

Minutes of: April 9, 2008  
Date Approved: May 14, 2008  
Date Filed/Village Clerk: \_\_\_\_\_

**April 9, 2008**  
**TUCKAHOE ZONING BOARD AND BOARD OF APPEALS**  
**TUCKAHOE VILLAGE HALL – 8:00pm**

**Present:** Susan Crane Acting Chairperson  
Kevin McBride Member  
Philip Allison Member  
John Kang Member

**Absent:** Gloria Rosell Chairperson

**Also in Attendance:**

Gary Gjertsen Deputy Village Attorney  
William Williams Building Inspector

Acting Chairwoman Crane announced the agenda as follows:

**Item #1 Approval of Minutes of the March 12, 2008 meeting.**  
**Item #2 101 Highview Ave. Area Variance**  
**Item #3 25 Oakland Ave. Special Permit/Variance**  
**Item #4 53 Underhill St. Area Variance**

Acting Chairperson Susan Crane announced that four members were present and asked each applicant if presenting before four members was acceptable to them. Each applicant agreed.

**Item #1 Motion by Acting Chairperson Crane to approve the minutes of the March 12, 2008 meeting was seconded by Member McBride and approved by the Board with a vote of 4-0.**

**Item #2 101 Highview Ave. Area Variance**

Mr. Michael Boettcher, designer of the proposed project, requested an area variance to reconstruct the overhang, which exists above the front steps of the house. The owners purchased the house with a poorly constructed overhang. The proposed overhang will be properly constructed and will be the proper length as to prevent the accumulation of ice and snow on the bottom step. He submitted plans of the proposed overhang.

**No Public Comments**

**Motion by Member Kang to close the public hearing was seconded by Member Allison and unanimously carried by the Board.**

**Member Allison offered a Resolution** for the application of an area variance requested by Peter and Jennifer McGahren, for relief of the following section of the building code:  
Section 4-2.4.1 – Front Yard – There shall not be a front yard with a depth of less than 25 ft., provided, however, if the lot was created after July 1, 1999, the front yard depth shall not be less than 35 ft.

Recommendation is for an area variance to be granted as the benefit to the applicant of the area variance outweighs the detriment to the health, safety and welfare of the neighborhood. The variance requested is to replace an existing covered entrance roof that does not have sufficient support and is in disrepair. It also does not fully cover the existing stoop. The new covered entrance roof will extend to the end of the existing blue stone stoop.

1. There will not be an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties: The design of the new overhang will add architectural character to the façade of the house.
2. The benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than an area variance. The existing overhang is not properly supported and in need of replacement.
3. The requested variance is not substantial.
4. The proposed variance will not have an adverse impact on the physical or environmental condition in the neighborhood in that the new overhang will not exceed the footprint of the existing stoop.
5. The alleged difficulty was self-created.

**Member Allison made a recommendation** to approve the requested area variances with the stipulation that construction begin within one year of granting this variance and for the construction to adhere to and be in compliance with the existing building code. The Board adopts a negative declaration pursuant to SEQR.

**Member Kang seconded the motion and upon roll call was carried with a vote of 4 – 0.**

### **Item #3 25 Oakland Ave.**

### **Special Permit/Variance**

Mr. Allacco, attorney for the applicant, Woodlot Christian Pre-School LLC., stated that he and his client have presented before the Planning Board for the past two months. The recommendation from the Planning Board was such that the traffic flow will be clockwise with 'No Left Turn' onto Fisher Ave. They also recommended that the applicant secure four parking spaces for the employees within 500 ft. from the premises, for the duration of the special use permit. He asked if the Zoning Board would agree that the Building Inspector review the applicant's special use permit each year rather than the applicant return before the Board each year to re-apply for the special use permit. He noted that the four spaces agreed upon with Rick's Auto Center have been revoked and the applicant has now secured two spaces at the Getty Station and is in the process of securing an additional three spaces behind Mr. Zocchi's building. The applicant is currently on the Village's list to secure permit spaces at the Fisher Ave. municipal lot. Mr. Allacco stated that he has submitted copies of all the written notices, which will be sent out to prospective patrons.

