental health facility, alcohol drug treatment facility, an infirmary operated by an educational institution for the care of students enrolled in faculty and employees and hospitals operated by state agency in care and treatment of tuberculosis, mentally ill, any multifamily dwelling units designed for a particular population that requires on-site staff. This is not a multifamily dwelling. So under the definition within the Portland regulations for a healthcare institution, this doesn't fall under it. It is a unique project and the commission should really look at it. Without having it defined in having the requirements set forth in your regulations, the commission would really be guessing at what is appropriate under this special permit. Under the special permit application your job here tonight is to determine whether this use, which may have some similarities to the RR Zone should fit in the RR Zone. That's what a special permit is and that's what you guys are tasked with doing is to determine the uniqueness and see if it fits in one. I don't think it is even defined. When it's not defined it is prohibited under 1.51 of your regulations so I think the analysis really stops there. If you find that it somehow fits in as a special permit then you're looking at whether this project has any negative effects on the neighborhood, properly fits within the neighborhood safety welfare and the list is within the regulations of the aspects of this neighborhood. So our claim is it's not a permitted use, it's not a use allowed by a special permit as it's a residential care home which has not been defined by these regulations and it doesn't fit under the definition.

Attorney George recapped the project is not to code. It is a residential subdivision with a private driveway shared by three other homes. These homes are obligated to share in maintenance of it, share in the cost of it, to insure it and have liabilities for it. When originally proposed I don't believe that any commissioner intended for commercial use to be put in that lot. It just doesn't fit. It doesn't work. When looking at a special permit from safety standards, it is a private road with young children. This is a commercial use. In all practicality there's going to be a more intensive use than what it was intended for in that residential area. Deliveries will occur, trash, laundry. The plan shows that it is really nine bedrooms which includes one used by staff.

Louis Zanette, Jr., *Address TBD* as he is building a house to the north of this property. There is no way that this can be approved tonight because there are too many "TBDs". You don't know how the business is going to be run, you don't know how it's going to operate, you don't know the level to which deliveries will occur. A traffic study was done without taking medical assistance into consideration. No medical assistance on-site translates to 911 calls on a regular basis. There's going to be commercial food deliveries, commercial laundry done. That's not in the traffic assessment. I'm glad you brought up the private road. My wife and I have a 37% maintenance burden for that private road. When we bought the lot we did not understand that there was a potential for commercial use of that road which would accelerate the wear and tear on that road and my financial burden. I will be financially harmed by that facility moving in. I would like to understand from the proposed how many facilities do you currently run like this. I think one of the commission members should ask that question. The failure rate of these facilities is quite high and now we're going to have a boat anchor of a house in that area with nine bedrooms. There's no resident potential single family individual that's going to buy that house if that business fails. I would like to see further evidence that the septic and water usage analysis is done correctly in light of the fact that I've been hearing eight bedrooms and we all know it's greater than that. I'd like to see the analysis reworked. I'd like to understand more about the sprinkler system that is going to be drawing on this well. I'm surprised that none of you want to understand more about that as well. The other thing that became

very apparent to me was if there's one person taking care of eight people but they have the ability to be driven around, are they all going together or if they go three at a time, who's watching the other five. I don't understand how that is managed especially by someone who has a full-time job. I think you all should understand that before you decide to vote on it. How is the business going to be run and why would you permit a commercial establishment on a private road.

Ms. Jinjika said we do not run a residential care home today. We will be applicants of the State which we've sent a letter of intent and have the application in hand. We do run other residential apartment buildings that are well maintained. My husband is the developer. I'm the idea generator and friend to the elderly. How this business is going to be run and that a lot of responsibilities fall under the administrator. Some of the responsibilities might require that person to be offsite driving residents somewhere. There would be a caretaker that's always available for the activities of daily living, the meal prep on-site – always staying on-site. The driver would be an on call person or myself and again I would say you don't normally get to pick your neighbors or get a say and who moves into the home next to you. My husband and I could very well be building this home and adopting 10 children which would require the same septic tank, the same meal delivery, etc. We are going to operationalize this and we are going to be a successful residential care home because we care about the elderly and we care about having this option available to them. I will be the owner operator. I have a 12-year old at home but the caretaker, the reason for staff quarters is if there's a storm they would stay overnight and there does need to be overnight care. They would maybe study, maybe sit and watch a video, make sure no one needs assistance during the night. That's what a staff quarters is. The topic of increased 911 calls. If there is no medical care on-site and a relatively minor medical situation were to occur I know some EMTs and they've never not been able to get to a victim. They would be able to get there. Eight residents could comparably be a family with three children that live in the area where two adults might need the same level of EMT services. Somebody mentioned a storm and sprinklers in the facility. The state requires a full-fledged backup generator. The sprinklers are fed from a well water source.

Matt Pegolo said there will be systems in the building so in the event of an emergency there is water held in the basement in these tanks for the sprinkler system. It would slowly draw from the well until those were full. It would not suck the well dry. There's a cistern system and a fire suppression system to provide a safety means of egress for all the residents to escape. It wouldn't be a draw from the sprinkler system. The fire protection system would not be a draw on the well and that's a normal thing.

Attorney George said I want to cover the plan as submitted. It is not sufficient enough for the commission to make a decision. It doesn't take into account a number of items that you have to consider. I think that's partly because the uniqueness of this use not allowed in the regulations has no criteria for you to determine if it fits. There are clearly items not mentioned in terms of how many visitors will be coming. Basically you have three parking spots. You have a holiday, a weekend; visitors are going to come. They can't limit the number of visitors. They can't schedule appointments. They can come and go as they please to see the residents. It's a small driveway with three parking spots in a garage. There's no explanation for that. There's no further detail. Another area is lighting. There should be a lighting plan. This is a commercial building. There's no real plan as to how lighting will be set up, how it will affect the neighbors. To be determined with this type of special permit request those really have to be before you now. The criteria of a special permit shows that there a number of things that aren't in here; visitation policies, lighting. This home as nice as it looks and if you put it somewhere else in town it might be great. What if it doesn't work. This is their first one as mentioned. They made a maiden voyage. What happens to that neighborhood if it doesn't work. Is there anyone in this room that is going to buy a nine bedroom 11 bath with a small kitchen on a ledge. "No". And that by itself should tell you whether that this fits into that area. It becomes a very difficult property to sell. It's too unique and it doesn't fit within this area. On the inside it's a completely different animal and it's not whether you have five kids or four kids. This is an eight/nine bedroom dorm really and it doesn't belong in this area. I gave you an appraisal report that shows that this type of facility in this location clearly has a detrimental effect on the values of the neighborhood. With a private driveway it deters someone from wanting to buy in this area especially with commercial use using the same driveway. We have our engineer here, Steve Trinkus (sp?) who will go over a couple of the technical items regarding storm water, drainage in the ledge. The last thing I will say is that Mr. Gans mentioned that it is a sloped lot on ledge. The original approval had a much smaller septic and leeching field. This is much larger and I, in fact, think has to go up. Although the project has admirable intentions it doesn't belong here and by putting it here or trying to fit it in here you're opening up the Town of Portland to precedent for this to go into other areas just like this and maybe somewhere near you.

