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January 12, 2022

**VIA FEDERAL EXPRESS & EMAIL**

Chairperson and Members of the Zoning Board of Appeals  
Town of Olive  
45 Watson Hollow Road  
West Shokan, New York 12494

**RE: Karen Ranucci – Interpretation Request**  
**Property: 1242 County Road 2, Olivebridge, NY 12461 (tax id 53.4-5-64)**

Dear Chairperson and Members of the Zoning Board of Appeals:

Our firm represents the Krumville Artist and Teachers Alliance, LLC, (“Applicant”), in connection with its proposed artist studio and educational and community center (the “Proposed Use” and/or “Project”), to be known as the Krumville School House, owned by the Applicant and located at 1242 County Road 2, in the Town of Olive, New York (the “Project Site”). The Project Site is located within the Residential/Exurban (“R/E-1A”) zoning district. The Applicant is seeking an interpretation from the Town of Olive Zoning Board of Appeals (“ZBA”) that the Proposed Use is permitted as commercial recreation, or in the alternative, a museum in the R/E-1A zoning district. See **Exhibit A** [ZBA Application Materials].

On or about October 28, 2021, the Applicant applied for site plan approval and a special use permit to the Town’s Building Inspector and Planning Board to use the building as an educational and community center. See **Exhibit B** [Planning Board Application Materials]. Via email, on November 14, 2021, the Clerk of the Planning Board questioned whether the Proposed Use was permitted on the Project Site. See **Exhibit C** [Planning Board Referral].<sup>1</sup> Accordingly, we submit this interpretation request to the ZBA pursuant to Zoning Code § 155-37(C).

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<sup>1</sup> The Planning Board referral letter indicates that the Applicant should apply “to the ZBA for an interpretation of to include a studio without a residence.” That said, Zoning Code § 155-17(D)(1) permits as an accessory use “[o]ffice or studio of a physician, dentist, artist, architect, engineer, surveyor, lawyer, public accountant, real estate, insurance or other broker, when conducted in a dwelling by the inhabitant thereof, with not more than two nonresident employees.” Zoning Code § 155-17(D)(1). However, the Proposed Use would be the principal use of the Project Site and not accessory.

By way of background, the ZBA should be aware that the Applicant applied for and was issued a building permit for a studio. *See Exhibit D* [Building Permit and Related Plans]. Based on the approved building permit, the Applicant constructed the studio building in the exact same building footprint of the historic schoolhouse, which has been moved to an adjacent lot. After receiving a stop work order from the Town Building Department, the Applicant applied to the Planning Board for site plan approval related to the Proposed Use and related off-street parking.

The Proposed Use includes educational classes including book discussions, exhibitions, and small performances. *See Exhibit E* [Project Narrative]. Prior to proceeding with the Planning Board and in accordance with the below, the Applicant requests that the ZBA classify the use as a “commercial recreation” and/or “museum”, with permitted accessory uses, which are permitted uses within the R/E-1A zoning district. *See Zoning Code §§ 155-17(A)(14) and 155-17(B)(4).*

### **The Project Site and History**

The Project Site contains an existing building owned by the Applicant on County Road 2 in the R/E-1A zoning district. *See Exhibit F* [Zoning Map]. The existing building was constructed in the building footprint of the Krumville’s old one-room schoolhouse, which later housed the Krumville Reformed Church. The Applicant initially hoped to rehabilitate the old schoolhouse before discovering structural problems that were beyond repair. The Applicant then had the old schoolhouse relocated to a neighboring property. The existing building sits on the exact site of the old schoolhouse and was built in its footprint, pursuant to the approved building permit. *See Exhibit D* [Building Permit and Related Plans].

Prior to commencing construction, the Applicant applied for a building permit for a “studio.” In conjunction with the application for a building permit, Applicant submitted building plans, including plans for a kitchen and full bathroom. *See Exhibit D* [Building Permit and Related Plans]. Pursuant to the building permit, the Town’s Building Inspector approved the Applicant’s plans and issued a building permit describing the Applicant’s project as a “studio.” *See Exhibit D* [Building Permit and Related Plans]. After receiving a stop work order, the Applicant submitted a site plan and special use permit application to the Planning Board. Notwithstanding this classification of Applicant’s project as a “studio,” the Zoning Code does not reflect any principal use equivalent with that of a “studio,” which is why the Applicant is now seeking an interpretation from the ZBA regarding the Proposed Use on the Project Site.

