

**VILLAGE OF PERRY  
ZONING BOARD OF APPEALS MEETING  
JULY 26, 2022**

Present:           John Czyryca, Chairman                               Joe Rebisz, Alternate  
                      Zach Kowasz, Member                               Eleanor Jacobs, Alternate  
                      Bethany Zerbe, Member                              Don Roberts, ZEO  
                      Meggan Quartz, Member                             Christina Slusser, Zoning Secretary

Also Present:   David DiMatteo, Village Attorney           Eli McWhinney, Attorney  
                      Rick Hauser, Mayor                                 Zak Jantzi, DiMatteo’s Office  
                      Holly Castleman, Forbes Court Reporting

Guests:           David Hou, Boylan Code                               Jill Gould, Business Owner  
                      Joe & Estella Safford, Applicant                Mohamed Abid, Business Owner  
                      Greg O’Connell, Business Owner                Mike Bellamy, Business Owner  
                      James Reynolds, Planning Board Member

Chairman Czyryca called the meeting to order at 6:35 pm and led in the Pledge of Allegiance.

**MINUTES**

Minutes from the last meeting were reviewed. Bethany Zerbe made a motion to approve the minutes for June 14, 2022 which was seconded by Zach Kowasz and carried with the following vote:

Ayes	4
Nays	0
Abstain	0

**PRELIMINARY REVIEW – 124 NORTH CENTER STREET**

An application was received by Deborah Yost of Yost Neon Displays, Inc. for a variance for sign pole height at 124 N. Center Street. The pole is existing and at a height of 22’ 5”. The applicant wishes to keep the existing sign pole and replace the signs with Family Dollar/Dollar Tree signs. With nothing additional to address, motion was made by John Czyryca to refer the application to the Wyoming County Planning Board which was seconded by Meggan Quartz and carried with the following vote:

Ayes	4
Nays	0
Abstain	0

**PUBLIC HEARING – 61 WALKER ROAD**

A notice of public hearing dated June 24, 2022 was published in the Perry Herald on June 30, 2022. An application was submitted by Joey Safford of 61 Walker Road for a variance under section 490-35 of the zoning code to build a new residential home in the rear lot behind an existing accessory building. Don, as Zoning Enforcement Officer, explained that the house suffered a fire and there is more room in the back of the lot to replace the home rather than repairing the structure that suffered damage. The existing accessory building is a garage which will remain as is since it did not sustain any damage. All other setbacks will be met. There was some concern about runoff due to the decline of the land. The property is surrounded by farmland on the back side but it seems the only runoff would be to the accessory building. Applicant and property owner, Joe Safford, informed the ZBA that he will not be altering the hill side and confirmed he does have plans to demo the existing house. Once the current house is demoed, there will be a straight path to the house. Conditions were considered to avoid having 2 houses on a single parcel. Motion was made by John Czyryca to grant the variance under the condition that the original structure is not inhabited and no other dwelling units can exist in front of the new one. Zach Kowasz seconded the motion and it was carried with the following vote:

Ayes	4
Nays	0
Abstain	0

**PUBLIC HEARING – 55-57 SOUTH MAIN STREET**

A Notice of Public Hearing dated June 14, 2022 was published in the June 30, 2022 edition of the Perry Herald. A Notice of Appeal was submitted by Boylan Code who represents Tilton Hacienda Apartments, LLC, the owners of Travers Place at 55-57 South Main Street. The notice is appealing the decision of the Zoning Enforcement Officer denying lawful first floor residential use of Travers Place. The hearing will address whether or not lawful pre-existing non-conforming use exists of having residential apartments on the first floor of Travers Place. The ZBA and other attendees listened to arguments for each side.

**ATTORNEY DAVID HOU**

Attorney David Hou of Boylan Code, representing the owners of Travers Place, was the first to speak on the issue. Mr. Hou handed out a letter written by his client, Lorraine Tilton, along with articles from the Perry Herald [Marked Exhibit 1]. Mr. Hou pointed out a Perry Herald article from 1983 demonstrating the importance of the ribbon cutting at Travers Place, noting that this is the strongest circumstantial evidence that its use was welcomed, and mentioned the many dignitaries who were involved.

The building at 55-57 S. Main Street was originally designed as a hotel but failed. Other attempts at commercial use, such as a hardware store, also failed, making the point that the building has not been successful for commercial use. The building contains the same number of apartments now as it did then. The building has been a residence for

over 40 years and changing that would be a significant burden on his clients. This would mean evicting people who call the building their home. There has been no indication of abandonment of residential use in 40 years.

