

Minutes of: April 7, 2009  
Date Approved: May 13, 2009  
Date Filed/Village Clerk: \_\_\_\_\_

**April 7, 2009**  
**TUCKAHOE ZONING BOARD AND BOARD OF APPEALS**  
**TUCKAHOE VILLAGE HALL – 7:30pm**

**Present:** Gloria Rosell                      Chairperson  
Philip Allison                      Member  
Kevin McBride                      Member  
Thomas Giordano                      Member  
John Santos                      Member

**Absent:** Susan Crane                      Member

**Also in Attendance:**  
John Cavallaro                      Village Attorney  
William Williams                      Building Inspector

Chairwoman Rosell announced the agenda as follows:

**Item #1 Approval of Minutes of the March 11, 2009 meeting.**  
**Item #2 35 Bronx St.                      Return**  
**Item #3 11 Jackson Ave.                      Return**  
**Item #4 100 Sagamore Rd.                      Area Variance**  
**Item #5 81 Lincoln Ave.                      Return**  
**Item #6 125 Marbledale Rd.                      Special Use Permit**  
**Item #7 45 Rogers St.                      Area Variance**  
**Item #8 184 Midland Ave.                      Adjourned**  
**Item #9 20 Bronx St.                      Adjourned**

**Item #1 Motion by Chairwoman Rosell to approve the minutes of the March 11, 2009 meeting was seconded by Member McBride and approved by the Board with a vote of 5-0.**

**Item #2 35 Bronx St.                      Return**

Ms. Lara Vargas, V.P., representing the childcare facility, stated that Supervisor Colavito offered a letter of intent for the lease from the Town of Eastchester, pending approval by the Eastchester Town Board during the upcoming April 21, 2009 meeting.

**Member McBride offered a resolution. (See Attachment #1)**

**Member Allison motioned to accept the resolution was seconded by Chairwoman Rosell and upon roll call was carried with a vote of 4 – 0 with Member Santos abstaining.**

**Item #3 11 Jackson Ave.****Return**

**Member Allison recused himself from the Board for this applicant.**

Mr. Maron, attorney for the applicant, Robert d'Ambrosio, stated that the applicant was requesting a confirmation of legal non-conformity use. Mr. Maron stated that the use of the property has not changed in 50 years. The prior use was of nonconformity. He noted that the property is 'For Sale' but there is no activity on the market. The applicant will install a tall fence to shield the view of the property as a condition to the approval. There is only storage equipment on the property now and he is no longer allows his tenants to sell items on the property.

Chairwoman Rosell noted that the trucks exiting the property cause traffic congestion. She asked if the applicant has ever obtained a parking lot license.

Bill Williams, Building Inspector, indicated that he researched the property at the County Clerk's office and that this property meets the requirements for a parking lot license, dating back to 1959. The owner of this property has never applied for a parking lot license.

Mr. Maron stated that the application is for 'use of property' not the ownership. Even though the property has switched ownership, the legal non-conforming use continues.

Mr. Williams noted that the applicant was issued a summons on August 30, 2007 and the applicant pleaded guilty and paid the fine. There are 3 years worth of photos of the property, the property was used as a transfer station, and there is an application dated 1984, for an electrical permit for a temporary service. The temporary trailers are still on the property.

Mr. Maron noted that the photos on file are from businesses that are no longer tenants.

Chairwoman Rosell stated that the Board would render their decision next month.

**Item #4 100 Sagamore Rd.****Area Variance**

Mr. Les Maron, representing the applicants Dino and Rita Gentile, stated that they are requesting a rehearing of the January 14, 2009 variance approval regarding the stone steps. The Board must grant approval with a unanimous vote pursuant to the NY Village Law 7-712-a(12).

**Upon roll call the motion to rehear the application of Dino and Rita Gentile was denied with a vote of 4 – 0 with Member Santos abstaining.**

Mr. Maron presented the second part of this application, to modify the patio deck to be no less than 5ft. from the property line, as opposed to the required 15ft. side yard set back. The survey dated 2006 displayed that a small portion of the Gentile's patio infringed on the adjacent property. The patio will be decreased by 6.5 ft., the 5ft. set back and the 18 in. on the adjoining property. The applicants will plant shrubs on the 5ft. piece of property.

