

# REPORT

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**To:** New Canaan Planning and Zoning Commission  
**From:** Glenn Chalder, AICP  
**Date:** January 17, 2017  
**Subject:** **Grace Farms**

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In response to your request, I have reviewed the "Grace Farms" application for a Special Permit for "authorization of an [sic] additional principal use on the Grace Farms property as a "Club and Organization" and "Philanthropic or Eleemosynary Institution" use" at 365 Lukes Wood Road.

## Background / Analysis

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**2007** – A Special Permit was granted by the Planning and Zoning Commission (PZC) under Section 3.2.C.14 (religious institution) to "allow use of the property *for Grace Community Church ... with related uses* all as described in the Special Permit Statement ..." at 365 Lukes Wood Road. There were 18 conditions, modifications, restrictions contained in the Special Permit. This approval was appealed and eventually upheld.

**2008** – An Amendment to the Special Permit was granted by the PZC to allow an increase in the size of the sanctuary above 700 seats under certain conditions. This approval was appealed and eventually upheld.

**2013** – An Amendment to the Special Permit and a separate Site Plan application were granted by the PZC to "**supersede and replace**" the conditions placed on prior approvals. There were 45 conditions, modifications, restrictions contained in the Special Permit. Notably:

- Condition #4 stated that any modification which resulted in "a change or intensification of use or increase in vehicular traffic requires an amendment to the Special Permit."
- Condition #12 states that use of the property for "multi-organizational conferences and/or usage as a conference center is not part of this approval."
- Condition #29 states that any increase above 226 parking spaces or other change in parking configuration requires an amendment to the Special Permit.

**May 2016** – The applicant was advised by the Town Planner and Senior Zoning Enforcement Officer that some of the activities at the site did not appear to be consistent with the 2013 approval.

**Fall 2016** – A Special Permit application was filed to authorize additional principal uses at the site.

It is considered significant that Grace Farms has applied under Section 3.2.C of the Regulations for *additional principal uses* rather than under Section 3.3.C.7 of the Regulations for *accessory uses*. Even though the applicant states on page 3 of Enclosure 1 that the *intensity of the Foundation use will not exceed the intensity of the Church's use*, the application as submitted does not appear consistent with that claim.

## Possible Approaches

Summary	Description
<p><b>Approve As Submitted</b></p> <p><i><b><u>Not Recommended Due To Lack of Specificity</u></b></i></p>	<p>Approval as submitted would allow the use of the property for a religious institution, a philanthropic institution, and/or an organization <i><u>without any limitations on the number or intensity of operations at the site.</u></i></p>
<p><b>Add One Or More Additional Principal Uses <u>With Conditions</u></b></p> <p><i><b><u>May Result In On-Going Enforcement Issues</u></b></i></p>	<p>Approval with conditions could allow the use of the property for a philanthropic institution (as per 3.2.C.17), <i><b><u>and/or</u></b></i> an organization (as per 3.2.C.16) in addition to the religious institution approved previously (as per 3.2.C.14). While the Commission could place conditions on the <i><b><u>new uses</u></b></i> (number of events, size of events, frequency of events, etc.), it would be necessary to search the record from the 2013 PZC approval to see if the activities of the religious institution were clearly defined. This could be an on-going enforcement issue since Grace Farms might seek to categorize all future activities as “religious” so as to operate the site as they desire. In other words, this approach might only manage two of the activities (philanthropic and/or organization) at the property and leave one of the activities (religious) less managed. The Commission should seek to manage <i><b><u>all activities</u></b></i> at the property to ensure the activities are consistent with the Special Permit criteria in Section 8.2.C.4 of the Regulations.</p>
<p><b>Withdraw And Resubmit Under Section 3.3.C.7 For Accessory Uses</b></p>	<p>Since the applicant has stated that the uses would not exceed the intensity of the Church’s use, the applicant could withdraw the application for principal uses and resubmit under Section 3.3.C.7 for accessory uses with <i><b><u>documentation</u></b></i> that the uses would not exceed the intensity of the Church’s use by submitting a “management plan showing that attendance for other events (measured weekly, monthly, or annually) is less than for the equivalent Sunday religious service (i.e., the size of the sanctuary at that time). The accessory uses would still be reviewed with regard to the Special Permit criteria in Section 8.2.C.4 of the Regulations.</p>
<p><b>Supersede and Replace the 2013 Special Permit With An Over-Arching Special Permit With A Defined Level of Activity</b></p>	<p>The Commission could approve the use of the property by an “organization” (as per 3.2.C.16) and state clearly on the record as they did in 2013 that this new approval <i><b><u>supersedes and replaces</u></b></i> the 2013 Special Permit. The new <i><b><u>over-arching approval</u></b></i> for the “organization” and its activities should include a “management plan” prepared by the applicant regarding the number of events, size of events, frequency of events, etc. of all types. In this way, the PZC can determine if the proposed utilization is consistent with the Special Permit criteria in Section 8.2.C.4 of the Regulations and that any conditions or limitations can be enforced.</p>
<p><b>Deny As Submitted</b></p>	<p>Parcel 1 will be bound by the Special Permit as modified through 2013 for a “religious institution” (in accordance with Section 3.2.C.14) regardless of what entity owns the property or what that entity’s mission or purpose might be.</p>

