

LAW OFFICE OF
MITCHELL I. GREENWALD



29 Wendell Avenue, Suite 2, Pittsfield, MA 01201
Phone: (413) 344-0022
mig@mgreenwaldlaw.com

May 29, 2024

VIA FIRST CLASS MAIL

Mr. Joseph G. Roy Jr
Clerk Zoning Board Appeals
Town Hall
21 State Line Road
West Stockbridge, MA 01266

Dear Mr. Roy:

Enclosed please find a copy of an Application for Hearing Before the ZBA, with a cover letter and accompanying documents, which we hand-delivered today to the Assistant Town Clerk. Feel free to contact me with any questions.

Thank you as always for your anticipated courtesy.

Yours truly,

Mitchell I. Greenwald

cc: William E. Martin, Esq.
Ms. Truc N. Nguyen
Mr. Brian Duval

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May 29, 2024

HAND DELIVERED

Ms. Ronni Barrett
Town Clerk
Town Hall
21 State Line Road
PO Box 163
West Stockbridge, MA 01266

Dear Ms. Barrett:

Enclosed for filing please find:

1. Application for Hearing Before the ZBA, together with Continuation Sheet and Exhibits A through C; and
2. My IOLTA check no. 395 in the amount of \$350, payable to the Town of West Stockbridge, as a filing fee.

We respectfully request that Chairman Thunfors take no part in any discussion or consideration of this Application and the subsequent proceedings, as we believe that he is conflicted.

Feel free to contact me with any questions. Thank you as always for your anticipated courtesy.

Yours truly

Mitchell I. Greenwald

cc: Ms. Truc N. Nguyen

To Be Filled In By Town Clerk For Office Use Only

Name: TRUC Nguyen + Tran Duong

Address: 1 Harris St West Stockbridge, MA
Street Town

Telephone: (413) 232-4204
State Home Office Mobile Zip 01266

Other: _____
Fax Email

Applicant is the (check one) Owner Tenant Prospective Buyer Agent

Remaining information to be filled in by Applicant:
The Applicant seeks permission to undertake the following construction or change in use or activity within the building. Briefly describe the project. For example: "Add a 10' by 15' addition to the front of our home as shown in the attached site plan," or, "Change the use of the existing structure on the property from Residential to Business."

This is an appeal of a ZEO decision.
See Continuation Sheet

(Use additional page if required).

Relief Requested:
The Applicant seeks the relief from The Board of Appeals (check 1, 2 or 3):

1. REVERSE THE DECISION OF THE BUILDING INSPECTOR, who is also the Zoning Enforcement Officer. Attach a copy of the decision from which appeal is sought. State the reason for the reversal and the ruling which you request this Board to make:

See Continuation Sheet.

2. REQUEST FOR A SPECIAL PERMIT as described in the West Stockbridge Zoning By-Law Sections and/or for a use authorized by Special Permit and listed in the West Stockbridge Zoning By-Law. Explain if needed:

3. REQUEST FOR A VARIANCE from The West Stockbridge Zoning By-Law. Specify all Sections of the Zoning By-Law from which relief is requested.

Specify Zoning Bylaw section(s): _____

Relief sought: _____

Current Owner of property (if other than Applicant):

Name: Two Harris Street LLC

Address: 2 Harris Street, West Stockbridge, MA 01266

c/o Amy ^{Street}Brentano, 2 Harris Street, ^{Town}West Stockbridge, MA 01266

Telephone: (413) 232-5222

Other: Home Office Mobile amy@thefoundryws.com
Fax Email

DEED REFERENCE: Book No. 2516 Page No. 30, Land Court No. , Plan No. . Provide copy of recent deed.

USE CLASSIFICATION (see Table of Uses in Zoning By-Law): Existing Proposed

ZONING DISTRICT (check one): R1 R3 RD C M

LOT INFORMATION: Size/Area Lot No. Is the property vacant? Yes or No. If so, for how long?

CONSERVATION COMMISSION: Is the property within any type of wetland area or flood plain? Yes No

SCENIC MOUNTAIN ACT: Is the property within its jurisdiction? Yes No

A PLOT PLAN PRODUCED BY A LICENSED SURVEYOR IS REQUIRED BY THE ZBA. Have you reviewed your site plan with The Building Inspector? Yes No

Other Departments Reviewing this Project:

Indicate any other Town Departments which will review or have reviewed this project. Indicate the status of their review process:

- Conservation Commission
- Planning Board
- Board of Selectpeople
- Board of Health

Repetitive Petition:

Is this a re-application? Yes No Have you met with The Planning Board? Yes No If yes, describe results?