Bill Williams, Building Inspector, stated that the architect for the Gentiles did not submit the plans to the Building Department. The plans filed are stamped 3/7/2002 by the architect, not the Building Dept. Mr. Maron found the plans in the file because the Gentile's submitted it at a later date. Mr. Williams also noted that if the patio in question is truly a 'patio' built on grade and not a

'deck' raised, a variance would not be required. If the patio is elevated and supported, than a variance is required. He advised the Board that he will get a definition and interpretation of a deck and patio from the Building Code Council.

### **Public Comments**

Evan Eisen, attorney representing Margaret Hu of 90 Sagamore Rd. Bronxville, whom resides next door to the applicants, noted that part of the deck is 3ft. above grade. The Jan. 14, 2009 approval with conditions was for a deck, not a patio.

Richard Thaler 5 Leonard Rd. Bronxville, voiced his concern regarding the retaining wall. He also asked the Board to consider sending out detailed information regarding the application instead of just a general notice.

Mr. Maron noted that the retaining wall will not be touched.

Chairwoman Rosell announced that the Board will review the application and render a decision next month.

### **Item #5 81 Lincoln Ave.**

### **Return**

Mitchell Koch, architect for the applicant, submitted plans for a one-story, two-car garage to be built in the rear right hand corner of the property. The Zoning Code requires a 5ft. rear yard set back and 5ft. side yard set back. The applicant is seeking a variance for both requirements. There is no other place for the garage to be built. The driveway would need to be placed on the opposite side of the house to allow the vehicle to access the proposed garage.

Chairwoman Rosell noted that the Board members visited the site and was very concerned with the narrow driveway and the small lot size.

Member McBride noted that there is a gas meter on the side of the house where the proposed driveway would be, which is a safety issue, as the driveway is lacking width and the vehicle would be endangering the corner of the house.

Mr. Koch noted that there will be approximately 10ft. at the front of the driveway and there will be bollards placed in front of the gas meter. The Planning Board will review the safety issues.

### **No Public Comments**

Chairwoman Rosell noted that there is not enough room for vehicles and a garage in the back lot. The property is too small and the garage is too big.

Mr. Koch withdrew the application.

**Item #6 125 Marbledale Rd.****Special Use Permit**

Mr. Quintineri, owner of Fleet Collision Corp., requested a renewal of the Special Use Permit. The current hours of operation are M-F 7:00am – 7:00pm and Sat. 8:00am – 12:00pm for clerical only. The proposed changes requested are M-F 7:00am – 9:00pm and Sat. 8:00am to 5:00pm - not restricted to clerical only.

**Member McBride motioned to open the public hearing, seconded by Member Giordano and was carried unanimously.**

**Public Comments**

Joseph Marinello 4 Coolidge St., voiced his disappointment that he resides in the only house behind the applicant's garage and he was not notified. He stated that he opposed this change in the hours, as the applicant has not adhered to some of the conditions of the original Special Use Permit.

Bill Williams, Building Inspector, stated that the applicant had appeared in court for one violation and paid the fine. There was one police report regarding noise, the noise was 'not founded.'

Bud Hanson, 140 Marbledale Rd., owner of the building across the street from the applicant stated that there has never been any problems with the applicant. He was in favor of the application.

Richard Quintineri stated that he has worked with this Special Use Permit for 6 years and has only been summoned twice. He has adhered to all the conditions set forth in the Special Use Permit.

Mr. Marinello noted that his biggest concerns were the paint booth being used at night and the vehicles being parked on the street. He will call the Police Dept. to file complaints in the future.

Phil Denning, owner of 125 Marbledale Rd., noted that the applicant was a good tenant.

**Member McBride motioned to close the public hearing, seconded by Member Allison and unanimously carried by the Board.**

**Member McBride motioned to approve the renewal of the Special Use Permit with the following conditions:**

1. The hours of operation will be from 7:00am – 7:00pm Monday thru Friday and 9:00am – 3:00pm on Saturday.
2. No parking of vehicles permitted on the sidewalk
3. All services will be confined to the inside of the building

The Board adopts a negative declaration pursuant to SEQR.