Mr. Hou claimed that his clients were verbally advised in January that it was a non-conforming use. He added that his clients were unable to attend the hearing and if additional information is presented tonight, he would like a chance to offer rebuttal comments.

Mr. DiMatteo pointed out that in a letter submitted from Tilton Realty, it says there was a verbal request on January 12<sup>th</sup> for a letter from the village, but to the knowledge of the Zoning Enforcement Officer, Don Roberts, and Village Clerk and Zoning Secretary, Christina Slusser, no request was received. The letter sent by Don Roberts, which was contained in the original packet from Boylan Code was [Marked Exhibit 2].

In the local law adopted last year, it prohibits the conversion of first floor residential, but this was not a conversion. The law does not say anything about non-conforming use and no one has been able to identify a permit from 1983. (A request was made for the Village Clerk to look for any permits from the year 1983.)

Mr. DiMatteo asked if there were any records upon the Tilton's purchasing the property in June of 2012, but Mr. Hou was unsure if Boylan Code represented Tilton Hacienda at that time. The Tilton's attorney stated that bank records and tax records support their position and documentation from First Niagara Bank dated April 26, 2012, who did their own diligence, believed that the property was in lawful use.

Chairman Czyryca questioned whether the statute of first floor occupancy was in place in 2012. Mayor Hauser believes it was but the laws have since been strengthened and clarified, in 2018, then again in 2021. Upper floor residential has been permitted but another line had competing language. Chairman Czyryca commented that if the Tilton's purchased the property when the law was in place, it would be a self-created hardship. He also asked if there was any evidence of first floor occupancy prior to 2012 and it was confirmed that the model unit during the ribbon cutting was on the first floor. According to the article, 1,000 people toured the building that day. There are reportedly 9 apartments on the first floor.

#### MAYOR HAUSER

Mayor Hauser stepped up to speak, handing out a memo in response to the Boylan Code letter, saying that this has been an important topic for the Village. The Mayor believes the missing piece of information in Boylan Code's letter is context. The ZBA is aware that the Village Board has been working on downtown revitalization for years, including strengthening policies to support economic activity in the downtown area. Over the years there have been numerous incentives for business owners due to the Village aggressively seeking grant funds and providing tools for renovations. The goal

was to establish a strategic vision, then implement. The Comprehensive Plan, adopted in 2015, required zoning to be brought into line. Perry holds events that attract visitors and customers and support small businesses. Business owners have stepped up during this time as well, making big investments in the downtown area. Since 2006, 36 net new businesses have been gained along with over 100 new employees and 24 upper floor apartments.

The local law which disallows first floor residential spaces in the C1 district predates the listing of the property and the two have no relationship. In 2018, after a year of meetings and working with a zoning consultant, the Village updated zoning laws to be consistent with the Comp Plan. The intention of the law was to strengthen the previous use table. In 2021 at the advice of the zoning officer, the Village corrected language to remove inconsistencies related to first floor apartments in the C1 district.

About five years ago, a “Problem Properties Task Force” was created to address chronically challenging properties adding that Travers Place epitomizes the reason that first floor residential in a commercial district is a bad idea. Mayor Hauser quoted section 490-45 of the zoning code which states that the purpose of the Central Business District is “to provide areas in which to shop, dine and conduct business, generally within enclosed buildings, providing a focal point for the economic, social and cultural life of the community.” Continuity is important. Continuous first floor businesses creates synergy. On Main Street, there are 19 continuous storefronts before coming to the newly renovated 39 S. Main Street then to Travers Place.

Mayor Hauser went on to address the part of Boylan Code’s letter that states that Travers Place as a commercial space would result in “yet another empty storefront” commenting that there is a big difference between “empty” and “affordable, available, attractive.” Mayor Hauser provided updates for the “12 vacant first floor commercial storefronts in close proximity” that were noted in the letter. He added that Perry is a case study for revitalization and that Perry’s story has been shared nationwide. Revitalization is a process which involves a lot of ongoing continuous and deliberate effort which everyone in Perry has taken very seriously.

In Exhibit G, Boylan Code calculates that the ground floor represents 58% of the rentable space but the calculation comes from using the gross square footage rather than the net rentable space. The report of gross income from rent earned on first floor apartments compared to the remaining apartments also seems misleading. The feasibility report makes no attempt to calculate commercial income that would replace lost residential income.