Steven Trinkus, licensed professional engineer from Southbury, CT. He was retained by the two neighbors to review the plans. We've submitted a letter but I will hit a couple of points. One is septic. In the applicants design they take two employees at 25 gallons a day for discharge however if you have a person staying overnight their accommodation makes it the nine-bedroom. That changes the amount of leeching area that you have. It also changes the length of the system by another 12 feet. Additionally the testing that was done back in '03 and '08 is quite old. It wasn't done by the current engineering firm. After about six years particularly when the testing is done by somebody else besides me I would want to go out and verify it because doing a design I become the engineer of record. I'm liable so the southern end of the system the approximate last southern 50 ft of it there's no testing in that area. Based on the '03 and '08 testing the ledge moves around. There's a shallow ledge, there's some deeper ledge. But in that southern end of the system there's no test holes at all in the area of the system itself. There is one down gradient. I've done enough test holes in my life to know that ledge is highly variable on sites. It can go up or down. You need to investigate it because if it is less than 24 in the southern end that area cannot be used under the health code. Mr. Gans has a well that's a little over 1,000 ft. in depth and has a yield of seven gallons a minute. The water surface in the well is only about 8 feet below ground. He has a one horsepower pump. The State Health Department made the determination that if the pumping capacity of the pump itself, not the yield of the well, is more than 10 gallons a minute, the setback to a septic system doubles from 75 to 150 ft which would pretty much eliminate the septic system on this lot. I think it is incumbent on the Chatham Health District to contact Mr. Gans and determine how deep in his well is the pump with the water being roughly 8T below grade. You don't have to have the pump 1,000 foot down because you've got plenty of capacity within the well itself. If it's very deep, the pumping capacity would be less but in the area of 200 ft. below ground the well, the pump has a capacity of 20 to 60 gallons a minute which is greater than 10. If that's the capacity of the pump, the setback to the septic system doubles from 75 ft.

The other major issue is the dumpster located on the north side of the driveway. There's no connection to the driveway so is the garbage truck going to park in the driveway and then how do you get these rollable dumpsters off a concrete pad across the lawn to your truck. They don't roll very well. They're not on rubber tires. They're on metal tires and they really don't roll at all. So that's a question. The garbage truck would wind up blocking the access to the site. Another issue is emergency vehicles. Yes, you have a sprinkler system but you may need to know fire trucks and other trucks have to come down an accessway and then a driveway. These trucks do not have sharp turning radiuses. They need to make sweeping turns. They may not be able to get into the site. Regarding the sprinkler system. They are typically called wet systems. They are full of water all the time so that when a fire occurs the water is there. Therefore, systems downstairs need to be pressurized so that the sprinkler lines are full of water. You can't have just a tank there. Sprinklers have to be under pressure because that's the idea. The sprinkler throws a bunch of water out, knocks the fire down so it doesn't spread to other places. If there's a delay in that, the fire can really get going. We heard the engineer state that basically the roof drains are going into a 24in. gallery. The footing drains to a 12in gallery. As there is no outlet structures to these it would be my experience that the engineer thinks they're going to infiltrate except there's no test pit data in either case. There's no infiltration testing to know whether the soils will infiltrate the water. If it doesn't in both cases that water is going to go west towards Mr. Gans property. According to calculations on the map it's one inch of rain for the roof drains. As we all know we're getting more short duration high-intensity storms. If you get 3in. of rain over a 4,000 ft. roof that's a lot of water. That's going to take the system and pretty much blow it apart so these need to be designed. They need to be modeled to show with an outlets structure that you are going to infiltrate or you're going to have an overflow. The town's regulations do allow this commission to require a more detailed stormwater management plan but one has not been provided. You can't create a nuisance condition on a down gradient property. Mr. Gans is downhill water, runs downhill through the wooded site. Once you build the house and a driveway and you've cleared the woods for a septic system, you have a lawn there that will all generate water. If it flows in a concentrated form to Mr. Gans it now creates a nuisance condition and that's a problem for him. That's in violation of the general drainage statute. There are several sections of the public improvement regulations for Portland that talk about runoff. The underground gallery systems while they might if the soils are suitable don't necessarily provide treatment. There's no treatment for the driveway. You're not going to have many cars going in. If you're having a van go in and out you're going to have a lot of traffic. You're going to have occasional oil drips. You're going to have metals from the tires and the brake systems that go onto the driveway and then wash off. There's no treatment for that area at all. That needs to be treated and also detained to prevent adverse impacts on the downgrading properties. There's also a potential area behind the house of a water treatment system, like a water softener. We don't know anything about that at this time. We don't know what the soils are so there needs to be more information.

