

January 20, 2024

To: Village of Pelham Board of Trustees

From: Joe Marty, Chairman, Village of Pelham Planning Board

Re: Planning Board Decision re 139 Fifth Ave, 74 Boulevard, and 213 Seventh Ave

The Village of Pelham Planning Board met January 16, 2024 to review four agenda items.

In attendance were Chairman Joe Marty, Matt Margulis, Amir Taraj, Ben Ascher, and Ron Diaz. Building Inspector Bill Rogel was in attendance as well.

139 Fifth Ave

The issue before the Board was to accept or reject changes to the approved site plan at the urging of the Building Inspector. James Smithmeyer represented the development.

- The site plan had shown solar panels both on top of the building and on parking lot canopies as approved by the Architectural Review Board. The developer had chosen not to put panels in the parking lot due the restriction in parking space this caused. Developer still plans to mount solar panels on building's roof, and potentially the roof of a neighboring building.
Decision: Planning Board approves the change, **but needs from the developer an accurate solar panel plan for the building's roof and any neighboring roof.** Board notes the building had been promoted to the Village as a Net-Zero building based on adequate solar panels (i.e., more than will be deployed).
- Site plan had shown utility poles in different spots than as built.
Decision: Board approves change as immaterial, noting that as of this writing one pole to be replaced still blocks vehicular egress from the parking lot.
- A rear of building sconce was eliminated that had been on site plan.
Decision: Board accepts as an immaterial change.

74 Boulevard

The issue was the developer's undocumented extension of the addition by two feet, discovered when Building Inspector examined the poured concrete footings. The lot coverage and rear yard spacing both remained in the acceptable range, and the storm water management system – Cultecs – still remained adequate for the entire impermeable surface.

- **Decision:** The Board criticized the builder for allowing this to happen without updating the Building Inspector or Planning Board. Given no breach of zoning thresholds and receipt of revised drawings, the Board accepts the revised plan.

213 Seventh Ave

The request was for building an attached car port to the side of the home. It was well within side yard and rear yard thresholds.

- **Decision:** Board approved, but demanded that storm water runoff treatment steps be taken for the additional impermeable surfaces – likely one small-medium Cultec – to handle the runoff.

The Planning Board reviewed each of these proposals above according to its standard checklist, shown at end of this decision memo.

Re: Planning Board Recommendations to the Board of Trustees re 125 Wolfs Lane (Tig & Peach) and other Use Issues

The Village of Pelham Planning Board met January 16, 2024 to review four agenda items. Notes for those regarding **139 Fifth Ave, 74 Boulevard, and 213 Seventh Ave are referenced in another note. This note refers to 125 Wolfs Lane (Tig and Peach)** plus another related case of a need for revision of current uses allowed in Business 1, 2, and 3.

In attendance were Chairman Joe Marty, Matt Margulis, Amir Taraj, Ben Ascher, and Ron Diaz. Building Inspector Bill Rogel was in attendance as well.

Recommendation 1: The Planning Board recommends the Board of Trustees commit to a comprehensive review and modernization of its zoning code, including the allowable uses and their definitions, promotion of alternative power sources, the effects of vehicular and pedestrian traffic, and the need for enhanced capture of storm runoff in situ rather than further burdening our storm drains.

Recommendation 2: The Planning Board also recommends the Board of Trustees takes up promptly two specific use issues in Business 1, 2, and 3 -- that stand to prevent otherwise desirable downtown development that would have the support of most residents.

125 Wolfs Lane, Tig & Peach

The Board heard the request of the business at 125 Wolf Lane known as Tig and Peach for an expansion of their enhanced play facility. The applicants did not make a formal site plan application; at the urging of the Board, they outlined what they intended, and made a case for broadening the uses allowable in this Business 1 district to allow them to apply formally. They are under some time pressure regarding the building into which they propose to develop.

Tig & Peach offer a very interesting higher use of an under-used and very visible Wolfs Lane storefront, as well as remodelling and use of a rear building with otherwise no street access. Apart from the land-use question below over whether their use is acceptable, their development proposal would lead to a much-improved streetscape in the heart of our downtown, with off street parking.

