STATE OF MICHIGAN

COURT OF APPEALS

DETROIT MEDIA GROUP, LLC,

Appellee/Cross-Appellant,

v

DETROIT BOARD OF ZONING APPEALS and CITY OF DETROIT,

Appellants/Cross-Appellees.

FOR PUBLICATION
September 23, 2021
9:00 a.m.

No. 352452
Wayne Circuit Court
LC No. 19-000308-AA

Before: CAVANAGH, P.J., and K. F. KELLY and REDFORD, JJ.

REDFORD, J.

Appellants/Cross-Appellees, the City of Detroit Board of Zoning Appeals (ZBA) and the City of Detroit (the City) appeal by leave granted[1] the circuit court's December 18, 2019 order that reversed the ZBA's ruling that an advertising use had been abandoned. Appellee/Cross-Appellant, Detroit Media Group, LLC (DMG) cross-appeals the circuit court's decisions that the ZBA had not violated its procedure nor violated DMG's right to due process, that the City was not estopped from claiming a presumption of abandonment, and that the ZBA's decision did not unconstitutionally interfere with DMG's free speech right.

The central issue before the Court is whether, when determining if a variance that applies to a leased portion of a freehold has been abandoned, the ZBA must base its determination on the conduct of the leaseholder or the freeholder? Because, like the circuit court, we conclude it is the conduct and actions of the leaseholder which are critical to the analysis, we affirm.

I. FACTUAL BACKGROUND

Around 1997, the owner of the Witherell Building in downtown Detroit (now known as the Broderick Tower) had a large wall graphic painted onto the east face of the building which has

[1] *Detroit Media Group LLC v Detroit Board of Zoning Appeals*, unpublished order of the Court of Appeals, entered March 25, 2020 (Docket No. 352452).

been called the "Whale Wall." In 2004, US Outdoor Advertising, Inc., an affiliate of DMG, leased from the building owner the right to place advertising signage over the Whale Wall graphic. US Outdoor Advertising, Inc. petitioned the City for permission to place an illuminated changeable 75 feet by 185 feet (13,875 square foot) advertising sign on the east face of the Witherell Building that featured the Whale Wall. The Detroit Buildings and Safety Engineering Department denied the petition and US Outdoor Advertising, Inc. appealed to the ZBA. On December 17, 2004, among other things, the ZBA found that the request met the City's zoning use variance provisions and noted that the building already had an advertising sign, the Whale Wall, on the building, and that the limits of the wall sign would remain the same. The ZBA found that the proposed signage would beneficially serve the area. The ZBA granted the appeal and entered a final order that required US Outdoor Advertising, Inc. to comply with all applicable ordinances, regulations, and laws, and authorized a variance to regulations of the City Zoning Ordinance. Among other things, the ZBA ordered US Outdoor Advertising, Inc. to secure its permit by July 1, 2005, and record the ZBA's order in the Wayne County Register of Deeds.[2] In 2005, the City Downtown Development Authority appealed to the circuit court the ZBA's decision. The circuit court affirmed the ZBA's order.

Meanwhile, in November 2005, the building's owner submitted Part 1 and Part 2 applications to the National Park Service (NPS) for federal historic preservation tax credits as part of its plan for renovation of the building in 2006. It is unclear whether the owner informed the NPS of ad signage on the building as an existing condition.

Following the circuit court's affirmance of the ZBA's final order, US Outdoor Advertising, Inc.'s affiliate, DMG, applied for a permit to change the advertising copy but Detroit Buildings and Safety Engineering Department declined to issue a permit on the ground that the Detroit Historic District Commission (DHDC) had to review and approve the sign before a permit would issue. The DHDC ultimately voted not to approve and the Detroit Buildings and Safety Engineering Department refused to issue DMG a permit. That led to a dispute which was ultimately resolved by settlement between the building owner, DMG, the City, and DHDC. The settlement, entered into December 14, 2005, provided in relevant part that: a) the Whale Wall constituted an advertising graphic, b) the DMG and building owner had the right to place an advertising graphic on the building face over the Whale Wall, c) the Detroit Buildings and Safety Engineering Department had the obligation to issue a sign erection permit to DMG, d) if the Detroit Buildings and Safety Engineering Department failed to issue the permit, the settlement agreement served as the permit, e) for a period of five years the City and the DHDC would refrain from interfering or preventing the change of advertising on the building, and f) if the City and the DHDC did not take action after five years and three months from the date of the settlement, those two entities would be deemed to have irrevocably waived any right to challenge DMG's and the building owner's rights.