Attorney Law said that he appreciates everyone's concerns. The issues regarding Mr. Gans are going to arise no matter what goes on this property. Somebody could move there tomorrow and build this size house for themselves. The sloping downward is where his property is. Something is going onto this lot someday. Nothing has for the last ten years. I'm not quite sure why but I don't think there's a lot of conjecture there and I would suggest that whatever is going to happen from the construction of this home is exactly what would happen from the construction of any other home. I hear your concerns raised about the septic and the location. You all have a letter from Chatham Health District saying that there are no issues with the plan as submitted. We have to go by that. You hear a lot of concerns about traffic and 911 calls and access to the property. I struggle that these other homeowners live there and feel that they have no access to these services. If their house is on fire the same emergency services from our town need to get there so I don't see any difference between this structure which is frankly closer to the road than a number of those properties. I would imagine these people will go elsewhere for holidays, and if not, I don't think these are valid reasons. They're reasons that would apply to any other home that's going to be built on this property. I do believe the zoning regulations clearly allow for it. The statute that defines this facility states that it falls within the healthcare institution because there are no trained medical staff on it. I think there's been a lot of assumption that there are going to be more people at this property than there are. There will be one person there who's not going to sleep in a ninth bedroom at night. Their job is to be awake and administer this property and be there for the residents. It's not a bedroom, it's an office or a room where this person can go for privacy. As far as a driver, there's not going to be an on-site driver when there's a need for somebody to go out. The driver will come and park where the SUV vehicle is and take that spot. There are three garage spots so even when staff is changing both staff can park in the garage along with the house car. When one leaves there'll be that open spot again. The sprinkler system will have to comply with building codes. What if this business fails is a horrible attitude. For you not to approve something for fear that it may fail and secondly if it does fail, whatever is going to happen at this property again is going to have to comply with our zoning regulations. The property meets all site criteria. It's in compliance with the POCD which specifically requires looking for alternate housing for our seniors, diversity, income housing, and to improve the general welfare of a community through diversity. It provides a remarkable opportunity. Commercial use was never expected here. I don't consider this commercial use, I consider it residential use. In the common driveway easement shared by all four properties, these properties share the maintenance agreement specifically excluded the declarant from having to participate in the cost of the maintenance of this property until a building has been built on the lot that he owns not a dwelling, a building. If everybody's saying they never anticipated this I would suggest the developer perhaps had because he specifically used the word in your maintenance agreement that provides until a building is on any lot that he owns. He's not required to participate in maintenance now that the lot's been sold out from the developer. It is required to participate in the main maintenance of the property and my clients intend to do that.

Mr. Benjamin returned to go over several things that were mentioned. The blasting. Most of the houses there have probably blasted. A good blaster, his insurance company goes out to the site. They do a blast survey if there's a concern about anything that's close, a well, or in building a house. They use portable seismometers. A blaster may be required to use smaller charges. The existing well on the abutter's property is more than 75 feet away from the leaching system. If the well is drawing more than 10 gallons per minute it goes to 150. If they think the well is going to be over 10 gallons per minute, they put a larger holding tank in the basement. They make sure that it's pumped at less than that. I've monitored facilities with actual water readings like this and they typically use on average about 39 gallons per day, per room. It's very low. We've also monitored nursing home uses and they're about 30 gallons per day. The Portland Town Engineer likes use of more than one inch of rainfall. Underground galleries are put on many lots. I've never heard of one issue from the town. I've never heard a complaint. Larger storm water events may require enlarging the underground gallery system. The size can be doubled as to the footing drain. The layout of the property is the same as what a five-bedroom house would be. It would be almost identical to the way we've laid it out. There haven't been any issues. Two rounds of soil testing have been done. An original test round and then Chatham Health went back out and retested the lot. We also looked at the perk test on the site so we don't believe there's going to be an issue with either the underground system for the roof water or the footing drain. As for fire truck access, it's the same for every house up there. They use a public road. Isinglass Hill Road is a private road. It has the same turning movements for any house that's built up there. It's the same for this dwelling. If you're digging and hit ledge at less than 24 inches you can't put a system on it. You can't put a septic system on it. If it's between 12 and 48 we have to prepare the area first before the building permit. If there's ledge at 48 or greater depending on the soils it can be a fill system. I've been out there with a probe and looked what we're going to lay in the system. I drive it into

the ground at least 24 inches to see what's there. If the sanitarian wants another test hole we can do another. There are at least 10 test holes on this site. It's very similar to a lot of systems in Portland that I've designed.

Mr. Zanette, Jr., said it's the increased quantity of 911 calls and costs associated with them. If an elderly person living on his/her own doesn't feel well and has no one for care, they're going to call 911. That's fact. We hit ledge in places we didn't expect to hit in the lot just north of this lot. Just because you put a probe in ground doesn't mean anything. You need test holes where the septic is going to go not where they've been put today. There's too many question marks in this thing for you all to say pass it.

Robert Ksiazek, 226 Isinglass Hill Road, said he's built three homes in town and have been here close to 35 years. I built a home from scratch. This is a retirement home for ourselves. We did not expect a commercial for-profit building in those four lots. That's a reflection of what is going on right now. George gave answers to certain things and Lewis mentioned too many unanswered questions. Concerns have been raised that would probably take months if not a year, if not longer, to answer some of these. The town should be concerned with liability. I know about adults needing care and there's no way that these people that choose not to have a car or not to have assisted living that they will not need that care. They may not need it the day they move in but they will need it at some point. At the end of Isinglass Hill Road is a dead end so there's one axis to that road. All it takes is one tree during a storm and there's no access not for use or not for nine residents and whoever is going to take care of from that house whether it's a fire truck, whether it's an emergency, whether it's anything. We're next to the state forest. Fire, sprinkler might take care of it for a little bit. What if the fire truck doesn't get there because the road is blocked and it's only one access. Now we're looking at a fire with a Department of Environmental Protection involved in this because of the state forest. The state forest goes all the way to Vernon and Manchester. None of this has been taken into consideration by the applicant. They only thing they care about is putting a building in there and making profit on it. I would rather see 150 or 350 unit building for an elderly couple on Route 66 where we have septic system and town water. It is unsafe for both the residents and for the people that are going to live there. Dig into the research before you vote on it.

Mr. Jinjika, is a developer supporting his wife, Courtney Jinjika, said that nearly 44% of senior housing inventory is now about 25 years old which to me highlights a need for new more advanced housing. The number of senior housing units under construction currently us at its 10 year. Those units under construction represent about 1.4% of the inventory. If you look geographically it tends to be more concentrated in Florida and Arizona which says that we're underdeveloped here. This is an opportunity for our Portland elderly community. It allows them to stay comfortably here in town closer to their family and friends. As a real estate developer I can say this with certainty, a lot of focus with real estate developers is serving the shortage of housing within the work from home community and there is a great neglect on senior housing. There is a tsunami coming of our seniors needing housing and I think we have an opportunity to set a precedent on how they will be cared for. Also on how we will be cared for as we get older. At some point we will need more comfortable living that's hassle free where we're closer to our families and our community. Researchers at the University of Chicago Medical School did a study on senior living and found out that on average seniors who live in this type of housing tend to live longer, they're healthier, they spend less time at the doctor's office and, to me that translates fewer 911 calls. There's somebody there to watch them around the clock. Another issue to be emphasized is isolation. Seniors tend to be lonely at big facilities and unhealthy.