The Board agrees with the applicants that the facility does not meet the definition of a childcare facility, and therefore avoids falling under the restrictive land use and New York State regulatory demands that label that would bring. But the role of offering enhanced training services for children is not explicitly laid out in Business 1 zone uses, shown further below. The Board agreed that in a child- and school-focused suburban village such as Pelham, it is not only natural but admirable that businesses that cater to parental desires to enhance their children's learning and development would be an acceptable business in its downtown, subject to guidelines around vehicular and

pedestrian traffic. Tig & Peach is like several other storefront operations that offer enhanced training, whether it be playtime, music or martial arts studios, or acting and singing training.

The Board concludes that there should be a use in Section 98.72 that captures what Tig and Peach and others like them do in our downtown, structured carefully so as not to allow Childcare providers to use this as an illegitimate back way entry or allow unacceptable traffic flows and unsafe pedestrian environments.

Proposal: Add to list in 98-72 or Business-1 (and have it flow to Business 2 and Business 3):
(17) Training and skill development not in a school or academic program

Proposal: Add definition to list in 98-6

Training and skill development not in a school or academic program: Training or development, not to include Child Day Care Services, that includes but is not limited to tutoring centers, martial arts studies, gymnastics and similar uses regardless of the ages served. Village retains the right to limit number of participants for reasons of traffic, pedestrian flow, fire life safety, sound or other environmental concerns. Activities or sessions do not exceed 2 hours and 45 minutes in duration for any participant.

Fast-Food Restaurants

The Planning Board is also aware of a handful of other seemingly legitimate businesses and/or requests that run afoul of decades-old use restrictions in code that need modernizing. The prohibition on “fast-food restaurants” within the acceptable use of restaurants in 98-72 Business 1, 2, and 3 states:

98.72 acceptable uses in Business 1 allows “Restaurant, with or without bar, **but excluding a fast-food restaurant.** “

Definition from 98-6 from Village Code of **Restaurant, Fast-Food**

An establishment whose principal business is the sale of foods, frozen desserts and/or beverages packaged in a ready-to-consume state, usually in paper, plastic or other disposable containers, for consumption on the premises, either within or outside the restaurant building or for carry-out and consumption off the premises

A Pelham resident could barely walk 30 feet on any part of downtown Fifth Ave or Wolfs Lane without seeing such an establishment! Many of those businesses opened within the last 10 years, so in no way can it be said they were grandfathered. So either the Village has made a mistake 10 or 15 times in the last 10 years, or the Village should change the description of restaurant to accurately represent what we want and what we have downtown.

Recommendation: The Board proposes a simple change to section 98.72: remove the phrase “, but excluding fast-food restaurant”. That existing definition of fast food is decades old, both in its reference to the use of disposable utensils and eating equipment, and in its implied fear of national chains over-running our downtown with garishly colored stores and huge amount of traffic. It’s no secret our small downtown has never been a serious target for national fast food chains: with the exception of Dunkin’ Donuts on Lincoln – – itself a technical violation of our use code – – there are no fast food restaurants in the way that most people understand that term in Pelham. But there are four delis, three bakeries, three coffee stores, an ice cream store, and virtually every restaurant’s carryout service from which flow each day hundreds of paper forks and spoons, plastic food containers, and – most importantly – hundreds of satisfied Pelham residents.

We can observe decades of fast food chains finding too little vehicular traffic or business demand in Pelham's small downtown to conclude that whatever evils residents may have felt would come from accepting fast food restaurants 40 years ago, Pelham's calm and lovely features are not likely to be put at harm by getting rid of this anachronism in the third decade of the 21st century.

Joe Marty
Chairman, Village of Pelham Planning Board

Planning Board Checklist

- Code compliance
- Building layout
- Interaction with neighboring properties
- Effect on traffic
- Parking, Including EV charging
- School age children
- Sewer connection and capacity
- Stormwater treatment
- Landscaping
- Lighting
- Commercial space
- Bike parking
- Garbage and recycling facilities
- Solar panels and roof
- Construction process/mitigation for neighboring properties