In Mayor Hauser’s conclusion, he stated that Perry is committed to supporting building owners and business owners and would find it a pleasure to work with the new owner or current owner to identify grants to support reinvestment just as the Village is doing with others. The Mayor has had two personal inquiries on the property and neither

have first floor residential in mind, which could be good news. The Mayor's "Memo to the ZBA regarding the Tilton Hacienda Apartments LLC Notice of Appeal" was later marked as [Exhibit 7].

#### GREG O'CONNELL

Greg O'Connell, who has been a real estate developer since 1967, addressed the ZBA. Mr. O'Connell spoke a little about his background and how he got his start with developing and renovating in Brooklyn but ended up in Geneseo and then Perry. He loves to bring historic buildings back to life. Mayor Hauser approached Mr. O'Connell asking him to get involved in Perry. Mr. O'Connell observed the enthusiasm of Main Street and took advantage of an auction to purchase buildings. He confirmed Mayor Hauser's statement that the Village is willing to work with business owners by utilizing grant funds. Mr. O'Connell has 8 apartments and 7 storefronts which are all rented. He has no doubt that there is a demand and supports that Travers Place could be reverted back to what it could be. He believes that since it was a store structurally, it shouldn't cost much to renovate. He added that the owners might want to advertise the possibility of bringing a storefront back and pitch it as the potential of what it could be.

#### JILL GOULD

Jill Gould is the owner of Butter Meat Co. on Main Street. She stated that she feels very passionate about this topic. The commercial district is a small, dense, intentional district with resources created by local governments. When starting her business, she explored a lot of other areas: Batavia, Geneseo, Rochester, Buffalo, etc., looking at the availability and cost of spaces. Perry had good available spaces at the time. Mr. O'Connell is the owner of the building that her business is in. Availability is important in attracting small business owners, as is resiliency. The attractability of Letchworth State Park had great exposure which led to the momentum she has experienced. Ms. Gould now has 4 part time employees and has enjoyed creating the opportunity for jobs. Main Street has been a commercial district since it has been created. It is important for the area to generate sales tax dollars.

From North Main Street, Ms. Gould expanded a commercial space on Covington Street. She saw a need to create a space for people to try their businesses. So far, she has had 4 entrepreneurs with one that was so successful, they rented an empty space on Main Street. Wyoming County offers training programs and funding programs for business owners. The IDA and Jim Pierce have a lot to offer someone getting started as a business owner.

Jill Gould has also purchased a building on S. Main Street, better known as the old "Ultimate." Renovations took place to convert the upstairs to apartments. Changes were needed to bring the building up to code. In June, it was finished and the apartments are rented. The downstairs is listed for rent and she has been shocked at the inquiries, noting that there is definite interest, but she wants to find the right tenant.

Ms. Gould had some magazines to enter as Exhibits. [Exhibit 3: edible Western New York & Erie Lakeshore, edition No.23 Summer 2022] The magazine quotes Perry as a destination for its “curiously hip revitalized Main Street.” [Exhibit 4: Rochester Home, July/August 2022 edition] This magazine shows 4 full pages highlighting Main Street business and calling Perry “a charming village with a little bit of everything to offer. . . historic & charming.” [Exhibit 5: Buffalo Home, July/August 2022 edition] This magazine features the same 4 full pages seen in Rochester Home. [Exhibit 6: Welcome to Perry Itinerary Map] This map of Perry highlights local points of interest.

#### MIKE BELLAMY

Next to speak was Mike Bellamy who is in the vacation rental business. He has 20 Airbnb’s in the area. Mr. Bellamy heard about the buildings across from Travers Place and found them as an opportunity. The Village has helped with grants and he hopes to offer apartments on the 2<sup>nd</sup> floor with a commercial space downstairs. He has had multiple offers already; people asking how much rent will be. In Mr. Bellamy’s experience, it is pretty easy to put together a commercial space on the first floor and he can testify that there is money to be made. He wants Travers Place to see this as an opportunity. Next door, Mohammed Abid is in the early stages of starting a Mediterranean restaurant and he likes the direction that things are going.

#### ATTORNEY DAVID DIMATTEO

David DiMatteo, attorney for the Village of Perry, was next to address the room. In the letter from Don Roberts advising the owners of Travers Place that they are not in compliance, this is his first knowledge of any request that Travers Place is not prior non-conforming. 55-57 South Main St. is unequivocally located in a C1 district, zoned for commercial use. Section 490 of the zoning code states that it “shall be impermissible to convert first floor to residential purposes.” The petitioner claims they have prior pre-existing use but have yet to show that they have ever received anything from the Village of Perry that thEY are a prior non-conforming use.