The Detroit Buildings and Safety Engineering Department issued an ad sign permit and DMG contracted for the installation of anchors and wire on the building's east wall. DMG displayed approximately 18 different ad signage banners over the Whale Wall from 2006 to 2012.

[2] A few months later, the ZBA entered an amended order substantially similar to its previous order.

In 2008, the building's owner extended DMG's lease to 2019. In 2010, Motown Construction Partners, LLC purchased the Broderick Tower and amended and restated the lease to reflect the changed building ownership and to provide for the potential removal of DMG's advertising signage for 60 days to accommodate building renovations.

During 2010, Motown Construction Partners, LLC, a contractor, a design firm, attorneys from a local law firm, a financial and tax consulting firm, banks, and the Michigan Historic Preservation Network formed a development team to facilitate renovation of the Broderick Tower building. As part of the team's renovation financing plan, Motown Construction Partners, LLC applied to the NPS for federal historic preservation tax credits and informed the NPS of the existing condition of ad signage on the building. It advised the NPS that the development team anticipated that the ad signage would discontinue at the end of the current lease, but also that its redevelopment financing depended on obtaining historic preservation tax credit certification and in part on the income derived from the ad signage to meet the ratio of commercial to residential income required for new market tax credits. The project contract amended Motown Construction Partners, LLC's federal historic preservation certification application to describe the building's physical appearance to include information regarding the ad signage and the DMG lease that would expire in 2019. The NPS responded by informing the building owner in January 2012 that the banner ad signage on the building would not be consistent with the preliminary approval issued to the previous applicant by the NPS in 2006 and that any banner or signage placed on the building since 2006 would be subject to review regardless of who entered the lease that allowed for the erection of such banners. In July 2012, the building's owner advised DMG that it would need to remove its ad signage in October 2012 for building renovations but apparently made no mention of a permanent removal or termination of the lease.

The NPS issued final historic preservation certification on February 21, 2013, approving the building for historic preservation tax credits for a period of five years from 2012 to 2017. On September 14, 2014, the NPS responded to a post certification amendment request made by Motown Construction Partners, LLC that proposed additional work consisting of the installation of a commercial advertising banner sign measuring approximately 73'6" wide by 130' tall that would cover the Whale Wall[3] which already had altered the historic character and appearance of the building. Motown Construction Partners, LLC apparently advised the NPS that the ad signage constituted an existing condition to both the project and the original rehabilitation. NPS responded that it had not been provided a copy of the lease and had not been provided information or documentation that established the existence of a banner sign on the building at the start of the rehabilitation project. The NPS informed Motown Construction Partners, LLC that periodically replaced banner signage constituted part of the project subject to review for certification purposes and had to, but did not, meet the United States Secretary of the Interior's standards respecting historic character and appearance.[4] The NPS warned that certification could be revoked if the

[3] The NPS characterized the Whale Wall as a painted art mural that constituted an existing condition of the building.

[4] The NPS representative appears to have not known of the existing mechanical structures in place since 2006 that enabled display of the ad signage because he asserted that the requested banner

owner undertook further unapproved project work inconsistent with the federal rehabilitation standards.

In March 2013, DMG sent correspondence to the Detroit Buildings and Safety Engineering Department stating that the removal of the advertising should not be construed as abandonment or relinquishment of DMG's variance, sign permits, or approvals. DMG later sent another letter to inform the Detroit Buildings and Safety Engineering Department that it temporarily removed the ad signage to accommodate historic restoration of the building, and that doing so should not be construed as abandonment of the variance. DMG applied for and received a sign license from the City in 2014. In 2015, DMG again sought a license, but this time the City did not issue one. DMG met with the Detroit Buildings and Safety Engineering Department which resulted in the issuance of a zoning verification letter by the department on January 28, 2016.

