

## DORF & NELSON<sup>LLP</sup>

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December 15, 2022

Mayor Chance Mullen and Members of the Village Board  
Village of Pelham  
Village Hall  
195 Sparks Ave.  
Pelham, NY 10803

### **Re: Soren, R.E., LLC Petition for Rezoning**

Dear Mayor Mullen and Members of the Village Board:

Please be advised that I represent Friends of Residential Pelham a Village wide organization committed to preserving and protecting the residential character of the Village. Friends of Residential Pelham is affiliated with the Pelhamwood Homeowners Association. . These groups are opposed to the proposed rezoning /zoning text amendment for 448 Washington Ave. which lies in the heart of the Pelhamwood neighborhood.

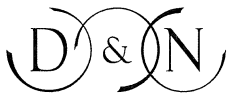
The proposed zoning text amendment if approved would result in permanent and significant damage to the residents of the Pelhamwood neighborhood, negatively impact the value of surrounding properties and compromise the integrity of your zoning code. This proposal is incompatible with the 2008 Village Comprehensive Plan..

#### The Proposal

The proposal seeks a zoning text amendment and rezoning of a single parcel at 448 Washington Ave. This petition is designed and submitted for a single parcel and a single entity. The applicant submits in his petition that they have contracted with the owner of the Community Church to seek a downzoning of the church parcel in order to utilize the 30,000 sq foot lot to build a mixed use development which in addition to expanded commercial space will add at least 30 multifamily high density housing units in the middle of a single family residential neighborhood.

#### The Applicant

According to the petition the applicant is Soren, R.E., LLC. The only member of the LLC identified in the petition is Michael Volpe. Prior to giving this proposal serious consideration the Board of Trustees and the Planning Board need to ascertain who are the other members of this LLC( if any) and the extent of their interest. As a matter of transparency and good public policy the community has a right to know who is benefitting from this rezoning. Furthermore the



petition references a contract of sale and a “partnership” with the church. The Board should obtain a copy of the contract and understand the terms and conditions of any “partnership”.

#### Incompatibility with Comprehensive Plan

The petition asserts that this proposed rezoning is consistent with the Village Comprehensive Plan. The applicant does that by taking a few paragraphs of the 100+ page document and misapplying them to a proposal that would radically alter the landscape of a single family residential neighborhood. It is inconceivable that a proposal as radical as this would be remotely consistent with your comprehensive plan.

Applicant references 3 sections of the comprehensive plan that allegedly support this application: Sections 2.3, 4.2.3 and 4.3.

Section 2.3 SUSTAINING AND PROMOTING THE PROSPERITY AND UNIQUE QUALITIES OF PELHAM. Nowhere does it mention downzoning residential neighborhoods to maximize developer profits or permanently altering a residential streetscape. Nothing in this proposal promotes the prosperity and unique qualities of Pelham.

Section 4.2.3 COMMUNITY CHARACTER. This section specifically mentions residential streetscapes, that are generally attractive and conducive to bicycle and pedestrian activity. In fact, it goes on to say that because these nice streetscapes are “not an issue” the plan focuses mostly on the “commercial corridor of Wolf’s Lane and Fifth Ave.” Again, no mention of a need to radically alter these nice streetscapes for mixed use development.

Section 4.3 RECOMMENDATIONS. The applicant seized upon a sentence in this section that does reference “up-zoning underutilized properties” to attract developers to locations with “undesirable uses”. The applicant conveniently left out the rest of the section. The section applicant references goes on to explain that the need for the “up-zoning for underutilized areas is identified as the three gas stations on Wolf’s Lane”. Most definitely not in the heart of Pelhamwood.

The Comprehensive Plan is very clear that the residential character of the neighborhoods should be preserved. See Comp Plan Sections. 2.1, 2.3 and 7.2.1. The plan makes specific reference to Pelhamwood as well as other neighborhoods that “all have special architectural and topographical features and should be preserved” The Plan further describes Pelhamwood “as containing more upscale homes on larger lots” The plan is replete with references to preserving all the residential neighborhoods, and “retaining the quality and character of Pelham’s unique and historic residential neighborhoods for which it is known.” Comp Plan Section 7.1.

