**Special Uses and Appeals Board Meeting**

**6:00PM Tuesday, August 14, 2012**

**Perry City Offices 3005 South 1200 West Perry Utah**

**Board Members Present:** Chairman Mark Stratford, Board Member Jim Felix, Board Member Boyd Hirschi, Board Member Jon Rakham

**Excused Board Members:** Board Member Suresh Kulkarni, Board Member Kim Barnard, and Board Member Bruce Howard

**Others Present:** Duncan Murray, City Administrator/Attorney; Susan K Obray, Minutes Clerk; Boyd Young, and Travis Coburn

1. **Approx. 6:00 pm - Call to Order, Opening Ceremonies, and Public Hearings**
2. Call to Order and Pledge Allegiance to the U.S. Flag

Chairman Stratford called the meeting to order and asked Board Member Hirschi to lead the audience in the Pledge of Allegiance

1. Declare Conflicts of Interest, If Any

Chairman Stratford asked for conflicts of interest; there were none.

1. Review the Agenda (and Possible Motion to Change the Order of Agenda Items)

No changes to the agenda

1. Approve Minutes for February 2, 2012

**MOTION**: Board Member Hirschi moved to approve the February 2, 2012 minutes. Board Member Stratford seconded the motion. All in favor.

 **E.** **No** Public Hearing(s)

**2. Approx. 6:15 pm – Training**

 **A.** Information Regarding Nonconforming Uses/Structures and Limited Nonconforming

 Uses/Structures

Duncan Murray explained this board has not had this type of application before and felt this training information regarding nonconforming uses/structures and limited nonconforming uses/structures would be helpful. Mr. Murray said that Perry City has an ordinance for limited nonconforming uses (or permits issued by mistake) and this could apply to the application for this meeting. Mr. Murray stated that the state law regarding regular non-conforming uses is: (1) at the time it was built it did comply with the ordinances at that time or maybe there wasn’t a zoning ordinance and so it was allowed; (2) the use has been maintained continuously since then; (3) and subsequently the ordinances have changed and so it does not meet the city’s current ordinances. Mr. Murray said if you can prove these elements, then the city must grant the certificate of non –conforming use, because it was legal at the time it was permitted (referred to as “Grandfathered”). Mr. Murray referred to page 3 Title 65 of the Perry City Ordinance: it says if a building or structure is vacant and/or remains unoccupied by a nonconforming use for a continuous period of one (1) year, the non-conforming status could be lost. Mr. Murray explained in state law some communities have ordinances indicating that if a non-conforming use is destroyed by fire or casualty, it may not be rebuilt. These ordinances are invalid under state law. He said if the applicant can show these three elements, then it is still a valid use and maybe rebuilt. Mr. Murray stated you can have a reasonable rule and that is the one year rule. Mr. Murray explained that for a nonconforming use, the three elements are: (1) the applicant did comply with the ordinances when established; (2) Use maintained continuously (without lapse of one year or more); (3) Does not comply with current ordinances (which have changed). If you can prove all three elements, then a certificate must be granted. Mr. Murray continued to explain that Perry City has something unique in the city and that is the Limited Nonconforming Uses and limited non complying structures. He said this is a permit issued by mistake which means: (1) it did not comply with the ordinances when it was established, but the city allowed it anyway by mistake; (2) the use is maintained continuously (without lapse of one year or more); (3) it does not comply with current city ordinances, and (4) the city did something clear and affirmative that the applicant reasonably relied upon. He explained that if the applicant can prove all 4 elements, the board may grant a certificate which shall be limited in 2 ways: (1) no “rebuild” and no “expansion” of use; and (2) and may be limited in other ways (limited period of time before use ends, conditions for parking, etc.). He said the city apparently did something clear and affirmative that the applicant relied upon; by issuing a business license, the city took some formal action. He said that the city has an ordinance regarding sufficient parking. He explained it is the boards duty to see if there is adequate parking; and if there isn’t, then this process could ensure there is sufficient parking. Mr. Murray stated only the special uses and appeals board can grant certification for a limited non- conforming use or limited non complying structure. If the applicant does not like the decision made at this meeting, then he could appeal it to the administrative law judge within 10 days.