Prior Relief:

If the property in question has been the subject of a prior application to the Board of Appeals, indicate the timing, nature and outcome of the process and give any additional information.

N/A

Building Inspector Comments:

SUBMIT DIRECTLY TO TOWN CLERK WITH APPLICATION FEE OF \$350.

Building Inspector's Signature

Applicant Signature

Date

Owner's Signature

CONTINUATION SHEET

(*This Continuation Sheet* is to supplement and clarify the official Request for Hearing Form.)

This is an Appeal (pursuant to M.G.L. c. 40A s. 7, and to Secs 7 and 10 of the Zoning Bylaw) of two decisions dated April 29, 2024, by the Zoning Enforcement Officer (Brian Duval) in response to requests to enforce the Zoning Bylaw by enforcing the conditions of a Special Permit. The Special Permit is held by, and was violated by, the business on property owned by Two Harris Street, Inc., at Two Harris St.

The enforcement requests were filed, and the present appeal is filed, by my clients, Truc Orient Express, Inc., Trai Thi Duong, and Truc Nguyen (the Truc Parties). Truc Orient Express, Inc. and Ms. Duong own two pieces of property which abut the Foundry property, and which are the residence of Ms. Duong and Ms. Nguyen, and the location of two businesses which they own and operate.

The Special Permit

1. On or about December 8, 2022, the Planning Board issued a Special Permit to Two Harris for the operation of a Commercial Amusement at Two Harris. A copy of the Special Permit is attached hereto as Exhibit A.
2. The Special Permit had conditions:
 - a. Setting sound level maximums.
 - b. Requiring Two Harris to maintain logs as to the levels of sound produced during performances.
 - c. Making violations of these conditions zoning violations.

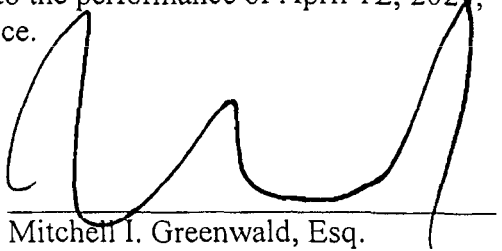
Violations

3. After the performances on April 6, 2024, and April 12, 2024, the Truc Parties requested that the ZEO obtain the sound logs and determine that there had been violations. A copy of the request is attached hereto as Exhibit B.
4. The ZEO determined on April 29, 2024, that there had been no violation as to either date. A copy of his response is attached hereto as Exhibit C.

Relief Requested

5. Mr. Duval's decision dated April 29, 2024, relative to the performance of April 6, 2024, must be reversed because it is contrary to the evidence.

6. Mr. Duval's decision dated April 29, 2024, relative to the performance of April 12, 2024, must be reversed because it is contrary to the evidence.



Mitchell I. Greenwald, Esq.
Attorney For Appealing Parties
Law Office of Mitchell I. Greenwald
29 Wendell Avenue, Suite #2
Pittsfield, MA 01201
(413) 344-0022
BBO# 542032

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EXHIBIT A

Date Filed with ^{ASST.} Town Clerk 12/8/22 ^{ASST.} Town Clerk Marilyn Ryan

TOWN OF WEST STOCKBRIDGE, MASSACHUSETTS PLANNING BOARD

NOTICE OF DECISION ON A SPECIAL PERMIT

Date: December 5, 2022

Applicant: 2 Harris St LLC
2 Harris St
West Stockbridge, MA 01266
Attn: Amy Brentano

Premises Affected: 2 Harris St
West Stockbridge, Ma 01266

Written Application was made to the Planning Board on October 7, 2022 for a "Commercial Amusement" Special Permit, pursuant to Section 4.11.1.20 of the West Stockbridge Zoning Bylaw, to operate a multi-disciplinary performing arts venue known as "The Foundry" on the property at 2 Harris St in West Stockbridge. The permitted use and the locations of the use on the property are more particularly defined and set forth in the Application and materials submitted by the Applicant in support thereof, all of which are incorporated herein and on which the Board relied in making its findings and votes.

The Board opened a public hearing on the Application on Nov 1, 2022, and held continued sessions of the public hearing on: 11/7/22, 11/14/22, 11/28,22, and 12/5/22. At the hearing on 12/5/22, the Planning Board closed the public hearing, voted to establish conditions, grant related parking special permits, and make the required findings, and thereafter VOTED TO GRANT the requested special permit for "Commercial Amusement" per sec. 4.11.1.20 including, but not limited to, educational workshops, live music of all genres, dance, comedy, and community-based events, subject to the Conditions and Incorporated Special Permits for parking, and based upon the Findings, set forth herein.