In 1951, the first Village of Perry code was adopted. The ordinance established the general business district situated along Center St. and Gardeau St. Mr. DiMatteo went on to cover the timeline of the building which was a hotel in 1924. The Hotel Commodore was severely damaged from a fire. It was bought, repaired, and sold by the estate. The next owner filed for bankruptcy. Bill Peddle converted the building to a hardware store which was later True Value Hardware in 1976.

In 1970, the Village of Perry enacted a zoning code allowing for operation of hotels and motels. The code was silent to prohibited first floor residence and has a separate apartment district section. Richard Betts determined that it was not sustainable as a hardware store and converted the building to living facility apartments rather than a hotel. The conversion that took place would require a special use permit according to the zoning laws set in 1970 but no such permit could be found.

Local law 5 of 1986 has the same ordinance for the purpose of this appeal. It does not alter the zoning district. The 1970 or 1986 zoning laws did not result in anyone issuing a non-conforming use permit on the property.

Betts transferred the property to Rich Plan of Lake Plains Inc. in 1990. Local law 4 of 1994 was introduced to protect the character of the village and to ensure that structures are harmonious. The 1994 definition of a multiple dwelling was a residence for 3 or more families living independently of each other. There is a separate definition of a hotel. In 1994, the zoning map established the C1 district which is in existence today. It is intended to provide areas to shop, dine, and conduct business. The only way to operate would be as a multiple dwelling unit. Travers Place would not have been able to comply with the requirements of the R district. Without a non-conforming use permit, it would have been illegal under the 1994 code. Rich Plan sold in 2002.

In 2007 the code was amended. The majority of the language was carried over but the term non-conforming use was amended. The code also eliminated 2 of the "R" districts. The owner of Travers Place would be required to have a permit or be in the requirements of the R2 district with less than ¼ acre of property.

Local law 4 of 2018 amended the code in an effort to align with the master plan adopted in 2017. Under the 2018 code, residential uses are prohibited on the first floor except in places of new development. The 2018 law was refined in 2021 to clarify language and added a sub section that the first floor must be and stay commercial.

ZBA member Kowasz requested a copy of what Mr. DiMatteo read. He questioned who would have granted a permit if one was issued. Mr. DiMatteo said that it depends on the use and depends on the statute of the code. A special use permit can sometimes be issued by the ZBA, Village Board, or Planning Board – it is code dependent. A special use permit would have been part of a meeting. The ZBA requested that minutes try to be obtained relative to when a special use permit would have been issued. The Village Clerk will attempt to locate minutes, as the clerk is currently unsure if they exist.

ZBA member Zerbe requested that Attorney Hou try to locate the purchase agreement which may have contained evidence of a title search and perhaps a permit if one were issued. Mr. Hou will talk to his clients to try to obtain the documents.

Chairman Czyryca questioned whether special use permits cancel upon sale of a property and if they need to be reapplied for. Don Roberts, Zoning Officer, responded that typically if a property transfers ownership, a special use permit should be transferred to the new owner by application and nothing could be found there either.

Mr. Hou believes that the property is a prior non-conforming use, not requiring a special use permit. He stated that just because a permit cannot be located, does not mean it

did not exist at some point. If prior non-conforming use, you wouldn't necessarily see a record of a permit issued. Laws change but the use did not. He gave the example of an existing gas station in an area that was built up around it, also mentioning that the absence of proof does not mean it was illegal. A non-conforming use has vested rights. Mr. Hou has been involved with revitalization projects and found it disturbing that his client's building is the subject of a problem property. He confirmed continuous use as an apartment building and stated whether they are luxury apartments or low income, that that should not play into it.

Mr. DiMatteo pointed out that Mr. Hou kept saying that it was a permitted use, but nothing suggests that this was a permitted use under the zoning law. Apartments on the first floor were never a permitted use. Mr. Hou questioned why there would be an article in 1983 celebrating the opening if it was an illegal use. It could have been an oversight by officials at that time. It is also speculative that a newspaper article proves legality.

The ZBA contemplated the adjournment of the Public Hearing and an appropriate date. Attorney DiMatteo confirmed he is able to attend a meeting next Tuesday and Attorney Hou has someone from his office that can attend. Motion to adjourn the Public Hearing to August 2<sup>nd</sup> was made by Zach Kowasz, seconded by Chairman Czyryca, and carried.

The next meeting, which was advertised, will be on Thursday, August 2<sup>nd</sup> at 6:30 pm. The meeting was adjourned at 8:45 pm.

Respectfully submitted,  
Christina Slusser, Zoning Secretary