After receiving that letter, DMG obtained a 13-year extension of the lease term from the building owner, Motown Construction Partners, LLC, and DMG recorded that lease in the county register of deeds. DMG continued to contact the Detroit Buildings and Safety Engineering Department and the City's Law Department throughout 2016 and 2017 regarding sign license renewals. DMG expressed its understanding that the City had elected to stop issuing sign licenses. After the historic preservation tax credit period elapsed, DMG submitted a change of copy application in December 2017. It never received a response. In 2018, however, the City issued licenses to DMG for downtown ad signs including for the Broderick Tower.

Because DMG had not received response to its change of advertising copy application, it followed up several times during 2018 to no avail. DMG, therefore, filed an appeal with the ZBA on June 13, 2018, regarding its request for approval of change of advertising copy or alternatively for a decision from the ZBA indicating that it did not need approval from the Detroit Buildings and Safety Engineering Department or the ZBA. Eight days before the August 21, 2018 hearing on DMG's appeal, the Detroit Buildings and Safety Engineering Department sent DMG a letter in which it raised for the first time the issue of abandonment of the variance and stated several grounds for its position. That prompted DMG to file an appeal on August 31, 2018, disputing the presumption of abandonment asserted by the Detroit Buildings and Safety Engineering Department in its letter. Detroit's Law Department responded on November 19, 2018, and contended that the ZBA had to consider the property owner's conduct alone and not DMG's conduct to determine the abandonment issue. DMG submitted to the ZBA a memorandum with supporting affidavits of the building owner, DMG, and the contractor who installed the signage for DMG to rebut the presumption of abandonment. The ZBA held a public hearing on December 4, 2018, at which DMG and the City argued their respective positions. The City contended that the building's owner's conduct determined that the variance had been abandoned to which DMG argued that DMG's conduct determined the issue. The ZBA found DMG's conduct dispositive and voted that DMG overcame the presumption of abandonment.

Two days later, the ZBA received a letter from a Detroit council member who urged the ZBA to reconsider its vote so that the Whale Wall could be preserved as public art. The next day,

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signage would require drilling holes in the existing masonry and attaching anchors which would likely increase the potential for moisture infiltration that could damage the historic wall.

three ZBA members notified the ZBA office that they wished to reconsider the decision. The ZBA reconvened on December 11, 2018, to vote on reconsideration. At the hearing, a ZBA member moved for reconsideration of its previous decision. The City and DMG were present and a representative of the Detroit Buildings and Safety Engineering Department attended the proceedings for the first time. The parties presented no new information or evidence. DMG and the City argued their positions and the Detroit Buildings and Safety Engineering Department took the position that its January 8, 2016 zoning verification letter had been issued in error because the City's sign licensing department and the land use department were separate departments. The ZBA reconsidered its previous decision. The ZBA voted to uphold the Detroit Buildings and Safety Engineering Department's presumption of abandonment. That prompted DMG to appeal the ZBA's decision to the circuit court.

On appeal the circuit court reversed the ZBA's decision. The circuit court agreed that DMG's conduct, and not the building owner's actions, were relevant and dispositive of the issue of abandonment. The circuit court held that the ZBA made a legal error by looking to the building owner's actions. The circuit court held that the ZBA's decision on reconsideration had not been based on competent, material, and substantial evidence and that the ZBA erred by looking to the building owner's conduct. The circuit court analyzed DMG's conduct and found that no substantial evidence demonstrated that DMG had abandoned the advertising variance. The circuit court, however, based on Detroit's city charter, zoning ordinances, and the zoning appeals rules, rejected DMG's argument that the ZBA had no authority to reconsider its first decision and rejected its claim that the ZBA's holding a second vote violated its right to procedural due process. The circuit court explained that the ZBA had authority to reconsider its decision and it had followed the appropriate procedure for doing so. The circuit court also rejected DMG's claim that the City's Law Department and the Detroit Buildings and Safety Engineering Department were estopped from claiming a presumption of abandonment. It concluded that DMG failed to meet the legal standard for application of estoppel. The circuit court additionally found no merit to DMG's claim that the ZBA's decision violated DMG's first amendment right to commercial free speech because neither the City's decision nor the ZBA's decision that DMG had abandoned the variance had anything to do with the content of the proposed speech in the ad signage. The circuit court concluded that the ZBA's decision did not unconstitutionally prohibit commercial speech. The circuit court, therefore, reversed the ZBA's decision and remanded for entry of a decision consistent with the circuit court's decision.