**Member Kang offered the following resolution (See Attached Pages 4 - 11).  
Motion was seconded by Member McBride and unanimously carried by the Board with a  
vote of 4 – 0.**

**Item #4 53 Underhill Ave.                      Area Variance**

Mr. Gjertsen, Deputy Village Attorney, stated that the applicant has requested an adjournment.

There being no further comments from the public or business before the Board, upon motion duly made, seconded and unanimously carried, the meeting was adjourned at 8:40p.m.

ZONING BOARD OF APPEALS  
VILLAGE OF TUCKAHOE, NEW YORK

In the Matter of the Application of

Woodlot Christian Preschool, LLC,

Premises: 25 Oakland Avenue,  
Tuckahoe, New York,

*Applicant.*

**FINDINGS OF FACT,  
CONCLUSIONS OF  
LAW AND DECISION**

**Background and Findings of Fact**

The Applicant is the lessee of the premises commonly known as 25 Oakland Avenue, Tuckahoe, New York, and known on the tax map of the Village of Tuckahoe (the “Village”) as Section 42, Block 8 and Lot 1 (the “Premises”). The Premises is located in the Business zoning district, which is located nearby and East of the Crestwood Metro North Rail Station and North of the downtown area of the Village.

The Western boundary of the Premises is adjacent to a gasoline and automotive service station. To the South of the Premises is a small commercial building. Residential dwellings are located across roadways bordering the Northern and Eastern boundaries of the Premises. The Premises is currently accessible by limited on-street parking, off-street parking lots of nearby businesses and off-street public parking lots.

The Applicant operates a day-care facility licensed by New York State Family Services to prepare children aged 2 years, 9 months to 6 years old for kindergarten. Currently, a total of 75 children attend the Applicant’s day-care facility in Eastchester on either a full or part time weekly basis. At present, only 10 children attend the day-care program on a full-time basis. The Applicant’s current preschool license allows for a maximum of 32 children to remain on the Premises at any given time and, consistent with a prior request, the Village’s Fire Inspector has approved an increase from 32 to 38 children being allowed on the Premises at any given time in conjunction with the day-care facility.

The Applicant proposes to operate its day-care facility in the existing structure on the Premises, which is a church. In connection with the Applicant’s proposal, it seeks a special use permit and approval to operate a day-care facility in a Business zoning district from the Zoning Board of Appeals for the Village of Tuckahoe (the “Zoning Board”).

Under the Village Zoning Ordinance, the proposed use for a building or structure in a Business District cannot have, as its major objective, the goal of “catering or furnishing of services to other than the residents of the locality.” Village of Tuckahoe Zoning Ordinance (“Zoning Ordinance”) § 4-6.1. The Applicant seeks to utilize a

portion of the interior space of the existing church on the Premises to provide day-care services to local residents (the “Proposal”). The Applicant has operated its current day-care business in Eastchester for approximately 40 years. The proposed day-care facility would operate wholly within the existing church building. Among the special permit uses outlined for the Business District, the Zoning Ordinance expressly lists day-care facilities among them. Zoning Ordinance § 4-6.1(b)(3).

### **The Nature of the Application**

In connection with this Application, the Applicant seeks to use part of the Premises for a day-care facility, which requires a special use permit. The Applicant will not make any structural alterations to the Premises or the existing church nor will the proposed use of the Premises cast any negative effects on any neighboring properties. In total, the Applicant requires a special use permit to accommodate its proposed use of the Premises.

### **Conclusions of Law**

In order to grant the requested special use permit, the Zoning Board must consider the following factors in reaching its determination:

1. Compatibility with District;
2. Compatibility with Comprehensive Plan;
3. Services;
4. Adjacent properties;
5. Nuisance;
6. Neighborhood Character and Property Values;
7. Traffic;
8. Parking; and
9. Conformance with Regulations.

