

TOWN OF NEW CANAAN PLANNING AND ZONING COMMISSION

GRACE FARM FOUNDATION, INC.

ENCLOSURE I

APPLICATION FOR SECOND AMENDED SPECIAL PERMIT

September 26, 2016

I. Legal Basis for Amendment:

Section 8.2.B.6.d of the New Canaan Zoning Regulations, as amended April 1, 2014 (“Zoning Regulations”), allows an existing special permit to be amended by the Planning and Zoning Commission (“P&Z”), for good cause shown.

II. Reason for Amendment:

Grace Farms Foundation, Inc. (the “Foundation”), as successor to its affiliate Grace Property Holdings, LLC, and since 2014 title owner of Parcel 1 and Parcel 2, 365 Lukes Wood Road, New Canaan, CT (“the Grace Farms site”), seeks to amend the special permit that P&Z granted to Grace Property Holdings, LLC, as applicant, for Parcel 1 in 2007, and amended in 2008 and 2013 (collectively, the “Special Permit”)¹, for the following reasons²:

(1) To provide clarity and transparency about the Foundation’s operations and activities of the Foundation as a now-operating charitable foundation on the Grace Farms site, which operations and activities were then in the planning stages in 2012-13, when the Special Permit was first amended; and

¹ Copies of the prior approvals are attached to the Special Permit Application Form.

² NOTE: The Foundation’s detailed Response to the Letter has been forwarded to P&Z separately as Enclosure II, and is expressly incorporated herein in support of this Application.

(2) To resolve questions and concerns raised by the Town Planner / Sr. Enforcement Officer in a letter dated June 24, 2016 (“the Letter”)(Appendix B).

III. Principal Uses:

This Application for Second Amended Special Permit (“Application”) seeks an additional principal use(s), for the Foundation itself, in addition to (and without relinquishing) the principal use already granted in the Special Permit in 2013 for the Foundation and for Grace Community Church. The principal uses sought to be recognized in the Second Amended Special Permit for the Grace Farms site are as follows:

(1) Grace Community Church (“the Church”), as a “Religious Institution,” as defined in Section 2.2, allowed under Section 3.2.C.14, and already part of the Special Permit; and

(2) Grace Farms Foundation, Inc, as a “Club / Organization” and “Philanthropic or Eleemosynary Institution,” under Sections 3.2.C.16 and – C.17.³

, in addition to the “religious institution” principal use described for the Foundation in the Special Permit, in Resolution Paragraph 4 and Condition 12.

The Foundation and the Church were each recognized in the 2013 Special Permit to exercise the principal use as a religious institution. During the public hearing it was explained that the Foundation was a separate entity from the church and intended to engage in charitable activities. However, the Foundation declined to seek a separate use designation for its own activities, because it believed that, given the vision it shared with the Church for community service and good works, a separate principal use was not needed. The intention was for the Foundation, independent from the Church, to reach activities that the Church’s religious identity could not reach, as well as many that are overlapping. At the time, Grace Farms site had not been developed, whereas the Church was already active. The Foundation can only surmise that for these reason more attention was devoted during the public hearings and in the final Special Permit document itself to construction activities and the Church.

This Application today, made with the benefit of the hindsight that nearly a year’s activity on site has provided, is filed because that distinction between a

³ The nature of the Foundation’s activities fits both of these defined principal uses, better than either individually.

religious institution and a charitable institution is an important one when it comes to the exercise of philanthropy and to perception in the community. Identification with a specific church can deter worthy partners, such as governmental agencies, from collaboration, and other worthy recipients of philanthropy from applying. And, as the Foundation has begun to pursue activities under the core initiatives recognized in the Special Permit, questions have been raised whether such activities are appropriate for a “church,” apparently derived from the use designation, even though the Special Permit is issued to the Foundation and calls out the Foundation use. So the Foundation has learned that the principal use designation is more than a technical zoning characterization, and that a separate use designation will assist in informing the community that the Foundation is independent from the Church.

Therefore, the Foundation has returned to P&Z, to ask respectfully that the additional uses of charitable institution and club, rather than the single religious institution, be established for the Foundation and Church as they share the Grace Farms site.