To suggest that this proposal is consistent with the Comprehensive Plan is simply untrue. On the contrary it flies in the face of virtually everything the Comprehensive Plan promotes.

#### Zoning

The proposal requests that the zoning text amendment not only permits a mixed use development but allows 30 units of multifamily housing with a permitted maximum height of 60 feet and 5 stories with a front yard setback of 4’ and no side or rear yard setbacks and permits



60% lot coverage. This is in a zone that currently has a height restriction of 2 ½ stories and 35 feet, max lot coverage of 40%, 25' front yard setbacks, 30' rear yard setbacks and 7' side yard set-backs. The project is in the middle of a residential neighborhood, not on the "outskirts" as claimed by the applicant. If approved this building would tower over all the neighboring properties all of which are single family homes. It would destroy the streetscape and forever alter the unique character of the neighborhood. That something this radical is even being considered is deeply troubling to my clients. This impacts the entire Village, not just Pelhamwood.

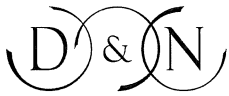
### SEQRA

SEQRA requires that the lead agency take a hard look at the environmental impacts of a proposed rezoning. In order to do that you need accurate information about the project. In this case you have referred the petition to the Planning Board who has not requested any information on the proposed impacts. This rezoning would permit underground parking in an area that floods. Has the Planning Board addressed the potential impacts of storm water run-off on neighboring properties? Evidently not. Adding 30 units plus commercial will add a substantial number of cars to the site. What is the traffic and parking impact on the neighborhood and the schools? Has anybody asked? Their proposed parking requirements call for one space per unit, yet they have a mix of 1, 2 and 3 bedroom units. Most families have more than one car, where are these cars going to park? Probably on the streets and around the neighborhood. Another impact not evaluated. We understand that the SEQRA process has not commenced since the petition is not before you however it is impossible for the planning board to make an informed determination on the very limited information before it.

Per Village Code 98-141 the Planning Board is to consider whether the proposed rezoning is consistent with the "objectives and purposes of the officially adopted Master Plan of the Village if one exists and with those of the districts that would be affected". It is clear that this proposal is totally inconsistent with the comprehensive plan and the district that would be affected. To recommend this be adopted would be a gross deviation from commonly accepted municipal planning principles.

### Spot Zoning

We believe that were this petition granted it would constitute impermissible spot zoning and would not survive a court challenge. The definition of spot zoning is "the process of singling out a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of other owners...spot zoning is the antithesis of planned zoning."...*Rodgers v. Tarrytown* (302 NY 115, 96 NE 2nd 731) Among the factors considered in evaluating a claim of spot zoning are "whether the rezoning is consistent with a comprehensive land use plan, whether it is compatible with surrounding uses, the likelihood of harm to surrounding properties, the availability and suitability of other parcels and the recommendation of professional planning staff." *Matter of Save Our Forest Coalition v. City of Kingston* 246 A.D. 217, 221, 675 NYS 2nd 451. No single factor is dispositive and the "ultimate test is whether the change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community" *id.* at 221, 675 NYS 2nd 451.



This petition is brought by an individual property owner seeking to rezone a single piece of property from A-2 residential to a high density mixed use with generous zoning restrictions (height, density, parking, setbacks) completely out of character with the surrounding area. The proposed rezoning is incompatible with the Comprehensive Plan and would have significant and permanent negative impacts on the surrounding neighborhood. This is not “well considered” or part of an overall plan. This is about changing the zoning so a developer can maximize his profit. There are other sites in the Village better suited for this. 448 Washington Ave is most definitely not one of them.

My clients respectfully request that this petition be rejected in its entirety, that the Planning Board issue a negative report so the applicant can seek other more suitable locations for his development.

Thank you for your consideration.

Very Truly Yours

A handwritten signature in cursive script, appearing to read 'Paul J. Noto'.

Paul J. Noto, Esq.

CC: Planning Board  
Village Attorney