



**TOWN OF OSSINING**  
**BUILDING & PLANNING DEPARTMENT**  
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ZONING BOARD OF APPEALS

TOWN OF OSSINING \_\_\_\_\_ X

In the Matter of the Application of

Bethany Arts Community,

**RESOLUTION**

For an amendment to a special permit pursuant to

The Zoning Ordinance of the Town of Ossining  
\_\_\_\_\_ X

Whereas, the Applicant Bethany Arts Community ("BAC" or "Applicant") is the owner of a parcel of land located at 40 Somerstown Road, Ossining, New York, designated on the tax map of the Town of Ossining as Section 90.10, Block 3, Lot 27 in the R-40 Zoning District (the "Property"), and

Whereas, by Resolution dated as of November 7, 2016, the Applicant was granted a special permit by the Town of Ossining Zoning Board of Appeals ("ZBA") to operate a not-for-profit, philanthropic, eleemosynary institution catering to the arts in accordance with the Town of Ossining Zoning Code ("Zoning Code") §§ 200-7(B)(2) & 200-45(C) for a period of three years ("2016 Special Permit"), and

Whereas, the 2016 Special Permit set forth the specific uses authorized by the special permit based upon the representations made by the Applicant at the time of the original application, and

Whereas, the Applicant applied to the ZBA for an extension of the 2016 Special Permit and at the duly noticed public hearing held on October 21, 2019 the Applicant advised the ZBA that it was engaging in certain activities on the Property, such as a summer camp and an annual interactive artistic experience, and using the outdoor space of the Property, which were not approved as part in the 2016 Special Permit, and

Whereas, the ZBA granted the Applicant an extension of the 2016 Special Permit subject to the same terms and conditions as the 2016 Special Permit by motion of the ZBA at its October 21, 2019 meeting for an additional three-year period ("2019 Special Permit Extension") and directed the Applicant to make another application to the ZBA for an amendment to the 2016 Special Permit to include those additional uses discussed at the October 21, 2019 meeting, and

Whereas, by application dated February 21, 2020 and subsequently supplemented and amended, the Applicant applied to the ZBA for an amendment to the 2016 Special Permit to include additional uses, including several outdoor uses, that were not contemplated or approved as part of the 2016 Special Permit, and

Whereas, pursuant to the applicable provisions of law and after due notice and publication, a public hearing was held on June 29, 2020 and continued at the ZBA's regularly scheduled meeting on July 27, 2020, and members of the public having the opportunity to speak on the application, the public hearing was closed on July 27, 2020,<sup>1</sup> and

Whereas, in response to comments from the ZBA and the public during the public hearing, the Applicant modified its special permit application to remove certain proposed uses including use of walking trails for outdoor art exhibits, collaborating with eco-friendly organizations to create awareness of the environment, becoming part of a trail system leading from Ryder Park through Bethany to connect to the Briarcliff Peekskill Trail and Teatown Reservation and keeping of beehives, with the remaining proposed additional uses being considered as part of this application being as follows:

1. Art-based educational summer camp designed with creativity, including collaborating with River Fund (an organization providing assistance to impoverished children in New York City) to provide no-cost camp opportunities to impoverished children
2. An outdoor children's theater camp (for example, Theater O)
3. An annual interactive artistic experience (for example, "Artoberfest")
4. Outdoor after school programs, and
5. Vegetable Gardens (raised bed within the existing orchard)

Whereas, in response to comments from the ZBA and the public during the public hearing, the Applicant also modified the proposed plan to limit the locations on the Property where these outdoor events would take place, which included ensuring a 100-foot buffer from the neighboring residential properties, confining the outdoor activities to west of the tree line of the existing orchard toward Route 133 that is closer to the principal structure on the Property, removing certain proposed larger garden areas, outdoor classrooms and sitting areas and eliminating any proposed use of the trails except as authorized by the 2016 Special Permit, and

Whereas, in connection with application to amend the 2016 Special Permit to include these proposed additional uses, the Applicant submitted the following:

1. A narrative dated July 10, 2020 and updated July 14, 2020 detailing the scope of the various proposed uses ("Narrative")
2. Survey of the Property prepared by Jeffrey B. DeRosa, LS dated July 29, 2015 ("Survey")
3. Site Plan prepared by Jorge B. Hernandez dated June 29, 2020 and last revised August 10, 2020 (Sheet S-1) ("Site Plan")