Pursuant to Section 6-1 of the Zoning Ordinance, the Zoning Board is vested with the authority to issue special use permits as set forth in the Zoning Ordinance. “Any use designated in a given district as requiring a special use permit shall be deemed to be a permitted use in such district subject to satisfaction of the conditions and standards set forth in this article in addition to all other requirements of this Zoning Ordinance.” Zoning Ordinance, Section 6-1.1. More specifically, the standards prescribed in Section 6-1.6 for all special use permit uses must be satisfied along with more specific requirements set forth in Section 4-6 of the Zoning Ordinance, which pertain to Business zoning districts.

#### **A. Standards For All Special Permit Uses**

##### ***1. Compatibility with District***

This Proposal is harmonious with the goals for a Business Zoning District because it will directly benefit children living in or within close proximity to the Village. This goal is expressly set forth in the Zoning Ordinance.

See Zoning Ordinance § 4-6.1. The day-care services provided will benefit residents of the locality, the local school district and businesses in the Village.

The Applicant's day-care business has been operating for approximately 40 years. Thus, its business practices and policies are well-suited to the particular needs of the required facilities to furnish day-care services. The Applicant has requested an increase in maximum occupancy on the Premises from 32 to 38, which is a deviation of approximately 18%. The physical and structural dimensions of the existing building on the Premises will remain unchanged and no more than 38 children will be permitted on the Premises at a given time. Taking into consideration the relative experience and abundance of staff supervising the children on the Premises at all times, any negative impacts on neighboring lots will be mitigated and/or entirely prevented. Thus, the above increase in occupancy is insignificant and will not hinder the Applicant's ability to utilize the Premises for a business use.

## **2. *Compatibility With Master Plan***

The Master Plan for the Village of Tuckahoe ("Master Plan") cites a "commitment to schools and education in Tuckahoe which truly impacts the Quality of Life for our youngsters and their families" as an aspirational goal for its schools under the Quality of Life section. Master Plan at 139. Additionally, the Master Plan boasts that the Village provides the "finest school districts for their children" and further cites providing "outstanding educational opportunities" as another express goal. *Id.* Allowing a well established, reputable day-care facility that has been successfully operating for over 40 years to operate in the community will provide residents with more choices for early childhood education. Clearly, this is harmonious with the purpose and intent of the Master Plan, which is to offer competitive options for private schools to its residents and to provide the best available school system to its residents. Adding a private day-care facility to this area of the Village will, indeed, be a positive contribution to the Village's school system and will provide newfound educational opportunities and/or alternatives to its residents.

The Proposal will be compatible with the Master Plan because one of its indirect net effects of it will be to enhance the economy of the Village. By allowing a day-care facility to operate in a Business District in the Village, it is very likely that any nearby local businesses can benefit from increased daily thoroughfare to and from the proposed day-care facility.

Providing outstanding educational opportunities and diversifying private school alternatives for the Village's youth is consistent with the goals of the Master Plan. Granting the relief requested will positively contribute to the educational opportunities currently available to Village residents, and could provide additional benefits to local

businesses and contribute to the economic base of the adjacent and greater community. Thus, this Proposal is clearly harmonious with the express and implicit goals of the Village's Master Plan.

### **3. *Services***

The Premises will continue to be readily accessible for fire and police protection. The building is located on a public street that is navigable by fire and police protection services. The Village's Fire Inspector has approved a slight increase in maximum occupancy for the existing building on the Premises and has otherwise certified the proposed use on the Premises. Neither the existing building's physical dimensions nor the configuration of the Premises will change from its current state in any respect. Nothing in this record suggests police or fire protection services will be diminished by the Proposal as proposed.

### **4. *Adjacent Properties***

To accommodate for the proposed use of the Premises, no construction or alterations of any structures thereon will be required. The proposed use will only affect a portion of the existing structure on the Premises and will not be any more intense than the current use for the Premises. The proposed use for the Premises will not appreciably affect the value of the Premises to the detriment of adjacent and nearby lots. Thus, any properties adjacent or nearby the Premises will suffer no injury or deleterious effects from the proposed use of the Premises.

