



Town of Washington
Zoning Board of Appeals
 P. O. Box 383
 Washington Depot, CT 06794
 Land Use Office: 860-868-0423

ZBA USE ONLY:

Appl. # ZBA- _____
 Date Rec'd 8-26-2021 by S. White
 Fees Paid \$60 - / \$100 -
 Cash/Chk # 35282 / 35281
 Chk writer Natl Iron Bank - Cashiers
check

APPLICATION TO APPEAL a Decision by the Town's Zoning Enforcement Officer

APPLICANT INFORMATION

(If there are two or more applicants, provide the following information for each)

Name: MFMISC2013, LLC
 Mailing Address: 118 Woodbury Road, Washington, CT 06793
 Home Phone: _____ Business Phone: 860-868-9466
 Email Address: mohitgirdhar@aubergeresorts.com

PROPERTY INFORMATION

Owner(s) of subject property: MFMISC2013, LLC
 Street Address of subject property: 116 Woodbury Road, Washington, CT 06793
 Is the property located within 500 feet of any town line? Yes _____ No X

APPEAL INFORMATION

Date of ZEO decision: Undated Order; received via US Mail on August 20, 2021
 Description of ZEO decision: See attached Enforcement Order prohibiting music at wedding events held under the current Special Permit.

(Signature)
 Signature of Applicant Mohit Girdhar, Acting General

Manager Dated this 26th day of August, 2021.

ATTACH TO THIS FORM:

1. Letter to the ZBA Chairman explaining the reason for the Appeal.
2. Written confirmation that the ZEO has been notified of the Appeal.
3. **Filing fees** of \$100 and \$60 in separate checks, payable to the Town of Washington.



LAW OFFICE
OF
WILLIAM V. GRICKIS

August 26, 2021

VIA HAND DELIVERY

Peter Bowman, Chairman
Zoning Board of Appeals
P.O. Box 383
Washington Depot, CT 06794

Re: Application to Appeal a Decision by the Town's Zoning Enforcement Officer ("ZEO")

Dear Mr. Bowman:

I have been asked by MFMISC2013, LLC, owner of a 12 acre parcel identified on Map 8, Block 3, Lot 29, together with contiguous property, comprising a total of 57.92 acres owned by affiliated entities (collectively "Mayflower"), to appeal an Enforcement Order ("Order") issued by the ZEO and received by the Mayflower on August 20, 2021. In the main, the Order prohibits the Mayflower from using "any generators or any sound amplification equipment at or in connection with the seasonal tent authorized by the" Special Permit granted by the Zoning Commission on December 16, 2019. The Mayflower believes that the ZEO's interpretation of certain Standards set forth in Section 13.1.C of the Zoning Regulations is unjustifiably narrow and contrary to the express language of Standard 13.1.C.8, which is the Standard chiefly as issue in the ZEO's decision.

First, as a technical Matter, the Mayflower's authorized agent erroneously identified the owner of Lot 29 as "Mayflower Inn 2013, LLC" in the Special Permit Application ("SPA") dated November 20, 2019. The correct owner of Lot 29 is MFMISC2013, LLC, by deed recorded in Volume 226 at Page 956 of the Washington Land Records. The Mayflower apologizes for this oversight. [Order Violation #4, Section 13.1.B.1]

Second, the Mayflower believes that Order Violations #'s 1 and 2 can be favorably resolved if the ZBA accepts the Mayflower's interpretation of Standard 13.1.C.8, which states as follows:

That the proposed use and any building or other structure in connection therewith ***will not create a nuisance*** such as ***noise***, fumes, odors, bright lights, glare, visual obstructions, vibrations, or other ***nuisance conditions at or beyond the property line.***
[Emphasis and italics added.]

At the Public Hearing convened by the Zoning Commission to allow the public to comment on the proposed SPA on December 16, 2019, Reese Owens, agent for the Mayflower, discussed with the



LAW OFFICE
OF
WILLIAM V. GRICKIS

Mr. Peter Bowman, Page 2.

Commission events that would be conducted from the proposed new hospitality tent. The fact that weddings would be held at the tent was described by Mr. Owens as an integral component of uses for the tent, as an additional venue to other sites on the Mayflower property that had hosted wedding events for many years. The tape from that Public Hearing reflects an active discussion among Commission member and Mr. Owens about wedding related activities and specifically noise arising from amplified music and generators to be used exclusively for air conditioning when needed. The public did not offer any comments or questions about or objections to the proposed SPA, to the best of my knowledge.