### **The Proposed Use**

The Applicant’s Proposed Use involves using the existing building on the Project Site as an artist studio and small educational and community center devoted to adult education, recreation, and the arts. *See Exhibit E* [Project Narrative]. The Applicant would also like to eventually host an art fellow, who would temporarily use the space to hone his/her skills, help implement the educational programming, and engage with community members while temporarily residing on the Project Site. The above noted building permit was issued for the existing structure to facilitate a “studio” with sleeping quarters, as evidenced by the inclusion of a kitchen and bathroom in the building plans.

Specifically, the Project will serve the local community by offering classes, book discussions, workshops, exhibitions, and small public performances by local artists. The types of classes that will be offered include history, philosophy, writing, literature, architecture, music theory, chorus practice, book group discussions, meditation, yoga, herbal healing, and wellness. See **Exhibit E** [Project Narrative]. The Project would collaborate with the Think Olio Organization, a non-profit that promotes education through classes on topics involving art, philosophy, history, and literature. All classes and/or special events will be limited in occupancy to comply with all New York State Building Code requirements.

In addition, the Applicant would eventually like to host a fellow in residence who would temporarily reside within the studio building and help with and participate in planned recreational activities for a limited group, which use would be accessory to the Proposed Use. The space may also be available to members of the public for special events with limited occupancy and during limited timeframes.

As indicated, the Proposed Use will be located within an existing building owned by the Applicant on the Project Site. The Applicant is proposing the completion of a parking area with eleven (11) spaces, a shed, a sign, and an increased septic reserve area to facilitate the Proposed Use. See **Exhibit B** [Planning Board Application Materials].

### **The Proposed Use Should be Permitted as a Commercial Recreation Use**

We respectfully submit that the ZBA should find that the Proposed Use is classified as “commercial recreation,” and as such, permitted on the Project Site with site plan approval and a special use permit from the Planning Board. See Zoning Code §§ 155-17(C) and 155-17(A)(14). The Zoning Code does not define “commercial recreation,” however Zoning Code § 155-17(A) states that commercial recreation is “*including but not limited to* resort hotels\*, commercial camps for seasonal residence only\*, resort ranch\*, resort lodge\*, bungalow colony\*.” Zoning Code § 155-17(A)(14) [Emphasis added].

It is well-settled in New York that when a zoning code does not contain a definition for a specific term, the municipality must look to the term's ordinary definition. See *Falco Realty, Inc. v. Town of Poughkeepsie Zoning Bd. of Appeals*, 40 A.D.3d 635, 636 (3d Dep’t 2007) (holding that “[z]oning codes and ordinances must be construed according to the words used in their ordinary meaning. Additionally, they must be strictly construed against the municipality and in favor of the owner of the subject property.”); see also *Baker v. Town of Islip Zoning Bd. of Appeals*, 20 A.D.3d 522, 524 (3d Dep’t 2005) (holding that “[a] zoning code must be construed according to the words used in their ordinary meaning and may not be extended by implication”); *Albany Basketball & Sports Corp. v. City of Albany*, 116 A.D.3d 1 135,138 (3d Dep’t 2014) (same). Thus, here, the ZBA must look to the ordinary definition of “commercial recreation” to discern the scope of uses permitted in the R/E-1A zoning district.

The Merriam-Webster Dictionary defines “commercial” as “occupied with or engaged in commerce or work intended for commerce.” See MERRIAM-WEBSTER DICTIONARY, *Commercial*, available at <https://www.merriam-webster.com/dictionary/commercial>. “Commerce” is defined as “social intercourse: interchange of ideas, opinions, or sentiments.” MERRIAM-WEBSTER

DICTIONARY, *Commerce*, available at <https://www.merriam-webster.com/dictionary/commerce>. Further, “recreation” is defined as a “refreshment of strength and spirits after work” or “a means of refreshment or diversion”. MERRIAM-WEBSTER DICTIONARY, *recreation*, available at <https://www.merriam-webster.com/dictionary/recreation>.

