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February 13, 2022

**Via E-Mail**

Mayor Chance Mullen  
Honorable Joseph Marty, Chairman Planning Board  
Honorable Ron Czajka, Chairman Architectural Review Board  
Members: Village Board, Planning Board, Board of Architectural Review, and Building Committee  
Edward A. Smith, Village Attorney, Village of Pelham  
Village of Pelham Village Hall  
195 Sparks Avenue  
Pelham, New York 10803

Re: Pelham House Application

Dear Mayor Mullen and Chairmans Marty and Czajka,

My firm represents a group of Village residents (the “Neighbors”) who reside in the vicinity of where Pelham House, LLC (the “Applicant”) proposes to construct a mixed use building (the “Project”). To be clear, the Neighbors do not object to the Project and we believe that it will be a successful addition to the Village. However, at almost 71-feet, the height of the proposed structure(s) does not comply with the Village Code (the “Code”) height requirements. The Code’s height restrictions exist to ensure that new developments preserve, complement, and are compatible with the character, massing and scale of the neighborhood. The Project must comply with the Code.

In addition, the current draft generic environmental impact statement (“DGEIS”) for the Restoration Initiatives needs to be finalized and the Village needs to complete the State Environmental Quality Review Act (SEQRA) process before the Project proceeds any further. According to the Scope approved by the Board of Trustees, the DGEIS will identify the thresholds and criteria that would trigger the possible need for a supplemental SEQRA analysis for projects

located in the downtown. Therefore, without knowing what these thresholds are, the Village and its residents are at a disadvantage to understand what the overall impact to the environment is.

## I. THE HEIGHT OF THE STRUCTURE EXCEEDS THE PERMISSIBLE HEIGHT UNDER THE VILLAGE CODE

Under the Village Code, the maximum height for multifamily, mixed-use buildings in Pelham's Business District Floating Zone ("BDFZ") is 60 feet (or 5 stories).<sup>1</sup> *See* Village Code § 89-106.3(4). The Code arguably would allow the Project to exceed 60 feet under two circumstances: (1) if it includes a pitched roof (§ 98-6); or (2) if it includes other structures such as a turret, dome, steeple or the like (§ 98-102(b)). Under either scenario, the project could only gain an additional six feet, potentially bringing the total permissible height to 66 feet. *See* § 98-102(c). The Project, at 70' 6", is 10' 6" higher than the 60-foot maximum height and 4' 6" higher than permitted under either exception.

In recent meetings, the Applicant proposed two plans. The first plan included the placement of 21-foot tall (and 30-foot wide) gables that stand atop an otherwise flat roof (stand-alone gables). The second plan depicted gables that are connected at their peak by a faux-dormer that creates a consistent pitched roof line (connected gables).

The Applicant seeks to justify its 70' 6" height by relying on the definition for "height of structure" and its allowance for pitched roofs, contained in Section 98-6.<sup>2</sup> Specifically, the Applicant has argued that because the pitched roofs of the 21-foot-tall gables are 60 feet at the midpoint, the area above these midpoints essentially have no further height restriction. Thus, the Applicant argues that it may exceed the 60-foot maximum height by 10' 6" (i.e. the distance from the gables' midpoint to their peak), whether the gables are connected or not.

As set forth below, the proposed height of the buildings under either plan violates the clear height restrictions in the Village Code regardless of how the building inspector measures the height of the Project.

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<sup>1</sup> The Planning Board has previously and specifically rejected the interpretation of the "or five stories" in the provision to permit a five-story building to exceed the maximum height. This was explained during a video-taped March 19, 2019 Planning Board meeting. Planning Meeting Video at 1:18:44, <https://www.pelhamgov.com/home/pages/march-19-2019-planning-board-meeting>. In addition, the developer's architect acknowledged that 60' was the maximum height for the building (as defined), effectively ruling out any reliance on the "or" wording in the Code.

<sup>2</sup> Pelham House-Drawings 6-4-2021 at 7. Moreover, at the December 16, 2020 ARB meeting, the Pelham House architect, in response to residents' concerns that the developer's misinterpretations of Pelham's height restrictions were being used to grant limitless height exemptions, stated, "Our max height is measured to the middle of that slope [of the pitched roof] and so our 60 feet is basically measured at that middle of that gable and what you are calling the dormer." The architect then continued concluding "And that's what's limiting that [the pitched roof's] height....So, it's not like you could build forever as tall as you wanted. You are limited to that sixty feet by the midpoint of the slope of your roof."