Attorney Law pointed out that he disagrees with brother Council. This is a permitted use under our zoning permitted use table. If you look at the criteria, the 12 items set forth under site plan review, I think we meet each and every single one of them. Chatham Health has approved it, Fire Marshall approved it. I understand there's a lot of opposition. I believe everybody's issue is with our zoning regulation that allows this and I think that's where energy needs to be focused. If you want to change the regulation, change the regulation. But I think unequivocally the regulation allows for this type of development on the property. This is a great opportunity for Portland. The POCD screams about making these types of living arrangements available for other people. I think it meets the criteria. I don't see how it can't be approved. Certainly that's up to the commission but I think the comments we're hearing tonight are directed at the regulation as it exists not so much that this plan does not comply with the regulation.

Angelo Lastrina, 227 Isinglass Hill Road, said he heard a lot about elderly housing. His 94 year old mother-in-law lives at the lower bottom of Isinglass Hill Road at the cul-de-sac. She's living independently on her own. I built my house on lower Isinglass Hill Road 35 years ago. I've been driving up and down Isinglass since 1975.

It's a narrow street. They just put the cul-de-sac in there twenty years ago. There was never even a turnaround down there for the usage of all the cars and people. Let's go back to the two storms we had where Isinglass was totally closed down for a week. We didn't have power for a week. You couldn't access. You couldn't get up and down at all. There were trees across the road. There are issues that we have to look at. The accessibility for ambulances, fire trucks; we might see a police car come down lower Isinglass twice a year. It's just not feasible for that type of traffic. There's not even a meridian line on Isinglass. There hasn't been a meridian line for over 100 years. It's just open roadway. It's not feasible for what they want to do.

Rob Taylor said that the memo Attorney George mentioned was given to us pretty last minute and I don't know Dan have you had a chance to review it at least; at least see if it's a permitted use per regulation.

Dan Bourret said "briefly" but I would want to go back and reevaluate and just double check that.

Bob Ellsworth said that's one of the key points I was going to make that we need legal clarification on whether this is a permitted use or not.

Dan Bourret said that we can certainly provide a memo regarding that if you'd like.

Bob Ellsworth said yes I would and asked commission members if there is any disagreement.

Commission members said "no".

Chantal Foster said that the other thing that she is hearing these concerns from the neighbors of potential blasting problems and runoff problems and I understand. I also understand that those types of things would happen likely whenever that piece of property got developed. The thing I am most concerned with is the idea that there are going to be eight people and there are a lot of services even though these people are elderly. They may not be running around like a 2-year old but they require a lot of services. I would expect that there would be a lot more people required to keep that place going to take care of eight people.

Tom Bransfield said I'd like you to know that we got handed this packet and I'd like to have time to review it. There's a lengthy letter from their attorney and also a lengthy letter from their engineer. So I'd like our attorney to look at it.

Attorney Kari Olson said happy to do so.

Tom Bransfield said that he would like Jeff to review the engineer's comments and get us some feedback. We've heard from both parties but I'd like to hear from our engineer.

Bob Ellsworth said agreed.

Rob Taylor asked if the Health Department should take a look at it too. Might as well have everyone look at it again.

Dan Bourret asked regarding Chatham Health, review the whole thing. Are you talking about the need for another test hole.

Rob Taylor said some of the engineering report.

Attorney Olson said that's a good idea to review the engineering report.

Rob Taylor said it will give the applicant more time to review the opinions in there and provide their own assessment.

Carolyn Freeman said usually we see how far they are from the other property lines and I don't know if I saw that. The abutters, the property lines, and the home.

Dan Bourret asked if Carolyn has the site plan.

Carolyn Freeman said that she has the site plan but I don't see where the other houses are located.

Dan Bourret said that he can provide an aerial view of the property and the surrounding to scale. I can make a map showing the surrounding property lines with an aerial photo with the leaf off so you can see where the other houses are.

Carolyn Freeman said I would also be curious as to the size of the other houses because this home I think they said it was like 4,200.

Dan Bourret said I think the footprint was that big but the overall square footage of the facility was...

Carolyn Freeman said I'm just wondering what the other homes around. Are they comparable.

Dan Bourret asked direct abutters. I'll get direct abutters. I'll get a map surrounding.

Ms. Jinjika said she has an answer to two of the questions. The last question was in comparison to the other homes. I think our architect said it was just within 20% difference from a square footage perspective. The question I would really like to answer is about the business plan. I have been consulting and working with the facility residence in Marlborough, CT that is actually 10 bedrooms with some shared bedrooms. So they have about 11 residents currently so that's what we're modeling after and typically they don't see more than two vehicles there at a time. Again, these residents don't need too much care because they can live independently. They're choosing to be taken care of to some degree and to have the companionship so the caretaker can throw in a batch of laundry, make the dinner, and socialize with them all while taking care of two to three activities of daily living. We can certainly bring that business model forward and we'd be willing to give transparency

Carolyn Freeman asked if these people need help with getting dressed or shower or those are activities of daily living that they may need assistance with. So it is kind of like custodial care.

Ms. Jinjika said I wouldn't say so because they are able to make decisions for themselves. They are well-minded. Rather than holding the bar in the shower they would like someone to be there. To address the 911 question; the caretaker offers to take care of a minor injury (stubbed toe).

Attorney George said that there are a couple of things I have to answer with regard to the square footage. The proposed one building is 6,600, 230 which is Mr. Ksiazek's is 2800 sf and Mr. Gans' 2100 sf. So they're not comparable. It's three times the size and we're getting a lot of those answers that aren't really fact. The last point I'll make which is really important is if you look at the definitions and we laid them out, a residential care home which is in their application. That's what they have. It is nowhere in your regulations and it is not allowed. I provided each definition for you. You can look at that and everything that's allowed is really skilled convalescent and hospital.

Bob Ellsworth said that we would need to keep this public hearing open so do we have a motion.

Rob Taylor said "so moved".

RECORDED VOTE

DATE: May 16, 2024

COMMISSION: PLANNING & ZONING COMMISSION

MOTION

To **Continue** Application #23-12: 220 Isinglass Hill Road. Request for Special Permit for construction of an 8-bedroom residential care home. Application of Oroville Place, LLC and property of Sean McGrail Revocable Trust. Map 129, Lot 9. Zone RR.