The Mayflower readily acknowledges that some neighbors have recently complained to Town officials about wedding music and generator noise from the hospitality tent and that the SPA stated explicitly that "Mayflower proposes no activity risking '... noise or other *nuisance* conditions...' ... No noise generating equipment is proposed." [Emphasis and italics added.] Clearly, the suggestion that no noise generating equipment was being proposed could have been understood literally as an absolute commitment that no noise whatsoever would leave the tent, but for the discussion between Mr. Owens, representatives from the Mayflower and the Commission acknowledging that there would of course be music at wedding events. To be fair to Mr. Owens, I believe he linked noise with equipment such as pool equipment rather than acoustic music amplifiers.

In spite of the confusion that might arise from the SPA representations addressing Standard 13.1.C.8, it cannot be denied, based on an objective review of the Public Hearing tape, that the Commission understood that there would be music at weddings held in the hospitality tent. The real issue for the ZBA's consideration then is whether the music played during weddings amounts to a public nuisance when crossing the property lines. Whether an activity rises to the level of common law nuisance is a question of fact and commands a highly subjective determination. Only a tortured reading of Standard 13.1.C.8 could lead to the conclusion that this Standard should be interpreted to preclude *any* measure of sound from crossing property lines. It would also be very unlikely that the Zoning Commission's 5-0 decision to issue the Special Permit contemplated such 0 noise parameter.

Section 12.14 of the Zoning Regulations addresses noise generating activities. Section 12.14.4. states that the ZBA may grant a special exception to allow generators to be located closer than 200' to the property line if the sound level from the generators will not exceed 50 dB's. Generators used for air conditioning at the hospitality tent are located more than 400' from the property line. Provided that



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OF
WILLIAM V. GRICKIS

Mr. Peter Bowman, Page 3.

these generators do not produce noise exceeding 75 dB's, it would appear that the generators used by the Mayflower meet the requirements of Section 12.14.2A and B.

The Mayflower now asks that the ZBA apply rule of reason and balancing tests to the interpretation of Standard 13.1.C.8 and vacate the Order on the condition that the Mayflower limit the sound level of music at the property line to 50 dB's or less; take active steps to implements such noise reduction efforts; and commit to the Town that music from the hospitality tent will not continue after 10:30 p.m. To this purpose, the Mayflower has already engaged two acoustical engineering consultants who are now actively involved in designing effective sound containment measures. A copy of my letter to Town Attorney Michael Zizka informing him of the names of these consultants is attached for reference. A starting point for these efforts would be the installation of side flaps on the tent.

In conclusion, the Mayflower very much regrets the inconvenience and offense experienced by some of its neighbors as a result of music and generator noise flowing from the hospitality tent, as well as the contradictory statements in the SPA, when considered in light of the Public Hearing tape. The Mayflower understands the importance of being a good and respectful neighbor. Conversely, the Mayflowers asks the ZBA, when deliberating its appeal, to apply rule of reason and balancing tests in order to find a solution that respects the neighbors' legitimate rights to peaceful use and enjoyment of their properties, while permitting the Mayflower to hold events at the hospitality tent that due not constitute a nuisance, as clearly contemplated by Standard 13.1.8.C. Furthermore, the Mayflower respectfully asks the ZBA to stay the Order until its Appeal has been decided.

I believe all would agree that the Mayflower has enjoyed a powerful economic legacy in the Town of Washington to the benefit of the local and regional economies, employment opportunities, and the excitement that the appearance of high-profile guests brings to the community. Mayflower management very much wants to overcome the raw feelings currently prevailing among its neighbors and work productively with them and the Town to produce a positive and beneficial working relationship wholly consistent with local regulatory requirements.

Very truly yours,

William V. Grickis

Cc. via electronic mail: Mohit Girdhar, Acting General Manager, Mayflower
Shelley White, ZEO
Michael A. Zizka, Esq., Town Counsel, Halloran Sage



LAW OFFICE
OF
WILLIAM V. GRICKIS

August 20, 2021

VIA ELECTRONIC MAIL
zizka@halloransage.com

Michael A. Zizka, Esq.
Halloran & Sage, LLP
One Goodwin Square
225 Asylum Street
Hartford, CT 06103

Re: Mayflower Inn 2013, LLC ("Mayflower") Modification of Special Permit Approval dated December 16, 2019

Dear Attorney Zizka:

Further to our recent telephone conversations and email exchanges in connection with an interpretive dispute that has arisen between my client and the Town of Washington concerning the above referenced Special Permit, I am writing to update you regarding my client's position about its interpretation of permitted activities under the Permit and its response to the Town's assertion that the Permit does not allow the projection of noise (in this case amplified music) beyond its property boundaries.