**Member Allison motioned to accept the resolution, seconded by Chairwoman Rosell and upon roll call was carried with a vote of 5-0.**

**Item #7 45 Rogers St.****Area Variance**

Steve Achinelli, attorney for the applicant, stated that the application was for a single family dwelling to be converted to a two-family dwelling. First floor apartment will be 700 sq. ft., one bedroom apt., the second floor, two-bedroom apt. will be 1000sq. ft. Three area variances would be necessary. The zoning code requires 4 parking spaces, 3 parking spaces proposed; parking spaces required to be 10ft. x 20ft., 8ft. x 20ft. proposed; 5ft. buffer required, 0ft. proposed.

Rebecca Rivera, architect, explained that the one parking space will be on the side of the house, two spaces will be side by side in front of the house.

Member Giordano asked why the tandem parking was not placed along the southern retaining wall.

Ms. Rivera noted that the applicant considered that idea, but there was too much rock involved, as well as mature trees would need to be removed. An 18ft. – 20ft. curb cut already exists on the northern side of the house.

Bill Williams, Building Inspector, indicated that this house was once an illegal two-family house and was returned to a one-family house.

Mr. Achinelli stated that the retaining wall on the northern side will be replaced by the applicant.

**Member McBride motioned to open the public hearing, seconded by Member Allison and unanimously carried by the Board.**

**Public Comments**

Henry Norman 30 Rogers St. stated that he was in favor of this application and remembers this house being a two-family dwelling. Parking is an issue in this area.

9:40 Board entered executive session.

9:50 Executive session ended.

**Member McBride motioned to close the public hearing, seconded by Member Allison and unanimously carried by the Board.**

**Member Giordano offered a resolution for 45 Rogers Street; Section 34, Block 4, Lot 29.**

The application is for a permit to convert an existing one family house to a two family house requested by 45 Rogers Street, LLC, and specifically for relief from Section 4-3.7 of the Zoning Code – which provides in pertinent part as follows:

“Off-Street Parking Requirements. For a two-family dwelling on any lot there shall be provided and maintained on the lot not less than four spaces for the parking or garaging of passenger vehicles. . . . Subject to all provisions of this chapter, including but not limited to Section 5-1.2, tandem parking, i.e., the parking of one vehicle in back of another or in front of or in back of a garaged parking space, may be permitted by the Planning Board, provided that such tandem

parking arrangement shall be restricted in its use to residents of the dwelling unit for which such tandem parking arrangement serves to satisfy the parking requirement . . . .”

The application is for administrative relief from the requirement that the lot on which the improved two-family dwelling is situated, provide and maintain no less than four spaces for the parking and garaging of passenger vehicles. In addition, the application is requesting relief for the 10ft. width requirement for a parking space and the 5ft. required side yard set back.

Recommendation is for a variance to be granted in part, as the benefit to the applicant outweighs the detriment to the health, safety and welfare of the neighborhood. Specifically, given the space constraints of the first floor of the dwelling, we find it sufficient that the lot provide and maintain no less than three spaces for the parking and garaging of passenger vehicles:

Addressing the five factors to be considered in making such a determination:

There will be an undesirable change in the character of the neighborhood and there will be a detriment to nearby properties: The existing first floor of the dwelling is roughly 700 square feet, and large enough to accommodate one bedroom only. The improvement to the second floor would increase the square footage of that floor by 271 square feet, allowing for a second bedroom. Given the limited total square footage of the dwelling as improved, including bedroom space, we believe that three spaces for parking would be adequate to accommodate the parking needs of the occupants of the dwelling without further encumbering Rogers and adjoining streets.

The benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue other than an area variance: Having viewed the survey of the lot as well as the lot itself, we do not believe that the inclusion of four spaces for parking could be achieved by other methods without undermining the character of the property and neighborhood. To require four parking spaces on a lot of the size of the subject lot would require the elimination of the existing limited front yard space in favor of paved areas for passenger vehicles, and thus unnecessarily detract from the curb appeal of the premises.

