

Minutes of: October 14, 2009
Date Approved: Nov. 18, 2009
Date Filed/Village Clerk: _____

October 14, 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

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

Absent: Susan Crane Member

Chairwoman Rosell announced the agenda as follows:

Item #1 Approval of Minutes of the September 9, 2009 meeting.
Item #2 25 Oakland Ave. Renewal of Special Permit
Item #3 184 Midland Ave. Return
Item #4 20 Bronx Street Return
Item #5 7 Clinton Place Area Variance

Item #1 Motion by Chairwoman Rosell to approve the minutes of the September 9, 2009 meeting was seconded by Member Allison and approved by the Board with a vote of 3-0.

Item #2 25 Oakland Ave. Renewal of Special Permit
Mr. Chris Allacco, attorney representing the Woodlot Christian Pre-School, noted that the applicant was requesting a renewal of the Special Use Permit.

Member McBride offered the following Resolution. (See pages 5-11)
Motion by Member Allison to approve the resolution, was seconded by Member Santos and upon roll call was carried with a vote of 5 – 0.

Item #3 184 Midland Ave. Area Variance
Mr. Rocco Salerno, attorney representing the applicant, presented the application for a single-family residence to be built on a vacant lot, which sits in both the Village of Tuckahoe and the Village of Bronxville. The lot, which measures 5969 sq. ft., is located in a Residential B zone.

The minimum front yard requirement in the zoning code is 5ft., the application requests a zero foot set back. The maximum height is 2.5 stories and 35ft., the application is for 2.5 stories and 38ft. Mr. Rocco described the surrounding houses on Midland Ave. all have a zero front yard. The roofline will be similar to the surrounding homes, with the roofline slightly lower than the roofline of the house that sits north of the proposed house. To comply with the current zoning code requirements, the applicant would have to build a one-story building which would not be feasible and the proposed house would not be keeping within the character of the surrounding homes. The steep slope of the property is a major problem in that area. If this property were level, there would be no need for a variance. Mr. Rocco noted, that if the Zoning Board in Tuckahoe approves the variances, the applicant would still be required to present the application to the Zoning Board in Bronxville. The slice of property that sits in Bronxville measures approximately 12% and includes only a tiny portion of the back end of the home. He indicated that the original plans were revised to decrease the footprint to 35ft. x 49ft. There is no need for a variance for the FAR and for coverage.

Chairwoman Rosell asked if there was any testing done on the property.

Mr. Rocco noted that there has not been any testing, and if there were rock found, the applicant would alter the plans of the basement. The applicant understands that blasting and chipping would not be feasible.

Roger and Anahita Kopet, architects for the project, noted that the height of the proposed house measures 29ft. above mean grade and 38ft. above street level. The Village of Tuckahoe measures from street level.

If the garage were removed from the plans, there would be a 5 ft. set back, but the applicant would need to apply for a parking variance. The roof of the garage offers the residents a level outdoor area instead of a steep slope of unusable front yard. If the garage were placed under the house, the front driveway would be a steep slope, which is unsafe.

Mr. Rocco noted that this house would certainly not fit into any other area of the Village except Midland Ave. as all the houses look this way. It simply continues the rhythm and the character of this neighborhood. It would look foolish in any other neighborhood. The property could be tiered with 6 ft. retaining walls, but this would not be keeping with the neighborhood.

The owner noted that the original plans were for a two-family house and was reduced to a single-family dwelling. He added that his residence is nearby and he would not build any home that would reduce the value of his existing home.

Mr. Williams, Building Inspector, advised the applicant to reduce the height of the basement ceiling to 9ft. from the proposed 11.5ft. This would reduce the height of the house and eliminate the need for a height variance.

Member Allison noted that the applicant has made several adjustments to the plans and is trying to present a plan that fits into this neighborhood.

No Public Comments

The public hearing will remain open for this applicant.

The Board will review the plans and will offer their decision next month.

Item #4 20 Bronx Street**Return**

Mr. Les Maron, attorney for the applicant, stated that the residence is a two-family dwelling with the first floor apartment 878sq. ft and the upper level apartment 1505 sq. ft. The FAR is .4766, which complies with the zoning code. The applicant finished the basement for a playroom for use by the first floor tenants. The owner did not have approval for the basement. As a result, the applicant has submitted revised plans. The carpet will be removed in the room on the left side of the hallway and become a storage area only. The fixtures will be replaced as well. On the right side of the hallway, the bathroom will be removed, the wall will also be removed so that the room will be one big open area. The proposed playroom will measure 344sq. ft. The removal of the bathroom increases the FAR to 444sq. ft. The result is .5654, which is 13% above the FAR. Mr. Maron cited 51 Wallace Street where a 26% FAR was approved with certain conditions. Mr. Maron noted that the applicant would agree to the same conditions.

Chairwoman Rosell summarized the proposed plans; remove bathroom, keep closet by rear steps, keep proposed corridor, remove carpet from the storage area, return proposed wine cellar back to unfinished storage room, and remove all plumbing from bathroom.

Motion by Member Allison to open the public hearing, was seconded by Member Santos and carried unanimously.

Mr. Zuckerman, neighbor to the applicant, stated no objections to the plans.

The Board will render their decision next month.

Item #5 7 Clinton Place**Area Variance**

Mr. and Mrs. Hanna requested approval to build a deck on the left side of their home. The deck will measure 160sq. ft. Mr. Hanna presented the proposed plans and noted that the area is very private and would not impose on any neighbors.

Motion by Member Allison to open the public hearing, was seconded by Member McBride and carried unanimously.