The following Board members and alternate attended each session of the public hearing and made the votes of the Board as set forth herein:

Dana Bixby, Chair
Susan Coxon, Member
Gunnar Gudmundson, Member
Andrew Fudge, Member
Sarah Thorne, Alternate

At the commencement of the hearing the Chair appointed Sarah Thorne to sit as a member of the Board to hear and decide the Application in place of Board member Ryan Beattie, who had recused himself from participation.

Conditions

Condition 1

The Foundry may present the same range of programming that it has been programming for the last three years including, but not limited to, educational workshops, live music of all genres, dance, comedy, and community-based events.

Condition 2

The Merritt Way public easement road shall be kept open at all times.

Conditions, cont'd

Condition 3

indoor entertainment is permitted provided that:

- a) Maximum Sound Pressure levels at the property line shall be as per Condition 6.
- b) The Monitoring Protocol established by Condition 6 is carried out.
- c) Performances are allowed 7 days per week and all amplified music shall all end no later than 10 pm.

Condition 4

The patio bar, as shown on the plans, is allowed to have music provided that:

- a) Maximum Sound Pressure levels at the property line shall be as per Condition 6.
- b) The Monitoring Protocol established by Condition 6 is carried out.
- c) live music on the patio bar shall end no later than 9 PM.
- d) two performers maximum
- e) no amplified drums or bass permitted
- f) all setup of sound equipment outdoors shall be done so that sound is directed away from residential neighbors and arranged for reflection of sound to be away from residential neighbors.
- g) live performers are allowed only on days when there are no other mainstream events.
- h) the patio bar may have recorded background music when there are no live performers.

Condition 5

During the months of April through October up to four non-consecutive 1-day outdoor events may be held on the Foundry Green provided that:

- a) An Entertainment License has been granted by the Selectboard for the event.
- b) Sound Pressure levels at the property line shall be limited as per the following:
 - maximum SPL of 70 dB (A) at the nearest property line.
 - maximum C weighted sound pressure level as per Condition 6 at the nearest property line.
- c) The Monitoring Protocol established by Condition 6 is carried out.
- d) Events may only between the hours of 10 am and dusk
- e) All setup of sound equipment outdoors shall be done so that sound is directed away from residential neighbors and arranged for reflection of sound to be away from residential neighbors.

Condition 6

Monitoring Protocol

- a) The Applicant shall provide sound monitoring for the duration of all performances that shows that the Sound Pressure Level (SPL) limits set by Condition 6g of this permit have not been exceeded, except as allowed by Condition 6g.
- b) The applicant shall take outdoor sound measurements at the Harris St property line using both A and C weighted scales for the duration of amplified performances.
- c) The Applicant's sound measuring equipment shall be installed at the Harris St property line, facing the Foundry building, and approximately 16' from the west end of the Foundry building.
- d) Sound measuring equipment used by the Applicant shall be "logging" type meters, for both A and C weighted scales, that produce an electronic record that can be reviewed by the Zoning Enforcement Officer (ZEO). The equipment used by the Applicant must be approved by the ZEO.
- e) Sound measuring equipment used by the Applicant shall be calibrated as required by the equipment manufacturer, and evidence of this calibration must be submitted and approved by the Zoning Enforcement Officer (ZOE) upon request. Review of calibration shall be made annually.
- f) Supervision and management of this Sound Monitoring Protocol shall be done by the ZEO, with the assistance of a sound engineer consultant hired by the Town, if the ZEO requests.
- g) Maximum Sound Pressure Levels (SPLs) shall be as follows:
 - The A weighted SPL at the property line shall not exceed 60dB(A), except for outdoor events as allowed by condition #5.
 - The C weighted SPL at the property line shall not exceed 65dB(C).

Condition 6, cont'd

- h) SPLs shall be measured with an integration time of 1 second, and a sampling rate between 2-5 seconds. SPLs may exceed stated maximums for bursts of 30 sec, with no more than 2 minutes of sound over the maximum during a performance.
- i) The Zoning Enforcement Officer, if notified of an alleged violation of the maximum sound level conditions of this permit, shall request and be given the written measurements from the Foundry's measuring protocol within 48 hours of a request to the Applicant.
- j) Failure to monitor shall be deemed failure to comply and shall be subject to the maximum fine. Failure to provide a record of the performance sound levels shall be deemed failure to comply and shall be subject to the maximum fine.

