

Casino Reinvestment Development Authority
Land Use Regulation and Enforcement
Division

Review Memorandum

TO: Lance Landgraf, AICP, PP, Land Use Hearing Officer

FROM: Robert L. Reid, AICP, PP, Land Use Regulation Officer

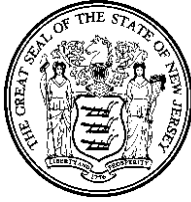
COPY: Applicant, Scott Collins, Esq., File

SUBJECT: Certificate of Nonconformity Request for the existing 3 units to be converted back to 2 units.
Review Application and Support Documents
Application #2024-09-3705
Applicant: Lina Hong
142 S Bellevue Avenue
Block 36, Lot 77
Atlantic City, NJ

DATE: September 13, 2024

The applicant, Lina Hong has submitted an application to the Casino Reinvestment Development Authority "Authority" requesting a Certificate of Non-Conformity for existing 3 units to be converted into 2 residential units at 142 S Bellevue Avenue, Lot 77 in Block 36, located in the RC District. The Applicant seeks a Certificate of Non-Conformity pursuant to the Municipal Land Use Law (N.J.S.A. 40:55D-68) for two residential apartments.

The Municipal Land Use Law provides in part that any 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. (NJSA 40:55D-68) The owner can submit an application to the city for a Certificate of Land Use Compliance. A nonconforming use is one which that lawfully existed on the property prior to the adoption of a zoning ordinance but which the ordinance does not now permit in the particular zone. (NJSA 40:55D-5)



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

Evidence List / Documents submitted and/or researched to support the request for Certificate of Non-Conformity:

Application Form for Certificate of Non-Conformity, dated 09-09-2024;
Deed dated 08/09/2024;
A H Mueller Map Atlas, Plate 6, dated 1908;
Sanborn Map Company Atlas, Plate 7, dated 1921, updated 1926;
Ord. # 34 of 1929 - Building Zone Ordinance (First development ordinance for Atlantic City)
Building Zone Map, dated 01-01-1950, supplement to Building Zone Ordinance (Ord #34 of 1929);
Sanborn Map Company Atlas, Plate 7, dated 1952, updated 1964;
Property Record Card assessment records, dated 1961 to 1982;
Ord. # 23 of 1977 - Interim Development Ordinance.
Ord. # 27 of 1979 – Land Use Ordinance
Sanborn Map Company Atlas, Plate 7, dated 1997;
AC Certificate of Land Use Compliance dated 11/16/2005;
Property Record Card assessment records, updated 12/20/2005;
Property Survey dated 08/14/2024;
Property Record Card assessment records, dated 07/29/2024.

The documents listed above have been reviewed and the following is offered:

Plate 6 in A.H. Mueller Atlas depicts a brick row home in 1908.

Plate 7 in Atlas of Atlantic City prepared by the Sanborn Map Company, dated 1921, updated 1926, depicts 3 Story brick dwelling.

This was before the Building Zone Ordinance was adopted in 1929. According to the Building Zone Map, dated 01-01-1950, the subject property was located in Business No. 2 zone.

Ord. # 34 of 1929 permitted commercial and apartments among other types of residential uses in Business No. 2 zone. The ordinance was silent on parking requirements.

Plate 7 in Atlas of Atlantic City prepared by the Sanborn Map Company, dated 1952, updated 1964, depicts 3 Story brick dwelling.

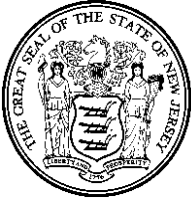
Property Record card (Building Record card reverse) dated 1961 through 1982 has two family use box checked off. Plumbing box checked with 2 bathrooms and 2 kitchen sinks.

Ord. # 23 of 1977 - Interim Development Ordinance is the first ordinance to require parking for each dwelling unit.

Ord. # 7 of 1979 – Land Use Ordinance is second ordinance to require parking for each dwelling unit.

Plate 7 in Atlas of Atlantic City prepared by the Sanborn Map Company, dated 1997, depicts 3 Story brick residence.

AC Certificate of Land Use Compliance (CLUC) dated 11/16/2005 issued for a 3 family.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

Property Record Card assessment records, updated 12/20/2005 includes 3 living units.

Property Record Card assessment records, dated 07/29/2024 indicates 2 units.

Property Survey dated 08/14/2024 indicating 4 story Masonry Dwelling.

It should be acknowledged that the map atlases indicating dwelling were based on exterior inspection only, and not an interior inventory of units as the common practice with tax assessment inspections.

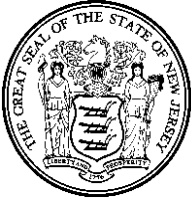
The Applicant must meet the burden of proof for the relief requested. The Applicant has the obligation to present evidence to explain the history of the use. Specifically, the Applicant must provide evidence that the non-conforming use lawfully existed prior to the adoption of Ordinance and/or State Regulation which rendered the use nonconforming. Applicant must also provide evidence that such use has been continuous, unchanged and was not abandoned.

The Applicant must meet the burden of proof for the relief requested under the Municipal Land Use Law in order for the Hearing Officer to recommend that the application be approved by the Authority.

The applicant asserts that the property lawfully existed as 2 residential units from 1961 to about 2005, and desires to maintain the 2 units.

The Applicant's evidence and research of the public record documents, demonstrate that the building was originally a single-family dwelling from before 1908 to 1961 (over 53 years) when the Property Record Cards first references 2 units. The 3 story brick building, over a basement, was subsequently modified from 2 units to 3 units sometime after 1982 and before 2005. This is according to a Certificate of Land Use Compliance (*Foot note 1) that was issued 11/16/2005, and a Property Record Card assessment record, updated 12/20/2005 referencing 3 living units. In 1977 when the first parking requirements went into effect. It appears the building was modified into a 3 unit dwelling after 1977 with no record of land use approvals being granted. The building was a 3 story brick dwelling before the first land development ordinance (Building Zone Ordinance) was adopted in 1929, and was modified into a 2 unit before parking requirements went in effect in 1977. There is no record of a parking variance being granted to allow the 3rd unit after 1977. There is no record of a construction permit for the 3rd unit.

In addition, there is no record of a density variance being granted for the 3rd unit. (*Foot note 2). The 2 units lawfully existed before the maximum density requirements were in effect. This Non-Conforming Use Certification includes the density for the 2 units. It does not include the 3rd unit since it was not lawfully approved before the effective date of the maximum density requirements.



Casino Reinvestment Development Authority Land Use Regulation and Enforcement Division

The documentary evidence provided by the Applicant appears to be sufficient to consider the granting the requested relief for the existing three units to be converted into two units. Such a conversion from 3 units to 2 units is consistent with *Poulathas v. Atlantic City Zoning Board*, 282 NJ Super. 310 (NJ Super. 1995) – 660A.2d 7, Decided June 28, 1995.

The Applicant's evidence and research of the public record documents, demonstrate that the property building was originally a 3-story brick dwelling. According to public records reviewed (from before 1961 to about 2005) the building included two units.

The building was a three-story brick structure at the time the first land development ordinance (Building Zone Ordinance) was adopted in 1929. The three-story brick structure included 2 apartments since 1961 before parking requirements went in effect in 1977. The 3-story brick structure including the 2 apartments lawfully existed before 1977 and, at the time N.J.A.C. 19:66 was in effect on 01/02/2018, which rendered such use nonconforming.

For all of the foregoing reasons, the Land Use Regulation Enforcement Officer recommends the request for a Non-Conformity Use Certification for two apartments use be considered. Should the Authority grant of approval of this Application, it should be expressly conditioned upon all applicable requirements of the city of Atlantic City Code, NJAC 19:66 Land Use Regulations, and the requirements of any City agency, board or authority. Any approval granted in accordance herewith shall be further expressly conditioned upon the Applicant obtaining all other necessary governmental approvals, and compliance with all Federal, State and local laws. This includes providing architectural plans prepared by a licensed architect for the structure as part of the requirement to secure a Certificate of Land Use Compliance.

*Foot note 1 - It should be noted that the Land Use Administrator had no authority to issue a CLUC for a 3-family use. The Certificate of Land Use Compliance for the 3rd unit should be considered invalid without the prerequisite variance relief required. (Case Law - Chelsea Neighborhood Association v. City of Atlantic City; Dept. of Planning, Div. of Land Use Administration, and Jay Fiedler, Administrator. The Order for Summary Judgement dated 11/13/1992 (DOCKET NO. ATL-L-001994-92 – PW).

*Foot note 2 – In accordance with NJAC 19:66 -5.10, (a) 1. Iv. (13) (effective 01/02/2018) the maximum density permitted is 50 DU/AC (or 871.2 SF per unit minimum lot area.). The site is only 900 SF. With 2 units the density is at 450 SF per unit. With 3 units the density is at 300 SF per unit.