

WHITEMAN  
OSTERMAN  
& HANNA LLP

Attorneys at Law  
[www.woh.com](http://www.woh.com)

One Commerce Plaza  
Albany, New York 12260  
518.487.7600

Charles J. Gottlieb  
Partner  
518.487.7612 phone  
[cgottlieb@woh.com](mailto:cgottlieb@woh.com)

February 25, 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: Krumville School House – Supplemental Submission to 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 “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. On January 12, 2022, the Applicant sought an interpretation from the Town of Olive Zoning Board of Appeals (“ZBA”) related to the use classification of the Project. We submit this letter to address comments heard at the February 9, 2022 ZBA meeting. We look forward to presenting our appeal to the ZBA at its March 3, 2022 public hearing.

**Commercial Uses are Permitted on the Project Site**

At the February 9, 2022 meeting, the ZBA questioned whether commercial uses could be permitted on the Project Site considering that the prior schoolhouse has been relocated. In response, we submit that the non-residential nature of Project is not reliant on the Project Site being classified as commercial from the prior schoolhouse use. In fact, there are a host of commercial uses that are permitted in the R/E-1A zoning district without any prior commercial uses taking place.

The R/E-1A zoning district specifically permits all principal uses that are permitted in both the Residential/Rural (“R/R-3A”) zoning district and the Residential/Conservation (“R/C-10A”) zoning district. *See* Zoning Code § 155-17(C). The Zoning Code permits various nonresidential uses in these three districts and as such in the R/E-1A zoning district and on the Project Site. Such commercial uses permitted on the Project Site (with approval from the Planning Board) include: timber harvesting, forestry management, saw mills, sand, gravel, shale and stone quarrying, nursery school, kennel, private nonprofit membership club, commercial recreation including, but not limited to, ski areas, horse riding trails, recreation facilities, resort hotels, commercial camps, resort ranches and lodges, churches, schools, colleges, libraries, museums, hospitals, and charitable institutions. *See* Zoning Code §§ 155-17(A), 155-17(B).

Accordingly, the R/E-1A zone is not limited to residential uses but rather permits all the above-mentioned commercial uses permitted in the Residential/Rural and Residential/Conservation districts with Planning Board review. *See* Zoning Code § 155-17(C).

### **Pre-existing Non-Conforming Lot Area**

Some ZBA members expressed a concern that the Project Site could not be developed because it was substandard and did not meet the minimum lot area requirements in the Town’s Zoning Code. However, the Project Site is a legal pre-existing non-conforming lot and may be developed to the extent that it meets the applicable area and bulk regulations.

The Project Site is approximately .6 acres. Thus, it is true that the Project Site does not conform to the Zoning Code’s lot area requirements (minimum 1 acre). However, the Project Site pre-dates the Zoning Code, which was adopted on June 16, 1975. The Krumville Reformed Church acquired the Project Site by deed on July 1, 1954, which demonstrates the Project Site existed prior to the Town’s Zoning Code. *See Exhibit A [Krumville Deed]*. Further, the Project Site is shown on the tax map and is therefore taxable, suggesting that it is a duly created lot that either predates the Town’s subdivision regulations or the subdivision creating the lot was approved by the Planning Board prior to the adoption of the one-acre zoning restriction applicable in the R/E-1A district. *See Exhibit B [Tax Map]*. Our office conducted a Ulster County search related to the Project Site and found no applicable subdivision maps, which suggests the Project Site lot was created prior to the Town’s subdivision regulations.

To this end, the Zoning Code provides that “[a]ny lot legally existing at the time of adoption of [the Zoning Code], but which does not comply with the area and dimension requirements of the district within which it lies, shall *not* be considered *nonconforming*.” Zoning Code § 155-13 [Emphasis added]. In other words, a pre-existing lot that is substandard in nature shall be considered *conforming* for the purposes of zoning.

Accordingly, because the Zoning Code considers the Project Site conforming, it is permitted to be developed in accordance with the Zoning Code, which permits commercial uses on the Project Site (see above). Any determination to the contrary would render the Project Site useless and may constitute an unconstitutional deprivation of property. *See Dittmer v. Epstein*, 34

A.D.2d 675, 675 (2d Dep't 1970); *see also Mandalay Const. Inc. v Eccleston*, 9 A.D.2d 918, 918 (2d Dep't 1959).

