



**RESOLVED**, that the minutes of the ZBA meetings shall be made available to the public after approval by the ZBA at the next regular meeting and will be posted on the Village’s website within 7 business days after approval; and

**RESOLVED**; that the Village Clerk is hereby directed to post the ZBA meeting schedule on the official bulletin, on the Village website, and to provide a copy of the schedule to the local media.

Motion to adopt the resolution setting the ZBA meeting schedule was made by Bethany Zerbe, seconded by Melissa Hennen, and carried with the following vote (The original schedule was revised to move the July 5<sup>th</sup> meeting to July 26, 2022 due to the 4<sup>th</sup> of July holiday.):

Ayes:	5
Nays:	0
Abstain:	0

**REVIEW APPEAL SUBMITTED BY BOYLAN CODE ON BEHALF OF TILTON HACIENDA APARTMENTS, LLC**

A Notice of Appeal from Boylan Code, Attorneys at Law, dated May 19, 2022 was received by the Village of Perry on May 23, 2022 appealing a letter from Village of Perry’s Zoning Enforcement Officer claiming that Travers Place at 55-57 South Main Street is being unlawfully utilized for residential purposes. In 1983 there were 23 apartments at Travers Place. The letter from Boylan Code states that there are 22 apartments today. Apartments exist on three floors, including the first floor.

Don Roberts, Zoning Enforcement Officer for the Village of Perry, explained that he has entered the building for inspections as the Wyoming County Code Enforcement Officer. The statement regarding legal use was based on fire safety inspections and operational permits. These permits are based on the building’s actual use and has nothing to do with zoning code. The building code does not correspond with local land use regulation. In a letter from Mr. Roberts, he explained the difference between building code, land use regulation, and zoning/property maintenance code as it pertains to the Village of Perry Zoning Law. The Village has never been able to find proof that the building exists as a pre-existing non-conforming use. There was never a zoning permit issued to Travers Place.

Mayor Hauser spoke on the topic, informing attendees that residential use is not permitted on the first floor in a C1 district. There was some ambiguity in previous versions of the zoning law, so several revisions have been made. The whole zoning law was updated in 2018 with another update in 2021.

The Village of Perry formed a Problem Properties Task Force about five years ago, bringing together the Chief of Police, DPW Superintendent, Zoning Officer, Property Maintenance Officer, Village Attorney, and 2 members of the Village Board. The origin of this task force stemmed from Travers Place. Mayor Hauser stated that the property has been considered a “problem property” for a very long time. There is an extremely high number of police calls on a regular basis and many reports of unsafe conditions in the units. If an officer, present for a call, observes unsafe conditions, they have photos and body camera footage and can alert the county about code compliance.

With the disallowance of first floor residential use of all properties in the C1 district, the Board considered whether the language was strong enough in the law. The zoning language in the code was

revisited, which takes time. Mayor Hauser wants the ZBA to understand that there is no relationship between the property listing coming up for sale with the action of sending a letter of noncompliance, adding that Travers Place has been on the Village's radar for years and it was simply a matter of strengthening the laws in order to move forward.

The Letter of Appeal from Boylan Code states that converting the first floor for commercial purposes would "result in yet another empty commercial space on Main Street" which is not in the best interest of the Village. Mayor Hauser responded by saying that a number of years ago, 70-80% of Main Street was empty buildings. Now there are 6 or 7 vacancies. The mayor also pointed out that another property on Main Street received a letter related to residency on the first floor and the Village has worked with property owners to address property maintenance. Mayor Hauser is aware that all other owners on Main Street have business plans and plans for occupancy (for example, the old Sears building, post office, and Silver Grill.) The old Ultimate is currently undergoing renovations. In distinguishing between "affordable, available, and attractive," 36 new businesses have been added since 2005, adding 100 new workers downtown, demonstrating that there is momentum, a demand, and viable business plans for first floor commercial spaces. With Travers Place not having been issued a zoning permit, this is unlike many other buildings in the commercial district that have obtained a number of permits over the years. If there was ever an addition or expansion planned for the property, it would have triggered a conversation, but that has never happened.

First floor residential spaces in the C1 commercial district creates a lot of challenges by breaking up the downtown area that Perry has worked hard to improve. Breaking up this synergy is unfair to neighboring businesses that could attract customers. The intent is to support economic activity and strengthen and clarify the enforcement of laws. The fact that 9 new businesses were added in Perry during the Covid pandemic speaks to the viability of the downtowns space. There have been millions of dollars invested in the last 15 years in upstairs apartments and new storefronts, proving that if an owner invests, tenants can run a successful business. Travers Place apartments does not appear to have invested over the years (since 1983) beyond satisfying code or fire safety violations.

Another challenge for the C1 district is parking. The number of residential apartments at 55-57 South Main Street vs. the number of available parking spaces on the property could potentially be a code violation. The Village is also looking at ways to improve parking on Main Street. It was clear that the mayor fully supports upper floor residential use but feels that first floor residential use causes problems in a commercial district.

Village Attorney DiMatteo let the ZBA know that they would be making a determination on whether first floor residential apartments in Travers Place is a prior non-conforming use. A Public Hearing will be scheduled to view the laws and to make a determination. At the Public Hearing, the Village Attorney and Boylan Code, representing Tilton Hacienda Apartments, LLC, owner of Travers Place, will provide as much information as possible to help the ZBA make a determination.

Old zoning laws were joint between the Village of Perry and Town of Castile. The Town of Castile had a fire and everything there burnt at the time, so a lack of records makes this a problem. There are old

newspaper articles, but are they of any value? The goal of tonight is to understand the concerns to be better prepared for the next meeting.

Chairman Czyryca asked the Zoning Board of Appeals if they accept the document (the letter of appeal packet from Boylan Code). Is the issue succinctly framed to start to make a determination? The ZBA would like to see the zoning laws throughout history. The ZBA is also interested in the history of ownership of the building and what the owners did with the property at the time. A record will be put together to present at the night of the Public Hearing. When the Public Hearing is closed, the Board has 62 days to make a decision.

Motion to accept the letter of appeal from Boylan Code for consideration was made by Zach Kowasz, seconded by Chairman Czyryca, and carried with the following vote:

Ayes:	5
Nays:	0
Abstain:	0

Motion to cancel the July 5<sup>th</sup> meeting (due to the holiday and to allow parties additional time to gather information) and schedule a Public Hearing on July 26<sup>th</sup> at 6:30 pm was made by Zach Kowasz, seconded by Bethany Zerbe, and carried with the following vote:

Ayes:	5
Nays:	0
Abstain:	0

#### **NEW BUSINESS**

Per Don Roberts, there might be another variance coming on Walker Road to tear down and rebuild a home. The owner wants to rebuild behind the old barn, but a variance would be necessary for an accessory building in the front of the lot.

With no further business, Melissa Henchen made a motion to adjourn the meeting at 7:50 pm which was seconded by Zach Kowasz and carried.

Respectfully submitted,  
Christina Slusser, Zoning Secretary