#### A. Measuring the Height from the “Pitched Roof” Exceeds the Height Restrictions

Under either plan, the Project would violate the Village Code. Both plans violate § 98-102, and specifically subsection (c) which restricts pitched roofs to a height no more than six-feet above the maximum height. The applicant ignores that this is the controlling provision of the Code. The definition of “Height of Structure” in § 98-6 on which Applicant relies, is expressly “*subject to*” the provisions of § 98-102. In addition, the first plan with stand-alone gables also violates § 98-102(b), as described below.<sup>3</sup>

##### a. The Stand-Alone Gables

Each gable represents a separate zoning violation. This is because the definition of “Height of Structure” in § 98-6 applies to both buildings and structures atop buildings.<sup>4</sup> Indeed, the fact that § 98-6 applies to each gable separately (whether connected or not) explains why Pelham House attempted to rely on § 98-6 to justify a previous plan which included only one gable.<sup>5</sup> This was made clear at the December 14, 2021 Planning Board meeting, during which Pelham House’s architects attempted to justify each gable’s 70-foot height by defining “height” in terms of the midpoint of each gable’s “pitched roof,” a reference to Section 98-6.<sup>6</sup> Again, Pelham House fails to account for the fact that the definition of “height of structure” in § 98-6, by its own terms, is subject to § 98-102(c). As referenced above, this provision restricts pitched roofs of buildings or structures from exceeding the maximum height (here 60-feet) by more than 6 feet. Accordingly, each of the proposed 70’ 6” gables violates the Code by 4 ½ feet.

Moreover, the height of the Project violates the Zoning Code even if the stand-alone gables qualify as structures “similar” to towers, turrets, steeples and the like under § 98-102(b). This is because the gables’ combined width exceeds 30% of the width of the building’s façade. This is true regardless of how the façade of the building’s u-shape is defined. If one assesses the two wings of the building separately, or combined, the gables occupy 71.4% of the façade on Fifth Avenue, far exceeding the 30% maximum.<sup>7</sup> Thus, in order to be compliant, the Applicant would

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<sup>3</sup> Notably, § 98-102(b)-(c) requires the Board of Trustees to make specific findings related to the benefits and compatibility of proposed architectural structures and pitched roofs. To date, the developer has neither sought nor received such requisite findings. Moreover, even if the Board of Trustees, were to make such findings, its own authority to grant exceptions to the maximum height is expressly limited by the zoning code to 6 feet for pitched roofs and a width of 30% façade coverage for architectural structures.

<sup>4</sup> The provision expressly restricts the “highest point of...structure[s]” “Structure” is a defined term in Section 98-6 that expressly includes structures constructed both on the ground and on top of buildings.

<sup>5</sup> See e.g. Pelham Presentation, June 4, 2021.

<sup>6</sup> See, Planning Board Meeting Video, Dec. 14, 2021, at 2:26-2:27:30, available at <https://www.pelhamgov.com/home/pages/december-14-2021-planning-board-meeting>.

<sup>7</sup> Even if the Village decided to include the facades of the unrelated buildings between the wings, the gables would still occupy 46.8%, far exceeding the 30% maximum. However, permitting either the inclusion of non-related buildings or the distantly set back wall of the Pelham House behind these buildings is inconsistent with both code and the common usage of the word “façade.” Village Code Section 1-9 provides that, “[a]ny term not specifically defined in this section, *in any other chapter of this Code* or in any other local law, ordinance, rule or regulation of the village

either have to: (1) decrease the base of each of the gables to no more than 14'7" or (2) eliminate two of the four gables facing Fifth Avenue. It is worth noting that reducing the 30-foot width of the gables, closer to those of nearby buildings (which are approximately 10 feet), would more closely align with the character and scale of the neighborhood.

b. The Connected Gables

The Applicant's plan to connect the gables similarly violates the Zoning Code as any attempt to rely on the definition of "Height of Structure" in § 98-6 to justify its over 70-foot height, would ignore the fact that this provision is expressly "*subject to* the provisions of Section 98-102." This includes § 98-102(c) which clearly and specifically limits a "pitched roof" to "a height of not more than six feet above the maximum height." Thus, the highest point of a pitched roof can only exceed the 60" maximum height [set in Section 89-106.3(4)] by no more than 6 feet. This effectively sets the maximum height for pitched roof buildings at 66 feet. Accordingly, at 70' 6", the Pelham House exceeds this height restriction by 4' 6".