**3.** **Approx 6:25pm-Special Uses/Business Applications (Final Land Use/License**

 **Authority Actions)**

1. Application by Philip R. Young for a Certificate of Limited Nonconforming Use (and Special Business License) for Duplex Rentals at 2295 South 900 West in the R1 Zone (which does

not allow duplexes)

Boyd Young, Philip Young’s Brother, addressed the board. He said his brother lives in Las Vegas and received the information. He said this application is a non-complying situation; he said he felt this structure did not meet the duplex requirements when it was built. Mr. Young stated the house, when it was first built, was a temporary office building for Jay Call in Brigham City. He said Mr. Call had three houses and when he got his new building built, he put the three houses up for bid and Mr. Young’s dad was awarded one of the houses. He explained at the time his dad built this home, there was a building moratorium and there were many back and forth efforts with Perry City to have the house installed on the lot. He said it was finally allowed to install the house on the lot, but not hook it up to sewer, water, or utilities until the moratorium was lifted. The house was built on a basement; the upstairs and the downstairs have separate entrances. There is no connection between the two except for going outside. He said his dad has always considered it to be a duplex. Mr. Young stated that during construction he was told by the city that it could not be a duplex and so his dad quit building. He said the basement was half finished and was rented continuously from 1983 until the present (no renters currently, since the house is going to be sold). He said at some point in time, the city told Mr. Young’s mother to go ahead and spend the money to finish the basement. He said it was turned into a duplex and the city had 100% knowledge of this. He said in the packet there is a copy of a 2004 business license issued by the city for a duplex at 2295 South 900 West. He felt this met the first criteria which the city did something clear and affirmative that the applicant could reasonably rely on. Mr. Young stated first they were told to go ahead and finish it and spent all the money to do so; secondly, they obtained a business license for the duplex. Board Member Felix asked what the zoning was at that time. Mr. Young stated he believed it has always been R1 (which allows single family dwellings only; 10,000 square feet minimum). Mr. Murray concurred with that statement. Mr. Young said the city gave his mother permission to finish the house as a duplex and gave her a business license to operate it. He said Susan Obray called and asked if he had any other documentation he could bring to this meeting. Mr. Young brought copies of his 2010 taxes showing rental income. He brought documentation that he and his wife prepared showing the income for both upstairs rental and downstairs rental. Mr. Young stated he has been the executor of his mother’s estate for the last couple of years (before and after she passed away) because his mother had Alzheimer’s so bad. He said the business license was dated in 2004 and has 2002 and 2004 tax records to prove that is was rented as a duplex. He felt with this information he can show that is has been in continuous use. Mr. Young stated in the packet there is a letter dated September 8, 1986 written to his dad from the city which states: “Much to our regret after several notices, you have still not purchased a 1986 business license for your duplex”. He said Perry City has referred this house as a duplex back in 1986. Also, there was a similar letter dated in 1990. Board Member Felix said there seems to be a discrepancy with the city paperwork. He said the sewer service application (1984) refers to the house as a single family residence and the business license letters refer it as a duplex (1986 and 1990). Mr. Young stated he got the supplement packet information 5 minutes before the meeting and does not feel prepared (which was provided in advance to Philip Young, but not to Boyd Young). Chairman Stratford asked Mr. Young if he felt comfortable moving forward or if he want to re-schedule the meeting. Mr. Young was not opposed to finishing the scheduled meeting. Mr. Young said his dad knew that it was a single residence in 1984 and that is why he quit working on the basement until he had permission from the city to use it as a duplex. Mr. Young said there is discrepancy in the city’s paperwork, but there is evidence the city knew it was intended to be used as a duplex. Mr. Young stated whether or not there were other licenses issued he could not find or locate, he did not know. He said in the last few years that he has been his mother’s executor, the city has not asked for a license from him. If she had been asked about a business license, he would have not known because of her condition. He commented