Made by: Bob Ellsworth

Seconded by: Rob Taylor

IN FAVOR

IN OPPOSITION

Unanimous by Voice Vote

IN ABSTENTION

Recorded By: Dawn Guite

5 minute recess at 9:32:16

Meeting resumed at 9:44:24

7. PZC Application #23-15: Proposed Amendment to the Portland Zoning Regulations. Change to section 9.17.1 to change to the maximum number of 2 bedrooms to 30% were 55% is currently allowed. To add a maximum number of 16 residential units per historic building restored. To remove text from section 9.17.5.M.2 “For good cause shown, and following a public hearing, the developer may secure relief from this requirement as a modification to the approved plan provided that the Commission is satisfied that conditions beyond the control of the developer will prevent the execution of the schedule of development as approved.” Application of Ben Srb

Dan Bourret provided Ryan’s sewer memo and Jeff Jacobs’ email. Dan said verbally that Jeff was in agreement with all of Ryan’s analysis and conclusions from that memo. Jeff didn’t deviate at all from the memo so he concurs with what Ryan said. Dan was looking into where the 55% came from and where the 16 residential units came from and was not able to come up with anything. The VCI report didn’t indicate why. The VCI report talks about the steering committee that was formed in 2015. There were no minutes or recordings of those public meetings so he could not locate those. He went back and read the minutes from the 2016 approval and there was no indication as to where the 55 or the 16 came from. He’s sure there was a reason and that it should be trusted. They will have to be evaluated on their own merits. He provided the memo on the properties that this affects from the prior applications. 9.17.5.M.2 came into existence before 2008. It was most likely in the original regulation when that was done. Three or four changes were done from 2008 onward to the regulations. We have a good record in our zoning regulations. His guess is that it is probably from the beginning. Lastly, what good cause shown is beyond the control of the developer. He didn’t have an answer on that. It was talked about in the prior meeting “subjective” He thinks it was subjective on purpose so it would allow for a judgement to be made based on whatever the good cause shown would be and have the latitude to make that decision. He provided a memo with examples of different unit ratio allowances today.

Ben Srb, West Cotton Hill Road, the Applicant, said that there is disagreement about one word in Dan’s memo. It could negatively affect the number of resources being preserved in the future. He disagrees with that and thinks the proof is so far to date we’ve had one application under the mixed use development and in that application there were six identified historic resources. He said that the ratio could have been allowed with one preservation throughout the entire site. We now lost the other three. They’re gone. Had there been a number which I proposed here tonight, the other six would have been on the table and potentially increased the number that this person could have received or that site could have received or the next site. The word negative should be changed to positive because there are positive effects or at the very least we could agree maybe it’s both. I could get on board with that. At the very least there were three lost on the only site that we had. That’s a fact. We had a ratio in place that may not have occurred. I’m sure the developer here tonight may say I wouldn’t have saved the other three no matter what. But maybe a different developer with less motivation on residential would have. I believe that not to be the case in what Dan wrote. We are running at 50% capacity and have approximately \$4.1M in deficiencies with the sewer plant. He has copies of everything. He said that the town engineer would weigh in who responded that there’s no difference in these known facts and I shouldn’t have been the one to let you guys know our sewer plant’s in that condition. That is something you guys should have definitely known not from Ben Srb. It’s the big elephant in the room. We have a situation that’s not going to be fixed overnight. When considering reg. changes they should be at the very least tightening things up not loosening. He gave an example of 70/30. That would definitely be in the spirit of sewer plant in trouble. Tighten up bedrooms if you feel absolutely comfortable. Absolutely no reason not to do that. The only application to date is the 70/30. I’m not trying to take something away from this developer. Quite frankly I want to finish the project he’s started. I want it to come out perfect. I want him to do what he was approved to and what he was required to do from a historic standpoint and from a commercial ratio. The other thing was the size of a potential building dwarfing everything else on site. This site already has two big towers. They only approved one. We really have to get our regs. in line. He believes his three changes do that. As a community we are going to have to fix our sewer plant at some point. We’re going to find grants, we’re going to find ways to do it.

We can't afford \$4.1M when we have approximately \$84M with interest for our new school. Potentially another \$11M plus interest for the high school. That's about \$100M. There's no shame in saying we have major deficiencies. We need to recognize and talk about it. We also have to be very careful. There's nothing preventing the only approved applicant at this point from switching a bunch of bedrooms. He could put in an application. I hope you guys have a comfortable level to vote for the three changes.

Rob Taylor said he is concerned about the sewer plant and it being a temporary thing because it has a limit of 1.2M gallons. Because it needs to be fixed, it's half the capacity. He asked Dan Bourret what the Board of Selectmen was talking about rather than digging through its meeting minutes. We were told not to look at outside stuff. If we do hear what the Board of Selectman plans to do. The project as it stands 96% could easily go wrong.

Dan Bourret asked if he wanted a question posed to the Board and ask for a response.

Board members want a response.

Ben Srb said that you need to know if there's somebody proposing to increase bedrooms or increase the amount of units. You don't need to know on a decrease. A decrease would be 100% be putting the town in a better position. There wasn't a plan moving forward at this point. He suggests that they find grants and things like that. We just don't have the money. As far as my application, you've got everything you need to make a decision that's easy I'm requesting to go down. You're putting the town in a better position no matter what.

Dan Bourret asked the Commission what he should do.

Victoria Tchetchet said I don't think we need to address this with the Board of Selectmen.

Rob Taylor said it's not our job. We're basing policy on it.

Chantal Foster said that it is something that has to be fixed. It's not like they are saying that this is the way it is and it's never going to change, It's something that they have to deal with.

Rob Taylor said if it's something that has to be fixed why make a reactive decision and restrict options on zoning regulations and reduce the amount of possible units to be built just based off of something that could be fixed.

Victoria Tchetchet said that she doesn't think it is just based off of that.

Ben Srb said he is not proposing any additional units. It was a percentage reduction of bedrooms. If that's the clientele you want for a nice downtown mix, it is smaller bedrooms. I truly believe that the 30/70 works. Quite frankly Mr. Bertram must have agreed to that at some point too because he applied for a 70/30, the only one that we have to date. I'd like to see others that come in follow the same. The development is approved. He's going to finish that project. I'm going to find a way to support it when it's the right mix and everything stays the way I want it. I'll be the guy standing up here in the interim. I think that 30/70 is the right number.

Rob Taylor said nothing stops us from saying the project's too big or you have too many two-bedroom units. It has to go through us. It says maximum. We could always say as a condition no more than x amount of two-bedroom units.

Attorney Olson said under the special permit criteria they do have discretion and because we're not dealing with a special permit tonight I can't speak to that clearly but I wouldn't say that when a regulation says up to they don't have any discretion. Under a special permit process for good reason based on their criteria to say that they want it less than that.

Victoria Tchetchet said they could always say they want more.

Attorney Olson said “no” right now it’s “up to” with a maximum. You can’t go over that but you can go under it.

