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January 10, 2025

**SENT VIA E-MAIL**

Mackinac Island Planning Commission  
Attn: Chairperson Michael Straus  
7358 Market Street  
P.O. Box 455  
Mackinac Island, MI 49757

Re: **C24-055/56-056 (H) - Expansion & Renovation Mister B's and Murdick's  
Fudge – Shared Wall Agreement**

Dear Chairman Straus and Planning Commissioners:

We represent Trayser Properties, LLC ("Trayser"), owner of the real property located at 7359 Main Street, Mackinac Island, Michigan, commonly known as the Trading Post Building (the "Trading Post Building"). As you are aware, the Trading Post Building adjoins the property at 7363 Main Street, commonly known as the Murdick's Fudge Building (the "Murdick's Building", and collectively, the "Buildings"). This correspondence relates to the proposed Mister B's and Murdick's Fudge Expansion & Renovation pursuant to plans dated August 19, 2024 (the "Project"). The purpose of this correspondence is to reiterate the necessity of the Mackinac Island Planning Commission (the "Commission") requiring Mr. Benser to enter into a shared wall agreement with Trayser as a condition of constructing the Project.

First, let us clarify that the Murdick's Building and the Trading Post Building **abut one another** and share a foundation. The Commission received a letter from Richard Clements Architect, PLLC dated December 6, 2024 (the "Letter"). The Letter, submitted by the proponents of the Project in response to our letter dated November 26, 2024, states that the Buildings are separated by a "small distance" and therefor do not abut. This is not accurate. The Letter and assertions at the December 10, 2024 Commission meeting identifying a continuous gap between the buildings are incorrect. We can only speculate about the motive behind such inaccurate statements, but we hope this incorrect information will not prevent the Commission from instituting precautions to protect Trayser's rights and the stability of the Trading Post Building.

Second, there appears to be some confusion about what constitutes a "shared wall". The Letter implies that an abutting wall is not a "shared wall" unless it structurally supports a neighboring building. This is not correct. Under Michigan law, a shared wall, also called a "party wall", is a wall "that divides two adjoining, separately owned properties". 20 Mich. Civ. Jur. Party

## MILLER JOHNSON

Mackinac Island Planning Commission  
Attn: Chairperson Michael Straus  
January 10, 2025  
Page 2

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Walls § 1 (citing *Scott v. Baird*, 145 Mich. 116 (Mich. 1906)). A party wall may even be made up of buildings constructed flush at the property line without support. *Weadock v. Champe*, 193 Mich. 553, 160 N.W. 564 (Mich. 1916) (“Every wall of separation between two buildings is presumed to be a common or party wall...”). There is no requirement that an abutting wall support the two structures to be legally classified as a shared wall. Therefore, at a minimum, the Trading Post Building and Murdick’s Building have a shared wall because the walls abut, regardless of whether one building is structurally supported by the other.

Third, the Letter suggests that the Project, once complete, will not include a shared wall between the Murdick’s Building and the Trading Post Building. This contradicts the site plan for the Project previously submitted to the Commission dated August 19, 2024. The site plan before the Commission proposes a renovation in the existing footprint of the Murdick’s Building, including renovation of the shared wall. In particular, the drawings depict the completed Project as flush with the Trading Post Building, indicating that the Buildings will continue to share a wall after the Project is complete.

Any renovation or removal of the shared wall as part of the Project must be conditioned upon the parties entering into a written agreement for the management of the shared wall. As outlined in our previous correspondence, any modification of the shared wall without Trayser’s prior written consent is a violation of Michigan law. Expanding, removing, reconstructing or otherwise modifying the shared wall without permission is a physical intrusion and trespass on Trayser’s right to exclusive use of its real property.

Additionally, a forward-looking written agreement is necessary for future management of the shared wall. Shared walls present unique safety and maintenance issues that, unless governed by a written agreement between the owners, can create a hazard to building occupants and the community. The joint nature of shared walls makes them prone to disputes over the cost of routine maintenance and upkeep. For example, an agreement is necessary to ensure that the wall is timely repaired following damage or to prevent the wall from deteriorating and threatening the occupants of both Buildings and pedestrians. Disputes over allocation of shared wall costs can cause delays to necessary maintenance or safety upgrades. Such an agreement is also necessary to establish the rights of the parties to modify the wall or install utilities. Without a mutually acceptable agreement, the shared wall included in the Project will almost certainly lead to litigation or, worse, a dangerous condition.

Finally, if the Letter is correct that the Project now proposes a small gap between the Buildings, that will create a serious hazard to public health, safety and welfare. Virtually all Michigan municipalities require side yard setbacks to be either 5 feet or greater or flush with the neighboring structure. *See, e.g.*, City of Grand Rapids Zoning Ordinance, Sec. 5.9.06; City of Holland Unified Development Ordinance, Sec. 39-2.04; City of Ann Arbor Unified Development

MILLER JOHNSON

Mackinac Island Planning Commission  
Attn: Chairperson Michael Straus  
January 10, 2025  
Page 3


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Code, Sec. 5.11.5, Table 5.17-4. These ordinances do not permit small, inaccessible gaps between buildings for obvious safety reasons, including increased risk of fire, infestation, refuse accumulation, and a lack of emergency and maintenance access. The Michigan Residential Code and Building Code discourage small gaps between neighboring walls because of the risk of fire in particular. The Commission should never allow the small gap between Buildings cited by the Letter when it would clearly create an unacceptable health, safety and welfare risk.

We ask that the Commission require as a condition of Project approval that the owner of the Murdick's Building enter into a mutually acceptable shared wall agreement with Trayser. Please contact me if you have any questions or wish to discuss this matter further.

Sincerely,

MILLER JOHNSON

By   
Robert W. O'Brien

cc: Trayser Properties, LLC