that if license papers had been mailed to his mother, they were not forwarded to him. Mr. Young said this is a limited non-complying structure, but he can show by the tax records and the information gathered, that the structure and the use have been maintained continuously. Mr. Young stated it does not comply with the current ordinance, in the fact that it is a limited non-complying structure says it did not comply when it was built, so it can’t be automatically grandfathered. He said the city has done something clearly affirmative that the applicant has reasonably relied upon. Mr. Young said the city has asked for licenses for the duplex and have issued those licenses for a duplex. Mr. Young asked the board if he has met their burden of proof. Board Member Hirschi asked for the last time it was licensed. Mr. Young said to his knowledge the 2004 license was the last time. Board Member Hirschi asked if it has been vacant that long. Mr. Young stated it has been fully rented. Mr. Young said he gets complementary copies of the tenant’s bills so he knows they are being paid. Mr. Young commented that the city has known up front that it has operated as a duplex. Board Member Hirschi asked it there has been a license issued each year. Mr. Young stated that as the executor in the last couple of years, there has not. He said if the license application was sent to his mother then he is unaware if they were paid and issued. Board Member Felix asked if the city has issued a license in the last 10 years. Susan Obray stated they went back the last two years and there has not been a license issued. Mr. Young stated if he had been informed that the duplex needed a license, it would have been taken care of. Chairman Stratford asked if the duplex has separate utility billings. Mr. Young stated it is a combined billing and has always been that way. Mr. Young stated when his dad hooked up the utilities; he did put in separate electric meter boxes. When his dad was told it could not be a duplex, he ran the house on a single meter and combined the two meters together with a jumper. He said when his mother was told she could operate it as a duplex, she just continued to use one meter and had the tenants each pay half. Chairman Stratford asked if the family has lived in the duplex or if it has always been rented. Mr. Young stated it has always been rented. Mr. Young stated at first, they started renting the upstairs only. Board Member Hirschi stated he remembers when it was first built there was a problem with it being too close to the road. Mr. Young stated he has all that documentation regarding that. Board Member Hirschi stated they had to take part of the roof off to make it fit. Mr. Young stated his dad went to the Board of Adjustment to get permission to put the house on a foundation, but was not hooked up until the moratorium was lifted. Mr. Young stated on the first building permit his dad checked “carport” and he gave it to the building inspector, but the building inspector ripped it up because of the moratorium. He said his dad filled out another building permit and missed the box that said “carport”, so in the process it was 3 feet too close to the street. Mr. Young stated on the plat map it shows a future right of way road between the duplex and Mr. Hudson’s home since the beginning of the concept of this house. Mr. Young stated he subdivided a lot off from his brother. Mr. Young sat down with Mr. Murray and went through documents that showed the future right of way to a cul-de-sac. Mr. Murray stated the current minimum right of way is 60 feet, but at that time it was 50 feet and the city approved it at that time. Mr. Young stated if the right of way would have been approved the front of the house would face south. Chairman Stratford asked when Boyd’s dad acquired the building. Mr. Young stated it was in 1982 or 1983. Chairman Stratford asked if Boyd recalled when his dad was asked to start building the second time. Mr. Young stated he thought it was after 1997 because it was after his dad’s death. He said somewhere between 1997 and 2000 it was finished. Chairman Stratford asked Mr. Young if he knew who the city contact was at that time and what the context was regarding the building permit getting issued at that time. Mr. Young stated he does not have any recollection of that, he said he didn’t know if there was a building permit issued or not. Mr. Murray stated it would be hard to find a record because the county does not keep the records that far back. Chairman Stratford stated he would like to know from the city’s side who gave the ok to build the duplex. Mr. Young stated to the best of his knowledge it was Mayor Skrobiszewski. Mr. Young stated it was not rented as a duplex until after his dad died. Chairman Stratford said he was confused by the letters written by the city dated 1986 and 1990 if the house was not being used as a duplex.