Here, the Proposed Use should be classified as “commercial recreation” because it includes exhibitions showcasing the work of local artists, book discussions, educational classes, and limited performances, all of which involve the interchange of ideas, opinions, and sentiments. See **Exhibit E [Project Narrative]**. Artists exhibit their work, among other reasons, to connect potential buyers with their artwork, as a means of community engagement, and to inspire a dialogue around certain themes. The Applicant’s Proposed Use would help artists wishing to sell their artwork by providing a space in which artists can forge personal and professional connections with local residents. Additionally, the Proposed Use provides recreational opportunities by offering locals educational and creative activities that serve as a diversion from day-to-day obligations. The Applicant’s Proposed Use is therefore consistent with the commonly used definitions of “commercial” and “recreation” and the zoning code should be construed to embrace the Proposed Use as these terms are not defined therein.

Notwithstanding, we respectfully submit that, because the term “commercial recreation” is not defined, it must be strictly construed against the municipality and in favor of the applicant and cannot be construed as less inclusive than its plain meaning. See *Falco Realty, Inc.*, 40 A.D.3d at 636. To this end, it is well settled that “zoning restrictions are in derogation of the common law and, as such, are strictly construed against the regulating municipality.” *Saratoga Cty Econ. Opportunity Council, Inc. v. Vill. of Ballston Spa Zoning Bd. of Appeals*, 112 A.D.3d 1035, 1036 (3d Dep’t 2013). Additionally, “any ambiguity in the language employed must be resolved in favor of the property owner.” *Id.* (citations omitted); *Sullivan v. Bd. of Zoning Appeals of City of Albany*, 144 A.D.3d 1480, 1482 (3d Dep’t 2016) (citations omitted).

Dictionary definitions can be ambiguous when there are alternative definitions set forth for the same term. See *Albany Basketball & Sports Corp. v. City of Albany*, 116 A.D.3d 1135, 1138 (3d Dep’t 2014) (BZA was unreasonable in concluding proposed use of standing only “musical entertainment” events is excluded from definition of auditorium on the grounds that two definitions of auditoriums contemplate fixed seating; BZA ignored alternative definitions). In such a case, the ZBA should not exclude “other commonly accepted definitions.” *Id.* Accordingly, to the extent that the dictionary definitions of the permitted uses contain alternative definitions for the same terms, the ZBA must consider the alternative definitions, resolving any and all ambiguities in favor of the Applicant. *Id.*

Lastly, the ZBA should acknowledge that the phrase “including but not limited to” in Zoning Code § 155-17(A)(14) creates an ambiguity by not specifying the uses embraced within the category of “commercial recreation.” Accordingly, this phrase must be construed in the Applicant’s favor. In *Saratoga Cty Econ. Opportunity Council, Inc.*, the Court held that the phrase “other necessary human services,” was vague enough to warrant construing the ambiguity in the petitioner’s favor. See *Saratoga Cty Econ. Opportunity Council, Inc.*, 112 A.D.3d at 1037.

Here, as the meaning of “commercial recreation” is ambiguous due to alternative definitions, the phrase “including but not limited to” only intensifies the ambiguity by not specifying, but leaving open for interpretation, the uses permitted. Accordingly, this ambiguity in the scope of permitted commercial recreational uses must be resolved in favor of the Applicant.

### **In the Alternative, the Proposed Use Should be Permitted as a Museum**

Notwithstanding the above, should the ZBA disagree with classifying the Applicant’s Proposed Use as “commercial recreation”, the ZBA should find that the Proposed Use is consistent with a museum, which is a permitted use in the R/E-1A zoning district subject to site plan approval and a special use permit. Zoning Code §§ 155-17(B)(4) and 155-17(C).