Victoria Tchetchet said if somebody came with 55 you couldn’t then say 70/30, right, because it’s at 55. But if it was at 70/30 and somebody wanted 55 we allow that.

Dan Bourret said “no”.

Victoria Tchetchet said without changing the regulation.

Dan Bourret said “correct” and that it would be another text amendment to change that percentage.

Mr. Srb talked about the waiver. It was your best guess. You weren’t able to find where that was created. It was prior to ’08.

Dan Bourret said that it’s from the original regulation.

Mr. Srb said I think you and I completely agree on that.

Bob Ellsworth said I think we’ve heard the current developer say that negotiation is critical when entering into an agreement and allowing for modifications to plans as things change is important to have that flexibility. Whether it belongs in a zoning regulation or whether it belongs in a contract negotiation. Does this sort of allowance for negotiation belong in a zoning regulation. It is a question that I am asking myself and I haven’t answered it yet.

Mr. Srb said that his take on the waiver is I can’t think of any circumstance where we’d ever want to be in the boat where all the residential or potentially most of the residential get built and we’re left with none of the commercial. The whole reason we adopted the mixed use development in Portland was to get a mixed use. It was never intended to ever get lopsided. Unexpected consequences can occur and we can be put in a bad position. If a developer stands up here and says that interest rates went up its outside my control. I can’t build the commercial now. I can only build if they come or something to that effect. That’s where we want to be as a community? No way.

Bob Ellsworth said this regulation has to do with the phasing. It sounds like your concern is that if we allow changes to the phasing, later phasing may not get done.

Mr. Srb said “correct” but more importantly it’s the ratio commercial to residential ratio.

Bob Ellsworth said you want to keep that ratio constant throughout all phases.

Mr. Srb said we need to. The only time you lose that is if you get a waiver.

Bob Ellsworth said the waiver could allow those ratios to change for a time. If all obligations are completed the intended ratio should remain in place.

Mr. Srb said except the only time it’s been used to date at the 8/18/22 meeting the developer stated the commercial may not come. We’re talking about all potential mixed use developments in the future. Do we want that reg. if it doesn’t work. If you want residential development to increase your downtown traffic, I can respect that and we can put that in a residential neighborhood. We have lots of that compared to our commercial. We have almost none. We’re talking about a very limited area in town that is actually developable commercial land. We have to be very careful when it comes to the residential being placed in our commercial. The only reason we agreed to it in this regulation when we created mixed use was because of the ratio and that’s a fact. If we lose that ratio we have residential development being placed in our best commercial sites. Where do you feel on my waiver idea? I’m up here trying to protect Portland so I hope I come across as that.

Tom Bransfield said when we talk about phasing we're also talking about the issuance of a CO. Previously the one case I've seen was a revision to the permit. This seems to allow to give them leeway whoever the developer is we could give it to them. Right now it says 50%. If you want to get a CO for residential you'd need 50% of your commercial for that phase to be complete. We could waive that but we need a public hearing. It's not necessarily a revision to the permit.

Mr. Srb said someone said at the 8/18 meeting that you want to give the developer the best chance to succeed. I can't agree with that more and I hope we're all referring to succeed in the entire project. If we're just allowing part of it and if that isn't the outcome that we wanted, you have a regulation proposal that only protects the Town of Portland. If something changes you have the right to change that. As of now we need to tighten up these regulations. All three of my changes are very appropriate and really put some thought into how it will affect this town as a whole. I put a lot of effort into getting this right. We need to work with Mr. Bertram in the future. What we're doing here tonight is revisiting our regulations and you are going to have a decision to make. Does it protect our town moving forward and does it have more positive than negative. If you do agree with me on those three changes then I would hope we can get to a vote.

Bob Ellsworth said if we remove this waiver would that be a turnoff to future developers.

Mr. Srb said maybe it wouldn't have been as ambitious. Maybe the next guy is not going to pick 240 maybe he's going to pick Dan's ratio. The development needs to be balanced with a certain amount of commercial and the apartments that are needed. You get a balanced mixed use. I think the proposed text amendments meet our objectives as a community and they match the POCD. We don't have a definition for historic building, correct. It's historic resource. It could be a fence. It could be a railroad trestle. It could be anything identified in the POCD.

Rob Taylor said historic resources aren't the same as historic buildings. Someone could buy a shed or a carriage house have it shipped to a property. You combine four of those and put them on a property. Would that count or is it only what is original to the Town of Portland?

Mr. Srb said it has to be identified on our POCD.

Dan Bourret said it is the Town of Portland. It is a significant historic resource as identified in our POCD. This body is in control of the POCD. If new significant resources are identified that you think should be included in the plan, that's possible. If you do not think it's a significant historic resource, a fence, you don't have to include it. You can also remove some of these from the list and I think one that has come up is the rail bed. What does preserving that mean? So you do have control over what is considered a significant historic resource. It will be addressed every 10 years.

Mr. Srb said I do believe you're going to get many requests to get things added. That's where my ratio is. These are coming whether we accept it or not. There are plenty of things that we do want to see saved as a community. There's only one driver to get it. Give the guy more apartments he's going to take that item put it on his site. He's going to do what he wanted. I believe in the 2026 revision there's going to be a proposal for more things added to it and you're going to have a better chance of saving those.

Victoria Tchetchet said she was looking through some verbiage that was similar to this. The commission is satisfied that conditions beyond the control of the developer and you know obviously this is mixed use and it's different. But I couldn't find anything in any regulations remotely similar to this sentence in other towns that I looked at.

Dan Bourret said that very well may be true. I haven't looked at the regs. In all those towns you can modify a special permit, a site plan. So if they didn't have this particular phasing regulation that talks about, you have to move in that particular fashion in those particular phases. You could simply come in for a modification of the approval. You could come in to modify what you got approved. You guys see it all the time. Two buildings could go to six buildings. It's possible. The wording of the MUD regulation requires this particular wave around the phasing. In order to have some flexibility you could have somebody resubmit an entire MUD application and do a special permit from scratch. That would be the other option if you took away the phasing. They would then submit a brand new MUD application for the project they're working on as a modification. It

wouldn't be a modification. You just propose a new special permit MUD. It's up to you whether you want to maintain the flexibility throughout the phases.

Chantal Foster said I understand what you are saying Ben. It's tightening things up. But on the other hand I don't think it's a bad decision to state that we can consider things that are really outside of developer's control.

