

**Minutes of: July 19, 2012**  
**Date Approved: September 12, 2012**  
**Date Filed/Village Clerk:**

**July 19, 2012**  
**TUCKAHOE ZONING BOARD AND BOARD OF APPEALS**  
**TUCKAHOE VILLAGE HALL – Special Meeting 7:00pm**

**Present:** Ronald Gallo                      Chairperson  
              Steve Alfasi                        Member  
              John Palladino                        Member  
              David Scalzo                            Member

**Absent:** Nicholas DiSalvo                Member  
              David Kubaska                        Member

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

**Chairman Gallo announced the agenda of this Special Meeting as follows:**

**Item #1** 25 Oakland Ave. Extend approval to continue to operate a day care facility

Chairman Gallo thanked ad hoc member David Scalzo for attending this special meeting. He stated that the Board is here to serve the public and try to accommodate the applicants as needed and therefore, this special meeting was scheduled during the summer.

Mr. Chris Allacco, attorney for the applicant, Rev. David Flores, representing Woodlot Christian Preschool, stated that the day care center has been located at the Korean church for the past five years. The applicant has just renewed its lease for five years. The requirement for the special use permit was for the applicant to re-appear before the Board every year to renew the special use permit. Mr. Allacco noted that in the past five years, there have been no complaints from any residents. He requested that the special use permit approval coincide with the length of the lease, five years.

Woodlot follows very strict standards required for its state license. The applicant must renew its state license, and adhere to all the requirements. The requirements of the special use permit were to keep the traffic flow moving as the location of the day care center is close to the Metro North station. The applicant requires all of its clients to adhere to the traffic rules. There are cameras in the front of the building to monitor drop off and prevent cars from idling. The neighbors are very happy with the facility.

**Chairman Gallo motioned to open the public hearing, seconded by Member Alfasi and carried with a vote of 4 – 0.**

**No Public Comments**

**Member Alfasi motioned to close the public hearing, seconded by Member Palladino and carried with a vote of 4 – 0.**

Chairman Gallo read a letter from a resident in support of the day care facility’s renewal. (See file)

**MEMBER SCALZO OFFERD THE FOLLOWING RESOLUTION DECLARING A NEGATIVE DECLARATION UNDER THE STATE ENVIRONMENTAL QUALITY REVIEW ACT AS IT CONCERNS A CERTAIN SPECIAL USE PERMIT APPLICATION FOR THE PREMISES 25 OAKLAND AVENUE, TUCKAHOE, NEW YORK**

At a special meeting of the Zoning Board of Appeals of the Village of Tuckahoe, New York (the "Zoning Board") held at Village Hall, 65 Main Street, Tuckahoe, New York on July 19, 2012.

WHEREAS, the Zoning Board of the Village of Tuckahoe is considering the extension of a certain Special Use Permit for the premises commonly known as 25 Oakland Avenue, Tuckahoe, New York; and

WHEREAS, the project consists of the continuation of the site with a day care facility; and

WHEREAS, based on the Environmental Assessment Form (“EAF”), submitted by the Applicant, the Zoning Board has determined that there will be no significant environmental impacts from this action as it concerns the proposed Project.

NOW, THEREFORE, BE IT RESOLVED

Section 1. Based on the information included in the EAF submitted by the Applicant and the criteria contained in the State Environmental Quality Review Act and its implementing regulations, the Zoning Board hereby adopts a Negative Declaration for this Unlisted Action under the State Environmental Quality Review Act.

Section 2. That this resolution shall take effect immediately.

**Member Alfasi seconded the motion and was carried unanimously with a vote of 4 – 0.**

**Member Scalzo offered the following Resolution for Woodlot Christian Preschool, LLC, 25 Oakland Ave. Tuckahoe, NY**

**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.” In the past, the Applicant has renewed and extended the special use permit in accordance with the above condition. 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 and an after-school program for children up to 11 years old. 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 and extension 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 and extension 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 renewal and extension of the special use permit 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***

Under any extension and renewal, 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 and extension of the subject special use permit.

**4. *Adjacent Properties***

In renewing and extending the special use permit, no construction or alterations of any structures 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 change as a result of renewing and extending 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 renewing and 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.

As discussed above, the continuance of the project is consistent with developmental and aspirational goals for the 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 experiences traffic volume and is in close proximity to the Crestwood Metro North Rail Station. 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, and must, 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 and extending 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 patrons 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 the 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 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 and extension 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 and extension 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 with the New York Civil Practice Law and Rules.

## **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 60 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.
11. This Zoning Board approval is conditioned upon the issuance of site plan approval from the Planning Board as applicable.

**Member Palladino seconded the motion.**

**Discussion:** Member Alfasi thanked the Chairman for his initiative in accommodating the applicant with a special meeting for a quick and efficient solution for the applicant. He asked Bill Williams if there have been any complaints from the residents regarding this facility. Mr. Williams replied, No. Member Alfasi congratulated Chairman Gallo with bringing this motion to the Board. The five-year renewal was a good idea as the renewal each year was a cost to the applicant. He thanked Mr. Allacco for his time representing Woodlot on a pro bono basis. Chairman Gallo added that the five year extension was the suggestion given by the new ad hoc member, Member Scalzo, and thanked him for his efforts.

**Upon roll call, the motion was carried unanimously, with a vote of 4 – 0.**

**Chairman Gallo** thanked the Planning Board for their hard work regarding the Crestwood project.

He also thanked the building department and the legal department for their time and effort given to Crestwood application to expedite the project. He added that there are many articles in the news lately regarding the financial problems communities are experiencing throughout the country. One community had to lower the public employees' salaries as a solution. This Village must stay ahead of the curve with the financial and economic problems concerning the tax base. There are many store vacancies in the Village and we must work together to try to fix that. The Village Board, Zoning Board, Planning Board, Police Dept. and Building Department must all work together to find solutions to keep the activity alive.

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.