The term “museum” is not defined in the Zoning Code. Accordingly, the ZBA must look to the term’s ordinary definition. *See Falco Realty, Inc.*, 40 A.D.3d at 636. The Merriam-Webster Dictionary defines “museum” as “an institution devoted to the procurement, care, study, and display of objects of lasting interest or value” or “a place where objects are exhibited.” MERRIAM-WEBSTER DICTIONARY, *Museum*, available at <https://www.merriam-webster.com/dictionary/museum>. “Institution” is defined as “an established organization or corporation (such as a bank or university) especially of a public character.” MERRIAM-WEBSTER DICTIONARY, *Institution*, available at <https://www.merriam-webster.com/dictionary/institution>.

Here, the Proposed Use classifies as a “museum” under the ordinary meaning of the term for the following reasons:

- Applicant, Krumville Artist and Teachers Alliance, LLC, classifies as an institution to the extent it is an incorporated business organization.
- Applicant proposes using the Project Site to exhibit the work of local artists.
- Applicant is devoted to the study of objects of lasting interest or value in so far as Applicant proposes: (1) helping writers, dancers, sculptors, and musicians advance their work; and (2) offering classes on various subjects of artistic, cultural, and intellectual value including literature, architecture, music theory, philosophy, history, and writing.
- Applicant will be working with local artists to procure the artwork for display and, as such, will be responsible for curating the exhibitions.

Accordingly, in the alternative and in line with all of the above noted case law, the Proposed Use, including all of its accessory uses noted herein and in the Project Narrative, is permitted as a museum in the R/E-1A zoning district. The Proposed Use will include space for community members to meet for the purpose of sharing ideas, learning, and engaging with local artists and their work. This use is permitted as a museum because, as noted above, the ordinary definition of “museum” embraces art exhibits, educational opportunities related to the study of objects of value, performance art, and related uses.

Again, we submit that, as the term “museum” is not defined, it must be strictly construed against the municipality and in favor of the applicant and cannot be construed as less inclusive than its plain meaning. *See Falco Realty, Inc.*, 40 A.D.3d at 636.

### **The Temporary Fellow In Residence is Accessory to the Above Noted Uses**

Regarding Applicant's proposal to host a temporary fellow in residence, we submit that a temporary residence of any fellow would be accessory to the principal use of the site. *See* Zoning Code § 155-43(B) (defining an accessory use as "[a] use which is customarily incidental and subordinate to the principal use of a lot, water area or a building, and located on the same lot or water area therewith."). Further, consistent with the Applicant's proposed accessory use, the R/E-1A zoning district also includes permitted accessory uses such as a guest house, caretaker's cottage, gate house, accessory apartments, and rectories. Zoning Code § 155-17(D). In addition, "[a]ny other accessory building or use considered by the Zoning Board of Appeals to be customarily incidental to any of the related principal uses herein and to be located on the same lot, or on a separate lot" are permitted in the district. *See* Zoning Code § 155-17(D)(10). It is a common practice for museums to support artists by offering temporary residency fellowships.<sup>2</sup> Additionally, the uses included within commercial recreation contemplate different lodging scenarios. Accordingly, we submit that sleeping quarters for artists is a use customarily incidental to the Proposed Use, which the ZBA should classify as a commercial recreation and/or museum.

### **Proposed Use is Less Impactful than Other Uses Permitted on Project Site**

Putting aside the legal arguments noted above, the ZBA should consider the fact that the Proposed Use is a unique community space that has far lesser impacts than that of other permitted uses in the R/E-1A district (e.g. saw mills, quarry, boarding house, kennel, resort, hospital). Comparatively, the Proposed Use will have insignificant impacts, akin to those of a museum or library, compared to the deleterious impacts associated with some of the other uses permitted such as traffic, noise, etc.