Condition 7

The Foundry is allowed to continue to donate the use of the land known as the "Foundry Green" to the West Stockbridge Farmer's Market one time per week, in the afternoon, April to October, with outdoor amplified music similar to the same extent as what has existed at the Farmer's Market previously. The Foundry is not responsible for management of music at the Farmer's Market.

Condition 8

Take reasonable steps to control parking and prevent parking trespass on neighboring property. "Reasonable steps" shall mean:

- a) Notification of ticket buyers electronically when they buy tickets about where to park (Foundry parking and municipal parking) and where not to park (neighbor's property) This notification shall include a graphic parking map showing locations of onsite and municipal parking, and locations of private parking where Foundry parking is not allowed.
 - b) Staff patrol of parking with directing of people to proper parking locations
 - c) Informing patrons a second time when they arrive about parking limits and advising them that they may be fined or towed if they do not park in the proper locations.
- It is recognized that the Foundry cannot 100% control the behavior of people and that this condition is limited to the Foundry taking "reasonable steps", as outlined above, to manage parking.

Condition 9

Comply with applicable regulations and laws, and any future sound bylaw that the town may enact.

Condition 10

This special permit shall apply only to the "Foundry" venue as operated by the Applicant and shall terminate if the 2 Harris St property is sold.

The Board made the following findings, in accordance with Section 6.3.4 of the Zoning Bylaws, with respect to the special permits granted:

A) Is in compliance with all provisions and requirements of this bylaw, and in harmony with its general intent and purpose:

- The applicant generates economic activity for the village center that supports and enhances the tax base, thus supporting the intent of the zoning in ensuring the value of property.
- Parking requirements have been met, based on conditions.

Findings, cont'd

B) is essential or desirable to the public convenience or welfare at the proposed location:

Many letters of support have been received, from abutters, residents and non residents attesting to the value of the Foundry to the community, to the life of the village center, to the economy of the village center, and to Berkshire County cultural life.

C) Will not be detrimental to adjacent uses or to the established or future character of the neighborhood:

- The proposal is consistent with the established character of the neighborhood, as evidenced by the record regarding the history and current status of music venues in the Village Center.
- The proposal enhances and supports the future character of the Village Center because of the support it gives to the economy, cultural life, and identity of the Village Center, as evidenced by the letters of support from abutters who are business owners in the Village Center
- One abutter, the owner of #1 and #3 Harris St, has objected to the proposed use based on sound and parking detriment. 2 abutters have objected based on detriment to 1 & 3 Harris St. 9 Abutters, and 5 residents renting abutters' property have given written evidence or spoken at the hearing in favor of the proposed use including giving evidence of significant benefit to the Village Center and the Town.
- The conditions of the permit, and in particular the conditions relating to sound and parking, adequately mitigate potential detriment to the nearest adjacent uses consistent with existing uses and the intent of the Zoning Bylaw as demonstrated by the uses allowed in the underlying district.

D) Will not create undue traffic congestion, or unduly impair pedestrian safety:

- The applicant has in the past and continues to propose management and control of parking and avoidance of parking trespass on neighboring property. There is abundant municipal parking within 300' of The Foundry. Events mostly occur in the evening where there is minimal other concurrent demand on municipal parking

E) Will not overload any public water, drainage, or sewer system or any other municipal facility to such an extent that the proposed use or any existing use in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting public health, safety, or general welfare.

- The applicant supplied documentation of sewer load and comparison of that load as less than that of a single family residence.
- A Monitoring Protocol is required of the Applicant relative to sound limits so as to complement the capacities of the inspection facilities of the Town so that the inspection facilities of the Town are not overloaded.

Incorporated Special Permits

Within the primary Special Permit issued for Commercial Amusement, which triggered application of parking requirements set forth in Section 6.2.2 of the Zoning Bylaw, the Board voted to grant two additional Special Permits for relief from otherwise applicable parking requirements, as follows:

Incorporated Special Permit 1a

Based on an off-site parking requirement of 37 spaces, per the calculations provided by the Applicant, and the parking drawing provided by the Applicant showing 20 parking spaces on site, the Board voted to grant a Special Permit pursuant to Section 6.2.2.b to allow shared parking on municipal spaces for 17 of the required 37 spaces. The Planning Board finds that 59 municipal parking spaces are available within 300' of the lot line

VOTE: The Board voted unanimously (5-0) to grant this special permit.