First, my client contends that Section 13.1C.8 of the Zoning Regulations should not be interpreted to mean that no sounds can be projected across its property lines, but rather any such sounds will not create a nuisance at or beyond property lines. I am advised by Reese Owens, the architect who submitted the Modification of an existing Special Permit in November 2019, that the Mayflower freely acknowledged at the Public Hearing convened to consider the Application that weddings would be conducted at the proposed Hospitality Tent as an alternative venue to other wedding sites on the property where weddings have been conducted for many years. To that end, it would appear that the current controversy incited by complaints from neighbors principally involves the determination of whether the music flowing from weddings occurring in the Hospitality Tent rises to the level of "nuisance," as surely contemplated by Section 13.1C.8.

Second, the Mayflower very much wants to be a good neighbor and positive force in the economy of the local and broader community. However, in order to fulfill that role, it must still

be free to conduct business operations without unreasonable restrictions, balanced against the legitimate rights of neighbors to enjoy their properties peacefully, without undue interference.

In order to address concerns of neighbors and to bring its activities at the Hospitality Tent within the ambit of its Special Permit approved Modification, the Mayflower now commits to the Town to reduce noise levels at or beyond its property lines to 50 or less dB's for any and all events conducted at the Hospitality Tent after August 21, 2021.¹ To deliver that commitment, the Mayflower has consulted with Powerstation, L.L.C. of Cheshire, CT and Brooks Acoustics Corporation of Vernon, CT; both are firms which offer significant experience in sound containment technologies and monitoring. In addition, the Mayflower would be very happy to involve Town officials in the development of these containment measures, where input from the Town and neighbors would be welcomed.

As of today, a privacy fence will be installed on the road behind the tent as well as box trucks located behind the fence to mitigate sound migration, based on advice of the acoustic engineers. In addition, Mayflower has contracted with a sound engineer to monitor dB levels along the property line nearest the neighbors during the entire Saturday event, who will also work with the band to suppress noise level within the tent

The Mayflower is hopeful that a reasonable interpretation of Section 13.1C.8, when coupled with the above recited commitment to maintain sound at the property line at or below 50 dB's, and measures already implemented to achieve that goal, offer a reasonable and fair compromise that will be satisfactory to all interest parties.

Very truly yours,



William V. Grickis

Cc. Mohit Girdhar, Acting General Manager, Mayflower Inn 2013, LLC, via electronic mail

¹ Section 12.14.4 of the Zoning Regulations referring to generators and other noise generating equipment provides authority to grant a special exception for resulting noise on the condition that the sound level at the nearest property line with not exceed 50dB.



LAW OFFICE
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WILLIAM V. GRICKIS

August 26, 2021

VIA HAND DELIVERY

Peter Bowman, Chairman
Zoning Board of Appeals
P.O. Box 383
Washington Depot, CT 06794

Re: Zoning Enforcement Officer Enforcement Order Received August 20, 2021 - Appeal

Dear Mr. Bowman:

This letter will confirm delivery to Shelley White, Zoning Enforcement Officer, via electronic mail, of a copy of the above referenced Appeal submitted by my client, MFMISC2013, LLC on August 26, 2021.

Very truly yours,

William V. Grickis

Cc. Mohit Girdhar, Acting General Manager, MFMISC2013, LLC, via electronic mail

12 PORTER STREET PO BOX 191 LAKEVILLE, CT 06039-0191
860 435-0044 FAX: 860 435-0056 WGRICKIS@SBCGLOBAL.NET

Attachment 3

ENFORCEMENT ORDER

To: Mayflower Inn & Spa
118 Woodbury Road
Washington, CT 06793

MFMISC2013 LLC
MFINN2013 LLC
MFSPA2013 LLC
Mayflower Owners, LLC
1375 Enclave Parkway
Houston, TX 77077

Re: 116 and 118 Woodbury Road and 35 Wykeham Road, Washington, CT

On December 16, 2019, the Zoning Commission of the Town of Washington, Connecticut, granted a special permit for the use of property at 116 Woodbury Road in Washington for a seasonal tent for outdoor events. The applicant represented the name of the property owner as "Mayflower Inn 2013, LLC." We have since determined that no such LLC has been registered with the Secretary of the State.

Section 13.1.C of the applicable Zoning Regulations requires all such uses to meet the following standards, among others:

2. That the location, type, character, size, scale, proportion, appearance, and intensity of the proposed use and any building or other structure in connection therewith shall be in harmony with and conform to the appropriate and orderly development of the Town and the neighborhood and will not hinder or discourage the appropriate development and use of adjacent property or substantially or permanently impair the value thereof.

8. That the proposed use and any building or other structure in connection therewith will not create a nuisance such as noise, fumes, odors, bright lights, glare, visual obstructions, vibrations, or other nuisance conditions at or beyond the property line.

The application was granted upon the applicant's agent's representations, which included the following:

"Mayflower proposes no activity risking ...'noise, fumes, odors, bright lights, glare, visual obstructions, vibrations, or other nuisance conditions....' Success of the Mayflower relies upon maintaining a level of peace and quiet for guests as well as neighbors. No noise generating equipment is proposed."

Despite those representations, sound amplification equipment and noisy generators have been installed and used at the property. For the past several weeks, the activities at and near the seasonal tent have created substantial noise and nuisance to the neighbors, and the Town's efforts to reach an understanding with the Inn's

management have been fruitless. It also appears that access to the activities has been made available through 118 Woodbury Road and 35 Wykeham Road.

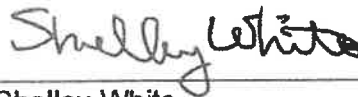
The special permit is valid only for the uses that were proposed and as they were represented in the application materials. Since the applicant represented that "no noise generating equipment" was being proposed, the special permit does not authorize the use of any such equipment. Consequently, the use of such equipment in connection with the tent and its associated activities is prohibited.

Therefore, I have determined that the following violations of the Washington Zoning Regulations exist on the premises located at 116 Woodbury Road, 118 Woodbury Road, and 35 Wykeham Road:

1. Violation of Section 2.3: conducting a special permit use without a special permit or zoning permit authorizing the same.
2. Violation of Section 13.1.C.2: location, type, character, size, scale, proportion, and intensity of the use is not in harmony with and does not conform to the appropriate and orderly development of the Town and the neighborhood and hinders and discourages the appropriate use of adjacent property and substantially impairs the value thereof.
3. Violation of Section 13.1.C.8: noise emanating from the tent and its associated uses creates a substantial nuisance in the neighborhood.
4. Violation of Section 13.1.B.1: the application failed to identify the proper owner of the subject property.

By virtue of the authority vested in me by the Washington Zoning Regulations, I hereby ORDER you to CEASE AND DESIST from using any generators or any sound amplification equipment at or in connection with the seasonal tent authorized by the permit or for any uses otherwise authorized by that special permit. If you fail to comply with this order, you may be subject to further orders and enforcement proceedings and penalties in accordance with Connecticut General Statutes § 8-12 and the Town's Zoning Regulations, including but not limited to revocation of the special permit in its entirety.

You have the right to appeal this action to the Washington Zoning Board of Appeals within 30 days [or as otherwise provided by the regulations] after the service of this order on you, in accordance with Connecticut General Statutes § 8-12.



Shelley White
Zoning Enforcement Officer

Signed Pages

William Grickis <bill@grickislaw.com>

Sun 8/29/2021 11:35 AM

To: Shelley White <swhite@washingtonct.org>

Cc: Michael A. Zizka <zizka@halloransage.com>; Mohit Girdhar <mohit.girdhar@aubergeresorts.com>

 1 attachments (564 KB)

Signed ZBA Pages.pdf;

Hi, Shelley.

Please find attached signed pages of Appeal confirmation copy letter and page 3 from my Appeal letter for your file.

Best,

Bill

Rec'd ^{S.W.} 8/30/2021



LAW OFFICE
OF
WILLIAM V. GRICKIS

August 26, 2021

VIA HAND DELIVERY


Peter Bowman, Chairman
Zoning Board of Appeals
P.O. Box 383
Washington Depot, CT 06794

Re: Zoning Enforcement Officer Enforcement Order Received August 20, 2021 - Appeal

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Very truly yours,



William V. Grickis

Cc. Mohit Girdhar, Acting General Manager, MFMISC2013, LLC, via electronic mail

12 PORTER STREET PO BOX 191 LAKEVILLE, CT 06039-0191
860 435-0044 FAX: 860 435-0056 WGRICKIS@SBCGLOBAL.NET

Received ^{SW.} 8-30-2021



LAW OFFICE
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Mr. Peter Bowman, Page 3.

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Very truly yours,

William V. Grickis

Cc. via electronic mail: Mohit Girdhar, Acting General Manager, Mayflower
Shelley White, ZEO
Michael A. Zizka, Esq., Town Counsel, Halloran Sage

S.W.
Rec'd 8-30-2021

TOWN OF WASHINGTON
Zoning Board of Appeals
P.O. Box 383
Washington Depot, CT 06794

* Copy —
mailed: 9/3/21

MFMISC2013, LLC
118 Woodbury Road
Washington, CT 06793

Re: ZBA-1128- Request of MFMISC2013, LLC, 116 Woodbury Road, Cease and Desist Appeal

Dear Applicant(s):

For your records please be advised that the Washington Zoning Board of Appeals has set the public hearing to consider the above referenced request for September 23, 2021. Please see the enclosed legal notice, which will be published in the Republican American for specific information concerning the date and time of your hearing. You are urged to attend or to send a representative to answer any questions that may arise at that time. Please remember to submit written authorization if a representative will act on your behalf. In this way, the Commission will be able to process your request as expeditiously as possible.

