

Town of Pelham
Zoning Board of Appeals

Minutes to the public meeting held on Wednesday, April 28, 2021

[Note: Because of COVID-19 health restrictions, this public meeting was held as a Zoom video-conference.]

Attendance: Members Carey Clouse, Jeff Eiseman (chair), Ralph Faulkingham (secretary), Amanda Huhmann (clerk), Ann McNeal (vice-chair), and Associate Members David Litwak and Stacey McCullough. Also attending: individuals representing Home City Development, Inc; individuals representing the Pelham Housing Committee, the Pelham Planning Board, the Pelham Conservation Commission, Pelham Building Inspector and Code Enforcement Officer Dave Waskiewicz, ZBA Lighting Consultant James Lowenthal, Jane Slade, Bruce Klotz, as well as other individuals who did not identify themselves by name or affiliation.

The meeting was called to order at 6:18 p.m. by chair Jeff Eiseman.

1. The minutes to the Pelham ZBA meeting on April 21, 2021 were approved as presented.
2. Chair Jeff Eiseman summarized the planned meeting agenda and invited additions. There being none, the agenda was pursued as planned. By way of introducing the topic of lighting, he observed that this portion of our hearing may be one of the most challenging we have to deal with.
3. He then invited ZBA lighting consultant James Lowenthal to summarize his report (which has been posted to the ZBA page on the Town of Pelham website). Mr. Lowenthal began by citing the purposes of section 125-8.2(G) 2 of the Pelham Code that deals with exterior lighting. Specifically, lighting equipment shall be designed, constructed and installed to:
 - control glare and prevent light trespass onto adjacent properties or public ways, curtail degradation of dark skies at night, and conserve energy resources while maintaining safety, visibility and security of individuals and property;
 - direct light only where it is needed at the minimum intensity necessary to serve the intended purposes;
 - prevent measurable light at the property lines and minimize glare at any location on or off the property.
4. Mr. Lowenthal then proceeded in sequence to summarize his findings after having reviewed the Home City proposal with respect to the Pelham lighting bylaw. He referred to a tabular summary of the Home City specifications. It turns out that the upper parking lot lies within the Village Center Neighborhood zone, while the lower parking lot lies within the Village Center – Mixed Use zone, and each zone has different lighting allowances in the bylaws. He then presented his detailed findings by section:

A. Sensors and timers, concluding that the proposal has no information about the installation of sensors or timers.

B. Illumination levels. In general, he found that the proposed illumination levels exceeded the code allowances by substantial margins. He also suggested ways that the proposal could be adjusted to allow sufficient visibility but with less illumination.

C. Color. He noted that the luminaires in the proposal had a mean correlated color temperature (CCT) of 3,000 Kelvin, whereas Pelham code sets the CCT maximum at 2,700 Kelvin. After pointing out the deleterious effects of blue light (i.e. that above 2,700 Kelvin) on the circadian rhythms of humans and animals, he again provided recommendations to address these problems in the proposal.

D. Finally, he addressed Backlight, Uplight, and Glare (known by the acronym as BUG), noting that most proposed luminaires meet code, while others do not. He suggested ways to bring the proposal into BUG code compliance.

5. Peter Serafino responded that Home City aimed to address the needs of a rental population with its own distinctive needs that may be unlike those of the owners of single-family homes in the rest of Pelham. Some might be disabled or visually impaired. These concerns and those of management required higher illumination levels than the code permits. The developer is concerned about liability, such as with slip and fall claims, that might arise as a consequence of inadequate illumination. It's really the multi-family character of rental population that's of concern here that seems to require more lighting. Kevin Rothschild-Shea, who designed the photometric plan for Home City, then noted that the security concerns of a rental population are very different from those of an owner population, and that the proposed luminaires are designed to be on poles 12 to 14 feet high and do not produce glare. He added that it might be possible to design in timers and sensors and to set back late-night lighting to 50% of the pre-midnight lighting. He concluded by arguing for a spirit of compromise so that the developer's goals and those of Pelham residents might both be met.