The variance to be granted is not substantial: Given the square footage of the dwelling as improved, we find three parking spaces sufficient and reasonable. To require four spaces would be exaggerated for a dwelling of the size of the subject lot as improved, and detract from the character of the property; whereas to allow a variance for only two spaces would not be sufficient for the parking needs of the residents of the dwelling. Analogize to the children’s story, we feel that the relief granted is “just right”. Further, we find that the lack of the parking space dimension requirement is de minimus and that the retaining wall next to the northern most border of the property will lessen the need for a 5ft. side yard set back, as the retaining wall provides a natural barrier.

The proposed variance will not have an adverse impact on the physical or environmental condition in the neighborhood in that: Inasmuch as the proposed improvement will not greatly increase the square footage of the dwelling, we agree with counsel for the applicant that the variance with respect to parking would not significantly impact the environmental conditions of the neighborhood, including water use, pollution, energy use, drainage, run-off or flooding.

The alleged difficulty is self-created: however, the applicant has come before the Zoning Board seeking a mutually acceptable solution to issue of parking requirements for the dwelling as improved prior to the commencement of any improvement to the dwelling.

Accordingly, it is recommended to grant the requested variance in part, allowing for a reduction of required spaces for parking and storage of residential from four to three, as well as the width requirement relief for the parking space and the 5ft. side yard set back, however, only with the following stipulations and conditions:

- (1) that two parking spaces be situated lengthwise and in tandem immediately adjacent to the retaining wall along northern property line of the lot; with the third parking space immediately adjacent to and south of the parking space which will abut Rogers Street and the northern property line;
- (2) that the two proposed tandem parking spaces must be ascribed for use by the upper two-bedroom unit of the dwelling; and the third adjacent parking space be ascribed for use by the lower one-bedroom unit; and
- (3) that no further improvements be made to the dwelling, which further increase its floor area beyond the 1,719 FAR square footage of the proposed addition, as such improvements would potentially increase the need for additional residential parking and storage.

If this application is approved, it is stipulated that completion be one year after receipt of the granting of all permits. The Board adopts a negative declaration pursuant to SEQR.

**Member McBride motioned to adopt the resolution, seconded by Member Allison and unanimously carried by the Board with a vote of 5 - 0.**

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 9:55 p.m.

Attachment #1.

ZONING BOARD OF APPEALS  
VILLAGE OF TUCKAHOE, NEW YORK

In the Matter of the Application of

JULIA DYCKMAN ANDRUS MEMORIAL, LLC

Premises: 35 Bronx Street  
Tuckahoe, New York,

Applicant.

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

**Background and Findings of Fact**

The Applicant is lessee of the premises commonly known as 35 Bronx Street, Tuckahoe, New York and identified on the tax map of the Village of Tuckahoe as Section 37, Block 3, Lot 2A (the “Premises”). The Premises is currently improved by an affixed one-story building, which is adjacent to an existing bleacher stand located on a field known as Parkway Oval.

The Applicant is a non-profit, non-sectarian social service agency providing child care services to children from the ages of 18 months to 5 years old. The Town of Eastchester is the record owner of the Premises. The Applicant holds a lease with the Town of Eastchester to utilize the Premises as a day care facility.

The Applicant seeks relief from the Village of Tuckahoe Zoning Code (the “Zoning Code”) by means of area variances for front yard setback, rear yard setback and landscape buffer requirements. The Applicant also requires a special use permit to operate its day care facility in a Residence B zoning district.

The Premises is located in a Residence B Zoning District, which requires, in pertinent part, that day care facilities be operated pursuant to special use permits issued by the Zoning Board of Appeals. Currently, the Premises is approximately 17,730 square feet and is improved by a one-story pre-fabricated, outdoor recreation area and a bleachers/grandstand structure overlooking the adjacent parkland.

The Premises is located adjacent to a parkland use. This parkland was originally owned by Westchester County (the “County”) and was deeded to the Town of Eastchester in 1949. That deed contained a reverter clause restricting the use of the land to playground or park uses. In 1967, the Town, with the County’s approval, entered into a lease agreement with the Applicant to operate its facility on a portion of the parkland. The County consented after rendering a determination that the proposed use of the parkland as a day care center was consistent with



recreational activities and other parkland purposes. The existing building was built in 1968 with additions and/or alterations being made in 1986.