### **The Proposed Septic System Has Been Approved by Ulster County Health Department**

The ZBA commented on the proposed septic system and whether the same was suitable for the Project Site and the Project (*e.g.* capacity). Please note that on January 26, 2022, the Ulster County Health Department (“UCHD”) approved the proposed septic expansion. *See Exhibit C [UCHD Permit and Plans]*.

Importantly, the UCHD approved the septic system expansion for a commercial recreation hall/studio and studio apartment. *See Exhibit C*. Accordingly, the approved septic permit is related to the exact Project being considered by the ZBA. The UCHD septic approval should ensure the ZBA that the system is sufficient to handle the Project.

### **Proposed Business Model**

The ZBA posed questions related to the Applicant’s projected business operations, which are typically not a concern related to zoning and is outside of the ZBA’s jurisdiction. *See Louhal Properties, Inc. v. Strada*, 191 Misc. 2d 746, 752 (Sup. Ct. 2002), *aff’d and remanded*, 307 A.D.2d 1029 (2d Dep’t 2003). That said, we appreciate the ZBA’s concern over whether the business model would require that the Project conduct large scale events for generating revenue. We hope that the below information will make clear that large scale events will not be required to sustain the Project, and there has never been a need in the Applicant’s business model to generate profit income.

For the benefit of the community, the Applicant has invested approximately \$500,000 which includes a cash purchase of the Project Site and the related construction. As a result of this initial donation to the Project and the community, the Applicant expects ongoing expenditures to be approximately \$15,000 per year for utilities, maintenance, insurance, taxes, etc.

To handle these limited ongoing expenditures, the Krumville Artist and Teachers Alliance, a Limited Liability Company, has partnered with a number of not-for-profit groups, including Think Olio Organization and the House of Miriam, who have agreed to cover these ongoing expenses to facilitate their programming for the Project. Most of the classes offered will be free or pay as you can as a service to the community. To be clear, the Applicant is **not** proposing to use the Project Site for large events such as weddings. Further, since the Applicant is partnering with nonprofits, the survival of the Applicant’s business is not dependent on large events. It is important to note that the corporate structure of the Project brings property onto the Town’s tax roll.

### **Proposed Use Classification**

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. The proposed primary use would be of an art studio/gallery and educational/recreational programming for community members (*e.g.* writers groups, art classes, yoga, cultural education, environmental programming). Accessory to this primary use would be

accommodation for a temporary artist-in-residence fellow, who would reside within the building which has been approved by the Building Department with housekeeping facilities. The artist -in-residence would be accessory to the primary use because the fellow would work within the proposed art studio and provide curriculum and workshops for the Project's educational programming. As such, the art fellow's temporary residence would be customary and incidental to the Project's primary use. *See De Mott v. Notey*, 3 N.Y.2d 116, 119 (1957). Please note that in our initial submission to the ZBA we provided citation to sources that demonstrate an artist-in-residence is customary and incidental to the uses associated with the Project.

Because the Project is a unique community benefit project, we have submitted our interpretation request for the ZBA to interpret the Zoning Code. We note that the Project is not a prohibited use nor is it a noxious use that might otherwise be prohibited. In fact, it is a less intense commercial use than what is permitted on the Project Site (*e.g.* saw mills, sand, gravel, shale and stone quarrying, nursery school, kennel) and the commercial excavation company immediately adjacent the Project Site.

In our submission dated January 12, 2022, we provide the ZBA with information related to its obligation to interpret any zoning ambiguities in favor of the Applicant. We stand by our position that the Project may be classified as a commercial recreation or museum use. That said, we heard the ZBA comments and demonstrate below how other permitted uses in the R/E-1A zoning district may facilitate the Project.

### ***Recreation Facility***

There was some discussion at the ZBA work session concerning whether the Project could be classified as a "recreation facility" under the Zoning Code. The Zoning Code permits a "[p]ark, reservation *and/or* recreation facility" as a principal use in the R/C-10A, R/R-3A, and R/E-1A districts. *See* Zoning Code §§ 155-17(A), 155-17 (B), 155-17 (C) [Emphasis added]. We note that the "and/or" language in connection with the commas in this Zoning Code provision separates these various uses. In other words, "recreational facility" is a standalone primary use separate and apart from a "park" or "reservation". As none of these terms are defined in the Zoning Code, the Town 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").