Further, notwithstanding the request for a separate principal use designation, it can be seen that the type of activities and programs of the Foundation and Church have not changed in any significant way. What was described to P&Z in the 2012-13 public hearings, namely, that the intensity of the Foundation use would not exceed the intensity of the Church’s use. That is to say, the existence and activities of the Foundation as a charitable institution, with specific charitable initiatives ---- and distinct from the Church as a legal entity ---- are identified in the Record and authorized in the Special Permit. See, Special Permit, Paragraph 4 of the Resolution and Condition #12. The Town Planner himself acknowledges this in the Letter (Appendix B).

Further, statistics collected by the Foundation from its nearly completed first year of operating in conjunction with the Church corroborate this and are presented in Appendix C, “Statistical Data Regarding Grace Farms” and discussed throughout this Application and the Response.

P&Z can see from the “Estimated Total Visits from Events and Meetings” chart in Appendix C that the Church is by far the predominant principal user of Grace Farms, at 72%, with the Foundation at a lesser level of intensity, 28% . Coincidentally, this is roughly the same ratio the Town Planner recites in the Letter (Appendix B) from his recollection and review of the Special Permit record in 2012-13. He cites to a “2012 Typical Usage” chart (attached as Appendix D) that was submitted by the Foundation at the time, to show the types of activities it

would pursue and how similar they are to those of the Church. P&Z can see that the types of activities listed in the 2012 Typical Usage chart (Appendix D), are similar to what the Foundation lists on the Foundation website (gracefarms.org) and calendar.

In candor, while the Letter correctly counts the number of events on the respective Foundation and Church calendars as roughly equal today (see, “Proportion of Events and Meetings” chart in Appendix C), the Foundation is not resting on this ratio alone. Rather, it respectfully submits that the number of visitors to Grace Farms is the more significant factor in terms of assessing impact for all zoning purposes, than is the number of events. In this regard, the “Proportion of Events Measured by Estimated Attendance per Event” chart in Appendix C shows the low intensity of all activity on the Grace Farms site: Fully 63% of all events held involved 20 or less people, and 92% of all events held involved less than 100 people. Of the remaining 8% of all activity, three-quarters of it is ascribed to the Church and its worship activity.

Any perceived lack of specificity in events on the part of the Foundation in 2012-13, as cited by the Town Planner in the Letter, can be ascribed to the fact that Grace Farms in 2012-13 had not yet been built, and the Foundation had not yet then begun its activities, especially in contrast to the Church, which had existed for over a decade.

In sum, this Application for additional use designation(s) for the Foundation separate from the use designation for the Church can thus be seen as related to clarity of the Foundation’s use, not to the intensity or nature of the Foundation’s use, of the Grace Farms site.

IV. Preliminary Statement

The Foundation, as owner of Grace Farms, is wholly responsible for all activities on site and under the Special Permit. It was founded by local residents who shared a vision for living faith and good works through the separate vehicles of the Foundation and the Church. The Foundation’s board is not controlled by the Church, and its mission is its own, apart from the Church. This mission was described in the public hearings before P&Z in 2012-13, and is reflected in the Special Permit, to support the initiatives of (1) nature⁴; (2) arts; (3) justice; (4)

⁴ Nature is not listed in the Special Permit itself, but the use of the Grace Farms site for open space and the study and appreciation of nature has been articulated as part of the Foundation’s mission from the start.

community; and (5) faith.⁵ See, Resolution Paragraph 4 and Condition 12. The Foundation's operations to date on the Grace Farms site have pursued these core initiatives, in an array of opportunities and services to the New Canaan community.

Appendix E, "Grace Farms Foundation History & Current Overview," explains how the Foundation has implemented the mission and plans articulated to P&Z at the public hearings in 2012-13. P&Z can see how the activities are consistent with the types listed in the "2012 Typical Usage" chart (Appendix D) provided to P&Z at the time. The Foundation respectfully submits that these activities, in addition to relating to the activities described in 2012-13, and approved in the Special Permit in 2013, are entirely consistent with the special permit criteria set forth in Section 8.2.4 of the Zoning Regulations, as well as with the goals and objectives of the Town of New Canaan Plan of Conservation & Development. Appendix F, "Statement Showing Consistency of Foundation Activities with (1) Special Permit Standards in Section 8.2.B.4 of the Town of New Canaan Zoning Regulations and (2) Town of New Canaan 2007 Plan of Conservation & Development," explains the standards under the Zoning Regulations and applicable sections of the POCD.