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

The Applicant seeks a special use permit from this Zoning Board of Appeals as well as three area variances for front yard setback, rear yard setback and landscaped buffer requirements. The nature of the area variances sought are as follows:

	<b><u>Required Before 7/1/1999</u></b>	<b><u>Required After 7/1/1999</u></b>	<b><u>Proposed</u></b>
<b>Front Yard Setback</b>	25 feet	35 feet	11 feet
<b>Rear Yard Setback</b>	25 feet	35 feet	10 feet
<b>Landscaping Buffer</b>	5 feet	5 feet	0 feet

In total, the Applicant seeks three area variances from this Board. The Applicant has represented that it would continue to utilize the Premises as a day care facility consistent with the plans submitted by the Applicant's architect.

### **Conclusions of Law**

In order to grant the requested area variances, this Zoning Board must consider five factors in reaching its determination as follows:

1. Whether an undesirable change would be produced in the character of the neighborhood or a detriment to nearby properties?
2. Whether the benefit sought by application can be achieved by a feasible alternative to the variance?
3. Whether the requested variances are substantial?
4. Would the variances have an adverse impact on the physical or environmental conditions in the neighborhood?
5. Whether the alleged difficulty was self-created?

In analyzing the above factors, this Zoning Board is left to consider whether the benefit to the Applicant outweighs the proposed detriments to the health, safety and welfare of the neighborhood or community. In applying the five factor test and in evaluating the respective benefits and detriments of this Application, this Zoning Board resolves to grant the application as presented because the Applicant has satisfied the five-factor test.

This Zoning Board finds that the Premises was a lot created after July 1, 1999. According to the Applicant's submissions, it appears that the Premises was carved out of the larger tract of parkland by the above mentioned 2003 April 7, 2009

New York State legislation. Although the Division of Land Records in the Westchester County Clerk's Office shows no filings to this effect, based on the evidence submitted on this record, the Premises was not an alienable or separate lot until the 2003 New York State legislative enactment. However, this finding does not affect the type of area variances required, but only the size of the area variances requested.

***1. Whether An Undesirable Change Would Be Produced In The Character Of The Neighborhood Or A Detriment To Nearby Properties?***

No undesirable changes in the character of the neighborhood would result from granting area variances for front yard setback, rear yard setback and landscaping buffer requirements. Although the Applicant is only providing a rear yard measuring ten feet, open parkland is located adjacent to the rear yard. Thus, no neighboring properties to the rear of the Premises would suffer any detrimental effects from granting the within rear yard area variance. As to an area variance for minimum front yard, no undesirable change in the character of the neighborhood would result because the Applicant would be providing a landscaped front yard setback of twenty feet, which is an adequate setback compared to the scale of the remodeled building.

The adjacent open parkland and the central siting of the building will mitigate the proposed reduction in the landscaping buffer. Based on the siting of the building in the surrounding parkland, the insufficient front and rear yards will not create any further density issues with respect to the neighboring properties. Any density or buffer zone issues are offset by the proposed central siting of the structure and the proposed landscaping.

***2. Whether The Benefits Sought By the Applicant Can Be Achieved By A Feasible Alternative to the Variances?***

The Applicant seeks to remodel the existing building on the Premises to better accommodate the day care facilities operated therein. The Applicant will not appreciably alter any dimensional characteristics of the existing building on the Premises in remodeling the same. Thus, based on the configuration of the lot and the required minimum space required by the applicant, there is no feasible alternative that exists absent the instant variances.

***3. Whether The Requested Variances Are Substantial?***

Here, this Zoning Board finds that the requested variances are not substantial in relation to the building and surrounding lots. The Applicant requests a twenty four-foot front yard area variance. The Applicant has attempted to mitigate the aesthetic impact of this area variance by landscaping the front of the building, providing for a better screening area and improving the aesthetics of this portion of the Premises.

Although the Applicant requests a twenty-five-foot area variance for rear yard setback, the Premises borders along open parkland. Any negative impacts of the area variance for rear yard setback are sufficiently offset by the added buffer zone provided by the adjacent open parkland. The encroachment on the landscaping buffer is mitigated by the proposed landscaping and screening in close proximity to the building on the Premises. Thus, none of the proposed area variances will cause any “substantial” impacts.