### **5. *Nuisance***

The intensity of use on the Premises will not appreciably change as a result of granting the special use permit discussed herein. The nature and scope of the proposed business use of the Premises will be such that no noise, fumes, vibration, flashing of lights or other similar nuisance conditions to the surrounding neighborhood will occur. Additionally, no offensive, dangerous, destructive or hazardous conditions affecting the health of the surrounding community will be produced as a result of the proposed use on the Premises. Bringing children from the ages 2 years, 9 months to 11 to the Premises on a daily basis will not generate any conditions tantamount to nuisance on or nearby the Premises. Any perceived or potential nuisance conditions will be effectively mitigated by the constant supervision and monitoring by staff of the day-care facility, in addition to the fact that day-care services will be primarily furnished indoors.

### **6. *Neighborhood Character and Property Values***

On this record, there is no evidence that the property values of adjacent and nearby lots in the community will be diminished by granting approval for this Proposal. Neither the existing structure on the Premises nor the configuration of the lot itself will be materially altered in any respect. The existing character of the immediate and

surrounding neighborhoods will not be affected whatsoever. This Proposal will add to the overall economic and tax base, school district support, and diversity in the Village.

As a result of the influx of capital, economic support and overall appeal of this Proposal, property values for lots adjacent to and nearby the Premises can only increase. These potential changes in neighborhood character and property values would only yield positive socioeconomic effects in the immediate vicinity and the greater community. As discussed above, the Proposal is consistent with developmental and aspirational goals for the Business zoning district and the greater community.

## **7. *Traffic***

The Zoning Board acknowledges that the traffic volume to and from the Premises will change if granting the special use permit, but the anticipated effects of this increased traffic volume will not be significant. The Premises is located in an area of the Village that regularly experiences higher traffic volume and is in close proximity to the Crestwood Metro North Rail Station. Thus, above average traffic volumes at and around rush hour time periods are commonplace. Despite this fact, however, any increases in traffic volume to the area as a result of the proposed use for the Premises will only occur during times when children are either dropped off or picked up from the Premises for day-care services. These time periods will be before morning rush hours, sporadically throughout the late morning and early afternoon and only a few children remain after 5:00 p.m.

The Applicant acknowledges that anticipated increases of approximately 30 vehicles to the area will result on a daily basis. Because so few of the children attending the day-care facility will remain on the Premises during peak afternoon traffic hours, the net effects of this slight increase in volume will be insignificant. Moreover, the Premises was previously used as a day-care facility without creating any adverse traffic conditions from a period of 1960-1980, which was noted by a member of the Planning Board at a February 26, 2008 meeting.

The Applicant has presented sufficient information to the Zoning Board demonstrating that any increase in traffic volume to the area near the Premises will be effectively mitigated. Due to the use of video camera monitoring, two-way radios and an intercom system, the staff of the day-care facility will be able to monitor pick-up and drop-off areas at the Premises at all times. Additionally, the Applicant has proposed that all vehicles on the Premises for purposes of pick-up and drop-off will only remain on the Premises for a period of approximately 1-2 minutes. Any increase in traffic to the area, however, will be mitigated by the off-street parking facilities proposed to service the Premises. Thus, the Zoning Board of Appeals has determined that the effects on traffic from this Proposal will be reasonable in nature.



**8.        *Parking***

Pursuant to Section 5-1 of the Zoning Ordinance, a minimum number of off-street parking spaces are required to accommodate the number of residential occupants and commercial patrons in the proposed buildings on the Premises. This Proposal does not seek to construct additional parking on the Premises or create off-street parking. The amount of parking available on the Premises will remain unchanged.

The Applicant has proposed to rent four off-street parking spaces from an adjacent business to accommodate for staff parking. Additionally, the day-care facility staff will utilize available public parking in designated areas of the Village as more rental spaces become available. Due to the nature of the day-care facility, only the above staff parking and transient parking for pick-up and drop-off is required. The Applicant has proposed a constant monitoring system consisting of multiple video cameras, two-way radios and an intercom to ensure that transients to the Premises will remain on-site for approximately 1-2 minutes.