The Foundation has been granted Section 501(c)(3) charitable corporation status by the IRS. Due to the generosity of a select group of donors who are committed to the Foundation's operations for its first five years, the Foundation has begun its philanthropic operations and stewardship of a \$125M real property and architectural asset entirely debt-free. Its board of directors and staff are in the planning stages of creating fiscal, sustainability, and operations plans to carry out its charitable mission, part of which is to share this unique facility with the New Canaan community and beyond.

The Foundation's philanthropy consists of Grace Farms as a platform to advance work in each of the five core initiatives, as well as to provide "space-grants," meaning free or only nominal charge for use of the uniquely artistic and natural setting of the Grace Farms site to individuals and groups, including the Church, that are pursuing an interest that falls under one or more of the five core initiatives --- nature, arts, justice, community, and faith --- that are recognized in the Special Permit and have been articulated by the Foundation since its inception.

⁵ The "faith" initiative of the Foundation is entirely separate from the Religious Institution use by the Church on a portion of the Grace Farms property. This initiative welcomes people of all faith or no faith and seeks to create a place for dialogue to encourage spiritual reflection.

V. Grace Community Church

This Application does not seek to modify the Church's exercise of the principal use as a Religious Institution under the Special Permit.

The Church, while established by persons who also established the Foundation, is and has always been a separate and distinct entity from the Foundation. It has no ownership interest in the Grace Farms property and no controlling interest in the Foundation management or board. The Church has been granted a revocable license by the Foundation to conduct its worship and outreach activities at Grace Farms, consistent with the terms of the Special Permit and its relationship with the Foundation.

The 2012-13 record, and the history of how the Foundation and Church came into their related but separate existence do not support the contention that the Foundation was intended to serve as the "outreach" for the Church or that its activities were "ancillary" to those of the Church. While the Church's outreach and that of the Foundation each embrace a shared sense of mission and service, and while in 2013 the Church's outreach was the more visible of the two, this does not alter the basic truth that it was always intended that they would be pursuing shared goals on divergent paths.

The Church has its administrative offices, lounge, and nursery in the East Barn, and uses space in the West Barn and River Building for youth and community service/outreach purposes ancillary to its principal use. The Church worship services and activities are open to the public; it does not have a formal membership process.

Appendix G, "Grace Community Church History & Current Overview," describes the history and present activities of the Church. P&Z can see that these are consistent with the religious institution activities described in 2007 and 2012-13, for which the Special Permit was issued.

The only change this Application seeks with regard to the Church is to Condition 31 of the Special Permit, to be allowed to station Foundation safety staff, each of whom is a Certified Flagger under Connecticut law, instead of a police officer. There has been no traffic incident in the year since the Church has begun to use the Sanctuary. In addition, in October, the Foundation will file an application to add additional parking spaces to Grace Farms, with the aim to remove the need for shuttle buses to carry churchgoers to and from off-site parking in Vista, NY. A copy of the preliminary plan is attached as Appendix H.

VI. Specific Aspects of the Application

As stated, the intensity of use by the Foundation and the Church on the Grace Farms property have been consistent with what was described by the Foundation in the public hearings in 2012-13: The actual visitor statistics in the summary “Estimated Total Visits from Events and Meetings” chart in Appendix C show the religious institution use by the Church has been the most intense, at 72% in summary, followed by the Foundation and its five core initiatives, at 28%. These statistics demonstrate a manifestly *low-intensity use overall* of Grace Farms, which is (a) what the neighbors have made clear they want; (b) what P&Z made clear it expected in the Special Permit conditions imposed; and (c) what the Foundation has delivered, in looking back over the first year of its operations.

The Foundation employs a staff of 60 full- and part-time employees. Its vision for Grace Farms is to continue into the next century what its first year of operation has seen: Use of the facility in a low intensity manner, but one that takes full advantage of the artistic and natural setting of the Grace Farms site for passive recreation, and creative, intellectual, and spiritual pursuits.