 Duncan Murray stated he will clarify that in his staff report. Duncan Murray reported the first issue is the business license, as Susan reported there hasn’t been one for the last couple of years. He said in all fairness, he was not sure if Mr. Young or his family got the business license renewals because there is a new business license technician. The second issue is every time an appeal is heard; everyone within 300 feet is notified. Mr. Murray stated Mr. Hudson called in and said he was opposed to this being considered a duplex. Board Member Bruce Howard (not present) expressed his concern in an e-mail in which he said “From the information presented in the email, I can see no compelling reason to grant a special use permit. The plat indicates to me that the proposed structure is being squeezed into the lot to fit within the available frontage. I am able to discern any benefit to Perry City to allow this request”. Third issue is the utilities. Mr. Murray stated he talked to the utility clerk and she indicated that there is one bill with two sewer billings, one water connection, one storm water billing, and two garbage cans, so the city recognizes that there are two units. Mr. Murray stated another issue is the 50 foot road. He said the letters dated 1986 and 1990 were sent to the address of 2270 south 900 west, that is where Mr. Young’s parents lived. They would have also received mailings for the 2270 south 900 west duplex (which is not an issue), and 2295 south 900 west duplex, which is an issue. He said the letter is ambiguous as to “which duplex” they were referring too. He stated another issue is the quickness of the application, which this application was dated July 27, 2012. When the applicant came in, he was informed of this process which could help him to have a legal remedy, he paid the filing fee, and the city staff started the process of putting the meeting together. Mr. Murray explained that the documentation dated January 9, 1984 was the initial sewer service application that indicated it is a single residence. He said this was during the time the applicant was trying to make it a duplex. The 2011 business license list was included in the packet to indicate Mr. Young was not on the list. Mr. Murray stated in all fairness, it’s probably because he was not sent a business license renewal. Mr. Murray does not believe that any permit has be issued for a few years, and the reason for this meeting is because a business license was recently filed for and denied by staff because it did not fit the zoning. Chairman Stratford asked if there was a parking issue and if it’s a duplex versus a single family residence. Mr. Murray commented that across the street from the duplex there a few single family houses, and Park Drive (900 West) is a rural road, not a fully dedicated full width street and no curb, gutter & sidewalk. The street is narrow with a small strip of asphalt. He said that the” duplex” in question is surrounded by an orchard, and Dick Hudson lives to the south. He commented that there is a 2 car carport where 2 cars could easily fit. Mr. Murray stated that most single family residences have the standard amount of 2 parking places. He said if this was considered a duplex then they would have to have 4 parking places. If this was a fully improved street, they would be parking acceptable on the street. The city plans in the future to have the street be 50 foot fully dedicated, improved right of way with interregnal sidewalk with no grass strip. Mr. Murray stated if that was already the case, there would be room to park the cars on the street, but with the unimproved surface, it is impossible until some kind of improvement is in place. Mr. Murray stated there is plenty of frontage, so it could be done. Mr. Murray told the board because it is a conditional use permit process, the board can put reasonable conditions if they do grant the certificate. Mr. Murray gave an example, that a condition could be that it needs to have ample parking for 4 cars. He said that it could be easily done with some minimal improvements, such as gravel at the edge of the right of way or the side of the driveway. Mr. Murray said the main issue is the health and safety issue. Chairman Stratford asked if the lot has been subdivided. Mr. Young stated in his mother’s estate documents, it says his brother should receive a half acre lot. He said his brother asked if there was any way he could break this ½ acre lot into two ¼ acre lots. Mr. Young stated his brother asked him the day before it was to go to City Council for final approval. He went to Hansen and Associates and the side yard requires 8 feet. Without surveying everything, he measured it 8 feet from the roof line and not the foundation. Hansen and Associates told Mr. Young that from the roof line, it was 10,001 square foot, so it meets the ¼ acre lot requirements. He said as of this date there has not been an application to develop this lot into two ¼ lots. Mr. Murray stated that this is a concept plan and has not actually been divided. Chairman Stratford asked if this were a legal duplex, is there a city ordinance about the size of the lot for a duplex compared to lot for a single family residence. Mr. Young said there is a covered carport that has room to fit two cars. He said they had to cut the side of the carport off to meet the 30 foot setback, he said so past the end of the carport which completely covers two vehicles there is another 30 feet before you get out to the curb area you need 20 to fit another car. He said that on the existing gravel driveway, there is enough room to put 4 cars. Chairman Stratford said that if people have been living in the duplex for 15 years, how they have been parking. Mr. Young stated the covered carport faces the street, with two cars under the carport and two cars behind. He said at one point they had someone who did not want to rotate cars, so they parked on the north side of the house in the grass. Chairman Stratford asked how the driveway comes into the carport. Mr. Young stated the driveway comes in from the west and faces the city street. Mr. Murray answered the Chairman’s previous question regarding lot size. He said in the R1 zone you can’t have a duplex unless you are grandfathered in, then it is referred to the R2 zone, which allows for 1 unit for 5000 square feet. He said so you could have a duplex on a 10,000 foot lot, there is ample square footage. Chairman Stratford said in looking at the information that was given, and the rules that apply, are we looking at an omission of action by the city or an affirmative action. Mr. Murray stated in his opinion, an affirmative action. Chairman Stratford said the board is looking at elements 1, 2 and 4. (1) The city did something clear and affirmative; (2) the city did something the property owner relied on; and (4) the applicant inquired, conferred, and did so.