Applicant's Proposed Use will not present any deleterious impacts with regard to conditions such as traffic and noise. The Applicant proposes hosting limited, small classes inside the existing building on the Project Site. Any special events or performances would also be limited in occupancy as the capacity of the current septic system restricts attendance. Additionally, the hours of any classes and events would be flexible to allow for community events but would be nondisruptive. Larger events would occur at respectable hours. Compared with more impactful uses occurring adjacent to the Project Site, such as the presence of an excavation company and its attendant truck noise (**Exhibit G** [Aerial Image]), the Applicant's Proposed use would pose no significant impact. In fact, Applicant's Proposed Use is entirely consistent with the function of the old Krumville schoolhouse on that very site for many years. First a school and later a church, the old schoolhouse and the site on which the Applicant proposes an artist studio and community center have always served as a gathering place for community members. Accordingly, the Project is consistent with the character of the community and the neighborhood where proposed. To this

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<sup>2</sup> The Artist Communities Alliance explains the benefits of artist in residence ("AIR") programs: "Not only are AIRs able to engage with and educate the public, but they are presented with new opportunities to develop professionally, to connect with curators and potential collectors. The museum-based residency programs provide AIRs with the opportunity to establish relationships that might otherwise take years to cultivate. The support, resources and public exposure that a museum based residency offers has the potential to grow careers." ARTIST COMMUNITIES ALLIANCE, *Residencies in Museums*, available at: <https://artistcommunities.org/publicrealm-museums>.

end, we submit that the Project has received overwhelming support from neighbors and local residents for Proposed Use. *See Exhibit H* [Letters in Support].

**Conclusion**

For the reasons stated above, we respectfully request that the ZBA find that the Proposed Use is permitted on the Project Site as “commercial recreation” and/or a “museum” and allow the Applicant to proceed to permitting before the Planning Board.

In support of this Interpretation Request, eight (8) copies of the instant letter and following exhibits are included:

- Exhibit A:** ZBA Application Materials;
- Exhibit B:** Planning Board Application Materials;
- Exhibit C:** Planning Board Referral;
- Exhibit D:** Building Permit and Related Plans;
- Exhibit E:** Project Narrative;
- Exhibit F:** Zoning Map;
- Exhibit G:** Aerial Image; and
- Exhibit H:** Letters in Support.

This Appeal is not subject to the New York State Environmental Quality Review Act (“SEQRA”) as it is a Type II action. *See* 6 NYCRR § 617.5(c)(37) (interpretation of an existing code, rule, or regulation). Please also note that the notice annexed hereto as **Exhibit A** is in draft form until we are placed on the next available agenda and video conferencing information is available. We will update the notice accordingly.

We have also enclosed a check for \$75.00 made payable to the Town of Olive Zoning Board of Appeals.

Thank you for your attention to this Appeal. We look forward to appearing before the ZBA at its next available meeting. In the meantime, please do not hesitate to contact me if you have any questions.

Very truly yours,

*/s/ Charles J. Gottlieb*

Charles J. Gottlieb

Enclosures

cc: John Ingram, Town of Olive Zoning & Code Enforcement Officer/ Assistant Building Inspector  
Barry Medenbach, P.E. Medenbach and Eggers, P.C.  
Karen Ranucci

# Exhibit A

NOTICE — This APPLICATION must be filed in duplicate within 30 days of the date of the order of the administrative official on which application is based, accompanied by necessary data. (See reverse side of this sheet.)

TOWN OF OLIVE  
BOARD OF APPEALS

Owner: Krumville Artist and Teachers Alliance, LLC  
Address: 16 Lower Sahler Mill Road  
Olivebridge, New York 12461  
Signature: Karen Ranucci  
Date: 11/22 Phone: 646 265 3480  
Applicant, if other than owner: N/A  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

(For Office Use Only)	Date	Initials
Cal. No. _____		
Application & Fee Rec'd. _____		
Other Req. Documents/Information Rec'd. _____		
Hearing Notice Given _____		
Copy Sent to Town Board and Planning Board _____		
Planning Board Opinion Rec'd. _____		
Public Hearing Held _____		
Decision Notice Sent _____		
County Planning Board Referral _____		
Notice to Abutting Property Owners _____		