***4. Would The Variances Have An Adverse Impact On The Physical Or Environmental Conditions in the Neighborhood?***

The proposed area variances will not produce adverse impacts on the physical or environmental conditions in the surrounding neighborhood. The open parkland adjacent to the rear yard of the Premises will be unaffected by the subject area variances. The front yard area variance will not generate additional environmental impacts such as poor aesthetics, increased traffic, greater parking demands, noise pollution or other negative environmental conditions. The area variance for landscaped buffer requirements is mitigated by the proposed landscaping and/or screening near the renovated building. Also, the reduction in size of the renovated building will reduce the need for a landscaped buffer near the boundaries of the Premises, as a less-imposing building is proposed for the Premises.

Aesthetically, the renovated building will be a marked aesthetic improvement from the existing building on the Premises. Thus, the physical and environmental conditions of the Premises will improve. Also, the subject area variances will cast positive effects on the surrounding properties and neighborhood.

***5. Whether The Alleged Difficulty Was Self-Created?***

Any alleged self-created difficulties are not fatal to this application.

**Special Use Permit**

Pursuant to Section 6-1 of the Tuckahoe Zoning Code, the Zoning Board of Appeals is vested with the authority to issue special use permits specified within the Zoning Code. “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 Zoning Code.” *See* Tuckahoe Zoning Code, Section 6-1.1. Under the Tuckahoe Zoning Code, this Zoning Board must apply certain conditions to ensure that the Applicant meets or exceeds the requirements of the Zoning Code.

***1. Compatibility with District***

The Applicant’s proposed use on the Premises is compatible and harmonious with the orderly development of the Zoning District in which the Premises is located. The day care facility use has been in existence continuously on the Premises for nearly forty years.

The site is located on a public street and borders open parkland to the rear. Thus, remodeling the existing building on the Premises poses no negative impacts to premises among the surrounding community in light of the abundant open space in this neighborhood. Notwithstanding that the Applicant has requested front and rear yard area variances, it has exceeded and satisfied the side yard setback requirements set forth in the Zoning Code, thus enhancing the degree of space between it and any neighboring buildings.

## ***2. Compatibility With Comprehensive Plan***

The project presented herein is compatible with the Comprehensive Plan in that the Comprehensive Plan does not recommend eliminating day care facilities from the Premises, or the re-zoning the Premises to a different classification. In July 2005, the Premises was rezoned as part of a Residence B zoning district, thus furthering the goals of the Comprehensive Plan by eliminating any un-zoned parcels within the Village. Because the proposed use for the Premises remains compatible with the goals for a Residence B zoning district, granting the instant special use permit is compatible with the Village's Comprehensive Plan.

## ***3. Services***

The remodeled building on the Premises will continue to be readily accessible for fire, police or any other municipally-provided services. The existing building and the remodeled building will still be located on a public street that is navigable by fire and police protection services. Nothing in this record suggests police or fire protection services will be affected or diminished by the project as proposed.

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

The location, nature and height of the remodeled building will not hinder or discourage the development and use of adjacent buildings. The Premises is located in an area of the Village that is fully developed by residential uses. The day care facility use has existed for nearly forty years in this neighborhood as it has developed over that time.

The building height is compatible with that of the residential uses in the surrounding community. Additionally, landscaping will be provided on the southerly and easterly boundaries of the Premises providing a landscaped buffer between the remodeled building and the surrounding lots and buildings.

## ***5. Nuisance***

It is worth repeating that the current use of the Premises has persisted for nearly forty years and, as a day care facility with limited hours of operation, the proposed project will not produce noise, fumes, vibration, flashing of

lights or other similar nuisance conditions to the surrounding neighborhood. Moreover, offensive, dangerous or destructive elements to the surrounding community are not produced as a result of this project in light of the day care facility use.

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

The record contains no evidence that surrounding property values will be affected by this project. Additionally, the building, as remodeled, is an aesthetic improvement from the current building on the Premises, which is in a somewhat deteriorated condition. This project will likely enhance the surrounding community.

#### ***7. Traffic***

The remodeled building will not produce any changes in the volume of traffic to the Premises or the surrounding neighborhood. Neither the day care facility nor the number of children on the Premises will change as a result of this remodeling. The intensity of use on the Premises will be unaffected and will have no corresponding impact on traffic conditions on or near the Premises.