The following are explanations of the chief changes the Foundation seeks in the Special Permit:

A. *Hours of Operation.* Grace Farms, like Grace Church, is open to the public, without admission charge or membership requirement. It proposes the following hours of operation to be included in the Second Amended Special Permit, which are a *reduction* of the hours of operation allowed under the Special Permit, (which requires in Condition 36 that “...exterior lighting, with the exception of security lighting, shall be turned off by 11:00 PM, when the facilities are not in use.”):

Monday: Closed to the public, except for the occasional scheduled event, to allow for maintenance and upkeep.

Tuesdays - Saturdays: Open to the public at 10 AM; the grounds close at dark.

Sundays: Open to the public at 12:00 Noon, following Church services and activities in the Sanctuary and Commons beginning at 8:00 AM. There is a 5:30 PM Church service in the Commons.

Activities that take place after dark at Grace Farms are organized events or programs, which are indoors and typically end at 9:30 PM, so the facility can be closed at 10:00 PM.

The basketball court is open to the public as part of the Church youth outreach and the Foundation community initiative. The Full Court Peace and the New Canaan Basketball Association, through the YMCA, and with the approval of P&Z, were space grant recipients for youth basketball programs in 2015-16.

B. Tours. While not anticipated in the 2012-13 discussions with P&Z, and not addressed in the Special Permit, tours take place for good reason and have been included in this Application in a manner that observes the low-intensity use commitment and manner that protects Grace Farms' highly-acclaimed River Building and natural setting.

Specifically, the Foundation, as its first year proceeded, organized tours as a means of managing visitors to Grace Farms and providing for their safety and the River Building's security. These 90-minute tours are limited to 25 persons and are led by staff docents. There is a charge of \$25.00 per person, \$10.00 for seniors and \$15.00 for students. Free tours have been provided to community groups, such as Staying-Put and local public and private schools. At present, tours are the only activity at Grace Farms that yield a source of profit to the Foundation.

The Foundation is also exploring a joint tour program with The Philip Johnson Glass House tour program, following two pilot tours earlier this year that were very well-received. Such an initiative can benefit both entities and help bring visitors to the downtown retail store area. These two institutions, with their unique architecture and special settings, can raise New Canaan's profile as an attractive community. The Glass House tour bus can reach Grace Farms almost entirely on public highways, from downtown on Rt 123 North, so there is no impact to the Town's residential neighborhoods.

C. Food Service. A very limited food and beverage service is another activity that is often ancillary to religious or other institutions operating a large building open to the public and equipped with a commercial kitchen. Such a service was not discussed in 2013, but is sought by the Foundation in this Application.

This is not a restaurant use, and the Foundation does not seek approval for a restaurant use; rather, it is sought as a use ancillary to the Foundation's role as

steward of a unique facility that is offered to the public for enjoyment, education, and passive recreation.

Indeed, the offering and sharing of food is a significant part of the separate spiritual missions of the Foundation and Church. The Special Permit, while not discussing this service for the public, did provide for a commercial kitchen. The meal on Sunday in the Commons, following Church services in the Sanctuary, and the community dinners that the Foundation offers once a month, are examples of the respective manner in which the Church and the Foundation see the sharing of food as part of the spiritual and community development under the Religious Institution use.

The Commons building, where food is served, is fitted out with long, room-wide tables to facilitate and to encourage interaction between people sharing food. There is no table service, and visitors are expected to bus their own meals. The Commons purposely lacks the personal intimacy and privacy of separate dining tables, and thus is more akin to a school dining or mess hall, than to any commercial restaurant service.

The Foundation found this limited service convenient to respond to certain exigencies it experienced because the Grace Farms site is open to the public, without entry fee or membership. It was seen that visitors began to bring food and drink, including alcoholic beverages, to the site for picnics. This created both a litter and safety problem, which the Foundation addressed by prohibiting food consumption anywhere except in the Commons. Again, this service is a very limited beverage and lunch menu offered for a nominal charge, and the service is open only 11-3 for lunch, and 10- 6 for beverage and light fare. A copy of the current menu is provided in Appendix D.

Like the tours, this limited food and beverage service is similar to the type of ancillary use that many cultural institutions provide. It is not planned as a source of profit, and the cost of providing the food is much higher than the revenues obtained from it. The food supplies are bought locally, and surplus bread and vegetables are donated to local food charities, including the Person-to-Person. Given the limited hours of operation and the venue of the Commons, the Foundation respectfully submits that this service does not compete with the downtown restaurants.