The ZBA and the City appeal the circuit court's reversal of the ZBA's decision following reconsideration. DMG appeals the circuit court's decisions rejecting its claims of procedural due-process violation, estoppel, and free speech violation.

II. STANDARD OF REVIEW

We review de novo a circuit court's decision in an appeal from a decision of a zoning board of appeals to determine whether the circuit court " 'applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the [ZBA's] factual findings.' " *Hughes v Almena Twp*, 284 Mich App 50, 60; 771 NW2d 453 (2009), quoting *Boyd v Civil Serv Comm*, 220 Mich App 226, 234; 559 NW2d 342 (1996). We also review de novo issues involving the interpretation of statutes and ordinances. *Soupal v Shady View, Inc*, 469 Mich 458, 462; 672 NW2d 171 (2003). "Municipal ordinances are interpreted and reviewed in the same

manner as statutes." *Sau-Tuk Indus, Inc v Allegan Co*, 316 Mich App 122, 135; 892 NW2d 33 (2016) (citation omitted). Therefore, we review de novo a court's ordinance interpretation and apply the rules governing statutory interpretation to a municipal ordinance. *Id*.

III. ANALYSIS

The ZBA and the City argue that the circuit court erred by reversing the ZBA's reconsideration decision on the ground that competent, material, and substantial evidence did not support the decision which applied a wrong principle of law. They contend that the ZBA properly determined the abandonment issue by considering the building title owner's conduct alone, which they assert established abandonment of the variance, and properly disregarded DMG's conduct requiring reversal of the circuit court's decision. We disagree.

The issues presented in this appeal concern the interpretation of a municipal ordinance. In *Sau-Tuk*, this Court explained how we must interpret an ordinance:

> When interpreting a statute, our primary goal is to give effect to the intent of the Legislature. If the language of a statute is unambiguous, we presume the Legislature intended the meaning expressed in the statute. A statutory provision is ambiguous only if it conflicts irreconcilably with another provision or it is equally susceptible to more than one meaning. . . . When construing a statute, we must assign every word or phrase its plain and ordinary meaning unless the Legislature has provided specific definitions or has used technical terms that have acquired a peculiar and appropriate meaning in the law.
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> Similarly, the goal of construction and interpretation of an ordinance is to discern and give effect to the intent of the legislative body. The most reliable evidence of that intent is the language of the ordinance itself, which must be given its plain and ordinary meaning. When the words used in a statute or an ordinance are clear and unambiguous, they express the intent of the legislative body and must be enforced as written. [*Sau-Tuk*, 316 Mich App at 136-137 (quotation marks and citations omitted).]

MCL 125.3606 governs appeals to the circuit court by any party aggrieved by a decision of the ZBA. MCL 125.3606(1) specifies the circuit court's appellate task in relevant part as follows:

> The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:
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> (a) Complies with the constitution and laws of the state.
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> (b) Is based upon proper procedure.
>
> (c) Is supported by competent, material, and substantial evidence on the record.

(d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

"The decision of a zoning board of appeals should be affirmed unless it is contrary to law, based on improper procedure, not supported by competent, material, and substantial evidence on the record, or an abuse of discretion." *Janssen v Holland Charter Twp Zoning Bd of Appeals*, 252 Mich App 197, 201; 651 NW2d 464 (2002).