Mr. Srb said you can still extend the permit. I don't think you can come up with a scenario where you want to see a project get so lopsided and the developer tells you that he can't find commercial but thanks for giving me all the residential. I want to read what was submitted by Dan Bertram's attorney at the last meeting. "The Planning and Zoning Commission will not be able to assess the impacts of the zoning amendments on preserving the historic resources." Mr. Srb said he would have added the word "proposed" zoning amendment. The attorney doesn't realize in that case there are three buildings already identified on his plan to be preserved. Attorney said "Why would we ever want to take into consideration anything to do with those homes." Mr. Srb said in the 8/18 meeting the attorney said "the Sage House, the Brainerd House, and the Hart Jarvis build would all be preserved. Why in the world would we then be assessing the impacts of a zoning amendment on the preserving of the historic resources." Mr. Srb said what does that tell you. They're not done. That's what it tells you. I think it's so important that you guys truly really think about these three changes and how they're going to benefit this community, get us where we need to be, and get these developments, all of them, finished properly because that's the only outcome we all want. I get your point Chantal that you want flexibility. You still do. It's a special permit application. You guys are in the driver's seat. I expect you to work with developers on modifications like Kari mentioned. All legitimate. Time frames once again within State Statute. They can also be modified. You guys have a lot of leeway without any of the language with that waiver. There's no scenario that this community is going to accept a lopsided project with very little to no commercial. That's just ludicrous. That's not a mixed use.

Carolyn Freeman said if you took something like that away and you're saying they just submit another special permit, I'm wondering what the financial impact is.

Mr. Srb said I'll give you one example to date. Covid. The State then extended site plans. How long, Kari?

Attorney Olson said 14 years.

Mr. Srb said that wasn't unique to Portland that was across...

Attorney Olson said it depended on when you got your approval.

Mr. Srb said if there was an approved plan in place....

Attorney Olson said by a certain date.

Mr. Srb said was extended. The financial impacts were coming either way from Covid. This doesn't change any of that. The only thing that changes is what we get as an outcome. My three changes that I'm requesting only help us. I do not see any detriment because you still have leeway under special permit.

Bob Ellsworth said I challenge that because I believe the town has the right to withhold the Co's. for the residents if the proper percentage of commercial.

Mr. Srb said before the waiver, yes. He has Phase 1, Phase 2. He has E and F, the majority of the residential. He has a requirement for approximately 30,000 sf of commercial be built. In that original approval Phase 1, Phase 2 had the CVS building needed to be poured by now. That's Phase 1. It's not only not poured it's being proposed to change it. The approval says Phase 1 has Building B in it to be poured before you even get to F. F is in the ground. F is poured. Foundation is in the ground. If you look at the approved site plan, the construction order, Building B supposed to be poured and well underway. So back to your point - "no". We have only 60% of the commercial is in Phase 3. And using Mr. Bertram's on 8/18 "it may not come". Mr. Srb said I'm referring to the entire mixed use development as a whole. I believe we need to tighten up our regulations. There is no scenario that anybody can tell me that we'd want to be in with almost all the residential,

very little commercial, ever want to be in that boat as a community. We didn't adopt these. The most we've ever allowed in any zone was 4 apartments under a conversion. This is 240.

Mr. Srb said the historic portion. I already talked to it about Dan's memo. I believe the ratio is important. I believe moving forward it's going to benefit the town and we're going to get better outcomes. Maybe they're not going to be as ambitious. I bet they get completed and what's more important is that they have the ability to complete it or have a big dream and put us in a very very difficult spot. I'd rather have the completed project being presented. We move forward. We get what we want as a community and it can always be expanded on once these start. They can always be expanded on.

Mr. Bob McDougall, Trustee of the Portland Historical Society, Kristen Drive, made a statement on behalf of the Society about this application.

The mission of the Portland Historical Society is to function as the custodian of Portland's Legacy and perpetuity to that end. We support changes to regulations which encourage, promote, support and require the protection, preservation, or restoration of the town's historic resources as enumerated in the town's POCD. Through the historic resource inventory the Amendment to Section 9.7 1.1 to add a maximum number of 16 residential units per historic building restored strengthens the regulations by establishing a ratio between the number of residential units and the number of historic buildings being restored while creating an incentive for developers to include more historic buildings in their plans. This is consistent with the current agreement for the Brainerd Place Development and will set a precedent that can be consistently applied to future development in town avoiding future wheeling and dealing that could erode our limited stock of historic resources. The Amendment to Section 9.1.17.5.m.2 to remove text stating for good cause shown in following public hearing, the developer may secure relief from this requirement as a modification to the approved plan provided that the Commission is satisfied that the conditions beyond the control of the developer will prevent the execution of the schedule of the development are approved. We do not believe that allowing relief to the developer at the expense of our historic resources is reasonable or prudent. We believe that the developer should be required to adhere to their schedule of development as approved in regards to the restoration of the historic buildings. These buildings are valued resources and allowing delays in restoration increases both the work to restore them and the risk that significant elements may be damaged or lost due to neglect. In summary we support these amendments to the regulations as they improve the protections of our historic resources and they provide incentives to protect, preserve, and save more buildings. Thank you.

Dan Bertram, 69 Marlborough Street, said it's hard for me to be less than direct so I'll apologize in advance for being direct. A couple of things said a few minutes ago that the other three buildings were lost. When I came to town I have the original story on a lot of these things because we were negotiating with Susan Bransfield. We were negotiating with Mary Dickerson. We were negotiating with Steve Cecil. Doing the VCI report we were negotiating with Carrie. There's a general rule of thumb in apartment development. 220 to 240 that is something I said. To say what is the minimum that we would need to step off and take on a project here it has to do with the amount of units that you can have in a market. You're not already in and have an on-site staff person who can run it if it's too small. You don't have the opportunity for the property to support the staff. You might need to independently run a property. So it's an institutional investment metric for suburbs. The 240 origin, the three historic buildings, even in the VCI report were dropped immediately. All the studies that were done and all the options that were presented to the town involve three historic building preservations. The sewer plant situation hasn't snuck up on anybody. If you look at the Public Works minutes going back the last few years it's right in there. Ben did not discover this and bring it to light and it's just a matter of looking at it. It is an issue, an operating cost issue and typically municipalities try to address that through grand list growth and other revenues to pay for their operating expenses. Of course grant monies and things like that get applied for and are usually granted so I don't think that will be a problem to pursue. But it's certainly not an issue that's come up recently or out of nowhere. Investing is psychological and so the discretion is just so important. I've tried to research Ben's approach and he's here alone. It's chicken scratch written into the existing regs. upon submission. Mr. Law is not here representing and kind of acting like a sounding board. If you look at the application for number two I think it's indecipherable and so we're finding our way to what it may mean. I've already said on number one it didn't matter to me. I do think that if we're looking at multi-family development in terms of a creative taxation right, unit mixing is a way of doing that and therefore we proposed a 70/30 mix and doing a 70/30 mix is fine. Discretion is something. I do these projects. Susan drove down to Brookfield and went through one of them before we ever did anything. I don't