As recommended in the Plan of Conservation and Development, there may come a point in time where it makes sense to establish an “institutional zone” for situations such as this. It is instructive to note that the Wavenny Zone contains a requirement for “management plans” and this should be a requirement for situations such as this.

## Major Recommendations

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1. **Obtain A Management Plan For The Property** – The applicant should prepare and provide an overall “management plan” for the facility” outlining the number and type of events that are being requested. It is only in this way that the PZC will be able to evaluate whether the use or uses proposed by the applicant will be consistent with the Special Permit criteria in Section 8.2.C.4 of the Zoning Regulations and that any conditions or limitations can be enforced.

It might be useful to think of this as the number of “person-days” allocated to different activities and to the site as a whole. It might also be useful to categorize the size of events so that larger events and events by third parties receive more scrutiny.

2. **Supersede And Replace The 2013 Special Permit For The Property** – Just as the 2013 Special Permit superseded and replaced the 2007 and 2008 Special Permits, any new Special Permit granted for “principal uses” should replace the existing Special Permit. It is only in this way that the Commission and the applicant will be able to have everything and everyone “on the same page” in terms of what is permitted.
3. **Impose A Condition For Annual Review** – As stated by counsel to the applicant in 2013, the Superior Court has “held that a zoning commission could not impose new restrictions on [a Special Permit application] where the existing special use permit did not include a condition requiring that the permit was subject to periodic review.” So that the PZC can retain the ability to impose new restrictions on uses in the future to the extent permitted by law, the PZC should include a condition that the permit will be subject to periodic review. In this way, the Commission will be able to better manage activities at the property and the applicant will have a clear understanding of possible implications if they do not comply with conditions of approval.

It should be noted that the PZC already does this in the Waveny Zone (see Section 5.1.D.4 of the Zoning Regulations).

4. **Reiterate 2013 Conditions On Use And Intensity** - Given the past practice by the owner/applicant of seeking to expand utilization of the site, the Commission should state for the record of this application and in any permit or approval granted in the future that the size of the sanctuary and the number of parking spaces are major elements of the Special Permit and critical considerations by the Commission in terms of the appropriateness of the use(s) on this site. In other words, any expansion of the size of the sanctuary or the number of parking spaces cannot be done by Site Plan approval or by Zoning Permit.
  - Any modification which results in “a change or intensification of use or increase in vehicular traffic requires an amendment to the Special Permit.”
  - Unless otherwise approved as part of the “management plan”, “space grants”, multi-organizational conferences, usage as a conference center, and/or any other use by third parties is not part of the approval.
  - Any increase above 226 parking spaces or other change in parking configuration will require an amendment to the Special Permit.

## Considerations For “Management Plan”

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### Parcel #1

1. **Activity and Intensity** - Number of events of different size, frequency of events, eligible entities (i.e., third party sponsors, agreements), etc. *for all operations at the facility (including “space grants”, tours, photo shoots, etc.)*, applicant required to maintain gate control and log all attendance and activities (?)
2. **Parcel(s) Under Consideration** - Whether Parcel #2 will remain as “open space” in order to offset the impacts on Parcel #1 (i.e., is the Special Permit evaluation being conducted for 45 acres or 80 acres?)
3. **Hours Of Operation** - regular hours per day of the week and the number of days per year when special events may extend the hours of operation
4. **Site Lighting** – establishment of “lighting zones” with illumination specified, hours of operation, full cut-off, etc. for both interior and exterior
5. **Landscaping / Buffering** – whether there will be additional landscaping, fencing, berming, or combination to mitigate any lighting, noise, or other impacts
6. **Food Services** – Clarification of church kitchen versus commercial kitchen (cooking classes) versus snack bar versus restaurant including hours of operation, food service, wait service
7. **Noise and Amplification** – what exterior activities are allowed and when and for how long
8. **Traffic Management** – whether to allow for Staff management of traffic and parking below a certain threshold
9. **Parking** – limitations on the use of non-paved areas for parking, how to manage the use of shuttle-buses from off-site in attempt to circumvent parking limitations

### Parcel #2

1. Whether Parcel #2 will remain as “open space” in support of Parcel #1 or is intended for a possible future use
2. Clarification that any structure will be required to obtain a Zoning Permit in the future
3. Clarification of whether any noise-generating facility is allowed (or will be removed)