The Merriam-Webster Dictionary defines "recreation" as a "refreshment of strength and spirits after work" or "a means of refreshment or diversion."<sup>1</sup> Also, "facility" is defined as "something that is built, installed, or established to serve a particular purpose."<sup>2</sup> Accordingly, the Project may be considered a recreational facility because it will provide recreational opportunities

---

<sup>1</sup> MERRIAM-WEBSTER DICTIONARY, recreation, available at <https://www.merriam-webster.com/dictionary/recreation>.

<sup>2</sup> MERRIAM-WEBSTER DICTIONARY, facility, available at <https://www.merriam-webster.com/dictionary/facility>.

for the community in the form of educational classes, art exhibits, yoga, meditation, community discussion, etc., which is a form of diversion from day to day life and an opportunity for community members to engage outside of work. Further, the proposed building clearly is a “facility” as it was constructed to serve the proposed recreational opportunities in the form of an adult educational and community center. Again, to the extent there are any ambiguities here, they must be weighed in favor of the Applicant. *See 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); *see also Sullivan v. Bd. of Zoning Appeals of City of Albany*, 144 A.D.3d 1480, 1482 (3d Dep’t 2016).

Classifying the Project as a “recreational facility” would not only be a rational interpretation from the ZBA, but is exactly the intended use of the Project, to provide recreational opportunities to benefit the community.

### **Proposed Hours of Operation and Events**

As noted above, the Applicant is not looking to host large scale events on the Project Site. The ZBA has correctly realized that the Planning Board is the proper local board to adopt any restrictive conditions on the Project, which will likely occur subsequent to another public hearing before the Planning Board. However, the ZBA may offer the Planning Board with suggested mitigation as they review the site plan and special use permit application. As such, the Applicant proposes the following:

- 1) Any classes and or small events will be capped in accordance with the approved septic systems per the UCHD approval, which is 33 persons.
- 2) Any outdoor programming of classes (*e.g.* art classes, yoga, etc.) would be limited to daytime hours.
- 3) Other outdoor events would be limited to two times per month during the months of May through October and be held during daytime hours only.
- 4) Indoor classes will be held a maximum of twice per day, in a window from 8am to 9pm on weeknights or 10pm on weekends, 7-days a week. Classes last on average from 1–3 hours. Noise would not result from indoor events. To this end, new HVAC units are installed in the building allowing windows to be shut during all events. Further, the Applicant has expended additional funds and constructed the building with robust insulation to mitigate any potential noise emanating from the building.
- 5) No street parking would be permitted. All attendees must park on the off-street parking provided in accordance with any approved site plan.

**Conclusion**

We strongly believe that the Project is a great benefit to the community. To that end, we have annexed hereto as **Exhibit D** updated letters of support with related addresses to demonstrate that those in support of the Project are within the community.

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

- Exhibit A:** Krumville Reform Church 1954 deed;
- Exhibit B:** Project Site Tax Map;
- Exhibit C:** UCHD Permit and related site plan; and
- Exhibit D:** Revised Letters of Support for the Project (addresses included).

Thank you for your attention to this matter and consideration of the supplemental information provided herein. We look forward to appearing before the ZBA at its March 3, 2022 meeting and public hearing. 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

T H I S I N D E N T U R E, made the 1st day of July,  
Nineteen Hundred and Fifty-four,