In order to demonstrate the limited nature of this service, the Foundation proposes in the draft proposed Second Amended Special Permit to limit this service to the existing schedule set forth above, and to certify each year to the

Town Planner that the revenues from this service for the year were less than the cost to the Foundation for the food itself and labor for preparation and maintenance of the kitchen and Commons, to demonstrate that the service is not profitable.

D. Types of Events. Questions are raised by the Town Planner in the Letter (Appendix B) and by neighbors, about the type of events and programs held at Grace Farms, and how they fit within the permitted Special Permit use. The short answer is that the events each fall within the core objectives and foundation existence that the Special Permit recognizes, and the limitations in the Special Permit are observed. The larger question is whether they should more appropriately fall under a different principal use, and that has prompted this Application. In hindsight, the Foundation should have followed P&Z's suggestion at the 2012-13 public hearings in this regard.

In any event, the Foundation believes that the additional principal use(s) it seeks to be granted for itself, highlighting the information regarding its mission that was recognized in the Special Permit, address these questions. The statistical information in Appendix C demonstrates that the events held in this first year of operations are truly minimal in impact and consistent with the core initiatives communicated originally. As the Town Planner admits, in fact there have been no impacts on the neighboring residential uses or on traffic in neighborhood roads in this first year.

In addition to the greater clarity the additional principal use(s) sought in this Application will provide, the Foundation has proposed in the draft proposed Second Amended Special Permit a regime of scaled events, with limits in size and reflective of parking capacity, that it may hold and at which it may provide limited food and beverage service. This regime is consistent with those imposed on other special permit uses in New Canaan, and provides assurance to the community that special permit activities at Grace Farms are undertaken mindful of the underlying residential zone. The following regime is proposed:

- a. Large Community Events (Foundation-sponsored, not Church-sponsored, events) are limited to four (4) per calendar year without prior approval, and defined as anticipating more than 700 participants during general public hours. Programs or events with an anticipated attendance in excess of 700 persons shall require prior review and authorization by P&Z at a regularly scheduled meeting.

b. Programs or events with an anticipated attendance of between 400 and 700 persons will require advance written notice to the Town Zoning Officer.

E. Sustainability Planning. Due to the generosity of its founders, the Foundation began operations of Grace Farms in 2015 debt-free, with real property, the River Building, and other structural assets, valued together in excess of \$125 Million. The Foundation is very mindful of the cultural and natural asset that it has created in Grace Farms. It intends this gift to the community to last through this century and beyond, and therefore has begun planning for an endowment to cover maintenance, repair, and operations costs. At present, its budgeting for annual costs and expenses is still too early to have an annual report to show for its operations.

At the same time, the Foundation is very much aware of the costs of maintenance, utilities, and insurance costs for the Grace Farms site, which for the period since it opened in October 2015 have been nearly \$1.0 Million, in insurance, utilities, and maintenance (not payroll) costs alone. For this reason, the Foundation seeks in this Application a measured way in which to use the beauty and uniqueness of the Grace Farms site and structures for fund-raising, to begin to defray its operating expenses and to build an endowment. The draft proposed Second Amended Special Permit seeks to modify Conditions 11 and 12 of the Special Permit, as follows:

Subject to advance notice to the Town Planner, the Foundation may allow for-profit organizations to use the property for limited activities, such as board meetings, team retreats, commercial photo shoots or videography, in exchange for a substantial donation to effect the long term financial sustainability of Grace Farms.