6. Jeff then invited comments and questions from ZBA members first, then others.

A. Ralph Faulkingham commented that that he did not find any compelling need in the proposal to justify higher levels of illumination, bluer light, and luminaires with more BUG problems. He stated that Mr. Lowenthal had pointed out that the issue should be adequate visibility not adequate illumination, and that technologies do exist to meet the developer's goals and comply with the Pelham code.

B. Stacey McCullough then asked Peter Serafino to scale the liability issues if possible, and Peter said he could not provide actual case numbers.

C. Judy Eiseman of the Pelham Planning Board pointed out that the pertinent code provisions were designed for the village center not for single-family homes elsewhere.

D. James Lowenthal added that there is a history in America of overlighting areas where poor people and people of color live. He added that in his judgment a late night lighting plan would have the lights off, not just reduced by 50%.

E. Jane Slade pointed out that having more light does not necessarily yield a safer property. She added that there are best practice engineering standards that can be relied upon as specs, so no guesswork is called for. She later pointed out that these specs are developed

with consideration of the various populations including the elderly, and that they are the best route to controlling liability concerns (rather than over-lighting being that route).

F. Stacey McCullough commented that the report points out important concerns, all of which deserve to be addressed at least to Pelham code, and preferably beyond that, to best practice. This includes knowing footcandles to the next decimal point at the edges of the property, and adapting to the Pelham context -- prizing stars, wildlife, etc. more than the developer might be accustomed to in their other locations.

G. Amanda Huhmann asked if there were any regulatory or statutory guidelines for commercial rental properties that might apply here. Attorney Michael Pill responded that the statute calls for "adequate" lighting, but does not provide any definition of "adequate." He said on the basis of his extensive experience as a trial lawyer, the question is not what the statutes say or don't say, but what juries and judges find in actual liability litigation, and it is prudent to leave no doubt about what constitutes "adequate" by being generous in lighting public areas. Jeff Eiseman added that our attorney-general-approved code is legal and doesn't violate the legally mandated "adequate" lighting.

H. Jane Slade noted that visibility should be the focus here, not illumination. More light does not necessarily lead to more visibility.

I. Judy Eiseman added that Pelham wants to protect the environment -- and the animals that live in it -- from the harmful effects of artificial light. Several decades ago, Pelham residents in town meeting voted to eliminate street lights. She said she believes that the Planning Board would not prioritize the proposed Colonial-style fixtures over the ones that are more in tune with the environment.

J. Kevin Rothschild-Shea said the overriding concerns for the proposer were security and safety. The design may have to move away from a colonial lantern style of luminaire in order to secure a luminaire with fewer BUG problems, and that luminaires may need to be mounted on taller poles. At that point James Lowenthal interjected that taller poles would be unnecessary and undesirable. Kevin Rothschild-Shea added that his photometric plan was far from a first draft, but had enjoyed extensive consultation in order to achieve an illumination plan that feels safe.

K. Ann McNeal said she appreciates the developer's commitment to flexibility, and then asked if it were really necessary to have *any* ongoing public space lighting for the late night hours, roughly midnight to dawn.

L. Jeff noted that Mr. Lowenthal had provided an abundance of alternative luminaire suggestions that meet both the developer's goals AND comply with Pelham code. He also pointed out, in reference to Peter Serafino's remarks, that one of the images that he projected of a residential structure with a desirable lighting plan was in fact a multi-family dwelling.

M. James Lowenthal pointed out that glare is a far more serious problem for elders than inadequate illumination.

7. Mr. Lowenthal concluded our lighting discussion by stating that the solution to the challenges this proposal brings is not more lighting but better lighting. There's no need to look for compromise or to waive code requirements with respect to lighting. The issue is not really illumination, but visibility. It's really important to build a lighting plan by having only the light you need when and where you want it and no more.

8. Jeff suggested that the Home City team might want to interact with Mr. Lowenthal as they revise the photometric plan, and that we will take lighting up again when we meet on May 25; he asked Peter if it were possible to have a plan revision by May 18, and Peter said he would let Jeff know in the next few days whether he could meet that deadline.

9. The ZBA then voted to continue the hearing to Wednesday May 5 at 6:15 pm.

Respectfully submitted
Ralph Faulkingham, Secretary