Travis Coburn, 2325 South 900 West addressed the board and stated he received a letter and he is opposed to any duplexes on 900 west because it will lower his property value. He said his main concern is that if this duplex is granted, is it going to open up the rest of the orchard. Chairman Stratford asked how long he has lived on that street. Mr. Coburn said 4 years. Chairman Stratford then asked him if he noticed at any time this “duplex” was not occupied. Mr. Coburn said the basement duplex was not occupied because of mold issues. He said the basement duplex has not been occupied since he lived there. Chairman Stratford told Mr. Coburn that the board is not considering and does not have authority to grant a zone change for additional; just a review of the existing duplex to continue to use it as such.

 Mr. Young stated his 2010 taxes show that it was rented because money was collected for rent. Mr. Young stated they had to do repairs because of the mold; he started the repairs in August or September of 2011 and it has not been occupied since. Board Member Rackham asked if a duplex is treated by the city as a business, so a business license is required. Mr. Murray stated yes, any 2 or more units requires a business license, unless owner occupied. Board Member Rackham asked where they were granted permission to use that land because of long history, so they were granted a special permit, is the permit transferable. Mr. Murray stated this is where it fits in a potential limited non-conforming use; clearly none of the actions by the city ever fit the ordinance. He said there is no record at all to support this in the ordinance and that the city followed the ordinance, it did not line up. If you could establish the ordinance did not allow for it, and the city did not allow it, then that is another issue. Mr. Murray stated the city has been charging him 2 sewers on the utility bill for the last couple of years. Apparently, the city through its actions acknowledges there is a “duplex” there and has received money from it. Mr. Murray stated that business licenses are only on a year by year basis. Mr. Murray stated the city’s prior actions do not necessarily run with the land, since there was never an application filed for a duplex. There is a common set of ownership because it has stayed in the family. Board Member Rackham asked if there were any minutes that would cover this issue. Mr. Murray stated all the information that the city had is in their packets. Mr. Young said the letters regarding the business licenses are in reference to the duplex at 2270 south and not the 2295 south address. He said that the duplex at 2295 south was rented out as a single family unit until after 1997. Board Member Felix said the city has issued a license for a duplex for the last 30 years. It has been licensed as 2 houses without any conformance of meeting the city’s residential requirements of the R1 zone. Board Member Rackham stated when he was on the Planning Commission and City Council, one of the things that he was going to do was to stick with what was in the ordinance books, and follow it. Board Member Rackham stated it is not really clear, whether the license lapsed for a year and then was rented again. He questioned if there was always someone renting the duplex within a year’s time, and why the city would continue to issue licenses if the rental lapsed. He said the city cannot monitor the duplex the whole time, but could bill the owner for fees. Board Member Rackham stated now the owner can sell it quicker if it is a duplex rather than a single family dwelling. Board Member Hirschi asked Mr. Young if his brother is going to sell it as a duplex or a single family dwelling. Mr. Young said if it is approved he will sell it as a duplex.

**MOTION:** Board Member Felix moved to either make a motion or to continue with further discussion. No second. Motion failed.

Further discussion continued.

