

**VILLAGE OF PERRY
ZONING BOARD OF APPEALS MEETING
AUGUST 2, 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
 Sue Ryckman, Forbes Court Reporting

Guests: Robert Marks, Boylan Code

Chairman Czyryca called the meeting to order at 6:45 pm and led in the Pledge of Allegiance.

MINUTES

Minutes from the last meeting on July 26, 2022 were reviewed. There was one clarification under the section titled “Attorney David DiMatteo.” The date of the letter mentioned in the section was March 21,2022. No change to the minutes was proposed. Motion to accept the minutes for July 26, 2022 was made by Bethany Zerbe, seconded by Zach Kowasz, and carried with the following vote:

Ayes	4
Nays	0
Abstain	0

PUBLIC HEARING – 55-57 SOUTH MAIN STREET (CONTINUED)

First floor occupancy has been at Travers Place for a while, but when was it permissible? The village has no document of a permit; no record of anything issued. In the event one is audited by the IRS, the burden of proof is on “you.” Travers Place needs to show evidence that they are in good standing. Mr. DiMatteo doesn’t know if first floor was ever permissible as a residential use. Before zoning, the property was a hotel. A hotel is not residential. The building was transformed in the 70’s to a hardware store which is also commercial. Commercial use continued into the 80’s and by then zoning laws were in place and first floor use was impermissible.

A full appraisal was presented [Exhibit A] which was a request placed by Bethany Zerbe at the previous meeting. The 120 page document from 2012 mentions apartments but did not contain evidence of permits. The Village of Perry was not a party to the deed between Time Warner and Betts/Warehard (or the owner at the time). The appraisal is not done by the

Village nor does the appraisal site the authority of the Village. The appraisal says it is in a C-1 district and C-1 prohibits first floor apartments.

Laws were presented from 1950 to date. Circumstantially there is not enough evidence that it was prior non-conforming. Mr. Roberts did not receive a letter in January 2022 with request to prior non-conforming status. The Village Clerk also received no such letter. One week ago, the owners of Tilton Hacienda, in correspondence to the Village, states that they requested it, but it wasn't until Don's letter in March of 2022 that this issue first came to light.

Page 33 of the appraisal states that someone verbally spoke to the Village of Perry Zoning Department, relying on circumstantial evidence, which is not uncommon. In 1982 or 1983 it would have been the call of the Zoning Department or Building department to decide if a permit was needed; if it was ever sought. The Village Clerk cannot find evidence of a hearing or meeting. According to a 1984 case law, it places the burden to establish prior non-conforming use on the owner and not the Village. They must show there is a preexisting right to a use that violates a local law.

Per Mr. DiMatteo, first floor residential was never a permitted use in the district under Village of Perry regulations, handing out a timeline of events. The document to the Village of Perry Zoning Board of Appeals Re: Village of Perry's Finding of Fact – Traver Place Apartments is [Exhibit B].

Zack Kowasz again raised the question on closing documents – the appraisal of sale, abstract – none of the documents speak to whether permission was received from the Village of Perry. Mr. Marks stated that 1,000 people watched the construction and attended the opening of the apartment building. Then 40 years later, a letter is received from the Zoning Enforcement Officer stating that they do not have the authority to use the property as such, but he believes there is circumstantial evidence. Mr. DiMatteo commented that it was never permitted. It either needed to be a variance or a special use permit that doesn't appear to have ever been applied for or granted. The burden is to show that there was something issued from the Village.

Bethany Zerbe requested that Don Roberts address a comment about a building permit, as a building permit is different than a zoning permit and there is some confusing language. Any permit under a land use regulation regulates the use for the district that it is in. One regulates land use while the other regulates construction. In 1982-1983 could there have been a building permit to turn the structure into apartments? Prior to January 1984, there was no state uniform code in effect at the time. They used life safety code, which was common, but not mandated. They may have not needed to obtain a building permit. There were just requirements under the local land use regulation in effect at the time.

One would think that any business owner that would do something different than what the building was before, would check with the Village to see if it is permissible. Mr. Marks suggested that it was, but there is a lack of paper trail due to the records being 40 years old.

The county took over jurisdiction of code enforcement in about 2003. Mr. Marks questioned whether there was a knowledge that the Village of Perry had a building code official. Don Roberts stated that it would have been Paul Gibson and all records would have been done and kept in house (at the Village Hall).

Meggan Quartz informed the room that she asked about the history of Travers Place in a Facebook Group. She received comments that the owner at the time applied for grants for the residential use and it was all legal. Paper documents were requested, but the previous owners moved a lot and were not able to find anything.

Mr. McWhinney addressed the room regarding 2 case laws brought in front of a ZBA. The burden is on the petitioner to prove that they have a non-conforming use. It is not the Village's burden to prove. The 1970 ordinance was in effect in 1983. The Perry Herald article sounds like an argument of equitable estoppel. If there was oversight in the past, it does not prevent the Village from going back to rectify in the present. Based on the location, no multi-unit dwellings or apartment buildings were permitted in the district so they would have been required to have a variance or special use permit which has not been located.

Mr. Marks stated that there were members of the Board at the ribbon cutting and therefore there wouldn't have been issues with the first floor. Of the individuals mentioned, however, the Zoning Officer was not present. Non-conforming use couldn't be established if it was not legal in the first place.

Options were discussed on how to move forward. Once the public hearing is closed, the ZBA has 62 days to make a decision. The attorneys for both parties will be able to present new information for 2 more weeks. The ZBA agreed that they would like a work session to discuss everything. A decision must be filed by October 5th with the Clerk. A special meeting was suggested to be held in 3 weeks once the ZBA has all submittals.

Bethany Zerbe made a motion to schedule a work session on August 23rd at 6:30 pm which was seconded by Zack Kowasz and carried with the following vote:

Ayes	4
Nays	0
Abstain	0

Bethany Zerbe made a motion to close the public hearing which was seconded by John Czyryca and carried with the following vote:

Ayes	4
Nays	0
Abstain	0

Chairman Czyryca added that there will be no training session on the 9th. He will look for other dates when all members are available.

The meeting was adjourned at 7:42 pm

Respectfully submitted,
Christina Slusser, Zoning Secretary