Any negative effects of limited parking will be mitigated by the fact that transient parking demand for the day-care facility will be most intense during off-peak traffic and commuting hours in the Village. Thus, the Zoning Board has resolved that the above approval is harmonious with the Zoning Ordinance and with its goals for a Business zoning district, thus the same is hereby granted.

**9.        *Conformance with Regulations***

The Applicant has complied with the requirements for the Premises concerning a special use permit. Based on the foregoing, this Board finds that the Applicant has reasonably satisfied the general conditions applicable to the issuance of special use permits as set forth in the Village's Zoning Ordinance.

**Conditions**

The approvals granted herein are subject to the conditions set forth and contained on Schedule A, attached hereto, made a part hereof and incorporated by reference herein. The Zoning Board finds that the conditions set forth and contained on said Schedule A are reasonable conditions imposed on the Applicant in an effort to make this project more compliant with the Zoning Ordinance standards as well as to reduce any negative environmental impacts associated with this project.

## **SEORA**

Based on the foregoing, the Zoning Board finds and determines that:

1. The action taken herein is an Unlisted Action subject to the requirements of SEQRA.
2. This Zoning Board is in possession of all information reasonably necessary to make the determination as to the environmental significance of the proposed special use permit and variance application.
3. That the action taken herein shall not have any significant impact upon the environment and declared that a Negative Declaration is hereby adopted with regard to this action.

## **Conclusion**

Based on the foregoing, it is resolved that the special use permit be and is hereby granted to the Applicant. The Applicant and/or interested third parties are notified of their respective rights to appeal this decision or any part thereof in accordance the New York Civil Practice Law and Rules.

Dated: Tuckahoe, New York  
May 14, 2008

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Gloria Rosell,  
Zoning Board Chairperson

## SCHEDULE A

### **CONDITIONS TO A CERTAIN APPROVAL FOR A SPECIAL USE PERMIT GRANTED TO WOODLOT CHRISTIAN PRESCHOOL, LLC FOR THE PREMISES 25 OAKLAND AVENUE, TUCKAHOE, NEW YORK FROM THE ZONING BOARD OF APPEALS OF THE VILLAGE OF TUCKAHOE**

1. The day care facility use that has been applied for shall not be enlarged, modified, expanded and/or amended in any manner whatsoever without the further approval of this Zoning Board of Appeals;
2. The ages of the children that shall utilize the proposed structure shall not be greater than six (6) years nor less than two (2) years of age;
3. The number of children constituting the use of the facility shall be limited to thirty eight (38) children in accordance with the Applicant's State license;
4. The proposed structure shall not be a 24-hour facility and shall operate five (5) days a week Monday through Friday from approximately 7:30 a.m. to 6:30 p.m.;
5. No part of the proposed structure shall be utilized for dwelling quarters or for dwelling purposes;
6. The proposed facility shall not be operated on the weekends during any time of the year;
7. Four off-street parking spaces that are to be located within 500 feet of the subject premises shall be provided by the applicant at all times;
8. The applicant must maintain cameras that must provide a view of the parking spaces and available parking. The Building Inspector shall verify the operations of the camera system;
9. This Special Use Permit shall be limited to a period of 12 months and at its expiration, the applicant should be required to renew the Special Use Permit from this Zoning Board of Appeals; and
10. The representations, illustrations, depictions and statements made by the Applicant in its: (i) application; (ii) Memorandum in Support; (iii) plans, drawings and renderings; and (iv) presentations during the course of the public meetings before this Zoning Board of Appeals are incorporated by reference herein and shall constitute conditions to the approvals granted herein. In the event that any of the foregoing (i-iv) conflict with this Findings of Fact, Conclusions of Law and Decision, the terms, provisions and conditions set forth herein shall control.