In this case, the circuit court had to interpret and analyze the ZBA's interpretation and application of Detroit's City Ordinance, § 50-15-31,[5] which specifies conditions under which a nonconforming use variance may be presumed abandoned and how that presumption may be overcome. Section 50-15-31 provides in relevant part as follows:

> Once abandoned, a nonconforming use shall not be re-established or resumed, except in accordance with Section 50-15-28 of this Code. Any subsequent use or occupancy of the structure or open land must comply with the regulations of the district where it is located and all other applicable requirements of this chapter:
>
> (1) *Presumption of abandonment*. A nonconforming use shall be presumed abandoned and its land use rights extinguished where any one of the following has occurred:
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> a. The owner has indicated, in writing or by public statement, an intent to abandon the use; or
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> b. A conforming . . . use has replaced the nonconforming use; or
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> c. The building or structure that houses the nonconforming use has been removed; or
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> (2) *Evidence of abandonment*. Evidence that a use has been discontinued, vacant or inactive for a continuous period of at least six months, and thereby abandoned, may include any of the following:
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> a. The owner has physically changed the building or structure, or its permanent equipment, in a manner that clearly indicates a change in use or activity to something other than the nonconforming use;
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> * * *

[5] The ZBA cited § 61-15-21 of the Detroit Zoning Ordinance as grounds for its decision and the circuit court did the same when analyzing the abandonment issue. An amendment to the Detroit City Code moved several of the pertinent sections of the zoning ordinance and we cite herein the current zoning ordinance section designation.

c. Any license, required by this Code, that is necessary for the operation of the nonconforming use:

1. Has not been renewed; or

2. Has been denied or revoked without a timely appeal having been filed;

3. Has been denied or revoked, and a timely appeal of the denial or the revocation did not result in the granting of the license.

(3) *Overcoming presumption of abandonment*. A presumption of abandonment based on the evidence of abandonment, as provided for in Subsection (2) of this section, may be rebutted upon a showing of all of the following, to the satisfaction of the Board of Zoning Appeals, that the owner:

a. Has been maintaining the land and structure in accordance with all applicable regulations, including Chapter 8, Article II, of this Code, Building Code, and did not intend to discontinue the use;

b. Has been maintaining all applicable licenses;

c. Has filed all applicable tax documents; and

d. In addition, the owner of the nonconforming use shall be required to demonstrate, to the satisfaction of the Board of Zoning Appeals, that during the period of inactivity or discontinuance the owner:

1. Has been actively and continuously marketing the land or structure for sale or lease; or

2. Has been engaged in other activities that would affirmatively prove there was no intent to abandon. [Italics in original.]

For purposes of interpreting and applying the City's zoning ordinance provisions, § 50-16-324 defines the term "owner" in relevant part as "[t]he person having the right of legal title or beneficial interest in or a contractual right to purchase a parcel of land." Section 50-16-2 states: "All provisions, terms, phrases and expressions that are contained in this chapter shall be construed according to the purpose and intent which are set out in Section 50-1-4 and Section 50-1-5 of this Code." Section 50-16-8 requires: "Words and phrases shall be construed according to the common and approved usage of English, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning." Section 50-16-13, in relevant part clarifies: "Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows: . . . (2) The term 'or' indicates that one or more of the connected items, conditions, provisions, or events may apply." Guided by these three sections of the Detroit City Ordinance one may address and determine the issue at bar.

Both parties agree that the abandonment analysis requires determination of the owner of the property interest. The ZBA and the City argue that abandonment is determined by examining

the conduct of the "dominant owner," a term they use but one that is neither stated in the subject ordinance nor defined under the City Ordinance. Analysis of § 50-16-324's definition of the term "owner" reveals that the provision uses the conjunction "or" to differentiate three types of owners to whom the zoning ordinance provisions may apply depending on the circumstances: 1) the holder of legal title to the property, 2) the holder of a beneficial interest in the property, or 3) the holder of a contractual right to purchase a parcel of land. In defining "owner" in this manner, § 50-16-324 recognizes that property ownership conceptually encompasses a variety rights that potentially may be held by different persons at the same time. This comports with longstanding Michigan law. In *Eastbrook Homes, Inc v Treasury Dept*, 296 Mich App 336, 348; 820 NW2d 242 (2012) (citations omitted), this Court explained that rights in property can be analyzed by:

> using the familiar analogy that real property consists of various rights with each right represented as a stick. A person having all possible rights incident to ownership of a parcel of property has the entire bundle of sticks or a fee simple title to the property. Important rights flowing from property ownership include the right to exclusive possession, the right to personal use and enjoyment, the right to manage its use by others, and the right to income derived from the property. Indeed, "title," is defined in Black's Law Dictionary (9th ed.), as "[t]he union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property. . . ."

