

1 **MILLERSVILLE BOROUGH ZONING HEARING BOARD**
2 **LANCASTER COUNTY, PENNSYLVANIA**

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5 IN RE:

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10 : Case No. 22-04
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16 **Perry Family Land Co.,**
17 *Applicant*

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21 **DECISION**

22 1. The **Millersville Borough Zoning Hearing Board** (herein also “**Board**”), by a 3-0
23 decision, hereby **GRANTS** to the Applicant and owner of the Properties, namely **Perry Family**
24 **Land Co.** (herein also “**Applicant**” or “**Owner**”), a **special exception** pursuant to the *Millersville*
25 *Borough Zoning Ordinance* (herein also “**ZO**”) § 380-59.F (*Changes from One Nonconforming Use*
26 *to Another*) in order to allow the Applicant to change the use of a two-story commercial office
27 building into two residential rental units (herein also “**RRU**”) on the Property located in an R-1
28 Residential Zoning District at **58 West Frederick Street**, Millersville, PA 17551 (UPI#440-73537-
29 0-0000) (herein also “**Property**”).

30 2. This Decision is subject to, and the Applicant and Owner shall comply with, the following
31 **general conditions:**

- 32 A. Except as modified by this Decision, in which case the Applicant and Owner shall
33 comply with this Decision, the Applicant and Owner shall at all times comply with
34 and adhere to the evidence presented to the Board (including, without limitation, the
35 Applicant’s application, plans, exhibits, and witnesses’ testimony), all of which
36 documents are incorporated herein.
- 37 B. The Applicant and Owner shall obtain all approvals and permits that are required by
38 applicable federal, state, and local law, ordinances, codes, rules, and regulations.
- 39 C. This Decision shall be binding upon the Applicant and Owner, and their respective
40 successors, heirs, and assigns.
- 41 D. Any violation of this Decision or conditions described herein also shall be
42 considered a violation of the ZO and shall be subject to the penalties and remedies
43 contained therein, in Pennsylvania’s *Municipalities Planning Code*, or both
44 (whichever is applicable).

45 3. If this Decision is appealed, the Board reserves the right to subsequently amend or
46 supplement this Decision, findings of fact, and conclusions of law that were drafted and adopted
47 without reviewing the official transcript of the hearing in order to minimize the costs and expenses
48 for all concerned persons.

49 **FINDINGS OF FACT, CONCLUSIONS OF LAW & DISCUSSION**

50 4. R-1 Residential Zoning District regulations only permit as of right single family detached
51 dwellings.

52 5. The Property is improved with two structures, including a two story building used as
53 offices and a storage shed; and it is surrounded by a commercial use and two 2-family residential
54 dwellings as described in the Applicant's application..

55
56 6. The shed is 24 sq. ft. and is wood framed.

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58 7. The office building is 3032 sq. ft., with stud walls and wood siding; is served by public
59 gas, sewage, and water; and includes an exterior staircase to the second floor.

60
61 8. The office building was originally constructed in 1940 as a duplex residential dwelling;
62 then was used primarily as office space for nearly 30 years; and then was used by the Millersville
63 Bible Church as an office until it was sold to the Applicant, who now desires to return the building
64 to a two unit residential use (specifically 2 RRUs within the meaning of the ZO) similar to the
65 building's original residential use.

66
67 9. The Applicant testified that the proposed use will be equal or less objectionable in external
68 effects than the preexisting nonconforming use as an office building; that the building is proposed
69 to be configured as two RRUs; that the Property has direct access to the Millersville University
70 Campus; that there will be no increase in the volume of traffic as a result of the proposed use; that
71 no trucks will enter the Property; that the proposed use will not generate any excess noise or create
72 any other nuisance to the neighborhood; that there will be no increase in the amount or character of
73 any outdoor storage; that there would be no late night or early morning operations; and that the
74 proposed use is compatible with the character of the neighborhood, because a number of other
75 buildings adjacent to the Property also are used as multifamily dwellings.