Whereas, as part of the original 2016 Special Permit, the Planning Board conducted a coordinated SEQRA review of this Unlisted Action and determined the proposed project would not have any significant adverse environmental impacts, and

NOW THEREFORE,

BE IT RESOLVED, the ZBA determines there have not been substantive changes to the project that would warrant further environmental review under SEQRA, but to the extent there are substantive changes to the proposed project from the 2016 Special Permit, this Board reviewed in detail those environmental areas as part of its review of this application and determines that in accordance with the

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<sup>1</sup> While the public hearing was originally scheduled to be held on March 23, 2020, due to the COVID-19 pandemic and the related ban on nonessential gatherings, the March 23, 2020 ZBA meeting was canceled. The public hearings were duly held via videoconferencing in accordance with the Governor's Executive Orders 202.1 and 202.15, and subsequently extended.

terms and conditions of this Resolution, the proposed amendment does not have the potential for any significant adverse environmental impacts, and

BE IT FURTHER RESOLVED, the Applicant's application for an amended special permit is hereby granted as follows:

1. The use of art-based educational summer camp designed with creativity, including collaborating with River Fund is approved subject to the following conditions and limitations:
  - a. The camp must be for non-recreational purposes and shall be designed with creativity themes which will include programming that combines and utilizes the physical environment at BAC and the many forms of art.
  - b. The camp shall only operate between June 15 and August 31 in any given year and shall consist of four one-week long sessions.
  - c. The camp shall operate only between the hours of 8:30am and 4:30pm Mondays through Fridays, which hours include preparation for the camp in the morning and breakdown of the camp in the afternoon.
  - d. Any buses transporting the students to the camp shall not arrive before 8:30am and shall depart the Property before 5:00pm. Buses shall adhere to idling laws and protocols.
  - e. The only outdoor locations used shall be the Quidditch pitch, the orchard and the front lawn (depicted in green hatching on the Site Plan) as shown on the Site Plan.
  - f. With respect to the children attending the camp from River Fund, the following conditions apply:
    - i. The children shall be between the ages of 8 and 13
    - ii. The children are included in the 40-camper maximum set forth above.
    - iii. The Applicant shall continue to make scholarships available to these children to attend at no or substantially reduced cost
2. The use of an outdoor children's theater camp (for example, Theater O) is approved subject to the following conditions and limitations:
  - a. The camp shall only operate between June 15 and August 31 in any given year and shall consist of a maximum of two one-week long sessions.
  - b. The camp shall operate only between the hours of 8:30am and 4:30pm Mondays through Fridays, which hours include preparation for the camp in the morning and breakdown of the camp in the afternoon.
  - c. The camp may have an occasional Saturday performance, not to exceed more than three per summer, to be conducted between the hours of 8:30am and 4:30pm.
  - d. Any buses transporting the students to the camp shall not arrive before 8:30am and shall depart the Property before 5:00pm. Buses shall adhere to idling laws and protocols.
  - e. The only outdoor locations used shall be the temporary outdoor stage and the contemplation willow as shown on the Site Plan.
3. The annual interactive artistic experience (for example, Artoberfest) use is approved subject to the following conditions and limitations:
  - a. It shall be a one-day event that will expand the idea of art and engage the many diverse members of Ossining.
  - b. It may not occur more than once every calendar year
  - c. The Applicant may not begin setting up for the event before 8:00am.
  - d. It may not be exclusively held outdoors and must also include the Applicant's indoor space. All outdoor activities associated with the event must be completed by 7:00pm. The Applicant may begin setting up in the days prior to the event and continue any necessary breakdown and/or clean-up of the site the following day(s) so long as it does not begin before 9:00am and is done by 5:00pm.

- e. There may be a maximum of four food trucks at the event and located only in the areas delineated on the Site Plan. Food trucks are only allowed on the Property as part of the use.
  - f. No alcohol shall be sold or permitted.
  - g. There shall not be more than 100 people on the Property at any one time.
  - h. Twenty parking spaces shall be designated for staff and volunteers and 72 parking spaces will be available for guests.
  - i. The only outdoor locations used shall be the contemplation willow, the front lawn (depicted in green hatching on the Site Plan), the patio, the loading dock, the fruit orchard, the temporary outdoor stage, and the garden area as shown on the Site Plan.
4. The Outdoor After School Program Use is approved subject to the following conditions and limitations:
- a. The after school program shall be conducted in partnership with the Ossining Union Free School District.
  - b. A maximum of 30 students may attend the after school program on any given day.
  - c. The program shall be during the hours of 3:00pm and 6:00pm with all students being picked up by 6:00pm.
  - d. The after school program may not be exclusively held outdoors and must also include the Applicant's indoor space.
  - e. The only outdoor locations used shall be the contemplation willow, the front lawn (depicted in green hatching on the Site Plan), the fruit orchard, the garden area, and the Quidditch field as shown on the Site Plan.
5. The Vegetable Garden use is approved subject to the following conditions and limitations:
- a. The garden shall be used (1) to support culinary arts presentations at BAC, (2) to support meals provided to resident artists, and (3) to promote health and wellness among Ossining's residents by donating a portion to local food banks.
  - b. There shall be natural irrigation of the garden through the use of rain barrels.
  - c. The garden shall only be in the existing fruit orchard as shown on the Site Plan and shall not be extended to any other area of the Property.
  - d. Any noise producing equipment, including but not limited to a small tractor and tiller and gator, may only be used between the hours of 8:30am and 5:00pm.

The following General Conditions apply to all uses of the Property approved by this Resolution and the 2016 Special Permit:

- 1. The 2016 Special Permit as extended by the 2019 Special Permit Extension is amended only to the extent set forth herein and in all other respects the 2016 Special Permit remains in full force and effect.
- 2. To the extent this Resolution is inconsistent with the Narrative or the Site Plan, the requirements of this Resolution shall be controlling.
- 3. There shall be no amplified music outdoors at any time.
- 4. The Applicant shall have a representative on site at all times that the camps and/or after school programs are operating.
- 5. With the exception of the annual interactive artistic experience, there shall not be more than 40 children on the Property on any given day in connection with any or all of the proposed outdoor uses, including the camp uses and the after school program use.
- 6. The Applicant is responsible for ensuring compliance with the conditions set forth in this Resolution and ensuring compliance

by any lessees, sublessees, contractors, subcontractors, agents, guests and visitors with the conditions of this Resolution.

7. The Applicant shall ensure the children on the Property are properly supervised and are accompanied by an adult at all times. Signage shall be conspicuously posted to this effect. The Applicant shall ensure a ratio of no less than 1 adult counselor for every six children.
8. The uses approved by this Resolution may only occur in the areas delineated on the Site Plan for such uses and as stated above with respect to each individual use. The Applicant is solely responsible for ensuring the outdoor uses only take place in the authorized locations.
9. These uses are approved based upon the traffic study prepared by the Applicant as part of its original application that was based upon the maximum usage of the indoor space and the 92-car parking lot. The Applicant shall not exceed this maximum capacity as part of the additional uses approved by this Resolution.
10. The Applicant shall ensure that it maintains proper insurance for the activities approved by this Resolution.
11. There shall be no benches installed on the trails.
12. There shall not be more than three school buses on the Property at any one time.
13. The Applicant shall not create any outdoor classrooms.
14. The Applicant shall ensure that the temporary stage satisfies all applicable code requirements to the satisfaction of the Building Inspector.
15. The Applicant shall ensure compliance with all social distancing requirements and occupancy limitations as may be promulgated by the State and in effect at any time related to the COVID-19 pandemic.
16. The Applicant shall ensure none of the outdoor uses occur within the 100-foot buffer of the Property or any areas west of the "tree line" as shown on the Site Plan.
17. The Applicant shall continue to further the approved special permit use of not-for-profit, philanthropic, eleemosynary institution catering to the arts through the following mechanisms:
  - a. Inexpensive or free or voluntary donation-based events
  - b. Free access to exhibits in galleries
  - c. Providing sliding scale and scholarship "seats" to programs
  - d. Scholarship spots in youth programs and camps
  - e. Affordable studio space
  - f. Providing grant-supported rehearsal space subsidies
  - g. Providing residency stipends
  - h. Providing free public program commitments to most residencies
18. The Applicant shall not conduct any activities on the site other than those expressly approved by the 2016 Special Permit, as extended, and/or by this Resolution.
19. This special permit is granted solely in connection with the proposed uses as set forth herein and the Site Plan, except to the extent the Site Plan is modified by the Planning Board as part of

any amended site plan approval deemed necessary by the Building Inspector as a result of this Resolution. In the event the Applicant seeks to modify the use or the plans from what was presented to the ZBA and approved herein (other than changes to the Approved Plans that are deemed by the Building Inspector to be minor field changes or are changes made by the Planning Board as noted above), the Applicant must return to the ZBA for an amended special permit.