In *Allard v Allard*, 318 Mich App 583, 594-595; 899 NW2d 420 (2017), this Court further explained that the "so-called bundle of property rights can include many diverse forms of property interests."[6]

This case involves the lease of a portion of the subject property to DMG. Michigan law has long held that a "lease is a conveyance by the owner of an estate to another of a portion of his interest therein for a term less than his own for a valuable consideration, granting thereby to the lessee the possession, use and enjoyment of the portion conveyed during the period stipulated." *Minnis v Newbro-Gallogly Co*, 174 Mich 635, 639; 140 NW 980 (1913). Our Supreme Court explained in *Grinnell Bros v Asiuliewicz*, 241 Mich 186, 188; 216 NW 388 (1927):

> There goes with every rental of premises the right of beneficial enjoyment by the tenant for the purpose for which the premises are rented, at least to the extent disclosed to the lessor at the making of the lease. Such enjoyment the landlord may not destroy or seriously interfere with, in use by himself or permitted use by others, of any part of the premises occupied in conjunction therewith.

This Court similarly has explained that a "lease is a conveyance by the owner of an estate of a portion of the interest therein to another for a term less than his own for a valuable consideration." *De Bruyn Produce Co v Romero*, 202 Mich App 92, 98; 508 NW2d 150 (1993). "A lease gives

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[6] Similarly, in *Rafaeli, LLC v Oakland County*, 505 Mich 429, 471 n 101; 952 NW2d 434 (2020) citations omitted), our Supreme Court referred to property rights as a "bundle of sticks" that "range from a property owner's right to use or enjoy the property, the right to eject others from the property, and the right to dispose of the property altogether."

the tenant the possession of the property leased and exclusive use or occupation of it for all purposes not prohibited by the terms of the lease." *Id*. Leasing one portion of a building grants the tenant possession of that portion of the building and no more. See *Forbes v Gorman*, 159 Mich 291, 294-296; 123 NW 1089 (1909) (holding that the lessor conveys to the lessee the absolute dominion over the premises leased for all purposes not inconsistent with the lease.)

To properly interpret and apply § 50-15-31, we must determine to whom the term "owner" applies in this case. The record indicates that certain business entities and later Motown Construction Partners, LLC held legal title to the Broderick Tower at times relevant to this case. Around 2004, DMG's predecessor in interest and affiliate, US Outdoor Advertising, Inc., entered a lease with the building's owner for use of the Broderick Tower's east face for ad space. With the owner's approval, US Outdoor Advertising, Inc. applied for a variance which the Detroit Building and Safety Engineering Department denied. US Outdoor Advertising, Inc. then petitioned the ZBA and appealed that decision. The ZBA held a public meeting after which it made findings and granted US Outdoor Advertising, Inc. a nonconforming use variance to use its leased portion of the Broderick Tower for changeable ad space. The ZBA's decision and later amended decision unequivocally indicate that the ZBA granted the variance to US Outdoor Advertising, Inc., the lessee of the Broderick Tower east face, for a nonconforming use as ad space. The ZBA's 2004 decision granting the variance indicates that it properly recognized the distinction between the building owner's legal interest and the lessee's interest that had been conveyed to US Outdoor Advertising, Inc. for whose benefit the ZBA granted the variance.

DMG took over the lease, and as explained previously, under Michigan law, it held absolute dominion over the leased portion of the Broderick Tower. By leasing the east wall portion of the property to DMG, the building owner conveyed its interest in possession and use to DMG for the period of the lease. The record reflects that DMG held its lease interest in that portion of the property continuously. The property owner extended the lease to 2019; and later, the building owner, Motown Construction Partners, LLC, further extended the lease term to 2032. Although DMG has not held legal title to the subject property, the record reflects that it owned a beneficial interest in the leased property with the right to exclusively possess, use, and enjoy it for ad space under the nonconforming use variance. Accordingly, DMG must be understood as an owner as defined under § 50-16-324's definition of the term "owner," for purposes of interpreting and applying the City's zoning ordinance provisions in § 50-15-31. The circuit court, therefore, did not err by concluding that DMG constituted an "owner" under § 50-16-324's definition, and did not err by considering DMG's conduct for determination of the abandonment issue.