If you have any questions, please call the Land Use Office at 868-0423. Thank you.

Sincerely,

Tammy Rill
Land Use Clerk

Enc.
Notice of Public Hearing and Instructions

PLEASE NOTE:

YOU MUST MAIL OUT NOTIFICATION OF THE PUBLIC HEARING TO ALL
PROPERTY OWNERS WITHIN 200 FEET OF THE PROPERTY BOUNDARIES, AS TO
THE NATURE OF THE REQUEST AND DATE OF THE HEARING. PLEASE FOLLOW
THE DIRECTIONS ON THE FORMS ENCLOSED

TOWN OF WASHINGTON
Zoning Board of Appeals
P.O. Box 383
Washington Depot, CT 06794

Republican American

Classified Department
389 Meadow St
Waterbury, CT 06702
Fax: 203-754-0644

Please publish the following in Republican American on Sunday, September 12, 2021 and again on Sunday, September 19, 2021. Please send a copy of the Tear Sheet to the Land Use Office. Thank you.

WASHINGTON LEGAL NOTICE

The WASHINGTON ZONING BOARD OF APPEALS will hold Public Hearing(s) on Thursday, September 23, 2021 at 7:30pm, in the Main Level Meeting Room of Bryan Memorial Town Hall to consider the following application(s):

ZBA-1128: Request of MFMISC2013, LLC, 116 Woodbury Rd., for an Appeal of a Cease and Desist Order given by the Town of Washington Zoning Enforcement Officer - for use of generators or sound amplification equipment at or in connection with previously authorized Special Permit.

Tammy Rill, Land Use Clerk

September 1, 2021

TOWN OF WASHINGTON
Zoning Board of Appeals
P.O. Box 383
Washington Depot, CT 06794

MEMO

To: Town of Washington
From: Tammy Rill, Land Use Clerk
Re: Zoning Board of Appeals Application

INSTRUCTIONS

Enclosed is a copy of the form you must send to all property owners within 200 feet of the property's boundaries to notify them of the public hearing to consider your pending request for a Variance or Special Exception. Please note this notification must be sent by "Certificate of Mailing".

****FAILURE TO DO SO WILL MAKE YOUR APPLICATION INCOMPLETE****

*****The White "Certificate of Mailing" receipts and a list of the names and addresses of all property owners within 200 feet of the property's boundaries should be submitted to the Land Use Office as soon as possible.**

If you have any questions, please call the Land Use Office at 868-0423.

Thank you for your cooperation.

Sincerely,



Tammy Rill
Land Use Clerk
September 1, 2021

TOWN OF WASHINGTON
Zoning Board of Appeals
P.O. Box 383
Washington Depot, CT 06794

NOTICE OF PUBLIC HEARING

To: Property owners within 200 feet of property's boundaries
Re: Pending Zoning Board of Appeals Application

As required by the Zoning Board of Appeals for all Variance or Special Exception Applications, the applicant must provide evidence by the hearing date of "Certificate of Mailing" notification to all property owners within 200 feet of the property's boundaries, as to the nature of the request and date of the hearing.

The following application has been submitted to the Washington Zoning Board of Appeals. Because you are a property owner within 200 feet of the property's boundaries you are being sent notification of this application and its scheduled public hearing.

Applicant(s): MFMISC2013, LLC
Address: 116 Woodbury Road
Washington, CT 06793

Application: ZBA-1128 - Request of MFMISC2013, LLC, 116 Woodbury Rd., for an Appeal of a Cease and Desist Order given by the Town of Washington Zoning Enforcement Officer – for use of generators or sound amplification equipment at or in connection with previously authorized Special Permit.

HEARING – MEETING – VOTE

Date/Time/Location of Public Hearing: September 23, 2021
Hearing begins at 7:30 p.m.
Bryan Memorial Town Hall
2 Bryan Hall Plaza
Washington Depot, CT 06794

The public hearing will be conducted **in person only** at Bryan Memorial Town Hall. Interested persons may appear at this hearing and written communications will be received. The application is on file in the Land Use Office for your inspection. If you have any questions, please call the Land Use Office at 868-0423. Thank you.