#### ***8. Parking***

Pursuant to the Tuckahoe Zoning Code, a minimum number of off-street parking spaces are not set forth and/or regulated under the Code. However, the Applicant has proposed that thirteen (13) off-street parking spaces be created on the Premises to mitigate any negative parking impacts. The Applicant will also provide one (1) handicapped parking space in addition to the above. In addition, the aforementioned loading zone will be available to the public for off-street parking during time periods outside of the facility's normal hours of operation. Thus, any parking concerns are mitigated by the additional off-street parking spaces provided on the Premises.

#### ***9. Conformance with Regulations***

With the exception of area variances for front yard setback, rear yard setback and landscaped buffer requirements, the Applicant has adequately met the zoning regulations for lot area, lot width, frontage, side yard setback, building coverage, floor-area ration and height. 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 Tuckahoe Zoning Code.

### **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. This 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 Code as well as to reduce any negative environmental impacts associated with this project.

### **SEORA**

Based on the foregoing, the Zoning Board of Appeals of the Village of Tuckahoe finds and determines that:

1. The action taken herein is an Unlisted Action subject to the requirements of SEQRA.
2. This Zoning Board of Appeals is in possession of all information reasonably necessary to make the determination as to the environmental significance of the applications for area variances and the proposed special use permit.
3. The action taken herein shall not have any significant impacts upon the environment and declare that a Negative Declaration be adopted with respect to this action.

### **Conclusion**

Based on the foregoing, it is resolved that the area variances referenced herein and the special use permit referenced herein be and are hereby granted to the Applicant in accordance with this decision subject to the conditions set forth and contained on Schedule A, attached hereto. 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  
April 7, 2009

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Gloria Rosell, Chairperson  
Zoning Board of Appeals of the  
Village of

Tuckahoe

## **SCHEDULE A**

### **CONDITIONS TO A CERTAIN APPROVAL FOR A SPECIAL USE PERMIT AND AREA VARIANCES GRANTED TO JULIA DYCKMAN ANDRUS MEMORIAL, LLC FOR THE PREMISES 35 BRONX STREET, TUCKAHOE, NEW YORK FROM THE ZONING BOARD OF APPEALS OF THE VILLAGE OF TUCKAHOE**

1. The use of the proposed structure shall be limited to a day care facility, inclusive of the head start program currently operated at the facility, which use 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 five (5) years nor less than eighteen (18) months of age;
3. The number of children constituting the enrollment and/or membership shall be limited to forty-seven (47) children;
4. The time period for the drop-off of children utilizing the remodeled structure shall be limited to 7:30 a.m. to 9:15 a.m. Monday through Friday but notwithstanding the foregoing the Village shall not enforce *de minimis* violations of this condition;
5. There shall be no mezzanine levels, loft levels and/or second story levels constructed and/or erected within the proposed structure without the further approval of this Zoning Board of Appeals;
6. As part of this Application, the Applicant is removing the existing bleachers currently situated on the subject premises. In the event the Town of Eastchester determines to relocate or re-install the same or new bleachers on the surrounding parkland, the Applicant will reasonably cooperate with the Town, if the same is necessary, in connection with such relocation or re-installation of the existing or new bleachers.
7. 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. subject to periodic parent workshops that are to be held during the evening hours;
8. No part of the proposed structure shall be utilized for dwelling quarters or for dwelling purposes;
9. The proposed facility shall not be operated on the weekends during any time of the year subject to periodic parent workshops that are to be held on weekends, which will not exceed four (4) per year;
10. There shall be no staff parking in front of the proposed building;

11. All deliveries of any kind or nature shall be made to the proposed facility after 7:30 a.m. and prior to 6:30 p.m. five (5) days a week Monday through Friday;
12. In order to avoid traffic impacts, there shall be no daily busing of children to and from the proposed facility, however this condition shall not apply to children who require the services of a bus, ambulance, ambulette or other similar vehicle because of handicaps or other special needs; and
13. The representations, illustrations, depictions and statements made by the Applicant in its: (i) application; (ii) Memorandum in Support, if any; (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