B E T W E E N NANCY R. DAVIS, of Stone Ridge, New  
York; ADA E. OAKLEY, of 56 Franklin Street, Kingston, New York;  
ROXY TOMAN, of Olive Bridge, New York; MARY ROSE SAMPIETRO, of  
Olive Bridge, New York; DOROTHY E. SHULTIS, of Olive Bridge,  
New York; RAYMOND CARNEY, of 78 Lincoln Street, Kingston, New  
York; FRANK KROM, of R D 4, Kingston, New York; SIDNEY C. KROM,  
of R.D. 4, Kingston, New York; ELWIN KROM, of 64 Hinsdale Street,  
Kingston, New York; OLIVER R. KROM, of Highland, New York;  
EDWARD R. KROM, of Highland, New York; SARAH F. KROM WILBER, of  
Ravena, New York; EMMA MERRIHEW, of West Shokan, New York; ELVIN  
P. DAVIS, of 130 Elmendorf Street, Kingston, New York; ROSINA  
LESTER, of 24 Kent Road, Paterson, New Jersey; GRANT E. KRUM, of  
9 Mary Street, Paterson, New Jersey; JESSE D. KRUM, of Mountain-  
view, New Jersey; WILLIAM H. KRUM, of Main Street, Singac,  
New Jersey; NINA FANTON, of 226 Olive Street, Bridgeport, Con -  
necticut; SUE DECELES, of 50 Vine Street, Bridgeport, Connecti-  
cut; JENNIE COONEY, of Cornwall-on-Hudson, New York; KATHERINE  
OAKLEY, of Olive Bridge, New York; STANLEY E. KRUM, of Maybrook,  
New York; HARRY R. KRUM, of Olive Bridge, New York; ETHEL J. BRUCK  
of 90 Murray Street, Kingston, New York; EDNA KRUM GEISLER, of  
321 Lincoln Avenue, Ridgewood, New Jersey; ALLEN KRUM, of Olive  
Bridge, New York; DOROTHY DANIELS OLDS, of 144 Academy Avenue,  
Middletown, New York; BERNICE DANIELS SHEA, of Stone Ridge, New  
York; STUART KRUM, of 725 Main Street, Birdsboro, Pennsylvania;  
L. AUGUSTUS KRUM, of 2 Wilbur Boulevard, Poughkeepsie, New York;  
MORA S. KRUM, of 2 Wilbur Boulevard, Poughkeepsie, New York;  
MARGARET K. MATSON, of 313 Kent Avenue, Endwell, New York; and  
MYRTLE D. KROM, of Ravena, New York, parties of the first part,  
and

THE KRUMVILLE REFORMED CHURCH, of Krumville, Ulster County,  
New York, party of the second part,

WITNESSETH, that the parties of the first part, in consideration of One Dollar (\$1.00) lawful money of the United States, and other good and valuable consideration, paid by the party of the second part, do hereby remise, release and quitclaim unto the party of the second part, its successors and assigns forever,

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Olive, County of Ulster and State of New York, more particularly bounded and described as follows:

BEGINNING at the corner of the stone wall on the South side of the School House near the public highway, thence North 150 feet to the corner of the stone wall, thence West 95 feet to the corner of the Church shed, thence South 150 feet to said Highway, thence along said highway 95 feet to the place of beginning.

Being the same premises as conveyed by Simon Krum to Ephraim Markle, sole Trustee of School District No. 1 of the Town of Olive, County of Ulster and State of New York, by deed dated October 15, 1889, recorded in the Ulster County Clerk's Office in book 288 of deeds at page 379, said deed providing that the grant thereby made was for a school house site and school purposes of said school district and when said premises should cease to be used to the purposes aforesaid, the title was to revert to the party of the first part, his heirs and assigns and said purposes having ceased and said title having reverted to said Simon Krum, his heirs and assigns, this present deed is executed by his heirs in order legally to transfer said title to the party of the second part, its successors or assigns.

It is understood and agreed that the property hereinabove conveyed is to be used solely for church or religious purposes.

Said Simon Krom died a resident of Ulster County in the year 1890, leaving three living children, namely Nathan Krom, Catherine Davis and Sara Davis, and L. Augustus Krum, a grandson, one of the grantors herein. Said Catherine Davis died a resident of Ulster County in or about the year 1913, leaving a daughter, Frances Winchell, who is since deceased, and the children of said Frances Winchell are signers of this deed. They are Mary Rose Sampietro, Nancy R. Davis, Ada E. Oakley, Roxy Toman. Another daughter of Frances Winchell, named Lottie, is now deceased, leaving as her only distributees, Dorothy E. Shultis and Raymond Carney, who sign this deed. Another daughter, Erma Krom is now deceased and her children who sign this deed are as follows: Myrtle D. Krom, Frank Krom, Sarah F. Krom Wilber, Sidney C. Krom, Elwin Krom, Oliver R. Krom and Edward R. Krom. Sara Davis, daughter of Simon Krom, is now deceased and left her son, Nathan Davis, who is now deceased, and who left Elmer Davis, her son, now deceased, and Elvin P. Davis who is now living and who signs this deed. The only distributee of said Elmer Davis, son of Nathan, is Emma Merrihew, who signs this deed. Said Nathan Krum, son of Simon Krum, is now deceased. He left Grant Krum, a son, who is now deceased, and the distributees of Grant Krum are Rosina Lester, and Luther Krum. Luther Krum is now deceased and left three sons, namely Grant E., Jesse D. and William H. Krum. Said Rosina Lester and the three sons of Luther Krum signing this deed. Carrie K. Steinard was a daughter of said Nathan Krum who was a son of Simon Krum and said Carrie K. Steinard left as her only distributees Nina Panton, Jennie Cooney and Sue Decelles, who sign this deed. Said Nathan Krum left another daughter, Katherine Oakley, who is now living and who signs this deed. Said Nathan Krum left also a son, Ephraim Krum, who is now deceased and said

Ephraim Krum left as his sole distributees the following persons who sign this deed: Stanley/<sup>E.</sup>Kr<sup>u</sup>m, a son, Ethel J. Bruck, a daughter, Harry/<sup>R.</sup>Kr<sup>u</sup>m, a son, Edna/<sup>Krum</sup>Geisler, a daughter, and Allen Kr<sup>u</sup>m, a son. Said Ephraim Kr<sup>u</sup>m left also a son George H. Kr<sup>u</sup>m who is now deceased and who left as his sole distributee Stuart Kr<sup>u</sup>m who signs this deed. Said Ephraim left also a daughter, Ina D. Daniels who is now deceased and who left as her sole distributees and who sign this deed, two daughters, Bernice/<sup>Daniels</sup>Shea of Stone Ridge and Dorothy/<sup>Daniels</sup>Olds of Middletown, New York. Said Simon Kr<sup>u</sup>m, the original grantor mentioned herein, had a son Ephraim who predeceased said Simon Kr<sup>u</sup>m. Said Ephraim, son of Simon, left a son, Davis Kr<sup>u</sup>m, who is now deceased and who left as his sole distributee/<sup>L.</sup>Augustus Kr<sup>u</sup>m, grantor herein, who is previously mentioned and two sisters of said/<sup>L.</sup>Augustus Kr<sup>u</sup>m, namely Mora/<sup>S.</sup>Kr<sup>u</sup>m and Margaret K. Matson, grantors, who join in this deed.

Together with the appurtenances and all the estate and rights of the parties of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, its successors and assigns forever.

IN WITNESS WHEREOF, the parties of the first part have hereunto set their hands and seals the day and year first above written.

IN PRESENCE OF:

Anna D. Davis

May Rose Sampietro L.S.

Harry R. Krum L.S.

Mala S. Krum L.S.

L. Augustus Krum L.S.

Katherine Oakley L.S.

Nancy R. Davis L.S.

Anna D. Davis	<u>Jessie Daniels</u> L.S.
Anna D. Davis	<u>Roxy Loman</u> L.S.
Anna D. Davis	<u>Nina Fartov</u> L.S.
Anna D. Davis	<u>Jessie Cooney</u> L.S.
Anna D. Davis	<u>Sue Drexler</u> L.S.
Anna D. Davis	<u>Rosina Lester</u> L.S.
Anna D. Davis	<u>Grant E. Krum</u> L.S.
Anna D. Davis	<u>William H. Thum</u> L.S.
Anna D. Davis	<u>Jesse Krum</u> L.S.
Anna D. Davis	<u>Dorothy Daniels</u> L.S.
Anna D. Davis	<u>Chas J. Brink</u> L.S.
Anna D. Davis	<u>Ada E. Oakley</u> L.S.
Anna D. Davis	<u>Dorothy E. Shultz</u> L.S.
Anna D. Davis	<u>Raymond Carney</u> L.S.
Anna D. Davis	<u>Emma Merrick</u> L.S.
Harold H. Tennant	<u>Margaret K. Matson</u> L.S.
David E. Raman	<u>Edna Krum Geisler</u> L.S.
Geo. W. Key	<u>Stuart Krum</u> L.S.
Anna D. Davis	<u>Sidney C. Krum</u> L.S.
Anna D. Davis	<u>Frank Krum</u> L.S.
Anna D. Davis	<u>E. Edwin D. Krum</u> L.S.
Anna D. Davis	<u>Sarah F. Krum Wilber</u> L.S.
Anna D. Davis	<u>Myrtle D. Krum</u> L.S.