

E V A S H E V S K I

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Dear Mayor Doud and Members of the Zoning Board of Appeals,

The Mustange Lounge owners have filed a request for a variance amendment. For some background: the subject property is the Mustange Lounge building, more specifically; the living quarters above the bar/restaurant. Section 9.04 of the Zoning Ordinance allows the subject property one (1) apartment and three (3) single-occupant boarding house sleeping rooms. In 2007 the property owners requested a density variance to allow an additional apartment, creating a total of two (2) apartments and three (3) single-occupant boarding house sleeping rooms.

On October 10, 2007, the Zoning Board of Appeals held a public hearing, followed by a meeting, at which it granted the requested density variance for the additional apartment. The meeting minutes do not reflect any discussion of the reason for the variance, any conditions imposed, or any reason for conditions. At the regular meeting of the City Council on October 10, 2007, immediately following the ZBA meeting, the City Council approved a liquor license transfer and re-classification for the Mustange. In that decision the minutes reflect that "the upstairs will be for owners and/or management and will not be rented".

On October 24, 2007 a special meeting was held prior to the regularly scheduled City Council meeting. The purpose of the special meeting, as reflected in the minutes, was to "clarify and solidify the status" of the variance. A motion passed to record a stipulation that only the owners/employees of the Mustange will be allowed to use the housing and that the use would be non-transient.

An affidavit reflecting and acknowledging the owner/employee-only occupancy and non-transient use conditions of the variance was signed by owner, Jason Klonowski on or about November 27, 2007. This affidavit was received by the City but never recorded with the register of deeds.

It is the applicant/owner's position that the conditions on the variance were placed on it due specifically to the status of the liquor license. It is certainly possible that the liquor license classification had something to do with it, but there is nothing in the minutes or other information tying the conditions to any requirements of the MLCC.

I have looked through all the files in my office that could relate to this matter, and I spoke to Tom Evashevski for his recollection. Unfortunately, there is nothing in any of the files to indicate the reason for the conditions, and, because this occurred over 17 years ago, Tom has no memory of the circumstances surrounding the variance.

I believe Mr. Cawthorne has retracted his October 18, 2024 letter, after reviewing the affidavit, but in the event there are any questions regarding that letter, I would like to address the issues:

I disagree as to the validity of the conditions. The ZBA is composed of the members of the city council. Although the meeting minutes are titled as a "Special Meeting of the Mackinac Island City Council", it was clearly an error. If the City Council wanted to address this as the Council, it would have simply done so in its regularly scheduled City Council meeting which occurred immediately following the special meeting. The clear intent was for the meeting to be a Zoning Board of Appeals meeting. It has been far too long to recover the notice that was posted for the meeting, however, Jason acknowledged in his Affidavit signed a month after the meeting that this was a Zoning Board of Appeals meeting. Regarding the requirement of an additional hearing: A variance does not require a hearing for each meeting or determination made regarding the variance. Only one public hearing is required.

Further, this was not an "amendment" to the variance, the purpose was clearly stated in the minutes that the meeting was to "clarify and solidify the status" of the variance. Although it is not spelled out in the October 10, 2007 ZBA meeting minutes, the matter of owner/manager occupancy was clearly discussed in that meeting, as the October 10, 2007 City Council meeting minutes regarding the liquor license transfer and re-classification states that "the upstairs will be for owners and/or management and will not be rented".

I cannot support the position that the conditions on the variance are not valid, although, like I said I do not believe that the applicant is taking that position. Regarding the owner's position that the conditions were only placed on the variance due to the requirements of the MLCC, I simply do not have an opinion. I was not there and there is nothing in the minutes that ties the reason for the conditions on the variance exclusively to the liquor license. The conditions are mentioned in reference to both the variance and the liquor license transfer/re-classification, but I cannot say that the only reason for the conditions on the variance is the MLCC.

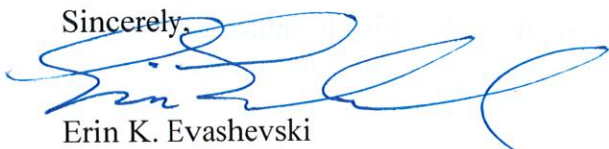
Regardless, it is my opinion that the only proper way to remove the conditions of the variance is to go through the variance procedure and make a decision as if it is a new variance request without the conditions, following the criteria under Section 22.05 and 22.06.

Section 22.06 – Criteria for Variances.

No variance in the provisions or requirements of this ordinance shall be authorized by the board unless the board finds from reasonable evidence that **all** the following facts and conditions exist:

- A. That there are exceptional or extraordinary circumstances or conditions applying to the property in question as to the intended use of the property that do not apply generally to other properties in the same zoning district.
- B. That such variance is necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the same zoning district and in the vicinity. The possibility of increased financial return shall not of itself be deemed sufficient to warrant a variance.
- C. That the authorizing of such variance will not be of substantial detriment to adjacent property, and will not materially impair the intent and purposes of this ordinance or the public interest.
- D. That the condition or situation of the specific piece of property, or the intended use of said property, for which the variance is sought is not of a general or recurrent nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.

Sincerely,



Erin K. Evashevski