The ZBA's and the City's argument that abandonment is determined by only examining the conduct of the "dominant owner" lacks merit because it disregards § 50-16-324's definitional distinctions that must be understood and applied for proper analysis and application of § 50-15-31. Indeed, proper analysis leads to the conclusion that DMG constituted the dominant owner because the legal title owner had conveyed by lease to DMG the portion of the property over which DMG had the right to possess and exercise its dominion and control. The circuit court correctly ascertained that the ZBA based its reconsideration decision on a mistake of law because the ZBA

failed to properly recognize that DMG constituted an owner under § 50-16-324 whose conduct had to be considered for determination of the abandonment issue.[7]

The ZBA and the City argue further that the circuit court erred by considering DMG's conduct and not solely the title owner's conduct to determine whether the presumption of abandonment had been rebutted. They assert that the title owner's conduct indicated an intent to abandon the variance because it accepted the historic preservation tax credits and that alone signified the abandonment of the variance. They contend that the circuit court should have deferred to the ZBA's factual findings. They argue that the circuit court erred by concluding that the ZBA's decision lacked support by competent, material, and substantial evidence in the record. We disagree.

Contrary to the ZBA's and the City's argument, analysis of the ZBA's reconsideration decision reveals that its mistake of law regarding the determination of the "owner" led to its misapplication of § 50-15-31. By adopting the City's mistaken "owner" analysis, the ZBA failed to consider the most relevant evidence and focused on only certain aspects of Motown Construction Partners, LLC's conduct when it should have considered the evidence of DMG's conduct.

Under § 50-15-31(1), a nonconforming use is "presumed abandoned and its land use rights extinguished" if, among other things, "[t]he owner has indicated, in writing or by public statement, an intent to abandon the use[.]" Under § 50-15-31(2), "[e]vidence that a use has been discontinued, vacant or inactive for a continuous period of at least six months," constitutes evidence of abandonment. Section 50-15-31(3), however, provides that the presumption of abandonment may be rebutted by the owner upon a showing that the owner a) maintained "the land and structure in accordance with all applicable regulations . . . and did not intend to discontinue the use, b) maintained all applicable licenses, c) filed all applicable tax documents, and d) demonstrates that during the period of inactivity the owner: 1) actively and continuously marketed the land or structure for sale or lease; or 2) engaged in other activities that would affirmatively prove it had no intent to abandon.

The record in this case indicates that DMG never indicated in writing or by public statement that it intended to abandon the variance. To the contrary, it indicated its intent to use and not abandon it. Nevertheless, evidence established that, for a period exceeding six months, DMG ceased using the Broderick Tower ad space at the request of the building owner, Motown Construction Partners, LLC, for renovation of the building. From this evidence, the circuit court could determine that the presumption of abandonment applied. The circuit court did not err in this regard.

The circuit court then considered whether DMG rebutted that presumption. For determination of that issue, the circuit court reviewed and analyzed the record evidence. The

[7] The ZBA and the City assert without citation that it "would be legally impossible for the City to grant a use variance to anyone other than the property owner." This bald assertion lacks merit because it too fails to understand and disregards the significance of § 50-16-324's definitional distinctions.

evidence established that DMG held the lease and exercised its rights under the lease and the variance by installing and changing advertising from 2006 to 2012 on the portion of the Broderick Tower that it leased. When requested by the building owner to not use the leased space for the period of renovation, DMG complied in October 2012. The record indicates that DMG became aware of the building owner's federal historic preservation tax credit approval and recapture period in early 2013. The building owner advised DMG that it intended to appeal the NPS decision regarding nonuse of the building's wall for advertising. The record indicates that Motown Construction Partners, LLC petitioned for an amendment of its renovation project's certification and communicated its intent that DMG be permitted to enjoy its lease and variance, but the NPS declined to grant the request.[8] Record evidence also established that, upon learning of the NPS decision, DMG communicated with the Detroit Building and Safety Engineering Department that its nonuse of the ad space should not be construed as an abandonment of the variance or its permits and approvals, and DMG claimed the right to maintain its right to use the ad space on the Broderick Tower. DMG also applied for and the Detroit Building and Safety Engineering Department issued it licenses in 2014 for ad signage in downtown Detroit including for the Broderick Tower.