Incorporated Special Permits, cont'd

Incorporated Special Permit 1b

For outdoor events on the Foundry Green, as provided for under Condition 5, without parking on the Foundry Green, available parking on site is reduced to 8 spaces. The Board voted to grant a Special Permit under Sections 6.2.2.f and 6.2.7 to reduce required onsite parking to 8 spaces and to allow up to 29 spaces on municipal parking for outdoor events per Condition 5.

VOTE: The Board voted unanimously (5-0) to grant this special permit.

Final Decision:

On 12/5/22 the Planning Board VOTED TO GRANT the requested special permit for "Commercial Amusement" per sec. 4.11.1.20 including, but not limited to, educational workshops, live music of all genres, dance, comedy, and community-based events, subject to the Conditions and Incorporated Special Permits for parking, and based upon the Findings, all as set forth herein.

VOTE: The Board voted unanimously (5-0) to grant this special permit.

Record of proceeding

A detailed record of the proceedings and all written submissions made in support thereof or opposition thereto, including the "Notice for Recording", is on file at the office of the Town Clerk at the Town Hall.

West Stockbridge Planning Board



Dana Bixby, Chair

IMPORTANT: Any appeal from the decision of the Planning Board can be made only to the Court and must be pursuant to Section 17, Chapter 40A (G.L.) as amended, and must be filed within twenty (20) days after the date of filing of the decision with the Town Clerk.

CERTIFICATE BY THE TOWN CLERK FOR FILING OF THE DECISION IN THE REGISTRY

This is to certify that twenty (20) days have elapsed since filing of the above decision with this office and _____ no appeal has been filed, or _____ an appeal has been filed pursuant to notice filed with his office on _____.

Town Clerk

date

Foundry - April 6 and 12

From: [Mitchell I. Greenwald <mig@mgreenwaldlaw.com>](mailto:mig@mgreenwaldlaw.com)
To: [Brian Duval <bduval@weststockbridge-ma.gov>](mailto:bduval@weststockbridge-ma.gov)
Cc: [Truc Nguyen <truc@trucnguyen.com>](mailto:truc@trucnguyen.com), legalassistant@mgreenwaldlaw.com
Subject: Foundry - April 6 and 12
Date: Monday, April 15, 2024 2:47 PM
Size: 13 KB

Brian . .

Truc Nguyen advises me that on both April 6 and 12 there was sound emanating from the Foundry that was intrusive and detrimental. She believes that the sound may have exceeded the allowable levels. Accordingly, I'm hereby requesting logs for those dates.

Please provide the logs themselves, not a link that cannot be used without a log-in.

Thanks . .
Mitch

Mitchell I. Greenwald
Law Office of Mitchell I. Greenwald
29 Wendell Avenue Ste. 2
Pittsfield MA 01201
(413) 344-0022
mig@mgreenwaldlaw.com

Exhibit B

Exhibit C

From: Duval, Brian BDUval@weststockbridge-ma.gov
Subject: Re: April 6 and April 12 sound files for The Foundry
Date: April 29, 2024 at 8:13 AM
To: Amy Brentano amy@thefoundryws.com
Cc: Mitchell I. Greenwald mig@mgreenwaldlaw.com, Truc Nguyen truc@trucnguyen.com



Amy,

Thank you for putting the audio recordings onto the flash drive.

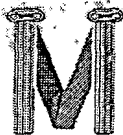
I have reviewed both event dates and also at times the event could be slightly heard in the background it was not enough to constitute a violation.

I do believe that the new location is picking up the turnpike traffic noise louder than where the microphone was first placed.

I am CC'ing Mitchell Greenwald and Truc Nguyen in this email to let them know of my decision, they of course have the right to appeal my decision to the zoning board.

Brian Duval
Town of West Stockbridge
Building Commissioner
Zoning Enforcement Officer
(413) 232-0300 ext 313

FOR SECURITY PURPOSES, THE FACE OF THIS DOCUMENT CONTAINS A COLORED BACKGROUND AND MICROPRINTING IN THE BORDER



Law Office of Mitchell J. Greenwald
IOLTA Account
29 Wendell Avenue Ste. 2
Pittsfield, MA 01201
(413) 344-0022

Lee Bank

5/29/24

0395

PAY TO THE
ORDER OF

Town of West Stockbridge

\$ 350.00

three hundred and fifty Dollars and ⁰⁰/₁₀₀ DOLLARS

AUTHORIZED SIGNATURE

MEMO

True ZBA Appeal for April 12

April 6

SECURITY FEATURES INCLUDED. DETAILS ON BACK

⑈000395⑈ ⑆211870870⑆ 41054⑈