II. THE VILLAGE BOARD SHOULD NOT INCLUDE THIS PROJECT IN THE BUSINESS DISTRICT FLOATING ZONE (BDFZ) UNTIL SEQRA IS FINISHED AND UNLESS IT COMPLIES WITH THE HEIGHT RESTRICTIONS

As mentioned above, the Village is currently in the final stages of the SEQRA process studying the Village's Restoration Initiatives. It is unknown what impact thresholds will be identified as part of the generic environmental review process but it is incumbent upon the Village to allow the public the opportunity to review the potential impacts, including the height of the Project, before it continues to move it forward.

Under Village Code § 98-106.3(E)(9)(b), "massing, height, scale, and architectural character should be compatible with, and not negatively alter the character of, abutting uses, particularly existing development located on or near the perimeter of the property." Here, the Village has notice that the most impacted neighbors are concerned specifically with the height of the Project. It is not compatible with the surrounding neighborhood and it is incumbent of the relevant Village boards to ensure it complies. The Project, as proposed, would be a blemish in the Village's revitalization effort.

Here, what "gain" is there to the Village or the neighborhood by allowing such a comparatively large scale mixed use building that towers over the adjacent neighborhoods. There is no reason that a new development cannot comply with the existing regulations. This is not a situation where the applicant is trying to renovate or add an addition to an existing structure. Rather, when an applicant is starting with new construction, there is no reason why it *cannot* and *should not* comply. Moreover, remediating the violations should have no impact on the

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shall be construed according to *its common usage*." The term façade is defined in § 77-2 of the Code as "[t]he building's general outer surface abutting and fronting on a legal street." As the wall behind the unrelated buildings does not abut and front Fifth Avenue, and the unrelated building's façade, is not the Pelham House building's outer surface, the gables' façade coverage must be measured at the width of one wing, or the two wings combined. However, even combining the two wings would likely betray the common usage of the word façade as the building appears almost as two distinct buildings from the street view.

commercial viability of the development as the excessive height of the structure resulted only from recently added discretionary and functionless features that were not in the developer's initial proposals.

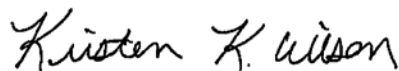
### III. THE BDFZ ENVISIONS DEVELOPMENT CONSISTENT WITH THE CHARACTER, MASSING AND SCALE OF ADJACENT RESIDENTIAL LAND USES

One of the primary purposes of the BDFZ is to ensure that the redevelopment of downtown properties "preserves, complements and is compatible with the character, massing and scale of adjacent residential land uses." It is incumbent that the BOT stay true to the intent of its recently adopted floating zone regulations. Likewise, pursuant to its authority and responsibilities in § 79-5(j), which are incorporated in the BDFZ, the Village should prescribe conditions such that the proposed site layout and overall appearance of buildings on the site will not have any reasonably avoidable adverse impact upon the desirability of adjacent properties by impairing [their] established character or value," which would include, at a minimum, faithfully enforcing Village zoning provisions. The Project, as currently proposed, does not complement the scale of the adjacent neighborhoods and unreasonably and avoidably negatively impacts neighboring properties. The Village should require alternatives that comply with the Code.

### IV. CONCLUSION

Based on the above issues, on behalf of the Neighbors, we respectfully request that the Village: 1) complete the Restoration Initiatives SEQRA process prior to moving the Project forward; 2) exercise its discretion to include the Project in the BDFZ *only if* the Applicant strictly complies with the height restrictions and insist that the Applicant develop a height compliant plan that the Neighbors can support; and 3) pursuant to Village Code § 98-106.3(F), the BOT should include a condition that the maximum height shall be 60' and there shall be no relief for an area variance to build beyond 60'.

Respectfully submitted,



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