know who's gone and looked at this. I've looked into Ben's stuff and I can't say he spends a lot of money on Architects either. I mean I have things from the assessor pictures and when I look at the scale of it it's hard and I look at a site on Sage Hollow Road and Cornwall Street that looks like a material processing thing in a residential zone. I went by it today and it had a loader on it and a pile of topsoil. I don't know why we're taking guidance when all these other professionals were involved. The VCI report was an extensive process. There are a lot of people involved. I'm imploring you to consider probably the single most important thing I can say is the discretion mattered a lot to me. If I foresaw sort of the conflict of working things out I wouldn't have stepped off the curb. My proposal revolves around delivering 50,000 sf. of commercial. It's not about not doing it. I spent three hours today on Hart Jarvis alone. I think I'm close to figuring something out but I'm out of time so I'll leave you with that.

Mr. Srb said I'm glad you looked into some of my properties, Dan. One thing you'll notice is I say what I do and I do what I say. I'm glad you drove by and the irony is the person that was one of the complainers at the time, sitting right behind you, on the Sage Hollow project, and I have a valid permit to this day so not sure what you meant by that my kids like it as a sledding hill. So I've decided to slow down on the building of the house at this point but I've done everything I said I was going to do. I even gave the town the intersection. They didn't own it. I gave it to them as part of my approval. If you're going to compare yourself to me I think the part that you struggle with and I find it hard to believe that I would just stand up here without experts. It is because I love this town and I know that's probably hard to believe and that's probably the reason you fired me. I have to let him know that I was working on his site through Ryan Curley and think that's comical that it took him long enough to figure that out. If anybody ever had any question of my integrity or my morals or where I stand in this community I think what Mr. Bertram just did speaks volumes and I kind of appreciate it to be hone with you. I hope you can see that I don't want to...

Dan Bourret interrupted Mr. Srb by saying that he is asking all parties to concentrate on the text amendment.

Mr. Srb said that Dan mentioned the 220 to 240 was the minimum that would work. Where our regulations came from, that number was part of the critical mass needed to come up with enough commercial and residential. If anyone including Mr. Bertram tells you otherwise well then we need to ask him why would you ever propose something that wouldn't work or didn't have the critical mass needed to start the project. There's absolutely no reason to have the waiver. That's a perfect example of just do the project the way it is intended and more importantly my ratio. The historic preservation sets a bar where everybody understands what they're getting and I was glad to hear we can agree on the 70/30. I think I heard him say that there was no major issue and that he incorrectly said the Public Works minutes. We don't have any Public Works minutes. So I didn't miss it Dan. What you meant to say was the Water and Sewer Commission. I just wanted to point that out. I would tell these guys that you're going to be making a decision shortly on the next proposed changes but keep in mind my three changes are independent of his two. All five can be approved. There are no conflicts with them. I would ask this commission before if you guys have any questions for me run it by me. Everything I'm proposing helps this town and I hope you guys truly understand where we're at with our mixed use, residential and where we could end up as a community if we don't work on these changes.

Dan Bertram said that he alluding to speaking from a core skill set versus not. I'm not going after Ben. More directly than that I'm just saying I haven't seen the investment in like projects that allows the pontification or gives them the grounding to throw bombs. We're doing our best to finish this job and we have a history of doing large jobs and impacting communities in a materially positive way and we look forward to seeing you next week. So thank you.

Mr. Srb said he has no issue with Dan. Actually moving forward if you guys approve, don't approve, we all have to work together as a community. We're going to get there.

Rob Taylor said we need to have a conversation at least about what changes we want to consider approving and putting into motion because I might vote for one but I wouldn't vote for all three.

Bob Ellsworth recommended closing the Public Hearing tonight and we can continue our discussion at our next meeting. Give us time to think about it.

Rob Taylor said next regular meeting.

Bob Ellsworth said next regular meeting we would plan to have a discussion amongst ourselves at part of that meeting and then presumably have a vote. So we're not all ready to vote. Just the public hearing would be closed.

Attorney Olson said you still have time. You don't have to make a decision tonight. You have 65 days to make a decision after a public hearing is closed.

Mr. Srb said that Kari mentioned it would be okay to change that one word.

Attorney Olson said the variance was between preserve or restore.

Dan Bourret said that in the VCI report and in our regs. right now it's preservation of significant historic resource. You have it listed as restore. I will make a note of that and then if the commission decides to do that.

Carolyn Freeman said that if you close the Public Hearing then I can no longer speak, correct?

Attorney Olson said that you can deliberate with the group during the meeting. You can talk amongst yourselves. You can't vote.

Attorney Olson said Public Hearing gets closed. You can no longer receive information from the outside world unless it's staff. You close the Public Hearing then you go into deliberations. Alternates are not part of deliberations. It's the five seated members only.

MOTION: Robert Taylor MOVED, seconded by Chantal Foster to CLOSE the Public Hearing.
VOTE UNANIMOUS. MOTION CARRIED.

9. PZC Application #23-17: 69 Marlborough Street. Request for Special Permit Modification. Application and Property of BRT DiMarco PTP, LLC. Map 19, Lot 68. Zone B-2, B-3 and TCVD. (To be determined)
10. New Business:
 - None
11. Old Business:
 - Business and Industrial Zoning
12. Staff Report:
 - Correspondence
 - Brainerd Place Update
13. Public Comment: The Commission will hear brief comments at this time from anyone wishing to speak. Comments may not be made regarding any pending application.
14. Approval of Minutes: 5/2/24 Regular Meeting

MOTION: Robert Taylor MOVED, seconded by Chantal Foster to APPROVE Minutes of 5/2/24 Regular Meeting as presented. **VOTE UNANIMOUS. MOTION CARRIED.**

15. Adjourn

MOTION: Chantal Foster MOVED, seconded by Robert Taylor to ADJOURN the meeting at 11:00 p.m. **VOTE UNANIMOUS. MOTION CARRIED.**

Respectfully Submitted:

Dawn Guite

Recording Secretary