This modification has been proposed because the Foundation receives requests by media and commercial entities willing to pay substantial fees to film or photograph advertising on site, and by many visitors for *small* gatherings or retreats. To date the Foundation has declined repeated requests to host weddings and bar mitzvahs, which are traditional religious institution activities, out of respect for its mission to provide a peaceful ambiance at Grace Farms. Such events as proposed to be allowed, however, are by their nature small in size and duration, and would have no impact on the neighboring residential zone, or on traffic. They are comparable in size and as un-impactful to the neighboring uses and traffic as the workshop-type meetings that the Foundation is already permitted to hold in pursuit of its core initiatives, and has done so without any impact or

complaint. They will be few in number, and can be highly selective to attract only the highest-end users willing to make a substantial donation.⁶

F. Other Modifications to Special Permit Sought. In addition, the following changes to specific conditions of the Special Permit are sought for good cause, as follows:

(1) Maintain the ban of outdoor use of bullhorn or loudspeakers in Condition 39 of the Special Permit, but allow the Foundation outdoor use of amplification devices at scheduled programs or events to comply with the Town of New Canaan noise ordinance. Given the large area of Grace Farms and the decibel measure under the noise ordinance at the property line, this modification protects the surrounding residential uses from any impact.

(2) Modify Condition 31 of the Special Permit, as mentioned above, so that the traffic monitoring at the two intersections can be conducted by Foundation safety staff who are Certified Flaggers under Connecticut law, in place of police officers. The reason for this modification is that, first, there has never been a traffic incident at either intersection in the eleven months since Grace Farms opened. Second, the safety staff at Grace Farms, which is on site around the clock to protect the property and structures, is highly trained and skilled.

[Note: Each of the safety staff is CPR/first aid-certified, and certified under Connecticut law to manage traffic. The Foundation maintains on site a full first aid station including 6 defibrillators. In addition, for the benefit of the entire neighborhood, the Foundation has installed a dry hydrant on its property that provides critical firefighting capability otherwise not available in north New Canaan.]

⁶ There is a practical, legal limit to the Foundation's ability to use Grace Farms for such activity and revenue: As a Section 501(c)(3) non-profit, it is subject to a federal tax law "Commerciality Doctrine," which provides in essence that "substantially all" of its activities relate to a tax-exempt purpose. This has been applied to mean that no more than 15% of its annual operations involve activity not related to its recognized tax-exempt purpose, and the 15% can be measured in any of several ways. Entities that have been designated under 501(c)(3) and violate this doctrine will lose their tax-exempt designation. Thus, P&Z can see that there are practical, legal limits to this aspect of the Application that offer assurance it will not be abused.

VII. Traffic/Parking Study:

Consistent with Condition 32 of the Special Permit that requires that the Foundation report annually on the nature and intensity of traffic using the Grace Farms property, this Application includes under separate cover the “2016 Annual Traffic and On-Site Parking Study” of Frederick P. Clarke Associates, Inc., the traffic consulting firm that provided the study in 2007 upon which the 2013 Special Permit was issued, and also the first update under the Special Permit in 2015.

In addition, and as noted in the Traffic and On-Site Parking Study, the Foundation is planning to file in October a separate Application for Site Plan Approval, to provide additional parking spaces on site. A copy of the preliminary plan is attached as Appendix H. The purpose of this additional parking is to eliminate the need for offsite parking by the Church in Vista, NY, and the use of shuttle buses to bring people from the off-site parking to the Sanctuary and back for Sunday and religious holiday services. The elimination of shuttles will provide a safety benefit.

VIII. Real Estate Appraiser’s Report

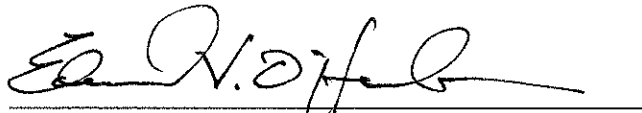
The question has been raised in the neighbors’ letters whether the activities on the Grace Farms site have had a deleterious impact on the property values of the surrounding residential properties. The Foundation respects their concerns in this regard, and to address them directly has engaged Wellspeak, Dugas, & Keane, a certified real property appraisal firm in Cheshire, CT to evaluate current conditions in the real estate market in New Canaan. Its “Market Study” is filed under separate cover as part of this Application. It demonstrates a thorough knowledge of the area and real estate market conditions, and concludes that the Foundation’s and Church’s activities on the Grace Farms site have not impacted the values of the surrounding properties.

IX. CONCLUSION

For all the foregoing reasons, the Foundation respectfully requests that its Application for Second Amended Special Permit be granted, and in the form of and with the modifications proposed in Appendix A.

The Foundation welcomes any questions P&Z or staff may have, in advance of or at the public hearings on this Application, and is grateful for P&Z's consideration of these issues.

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