20. The granting of this application shall not be deemed to relieve the Applicant of the need to obtain approval of any other board or agency or officer prescribed by law or ordinance with regard to the approved uses, the Site Plan or any other phase of the project.
21. The granting of this application shall not be deemed to relieve the Applicant of the need to fully-comply with all of the requirements of all applicable building and fire codes, as amended from time to time, and particularly those requirements related to occupancy, which compliance will be confirmed by the Building Inspector.
22. In the event of transfer of ownership of the Property or operation of the facility this special permit shall automatically become null and void.
23. This special permit shall expire on October 21, 2022, three years from the date of the 2019 Special Permit Extension, unless before that time the Applicant makes an application to the ZBA to have this special permit renewed. Based upon the information the ZBA receives when considering the renewal application, the ZBA may, in its discretion, add to, remove and/or alter the conditions of this approval. The ZBA reserves the right to modify this renewal schedule based upon the information presented to it during the renewal applications by the Applicant, the public and/or its consultants and representatives.
24. Failure to comply with any of the conditions of this approval shall be grounds for revocation of this special permit.

BE IT FURTHER RESOLVED, after duly considering all the proofs and evidence before it, and subject to the terms and conditions set forth above, the Board finds that the Applicant satisfies the requirements for the amended special permit for a philanthropic, eleemosynary institution set forth in Zoning Code § 200-7(B)(2) as follows:

1. No building or part thereof or any parking or loading area will be located within 100 feet of any street or lot line.
2. The sums of all areas covered by principal and accessory buildings will not exceed 20% of the area of the lot and the lot exceeds the 2-acre minimum.
3. The building is legal, nonconforming as to height.
4. The entire lot, except for areas covered by buildings or parking or loading areas, is suitably landscaped and properly maintained.
5. Sufficient exterior illumination of the site is being provided to assure convenience and safety with such illumination being shielded from the view of all surrounding streets and lots.

BE IT FURTHER RESOLVED, after duly considering all the proofs and evidence before it, and subject to the terms and conditions set forth above, the Board finds that the Applicant satisfies the general requirements for the amended special permit set forth in Zoning Code § 200-45(C) as follows:

1. The proposed application and uses will not have any negative impacts on the public health, safety and welfare and the comfort and convenience of the public in general and of the residents of the immediate neighborhood in particular. The hours of the outdoor uses have been restricted and the number of children that can attend the camps and after-school programs at any one time, and the amount of people that can attend the annual interactive artistic experience at any one time, have also been limited. The camps will only occur for a few weeks out of the year during the summer and the after-school program will only be in the afternoons and early evenings. These uses will not be exclusively outdoor uses and will also utilize the Applicant's extensive indoor space, and the outdoor use will be weather-dependent. The annual interactive artistic experience will only occur once per year and will be an asset to the community. In the current climate of the COVID-19 pandemic, the need for outdoor space is crucial, particularly for children.
2. The proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the R-40 Zoning District and will not be detrimental to the orderly development of adjacent property in accordance with the zoning classification of such properties. The Applicant has revised the Site Plan to ensure there is a 100-foot buffer from the neighboring residential properties and has restricted the areas of the Property where the outdoor uses will be conducted to be closer to the principal structure. The Applicant also removed certain proposed uses that would have been conducted in closer proximity from the neighboring residential properties, particularly related to the walking trail.
3. The location and size of such use, the nature and intensity of operations involved in or conducted in connection herewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to or incongruous with the said residential district or conflict with the normal traffic of the neighborhood. The Property is nearly 22 acres in size and has a driveway and parking lot with 92 parking spaces. These uses are also restricted in size based upon the traffic study prepared by the Applicant as part of the original application materials.
4. The location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings. The Property has substantial landscaping and the building is already existing. The Property also has walking trails that are available to the public to use. The neighboring properties are already developed as residential homes.

Dated as of August 17, 2020

Sal Carrera, Chairman  
James Blair, Member  
David Krieger, Member  
David O'Neill, Member  
David Whitlinger, Member