The record reflects that, in 2015, the Detroit Building and Safety Engineering Department did not issue DMG licenses for any of its downtown Detroit locations. That prompted DMG through its attorneys to communicate with the City's Law Department, and DMG and its attorneys met with representatives of the Detroit Building and Safety Engineering Department and Law Department and later sent further correspondence all of which indicated that DMG did not intend to abandon the variance. In 2016, in response to DMG's inquiries, the Detroit Building and Safety Engineering Department sent DMG a zoning verification letter that confirmed that the ZBA had granted DMG a nonconforming use variance and entered an order that authorized DMG to use the Broderick Tower for ad space. Then, DMG negotiated an extension of the lease under which the building owner agreed that, upon termination of the NPS restrictions, DMG's rights to use the Broderick Tower for ad space would automatically revive and extend to 2032.[9]

The circuit court observed that the evidence also established that DMG had maintained the land and structure for its intended use and never intended to discontinue the use. The circuit court noted that DMG had never been cited for violation of any regulations, DMG had made significant efforts to maintain the applicable licenses, DMG marketed the property for ad space leasing, and DMG engaged in other activities indicative of its intent not to abandon the variance. Under Michigan law, "[t]he necessary elements of 'abandonment' are intent and some act or omission on the part of the owner or holder which clearly manifests his voluntary decision to abandon." *Rudnik v Mayers*, 387 Mich 379, 384; 196 NW2d 770 (1972).

[8] This evidence also contradicts the City's and the ZBA's argument that the building's title holder intended the abandonment of the variance.

[9] This evidence also contradicts the City's and the ZBA's argument that the building's title holder intended the abandonment of the variance.

IV. CONCLUSION

The record evidence in this case supports the circuit court's analysis and conclusion that DMG rebutted the presumption of abandonment. The evidence does not establish that DMG intended by act or omission to voluntarily abandon the variance.

Proper analysis of the record evidence and the correct application of § 50-15-31, reveal the erroneous nature of the ZBA's reconsideration decision. The ZBA's mistake of law regarding the owner led it to improperly consider the building owner's conduct to the exclusion of consideration of DMG's conduct. That error led to the improper conclusion that the building owner had abandoned the variance and failed to rebut the presumption of abandonment. Because the ZBA engaged in misdirected analysis based upon a fundamental mistake of law, its conclusion lacked support by competent, material, and substantial evidence.

We hold that the circuit court correctly interpreted and applied the law and supported its decision with competent, material, and substantial evidence. The circuit court, therefore, did not err by reversing the ZBA's reconsideration decision. Accordingly, we affirm the circuit court's decision.

In its cross-appeal, DMG asserts that the circuit court erred by ruling that the ZBA did not deprive DMG of procedural due process when it reconsidered its ruling, by ruling that the estoppel doctrine did not apply to the City precluding it from asserting that the variance had been abandoned, and by ruling that the City had not violated DMG's commercial speech rights. Because we affirm the circuit court's reversal of the ZBA's reconsideration decision, we decline to address the additional issues raised by DMG because our affirmance of the circuit court's decision renders moot any need to address those issues, the determination of which would not result in the grant of any further relief. Issues are rendered moot when they present nothing more than abstract questions of law, the determination of which, would not lead to the granting of relief. *In re Detmer/Beaudry*, 321 Mich App 49, 56; 910 NW2d 318 (2017). A court, nevertheless, may consider a moot issue if it presents an issue of public significance, and disputes involving the issue are likely to recur, yet evade judicial review. *Id*. In this case, the record reflects that DMG raised these three issues as alternative grounds for reversing the ZBA's reconsideration decision. Those issues had no bearing on the determination of the primary issue whether the variance had been abandoned. Because we have determined that the circuit court properly reversed the ZBA's reconsideration decision, determination of DMG's alternative grounds for reversing the ZBA's erroneous reconsideration ruling is unnecessary and we are not convinced that the issues are of public significance requiring judicial review.

Affirmed.

/s/ James Robert Redford
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly