



## COFONE CONSULTING GROUP, LLC

CHRISTINE A. COFONE, PP, AICP  
*Principal*

November 8, 2017

Lance Landgraf, AICP, PP  
Director of Planning  
Casino Reinvestment Development Authority  
15 South Pennsylvania Avenue  
Atlantic City, NJ 08401

RE: **Dritan Jonuzi**  
**1708 Atlantic Avenue**  
**Block 156, Lot 10**  
**Application #2017-11-2283**

Dear Mr. Landgraf:

As per your direction, we have reviewed the above-referenced development application. In the subject application, the applicant is seeking a Certificate of Nonconformity for the use and structure at 1708 Atlantic Avenue, aka Block 156, Lot 10.

The property is currently occupied by a structure that contains a vacant commercial space on the ground floor and one apartment on the second floor. The property is located within the CBD District, which permits multi-family residential units on the second floor and above, whereas the existing use only has one residential unit.

As part of our analysis, we undertook the following tasks: an inspection of the subject premises; a survey of surrounding land uses; review of the City of Atlantic City Zoning Ordinance and Zoning Map; and review of the filed application materials, including supporting evidence.

We offer the following analysis and comments for your consideration.

### **Description of Site and Summary of Development Proposal**

The Site is occupied by a structure that contains a vacant commercial space on the ground floor and one apartment on the second floor. The applicant is not seeking any modifications to the site at this time. The only action sought is a certification of a non-conforming use.

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125 Half Mile Road, Suite 200 • Red Bank, New Jersey 07701 • Office: 732.933.2715 • Fax: 732.933.2601 • Cell: 732.439.6400

E-mail: [ccofone@cofoneconsulting.com](mailto:ccofone@cofoneconsulting.com) • [www.cofoneconsulting.com](http://www.cofoneconsulting.com)



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### **Surrounding Land Uses**

The subject property is located in an area generally characterized by commercial uses on the ground level and apartments above.

### **Zoning Compliance**

The property is located in the CBD “Central Business” District, which purpose is enunciated at Ordinance Section 163-59(A)(3) as follows:

The CBD Central Business District is established to preserve and enhance commercial, financial, retail and similar activities and services of importance to the existing central business district. The district is intended to accommodate a wider variety of commercial uses than any other district. High land values, space limitations and public convenience justify greater intensity of use than in any other commercial district.

The residential use, one apartment on the second floor, is not permitted. The NC-1 Zone only permits three or more units at the second floor or above.

The term “nonconforming use” is defined at N.J.S. 40:55D-5 as “a use or activity which was lawful prior to the adoption, revision, or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reason of such adoption, revision or amendment.”

N.J.S. 40:55D-68 provides that “[a]ny nonconforming use or structure existing at the time of the passage of an ordinance may be continued upon the lot or in the structure so occupied and any such structure may be restored or repaired in the event of partial destruction thereof.”

The burden of proof in establishing and proving the existence of a nonconforming use is upon the Applicant. According to the 2011 Edition of New Jersey Zoning and Land Use Administration at 11-2.2, titled “Burden of proof,” the Applicant should be very clear in explaining the prior usage of the subject property:

It is important that the evidence presented to the board establish exactly what the use was at the time of adoption of the ordinance, its character, extent, intensity and incidents.

Further at 11-2.3, titled “Elements of proof,” it states:

In determining the status of a purported nonconforming use or structure, the board of

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adjustment must trade the nonconforming history of the property back to the zoning ordinance in existence at the time the use in question commenced in order to establish that it was in fact conforming when commenced or existed prior to an amendment which made it nonconforming.

If the residential usage of the property had changed at any given time contrary to the use for which an applicant seeks a certificate of nonconformity – and is therefore not a continuous usage of the property – then it is not entitled to protection. Municipal records, such as tax certificates and certificates of occupancy, have been found to be sufficient by the judiciary (*Eltrym Euneva v. Keansburg*, 407 N.J. Super. 432, 438-439 (Law Div. 2008)).

According to the 2016 Edition of New Jersey Zoning and Land Use Administration at 11-3, titled “Abandonment,” there is a two-step process involved in order for the board to determine the existence of a legal non-conforming use: 1) proof that the use was lawful at the time of the creation of the zoning ordinance and 2) the use had not been abandoned during the period in which it was a prior nonconforming use or structure.

However, note that courts have determined that simply not utilizing the nonconforming condition does not constitute abandonment. Abandonment occurs with the following acts: 1) an overt act or some failure to act which carries a sufficient implication that the owner neither claims nor retains any interest in the subject matter of the abandonment and 2) an intention to abandon.

### Planning Analysis and Issues for Consideration by the Board

We offer the following for your consideration in reviewing the Application:

- 1) The burden of proof is on the Applicant to prove the existence of a legal non-conforming use prior to the adoption of the ordinance establishing the CBD District. The Applicant is also burdened to prove that the use had not been abandoned.
- 2) The Applicant should provide testimony regarding all supporting historical public record documentation to prove the existence of a legal non-conforming use.
- 3) The test year appears to be 1979. The Applicant has submitted documentation in support of the certification, including a 1961 property record indicating a commercial and apartment use. CRDA has provided a 1952 Sanborn map (updated to 1964) showing the building.

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I would be happy to address any questions or comments on the above at the public hearing.

Respectfully submitted,

Christine A. Nazzaro-Cofone, AICP, PP  
CRDA Consulting Planner

cc: Robert L. Reid, AICP, PP, Land Use Regulation Enforcement Officer  
Paul G. Weiss, Esq., Chief Legal Counsel  
William England, PE, Board Engineer  
Applicant's Attorney  
Applicant's Engineer