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77 10. ZO § 380-59.F (*Changes from One Nonconforming Use to Another*) provides as follows:

78
79 **F. Changes from one nonconforming use to another.**

- 80 (1) **Once changed to a conforming use, a structure or land shall not revert to a**
81 **nonconforming use.**
82 (2) **A nonconforming use may be changed to a different nonconforming use only**
83 **if permitted as a special exception by the Zoning Hearing Board. However,**
84 **special exception approval is not needed for a simple change within an**
85 **existing building from one lawful nonconforming retail store use to another**
86 **retail store use or from one lawful nonconforming personal service use to**
87 **another personal service use, provided that the new use complies with any**
88 **Zoning Hearing Board conditions that applied to the previous use and is not**
89 **more objectionable in external effects than the previous use.**
90 (3) **Where special exception approval is required for a change of a**
91 **nonconforming use, the Board shall determine whether the applicant has**
92 **provided sufficient proof to show that the proposed new use will be equal or**
93 **less objectionable in external effects than the preexisting nonconforming use**
94 **with regard to:**
95 (a) **Traffic safety and generation (especially truck traffic);**
96 (b) **Noise, dust, fumes, vapors, gases, odor, glare, vibration, fire, hazardous**
97 **substances, and explosive hazards;**
98 (c) **Amount and character of outdoor storage;**
99 (d) **Late-night and early-morning hours of operation if the use would be**
100 **close to dwellings; and**
101 (e) **Compatibility with the character of the surrounding area.**
102 (4) **A nonconforming use shall not be changed to a nonconforming adult use.**

103
104 11. Applying the facts of this case to the foregoing ZO § 380-59.F, the Board is thoroughly
105 convinced that the Applicant has met all the requirements to change the existing nonconforming use
106 to another nonconforming use of the commercial building on the Property for 2 RRUs, particularly

107 since the new use is so similar to the building's original duplex residential use and is likely to be less
108 objectionable than the preexisting nonconforming commercial use.

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110 12. The Applicant also requested in the alternative a variance from ZO § 380-27 (*Table of*
111 *Permitted Uses*). Such request is moot in light of the Board granting the above special exception
112 and, thus, the Board renders no decision regarding same.

113
114 13. FOR THE FOREGOING REASONS, the Board grant's the Applicant's foregoing request to
115 change from one nonconforming use to another as more fully described herein.

116
117 **MILLERSVILLE BOROUGH ZONING**
118 **HEARING BOARD**

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120 By: _____
121 **Lindsay Gerner, Chairperson**

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123 _____
124 **Vickie Usciak**

125
126 _____
127 **W David Sykes**

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129 Dated and filed December 22, 2022 after public notice and hearing duly held on November 17, 2022.

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133 **APPEALS DEADLINE**

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135 **ALL APPEALS OF THIS DECISION MUST BE FILED WITH THE LANCASTER**
136 **COUNTY COURT OF COMMON PLEAS, LANCASTER COUNTY, PENNSYLVANIA,**
137 **WITHIN THIRTY (30) DAYS OF THE DATE OF SERVICE OF THIS DECISION.**

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140 **PROOF OF SERVICE**

141
142 The undersigned hereby certifies that the **Date of Service of this Decision** is on December 22, 2022, and it was served
143 upon the persons at their respective addresses and in the manners as follows [*applicable boxes* are checked]:

144
145
146 **PERSONS SERVED:**

147 ***Applicant:***
148 **Perry Family Land Co.**
149 2884 Safe Harbor Road
150 Millersville, PA 17551

151
152
153 ***Applicant's Attorney:***
154 **George T. Cooke, Esquire**
155 Blakinger Thomas
156 28 Penn Square
157 POB 1889
158 Lancaster, PA 17608-1889

146
147 **METHOD OF SERVICE:**

148 Hand delivery
149 Ordinary United States first class mail

150 Hand delivery
151 Ordinary United States first class mail

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159 DATED: December 22, 2022

160 _____
Greg Sahn, Millersville Boro. Mgr.