Interest of applicant, if other than owner: \_\_\_\_\_

- TO THE ZONING BOARD OF APPEALS OF THE TOWN OF OLIVE: Application is hereby made for:
- ( ) A Variation of Article \_\_\_\_\_, Section \_\_\_\_\_ of the Zoning Ordinance.
  - (X) An Interpretation of Article IV, Section 155-17 of the Zoning Ordinance.
  - ( ) An Interpretation of the Zoning Map in the \_\_\_\_\_ (Describe the general area)
  - ( ) Appeal under Section 280(a) of the Town Law.
  - ( ) An Appeal from an Order of the Zoning Inspector to correct a Violation of the Zoning Ordinance, Section \_\_\_\_\_
  - ( ) (Other) \_\_\_\_\_

and further described as follows (Specify ruling sought):

1. Location of Affected Premises  
1242 County Rd. 2 (.03 miles from County Rt. 2A)  
(Give street number, name, site distance from cross street)

and shown on the Tax Map (if any) as: Sheet 53.4 Block 5 Lot 64  
Zoning District R/E-1A

2. Size of Lot: Front +/- 185.23 ft Rear +/- 63 ft. Depth +/- 150 ft Area +/- .64 Acres

3. Have previous appeals been filed in regard to these premises? No  
(if yes, give calendar number and date, if any)

Cal. No. _____	Date _____
Cal. No. _____	Date _____
Cal. No. _____	Date _____

4. Has court summons been served relative to this matter? No

5. Have you inquired of the Clerk of the Town of Olive whether there is any petition pending to change the use district regulations affecting the block on which these premises are located? No

6. ATTACHED HERETO AND MADE A PART OF THIS APPLICATION, I SUBMIT THE FOLLOWING:

(Note— All these papers must be submitted with the application or as required by the Board)

- a. A facsimile copy of decision of order of administrative official on which application is based.
- b. A statement of the grounds on which I base my application with a clear and accurate description of proposed work, if any.
- c. THREE SETS OF DIAGRAMS, including:
  - a block diagram with street numbers and tax block and lot numbers (if any and street frontage, showing the character and occupancy of all property affected, with points of compass and scale indicated. A copy of ground floor plans and elevation of buildings with all necessary measurements. A copy of Zoning Map for location.
- d. A full list of NAMES and ADDRESSES of owners of all property shown on block diagram or all abutting properties, and indicating property owned by Tax Section, Block and Lot numbers (if any.)
- e. Duly acknowledged or signed consents, given by such property owners; affidavits of publication and service of notice by mail, and such other data or information as the Board may deem necessary when specifically asked for by the Board.
- f. Copy of notice to the particular Town office, offices or agency from whose order I have appealed.
- g. A fee in the amount of \$ 75.00

(Spaces below to be completed by the Notary Public except where otherwise indicated)

I hereby depose and say that all the above statements and the statements contained in the papers submitted herewith are true.

Sworn to before me this 11 day)

Karen Ranucci  
(Applicant to sign here)

of Jan, 2022

AFFIDAVIT OF OWNERSHIP

State of New York )  
County of Ulster ) Karen Ranucci being duly sworn,  
deposes and says that he resides at 16 Lower Sahler Mill Rd in the Town of  
Olive in the County of Ulster in the State of New York

and that he is the owner in fee of all that certain lot, piece or parcel of land situated, lying and being in the Town of Olive, N.Y., aforesaid and known and designated on the Tax Map (if any) as Lot Number 64 in Block 5 on Sheet 53.4 and that he hereby authorizes Whiteman Osterman & Hanna LLP to make the annexed application in his behalf and that the statements of

fact contained in said application including the statements contained in all of the exhibits transmitted herewith are true.

Sworn to before me this 11 day)

of January, 19 2022

Musea Gull  
(Notary Public)

MUSEA GULL  
Notary Public, State of New York  
Office: 200 West 10th Street  
Olive, New York 12552  
Commission Expires July 28, 2023

Abutting Property Owners

Roger Davis – 1228 County Road 2 – SBL 53.4-5-63

Davis – SBL 53.4-5-60.200

Depalma – SBL 53.4-5-65

Martin – SBL 53.4-5-66

Martin – SBL 53.4-5-74.200

Ryan – SBL 55.4-5-62