Sandy Thompson 7 Underhill Street, neighbor to the applicants, stated that she was in favor of this application.

Chairwoman Rosell read a letter from resident 31 Pleasant Place whom offered no objection for this application.

Motion by Member Allison to close the public hearing, was seconded by Member McBride and carried unanimously.

Member Allison offered a Resolution for the application of an area variance requested by James and Kate Hanna 7 Clinton Place for relief of the following sections of the Zoning Code; Section 4-3.4.2 side yard, 4-3.4.3 rear yard and 5-1.6.3 conformity.

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 as the location of this house, which virtually stands by itself on Clinton Place.

1. There will not be an undesirable change in the character of the neighborhood and there will not be a detriment to nearby properties: There are no neighbors to the left side or right and the rear outlooks the parking lot on Underhill Street.
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 applicant will have use of the elevated deck to avoid the fight of stairs.
3. The requested variance is substantial. It is the only way to achieve their goals.
4. The proposed variances will not have an adverse effect on the physical or environmental condition in the neighborhood in that; the deck will be below grade of the street and out of sight from the rear parking lot due to the elevation.
5. The alleged difficulty was not self-created, as the house was constructed at this location.

Member Allison made a recommendation to approve the requested area variance, to be completed within one year after the approval of all permits. The board adopts a negative declaration pursuant to SEQR.

Member McBride motioned to adopt this resolution, seconded by Member Santos and upon roll call was carried 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.

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**

Introduction

In May 2008, the Applicant was granted a special use permit from the Zoning Board of Appeals (the “Zoning Board”) in connection with its operation of a day-care facility located at the premises commonly known as 25 Oakland Avenue, Tuckahoe, New York. In connection with the issuance of the special use permit, the ZBA set forth certain conditions. One of the conditions stated that, “[t]his 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.” Presently, the Applicant seeks to renew the subject special use permit and extend its duration.

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 ages 2 years, 9 months to 6 years old for kindergarten. Currently, a total of approximately 75 children attend the Applicant’s day-care facility on either a full or part time weekly basis. The Applicant’s current preschool license allows for a maximum of 35 children to remain on the Premises at any given time and, consistent with a prior request, the Village’s Fire Inspector had approved an increase from 35 to 38 children being allowed on the Premises at any given time in conjunction with the day-care facility.

The Applicant seeks to continue the operation of its day-care facility in the existing structure on the Premises, which is a church. In connection with the Applicant's proposal, it seeks to renew and extend the previously-granted special use permit to operate a day-care facility in the Business zoning district from 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 continue to utilize a portion of the interior space of the existing church on the Premises to provide day-care services. The 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 continue its day-care facility use, which requires a renewal of its special use permit. The Applicant will not make any structural alterations to the Premises or the existing church nor will the extension of the proposed use cast any negative effects on any neighboring properties. In total, the Applicant requires a special use permit to continue its use of the Premises.

Conclusions of Law

In order to renew and extend the previously-granted 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.

A. Standards For All Special Permit Uses

1. *Compatibility with District*

The special use permit's renewal 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 service benefits 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 35 to 38, which is a deviation of approximately 8%. 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*

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. Continuing 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 project will be compatible with the Master Plan because one of its indirect net effects will be to enhance the economy of the Village. By continuing the day-care facility in a Business District, the nearby local businesses can continue to benefit from increased daily thoroughfare to and from the site.

Providing outstanding educational opportunities and diversifying private school alternatives for the Village's youth is not inconsistent 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 project is 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. 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 renewal of the subject special use permit.

4. *Adjacent Properties*

In renewing and extending the special use permit, no construction or alterations of any structures thereon will be required. The continuance of the use will only affect a portion of the existing structure on the Premises and will not be any more intense than the current use of the Premises. Continuing the Premises' use 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 use of the Premises.

5. *Nuisance*

The intensity of use on the Premises will not appreciably change as a result of renewing the special use permit. 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 ages 2 years, 9 months to 6 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 the day-care services will continue to 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 extending the approval for the special use permit. 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.

As a result of the continued influx of capital, economic support and overall appeal of this project, 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 continuance of the project is consistent with developmental and aspirational goals for the Business zoning district and the greater community.

7. Traffic

On this record, there has been no showing that significant traffic increases have resulted due to the Premises' use as a day-care facility. 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 continue to be commonplace. Despite this fact, however, any increases in traffic volume to the area as a result of the Premises' use will continue to occur during times when children are either dropped off or picked up 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 will continue to remain after 5:00 p.m.

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 had 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. Thus, the Zoning Board has determined that the effects on traffic from renewing the special use permit will remain reasonable in nature.

8. Parking

This project 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 four off-street parking spaces available in the Fisher Avenue parking lot to accommodate 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.

The negative effects of limited parking are 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.

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.

SEQRA

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 renewal of the special use permit application.
3. That the action taken herein shall not have any significant impact upon the environment and it is declared that a Negative Declaration is hereby adopted with regard to this action.

Conclusion

Based on the foregoing, it is resolved that the renewal of 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
October 14, 2009

Gloria Rosell,
Zoning Board Chairperson

SCHEDULE A

CONDITIONS TO A CERTAIN APPROVAL FOR THE RENEWAL OF 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. The subject facility shall operate 12 months a year as a day care facility and shall not operate as a day camp or summer camp;
2. The ages of the children that shall utilize the proposed structure shall not be greater than eleven (11) years nor less than two (2) years, nine (9) months 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 will focus on the drop off area on Oakland Avenue and the door on Fisher Avenue. 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.