Board Member Rackham asked Mr. Young if it has ever lapsed within a year’s period of time. Mr. Young said that it they are within 12 months since the basement renter has left. Board Member Rackham asked out of all the years between 1984 and 2012, has there been a year where it has not been occupied by 2 sets of residents. Mr. Young said from 1984-1998 or 1999 it was rented as a single family dwelling, in 1998 or 1999 is when his mother was given the ok to rent it as a duplex, it has been finished and rented continuously as a duplex minus the last 10 months, during which time repairs have been made. Chairman Stratford said the date we are looking for is 1998 to 2012. Mr. Young stated there has not been a year lapse.

**MOTION**: Board Member Felix moved to close input. No second. Motion failed.

Board Member Felix said this duplex has been nonconforming for a long time and the city has looked the other way and it has developed into a permanent situation. He said tonight does the board change it to be legally nonconforming and legal to be a duplex.
Board Member Rackham said the ordinance does not allow it. Board Member Hirschi asked if the business license has to be renewed every year. Chairman Stratford said if the board approved it today it would go with the property as a duplex as long as there is not a one year break. The business license would be approved with this. Mr. Murray said the 2 things that are automatically included in the ordinances are it cannot be expanded or re-built. Mr. Murray said if the board does put a limit on the time, they would want to make findings as to why they are doing it and also they could put conditions on the parking or anything else they felt was an issue. Board Member Felix said the business license and the granting of the limited non-conforming use are two separate items. Mr. Murray stated yes, but the business license can’t be granted if the limited nonconforming use isn’t granted. Chairman Stratford said the fact that he has or hasn’t had a business license off and on he said he is not sure that sways him one way or another except he shows him the city knew something was going on. He said the thing that does matter is what went on when they were told to invest money and finish the basement. Board Member Hirschi said the thing that bothers him is that there is only one water service and one sewer service.

**MOTION**: Board Member Felix moved to recognize the structure as a limited nonconforming use as a duplex in a single family zone. Chairman Stratford seconded the motion. Roll call vote.

Chairman Stratford asked Board Member Felix if there were any conditions added to the motion. Board Member Felix stated no.

Board Member Felix yes Chairman Stratford yes

Board Member Hirschi no Board Member Rackham no

Motion failed.

Chairman Stratford said they could table the meeting and have it another date or think of some limitations to make it acceptable or not. Board Member Felix asked for the reasons for the “No” votes. Board Member Rackham said he voted no because there were some things that were said that were hearsay. Also, there needs to be more limitations to be treated as a duplex. Board Member Hirschi said the board needs to get it to conform. Board Member Felix said the thing that has bothered his is a duplex among single family residences, but it has already been a duplex and has been for years.

**MOTION TO RECONSIDER:** Board Member Felix moved to table this meeting and have another meeting when there are more members. No second. Motion failed.

**MOTION TO RECONSIDER:** Board Member Rackham moved to approve the certificate of limited nonconforming use to be used as a duplex, on the basis that the owner can provide adequate parking per Perry City Ordinances for the tenants, and if the house burns down or if there is on year of no use for either unit, the certification is automatically revoked. Also, have separate utility billings. Board Member Felix seconded the motion. Roll call vote.

Discussion:

Mr. Young said in order to have separate pipes for water and sewer; it would cause a demolition of the basement, sheetrock, and foundation.

Mr. Murray stated that it would be easy with the Caselle financial software, where the city could charge a separate bill to each tenant for water, sewer, garbage, and storm water. He said the only problem would be the culinary water and the overage. He suggested that the tenants could equally pay 50% of the water overage. He said then you would not physically need a separation of water lines.

Roll Call Vote:

Board Member Felix yes Board Member Hirschi yes

Board Member Rackham yes Chairman Stratford yes

**Motion Approved:** Yes 4 No 0

**MOTION:** Board Member Felix moved that Mr. Young purchase a business license for the duplex (effectively approving the special business license). Board Member Hirschi seconded the motion. All in favor.

**4**. **Approx. 6:45 pm – Questions and Adjourn**

  **A.** Questions by Special Uses and Appeals Board Members

 **B.** Motion to Adjourn

**MOTION:** Board Member Felix moved to adjourn. Chairman Stratford seconded the motion. All in favor.